The House met at noon and was called to order by the Speaker pro tempore (Mr. Bartlett of Maryland).

DESIGNATION OF THE SPEAKER PRO TEMPORE

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

WASHINGTON, DC, November 25, 2003.

I hereby appoint the Honorable Roscoe G. Bartlett to act as Speaker pro tempore on this day.

J. Dennis Hastert,
Speaker of the House of Representatives.

PRAYER

The Reverend Dr. Barry C. Black, Chaplain, United States Senate, offered the following prayer:

Eternal and dependable Creator, giver of the abundant harvest, the refuge of all who flee to You, the helper of those in need and the one sure resource in times of trouble, Lord, thank you for harmonizing the world with seasons and climates, sowing and reaping, color and fragrance.

We praise You, for You are the substance that sustains us in each of life’s seasons. In time’s rapid passing, remind us of life’s brevity and teach us to number our days.

Lord, thank You for all the beauty in our world, for the loveliness of Earth and sea and sky. Thank You for great music and great books, for prose and poetry. Thank You for the nobility You have placed in human hearts, for our military people who love their country until even self is forgotten. Thank You for the Members of this body, who struggle with complex issues and labor for a world at peace. Thank You for loved ones, without whom life would never be the same.

Lord, thank You also for obstacles, delays, challenges, trials, and even enemies that make us stronger. Above all, thank You for Your gift of salvation. Accept this our sacrifice of Thanksgiving and praise, for the sake of Your glorious name. Amen.

NOTICE

If the 108th Congress, 1st Session, adjourns sine die on or before November 26, 2003, a final issue of the Congressional Record for the 108th Congress, 1st Session, will be published on Monday, December 15, 2003, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–410A of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 12, 2003. The final issue will be dated Monday, December 15, 2003, and will be delivered on Tuesday, December 16, 2003.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators’ statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at “Record@Sec.Senate.gov”.

Members of the House of Representatives’ statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at http://clerkhouse.house.gov/forms. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT–60 of the Capitol.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the Congressional Record may do so by contacting the Office of Congressional Publishing Services, at the Government Printing Office, on 512–0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

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

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

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. The Chair will lead the House in the Pledge of Allegiance.

Mr. EDWARD B. JOHNSON of Maryland led the Pledge of Allegiance as follows:

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

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate had passed without amendment bills and concurrent resolutions of the House of the following titles:

H.R. 421. An act to reauthorize the United States Institute for Environmental Conflict Resolution, and for other purposes.

H.R. 1367. An act to authorize the Secretary of Agriculture to conduct a loan repayment program regarding the provision of veterinary services in shortage situations, and for other purposes.

H.R. 1883. An act to increase, effective as of December 1, 2003, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes.

H.R. 1821. An act to award a congressional gold medal to Dr. Dorothy Height in recognition of her many contributions to the Nation.


H. Con. Res. 69. Concurrent resolution expressing the sense of Congress that Althea Gibson should be recognized for her ground breaking achievements in athletics and her commitment to ending racial discrimination and prejudice within the world of sports.

H. Con. Res. 71. Concurrent resolution recognizing the importance of Ralph Bunche as one of the great leaders of the United States, the first African-American Nobel Peace Prize winner, an accomplished scholar, a distinguished diplomat, and a tireless campaigner of civil rights for people throughout the world.

H. Con. Res. 106. Concurrent resolution recognizing and honoring America's Jewish community on the occasion of its 350th anniversary, supporting the designation of an "American Jewish History Month", and for other purposes.

The message also announced that the Senate has passed with amendments in which the concurrence of the House is requested, bills and a concurrent resolution of the House of the following titles:

H.R. 100. An act to restate, clarify, and revise the Soldiers' and Sailors' Civil Relief Act of 1940.

H.R. 622. An act to provide for the exchange of certain lands in the Coconino and Tonto National Forests in Arizona, and for other purposes.

H.R. 1006. An act to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species.

H.R. 1022. An act to protect the Carter G. Woodson Home National Historic Site in the District of Columbia, and for other purposes.

H. Con. Res. 339. Concurrent resolution providing for the sine die adjournment of the first session of the One Hundred Eighth Congress.

The message also announced that the Senate has passed bills and concurrent resolutions of the following titles in which the concurrence of the House is requested:

S. 33. An act to authorize the Secretary of Agriculture to sell or exchange all or part of certain lands in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve certain wildlife refuges.

S. 391. An act to enhance ecosystem protection and the range of outdoor opportunities protected by statute in the Skykomish River valley of the State of Washington by designating certain lower-elevation Federal lands as wilderness, and for other purposes.

S. 425. An act to revive the boundary of the Wind Cave National Park in the State of South Dakota.

S. 434. An act to authorize the Secretary of Agriculture to sell or exchange all or part of certain parcels of National Forest System land in the State of Idaho and use the proceeds derived from the sale or exchange for National Forest System purposes.

S. 435. An act to provide for the conveyance by the Secretary of Agriculture of the Sandpoint Federal Building and adjacent land in Sandpoint, Idaho, and for other purposes.

S. 452. An act to require that the Secretary of the Interior conduct a study to identify sites and resources to recommend alternatives for commemorating and interpreting the Cold War, and for other purposes.

S. 553. An act to provide for the implementation of air quality programs developed in accordance with an Intergovernmental Agreement between the Southern Ute Indian Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes.

S. 610. An act to amend the provision of title 5, United States Code, to provide for workforce flexibilities and certain personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes.

S. 714. An act to provide for the conveyance of a small parcel of Bureau of Land Management land in Douglas County, Oregon, to the county to improve management of and recreational access to the Oregon Dunes National Recreation Area, and for other purposes.

S. 811. An act to support certain housing proposals in the fiscal year 2003 budget for the Federal Government, including the downpayment assistance and HOME Investment Partnership Act, and for other purposes.

S. 1003. An act to clarify the intent of Congress with respect to the continued use of established commercial outfitter hunting camps on the Salmon River.

S. 1270. An act to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize the President to carry out a program for the protection of the health and safety of residents, workers, volunteers, and others in a disaster.

S. 1499. An act to adjust the boundaries of Green Mountain National Forest.

S. 1527. An act to provide human capital flexibilities with respect to the GAO, and for other purposes.

H. Con. Res. 82. Concurrent resolution recognizing the importance of Ralph Bunche as one of the great leaders of the United States, the first African-American Nobel Peace Prize winner, an accomplished scholar, a distinguished diplomat, and a tireless campaigner of civil rights for people throughout the world.

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 1) "An Act to amend title XVIII of the Social Security Act to provide for a voluntary program for prescription drug coverage under the Medicare Program, to modernize the Medicare Program, to amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings security accounts and health savings accounts, to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements, and for other purposes."

The message also announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2622) "An Act to amend the Fair Credit Reporting Act, to prevent identity theft, improve resolution of consumer disputes, improve the accuracy of consumer reports, records, make improvements in the use of, and consumer access to, credit information, and for other purposes."

The message also announced that the Senate agrees to the amendment of the House of Representatives to the bill (S. 1768) "An Act to extend the national flood insurance program."

The message also announced that pursuant to Public Law 94-201, as amended by Public Law 105-275, the Chair, on behalf of the President pro tempore, appoints Dr. Daniel Botkin, President, California Academies of Science, a member of the Board of Trustees of the American Folklife Center of the Library of Congress, vice Susan Barksdale Howorth, of Mississippi.
CONGRESSIONAL RECORD—HOUSE

Mr. YOUNG of Florida submitted the following conference report and statement on the bill (H.R. 2673) making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004, and for other purposes:

[The conference report will be available in Book II of the CONGRESSIONAL RECORD.]

COMMENTS REGARDING CONFERENCE REPORT ON H.R. 2673

(Mr. OBEY asked and was given permission to speak out of order for 7 minutes.)

Mr. OBEY. Mr. Speaker, I wanted to take this time to comment on the legislation just filed. The legislation just filed would complete the work of the Committee on Appropriations and the Congress on a number of appropriation bills which were not able to get through the system one by one, as is the usual process. But in the process of putting together this omnibus appropriation bill, the House has, I think, reached a new low in terms of its willingness to reflect the will of the membership.

We elect in this country 535 people to come to this Congress, 435 of them in this chamber; and the idea is that those Members are supposed to vote on various issues, and after those Members have voted, then a conference committee between the Senate and the House is supposed to iron out whatever differences remain between the House and the Senate in the consideration of that legislation.

That is really not what happened on this legislation this year. Time and time again, the conferences simply disregarded the will of Members of both Houses, went into a back room, and decided on their own, without consulting anybody but themselves and the White House, that they were going to cut the cards a different way and deal a new hand to everyone.

So we find, for instance, that in the legislation just filed, even though both Houses of Congress in public, on-the-record votes made the decision to try to scale back the expansion of the ability of large businesses in the communications industry to own television stations, despite the fact that both branches of the Congress voted to put a 35 percent cap on the percentage of American homes that should be reachable by any one corporate entity in the television business, despite that fact, the conferees produced legislation just filed at this moment which changes that cap and raises it to 39 percent. No votes taken in either House to do that, just an arbitrary judgment because the White House said, "If you do not do it our way, we are going to hold our breath and turn blue."

So the conferees caved and went against the position of both Houses. I think that is a national scandal. This is a backroom deal to strengthen the hands of the national media giants against local control of television. It allows ABC and NBC to acquire additional stations up to the new 39 percent limit, and it takes Fox and CBS off the hook so that they do not have to divest as they would have had to if the will of the House and the Senate had prevailed.

I am also concerned about what has happened here with the across-the-board cut that is being provided in this legislation because, as I understand the impact of that cut, that is going to mean a reduction of $178 million in crucial veterans medical care; and it is going to, as I understand it, severely hamper the VA in its ability to reduce the backlog in handling cases brought to them by veterans. It now takes about 157 days to process a veteran's claim; and this across-the-board cut in the operations of the VA will, I am afraid, result in seeing those delays expanded rather than contracted.

I also want to take just a moment to point out that this institution has encouraged to a very great extent the practice with respect to congressional earmarks. In the past, there is no question that Congress had provided significant numbers of earmarks. But in the past 4 or 5 years, in my view, that has gotten incredibly out of control. There is nothing wrong with Congress deciding to take a reasonable number of projects through earmarks in order to give this institution an opportunity to define what activities it considers to be very important; but when the practice explodes to such a degree that virtually every university hires a lobbyist to try to obtain funds through the political process rather than the process of review, then that is what this bill abandons all pretense of taxpayers' moneys being used in rational fashion.

The other problem, Mr. Speaker, is that when earmarks change in character from being a convenience to a weapon in the hands of the majority party to punish Members of the minority party who oppose those appropriation bills, then we have, I think, fundamentally corrupted the appropriations process of the House, and I think it becomes a source of shame for the House in many ways. We have had a huge explosion in the amount of Member-directed earmarks over the past 4 or 5 years; and I would say that when that is accompanied by the idea that Members will be punished if they vote on the basis of substance, then I think this Congress ceases to be a body which can earn the respect of the American people. It seems to me that if we are going to allow earmarks to be used as a partisan threat, then what we will do is eliminate the ability of the appropriations process to be considered on the merits, and the only thing Members will be focused on will be their local pork projects rather than the broader welfare of the country; and I think that will deme the process of the Congress and demean the American people in the process.

RECESS

The SPEAKER pro tempore (Mr. BARTLETT of Maryland). Pursuant to
case 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 1 o’clock and 24 minutes p.m.), the House stood in recess subject to the call of the Chair.

☐ 1521

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. Bartlett of Maryland) at 3 o’clock and 21 minutes p.m.

MESSAGE FROM THE SENATE

The SPEAKER pro tempore. The Chair rises before the House the following privileged message from the Senate.

The Clerk reads as follows:

Amendment:

Page 1, line 2, strike out all after “concurring,” and insert: That when the House adjourns on any legislative day from Tuesday, November 25, 2003, through the remainder of the first session of the One Hundred Eighth Congress, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until such day and time as may be specified by its Majority Leader or his designee in the motion to adjourn, or until the time of any reassemblly pursuant to section 2 of this concurrent resolution, whichever occurs first.

The Senate amendment was agreed to.

A motion to reconsider was laid on the table.

SENATE BILLS REFERRED

Bills and a concurrent resolution of the Senate of the following titles were taken from the Speaker’s table and, under the rule, referred as follows:

S. 391. An act to enhance ecosystem protection and the range of outdoor opportunities protected by statute in the Skykomish River valley of the State of Washington by designating certain lower-elevation Federal lands as wilderness, and for other purposes; to the Committee on Resources.

S. 434. An act to revise the boundary of the Wind Cave National Park in the State of South Dakota; to the Committee on Resources.

S. 435. An act to authorize the Secretary of agriculture to sell or exchange all or part of certain parcels of National Forest System land in the State of Idaho and use the proceeds derived from the sale or exchange for National Forest System purposes; to the Committee on Resources.

S. 455. An act to provide for the conveyance of the Sandpoint Federal Building and adjacent land in Sandpoint, Idaho, and for other purposes; to the Committee on Transportation and Infrastructure and in addition to the Committee on Resources for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

S. 452. An act to require that the Secretary of the Interior conduct a study to identify sites and resources, to recommend alternatives for commemorating and interpreting the Cold War, and for other purposes; to the Committee on Energy and Commerce and in addition to the Committee on Resources for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

S. 515. An act to provide for the implementation of air quality programs developed in conjunction with an intergovernmental agreement between the Secretary of Agriculture of the Tribe and the State of Colorado concerning Air Quality Control on the Southern Ute Indian Reservation, and for other purposes; to the Committee on Energy and Commerce and in addition to the Committee on Resources for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

S. 714. An act to provide for the conveyance of a small parcel of Bureau of Land Management land in eastern Oregon, to the county to improve management of and recreational access to the Oregon Dunes National Recreation Area, and for other purposes; to the Committee on Resources.

S. 1003. An act to clarify the intent of Congress with respect to the continued use of established commercial outfitter hunting camps on the Salmon River; to the Committee on Resources.

S. 1271. An act to amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to authorize the President to carry out a program for the protection of the health and safety of residents, workers, volunteers, and others in a disaster area; to the Committee on Transportation and Infrastructure and in addition to the Committee on Energy and Commerce for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

S. 1490. An act to adjust the boundaries of Green Mountain National Forest; to the Committee on Agriculture.

S. 1531. An act authorizing the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall; to the Committee on Financial Services.

S. 1947. An act to offer of credit by a financial institution to a financial institution examiner, and for other purposes; to the Committee on the Judiciary.

S. Con. Res. 77. Concurrent resolution expressing the sense of Congress supporting vigorous enforcement of the Federal obscenity laws; to the Committee on the Judiciary and in addition to the Committee on Energy and Commerce for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

ENROLLED BILLS SIGNED

Mr. Trandahl, Clerk of the House, reported and found truly enrolled bills of the House of the following titles, which were thereupon signed by the Speaker:

H.R. 421. An act to reauthorize the United States Institute for Environmental Conflict Resolution, and for other purposes.

H.R. 1301. An act to authorize the Secretary of Agriculture to conduct a loan re-payment program regarding the provision of veterinary services in shortage situations, and for other purposes.

H.R. 1683. An act to increase, effective as of December 1, 2003, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes.

H.R. 1821. An act to award a congressional gold medal to Dr. Dorothy Height in recognition of her many contributions to the Nation.

H.R. 1828. An act to halt Syrian support for terrorism, end its occupation of Lebanon, and stop its development of weapons of mass destruction, and by so doing promote the stability and security of the region, and for other purposes.

H.R. 1904. An act to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to conduct hazardous fuels reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance natural processes that improve the landscape, and for other purposes.

H.R. 2417. An act to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.


H.R. 3410. An act to provide for availability of contact lens prescriptions to patients, and for other purposes.

H.R. 3166. An act to designate the facility of the United States Postal Service located at 57 Old Tappan Road in Tappan, New York, as the "John G. Dow Post Office Building".

H.R. 3185. An act to designate the facility of the United States Postal Service located at 34 Spring Street in Nashua, New Hampshire, as the "Hugh Gregg Post Office Building".


H.R. 3419. An act to establish within the Smithsonian Institution the National Museum of African History and Culture, and for other purposes.

SENATE ENROLLED BILLS SIGNED

The SPEAKER announced his signature to enrolled bills of the Senate of the following titles:

S. 189. An act to authorized appropriations for nanoscience, nanotechnology, and nanotechnology research, and for other purposes.

S. 579. An act to authorize veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain service-connected disabled veterans, and for other purposes.

S. 1152. An act to reauthorize the National Transportation Safety Board, and for other purposes.

S. 1156. An act to amend title 38, United States Code, to improve and enhance programs for veterans with service-connected disabilities and the rates of compensation for survivors of certain service-connected disabled veterans, and for other purposes.

S. 1158. An act to reauthorize the United States Forest Service, and for other purposes.
Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and for other purposes.

S. 198 in effect to extend the national flood insurance program.

S. 199. An act to temporarily extend the programs under the Small Business Act and the Small Business Investment Act of 1958 through March 15, 2004, and for other purposes.

BILLS PRESENTED TO THE PRESIDENT

J. Trandahl, Clerk of the House, reports that on November 21, 2003 he presented to the President of the United States, for his approval, the following bills:

H.R. 23 To amend the Housing and Community Development Act of 1974 to authorize communities to use community development block grant funds for construction of tornado-safe shelters in manufactured home parks.

H.R. 1988 To authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

H.R. 2751 Making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes.

H.R. 3175 To designate the facility of the United States Postal Service located at 534 17th Street in Moline, Illinois, as the “David Bybee Post Office Building.”

H.R. 1888 To designate the facility of the United States Postal Service located at 3210 East 10th Street in Bloomington, Indiana, as the “Francis X.McCloskey Post Office Building.”

H.J. Res. 79. Making further continuing appropriations for the fiscal year 2004, and for other purposes.

DESCRIPTION OF BUSINESS

BILLS AND RESOLUTIONS

The SPEAKER pro tempore, Pursuant to House Concurrent Resolution 339 and at the designation of the majority leader, without objection, the House stands adjourned to meet at 9:30 a.m. on Monday, December 8, 2003, for morning hour debates.

There was no objection.

Accordingly, (at 3 o’clock and 23 minutes p.m.), pursuant to House Concurrent Resolution 339, the House adjourned until Monday, December 8, 2003, at 9:30 a.m., for morning hour debates.
5673. A letter from the Acting Secretary, Fish and Wildlife and Parks, National Park Service, Department of the Interior, transmitting the Department’s final rule — Operating on public lands and waters in the State of Arizona (RIN: 1024-AC69) received November 3, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

5674. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration’s final rule — Fisheries of the Economic Exclusive Zone Off Alaska; Trawl Gear in the Gulf of Mexico [Docket No. 02122286-3098; I.D. 100303B] received December 4, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

5675. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration’s final rule — Fisheries of the Western Pacific; Pacific Coast Groundfish Fishery: Annual Specifications and Management Measures; Trip Limit Adjustments; Corrections [Docket No. 02123930-3046-02; I.D. 100335B] received December 4, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

5676. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration’s final rule — Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery: Annual Specifications and Management Measures; Trip Limit Adjustments; Corrections [Docket No. 03062963-3246-02; I.D. 100209A] received November 18, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

5677. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration’s final rule — Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fishery; Closure of the Fishery for Pacific Sardine (RIN: 1625-AD12) received November 18, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

5678. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration’s final rule — Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fishery; Closure of the Fishery for Pacific Sardine (RIN: 1625-AD12) received November 18, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

5679. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration’s final rule — Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery: Vessel Monitoring Systems and Incidental Catch Measures [Docket No. 03061808-3286-02; I.D. 000403A] (RIN: 0648-AR43) received November 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

5680. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration’s final rule — Fisheries of the North-eastern United States; Summer Flounder, Summer Flounder, Plaice, and Summer Flounder and Plaice Complex; September 2003 Annual Individual Quota Adjustment [Docket No. 03060931-3286-02; I.D. 100218A] received November 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

5681. A letter from the Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting the Administration’s final rule — Fishery Improvement Plan Guidelines for High/Highly Migratory Species; Exempted Fishing Activities [Docket No. 02111327-3267-02; I.D. 031501A] received November 21, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.


5683. A letter from the Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, transmitting the Administration’s final rule — Statement for the Construction of an Office-laboratory Classroom Facility at Penn State University [Docket No. 03112076-3276-01] received November 20, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.


5685. A letter from the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, transmitting the Administration’s final rule — Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Vessel Monitoring Systems and Incidental Catch Measures [Docket No. 03061904-3286-02; I.D. 000403C] (RIN: 0648-AR50) received November 13, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

5686. A letter from the Director, Regulations and Forms Services, CIS, Department of Justice, transmitting the Department’s final rule — Regulations and Rules: Inflation Adjustment of Civil Monetary Penalty (RIN: 2135-AA16) received November 18, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5687. A letter from the Attorney, RSPA, Department of Transportation, transmitting the Department’s final rule — Reporting Requirements for Driver’s Hours of Service of Intrastate Motor Carrier Operations (Grants) (RIN: 1121-AA57) received November 18, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5688. A letter from the Attorney, OST, Department of Transportation, transmitting the Department’s final rule — Preemption in Air Transportation; Policy Statement Amendment [Docket No. 03041904-3286-02; I.D. 000403C] (RIN: 2137-AC68) received October 24, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5689. A letter from the Assistant Administrator for Procurement, National Aeronautics and Space Administration, transmitting the Administration’s final rule — Government-wide Debarment and Suspension, and Administrative Law; USCG, Department of Homeland Security, transmitting the Department’s final rule — Drawbridge Operation Regulation; Canaveral Barge Canal, Cape Canaveral, Brevard County, FL [CGD07-03-018; RIN: 2105-AD04] received November 18, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5690. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule — Drawbridge Operation Regulation; St. Croix River, Prescott, WI [CGD08-03-045] (RIN: 1625-AA09) received November 18, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5691. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule — Drawbridge Operation Regulation; Mississippi River, Iowa and Illinois [CGD08-03-042] (RIN: 1625-AA09) received November 18, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5692. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule — Drawbridge Operation Regulation; Port Everglades Harbor, Fort Lauderdale, FL [CGD08-03-035; RIN: 1625-AA09] received November 18, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.
REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:


TIME LIMITATIONS OF REFERRED BILLS PERSUANT TO RULE XII

Pursuant to clause 2 of rule XII the following actions were taken by the Speaker:

[Omitted from the Record of November 21, 2003]


H.R. 1081. Referral to the Committees on Transportation and Infrastructure, and House Administration for a period ending not later than January 31, 2004.


H.R. 2120. Referral to the Committee on Judiciary extended for a period ending not later than January 31, 2004.


H.R. 3358. Referral to the Committee on Agriculture extended for a period ending not later than January 31, 2004.

S. 1223. Referral to the Committee on the Judiciary extended for a period ending not later than January 31, 2004.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were presented and referred as follows:

230. The SPEAKER presented a memorial of the Senate of the State of Michigan, relative to Senate Resolution No. 66 memorializing the United States Department of Homeland Security to locate its Midwestern headquarters at the Selfridge Air National Guard Base in Macomb County; to the Committee on Homeland Security (Select).

231. Also, a memorial of the House of Representatives of the State of Michigan, relative to House Resolution No. 135 memorializing the United States Congress to enact legislation to provide Michigan a more equitable share of federal transit funding and increased funding for bus projects; to the Committee on Transportation and Infrastructure.

232. Also, a memorial of the Senate of the State of Michigan, relative to Senate Resolution No. 65 memorializing the United States Congress to enact the Armed Forces Relief Act of 2003; to the Committee on Ways and Means.

233. Also, a memorial of the Legislature of the State of Florida, relative to House Memorials No. 420 memorializing the Congress of the United States to all actions necessary to resolve the fate of Captain M. Scott Speicher, United States Navy, M-Captain of the United States Congress to enact legislation to provide Michigan a more equitable share of federal transit funding and increased funding for bus projects; to the Committee on Transportation and Infrastructure.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 285: Mr. LATOURRETT and Mr. Bishop of Georgia.

H.R. 806: Mr. GORDON.

H.R. 857: Mr. GERLACH, Mr. BELL, Mr. SERRANO, and Mr. LEWIS of Georgia.

H.R. 871: Mr. WILSON of South Carolina.
H.R. 1372: Mr. McINNIS.
H.R. 1532: Mr. Becerra, Mr. Cardoza, Mr. Jackson of Illinois, Ms. Mccollum, Ms. Eddie Bernice Johnson of Texas, Mr. Doggett, Mr. Bell, Mr. Lewis of Georgia, and Mr. Meehan.
H.R. 1563: Mr. Gallegly, and Mr. Udall of New Mexico.
H.R. 1748: Ms. Slaughter.
H.R. 2135: Mr. Price of North Carolina.
H.R. 2239: Mr. Blumenauer and Mr. Meehan.
H.R. 2246: Mr. Allen, Mr. Serrano, Mr. Langevin, and Ms. Degette.
H.R. 2403: Mr. Baird.
H.R. 2470: Mr. George Miller of California.
H.R. 2771: Mrs. Lowey.
H.R. 3055: Mr. Terry, Mr. Garret of New Jersey, Mr. DeMint, and Mr. Houghton.
H.R. 3125: Mr. Kline.
H.R. 3263: Mr. Schiff.
H.R. 3344: Mr. Moran of Virginia, Mr. Frost, Ms. Carson of Indiana, and Mr. Cooper.
H.R. 3474: Mr. Farr.
H.R. 3484: Mr. Doyle, Mr. Baird, Mr. Allen, and Mr. Pascrell.
H.R. 3539: Mr. Green of Texas, Mr. Udall of New Mexico, Mr. Case, and Mr. Rangel.
H.R. 3582: Ms. Slaughter, Ms. Corrine Brown of Florida, Mr. Towns, and Mrs. Christensen.
H.R. 3587: Mr. Filner, Mr. Scott of Virginia, and Mr. George Miller of California.
H.R. 3633: Mr. Tom Davis of Virginia, Mr. Goss, Mr. Bartlett of Maryland, Ms. Ross-Lehutin, Ms. Harris, Mr. Peterson of Pennsylvania, Mr. Pickering, Mr. Sullivan, and Mr. Hyde.
H. Con. Res. 190: Mr. Brown of Ohio, Mr. Bereuter, Mr. McGovern, Mr. Jones of North Carolina, Mr. Turner of Texas, Mr. Brady of Texas, and Ms. Carson of Indiana.
H. Con. Res. 304: Ms. Eshoo, Mr. Mankey, Ms. McCollum, Mr. Blumenauer, Ms. Homan, Mr. Hinchey, Mr. Miller of North Carolina, and Mr. Tierney.
H. Con. Res. 311: Mr. Frank of Massachusetts.
H. Con. Res. 318: Mr. King of New York, Mr. Welller, Mr. Goode, Mrs. Musgrave, Ms. Ginny Brown-Waite of Florida, Mr. Ballenger, Mr. Hostetler, Mr. Simpson, Mr. Gibbons, Mr. Bachus, and Mr. Peterson of Pennsylvania.

PETITIONS, ETC.

Under clause 3 of rule XII, petitions and papers were laid on the clerk's desk and referred as follows:

46. The SPEAKER presented a petition of the Legislature of Rockland County, NY, relative to Resolution No. 526 of 2003 petitioning the United States Congress to pass legislation extending Medicare cost-sharing; to the Committee on Energy and Commerce.

47. Also, a petition of the Legislature of Rockland County, New York, relative to Resolution No. 528 of 2003 petitioning the Environmental Protection Agency to rescind rules relaxing the requirement that older power plants and industrial complexes be required to install advanced pollution control devices during any expansions and modifications; to the Committee on Energy and Commerce.

48. Also, a petition of Mr. John Thomas Redder and Mrs. Keiko Redder, Embassy of the United States, Tokyo, Japan, relative to petitioning for Mrs. Redder's right to assume the surname of the husband at the time of marriage in accordance with Article 750 of the Civil Code of Japan; to the Committee on International Relations.

49. Also, a petition of the Legislature of Rockland County, New York, relative to Resolution No. 529 of 2003 expressing support for the Clean Water Authority Restoration Act of 2003, H.R. 962, to the Committee on Transportation and Infrastructure.
The Senate met at 8:15 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER
The Chaplain, Dr. Barry C. Black, offered the following prayer:
Eternal and dependable Creator, giver of the abundant harvest, the refuge of all who flee to You the helper of those in need and the one sure resource in times of trouble. Thank You for harmonizing the world with seasons and climates, sowing and reaping, color and fragrance. We praise You, for You are the substance that sustains us in each of life’s seasons. In time’s rapid passing, remind us of life’s brevity and teach us to number our days.

Lord, thank You for all the beauty in our world, for the loveliness of earth and sea and sky. Thank You for great music and great books, for prose and poetry. Thank You for the nobility You have placed in human hearts, for our military people who love their country until even self is forgotten. Thank You for Senators who struggle with complex issues and labor for a world at peace.

Thank you for loved ones without whom life would never be the same. Lord, thank You also for obstacles, delays, challenges, trials, and even enemies that make us stronger. Above all, thank You for Your gift of salvation.

Accept this our sacrifice of thanksgiving and praise, for the sake of Your glorious name. Amen

PLEDGE OF ALLEGIANCE
The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:
I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE MAJORITY LEADER
The PRESIDENT pro tempore. The majority leader is recognized.
Mr. FRIST. Mr. President, this morning there will be 1 hour of debate prior to the vote on adoption of the conference report to accompany H.R. 1, the Medicare Prescription Drug Modernization Act. That vote will occur at 9:15 this morning. I will have more to say about this bill on this important occasion. I look forward to the vote. I thank all Members for their cooperation and participation throughout this debate. I also announce that we are continuing our efforts to act on the remaining appropriations bill. This morning, I will continue my discussions with the Democratic leadership as to the possible consideration of that bill. I will have more to say about this and the final schedule after the vote on final passage.

Having said that, we are prepared for the final closing remarks on this landmark legislation.

RESERVATION OF LEADER TIME

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

MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003—CONFERENCE REPORT

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the conference report to accompany H.R. 1, which the clerk will report.

The legislative clerk read as follows:

Conference report to accompany H.R. 1, an act to amend title XVIII of the Social Security Act to provide a voluntary prescription drug benefit under the Medicare Program and to strengthen and improve the Medicare Program, and for other purposes.

The PRESIDENT pro tempore. The Senator from Nevada is recognized.

Mr. REID. Mr. President, the majority leader is not here. I have been designated to be the opposition manager for the half hour that we have. In a short time, I will delegate that time to the senior Senator from Massachusetts.

As we begin this half hour on our side and half hour on the other side, I extend my appreciation and that of the whole Democratic caucus to Senator KENNEDY for leading the opposition, literally, to this measure. He has had a lot of help. I have sat through days of speeches on this matter and I have been impressed with the quality of the speeches, really, on both sides. Especially on our side, I have been impressed with Senator KENNEDY, and I will mention a number of names who I thought did such a wonderful job: Senators BATH, BOXER, CANTWELL, CLINTON, DODD, HARKIN, Pryor, NELSON of Florida, and GRAHAM of Florida. What a loss it is going to be to this institution and our country that this fine man is going to no longer be part of the Senate after 1 year.

I believe there is no one who has a better grasp of this legislation than the Senator from Florida. He has done such an outstanding job of articulating his views.

Of course, I add a congratulatory note to Senator STABENOW who has worked on this measure long and hard.

Senator DURBIN has always done such a good job of expressing his views. He was never any better than on this issue.

Mr. President, I reserve the last 5 minutes for Senator DASCHLE. I delegate the rest of our time to the senior Senator from Massachusetts.

The PRESIDENT pro tempore. Under the previous order, the last 5 minutes is reserved.

Mr. KENNEDY. Mr. President, on the question of time, we have the last 5 minutes. That will probably be leader time. The leader, obviously, ought to have whatever time he needs.

Mr. REID. Mr. President, we have 23 minutes on our side; 23 minutes on the other side.

The PRESIDENT pro tempore. The Senate will now consider the report to accompany H.R. 1, which the Senate has voted to proceed to. The Clerk will report.

The title is "In Dorchester, Seniors Weigh Changes Against Their Needs." It reads:

Thomas Lombardi dropped his private health insurance a few years ago when the price rose steeply. Then he switched from Coumadin, a prescription anticoagulant he took for heart disease, to half an aspirin to save about $15 a month. Living on Social Security and a bit of savings, Lombardi, 75, says he frequently has "to cut corners to stay alive."

But over lunch at the Kit Clark Senior Center in Dorchester, he said he doesn't support the $400 billion Medicare drug benefit that is about to become law and provide coverage to millions of seniors like him. Echoing the comments of many others at the center yesterday, he said it's far too complicated and probably won't go far enough to help him because of gaps in the coverage designed to keep down the cost of the new benefit. Besides, he said, it will be two years before the full benefits kick in.

"I don't believe it's good for me," said Lombardi, who owned a welding business in Dorchester.

"This is part of the Bush strategy to . . . destroy programs put in place years ago," said Richard Schultz, who qualifies for Medicare at 66 because she won't be able to afford her prescriptions if she retires. The center does not pay health benefits for retirees, she said, and she has chronic lung disease that causes her more than $200 a month for inhalers alone.

"People that can't afford to buy medications should get it at a minimum charge," she said.

An Kim Hoang, 67, said she can't afford a copayment of $3 for a brand-name drug, which will be required under the new plan for those below the poverty level. Those with incomes from $8,900 to $12,123 will face copayments up to $5 per prescription. Seniors currently getting drug coverage through the MassHealth, the state-federal Medicaid program for the poor, would be shifted to the federal program.

In fact, that is going to be eliminated in terms of coverage. That is part of the 6 million low-income seniors who will pay more.

Hoang, speaking through a translator, said she borrows from friends to cover the $2 co-payment required by Medicaid for each of the eight prescriptions she takes to treat mental illness. "$1 is OK," she said, "but $2 is too much."

This is the real world, Mr. President. This is putting a face and name on the 6 million low-income seniors who will pay more.

"$1 is OK," she said, "but $2 is too much."

That was put in here to save some $12 billion to $15 billion put into a slush fund to provide additional benefits to the HMOs.

Because of the Medicaid copayment, her friend Quy Nguyen, 71, said she limits herself to four prescriptions she needs most and tries to get by without several others. She said she envisions that choice becoming more difficult under [this program.]

Josephine DeSantis said the new benefit would help her immensely. She struggles to scrape together the $157 she spends every three months for drugs to prevent ulcers and dizziness. But at 78, she said, she's upset that the benefit won't start until 2006. "In two years," she said, "I'll probably be dead."

There you have it, Mr. President, reaction in a working class community in Dorchester. We have the reaction in real life about what the low-income seniors pay.

When we talk and bring out these charts, as we have in the past few days, this is the very instance about which we are talking. It did not have to be this way. This is just an illustration of the overall challenges of this legislation and a reason that it should not pass the Senate.

How much time do I have, Mr. President?

The PRESIDENT pro tempore. The Senator has 15 minutes remaining.

Mr. KENNEDY. Mr. President, I yield 7 minutes to the Senator from Florida.

The PRESIDENT pro tempore. The Senator from Florida is recognized.

Barbara Burke, who operates the switchboard at the senior center, disparagingly called the new benefit "a Band-Aid."

"It's not enough with the high cost of medicines," said Burke, who said she's still working at 66 because she won't be able to afford her prescriptions if she retires. The center does not pay health benefits for retirees, she said, and she has chronic lung disease that costs her more than $200 a month for inhalers alone.

"People that can't afford to buy medications should get it at a minimum charge," she said.
Mr. GRAHAM of Florida. I thank the Chair.

Mr. President, I thank Senator KENNEDY. We have had a long and quite illuminating debate over the past week on one of the most important issues that we have ever come across: that is, shall we turn a program which for 40 years has protected older Americans and disabled Americans against illness into a program which promotes wellness?

In order to do that, we understand that fundamentally we will have to make access to prescription drugs affordable, comprehensive, universal, and reliable because prescription drugs are now fundamental to a preventive health care policy.

There is much to criticize about this legislation, and I intend to vote no. We have heard that at great length in recent days. Let me take a slightly different approach. I am assuming that this legislation is going to pass. The challenge will then be before us: What do we do next?

Let me suggest three things that we ought to do next. One is that we have to look realistically at the cost of this bill. As Senator ENZIGN said during last night’s debate, the $400 billion figure is a miracle going to cost substantially more than $400 billion. The Congressional Budget Office is estimating that in the second 10 years, it will be over $1 trillion.

What are the suggestions of how to deal with this reality? One of those suggestions is to reduce benefits. Another one is to set some type of a formula relating Medicare expenditures to general revenue, and then scaling back Medicare expenditures when they break through that barrier.

Of course, one of the things that we ought to have done in terms of cost is not start this year by passing a massive tax cut which added substantially to the Federal deficit and narrowed the range of realistic options that we have today.

This has been truly an amazing year for the Congress and the President. We started the year with a proposal for almost a $1 trillion tax cut. We reasserted our commitment to fight and win a war against terror in Afghanistan. We started a war in Iraq. We have seen surging Federal Government expenditures in the nondefense area, and now on what will likely be the last day of the session, we conclude by passing a $400 billion unfunded new entitlement.

My answer to the question of cost, at least a significant part of it, lies in the fact that in this bill we are failing to sanction the use of the tremendous marketing influence which the Federal Government, through the Medicare Program, can have over the cost of prescription drugs.

Just as we did over 10 years ago—and the Presiding Officer’s colleague, Senator MURkowski, was a prime sponsor of this legislation—we authorized the VA to negotiate to get the best prices it could for American veterans. I think the high priority for 2004 should be to give to the administrator of the Medicare Program similar authority.

Second, I think we need to pass a Patients’ Bill of Rights. If we are going to be herding millions of older Americans into health management, we have a responsibility to give them some assurance as to what the standards of that access to health care will be.

Third, we have a strange provision in here for drug distribution on prescription drugs. That is, we use private insurance programs rather than traditional Medicare. It would be like having to get a private insurance program to get anesthesiology or any of the other services that have traditionally been provided through Medicare.

Then, in order to encourage—I would say more than encourage—mandate the maximum number of Americans participating in that program, we say there has to be at least one prescription plan available for the region and, second, then a preferred provider organization, essentially a variant of an HMO, in the region. It is only if both of those fail, there is not one or more drug-only insurance plan or a Medicare prescription plan. In circumstances where a person will be able to consider using standard fee-for-service Medicare as the means of getting their prescriptions.

It is ironic that in another part of this bill, which is going to create a demonstration project on the totality of Medicare, we line up all of the choices side by side, including staying in traditional fee for service, which over 85 percent of Americans are electing to do, and then choose on an equal basis, as we do in the Federal health insurance program. We do not have to wait until all of the other choices have been rejected, because they are not being provided, and then drop back into a Blue Cross/Blue Shield-type fee for service.

We ought to do the same thing with prescription drugs. If we are going to have what I think is a rather irrational program—incidentally, the prescription drug-only proposal is not in existence in any other area of American health care. A person cannot buy that through the Federal health care system. A person cannot buy it through their employer system. The reason they cannot buy it is because no insurance company is providing it. That ought to tell us something about what they think of the management and fiscal implications of providing a drug-only prescription plan.

At least we should not require our oldest citizens to go through a so-called fallback process. We should allow older citizens to assess all of the options at the same time and make the decision they consider to be in their best interest.

As I conclude this long debate, I urge that the agenda of cost, patients’ rights, and providing the more rational process for elderly determinations as to how they will receive their drugs be the starting point of the agenda for reform next year.

The PRESIDENT pro tempore. The Senator’s time has expired.

Who yields time?

The PRESIDENT pro tempore. Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

First, I very much appreciate the passion of the opposition. Hopefully, they will look back on this day and come to the conclusion that we have not only provided prescription drugs for seniors as the first improvement in Medicare in 38 years and the strengthening of Medicare that follows it, but that we are also in the process of giving baby boomers an alternative Medicare Program, if they would so choose.

The basis of such legislation is the right to choose for seniors. No one is forced to do anything. We will give those baby boomers a program that is much closer to the health insurance they have in the places from which they retire.

Regardless, there are two classes of people covered today or not covered today with prescription drugs that we are emphasizing. For low-income people, too often our seniors are choosing between heat and prescription drugs, particularly in the cold areas of the country, or between food and prescription drugs. This legislation is going to lessen those choices. Low-income people are going to have to make such choices.

The other group of people are those who have catastrophically high prescription drug costs. There is heavy subsidy and help in this bill for those two categories of people. Those are significant categories of people.

Also, we are doing something for everybody in this legislation from the standpoint that for the first time there will be place mechanisms to dramatically negotiate down the price of drugs. That is obviously going to help the people who voluntarily choose to go into these plans, but the extent to which that is going to have an impact on everybody, old or young, is very important because all I hear from opponents of this bill is that we do not do anything to help cut down on the costs of drugs.

We do it through the subsidy. We do it through negotiations. We do it through getting generic drugs on the market much sooner than before.

Also, this bill is about enhancing the quality of life, because none of us think the quality of life is enhanced by putting people in the hospital. Today, the practice of medicine is to put everybody into the hospital. Tomorrow, the practice of medicine is to keep people out of hospitals and out of operating rooms. So people who cannot afford drugs, who go to the doctor very sick,
Let me make it clear. People on that care beneficiaries. Let's get this clear. all, no donut hole for low-income Medicaid eligible persons. The dual eligibles are a fragile population and I hope that will be conceived or considered as a toning down of the partisan opposition to this legislation. I reserve the remainder of my time just in case some colleagues come over. I have more to say, but I will say it later if other colleagues don't show up, so I yield the floor.

Mr. KENNEDY. Mr. President, I oppose the Medicare bill before the Senate, but with my understanding of the refinements of the Hatch-Waxman Act found in Title XI of the Medicare bill now before the Senate. I was deeply involved in the negotiations of these provisions in the conference. The Hatch-Waxman Act, which passed in 1984, reflects efforts by the Congress to promote two policy objectives: to encourage brand-name pharmaceutical firms to make the investments necessary to research and develop new drug products, and to enable competitors to bring cheaper, generic copies of those drugs to market as quickly as possible.

The Hatch-Waxman Act has worked very well for almost 20 years. It has provided the incentives necessary to bring the many medicines to market that have so transformed the shape of modern medical practice. And it has brought generic drugs to market faster and cheaper than ever, saving consumers billions of dollars.

As the Federal Trade Commission has shown, however, in recent years both brand-name and generic drug companies have exploited certain aspects of the Hatch-Waxman Act to delay generic competition. The changes to the Hatch-Waxman Act found in Title XI represent refinements to the present system that will stop these abuses, will restore the original balance the law intended, and will ensure Americans more timely access to affordable pharmaceuticals.

Most significantly, the Hatch-Waxman provisions in this bill limit brand-name drug companies to only one 30-month stay of approval of generic drugs. This change will stop the multiple, successive 30-month stays that the Federal Trade Commission identified as having delayed approval of generic versions of several blockbuster drugs and cost consumers billions of dollars.

It also restructures how the 180-day generic exclusivity provisions work. The 180-day exclusivity gives a generic company a period of 180 days during which it is the only generic competitor to the brand drug. The exclusivity is a very valuable incentive for generic companies. The exclusivity encourages generic companies to challenge patents which are likely invalid or not infringed and, because it goes to the first generic applicant to challenge a brand-name drug patent, it encourages challenges of those patents as soon as possible. These incentives mean that consumers will be able to enjoy the lower prices provided by generic companies sooner rather than later.

The Federal Trade Commission reports that the exclusivity has at times been parked through collusive agreements between brand and generic companies. Parking the exclusivity has blocked other generic companies from getting to market and has cost consumers billions of dollars. The Hatch-Waxman provisions in this bill are intended to prevent parking of the exclusivity if doing this is against the public interest. Most significantly, the Hatch-Waxman provisions in this bill also make the exclusivity available only with respect to the patent or patents challenged on the first day generic applicants challenge brand drug patents, which makes the exclusivity a product-by-product exclusivity rather than a patent-by-patent exclusivity, and the exclusivity is available to more than one generic applicant, if they all challenge patents on the same day.

Mr. SCHUMER. Mr. President, will the Senator yield for a question?

Mr. SCHUMER. Thank you, Mr. President. Let my just say, before I ask the question, that I want to thank the Senator from Massachusetts, and the senior Senator from New Hampshire, for their leadership on this issue. The
Senator from Massachusetts, as chair of the HELP Committee last year, took up the generic drug bill authored by the senior Senator from Arizona and myself, saw it through the HELP Committee, and managed its passage by the full Senate. This year, the senior Senator from Arizona and myself again asked me to work together to come up with the generic drug bill that served as the basis for what is in this bill, and he brought it through the HELP Committee, offered it as an amendment to the food, drug, and cosmetic bill in the Senate, where it was accepted 94–1, and defended it very ably in conference with the House. So, again, I would like to thank both distinguished chair and ranking member of the HELP Committee for their leadership on this issue.

Of course, I also want to thank the senior Senator from Arizona, without whose leadership over the past several years we would not be where we are today on such an important consumer issue.

As for my question, I understand that a generic applicant that has the 180-day exclusivity will forfeit the exclusivity if it has failed to market its product. After certain events have happened with respect to itself or another generic applicant and with respect to each of the patents that gives the generic applicant its generic exclusivity, is that correct?

Mr. SCHUMER. That is correct.

Mr. KENNEDY. Certainly.

Mr. SCHUMER. And am I correct that one of these events is when “a court enters a final decision” that the patent is invalid or not infringed by the drug of the generic applicant?

Mr. KENNEDY. The Senator is correct.

Mr. SCHUMER. And am I correct that a final court decision under this provision includes the kind of court decision recognized in the Teva v. Shalala opinion?

Mr. KENNEDY. Yes, I very much appreciate your question on this point. We do intend that a court decision like the one in the D.C. Circuit’s 1999 decision in Teva v. Shalala—a decision dismissing a declaratory judgment action for lack of subject matter jurisdiction because the patent owner has represented that the patent is not infringed—will count as a court decision under the new “failure to market” provision. The conditions for forfeiture are intended to be satisfied when a generic company has resolved patent disputes on all the patents that earned the first-to-file its exclusivity. After a court decision such as that at issue in Teva v. Shalala, the patent owner is stopped from suing the generic applicant in the future and the patent dispute is resolved. So these sorts of decisions should be recognized as court decisions under the failure to market provision.

I’d also like to point out the importance of the declaratory judgment provisions that are in the Senate bill and are retained in modified form by the conferees in the conference report now before the Senate. Amendments made by this bill to both the Federal Food, Drug, and Cosmetic Act and Title 35 clarify that generic applicants may bring declaratory judgment actions to ensure timely resolution of patent disputes. These provisions authorize a generic applicant to bring a declaratory judgment action to obtain a judicial determination that a listed patent is invalid or is not infringed if the applicant has given notice to the patent owner and brand-name drug company that it is challenging the patent. This clarification of a generic applicants right to bring a declaratory judgment action is crucial to ensuring prompt resolution of patent issues, which is essential to achieve our goal of speeding generic drugs to market.

It’s worth pointing out that the Hatch-Waxman Act has always provided that brand-name drug companies can bring patent infringement suits against a generic applicant immediately upon receiving notice that the generic applicant is challenging a patent. The declaratory judgment provisions in this bill are intended to clarify that generic applicants may also seek a prompt resolution of these patent issues by bringing a declaratory judgment action if neither the patent owner nor the brand drug company has brought suit within 45 days after receiving notice of the patent challenge.

Mr. MCCAIN. Mr. President, will the Senate yield for a question?

Mr. KENNEDY. Yes, I will yield.

Mr. MCCAIN. Will the Senate please explain for me and our colleagues the purpose of the provision in Title XI that amends Title 35 to say that courts must hear declaratory judgment actions filed by generic applicants?

Mr. KENNEDY. Certainly. The provision in Title 35 is intended to clarify that Federal district courts are to entertain such suits for declaratory judgments so long as there is a “case or controversy” under Article III of the Constitution. We fully expect that, in almost all situations where a generic applicant has challenged a patent and not been sued for patent infringement, a claim by the generic applicant seeking a declaratory judgment will rise to a justiciable “case or controversy” under the Constitution. We believe that the only circumstance in which a case or controversy might not exist would arise in the rare circumstance in which the patent owner or brand drug company have given the generic applicant a covenant not to sue, or otherwise formally acknowledge that the generic applicant’s drug does not infringe.

The most fact that neither the patent owner nor the brand drug company has brought a patent infringement suit within 45 days against a generic applicant does not mean there is no “case or controversy.” The sole purpose of requiring the passage of 45 days is to provide the patent owner and brand-name drug company the first opportunity to begin patent litigation. Inaction within the 45-day period proves nothing, as there are tactical reasons why a patent owner or brand drug company might refrain from bringing suit on a patent within 45 days.

For example, the brand drug company might have several patents listed in the Food and Drug Administration’s Orange Book with respect to a particular drug. It could be in the company’s interest to bring suit within 45 days on one patent and to hold the others in reserve. The suit on one patent would automatically stay approval of the generic application until the lawsuit is resolved or the 30 months elapses. Holding the other patents in reserve would introduce uncertainty that could discourage generic companies from devoting resources to bring generics to market. And that would give the brand drug company a second opportunity to delay generic competition by suing the generic company for infringement of the reserved patents after the resolution of the initial infringement action.

Or for patents on which no 30-month stay is available, the brand drug company could sit back to create uncertainty and similarly delay generic entry by delaying resolution of those patents. Or when generic applicants are brought on a patent by a first-inventor’s 180-day exclusivity, the brand drug company could choose not to sue those other generic applicants so as to delay a final court decision that could trigger the “failure to market” provision and force the first generic to market.

In each of these and in other circumstances, generic applicants must be able to seek a resolution of disputes involving all patents listed in the Orange Book with respect to the drug immediately upon the expiration of the 45-day period. We believe there can be a case or controversy sufficient for courts to hear these cases merely because the patents at issue have been listed in the FDA Orange Book, and because the statutory scheme of the Hatch-Waxman Act relies on early resolution of patent disputes. The declaratory judgment provisions in this bill are intended to encourage such early resolution of patent disputes.

Mr. MCCAIN. Mr. President, will the distinguished Senator yield?

Mr. KENNEDY. Yes, I will yield.

Mr. MCCAIN. Mr. President, I’d like to ask the Senator if it is the intent of this legislation that the declaratory judgment provisions in this bill, in particular, the change to Title 35, will be available immediately to help generic drug applicants who are now in federal court seeking declaratory judgments that listed drug patents are invalid or are not infringed?

Mr. KENNEDY. I agree with the distinguished Senator from Arizona. It is clearly our intent that, under these
provisions, courts considering jurisdictional challenges to declaratory judgment actions brought by generic drug companies should apply the standards set forth in this bill to such challenges in any case pending (either in the trial court or on appeal) at the time of enactment. It is to be hoped that the Senate will soon address these issues as soon as possible and to clear the way for quicker generic entry.

Mr. MCCAIN. I thank the Senator for his answer and for his leadership on these issues. His experience and technical expertise have been invaluable. I would also like to thank my friend, the senior Senator from New York, who has worked with me these many years on this legislation. His dedication to American consumers and his commitment to restoring fairness to the drug industry must be commended. The senior Senator from New Hampshire must also be recognized for leadership on this issue in his committee, in the Senate, and in the conference on this bill. I would also like to thank the staffs of all three of these Senators, who have worked tirelessly on behalf of this issue. I ask unanimous consent that a letter from Chairman Muris of the Federal Trade Commission about the value of the judgment provision in Title 35 be printed in the RECORD.

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


Hon. JUDGEE MURIS.

Hon. EDWARD M. KENNEDY.

Dear Chairman Gregg and Ranking Member Kennedy: In written testimony submitted to the Senate Judiciary Committee on August 1, 2003, for a hearing entitled, ‘‘Examining the Senate and House Versions of the ‘Greater Access to Affordable Pharmaceuticals Act,’’ the Federal Trade Commission commented on both the Senate and House-passed bills that reform the Hatch-Waxman generic drug approval process. The reforms are nearly identical to recommendations contained in the FTC’s July 2002 study, and entitled, ‘‘Generic Drug Entry Before Patent Expiration.’’

I understand that one particular provision contained in the Senate-passed version is of particular interest now on the bills proceed through the conference process. Specifically, the Senate bill adds a provision clarifying that if a brand-name company fails to bring an infringement action within 45 days of receiving notice of an abbreviated new drug application (ANDA) containing a paragraph IV certification, the generic applicant can bring a declaratory judgment action that the patent is invalid or not infringed. Without comment, the Committee’s report addresses these overpayments, while ensuring fair reimbursements for oncologists and other affected physicians to ensure that patient care remains unaffected. Moreover, I think it is important that members of Congress understand the strong consumer protection measures that are in place to ensure that they receive access to an affordable drug plan, one that provides access to the prescription drugs that they need.

Sincerely,
TIMOTHY J. MURIS.

Mr. BAUCUS. Mr. President, one of the criticisms that some have raised about this bill is the provision that prevents the Department of Health and Human Services Secretary from interfering in the negotiations between private prescription drug plans, drug manufacturers, and pharmacies.

Mrs. FEINSTEIN. Yes, we have heard this criticism often during the debate. And I believe it is important to clarify that this bill will ensure that seniors pay less for prescription drugs than they pay today.

Mr. BAUCUS. I also believe it is important that we clarify the purpose of the non-interference language. This language is not intended to pad the pockets of drug manufacturers. It is not intended to pad the pockets of the insurance companies.

Mr. GRASSLEY. The purpose of this bill is to ensure that Medicare beneficiaries get the benefit of negotiated discounts that the private sector is able to achieve today. And I believe that if seriously pay the highest prices, to have access to discounted prices. And we don’t want to see the situation where we have today with Part B covered drugs.

Isn’t it true that the Federal Government dramatically overpays for the drugs that are currently covered under Medicare today?

Mr. BAUCUS. Yes, that is true. The HHS Inspector General has been urging Congress to end these overpayments for over 15 years. The conference report addresses these overpayments, while ensuring that oncologists and other affected physicians to ensure that patient care remains unaffected. Moreover, I think it is important that members of Congress understand the strong consumer protection measures that are in place to ensure that they receive access to an affordable drug plan, one that provides access to the prescription drugs that they need.

Mrs. FEINSTEIN. Isn’t it also true that if a plan chooses to use a formulary, it must include at least two drugs in each therapeutic category or class, unless the category or class only has one drug and that the plan must use pharmacy and therapeutic committees that consist of practicing physicians and pharmacists to design their formularies?

Mr. BAUCUS. Yes, this is true. It is also true that the Secretary is prevented from approving a drug plan that charges too high of a premium. The premium must reasonably and equitably reflect the cost-sharing of the beneficiaries.

Mr. GRASSLEY. Isn’t this requirement the same standard that applies to the Federal Employees Health Benefits Plan?

Mr. BAUCUS. Yes, the same one. And I think it is also important to note that conference report has a requirement for a Government-backed fallback plan if fewer than two plans are available. This Government-backed plan is required to negotiate prices with drug manufacturers. And if the fallback plan is unable to negotiate good discounts on its own, then the Secretary will be able to intervene as appropriate to negotiate to achieve lower prices.

Mrs. FEINSTEIN. In addition, I also think it is important to note that the Congressional Budget Office has estimated that the net price increase for prescription drugs under this bill will be 15 percent. CBO also found that drug plans bearing full statutory risk levels are estimated to produce an overall higher cost savings of 20 to 25 percent for prescription drugs under this bill, as compared to the 12 to 15 percent that CBO did achieve by private prescription benefit managers today.

Mr. GRASSLEY. Yes, CBO estimates that under the conference report seniors will be offered average greater savings under the Senate bill. The price for prescription drugs will almost certainly be lower than the prices seniors who do not have drug coverage pay today.

COMPANY-OWNED LIFE INSURANCE

Mr. CONRAD. Mr. President, I rise to engage the chairman of the Finance Committee in a colloquy regarding pending committee action with respect to the tax treatment of company-owned life insurance, COLI. Let me again express my appreciation for the efforts the chairman made on October 1 in securing the committee’s unanimous consent to conduct some issues surrounding COLI and to mark up a COLI provision shortly thereafter.

Mr. GRASSLEY. I thank the Senator.

Mr. CONRAD. I welcomed the opportunity the chairman provided in the committee hearing on COLI that occurred on October 23. By the end of
that hearing, I believe committee members had a solid grasp of the legitimate problems that still remain after the numerous legislative reforms of COLI over the last 20 years.

Mr. GRASSLEY. I agree. The hearing was informative and prepped the committee to come to an agreement on the reforms that ought to take place.

Mr. CONRAD. Since the hearing, the chairman and I have worked toward the development of a COLI proposal that is supported by the broadest possible consensus in the committee and in the full Senate. I believe that last week we were close to an agreement on a proposal that responded to every legitimate criticism of COLI heard during the course of the October 23 hearing.

I regret that the crush of Finance Committee legislation on the Senate floor in October and November has so far prevented the chairman from scheduling a markup. Unfortunately, it is now clear that the markup agreed to on October 1 cannot be before the end of this session of Congress.

Mr. GRASSLEY. I share this regret. Let me pledge to have this markup on a COLI provision at the Finance Committee opportunity in 2004. I look forward to completing the action we began in October.

CANCER CARE REIMBURSEMENT

Mrs. FEINSTEIN. Mr. President, the Medicare conference report, which includes a reform of the Part B drug payment system, provides significant payment reductions to providers of cancer care. I understand that Senator Grassley does not intend for these payment reductions to force efficient cancer clinics to close, jeopardizing access to care for thousands of cancer patients.

Mr. GRASSLEY. That is correct, Senator. The Medicare conference agreement contains a number of significant reforms, which will save billions of dollars in overpayments from Medicare to physicians, while also substantially increasing payments to physicians. I intend to preserve continued access to high-quality cancer care.

Mrs. FEINSTEIN. Many physicians depend on overpayments on Part B drugs to make up for inadequate practice expenses. Is it the intent of the Senator from Montana that physicians' practice expenses will be increased sufficiently to ensure access to care?

Mr. BAUCUS. Yes, that is my intent. And I am contented to monitoring this new payment system as it is implemented, in order to ensure access to high-quality cancer care.

Mrs. FEINSTEIN. Is it the intent that if this new payment system does not suffice to ensure access to care, that you will revisit the system and revise the payment methodology?

Mr. BAUCUS. That is correct.

Mrs. FEINSTEIN. Finally, it is my understanding that practice expense increases for oncology care are expected to be about $500 million in 2004, $600 million in 2005, and $560 million in 2006, as shown in the summary which I will submit for the RECORD. Is it your understanding that the payment expense increases will allow efficient cancer care providers to continue serving cancer patients and not close their doors?

Mr. GRASSLEY. Yes. I would also note that the Senator from Kansas, Mr. Brownback, has some concerns over this issue. He has been a forceful advocate for the oncology community. And while I think the package for cancer care is a fair one, I understand that he has some concerns over this matter.

Mr. BROWNBACK. I thank the chairman, both for his commitment to this legislation and for keeping my staff and me informed throughout the drafting of these provisions. I would note that from the time he first spoke on this issue during consideration of the tax bill the chairman has expressed his intent to, "ensure that seniors and their caregivers have adequate payment for, and continued access to, important cancer treatments." I would ask the Senator to assure me that if this intent that he expressed in the words to the floor that the changes to outpatient drug reimbursement in Sections 303 and 304 of this bill will not have a significantly adverse impact on access to cancer treatment?

Mr. GRASSLEY. The Senator from Kansas is correct. My commitment to cancer patients has not changed.Indeed, according to estimates from the Congressional Budget Office, this bill is expected to actually increase net payments to oncologists in 2004. Also, CBO estimates that from the time he first spoke on this issue during consideration of the tax bill the chairman has expressed his intent to, "ensure that seniors and their caregivers have adequate payment for, and continued access to, important cancer treatments." I would ask the Senator to assure me that if this intent that he expressed in the words to the floor that the changes to outpatient drug reimbursement in Sections 303 and 304 of this bill will not have a significantly adverse impact on access to cancer treatment?

Mr. BROWNBACK. I would like to thank my friends for the progress that was made in the conference. The bill passed by the Senate several months ago contained a net cut of $16 billion as a result of Part B drug price reforms. The reduction in the Conference report before us is now $11.4 billion. However, I would also note to my friend from Iowa that the Secretary of Health and Human Services is given the discretion to reduce reimbursements further based on studies preformed by the Inspector General of the Department. I would ask my friend if it was the intent of the conference that any future adjustments to the reimbursemens be based on average of prices available to and paid by a wide range of physicians in the marketplace.

Mr. GRASSLEY. The Senator is correct.

Mr. BROWNBACK. I thank my friends.

Mrs. FEINSTEIN. I ask unanimous consent to print the following in the RECORD:

There being no objection, the Record is ordered to be printed in the following, as follows:

MEDICARE CONFERENCE REPORT CANCER CARE CHANGES

Payments for Part B drugs are currently based on Average Wholesale Price (AWP).

The difference between the AWP and the actual sales price often results in a profit to providers when they administer such drugs. For example, an oncologist may buy a chemotherapy agent, called doxorubicin, at about $10.00, while Medicare’s reimbursement for that same dose was approximately $42.00, resulting in a profit to the physician of $32.00.

Because the reimbursement payments on Medicare covered drugs, beneficiaries are paying $8.40 for a dose of doxorubicin. That is 20% of the $42.00, rather than 20% of the $10.00 that the oncologist paid for the drug, which is $2.00. The HHS Inspector General estimated that inflated AWP's caused beneficiaries to pay an extra $1 billion in consumer out-of-pocket costs in 2004.

The Medicare conference agreement reforms the Part B drug payment system, saving $1.2 billion from the oncology specialty over the 10-year period 2004-2013. This reform is effected mostly by using an Average Sales Price (ASP) system, which accounts for the true costs of these drugs. An additional $7.3 billion is saved by applying these reforms to other physician specialties. Most of these savings occur in the later years of the budget window. Under the Medicare conference agreement, oncologists will receive an approximate $100 million increase in payments in 2004, net of reductions in reimbursement for Part B drugs.

Following is an estimated overview of what oncologists will receive in increased practice expense payments, starting in 2004.

Approximately $400m increase in practice expense (increase to oncology in 2004, net of drug payment reductions, is about $100m).

2005: ASP+4%; approximately $600 million increase ($200m for Average Sales Price+6%, $400m increase in practice expense).

2006 and thereafter: ASP+4%; approximate $300m increase ($200m for Average Sales Price+6%, $300m increase in practice expense).

FORMULARIES FOR MEDICARE BENEFICIARIES LIVING WITH HIV/AIDS

Mrs. FEINSTEIN. Mr. President, I am concerned about the impact the Medicare conference report will have on low-income Medicare beneficiaries who are living with HIV/AIDS. I have heard a lot of opposition to this bill from the HIV/AIDS community. My concern is with their access to drug treatment therapy under the Medicare prescription drug benefit. Is it your understanding that the Medicare conference report will not prevent low-income Medicare beneficiaries who are living with HIV/AIDS from getting all the drugs they need through Medicare Part D?

Mr. BAUCUS. That is correct, Senator. One of the things I am particularly proud about in the strong beneficiary protections that will ensure that all Medicare beneficiaries get access to the appropriate medicine they need. You know, Senator Grassley, that there are certain diseases and conditions—like AIDS, and epilepsy—where having access to just the right medicine is especially important.

Mr. GRASSLEY. I did know that, and I know that certain mental illnesses also fall in that category. This bill contains a number of protections for people who need exactly the right medicine for them.

Mrs. FEINSTEIN. Victims of HIV/AIDS are somewhat unique since the
treatment for HIV/AIDS varies with the individual. To be clear, no low-income Medicare beneficiaries who have HIV/AIDS will be denied access to the drugs they need in Medicare Part D.

Mr. BAUCUS. Exactly. The bill asks the US Pharmacopeia to develop model formularies with therapeutic classes that can’t be gamed. Then we require drug plans to offer at least two drugs in each therapeutic class. And for drugs that treat AIDS, epilepsy, or mental illnesses, we would expect that plans would carry all clinically appropriate drugs.

Mr. GRASSLEY. I agree. And I am pleased with the backup protections in this bill. That if a plan doesn’t carry or doesn’t treat as preferred a drug needed by, say, a person with AIDS, a simple note from a doctor explaining the medical need for that particular drug could get that drug covered.

Mrs. FEINSTEIN. Will that apply to all covered drugs prescribed by a person with HIV/AIDS and in all cases?

Mr. BAUCUS. That is correct. These beneficiary protections are crucial for these vulnerable Medicare beneficiaries. I would expect that the Secretary would account for the medical medication needs when he writes regulations on this provision and when he is evaluating plan bids. If a plan can’t adequately ensure all of the proper medication for beneficiaries living with HIV/AIDS, epilepsy, and certain mental illnesses, the plan should not be doing business with Medicare.

Mr. GRASSLEY. I agree with my good friend.

Mrs. FEINSTEIN. I would like to quote from a letter I received from Secretary of Health and Human Services Tommy Thompson, the full text of which I will include for the RECORD. Secretary Thompson says, ‘I would not approve a plan for participation in the Part D program that does not sign the plan and its benefits, including any formulary and any tiered formulary structure, would substantially discourage enrollment in the plan by any group of individuals. If a plan, however, complies with the US guidelines then it would be considered to be in compliance with this requirement. Thus, if a plan limited drugs for a group of patients (individuals living with HIV/AIDS) it would not be permitted to participate in the Part D program.

‘Under the Conference Report, the beneficiary protections in the Medicare drug benefit are more comprehensive than the protections now required of State Medicaid programs. This will ensure access to a wide range of drugs. For example, there are extensive information requirements so that beneficiaries will know the drugs the plan covers before they enroll in the plan. Beneficiaries can also appeal to obtain coverage for a drug that is not on their plan’s formulary if the prescribing physician determines that the formulary drug is not as effective for the individual as another drug, or if there are adverse effects. As a result, access to all drugs in a category or class will be available to a beneficiary when needed.’

Is this your understanding as well?

Mr. BAUCUS. Absolutely.

Mr. GRASSLEY. Mrs. FEINSTEIN, I thank the distinguished Senators from Montana and Iowa.

‘I ask unanimous consent to print the full text of the U.S. Pharmacopeia report on the Conference Report over access to drugs for individuals with AIDS, as follows:

DEPARTMENT OF HEALTH AND HUMAN SERVICES, OFFICE OF THE ASSISTANT SECRETARY FOR HEALTH

Washington, DC.

HON. DIANNE FEINSTEIN, U.S. Senate.

WASHINGTON, DC.

DEAR SENATOR FEINSTEIN: Recently, you have expressed concern with the Conference Report over access to drugs for individuals with HIV/AIDS. Your major concern appears to be whether or not individuals living with HIV/AIDS will have access to all drugs within a therapeutic class under the conference report or not a Prescription Drug Plan (PDP) could limit the number of drugs that are covered within a therapeutic class and expressed concern that dual eligible individuals would lose the coverage that is currently available to them in Medicaid if they enroll in any of the new Medicare drug plans.

Let me assure you that in the Conference Report there are significant safeguards in place for the development of PDP formularies to ensure a wide range of drugs will be available to Medicare beneficiaries. These plans will have the option to use formularies but they are not required to do so. If a plan uses a formulary, it must include at least two drugs in each therapeutic category or class, unless the category or class only has one drug.

I will be requesting the U.S. Pharmacopeia (USP), a nationally recognized clinically based independent organization, to develop model formularies with therapeutic classes and classes. In designing this model it is essential that categories and classes be established to assure that the most appropriate drugs are included in a plan’s formulary. I am confident they will design the categories and classes to meet the needs of patients; USP’s work in clinically based and patient oriented.

Plans will also use pharmacy and therapeutic committees that consist of practicing physicians and pharmacists to design their formularies. The committees will be independent and free of conflict with respect to the plan. They will have expertise in care for the elderly and in individuals with disabilities. The committees will also use both a clinical and scientific basis for making its decisions relating to formularies.

Further, I would not approve a plan for participation in the Part D program if I found that the design of the plan and its benefits, including any formulary and any tiered formulary structure, would substantially discourage enrollment in the plan by any group of individuals. If a plan, however, complies with the US guidelines then it would not be permitted to participate in the Part D program.

Under the Conference Report, the beneficiary protections in the Medicare drug benefit are more comprehensive than the protections now required of State Medicaid programs. This will ensure access to a wide range of drugs. For example, there are extensive information requirements so that beneficiaries will know the drugs the plan covers before they enroll in the plan. Beneficiaries can also appeal to obtain coverage for a drug that is not on their plan’s formulary if the prescribing physician determines that the formulary drug is not as effective for the individual as another drug, or if there are adverse effects. As a result, access to all drugs in a category or class will be available to a beneficiary when needed.'
focus enough of the assistance on low-income seniors and could do more to keep employers from reducing or eliminating benefits for their employees. Others have raised concerns about the fact that there is a $1,400 “doughnut hole” in Medicare. Then contend that this $400 billion expansion, without making additional structural reforms, puts Medicare on an unsure footing for the future. It is for these reasons that Members on both sides of the aisle have said they will vote against this bill.

Many maxims have been used over the past few days to describe the choice before us. Some have said, “A bird in the hand is worth two in the bush.” Others have said, “Let us not make the perfect the enemy of the good.” Still others have said, “Something is better than nothing.” I have spent the last 25 years in public service, and if there is one thing I have learned, it is that a true compromise is one from which no one is completely happy. If there is anyone who knows that lesson better than I, it is the senior Senator from Louisiana, Senator Breaux. I have often said that if there is a deal to be had, Senator Breaux will find it. He knows that putting two sides together in a way that preserves the key principles of both, I think he has succeeded in doing that again here.

Going into the conference, Democrats insisted that the final bill must include the following: meaningful assistance to low-income beneficiaries; providing Federal assistance to Medicare seniors on Medicaid, dual eligibles; strong Government failbacks; and real tax incentives to employers to encourage coverage. The conference agreement represents major victories in all four of these key areas.

First, and perhaps most importantly, beneficiaries with low incomes will get immediate assistance in paying for their drugs. The premium, deductible and coverage gap would be waived for people earning up to $12,123 a year, $16,362 per couple. Those making up to $15,470, $18,180 per couple will not have to pay or be subject to a coverage gap and would only have a $50 deductible. What this means in real terms is that one-third of all Medicare beneficiaries, over 200,000 of which are from my State, will get immediate assistance to drugs at little or no cost to themselves. These are people who today have no help.

This bill also provides $88 billion in tax incentives to employers to encourage retaining existing retiree drug coverage. CBO estimates those incentives will greatly diminish the number of employers who will reduce or eliminate their coverage because of passage of this bill. It ensures that all beneficiaries will have access to drug coverage by providing a strong government fallback in the event that private plans do not provide adequate coverage in any particular region. Finally, it provides meaningful support to Medicare during a period of fiscal uncertainty. The conference agreement全面修改了一个$400 billion expansion used to determine a person’s eligibility for Social Security Income (SSI) and Medicaid. I understand that it is, in fact, three times as generous as the asset tests used by those programs. Yet, in my view, further restricting eligibility for vital Government programs so as to separate out the near poor from the poor is a precedent that should be abolished, not furthered. I think the American public would be shocked to learn how restrictive these asset tests are.

In this bill, if a senior whose income is less than $12,123 a year has more than $6,000 in assets, they will no longer qualify for assistance with their premiums and deductibles. The proponents of the asset test claim that they are necessary to ensure that a person doesn’t claim to have an income of $12,123 and at the same time have a vacation home in Florida and $50,000 in assets. But this is not how the people that these asset tests affect. Who they end up affecting is a widow who is living on her husband’s $600 a month Social Security check, but just so happens to have a $10,000 life insurance policy or home full of furniture valued at $3,000. That is just not fair. While I am not able to change this policy here, I do intent to work to change it later. Ten years have passed since this body was first presented with the need to reform Medicare. We have recognized that the ways of medicine have changed. Medications and outpatient services have taken the place of intrusive surgeries and long-term hospitalization. We know that Medicare has not keep pace with those changes, nor does it reflect the current needs of our seniors. Over the past 10 years, we have assembled task forces, engaged in numerous studies, held countless hearings and drafted several legislative proposals. We have listened to where we are today, at the brink of passing a bill that will put us on the path of making reform a reality.

I think we must act now. In a time of rising deficits, it is unlikely we will have $400 billion or the political will to make these improvements any time in the near future. The seniors in my State are tired of waiting for the perfect bill. If we do not pass this bill this year, who knows how much more time will pass before we get to this point. It was totally understandable that we had not reduced our surpluses by giving out tax cuts, perhaps we could have done more, but there is no sense in wondering what could have been. What we need to focus on now is what can be.

One year ago, I was in Louisiana running for re-election and I promised the people of Louisiana that while I would be with the President some of the time, I would be with the Democratic caucus some of the time, no matter what, I would be with the people of Louisiana 100 percent of the time. This bill is good for Louisiana. Ultimately, that is why I support it.

In Louisiana, one out of every two seniors has no prescription drug coverage. Today, 72-year-old Ethel Cernigliaro of Homer is one of them. With only her $727 a month Social Security check to depend on, Mrs. Cernigliaro finds a way to pay her utilities, buy groceries and still cover the $300 and more she pays each month for prescriptions. At this point, Mrs. Cernigliaro doesn’t know all of the details of how this Medicare reform will help her, but she is certain of one thing: It has got to be better than what she has now. “I’ve been following it closely, and it is certainly encouraging to think that someone is doing something,” she said. This bill means seniors like Mrs. Cernigliaro will no longer be without assistance for the drugs they need to maintain their quality of life and health. She and the 200,000 seniors like her will, in most cases, pay no more than $5 a prescription for their medications. Because of this reform, no senior citizen in our State will be without some level of coverage for prescriptions.

That’s more, the bill will deliver $551 million over the next 10 years in emergency assistance for Louisiana’s hospitals, most of which are struggling to keep their doors open. It will provide $156 million in much needed assistance to Louisiana’s doctors. Without this assistance, these doctors could no longer afford to care for Medicare patients. It will provide $25 billion in help for our Nation’s rural communities, many of which are in Louisiana. This represents the largest comprehensive rural package ever passed by Congress. Finally, this bill provides for much-needed prevention services, including screening for heart disease and diabetes, which could have helped to save the lives of the nearly 10,000 Louisiana seniors who died of these diseases last year.

If this bill does not pass, the people of my State will go yet another year waiting for these improvements. I, for one, cannot ask them to wait. Since Medicare was first passed into law in 1965, it has been amended and modified hundreds of times. This comprehensive reform package is not the final step, it will be forward to working with my colleagues in the months and years to come to ensure that the Medicare program, and this new prescription drug benefit, will be all that it promises to be and more.
me. There are some positive elements of this bill, and there are also some flaws about which I am very concerned. In weighing the good and the bad, however, I have decided to support this bill.

The final legislation will provide very generous prescription drug coverage for about one-third of the lowest income senior citizens and disabled Medicare beneficiaries who live in North Dakota. For those Medicare beneficiaries whose incomes are below 150 percent of the poverty level, they will receive a benefit that will cover nearly 95 percent of their drug costs.

However, for senior citizens with incomes above 150 percent of the poverty level, this prescription drug benefit will not be very attractive at all, in my judgment. There is a $35 per month premium that will increase over time, a $250 deductible that will grow to $445 by 2013, and a period of time when seniors' drug expenditures reach $2,250 and seniors must pay all of their drug costs but have no drug coverage at all. Only after spending a total of more than $5,100 would Medicare beneficiaries receive catastrophic coverage of 95 percent for prescription drugs.

If the prescription drug benefit was a mandatory program, I would vote against it. Because it is optional, I think many senior citizens with incomes above 150 percent of poverty will take a look at the benefit and decide it is not worth it. The one-third of our senior citizens with the lowest incomes will benefit from it.

In addition to providing generous coverage for the lowest income senior citizens, the other feature of this bill that I strongly support are the steps it takes to offer some fairness in Medicare's payments for rural hospitals, doctors and other health care providers.

Hospitals and physicians in rural States have found that their reimbursement rates under Medicare have put them at a serious disadvantage. If these lower reimbursement rates were to continue, the quality and access to health care delivered to rural citizens would diminish. Rural hospitals have to compete for the same doctors and nurses and use the same sophisticated medical equipment as urban hospitals, and yet their reimbursement rates have been dramatically lower. As a result, many of North Dakota hospitals are in real financial trouble. This legislation begins the process of establishing some fairness in these reimbursement rates, and I strongly support that.

But there are also a number of provisions in this bill that I think are a mistake. First of all, this bill lacks provisions that would begin to contain the rising costs of prescription drugs. That is a dramatic failure. For most senior citizens, the problem with prescription drugs is the steep rise in the prices of those prescription drugs. Unfortunately, the majority party bowed to the pressure of the pharmaceutical industry and failed to put any real cost containment in this bill. That is a serious mistake.

In addition, this bill includes provisions that have nothing to do with adding a prescription drug benefit to the Medicare system. I believe that the potential to do harm. The Health Savings Accounts established by this bill are at best a costly tax shelter for the wealthy and at worst could drive up costs for the traditional insurance market. Likewise, this bill is cluttered up with subsidies for insurers and a phony demonstration program that adds additional costs to Medicare and could undermine the Medicare program itself if these provisions are not adjusted in the future.

As I sifted through all of these provisions, I concluded that providing nearly total prescription drug coverage for one-third of our senior citizens with the lowest incomes is a very important objective to achieve. Add to that the effort to improve reimbursement rates to strengthen rural hospitals and health care providers, and I believe that these two features warranted support for the bill.

Again, this bill is a close call because I think the authors have written it in a way that has created an optional program that is sufficiently unattractive to many senior citizens that they will elect not to sign up for this program.

My hope is that we can look in the supporting legislation for the nearly one-third of the senior citizens with the lowest incomes, address the reimbursement inequity for rural hospitals and doctors, and then come back in future legislation and do what should have been done with the rest of this bill.

That is, we need to add some real cost containment, fix the drug benefit so that senior citizens aren't paying premiums while they're getting no coverage, and dump the extraneous provisions that have nothing to do with adding prescription drug coverage to Medicare.

In summary, I am not pleased with this choice, but I know that if we do not commit the $400 billion that we have now set aside for Medicare prescription drug coverage in the coming 10 years, that funding may not be available in the future. And I know that we may not get another opportunity to fix the reimbursement rates for rural hospitals in the near future. So I will vote for this bill, but I do so with some real regret because this bill could have been so much better.

Mr. HOLLINGS. Mr. President, I oppose the Medicare Prescription Drug and Modernization Act.

I remind my colleagues that we have a national debt that exceeds $6.9 trillion. The legislation currently before us is part of a budget resolution and economic plan that will cause our debt to double over the next 10 years. Make no mistake about it, we will borrow every penny to pay this $394.3 billion bill. How ironic—we are going to borrow money from Social Security to pay for seniors health care. And what do we get in return? Spotty drug coverage for senior citizens, millions of Americans who will lose their existing coverage, massive subsidies for HMOs, the first step toward the dismantling of Medicare, and a larger fiscal deficit and a larger fiscal burden for future generations. We can do much better and should go back to the drawing board.

Instead of providing seniors with the stable and affordable benefit they deserve, this bill forces seniors to maneuver a complex maze of premiums, deductibles and cost-sharing in benefits that contain huge gaps in coverage. On top of their premiums, which will vary from region to region and plan to plan, seniors will get no help for the first $250 of their drug costs, pay 25 percent of costs from $251 to $2,250, pay all the costs from $2,251 to at least $5,100, and then pay a fifth of costs above $5,100. With a breakeven point of $810, many healthier Medicare beneficiaries will opt not to participate. Because of the $394 billion cost of the new coverage for the sickest patients will have to ration care for months because even though they continue to pay premiums, they receive no government assistance. Furthermore, seniors better not get too comfortable with their prescription drug coverage. Nearly 3 million of them with retiree coverage, including 39,000 residents of South Carolina will lose their coverage. This bill could force those who participate in the new Medicare drug benefit to move in between three separate plans, with three separate formularies, in 3 years.

I should come as no surprise that the authors of this convoluted mess and Karl Rove have decided to wait until after the 2004 election before this new benefit starts up and Medicare beneficiaries see what it offers for. Conferees could have taken a number of steps to address these deficiencies. Instead, they denied the government the ability to negotiate lower drug prices on behalf of all Medicare beneficiaries. This will impose a higher cost on both the taxpayers who foot this bill and the Medicare beneficiaries who will have to make higher copayments. They also created a $12 billion slush fund the government can use to entice private plans to participate against traditional Medicare, and diverted $6.7 billion from the amounts saved by companies that will drop retiree coverage to create tax shelters for wealthy individuals. These funds could have been more appropriately spent providing incentives for continued retiree coverage or reducing the size of the "doughnut." I also believe this bill is the first step toward the dismantling of Medicare. The "premiums support" demonstration contained in this legislation opens the door to the privatization of Medicare. Seniors in at least six parts of the country will be forced to either pay higher premium to remain in the traditional Medicare system or move into
Mr. SPECTER. Mr. President, since Medicare was established in 1965, people are living longer and living better. Today Medicare covers more than 40 million beneficiaries including 4 million over the age of 65 and nearly 6 million younger adults with permanent disabilities.

Congress now has the opportunity to modernize this important Federal entity to ensure the Medicare Program that offers comprehensive coverage for pharmaceutical drugs and improves the Medicare delivery system.

The Medicare Prescription Drug and Modernization Act would make available a voluntary Medicare prescription plan for all seniors. If enacted, Medicare beneficiaries would have access to a discount card for prescription drug purchases starting in 2004. Projected savings from cards for consumers would range between 10 to 25 percent. A $600 subsidy would be applied to the card, offering additional assistance for low-income beneficiaries defined as 160 percent or below the Federal poverty level. Effective January 1, 2006, a new optional Medicare prescription drug benefit would be established under Medicare Part D.

This bill has the potential to make a dramatic difference for millions of Americans with lower incomes and chronic health care needs. Low-income Medicare beneficiaries, who make up 44 percent of all Medicare beneficiaries, would be provided with prescription drug coverage with minimal out-of-pocket costs. In Pennsylvania, this benefit would be further enhanced by including the Prescription Assistance Contract for the Elderly, PACE, program which will work in coordination with Medicare to provide increased cost savings for low-income beneficiaries.

For Medical services, Medicare beneficiaries will have the freedom to remain in traditional fee-for-service Medicare, or enroll in a Health Maintenance Organization, HMO, or a Preferred Provider Organization, PPO, also called Medicare Advantage. These programs offer beneficiaries a wide choice of health care providers, while also being cost-effective, especially for those with multiple chronic conditions. Medicare Advantage health plans would be required to offer at least the standard drug benefit, available through traditional fee-for-service Medicare.

We already know that there are many criticisms directed to this bill at various levels. Many would like to see the prescription drug program cover all of the costs without deductibles and without co-pays. There has been allocated in our budget plan $400 billion for prescription drug coverage. That is, obviously, a very substantial sum of money. There are a variety of formulas which could be worked out to utilize this funding. The current plan, depending upon levels, has several levels of coverage from a deductible to almost full coverage under a catastrophic illness. One area of concern is the so-called “donut hole” which requires a recipient to pay the entire cost of their medications.

As I have reviewed these projections and analyses, it is hard to say where the line ought to be drawn. It is a value judgment as to what deductibles and what the co-pays ought to be and for whom. The Medicare program ought to be fair to all, not just those who have health insurance. We need a meaningful prescription drug benefit that is affordable.

I am pleased that this bill contains a number of improvements for the providers of health care to Medicare beneficiaries. For example, income recipients scheduled to receive cuts in 2004 and 2005 will receive a 1.5 percent increase over that time. Moreover, rural health care providers will receive a 1.5 percent increase over that time. Then, when the costs move into the catastrophic illness range, the plan would pay for nearly all of the medical costs.

I think we are going to see a positive effect on oncologists' ability to provide cancer care to Medicare beneficiaries. Every Medicare beneficiary suffering from cancer should have access to oncologists that they desperately need. We have before us eleven hundred provisions in this Medicare legislation that I would redirect that our emphasis have the chance of which plan they want to participate in. This bill dramatically slants the playing field in favor of private plans. In addition to a 9 percent higher payment, private plans will have access to a $12 billion “sweetheart” contract that will undercut their costs. These actions undermine the traditional Medicare system generations of our seniors have come to depend on.

The filmy prescription drug benefit and long-term damage done to Medicare contained in this legislation do not warrant its high price tag. I encourage my colleagues to defeat this bill, take up and pass S. 1926 to improve reimbursement for doctors, hospitals and rural providers, and continue to work toward a meaningful drug benefit.

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this bill—provisions which were never a part of the bill I supported in June—will do more harm than good. I know that many of my colleagues worked long and hard to produce this bill. I respect their efforts and their best intentions. I believe they sought to meet the need and deserve far better than this. We passed a decent bipartisan bill once before this year. I know that we can do better than this compromise before us, and that is why I will be voting no. Instead, I urge you to read through a few hundred pages so that we can go home for Thanksgiving and adjourn for the year, I think that we need to keep working on this important issue until we get it right.

I am concerned that the measure before us moves Medicare down the road of privatization and does not adequately protect the access to the prescription drug benefit of rural seniors in traditional Medicare. I am concerned that fewer low-income seniors will be helped with their costs, and it troubles me that the need to bring down the ever-escalating costs of prescription drugs has not been addressed in this bill.

Under the conference agreement, a significant amount of money—$12 billion—is set aside in a slush fund for the Secretary of Health and Human Services to entice insurance companies into Medicare. The conference agreement also includes a provision to experiment with privatization of the Medicare program in at least six areas of the country. This troubling provision could impose increased premiums for millions of seniors in traditional Medicare, potentially forcing them to leave the program that they know and trust. And making this experiment even worse, the Federal Government will overpay private plans—putting Medicare at an unfair disadvantage—to offer the same benefits that traditional Medicare covers. Will all of these payments necessary? If the private insurance model is so effective and efficient, why do we need to pay them more than we pay for traditional Medicare? No one can credibly argue that doing this makes sense.

The reason that we needed Medicare in 1965, and the reason that we will continue to need Medicare in the future, is because the insurance model fails elderly and disabled people. It is not adequate. As we grow older we inevitably get sick and we need to take more trips to the doctor and to the hospital to manage and maintain our health. This costs money, and the insurance companies know that they lose money when the bills have to be paid not occasionally but frequently. Instead of sending billions of dollars to insurance companies, it is far better to use those resources to strengthen Medicare and to create a stronger and more reliable prescription drug benefit.

In the earlier Senate bill, I accepted that we could try this private delivery model for the prescription drug benefit because rural seniors in traditional Medicare—this is all of the seniors in Vermont, by the way, because private plans have chosen not to operate in our rural state—would be assured of having a choice of two stand-alone drug plans. And as it happens those two plans did not exist in Vermont’s region, then Vermonters in traditional Medicare would be guaranteed access to a standard government fall back plan. Unfortunately, this essential protection was weakened in the conference agreement. Furthermore, Vermonters will be considered to have adequate choice—and therefore no access to the government fallback plan—if there is only one stand-alone plan and one managed care plan. What kind of choice is that? The choice that Vermonters in traditional Medicare will have under that scenario is either to sign up for that one stand-alone plan that happens to be offered, or to forgo the new prescription drug benefit altogether. That doesn’t sound like much of a choice at all.

I am also concerned about the impact that this bill will have on low-income Medicare beneficiaries. It is true that the bill provides generous subsidies to low-income seniors, but the earlier Senate bill covered more people: almost one million Americans who would have had access to a subsidy under that bill will not receive help with their premiums, deductibles, and cost sharing under this bill. In addition, millions more Americans will not qualify for help because they have minimal savings and other assets. In Vermont, that amounts to about seven thousand people who will be worse off under this agreement than under the Senate bill. Furthermore, thousands of Vermonters who currently have prescription drug coverage under the Medicaid program could end up with less generous coverage under this plan.

The real reason under this agreement is the drug industry. Many express concern over the high cost of creating a Medicare prescription drug benefit. I would suggest that we could have done something very simple to bring down the cost: We could have used Medicare’s market power to negotiate lower prices for the medicines the program will be buying. Instead, this compromise agreement actually prohibits this common sense approach to cost containment. Thanks to objectionable, and one-sided, provisions designed to speed low-cost generic drugs to market were weakened in the conference agreement. And last, but certainly not least, the drug industry prevailed in their efforts to block a provision to allow Americans access to lower-priced medicines from Canada. This is unacceptable. A majority in the senate voted to allow re-importation and the House of Representatives overwhelmingly supported a strong re-importation provision. Somehow, the conference agreement weakened or eliminated either provision passed in either body. How long do we intend to force Americans to continue to pay the highest prices in the world for their indispensable medications?

It is wrong to have hijacked this bill as a locomotive to pull the drug industry’s baggage. House leaders have taken the industry’s side over concerns of their own issue. They have given the industry a veto over giving Medicare the market leverage to bring down costs. They have done the drug industry’s bidding by blocking drug reimportation. It is designed to pad the drug industry’s wallets at the expense of the seniors of Vermont and the Nation.

I remain concerned that cuts in payments for cancer drugs and services—estimated to be in excess of $1 billion over the 10-year budget window—threaten access to cancer care across the nation and particularly in rural area. And though the conference agreement does reduce the number of retiree—cannot to lose their employer-based coverage as a result of passing this bill from the Senate level, the Congressional Budget Office still estimates that close to three million retirees will lose their coverage. That number is still far too high and would affect thousands of Vermonters.

Finally, I question why we set aside $6 billion—money that could be spent to reduce the troubling gaps in coverage under the prescription drug benefit—to create Health Savings Accounts that have nothing to do with Medicare and that many analysts predict will boost the costs of comprehensive employer-based health insurance across the country. I do credit this bill with some good provisions to provide increased payments to doctors and hospitals, particularly in rural areas. I fully support these provisions, but their inclusion cannot overcome the problems in the rest of the bill.

I hope that I am proven wrong about the impact that this bill will have on the Medicare program and on the help, or lack thereof, it will provide to Medicare beneficiaries. I will continue to work to improve this bill. I hope that I am proven wrong about the impact that this bill will have on all seniors, to close their coverage as a result of passing this bill, I wish to thank one individual. We are part of our distinguished process, and I wonder from time to time about a bill which we support in June—Mr. DOMENICI. Mr. President, thank you for recognizing me and letting me speak for a couple minutes. I wish to thank one individual. We wonder from time to time about a bill of this magnitude. We want to be careful when we mention Senators we want to agree to—Mr. President. But I don’t have any reluctance on this one, having been part of the process, having been part of our distinguished majority leader’s life in the Senate before he was majority leader. There is no doubt in my mind when he came to the Senate and learned about Medicare, he made a commitment that he was going to be part of fixing it.
I watched this fantastic, talented man devote his energy and his enthusiasm, put the best people one can imagine around him, and I watched him lead the maneuvering, the activities, and the thinking, and I watched him make the moves of this legislation in the Medicare Program. This debate has not been limited to the last few days, as we all well know. This debate has been waged for 38 years.

Providing Americans with access to prescription drugs at an affordable cost has been one of the most vexing issues facing Congress in recent years. Many "solutions" have been offered to "fix" the problems of high cost and lack of access, and Congress has explored and debated various approaches. Of these approaches, providing a Medicare prescription drug benefit is the most important and perhaps the most challenging to accomplish.

I do not want to let this record on this debate without the Senator from New Mexico—who knows a little bit about this man, who served with him, worked with him, and in his ability to make commitments, the idea that there has to be a way to modernize Medicare and provide prescription drugs. I would say it is a tossup from what I think it is good because it isn't theirs. I don't know whether they don't like it or the AARP liked.

It just seems as if we go months and years without any good news, and then good news comes in bushels. Today we have a bushel of good news. We passed this bill that our seniors have been asking for. It is amazing, the AARP supports it, and then the other side of the aisle, the Democrats who used to just crave having the AARP on their side, the AARP found out that the Democrats don't like—and I don't know whether they don't like it because it isn't theirs or it isn't good. I would say it is a tossup from what I can tell. Part of the Democrats don't think it is good, but part of them don't think it is good because it isn't theirs. They chose now even to blame the AARP; that there was something nefarious involved in the passage of this bill.

I hope the millions of people in the AARP who worked with me to address another issue, the AARP found out that the Democrats don't like—and I don't know whether they don't like it because it isn't theirs or it isn't good. I would say it is a tossup from what I can tell. Part of the Democrats don't think it is good, but part of them don't think it is good because it isn't theirs. They chose now even to blame the AARP; that there was something nefarious involved in the passage of this bill.

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as critical resources to their communities.

I am very pleased to see that the conferees retained a provision from the Senate measure that will allow critical access hospitals, like the Mount Ascutney Hospital in Vermont, to expand access to psychiatric and rehabilitative services to the most vulnerable citizens in that community.

This bill contains a provision that will allow us to better understand how to provide quality health care, culminating several years of work in concert with Dr. Jack Wennberg at Dartmouth to measure care by the quality of patient outcomes rather than utilization of resources.

In closing, I especially want to salute the efforts of Senator Baucus, Senator Grassley, and Senator Breaux and the other without whose hard work and commitment to working through an agreement we would not have accommodated passage of this legislation and they were unaccolades. I also want to thank several of my other colleagues who have contributed so much to this debate over the years. I have worked for more than 3 years with my good friends, Chairman Grassley and Senators Breaux and Hatch. But many meetings over many months, we delved into the details of what came to be called the tripartisan bill. This has been one of the finest experiences of my many years in Congress. I am very proud to have been a part of that group and that our efforts led the way to our success today.

A bill such as this is the result of great effort on the part of many different people who are not elected to this body but upon whom we all rely. I would like to recognize the staff members who have worked so hard on this bill and deserve much of the credit for its successful passage.

On Senator Grassley’s staff: Ted Tottle, Fishman, Colin Roskey, Mark Hayes, Jennifer Bell, and Leah Kagler, and on Senator Bau
cus’ staff Jeff Forbes, Liz Fowler, Jon Blum, Pat Bouslin, Kate Kirschgraber, and Andrea Cohen de
serve considerable recognition for their tireless efforts. Catherine Finley, Tom Gieier, and Carolyn Holmes from my friend Senator Snowe’s staff; Patricia DeLoache and Patricia Knight of Sen
ator Hatch’s office; and most espe
cially Senator Breaux’s legislative di
rector and senior coordinator, Michelle Easton and Paige Jennings deserve enormous credit for this bill.

On my own staff, I particularly want to recognize the contributions of Sher
ry Kaiman, Eric Silva, and especially Sean Donohue who took up the effort on the tripartisan bill and who has continued to see it through to today’s suc
cess. Each and all have worked tire
lessly to gather the input, analyze the issues, and build a consensus toward achieving this final product.

Mrs. Snowe. Mr. President, today, we stand at the precipice of opportu
nity. Culminating a decade of work, we have before us legislation that will forever change the face of Medicare—providing every senior in America with a prescription drug benefit under a Medicare program that will experience the largest expansion in its 38-year his
tory.

We would not have arrived at this point without the exceptional commit
ment made by Finance Chairman Grassley to advance this issue and meld the complex and pol
icy differences that have marked the development of this bill. His efforts were nothing short of Herculean from the outset, and guided us through a challenging conference. He, as well as Finance Committee Ranking Member Baucus, have re
mained committed to the bipartisan principles that forged the Senate legis
lation, which garnered the support of 16 members of the Finance Committee, and a remarkable 76 members of the full Senate.

I want to recognize the outstanding leadership of the President—who in 2001 challenged Congress to enact the Medicare Prescription drug benefit . . . propounded the legislation to help close the “gaps” has provided strong impetus during this “home stretch” for Congress to complete our work and send to his desk legislation he can sign this year. I know firsthand from my conversations with the President that this is a cor
nerstone of his agenda and absent his driving force we wouldn’t be here today.

So, too, has the Majority Leader re
doubled his longstanding and unflag
ging commitment to include in law a bipartisan bill, moving us ever closer to that goal. Thanks to the unique con
fluence of his skills . . . his unparal
leled knowledge and grasp of the issue . . . and his single-mindedness of pur
pose . . . in bringing us to the eve of final pas
sage of this conference report, he has been typically respectful of—and re
sponsive to—a wide-ranging con
cerns and recommendations voiced to him, and I thank him for his leadership and for guiding and shaping this proc
ess to its ultimate and successful con
clusion.

I also want to extend my apprecia
tion to my colleagues Senators Hatch, Breaux, and Jeffords, with whom I’ve worked so closely on a prescription drug benefit over the past 3 years. They’ve been at the forefront of this effort and together we developed the tem
plate for the “tripartisan” proposal that helped frame the proposal before us. And certainly no one has more fiercely championed the cause than an
other colleague I’ve joined with in this battle in the past—Senator Kennedy— who I recognize does not support this conference report, but whose early, longstanding involvement and pas
sionate policy advocacy unquestion
ably built momentum for this issue in Congress.

Finally, I want to thank my good friend and colleague, Ron Wyden, with whom I began my “prescription drug coverage journey” almost 6 years ago. When we developed the first bipartisan prescription drug coverage bill in the Senate, which established the principles that I believed were critical to shaping this bill.

We reached across the party isle be
cause we recognized that only a bipar
tisan plan could ever “see the light of
day”. And we joined forces as members of the Budget Committee to establish in the 2001 budget a $40 billion, 5-year reserve fund. Well, look how far we’ve now come—from the $370 billion tripartisan plan developed last year, to the historic passage of S. 1 in the Sen
ate this past June.

But I can tell you from my own per
sonal and professional experience that Congress’ journey along this road has never been easy—although it has been infinitely more arduous for America’s seniors. The process has borne witness to a multiplicity of goals and philoso
dies across the spectrum.

Some have wanted to add a drug ben
efit to the existing Medicare program to leverage the purchasing power of 40 million seniors, while others have sought to use the issue either as a vehi
cle for the wholesale privatization of Medicare, or full-scale. Government administered health care.

Some have said we are providing too great an incentive for people to enroll in private plans, while others argue we are starving those very same plans.

And some have argued the benefits provided in a particular bill are inade
quate, while others submit that they are, in fact, too generous and should be limited to a low-income catastrophic plan.

Yet, today, we essentially all agree we are well beyond one question—the question of need. Therefore, it is im
perative we acknowledge the reality that, just as the journey thus far has been marked by the “slings and ar
rows” of those on all sides of this issue, it will not become easier with the pas
sage of time—not when you’re debating the creation of the largest domestic program in nominal terms ever.

Not when you’re attempting the larg
est expansion in the history of the third largest Federal domestic spend
ing program.

And not when significant challenges loom on the horizon such as strength
ening Social Security as 77 million baby-boomers begin to retire in 2033—all while we face record-setting Federal deficits.

We did have an optimal window for positive change just 2½ years ago when the Congressional Budget office was projecting surpluses “as far as the eye could see”—about $6 trillion through 2011. Now, next year’s deficit alone is projected at nearly $500 billion. That is how quickly the tide can turn. That is how quickly opportunities can be lost.

Just think—a little over a year ago the Senate was presented with a choice between a “tripartisan” plan that ensured coverage would be available to
all seniors . . . was comprehensive, with the maximum benefit possible for lower-income seniors . . . and was a permanent part of the Medicare program—and the alternative, which was temporary and would have ‘‘sunset’’ and statutorily restricted access to drugs. Talk about lost opportunities! Indeed, those who are dissatisfied with what we have before us today should fondly recall that tripartisan bill, and lament its unfortunate demise.

So here we are. The conference report before us is the result of an attempt to balance the competing viewpoints not only among Members, but between the two Houses, the Senate and House and Senate legislation. The simple truth is, while I continue to prefer the Senate bill, it is this conference report upon which we will vote. And after careful review, I have concluded that while it isn’t everything, it is the best we can do. It will help millions of people, especially those with low incomes and high drug costs.

Margaret Thatcher once said, ‘‘You may have to fight a battle more than once to win it.’’ Well, some of us have been fighting this battle for nearly 6 years. The bottom line is, we cannot hold hostage our seniors’ futures to a political unwillingness to compromise. And this bill provides us with our best available opportunity to secure, for the first time, a legislative foothold that it should be. In the end, millions of seniors will benefit over the stagnation of the status quo.

To quote AARP, ‘‘Enactment of this legislation is essential to strengthening health security for all Americans. This is an important step toward fulfilling a longstanding promise to older and disabled Americans and their families. While this legislation is not perfect, it will help millions of people, especially those with low incomes and high drug costs.’’

That, in keeping with the basic tenets of Medicare, the prescription drug benefit design was comprehensive, compulsory, comprehensive, affordable, voluntary, permanent, and provide equal benefits across all plans. And that—like the Senate bill and the tripartisan proposal before that—it directs the most assistance toward those seniors with the lowest incomes . . . includes a reliable Government fallback of last resort . . . and continues to ensure seniors access to, and the stability of, the traditional Medicare program. In its totality, this conference report fulfills all of these principles.

In evaluating the individual components of the package, Mr. President, we should be mindful of how we arrived at this point. Recognizing that this bill is not perfect, I find it imperative to note I was disappointed to see two provisions that I oppose are included in the conference report—means testing of the Part B premium and indexing of the Part B de

And in examining the assistance provided to the lowest income, I am relieved to know that the conference utilized the Senate bill. Most critically, in keeping with the Senate bill, seniors with incomes below 150 percent of poverty who qualify for one of the low income categories will experience a gap in coverage—and will receive a generous level of assistance. This means that in Maine over 93,450 beneficiaries, or more than 40 percent of the Medicare population, will receive a generous benefit with no gap in coverage.

And while the Senate bill may have extended this coverage to a greater number of seniors, unlike the Senate bill, this proposal ensures that all seniors, even the so-called ‘‘dual eligibles’’—those who qualify for both the Medicare and Medicaid programs—receive a Medicare drug benefit. This will ‘‘federalize’’ 47,100 beneficiaries in Maine and approximately 6 million nationally. This results in a savings of $161 million over eight years to the States of Maine. So, while this benefit does not achieve all that I would like, it has laid the foundation from which we can and must build in the future.

Yet, not only do seniors deserve a subsidy to help make prescription drugs more affordable, they should also have the benefit of choice when it comes to the coverage they purchase.

Because seniors shouldn’t be limited in their options to just two drugs from each therapeutic class and category. Not only does this provide seniors with options, it helps ensure they will receive the drug their doctor determines is the most appropriate.

And let us not forget, there was a time when it was proposed that if seniors desired prescription drug coverage, they would be obligated to enter an HMO. Well, thankfulness—and appropriately—this conference report shuns the ‘‘one size fits all’’ philosophy of placing all seniors into managed care and maintains the critical protection of choice of ensuring seniors remain in the Medicare program. Seniors absolutely should have the option of staying where they’re comfortable—without sacrificing guaranteed and equal prescription drug benefits.

But others on both sides of the spectrum have said that the privately delivered stand-alone drug coverage option is doomed to fail—that this type of plan doesn’t exist in nature and insurance companies won’t participate. However, this conference report includes key principles developed in the Senate bill—including risk corridors, reinsurance and stabilization accounts—which are intended to build a stable, productive model that I believe will attract and keep companies in the program.

Ultimately, however, there is no way to guarantee private companies will deliver services in every region of the country. Therefore, as we were developing the Senate bill I asked the 12 rural States in which no Medicare+Choice programs operate included a fall back of last resort—which I’m pleased to say is sustained in this conference report. This key provision will serve to provide security to beneficiaries by knowing that no matter where they live, they will be assured of coverage even when private plans choose not to participate.

Throughout this debate, concerns have been voiced to me about the enactment of a Medicare prescription drug benefit some employers will be provoked into reducing coverage that they offer to their former employees. Indeed, I have expressed concern about this issue throughout my six years of involvement in developing Medicare prescription drug legislation. And while I have concluded that we can take steps to mitigate the problem of employers ending coverage, I do not believe we can eliminate it.

That is because this bill is not causing employers to cease coverage—in fact, from 1999 to 2002—prior to the enactment of a Medicare prescription...
I added this provision in an effort to protect policy that I worked to include in the 1997 Balanced Budget Act, which, for the first time, allowed residency training programs to place their trainees outside of hospitals, most often in rural communities, and provided them with the funds to train. Unfortunately, the Centers for Medicare and Medicaid Services (CMS) recently tried to regulate around that law and prohibit programs from utilizing this option by making it so onerous that programs would have reduced residents back into the hospital instead of complying with the agency’s new rules. While I was able to include the corrective action in the Senate-passed Medicare bill, some of the House conference refused to maintain this critical Senate provision. But, working with the Medicare program, one was able to secure support to provide a one-year moratorium that prohibited these actions against programs that allow physicians who supervise residents to volunteer their time. The provision also includes the Secretary of Health and Human Services to perform a review of this facility to ensure the impact to rural training programs if physicians are not allowed to volunteer their time as a supervisor. Though the moratorium is helpful, it does not resolve the issue, and I, therefore, have introduced a one-year moratorium that provides funding for CMS to report on the future enrollment in CMS. In the Senate bill, the Medicare conference report unquestionably represented the other Medicare program, the creation of Medicare in 1965. And you don’t have to take my word for it. According to the Centers for Medicare & Medicaid Services, seniors living in Miami, FL, would pay $2,100 a year for traditional Medicare, compared to $900 in Osceola for traditional Medicare. So let there be no mistake, women in the U.S. will be diagnosed with invasive breast cancer, and almost 40,000 will die from the disease. Yet, the FDA reports that the number of mammography facilities closing now number over 700 nationwide. These closures have led to longer waiting periods for State-sponsored mammography and follow-up mammography visits which could lead to delayed diagnosis and delayed treatment. This is not acceptable. The bill before us includes provisions closing the gap between the Medicare reimbursement and the actual cost of diagnostic mammography by removing the reimbursement of diagnostic mammography performed in a hospital setting from the Ambulatory Payment Classification and placing the procedure in the Medicare Fee Schedule. This would bring the hospital technical number closer to the actual cost of the mammogram, thus reducing the financial disincentive for hospitals to continue to offer these services.

Having been the lead Republican co-sponsor of this bill for a number of years, I am pleased the conference report before us today seeks to turn the tide on these closures as too many inadequate facilities can no longer afford to offer these procedures due to low Medicare reimbursement. One million additional women become age-eligible for screening mammography each year. This action will help ensure that these women, who supervise residents to volunteer their time, have access to the screening they need to detect and combat this disease earlier and, hopefully, with less invasive procedures. This inexpensive provision in the Medicare conference report could save countless lives, and I am pleased that it will be enacted into law along with the rest of this bill.

Finally—and fortunately—this conference report unquestionably represents the end of the House bill’s misguided efforts to privatize Medicare toward a national, privatized system through an untested, untried policy known as “premium support” that could have led to the patchwork delivery of health care that existed prior to the creation of Medicare in 1965. This approach would have fostered wild fluctuations in premiums for the traditional Medicare program. Whereas, incredibly, Medicare now provides all seniors the same benefit for the same price. This proposal allows premium variations would have occurred not just from State to State, but within a State and even within a congressional district!
this House-hacked provision was a full frontal assault on traditional Medicare. Yet, according to CBO, this proposal that supporters touted as the savior of the program ultimately would have saved Medicare less than $1 billion.

I happen to believe that prescription drug legislation should be about providing seniors with a drug benefit. And while we certainly can and indeed should ask—how can we create a system that promotes competition and enhances the underlying program?

The drug benefit should not be used as what someone appropriately described as a “Trojan Horse” to open the door to the privatization of Medicare.

I ask unanimous consent that this letter, as well as another letter my colleagues and I sent in October, and an editorial from the Bangor Daily News be printed in the RECORD. The material was ordered to be printed in the Record, as follows:

CONGRESS OF THE UNITED STATES,
WASHINGTON, DC, NOVEMBER 13, 2003.

HON. BILL Frist,
Majority Leader, U.S. Senate,
Washington, DC.

DEAR LEADER FRIST: It has come to our attention that leadership is considering the inclusion of a new version of the policy model known as premium support. As you know, this policy places the traditional Medicare program and private plans into direct competition and according to the Centers for Medicare and Medicaid Service (CMS) will lead to increases in the annual premium for the traditional Medicare program.

We are extremely concerned about the inclusion of this policy proposal in a Medicare bill. We urge leadership to reject this proposal from a demonstration project. We disagree. This appears to be a veiled attempt to institute this policy into law. According to CMS data this proposal could capture up to 10 million seniors, 25 percent of Medicare beneficiaries. Further, it will require them to bear the burden of cost increases associated with the demonstration project. This policy also unfairly targets some seniors simply based on their geographic location and modifies their participation. The likely result will be significant increases in traditional Medicare premiums for seniors living in the affected areas and could destabilize the traditional program for all seniors.

We understand that leadership and some conferees may be considering possible changes to this latest proposal. We urge you to remove this policy from the bill. We believe there are other possible options that will encourage private plan participation in the Medicare program. Perhaps a demonstration.

Thank you for your consideration of this vitally important issue.

Sincerely,

44 MEMBERS OF CONGRESS.

U.S. SENATE

Chairman CHARLES E. GRASSLEY and Ranking Member MAX BAUCUS,
Senate Finance Committee, Dirksen Senate Building, Washington, DC.

Chairman WILLIAM M. THOMAS and Ranking Member CHARLES B. RANGELL,
House Ways and Means Committee, Longworth House Building, Washington, DC.

Chairman W. J. (Billy) TAUDIN and Ranking Member JOHN D. DINGELL,
House Energy and Commerce Committee, Rayburn House Building, Washington, DC.

DEAR CONFEREES:

The Medicare conference has reached a critical juncture in its effort to craft a conference agreement to develop a Medicare prescription drug and modernization bill. The conference has now begun its work and the many issues remain unresolved, which will determine whether this bill can garner strong bipartisan support and ultimately become law. As you progress through this conference, we urge you to remain committed to the bipartisan principles contained in the legislation developed and passed by the United States Senate.

The conference must now take the steps to provide every senior and disabled American, no matter where they live, with choices in coverage. Notably, this is done in a manner that preserves the traditional Medicare program as a viable option. This balance was achieved by providing all seniors with access to the same level of drug coverage no matter where they live. The matter of the coverage option chosen. Further, the Senate bill assures this choice will be a fair one that will not disadvantage senior citizen longevity, however, it is not possible to guarantee their participation. Therefore, it is necessary that the final proposal include a mechanism that will ensure that all seniors have access to a prescription drug benefit, no matter where they live. The Senate bill assures that private plans interested in providing this benefit can do so and will be the preferred mechanism of delivery in every geographic location; however, it is not possible to guarantee their participation. Therefore, it is necessary that the final proposal include a fallback mechanism, as we included in our conference report, that several beneficiaries will have access to the drug benefit in the event that private plans are not available in a region.

Thank you for your consideration of this vitally important issue.

Sincerely,

ARLEN SPECTER,
MIKE DEWINE,
EDWARD M. KENNEDY,
JEFF BINGAMAN,
BLANCHARD L. LINCOLN,
OLYMPIA J. SNOWE,
JAMES M. JEFFORDS.

[From the Bangor Daily News, Nov. 21, 2001]

HOBSON’S MEDICARE

Never have so many dollars been put to so little use. The $400 billion Medicare bill before Congress establishes what all sides agree is a needed and long overdue prescription drug benefit— but blows away at much of Medicare’s foundation. It is a deal that makes all previously rejected Medicare reform look wise and generous by comparison. More to the point, the next deal the current Congress is likely to get.

The difficult calculation is this: Is a badly flawed bill that contains a needed drug benefit worth passing when the alternative is to reject it without the chance to enact improved legislation? The $400 billion has been set aside for funding this legislation; should it fail, the money would disappear and give the extent of the deficit for the next decade or more, would not be available next year; even in the unlikely chance a bill could be passed in an election year, or perhaps after that.

Much of the debate this week has focused on the House’s intention to privatization pilot projects—subsidized private insurers would offer Medicare in six metropolitan areas in competition with traditional Medicare—but other aspects of it are equally important and equally troubling. The means testing provision in the bill, for instance, raises costs for middle-class seniors; reimbursement for medical residents in clinic networks; the potential to shift future costs to seniors. Several of these problems are being debated now—Sen. Olympia Snowe has been in the middle of negotiations all week; imagine the time and argument that would have been saved had she been put on the conference committee. Some of these issues may be resolved but several are likely to remain as the House and Senate vote.

Some members of Congress do not support this bill for these reasons. We don’t support it because of its cost and relatively small nod toward privatization. But for those who believe a drug benefit is important and will become more important in the coming years, the choice is to vote yes and immediately set about chipping away at some of the worst aspects of the bill. This is a terrible way to build a safety net for the nation’s seniors, but lamenting the process is not an excuse for allowing this opportunity to pass by without approving the drug benefit.

At 1,100 pages, the Medicare bill is too long and complex to describe it merely as a sop to nursing homes (though medical facilities manufacturers should love it), an ideological document (though its medical-savings accounts are a GOP crowd-pleaser) or a broad expansion of entitlements (though the medical-savings accounts are exactly that). It is fair to say the bill is a poor version of what should have been passed years ago and now that Congress is out of time and out of money. It is about as much as the public can expect.

Ms. SNOWE. In a letter that 43 colleagues sent, we expressed our strong opposition to this ideological venture.
It is rewarding to note that significant changes were made that transformed the full-scale national premium support proposal into a limited bona-fide demonstration project, as seen in this chart.

Where once efforts centered on the wholesale national privatization of Medicare under a proposal that offered seniors zero protections from premium fluctuations, conferences shifted to crafting a bona-fide demonstration project.

Notably, this proposal exempts seniors from the demonstration who have incomes below 150 percent of poverty.

This bill includes a sunset that ends the demonstration project after six years, limits premium increases to 5 percent annually; and because the demonstration is phased in over 4 years, the actual impact to premiums is significantly less than 5 percent. In fact, the true cap on premiums during the first 4 years of the 6 year demo is only one-quarter of the five percent increase.

Further, under the initial proposal the premium increases would have compounded annually, which could have resulted in a net increase in the traditional premium of over 30 percent during the 6 year project. But we worked with the conferees and even this component was removed so that the increases are not compounded.

Finally, we were able to secure a port to include selection criteria that identifies qualifying MSAs. Sites must have at least 25 percent private plan participation and seniors living within the MSA must have access to at least two local private plans. Further, the demo must include—one of the largest MSAs—one with low population density—one multi-State MSA—and all must be from different parts of the country. Under this criteria, Maine will not qualify as a demonstration site.

According to CBO this criteria serves to limit the scope of the project to between 650,000 and 1 million seniors, as opposed to the proposal we addressed in our letter, which would have captured 10 million seniors.

Looking back it is remarkable how far this provision has come. Where discussion back in October once focused on the House-passed provisions that created a national premium support program, we now are considering a limited, bona-fide demonstration project that is a legitimate avenue for exploring new ideas to ensure the future of Medicare.

Looking back on the development of the Senate bill, many notions existed about how best to encourage private plans to participate in Medicare. But as we discovered, expectations about the impact and results produced by these proposals often were in conflict. With one proposal, while CMS predicted 13 million seniors would participate in private plans, CBO estimated only two percent. Yet at a later point, in considering a measure to establish a payment system for the MedicareAdvantage program, CBO estimated it would cost hundreds of billions of dollars, while CMS predicted it would save Medicare money.

Clearly, it is imperative that we first test what is needed to get Medicare down a path of change. To do otherwise would be to potentially imperil the very health care system seniors have come to reply upon.

So I am pleased that in the final analysis the premium support proposal that once threatened to unravel the very thread of Medicare has been reduced to a limited, focused, true demonstration project, which starts in 2010; is limited to 6 years; is limited to 6 MSAs that according to CBO captures only 1 million seniors; limits premium increases to 5 percent per year without a compounding affect; terminates the financial incentives offered to private plans under the MedicareAdvantage program; and protects seniors whose income will not be in the near vicinity of poverty by holding them entirely harmless.

There is one place where this conference report fails to hold seniors harmless, and that is in the skyrocketing prescription drug costs which are increasing at a rate seven times higher than the rate of inflation and grew 16 percent between 1999 and 2002.

One effective means to reduce the cost of prescription drugs is through importation. Regrettably, this conference report perpetuates the status quo by insisting on maintaining the safety certification requirements that have to date made it impossible for either the former or current Secretary of Health and Human Services to certify the integrity of imported drugs. Yet none in eight American households already use imported prescription drugs, and according to William Hubbard, senior associate commissioner at the FDA, in his testimony before the House Government Reform Committee in June, there is "no evidence that any American has died from taking a legal drug from another country."

The FDA has a critical role to play in the Secretary's ability to certify the safety of imported drugs—and they're not fulfilling that responsibility. Rather than expending the resources to develop the tools necessary to improve safety, when it comes to this medications, the FDA is instead directing their efforts to threaten consumers. This is astounding because we know we have the ability to improve safety. For a few pennies, anti-counterfeiting packaging can be used. We use it on a twenty dollar bill—a lifesaving prescription deserves no less. Further, drug manufacturers were mandated back in 1992 to track their products using a "pedigree", something which has yet to be enforced.

The FDA is asking the Senate to pass the conference report, and I encourage my colleagues to do likewise.

Mr. MCCAIN. Less than 5 months ago, I stood before the Senate and spoke at length of my concerns that such a package would be detrimental to the future solvency of our Nation, and leave future generations with a reckless and unjust financial burden. Since that time, members engaged in conference committee negotiations produced a voluminous package which represents the single largest expansion of Medicare since its creation, offering enormous profits and protections for a few of the country's most powerful interest groups, paid for with the borrowed money of American taxpayers and leave future generations and generations to come.

Everyone here is well aware that Medicare faces enormous long-term fiscal challenges. In recent years, the program's financial state has worsened. The most recent Trustees' Report has forecasted that Medicare will reach financial insolvency by four years to 2026. Adding a prescription drug benefit to an already failing Medicare, is like putting a band-aid on a patient that needs surgery.

Earlier today I mentioned several statistics which I believe are worth repeating. Today, our Nation has an accumulated deficit of $7 trillion—which...
translates into $24,000 for every man, woman and child in the United States. Making our bad financial condition worse, the Federal Government is estimated to run a deficit of $480 billion in fiscal year 2004.

Passing this bill continues our reckless spending. Although this package is estimated to cost just under $400 billion over 10 years, I guarantee you, $400 billion is merely a down payment. I don’t believe there is one person here who honestly believes that $400 billion is the sum total we will pay in the next 10 years.

Additionally, this new package will substantially increase existing unfunded liabilities. The Office of Management and Budget estimates the current unfunded liabilities of Medicare and Social Security at $18 trillion. This new benefit will add an estimated $7 trillion in additional unfunded liabilities.

By 2020, Social Security and Medicare, with a prescription drug benefit, will consume an estimated 21 percent of income taxes for every working American. Adding a new unfunded entitlement to a system that is already financially insolvent, is so grossly irresponsible that it ought to outrage every fiscal conservative.

The American people deserve some straight talk. Passing this package, without implementing the necessary reforms to ensure that the Medicare system is solvent over the long-term, will simply expedite its failure. Clearly, it should be incumbent upon us to include comprehensive, free market reforms, into any Medicare prescription drug package in order to ensure that Medicare is financially sound for current beneficiaries as well as future generations. Unfortunately, this conference report represents a missed opportunity.

Medicare has changed substantially since the creation of the Medicare system in 1965. Advances in medical technology and pharmaceuticals have lead to more prescription-based treatments, and Americans now consume more prescriptions than ever before. In 1968, soon after the enactment of Medicare, American seniors spent about $65 a year on a handful of prescription medications. Today seniors fill an average of 22 prescriptions a year, spending an estimated $999.

The conference report before us represents one of the largest enhancements to Medicare since its creation—setting up an entirely new bureaucracy and establishing a sizable new entitlement program. I believe this bill attempts to address a real problem, but falls perilously short. We must halt our illusions. There are dangers, complexities, and potential unintended consequences associated with this bill.

This legislation is without a doubt an enormous fiscal and social train wreck. Some in this Congress and this administration have left office our children and our grandchildren, and a future Congress and administration, will be left here to clean up the mess we have created with this bill.

I believe we have an obligation to future generations to start exercising some fiscal restraint. While our national debt rapidly mounts, we continue to burden our children and our grandchildren will have to bare, without reigning in costs. Unfortunately, this problem is exacerbated by our inability to put a stop to our excessive and wasteful spending, particularly egregious pork barrel projects, which Congress has become addicted to.

We are on a shopping spree with borrowed money. The extraordinarily large new entitlement package before us substantially increases the already enormous burden of current and future taxpayers. We have to stop living in denial, eventually the money has to come from somewhere and none of the options are desirable. The reality is, this new benefit will be funded by raiding the IRS through increasing our national debt, reducing benefits or through increased taxes. An expansion such as this is simply not sustainable.

For the enormous cost of this bill, the most alarming fact is that it won’t even provide adequate prescription drug coverage or enact many of the significant measures needed to reform the Medicare system and ensure its long-term financial solvency. To save this system, we must enact true free market reforms and bring Medicare into the 21st century. Some provisions in this bill, including means testing Part B and expansion of health savings accounts, are a good start toward long-term reform. Unfortunately, these minor reforms do not outweigh the burden of the new unfunded drug benefit.

With future generations of American taxpayers funding the purchase of prescription drugs under Medicare, we have an obligation to ensure some amount of cost containment against the skyrocketing cost of prescription drugs. Unfortunately, however, this package explicitly prohibits Medicare from using its new purchasing power to negotiate lower prices with manufacturers. The Veterans’ Administration, VA, and State Medicaid Programs use market share to negotiate substantial discounts. Taxpayers should be able to expect the same purchaser of prescription drugs, to be able to derive some discount from its new market share. Instead, taxpayers will provide an estimated $9 billion a year in increased profits to the pharmaceutical industry.

Prescription drug importation is another lost opportunity for cost containment. American consumers pay some of the highest prices in the developed world for prescription drugs, and as a result, millions of our citizens travel across our borders each year to purchase their prescriptions. In Arizona, bus loads of seniors depart from Phoenix and Tucson every week, heading south to Mexico to purchase lower cost prescription drugs. The story is similar across the northern border where seniors make daily trips to Canadian pharmacies.

Throughout the country an increasing number of seniors are turning to online pharmacies selling reduced-priced prescriptions imported from other countries, oftentimes with questionable safety. In all, Americans spend hundreds of millions of dollars of imported pharmaceuticals not because they don’t want to buy American, but because they simply can’t afford to. Although the conference report does contain language on drug importation, it has been successfully weakened to the point of guaranteeing that implementation will never take place.

The only provision contained in this package that has any potential to help rein in the cost of prescription drugs is a negotiated version of a bill Senator SCHUMER and I have championed for several years. Regrettably, it is weakened from its original form. But, this language still represents a partial victory for consumers. It closes loopholes in current law that have allowed brand name drug companies to unfairly describe entry, empowering generic firms to challenge patents and obtain certainty before risking market entry.

Given the difficult budgetary realities in which we live, this package is simply not feasible without reigning in costs. Unfortunately, this problem is exacerbated by our inability to put a stop to our excessive and wasteful spending, particularly egregious pork barrel projects, which Congress has become addicted to.

Here is some straight talk to America’s seniors: For those of you who honestly believe that $400 billion in new unfunded liability is acceptable, I challenge you to talk to the future generations to start exorcizing the bureaucracy which will administer the new system. And, for those of you who believe in free market reforms and bringing Medicare into the 21st century, I urge you to talk to the future generations to start exorcizing the bureaucracy which will administer the new system.

Here is some straight talk to America’s seniors: For those of you who think this bill will solve your financial problems I am here to tell you, there are substantial limitations to the proposed legislation targeted to the most needy. Today, approximately 75 percent of seniors have some form of prescription drug coverage, but the package before us is a universal benefit, not one that targets those poor seniors who we all know make difficult decisions between life sustaining medicines and other basic needs. One of the ludicrous facts is that this new plan will spend an estimated $100 billion to cover the people who already have coverage. Goldman Sachs analysts estimate that this bill shifts a total of $30 billion a year in U.S. health care spending to the Federal Government.

Despite our differences of opinion over this legislation, virtually everyone involved agrees that in this country, there exists a serious crisis for lower and middle income seniors and the disabled. I believe it is an outrage that in a country as wealthy as ours, seniors across the country are struggling to afford the high cost of prescription drugs.

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that coverage. Over the summer, the Wall Street Journal quoted one analyst who called this bill the “automaker enrichment act,” because companies will see huge reductions in unfunded liabilities and annual drug spending. It is unconscionable that our grandchildren will be saddled with the burden of legacy costs of big business.

Despite the enormous sums of money we are spending on this package, far too many seniors will find themselves with a benefit that is mediocre, at best. And too many others will find themselves worse off than they are today. Many other seniors, might not even get out of the system what they will pay in deductibles and premiums. I am concerned that we are about to repeat an enormous mistake. I have been around long enough to remember another large Medicare prescription drug entitlement program we enacted in 1988, Medicare catastrophic. The image of seniors angered by the high cost and losses of that package attacking Rostenkowski’s car, should be a cautionary tale to all of us.

The American people must be aware that this new package has substantial cost to seniors, to taxpayers and to the future of Medicare. Those who are afraid of the majority of the financial burden. We must be realistic, there will be unintended consequences of our actions. Moreover, we must be honest about the cost of this measure—$400 billion is merely a down payment for what we are creating. If we as a body decide to support this bill, we must also commit to fiscal responsibility.

Despite my concern for the overall package, several provisions will provide good fixes to the existing program and a better quality of life to many Americans. Several provisions benefitting our Nation’s hospitals, will provide much needed assistance to hospitals in my State, particularly teaching hospitals, those in rural areas and those which suffer from the crippling burden of uncompensated care of undocumented immigrants. I am, however, disappointed that the Immigrant Children’s Health Improvement Act was dropped from the conference report. This bill would have reversed a 1996 law that prohibited States from extending State Medicaid and SCHIP Programs to legal immigrants.

The Wall Street Journal has called this plan an ‘awfully high price to pay for expanded health savings Accounts,” but I would call it legislative malpractice.

After much thought and careful deliberation, I regret that I cannot vote for this conference report. I have reached this conclusion, not because I believe our seniors and disabled do not need or deserve prescription drug coverage, but because I do not believe our country can sustain the cost of this package and because I fear that our actions will not provide adequate assistance to most beneficiaries.

Mrs. CLINTON. Mr. President, this is a sad day for seniors and a sad day for America. I have long fought for a prescription drug benefit, and I am truly disappointed that this bill fails to adequately address this need. Seniors deserve a comprehensive, reliable prescription drug plan. This is no such bill. It is a weak benefit meant to cover the concerns of its authors by privatizing Medicare. In short, the bill Republicans are passing today is a wolf in sheep’s clothing.

This bill, over time, will bring about the unraveling of the Medicare system. Breaking the promise we made to our seniors. It does all this under the cloak of a prescription drug benefit that is far too small and far too weak to justify the negative side effects.

To illustrate how this bill begins the demise of Medicare and sets our Nation back in its effort to care for seniors, we need only to look at the years before Medicare, when the private market failed to adequately serve the elderly. This sicker, costlier population was an uninsurable, high-risk group for private insurers to cover. It was impossible to take care of this pool and still keep premiums affordable. Before we passed Medicare in 1965, 44 percent of seniors were uninsured. Now 1 percent of seniors are uninsured. For other age groups, Medicare does this by being able to spread the per-person costs across a large number of people to pool the risk.

This bill, however, fragments the risk pool and allows private plans to ‘cherry-pick’ the healthiest seniors. Left behind will be a group of Medicare applicants that are far more expensive per person. This will create a two-tiered system and start an insurance cost death spiral that will unravel Medicare’s financing. Medicare is a promise we made as a nation to guarantee seniors the health care they need in their golden years. This bill betrays that promise. And it does so under the false pretense of a prescription drug plan. This is no such plan. It is a weak benefit meant to cover the concerns of its authors by privatizing Medicare—the poorest and the sickest. I voted against this bill for these reasons, and because these flaws will particularly harm New Yorkers.

This bill contains little to prevent employers from dropping retiree coverage. That will disproportionately affect New York, which has a higher percentage of seniors with retiree health than other States. In New York State, 36.5 percent of Medicare beneficiaries have retiree coverage compared to a national average rate of 31.8 percent. Over 200,000 Medicare beneficiaries in New York will lose their retiree health benefits under this bill.

This bill will also reduce drug coverage for the lowest-income and sickest Medicare beneficiaries—those dually eligible for Medicare and Medicaid. In a cost-savings provision, this bill will ban Medicaid from filling in the gaps in coverage by prohibiting Medicaid dollars from covering prescription drugs not covered by the new Medicare drug plan. This could hurt 6 million nursing home residents, people with disabilities, and truly indigent seniors nationwide, and over 400,000 in New York alone.

This bill also fails to protect seniors who hope to stay in state prescription drug plans, like New York’s EPIC. Unless corrected, this bill will force EPIC to comply with private drug plans preferred drug list, hampering EPIC’s ability to “wrap around” Medicare and supplement the drug coverage. The state legislature will be forced to change the law and the design of EPIC to continue to program.

Retirees, dual-eligible and state plan participants are not the only losers in this bill. The premium support provision will also hurt seniors in various regions selected for enrollment. These seniors will incur a surcharge in their Medicare premiums others will not have to pay. The seniors who want to stay in traditional Medicare but fall in a metropolitan area chosen for the premium support “demonstration” will see their premiums jump 300 percent above their counterparts in other States. In the future that surcharge could spike to 88 percent if the “demonstration” is expanded to a full-premium support privatization effort. New York seniors in Rochester and Buffalo are at risk of being treated in that discriminatory manner. New York State also has two other Metropolitan Statistical Areas—Albany-Schenectady-Troy, and Glen Falls—that face the possibility of being chosen and whose seniors are therefore at risk of having to pay more in Medicare part B premiums than other seniors in the U.S.

The bill also hurts seniors and individuals with disabilities by raising Medicare copayments for prescription drugs. This is not true savings for seniors and those on Medicare Advantage plans. In short, the bill Republicans are passing today is a wolf in sheep’s clothing.

This puts existing non-drug benefits at risk of having to pay more in Medicare part B premiums than other seniors in the U.S.

And far too many others will find themselves worse off in our nation’s hospitals, will provide much needed assistance to hospitals in my State, particularly teaching hospitals, those in rural areas and those which suffer from the crippling burden of uncompensated care of undocumented immigrants. I am, however, disappointed that the Immigrant Children’s Health Improvement Act was dropped from the conference report. This bill would have reversed a 1996 law that prohibited States from extending State Medicaid and SCHIP Programs to legal immigrants. The Wall Street Journal has called this plan an ‘awfully high price to pay for expanded health savings Accounts,” but I would call it legislative malpractice.

After much thought and careful deliberation, I regret that I cannot vote for this conference report. I have reached this conclusion, not because I believe our seniors and disabled do not need or deserve prescription drug coverage, but because I do not believe our country can sustain the cost of this package and because I fear that our actions will not provide adequate assistance to most beneficiaries.

Mrs. CLINTON. Mr. President, this is a sad day for seniors and a sad day for
bill is, the Senate discussed it for less than a week. We have not been given ample time to understand this bill, and our constituents have not been given adequate time to discern how it will affect their lives.

Please note, there are some provisions included that I support. I am very glad to see that this bill stops the damaging cuts to physician payments and provides a small increase to physicians instead. I am pleased that the bill included $300 and $400 million for rural and small community hospitals and health providers in New York, while also providing additional funds for public and other hospitals who serve a disproportionate number of uninsured or Medicaid patients. And while I would have liked to see all teaching hospital cuts averted, I am pleased that at least some improvements were made for graduate medical education, since New York State trains many of the graduate physicians in the nation. This bill also includes a version of Senator Schumer’s proposal, which provides greater market competition for generic drugs. And finally, this bill contains a proposal that I offered as an amendment on the Senate floor—the comparative effectiveness research provision. This will assure that we spend money on drugs that are most effective, not just the ones that are most advertised.

These positive provisions, however, should not be attached to a bad bill. They are not enough to justify undermining the promise of Medicare. I believe New York deserves a better bipartisan alternative than the one that passed today, and I will continue fighting this year, as well as in years to come, to correct the deficiencies I’ve described today so that Congress might deliver on the long-awaited promise of a simple, affordable, comprehensive prescription drug benefit for all seniors.

Like so many other pieces of legislation we have witnessed in the past two and a half years, this bill is designed to please special interest and not the public. It will be a benefit to drug manufacturers. And it will be an benefit to private insurance providers. They are the big winners here, and that’s not right.

We need a bill that will benefit seniors. They deserve a benefit that is comprehensive, affordable, and sustainable. Today’s bill is mainly a bill to privatize Medicare. I believe New York deserves a better bipartisan alternative than the one that passed today, and I will continue fighting this year, as well as in years to come, to correct the deficiencies I’ve described today so that Congress might deliver on the long-awaited promise of a simple, affordable, comprehensive prescription drug benefit for all seniors.

Mr. JOHNSON. Mr. President I rise today, conflicted about the conference report now before this body. Shortly, my colleagues and I will be faced with making an important decision regarding whether or not we think this Medicare conference report is good enough for America’s seniors. This is not a simple task as there are so many moving parts, each with its own implications.

The Senate bill, which I supported was not perfect. While it had its flaws, it represented a bipartisan effort and a first step toward some kind of prescription drug coverage seniors need. With the conclusion of that vote, I remain cautiously optimistic that conferees would be able to deal with some of the inherent problems in that bill. I was hopeful that conferees would find a way to eliminate or come very close to eliminating the employer-sponsored retiree coverage drop problem. I was hopeful that conferees could maintain the level playing field between traditional Medicare and private plans. And I was optimistic that progress could be made on reducing the high cost of prescription drugs that Americans pay compared to the rest of the world.

I was hopeful and confident, but I must unfortunately report today that those feelings are now all but entirely lost. I am discouraged that my colleagues on the other side of the aisle abandoned the bipartisan spirit of the conference committee. Senator Dasy has discarded the strong voice he had been a leader on this important health care access issue, as well as many other Democratic members, had been completely shut out of the conference committee. This is a very unfortunate circumstance, and the result today is obvious.

It is obvious because now we are faced with a conference report that does not represent a fair balance between the strong Senate bill and the bill passed by a 1-vote majority in the House. Rather, today we have a conference report that moves to privatize Medicare, actually prohibits the government from negotiating lower drug prices, and puts rural and chronically ill seniors to bear higher premiums than their urban and healthier counterparts. All of these things weigh on my mind as I think about this very important vote.

And I am especially frustrated that the majority has intentionally held the rural provider package hostage. This package should have been passed with the tax bill, but President Bush made a convenient promise to our Republican friends to address this issue in the controversy. The Medicare prescription drug bill and they have now created the illusion that a no vote for this bill equates to a lack of support of rural provider payment equity. Well, this is simply not true. Many of my colleagues on the Rural Health Caucus have worked tirelessly over many years to achieve payment equity for our providers. I would like to thank all members of our caucus, and especially Senator HARKIN for his hard work on this issue. I have long supported these important provisions, which were all contained in the better Senate-passed bipartisan bill.

And while I am pleased that the Senate bill’s rural provider package has made it into the conference report, I am very concerned about the actual drug benefit. While the conference report appears to do a pretty good job of addressing the prescription drug needs of many low-income beneficiaries, most seniors, especially those above 150 percent of poverty, expecting much more than what they will receive under the program. This will be a shocking wake up call for many around the country when the plan finally reaches them in 2006. And only will seniors across the country experience varied premium rates and benefits, but many seniors will not break even under the plan, spending more in premiums, copayments and deductibles than the value of the drugs they need in a given year. In South Dakota, about 16.6 percent of the Medicare population will fit in this category. This is not what seniors are expecting and they should know this right away—up front.

Additionally, many beneficiaries will hit the coverage gap and remain there for a long period of time in any given year. In my home State, approximately 24.4 percent of seniors will hit the coverage gap of $2,250 but never reach the catastrophic level of $5,100, meaning they wind up paying 100 percent of their drug costs or $2,850 while continuing to pay a monthly premium to their PPO or drug-only plan. I know that South Dakotans will be saying to themselves, I was hoping for $5,100, not $2,850.

In addition to these less than ideal benefits, I am angered that this bill does almost nothing to constrain the rising cost of prescription drugs. I am pleased that provisions have been included to speed access to lower priced generics, however beyond that, it is simply not true. Many of the inherent problems in that bill are not true. Many of the provisions in that bill are not true. Many of the provisions in that bill gone to great lengths to establish roadblocks against real price reform. The conference report disallows the Secretary any real authority to negotiate for lower priced drugs for the 41 million seniors that will be eligible for this program. This is the real tragedy in this conference report of which people across America must be made aware.

Disturbing are the estimates that the pharmaceutical industry will experience a windfall profit of over $139 billion dollars over eight years as a result of this new program. Our friends on the other side of the aisle talk of “free market” and “fiscal discipline” but went far beyond turning the other cheek when they struck the Senate’s reimbursement language that disallowed drug manufacturers to restrain their exports to other countries. This is not free market colleagues and such excess will eventually threaten the viability of the Medicare Part D prescription drug benefit of 2006.

I am also concerned that while conferees have provided some dollars in the final report to address the loss of...
employer-sponsored retiree drug coverage, we have only partly addressed this problem. I was pleased to see that conference alloted funds to address this issue in part. And while the conference report reduced the drop rate by about 14 percent for health savings accounts, which have nothing to do with Medicare or the prescription drug benefit, and only serve to help healthier and wealthier Americans save money on the costs of their health care. I find this very disappointing and, frankly, unacceptable.

There are countless others in my State and across the country that are left out under the so-called “agreement” before us. In South Dakota, 14.1 percent of Medicare beneficiaries are also denied coverage for long-term care. In my State thousands fewer seniors will not qualify for the low-income protections as the conference report re-duced the income threshold from 150 percent as was in the Senate bill to 140 percent, as well as instituted a strict assets test for low-income benefits.

Of most concern to seniors in rural South Dakota will be the proposal’s heavy reliance on managed care. In my home State, currently there are no beneficiaries enrolled in the Medicare+Choice program. If we take lessons from that fact, one that is mir-rored in rural states, we can conclude that the managed care op- tions in this conference report are not likely to have much success in those areas.

The Senate bill did contain a strong fallback provision which would have provided real choices to rural seniors. Under the bill I supported, if two “prescription drug only plans” of PDP’s were not available in a given region, seniors would have the choice to select a government fallback option. However, it is my understanding that under the conference report that guaranteed fallback trigger is restricted because only one PDP and one managed care plan are re- quired to prevent the fallback from being made available. This scenario means that a senior in South Dakota has to choose between two bad options: be forced into a man- aged care plan and lose the choice of their doctor to achieve affordable drug prices, or join the only PDP plan in the region that enjoys a captive market which allows them to charge whatever premium they desire. The managed care plans under this conference report will be able to achieve lower prices for seniors because they will enjoy over $12 billion in slush fund money from a so-called “stabilization fund” that is included in the conference report lan-guage. These are not options or choices for seniors or all states, but still lose the generous retiree coverage they now enjoy. Additional dollars were available in the budget to further reduce this number. Unfortunately, conference leadership chose to spend-ing both of these health savings accounts, which have nothing to do with Medicare or the prescription drug benefit, and only serve to help healthier and wealthier Americans save money on the costs of their health care. I find this very disappointing and, frankly, unacceptable.

I am also pleased that the conference report has found the right balance with respect to delineating the jurisdic-tional reach of the Federal Energy Regulatory Commission, FERC. As a Senator from the West, I’ve been frustrated by FERC’s effort to impose a mandatory “Government knows best” on fundamental electric market design, or SMD, on all regions of the Nation. This proposal has drawn se- vere criticism from the West and other regions of the country, as being un-workable and potentially disruptive to the fundamentals of electric markets, infrastructure, all to the detriment of consumers. This criticism comes from a broad spectrum including State regulators, industry representatives, and consumer groups, all of whom express concerns about the inflexibility of the SMD requirements, and the untested na-ture of many of them in regions with- out a history of RTO operations, and the potential cost burdens on electric-ity consumers.

Normally, one would have expected an agency like FERC to respond to such comments at a minimum by de-laying its SMD proposal, or proposing a more measured approach, both in scope and mandatory application. Instead, FERC has indicated it will proceed with the fundamentals of SMD. As a re-sult, Congress has been forced to take the unprecedented step of mandating a pause in SMD, through 2006, to enable those involved in this critical industry to assess how to proceed. It is unfortu-nately, the Senate will pass a bill that re-quires FERC to move immediately to com-pletely deregulate electricity mar-kets; others favored imposing a more stringent regulatory regime as a result of problems in California.

Representing Arizona, I was well aware of the real consequences of the California energy crisis, and cannot agree with those who say the solution is to return to a command-and-control regulatory structure. I continue to be-lieve that the most efficient way to ad-just prices is through competitive markets. The chairman has done an ad-mirable job of trying to encourage competitive markets while making sure that consumers continue to pay the lowest possible price for energy re-sources.

There are several provisions in this bill that hit the right balance for our electricity policy. The legislation re-places the Public Utility Holding Com-pany Act of 1935 nearly 70 years ago.

I am also pleased that the conference report has found the right balance with
any rule or order of general application within the scope of the proposed SMD rulemaking.

I have often expressed my concern with what some industry officials have termed a jurisdictional reach by the Federal Energy Regulatory Commission into the delivery of power to retail customers. The service obligation amendment that I worked on with the chairman has been included in this package, and I believe it provides a common-sense way to promote competitive markets while preserving the reliability that retail electric consumers expect and deserve. In its actions governing access to transmission systems, FERC has not adequately ensured that the native load customers, for whom the system was constructed, can rely on the system to keep the lights on. The bill adds a new section 217 to the Federal Power Act to ensure that native load customers’ rights to the system, including load growth, are protected.

It is also worth noting that the conference report expands jurisdiction over those stakeholders in electric markets that were previously unregulated. The FERC-lite provision that addresses the Federal Energy Regulatory Commission’s efforts to provide open access over all transmission facilities in the U.S. again, in my mind, strikes the right balance. It requires FERC to ensure that transmission owners—whether they are municipal utilities, power marketing administrations, or electric cooperatives—deliver power at terms that are not discriminatory or preferential. However, this provision is limited and does not give FERC the ability to begin regulating the rate-setting activities of these organizations. If FERC finds fault with the transmission rates of such an organization, the bill provides that FERC will remand the rates to the local body for regulation. FERC-lite does not confer further authority to FERC over public power systems. FERC cannot order structural or organizational changes in an unregulated transmitting utility to comply with this section. For example, if an integrated utility providing a bundled retail service operates transmission distribution and retail sales out of a single operational office, the commission cannot require functional separation of transmission operations from retail sales operations.

I would also like to mention the new refund authority provision in the bill. I understand that the purpose of the new section 206(e) of the Federal Power Act is to permit FERC to order refunds where a governmental entity voluntarily enters the wholesale market and acts egregiously. Section 206(e) gives FERC authority to order refunds where a governmental entity voluntarily enters a FERC-regulated market, makes short sales and liabilities, and FERC’s substantive rules of general applicability governing other sellers into that market. Section 206(e) provides a means to correct market abuse; it is not meant to be a back door to full FERC jurisdiction over governmental entities.

The chairman should also be commended for what is not in this bill. I note that I wanted to include a renewable portfolio standard. I commend the chairman and the Chairman of the Budget Committee for convincing fellow conferees that a renewable portfolio standard would be costly and yield few benefits. I am also pleased that the chairman saw the wisdom of not including a climate-change provision.

Gratifying, as well, is that the conference report has not pursued a command-and-control approach with respect to regional transmission organizations, or RTOs. I believe the best approach, which is captured in this conference report, is for FERC to provide incentives to encourage membership in RTOs and independent system operators. As lawmakers, we need to be sensitive to the policy changes we propose and how the laws we draft will affect Wall Street and the markets, and we must make sure we promote the investments that are needed. This is a prime example of how the conference report has sought to advance policies to which the investment community can respond favorably.

Related to the need to give clear signals to the investment community, I believe that the participant-funding provisions have placed FERC in the appropriate role of providing incentives to invest in transmission infrastructure. As a member of the Energy Committee, I have heard countless hours of testimony on the Nation’s transmission grid being woefully underfunded, and the urgent need for significant upgrades to meet energy demands in the future. The provision on participant funding address this need and gives FERC the appropriate instructions to adapt methodologies for particular regions.

As I have said, some important provisions of this conference agreement have much to recommend them. Still, I find the bill’s many tax subsidies—most in the form of tax credits—to be irresponsible, unnecessary, and inefficient. There are just too many of them to permit me, in good conscience, to vote for this bill.

My overarching concern has to do with the use of tax credits by the government. The Federal Government uses tax credits to induce individuals or businesses to engage in favored activities. This can distort the market and cause individuals or businesses to undertake unproductive economic activity that they might not have done absent the inducement. Tax credits are really appropriations that are run through the Internal Revenue Code, the Code, and are a way to give Federal subsidies to favored constituencies. It is something we should do sparingly—very sparingly. While tax credits can be effective in encouraging activities we consider laudable for one reason or another, I believe that, as stewards of the taxpayers’ money, we must only support those credits that provide broad benefit to all taxpayers and that are temporary and revenue they will cost the Federal Treasury.

I do not believe that any of the tax credits in the conference agreement meet these tests. Let me highlight three particular provisions. The conference agreement extends and expands the tax credit provided in section 45 of the Code. This credit is available on a per-kilowatt-hour basis for energy produced from wind, solar, closed-loop biomass, open-loop biomass, geothermal, small irrigation, and municipal solid waste. I believe that the credit for wind energy should have sunset several years ago. Wind energy has been provided this credit since 1992 and if it is not competitive after a decade of taxpayer subsidies, it will never be competitive. In 2001, the wind industry was in fact touting its great success and competitiveness with other forms of energy, but here we are extending the wind credit for 3 more years. All of the credits I just mentioned, except wind and wind, are temporary and eligible for the credit for the first time in this bill. I wager that we will still be paying for the “temporary” advantage being given to these new energy forms a decade from now.

Let me point out that it is good that the conference agreement calls for a study of the section 45 credits. If we are going to spend more than $3 billion on these credits, we should at least know whether they are having a positive effect and whether these forms of energy will ever be able to survive without a taxpayer subsidy. A 2002 Cato Institute study suggests that section 45 is not worth the expense; some economists estimate that the cost is double the benefit.

Another of the credits provided in the agreement is the tax credit for biodiesel fuel. In addition to questions I have about the need for this credit, I have heard concerns from companies located in Arizona that this credit might have unintended results, including affecting market prices for tallow and glycerin, which are byproducts of biodiesel production. I strongly encourage the Finance Committee staff to look at this credit and whether and how the biodiesel credit affects the market prices for these products.

Finally, the conference agreement provides tax credits for the purchase of a new qualified fuel cell, hybrid, or alternative fuel motor vehicles. I have grave concerns about this provision and I refer my colleagues to Arizona’s disastrous experience with its alternative fuel vehicle tax incentives. The program could have cost Arizona half a billion dollars—a huge percent of the State’s budget. If it had been enacted, When proposed, the cost of the program was projected to be only between $3 million and $10 million—less
than 10 percent of its true cost. The Joint Committee on Taxation estimates that the provision in this conference agreement will cost $2.23 billion over 10 years. While I appreciate that the Finance Committee incorporated changes to reflect lessons from Arizona's experience, I seriously doubt we can be confident about the revenue estimate for these provisions of the conference agreement. That's why I am particularly disturbed that it deletes a requirement that was in the Senate bill for a study of the credits. Such a study could have given Congress important information about how much the credits are costing, how effective they are at encouraging the purchase of alternative fuel vehicles, and how long the credits will be needed.

Beyond the issue of tax credits, I would also like to say a word or two about the tax provisions that were included in this legislation that I believe have been generally good for all Americans. The Code already has taken steps to address some of the issues above, and with assigning more realistic depreciation recovery periods to various energy-related investments. For example, the agreement assigns a 7-year life to natural gas gathering pipelines and a 15-year life to natural gas distribution lines. I strongly believe that the Code requires a great many investments to be depreciated over too long a time period, so I am pleased the agreement addresses this problem.

Next, I want to discuss an issue that I had hoped would be addressed in the conference report that will accompany the agreement, but that was not included. I had hoped that one aspect of the transmission issue would be addressed in the conference with some simple report language. That issue has to do with the electricity supplied in the evolving marketplace by publicly owned utilities. Unfortunately, the conference report does not address this issue and I raise it now as something I hope the Treasury Department will address.

A significant goal of this bill is to foster open access to the greatest extent possible. However, in recognition of the limitations imposed by section 141 of the Code, the electricity title provides that States and municipalities may not be ordered to provide transmission services in a manner which would result in any bonds ceasing to be treated as tax-exempt under the Code. This is a concern because of the importance of the open access provision to the reliability in the transmission facilities.

Accordingly, in recognition of the purposes of the act, I would ask the Treasury Department to strongly consider: (1) Amending the regulations or providing other general guidance relating to the use of open access to provide the same degree of broad flexibility whether or not the facilities are operated by an ITO, and (2) issuing proposed and final regulations relating to Equity First for output facilities and facilities providing energy-related investments. For example, the conferees are aware that final regulations, however, are significantly more restrictive than the Treasury regulations are flexible. The Treasury Department has not issued final regulations relating to Equity First for output facilities or facilities providing energy-related investments. Yet they are not covered by Medicare today. No other health insurance program in this country today fails to cover prescription drugs. It is long past time to add drug coverage to Medicare.

The bill before us creates a voluntary prescription drug benefit in the Medicare program starting in 2006. Here's how it would work. Those beneficiaries who choose to sign up for this benefit will pay a premium estimated to average $35/month starting in 2006. Beneficiaries would then have the option of $26 billion over the next $2000 in drug costs. The benefit cuts off. Medicare will pay 75 percent of the next $2000 in drug costs. Then, the benefit benefits. Medicare will pay nothing until the beneficiary has paid an additional $2500 out of pocket. After this gap in coverage, Medicare will then pay 95 percent of all additional drug costs.

Obviously, this is not a perfect drug benefit. It allows an open enrollment period. It is long past time to add drug coverage to Medicare. It is long past time to add drug coverage to Medicare. I do not believe this legislation provides $400 billion to add a voluntary prescription drug benefit in Medicare. Prescription drugs are an integral part of modern medicine. Yet they are not covered by Medicare today. No other health insurance program in this country today fails to cover prescription drugs. It is long past time to add drug coverage to Medicare.

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will not face a gap in coverage. They will get the vast majority of their drugs covered, with minimal out-of-pocket costs. In addition, they will get a $600 annual credit toward their drug costs in 2004 and 2005 before the main drug benefit takes effect. These low income and newly eligible seniors who most need help paying prescription drug costs.

In particular, all seniors with incomes below the Federal poverty level—about $10,000 in annual income for singles and $12,120 for couples—will pay no premium. They will pay no deductible. They will have no gap in coverage. They will pay just $1 for generic prescriptions and $3 for brand-name drugs.

Those with incomes up to 135 percent of the poverty level and less than $6,000 in countable assets will also pay no premium. They will pay no deductible. They will have no gap in coverage. And they will pay only $2 for generic drugs and $5 for most brand-name medications.

Those seniors with incomes above these thresholds, but still below 150 percent of the poverty level, will pay a sliding scale premium based on income. They will pay a $20 premium. And they will pay 15 percent coinsurance on all their medications, until their drug costs reach $3600. After that, they will pay only 5 percent coinsurance. Seniors who qualify for any of the income or income-related benefits get an extremely generous drug plan. In my view, this benefit alone is a very significant achievement.

Third, the bill includes a whole host of rural provider provisions that I authored or coauthored. Currently, rural areas face huge payment disparities. For example, Mercy Hospital in Devils Lake, ND, gets paid just half as much as Our Lady of Mercy Hospital in New York City for treating exactly the same patient at the same time, exactly the same illness. Yet hospitals in North Dakota don’t pay half as much for equipment as their urban counterparts. And rural hospitals have much smaller patient loads over which to spread their costs. As a result, rural hospitals are on the brink of financial failure. These hospitals are critical economic anchors in their communities. Other rural health care providers, from clinics to home health to ambulance services, face similarly dire circumstances. This bill will go a long way to eliminating some of the Medicare funding inequities that have hurt rural health care. It will help make sure rural Medicare beneficiaries continue to have adequate access to health care.

Specifically, this bill will close the gap in standardized payment rates, which will ensure rural hospitals’ base payments are equal to those of urban providers. The legislation also takes important steps to address inequities in the wage index system, which is intended to account for labor costs. And it provides a new, low-volume adjustment payment for facilities serving the smallest communities in the state. In addition, the Medicare bill includes important provisions to improve the Critical Access Hospital Program. Today, about 28 hospitals in my state have this designation. This bill will place them on sounder financial footing.

Along with the provisions to assist North Dakota hospitals, the Medicare bill will also address payment inequities experienced by our physicians and rural hospital administrators. There will be no new payment cuts in the coming years. There are also new adjustments for home health care providers and ambulance services. I hope these provisions will make a real difference in their ability to continue providing quality care across our state. In total, this part of the bill is a very significant victory for rural America.

For these three reasons, I have concluded that we should pass this bill, but we should not oversell it either. As I noted at the outset, this bill is—in many respects—very disappointing. Quite simply, it could and should have been a much better bill.

Democrats in the last Congress put together a plan knowing that I was proud to sponsor. It provided a good drug benefit to all seniors. It did not have any gaps in coverage, where seniors would continue to pay monthly premiums but get no assistance from Medicare or drug plans. It did not rely on creating a whole new type of insurance plan to meet the drug needs of seniors. Instead, it used the delivery mechanism that the private sector uses to provide drug coverage. It was a bill that would have provided much more comprehensive prescription drug coverage to seniors at a reasonable price. Compared to what we have before us today, it was simple and easily understandable for seniors. It did not have a complex scheme of differing copayments, coverage gaps, and premiums. But that bill was blocked by Republicans.

This year, the leadership on the other side appears to have put ideology and special interests ahead of the interests of seniors in crafting many of the details of this drug bill. As a result, seniors will be facing an untested delivery model that may not provide the advertised benefits at the advertised prices. The simple fact is that there is no such thing as a private, drug-only insurance plan in the commercial insurance market anywhere in this country. They just do not exist. By contrast, we have a proven, successful delivery model in the traditional Medicare program. It works just fine in providing medical and hospital coverage to seniors today. Yet, in drafting this bill, the authors insisted that the plan rely on untested private, drug-only insurance plans. However, it is possible that no such plans will materialize. Or they may be entering the market as a region one year, just to turn around and leave the next year if they are not making a profit.

In my view, it is a serious mistake to set up a system that could force seniors to change drug plans every year. Under this approach, each year seniors could face a different premium, different copayments, and different coverage gaps. All this adds greatly to the confusion that medicine wrought already.

I fought to correct this plan. My amendment would have allowed seniors to stay in a government-sponsored back-up plan if they liked it. But that effort was rejected by those who insist—in a triumph of hope over experience—that private drug-only plans will work even though they do not exist today. In the conference, the option was further scaled back to make it even less likely that seniors can choose a stable, government sponsored backup. The Senate bill requires those seniors be given the option of enrolling in the so-called fallback plan if they did not have at least two private drug-only plans to choose from. But the conference report will not give seniors the fallback option if there is just one private drug-only plan available. As long as there is also a managed care Preferred Provider Organization plan in the region, I fear that this will give seniors an unpalatable choice if they want a drug-only plan. Either they will have to join a PPO that restricts their access to health care providers of their choice, or they will have to join the one private drug-only plan even if it charges excessive premiums.

That brings me to another area that I think will be a surprise to seniors: the variation in premiums. The authors of this bill like to talk about how the premiums will be $35 a month. But what they don’t tell seniors is that $35 a month is just an estimate. Individual premiums will vary substantially. If the drug plan’s projected cost for delivering the benefit is only slightly higher than the national average—a real concern in many areas—the premium would be substantially higher than $35 a month. I think seniors will be very surprised to learn that their premiums may actually be as much as $45 or $50 a month instead of the $35 that has been advertised. These differences will be compounded because premiums will increase each year in line with the increase in prescription drug costs.

The thing about this bill that might be the biggest surprise for seniors will be the coverage gap, sometimes called the donut hole. The authors of the bill understandably don’t want to advertise this gap in coverage. Many seniors probably don’t even know that it exists. But when they hit this gap in coverage, they are going to be mighty surprised. The will discover that Medicare will not pay for their drug costs even though their monthly part D premium keeps coming out of their Social Security checks. And they’re
going to be doubly surprised when they find out that the gap isn't a little more than $1000 wide, but is closer to $3000.

The authors of the bill like to talk about a coverage gap from $2250 in drug costs to $9600 in drug costs. When you read the fine print, you learn that the real gap is from $2250 to $5100. That's because the $2250 counts all drug costs, by both Medicare and the beneficiary. But the $3600 counts only spending by the beneficiary. When total spending hits $2250, the beneficiary has paid $750—the $250 deductible and 25 percent coinsurance on the amount from $250 to $2250. So Medicare won't pay another dime until the beneficiary has paid an additional $3600 out-of-pocket.

Some who are watching might ask, Who in their right mind would design a drug benefit that starts, then stops, then starts again, the way this one does? Why does the benefit have this gap in coverage? The answer is simple: money. It would cost tens of billion of dollars to close this gap. The folks on the other side of the aisle made tax cuts for the wealthy a higher priority than prescription drug benefit for middle income seniors. As a result, they didn't have enough money left over to provide a drug benefit without this gap in coverage. By most estimates, about one third of all seniors will reach some time during the year when Medicare just stops paying any part of their drug bills. They will keep paying premiums, but Medicare will not pay another dime until and unless they reach the catastrophic spending threshold.

Finally, I am concerned about the effect of this contorted benefit structure on retiree drug coverage. Millions of seniors currently have retiree health coverage that provides more generous prescription drug coverage than this bill will provide. When the Senate passed its bill last June, the Congressional Budget Office estimated that one third of those with retiree drug coverage—coverage that costs because spending by an employer plan does not count toward reaching the catastrophic coverage threshold. In other words, if you have employer coverage, no drug spending by your employer plan counts toward the $3600 you have to spend out of your own pocket before the catastrophic coverage kicks in. This provision creates a clear incentive for employers to cut back or drop coverage so that a beneficiary will reach the catastrophic coverage threshold and Medicare—not the employer—will pay the remaining costs.

When this bill passed the Senate, I said it was not a Cadillac drug plan. It wasn't even a Chevy drug plan. Instead, it was a bare bones plan. To stretch the analogy, in conference, some of the bones got fractured, leaving the plan even weaker, and some of those bones were replaced with untested artificial ones that may not work the way they have been advertised.

The conference did not just widen the coverage gap and decrease the stability of the fallback drug plans that will be important in many rural and other areas of the country. They also loaded down those weak old bones with a new, heavy load: This bill now is carrying a number of provisions that, in my view, will harm the Medicare program and our health care system.

For example, the bill requires demonstration projects to privatize the Medicare program, taking the first steps in turning it from a defined benefit entitlement to a voucher program. I am pleased that this demonstration has been limited to just six areas. I am hopeful that even these few demonstrations may not get off the ground. I, nonetheless, strongly oppose this effort. This policy will allow private plans to cherry-pick younger, healthier beneficiaries, leaving older, sicker beneficiaries to face higher premiums in the traditional Medicare program. This is terrible health policy, and I hope we will succeed in reversing it in the future.

The bill also contain a $10.5 billion "stabilization fund" that allows the Secretary of HHS to make additional payments to managed care plans. This fund will just add to the substantial overpayments by Medicare for plans that already exists in the Medicare plan. To me, it makes no sense to talk about managed care saving money for Medicare when it costs Medicare more to move people into managed care. Why should Medicare pay billions and billions of dollars more than we would pay in traditional Medicare to provide the same benefit? That money could have been put to far better use in other ways, either by improving the drug benefit or by devoting money to chronic care disease management in traditional Medicare.

The fact is that about 5 percent of Medicare beneficiaries account for roughly 50 percent of total Medicare drug spending. Furthermore, even though they have a number of conditions, but they don't get coordinated care because they see different doctors for different problems. This can result in adverse drug interactions, the failure to treat underlying causes rather than symptoms, and higher spending than necessary. Yet Medicare does nothing today to coordinate care in the traditional Medicare program that serves nearly 90 percent of all beneficiaries. Spending a little money up front in terms of funding a new "stabilization fund" that could produce significant cost savings over time for the Medicare program. I hope we will be able to find money to expand the chronic care demonstration in the bill.

The bill also expands health savings accounts that are both bad tax policy and bad health policy. These accounts will allow both untaxed contributions and untaxed withdrawals, a terrible precedent. If it is copied for other tax-preferred savings accounts, this policy could encourage millions of people to examine the money they have been saving.

For me, the answer is yes. For millions of seniors who do not have access to any kind of prescription drug coverage at any price, this will give them a new option to have a portion of their drug costs covered. Millions of low income seniors will be significantly better off, with a new generous drug benefit that they do not now have. Rural health care facilities that are now on the brink of closure because they are underpaid for their services will get a new life from the rural Medicare reimbursement provisions in the bill.

If I thought this bill fundamentally threatened the existing Medicare program, I could not support it. I know that there are some who sincerely believe that the privatization demonstration projects would have a positive effect on the program. Although I share their view of these demonstrations are bad policy—perhaps even terrible policy—I

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do not believe that six demonstration projects affecting less than 5 percent of all Medicare beneficiaries will destroy Medicare.

Although this bill is far from perfect, I have concluded that we should pass it. One bill is a step in the right direction. We do not know when we will have another, better bill that can pass the Congress and be signed into law. In my view, it would not be fair to those seniors—including tens of thousands of Dakotans—who have no access to drug coverage of any kind at any price to deny them this first step in the uncertain hope that we might be able to do better at some point in the future. Rather, we must take the $400 billion opportunity that is on the table today and start providing prescription drug coverage to America’s seniors. Then we can and we will go to work to improve the prescription drug benefit provided by this bill.

Mr. RIDDLE. Mr. President, I voted against this bill today because I would never do anything that risks the future of Medicare, and I fear this bill takes the first steps toward the breakup of the traditional Medicare Program. In addition, this administration’s misplaced priorities put enormous tax cuts first and left us little room to provide the comprehensive and fair drug benefit that seniors deserve. We should have done this right and provided a better bill without the breakup of the Medicare Program that has given seniors health security for 38 years.

My vote today was one of the more difficult decisions I have faced in my Senate career. For starters, let me note that not all of this bill is bad. Some people will get help with their drug costs. We in Delaware are fortunate to already benefit from unique programs that have long helped low-income seniors with their prescription drug costs, and this bill should build upon that foundation. It also offers some coverage to many middle class seniors and disabled citizens. All in all, these aspects of this bill are not enormously different from those in the Senate-passed bill that I voted for earlier this year.

This bill also includes sorely needed payment adjustments for hospitals, doctors, and other health care providers, which will ensure that Medicare patients get quality care and continued access to important medical services.

On the downside, however, this legislation still has a large gap in coverage—forced by budget constraints—in which the Government provides no subsidy for prescription drugs. I know that many people will find this gap confusing, disappointing, and burdensome. I am also very concerned that this bill does not sufficiently protect millions of retirees who currently receive good health care benefits from their former employers.

If we had done this the right way, we would have held back on some of the excessive tax cuts pushed through over the last three years and allocated more of our resources to meeting our obligation to provide a complete prescription drug benefit. Instead, the administration’s misplaced priorities tied our hands.

If this legislation were just limited to the prescription drug benefit and the provider payment modifications, it would probably have my vote as being about as good as could be done under current circumstances. But I have very serious concerns about other provisions tacked onto this bill that will take the Medicare Program and the health care benefits for 40 million Americans into uncharted and hazardous waters. This bill takes the first step toward monumental changes in the very foundation of how Medicare operates, beginning a push toward the breakup of the entire program.

The strength of the Medicare system has been its broad coverage, its simplicity, and the open choices patients enjoy. This bill sets in motion a new system that could tear down each of these advantages.

On balance I cannot support this legislation. To me, the negative features have by far outweighed the benefits. Had the negotiations on this bill been done in the open, with the full participation of both parties, I think we could have crafted a better bill. I cannot vote for a bill that is on the path toward undermining the traditional Medicare Program that has worked so well for decades.

Mr. BREAUX. Mr. President, today we passed historic Medicare legislation. Getting here was not easy. Behind the scenes, for months and even years, staff has worked incredibly hard to help produce this complex and comprehensive bill.

In particular, I would like to thank Senator Kyl's Finance Committee staff who put in countless hours and remained dedicated to this legislation during long and difficult late-night and weekend sessions. Dr. Elizabeth Fowler lead the Finance health team. Dr. Fowler’s expertise, even-handedness, and professionalism were critical in getting us to where we are today. Other professional staff, including Jon Blum, Pat Bousliman, Andrea Cohen, Bill Dauster and Daniel Stein, all served us well. And of course, all the Minority Staff Director, Jeff Forbes, was also instrumental in seeing this legislation through until the end. We were able to achieve many Democratic priorities in this bill because of their hard work and dedication.

I would also like to thank Senator Grassley’s staff on the Senate Finance Committee for the critical role they played in passing this historic legislation. Linda Fishman, Ted Totman, Colin Roskey, Jennifer Bell, Mark Hayes and Len Persinger worked tirelessly for many months to get a bill drafted, through the Senate Finance Committee, passed on the Senate floor and out of tough conference negotiations with the House. The majority staff director of the Senate Finance Committee, Kolan Davis, also played an integral role in getting this conference report passed.

As a member of the Senate Finance Committee, I believe all of the Members of this Committee—some citizens owe the whole Senate Finance Committee team a debt of gratitude for making this Medicare legislation possible. I yield the floor.

Mr. SARBANES. Mr. President, I cannot support the Medicare prescription drug conference report before us. I share in the disappointment of the many seniors, advocacy groups, providers, and colleagues in Congress who have fought so long to provide Medicare beneficiaries with prescription drug coverage. Drug coverage should be an integral part of any meaningful health care insurance and it is certain that if Medicare were created today, no one would imagine excluding drug coverage. Unfortunately, the bill before us would restrict Medicare beneficiaries and give Medicare beneficiaries the affordable and comprehensive coverage they deserve. The conference report provides inadequate coverage while at the same time undermining Medicare, a program that has served our seniors for over 37 years.

Under this bill, Medicare beneficiaries will pay an estimated premium of $35 per month although that premium level is not guaranteed and it comes from the very people who have fought so long to provide Medicare beneficiaries the affordable and comprehensive coverage they deserve. The conference report provides no coverage for drug costs between $2,251 and $3,600, though they are still required to continue paying monthly premiums during this coverage gap. Once drug costs exceed $3,600, the drug plan would cover 95 percent of a beneficiary’s drug costs are covered up to $2,250. A beneficiary receives no coverage for drug costs between $2,251 and $3,600, though they are still required to continue paying monthly premiums during this coverage gap. Once drug costs exceed $3,600, the drug plan would cover 95 percent of a Medicare beneficiary’s drug expenses. This drug benefit is insufficient and much less than many seniors receive through existing coverage.

Those opposed to offering more substantial prescription drug benefit claimed there are insufficient resources to pay for it. This argument comes from the very people who have pushed through the Congress tax-cut programs that tilt heavily in favor of the wealthy. Over the last several years, the administration has squandered a surplus and left the Nation to face a deficit already half a trillion dollars. These valuable resources could have been used to provide our Nation’s seniors the real drug coverage they deserve.

During consideration of the Senate bill, we missed an opportunity to provide Medicare beneficiaries with a substantial, reliable and straightforward prescription drug benefit. I cosponsored and voted for an amendment offered by my colleague from Illinois, Senator Durbin. His alternative would have included a Medicare-delivered drug benefit that would have allowed the Medicare program to employ negotiating strategies used by the Veterans
Administration—VA—and other government entities to bring down drug prices. Senator DURBIN’s plan would have begun as soon as practicable, unlike this legislation that leaves beneficiaries waiting until 2006 for the drug benefit to begin.

Under Senator DURBIN’s plan, seniors would have not paid a deductible, would have paid 30 percent of costs, and would have no coverage gap. Once drug costs reach $5,000, 90 percent of their costs would be covered. In addition, employer contributions would count toward out-of-pocket limits so there would be much less risk of employers dropping retiree coverage. This was the proposal we should be acting on today.

As I emphasized during debate on the conference report, this bill contains a number of provisions that would undermine Medicare. For the first time in history, Medicare beneficiaries will pay more for their Part B premiums based on the Medicare Part B premium, thereby eroding the universal nature of the program. Medicare enjoys widespread support since everyone pays the same monthly premium for the same service, thereby giving us a social insurance program in which everyone has an equal stake.

The bill before us does not deal effectively with the rising costs of drugs. This legislation does not allow the Federal government to bring its weight to bear to lower drug costs. We are not allowed to bargain on behalf of the millions of beneficiaries who would receive drug benefits. We know that drugs purchased through the VA program cost substantially less than those purchased at retail value. Furthermore, under this bill drug reimportation is completely at the discretion of the Administration. This is the same Administration that has repeatedly expressed its opposition against drug reimportation even if safeguards can be taken to ensure the safety of the reimported drugs.

This bill has the serious potential to cause a number of retirees to lose existing employer-sponsored prescription drug coverage. CBO estimates that 2.7 million retirees would lose existing coverage. This is an unacceptable consequence of legislation that is supposed to make life better for seniors. This serious deficiency has prompted many constituents to call my office to express concern about this bill.

Congress began this debate focused on the best way to provide Medicare beneficiaries drug coverage and efforts to keep those drugs affordable. We now have legislation before us in which the drug benefit appears to be an afterthought. I think a deeply troubling aspect of the bill is that it takes steps toward privatizing Medicare. This legislation relies on private plans to deliver the drug benefit; seniors could be forced to shift from plan-to-plan, year-to-year, from Medicare+Choice HMOs pulled out of the Medicare program a few years ago.

In my own State of Maryland, insurance companies left the Medicare program, abandoning more than 100,000 seniors.

In addition, the bill includes a six-year premium-support “demonstration project,” which would be established in six metropolitan areas. Medicare recipients in these areas would choose between traditional Medicare and private health plans; if the cost of the selected form of coverage exceeded a benchmark level set for the area, the individual pays increased premiums to cover the difference. This bill also contains $12 billion in subsidies for private plans. This funding gives private plans an unfair advantage by enabling them to provide benefits that traditional Medicare does not.

The inclusion of tax savings accounts to pay out-of-pocket medical expenses further underscores how far the focus of the bill has strayed from providing Medicare beneficiaries prescription drug coverage. The bill makes health savings accounts that are currently a limited demonstration project universally available. These accounts could be used with high-deductible health policies giving increased, albeit work-related, financial incentive to opt out of comprehensive health insurance plans in favor of the new accounts. If large numbers of these workers opt out of comprehensive plans, the pool of people left in comprehensives would be older and sicker, causing premiums for comprehensive insurance to rise significantly.

I have long been a strong supporter of providing older Americans and disabled individuals on Medicare an affordable, comprehensive, reliable and voluntary prescription drug benefit. However, I want to ensure we do so in a way that does not worsen the situation in which many seniors find themselves as drug costs rapidly rise.

As we consider proposals to expand our Nation’s major health entitlement programs, it is appropriate to follow a guiding principle in the practice of medicine—do no harm. Our seniors deserve a drug benefit that is a real improvement, not a complex experiment that may cause more trouble than it’s worth. We must not enact a law intended to help that might eventually harm seniors. The American people deserve better.

The PRESIDENT pro tempore. The President from Massachusetts.

Mr. KENNEDY. Mr. President, I ask unanimous consent to use the 5 minutes reserved for the Leader. That has been cleared on both sides.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. KENNEDY. I yield 7 minutes to the Senator from Connecticut.

How much time remains on each side?

The PRESIDENT pro tempore. There remain 11 minutes 41 seconds on the majority side, 12 minutes 40 seconds for the minority. The source is the minority leader’s time.

Mr. KENNEDY. So we have 12 minutes, 1 yield 7 minutes to the Senator from Connecticut.

The PRESIDENT pro tempore. Yes, 11 minutes 41 second plus the 5 minutes.

Mr. DODD. Mr. President, in the limited time we have I would like to go back over and reiterate some points. In the very first instance, looking at the Medicare portion of this bill, right off the bat there are almost 9 million seniors who are going to be disadvantaged by this legislation. Almost one-quarter of the 41 million seniors who benefit from Medicare are going to be disadvantaged by this bill. There are 2.7 million seniors, according to the Congressional Budget Office, who are going to lose health benefits currently offered by their former employer. In my State, that is 40,000 people right off the bat. Those are CBO numbers; those are not mine, not made up by the minority.

Second, 6.4 million low-income seniors will have to pay more for the drugs they need. In my State, that is 74,000 people. The combined numbers are 9 million people, before anything else happens, who are going to be disadvantaged. This is a fact. If you are on Medicare and Medicaid you currently receive drug discounts when it comes to prescription drugs. Now, under this bill, you will. It may not seem like a lot to people, but if you are making $13,470 or less than that, believe me, even a slight increase in these drug costs can be very harmful. That is just a fact.

Let me say to my friend from Iowa, I have respect for him and I admire his tenacity and his tremendous effort on behalf of this bill. I say to my friend, $13,470 is not a lot of money for Americans, and if you make $13,471, you are going to pay $420 in premiums, a $250 deductible, and you have to pay 25 percent of the cost of your prescription drugs. If you make $13,471, that is what you are going to be burdened with. I appreciate the fact that the very low income get some help, but I do not know anyone in this country who thinks $13,471 is a lot of money. But if you hit that number, then you are going to pay those kinds of costs, and that is going to be tremendously burdensome to many people.

Second, of course, if you look at chart 2 quickly here, you will see that this bill creates an unlevel playing field. We are told about free competition and choice, but the fact is, under this bill private plans get a 9 percent higher reimbursement than the Medicare plan, and they get $12 billion. If you have two competitors trying to appeal to a consumer and one side gets a 9 percent increase in reimbursement plus $12 billion to get into the market, I don’t know how you call that a level playing field. That is not level at all, in my view.
MEDICARE REFORM: TRY AGAIN

It’s not perfect, but it’s a start. That’s the gist of the multimillion-dollar marketing campaign launched by AARP in support of the Medicare bill that passed the House by a 220 to 215 vote early Saturday. The argument that purports to represent Americans who are at least 50 years old pledges to fix the bill’s flaws and keep the presidential record.

Beware of such promises. Americans are not looking for a perfect system. They yearn for improvements in Medicare that they can comprehend. They know that Rome wasn’t built in a day and prescription drug coverage won’t be guaranteed overnight.

But Medicare beneficiaries have waited for at least two years for some action from Congress. They deserve better than the scrambled egg that Congress, AARP and other special interests want to dish out in the guise of “reform.” Is it any wonder why shares of health care businesses, particularly drug companies, skystroked on Wall Street after the congressional conferees announced the details of the agreement? Lawmakers listened to lobbyists far more attentively than they listened to Medicare beneficiaries.

The centerpiece of this faux reform is prescription drug coverage. The math: a beneficiary who has prescription drug bills totaling $2,250 a year would have to pay premiums of $420, a deductible of $250 and 25 percent of the cost of the medicines. That adds up to $1,252 out of pocket.

Once a beneficiary’s drug bills reach $2,250, the beneficiary would have to foot the entire drug bill up to $3,600. Only after drug costs exceed this amount would the prescription plan pay 5 percent of the bills.

This package contains little to cheer about. Some special interests deserve jeers. Those who had hoped to buy less expensive prescription drugs from Canada and Mexico are out of luck. Those who have paid Medicare part B premiums for years will be dumped on their retirement income. For those who earn more than $80,000 a year, the premiums for Medicare Part B (doctors’ bills and other costs not covered by basic Medicare) would increase substantially. So much for relying on government to honor its pledge to treat everyone equally under Part B.

Why is AARP aiding and abetting GOP lawmakers in selling such reform under false pretenses? The organization is a big-business operation, with revenue of $608 million last year from its insurance-related operations. It’s almost as if—AARP, wouldn’t stand to gain” as a result of this legislation, said David Himmelstein of Harvard Medical School. Alan Simpson, a former GOP senator, hit the bull’s-eye when he noted: “If there was a sublime definition of conflict of interest, it would be AARP from morning to night.”

AARP’s members should make themselves heard as they did in 1988, when the organization successfully lobbied for a flawed catastrophic insurance benefit. The ensuing uproar by elderly people forced Congress to repeal the legislation.

On the subject of lobbying, why is AARP still designated as a tax-exempt nonpartisan organization?

Mr. DODD. Mr. President, I urge our colleagues to reject this bill and come back in January and rework it. Forty-one million Americans deserve a lot better than this bill is going to give them.

The PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time do we have remaining?

The PRESIDENT pro tempore. There are 7 minutes remaining.

Mr. KENNEDY. I yield 1 minute to the Senator from Illinois.

The PRESIDENT pro tempore. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank the Senator from Vermont.

America’s parents and grandparents are the losers today, and special interest groups are the winners. America’s senior citizens deserve better. This bill does nothing to reduce drug prices, and it starts our Nation down the road toward privatizing Medicare and endangering America’s lifeline program that has been a bright beacon for seniors across our country for more than four decades. The pharmaceutical companies and the HMOs will give thanks for this turkey, but America’s seniors will get stuffed.

I am going to vote no on this. I hope my colleagues will join me.

I yield the floor.

The PRESIDENT pro tempore. Who yields time?

Mr. DODD. Mr. President, how much time remains?

The PRESIDENT pro tempore. The Senator’s side has 7 minutes 1 second. The other side has 11 minutes 41 seconds.

Mr. KENNEDY. I withhold our time.

The PRESIDENT pro tempore. Who yields time?

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I consume and I invite proponents of the legislation to come over so I can yield some time to them.

One of the issues that has been bad-mouthed by the other side, the opponents of this legislation, is that we have not done enough to help retiree coverage; in other words, the problem that would support a lot of corporate dumping is that we have not done enough to help retiree coverage. One of the things we have done to encourage corporations not to do that is we have put $89 billion in this bill to protect retiree health coverage. This funding makes it more likely—not less likely—that employers will continue their retiree benefits. We do that for a reason. Obviously, it is better for people to keep what they have. So there is an incentive for that. That will help keep a good drug benefit. Second,
if this is dumped on the Medicare Program, it is going to be much more costly than to keep it in the corporation plan. We did it for those two reasons.

The opponents of this bill have been saying retirees are going to be dropped—that they will be left without coverage because of this bill. It is easy to make very clear that these retirees will not be left without drug coverage. That is, obviously, because one of the motivations behind this 3-year effort to get this into Medicare is that it will take care of or at least offer a plan to people who don’t have anything. That is about 35 percent of the people today. It is better for those who do not have as good a plan as we are putting on the books. These retirees will still be better off than they are today because today, when their employers drop their coverage, they are left with nothing—no coverage at all.

Because of this bill, these retirees will be getting drug coverage from Medicare, and their former employer will likely pay the monthly premium for that.

This is a bipartisan bill. This bill addressed the problem we saw as a very serious problem. According to the Congressional Budget Office, we have addressed it in a very responsible way and by reducing very much the possibility that these corporate retirees will be dumped onto this plan.

This bipartisan bill protects retirees’ benefits. That has been our goal, and we have accomplished it. The time has come to strengthen and improve Medicare with this historic bipartisan agreement. It is the culmination of yeomans work by Republicans and Democrats who have come together to get this done.

As the AARP has made clear when providing its strong endorsement, this bill “helps millions of older Americans and their families,” and is “an important milestone in the nation’s commitment to strengthen and expand health security for its citizens.”

This offers affordable, universal prescription drug benefit that will cover about half the cost of prescriptions for the average senior.

It offers generous coverage for 14 million lower income seniors. It expands coverage for lower income seniors far beyond what is offered today. They will have access to drug coverage with lower or no premiums, no coverage cap, and coverage of 85 percent to 96 percent of the prescription drugs.

And the new Medicare drug benefit is voluntary—no one is forced to enroll in this benefit. Seniors can stay in traditional Medicare just like they have today and have full access to prescription in this benefit.

There is also a guaranteed government fallback. It is a guarantee that seniors will be able to get prescription drug coverage.

This bill also invests $80 billion to protect retiree health coverage. This funding makes it more likely, not less likely, that employers will continue their retiree benefits.

This bill also creates new coverage choices for beneficiaries in a newly revitalized Medicare Advantage program. And this is voluntary too—no one will be forced to join an HMO.

The bill lowers drug costs by speeding the delivery of new generic drugs to the marketplace and by reducing costs for all Americans, not just those on Medicare. The bipartisan bill includes long overdue improvements to Medicare’s complex regulations.

It also revitalizes the rural health care safety net with the biggest package of rural payment improvements Congress has ever seen.

I urge my colleagues to put the interests of our seniors first and give them more choices and better benefits by voting for this historic bipartisan prescription drug bill.

We cannot let this opportunity pass. Mr. President, it has been a long and arduous process to get us to where we are today, but this is a process that didn’t start this year, or even last year, but many years ago, on the foundation of what we then called the “triptarian bill.” Through many years of discussions and negotiations in the Finance Committee, we have taken the foundation of that tripartisan bill and crafted comprehensive Medicare policy that will vastly improve the health and overall well being of our nation’s seniors.

Our critics will say it is not enough or that it lacks one provision or another. My response is that no other Finance Committee membership and no other Congress has been able to produce a bill of this magnitude. We have worked tirelessly in the Finance Committee and with our colleagues in the House to try to make this bill as perfect as possible.

The reality is the Medicare program itself is not perfect.

And I challenge those in opposition to this bill, to show me perfect legislation. It is impossible because we’re adding layers on a system that has been in place for nearly 40 years. But everyone involved in this process has worked their heart out to make this bill the best bill that it can be. It has been a sacrifice for all involved. Missed dinners with family, missed weekends with the kids, little sleep, and intense emotions and intellectual energy—to make this bill what it is.

We’ve all given 150 percent to get this bill done, and we did not reach “perfection”, but we reached excellence. And America’s seniors will benefit from the commitment that was made by all of us involved. We did it for them. And it will make a positive difference in their lives. To me, that is the closest thing to perfection that we could achieve.

Let me close by thanking my colleagues on the committee, in the Senate, the House, CMS, HHS and the Medicare Advantage providers who continue to take care of our seniors.

And I also recognize Senator Baucus’s staff, who played a critical role in the development of this legislation; Senator Baucus himself, who led the committee’s consideration of this bill and who captained a team of talented analysts, including Colin Roskey, whose daughter, Rose, was born while his colleagues played out in the Finance Committee in March; Mark Hayes, who balanced multiple titles of this legislation while attending law school at night; Jennifer Bell, whose dedication to the needs of rural Americans played an instrumental role in the success of our rural healthcare package; Leah Kegler, who managed many of the complex low income and Medicaid policies in the bill; Alicia Ziemlecki, who provided crucial assistance and support to all on this staff and to individual Committee members throughout the year; and Mollie Zito, who joined the staff just this year and immediately made important contributions to the overall effort.

Still other former members of my Finance Committee staff who are not with me on the floor today have been instrumental in the development of this legislation. They include: Monica Tencate, Tom Walsh, Rebecca Reisinger, Hope Cooper, and Jeanne Haggerty. Each of them helped to shape the original Tripartisan proposal, whose imprint on this legislation is unmistakable. Each of these individuals contributed creatively, analytically and energetically to the successful completion of this legislation.

Beyond the health staff of the Finance Committee, I want to recognize other committee staff who played important roles in resolving the many interwoven, complex tax, health and trade policies within this legislation. Mark Prater and Diann Howland helped navigate many of the health savings account and employer-related issues in the bill. Steven Schaefer and Everett Eissennet also along with Rita Lari of my Judiciary Committee staff helped conferes reach consensus on difficult pricing, importation and generic drug policies. Steve Robinson assisted in budgetary matters, and Dean Zerbe and Emilia DiSanto provided good counsel on legislation to Medicare program integrity. Jill Kozeny, Jill Gerber, Beth Levine and Dustin Vande Hoof provided cogent and concise outreach and explanation to the media. Leah Shimp, Cory Crowley and Mary Gross kept in close touch with lawmakers on the legislation. And Kolan Davis, my Chief Counsel on the committee, provided important oversight and advice throughout the process.

Beyond my own staff, I want to recognize Senator Baucus’s staff, with whom I have enjoyed an excellent working relationship over the last few years and with whom my own staff has
worked especially closely: Jeff Forbes, Russ Sullivan, Judy Miller, Bill Dauster, Liz Fowler, Jonathan Blum, Pat Bouslimian, Andrea Cohen, Mike Mongan, Kate Kirchgbraber and Dan Stein. Senator Baucus’s team have shown us a sincere commitment to balanced, fair, bipartisan legislation and have been consummate professionals throughout.

The staff to my Senate colleagues on the conference are also deserving our thanks. Each contributed to a collegial working environment under enormous time and political pressures: Pattie DeLoatche, Mark Carlson, and Bruce Artim with Senator HATCH; Stacey Hughes, Hazen Marshall and Bini Zomer with Senator NICKLES; Don Dempsey, Diane Major, Elizabeth Maier and Lisa Wolski with Senator KYL; Dean Rosen, Elizabeth Scanlon, Craig Burton and Eric Ueland with Senator FRIST; and Sarah Walter, Michele Easton and Paige Jennings with Senator MURkowski.

Finally, all of us were extremely well served by the hard work of our Congressional support agencies, including the able work of our Senate Legislative Counsel’s who toiled longer into the night than most: Ruth Ernst, John Goetcheus and Jim Scott. Technical and analytical support was provided by experts at the Congressional Research Service, including Richard Price, Jim Hahn, Chris Peterson, Hinda Chakind, Jennifer O’Sullivan and Jennifer Boulanger. Members whose assistance was crucial to the completion of the Conference Report. At the Congressional Budget Office, Doug Holtz-Eakin, Steve Lieberman, Tom Bradley, Chris Topoleski, Phil Ellis, Rachel Schmidt, Jeannie De Sa, Eric Rollins, Shinobu Suzuki and many others played crucial roles in developing cost estimates for policies large and small in this conference agreement.

Each of these dedicated individuals is deserving of our thanks for their commitment to improving Medicare and making affordable access to prescription drugs a reality for America’s seniors.

If the other side says it is OK, I would like to yield 3 minutes to the Senator from Texas.

The PRESIDING OFFICER (Mr. Chambliss). The Senator from Texas is recognized for 3 minutes.

Mr. KENNEDY. Mr. President, I have been here for 10 years now. There are many in the Chamber who have been here longer than I. But I know one thing. Anytime we do something that is very major and very complicated, it is easy to pick it apart. It is easy in 30 seconds to say why you are not going to vote for something that has so many facets. That is much more politically feasible and it is much easier. It is harder to vote yes on something that isn’t perfect.

How can you ever expect a bill this complicated to suit every person in this body perfectly? Of course, you can’t. That is why we have 100 Senators from 50 States. It is why we go back and forth and compromise. Yes, there is compromise in this bill. But let me tell you in a few minutes why I am voting yes.

I am voting yes because senior citizens deserve the best care that prescription drugs can provide. We must start. No one would say this is perfect. Who could expect a perfect bill that is this comprehensive? This is the bill. Of course, you don’t agree with every word in it. But are we going to throw it away and not have anything? Those who have been around here longer than I know that we will come back and we will adjust where adjustment is necessary, as we do in every major piece of legislation that is far-reaching.

I am voting for this bill because for the first time everyone in our country will have the chance to put aside money in a health savings account to build up for their copays and for their premiums on health care insurance. It will be a tax-free buildup, and it will be tax free when you take it out for your health care needs.

I am voting for this bill because it increases the reimbursement for our people who give medical services. Our rural hospitals are our lifeline. They cover the whole country and they will have a better reimbursement rate, something Senator Kennedy and I worked on very hard. This is not what I wanted in totality, but we are going to increase the teaching hospital reimbursement rate and danger that rural hospitals are the hospitals that treat our poor. Our teaching hospitals are where our up-and-coming physicians and nurses learn how to treat patients. We are increasing the reimbursement. Senator Kennedy and I worked very hard on that.

It is not everything we wanted but we can come back and we will make it even better. There will be millions of dollars going into our teaching hospitals and every State in our country has a teaching hospital.

The reimbursement to physicians is going to increase. How many physicians have said, I am not taking Medicare patients anymore; I cannot afford it. We want physicians to take our Medicare patients. We also want a freedom to choose, which our Medicare patients do not now have and which we will have in the future.

That is why I am voting for this bill. It is the harder vote. I urge my colleagues to step up to the plate and help us start.

Mr. KENNEDY. How much time is on the other side?

The PRESIDING OFFICER. The majority has 6 minutes 3 seconds. The minority has 3 minutes 16 seconds and the majority has 6 minutes 3 seconds.

Mr. KENNEDY. Mr. President, I yield myself 5 minutes.

Mr. President, my friend from Iowa talked about what is happening to the retiree programs. This is the most recent. First, offering retiree health benefits dropped 40 percent in the last 8 years. With this legislation, it will go right down through the cellular, make no mistake, We brought that out in this debate.

My friend from Connecticut has talked about what will happen in his State, about the retirees. It happens in Connecticut, it happens in Massachusetts, it is happening in every State in this country, for the love of retired. The low-income elderly and disabled will pay more. Thousands are going to fail the assets test. That is what is happening in the bill.

In my early years of service in the Senate, I was privileged to participate in the final stages of the long debate that culminated in the enactment of Medicare.

Today, Medicare is so much a part of the essential fabric of our society that it is hard to remember the harsh reality the elderly faced before its enactment. Too often, their lives were blighted by the fear of a costly illness that would swallow the savings of a lifetime and leave them impoverished. Today, their lives are a far from affordable medical care made a mockery of the dignified and secure retirement that should be the birthright of every American. Private health insurance had failed the elderly, and Medicare was the response.

Today, Medicare and Social Security are the most beloved and successful government programs ever enacted. They form the cornerstone of our nation’s retirement system. But they are under assault by a right-wing ideology that ignores the lessons of the past.

This ideology views health care as just another commodity. It sees Medicare as another potential profit center for HMOs and insurance companies, not as solemn commitment between government and its citizens. It says senior citizens should be subject to the sink or swim economics of the marketplace—and if they sink, it is their failure, not our society’s.

The legislation we are debating today started as an important down payment on the comprehensive prescription drug coverage the elderly have long needed to complement the coverage of hospital and physician care that Medicare provides. That was the essence of the bipartisan bill that passed the Senate by an overwhelming majority. But that bipartisan bill is not the one we are debating today.

In other legislation before the Senate is a partisan document that embodies this administration’s right-wing ideology and its desire to fuel the profits of the wealthy and powerful who support it. It cynically uses the elderly’s need for prescription drugs as an Trojan horse to reshape Medicare. The Republican majority has hijacked this conference.

Their program draws its essential inspiration from the President’s original program to limit prescription drug benefits to senior citizens who join an HMO. That plan was too crude and obvious to withstand public scrutiny, so the House of Representatives—and now
this conference committee—has crafted a more subtle but no less destructive approach. That is why this legislation had to be rammed through the House of Representatives in the dead of night, with the support of only one party, and only after the rules of the House were bent and broken. That is why this legislation is being rammed through the Senate after only 3 days of debate, and only after the Senate waived its own rules in a very close and narrow vote.

This bill is a cold, calculated program to unravel Medicare, to privatize it, to voucherize it and to force senior citizens into the unloving arms of HMOs. It is the first step in the Administration’s campaign to reshape America to fit its right-wing ideology. And the White House has already announced that if they are successful in enacting this first step, the privatization of Social Security will be the next step. Today, big HMOs, insurance companies, and pharmaceutical companies are the winners. Tomorrow, when Social Security is privatized, it will be the big banks and brokerage houses. And, in both cases, senior citizens and their families will be the losers.

The bill uses a triple threat to unravel Medicare.

It creates a new program called premium support. They call it a demonstration, but it is really a vast social experiment using millions of senior citizens as guinea pigs. It is designed to raise Medicare premiums, so that seniors will have to join HMOs to get affordable care. They call it competition, but it’s not competition, it’s coercion.

It raises Medicare payments to HMOs so that Medicare can’t compete—a 25 percent overpayment. They use the elderly’s own Medicare money to undermine the Medicare program they depend on.

It creates a $12 billion slush fund for private insurance plans to make Medicare even more competitive.

The assault on Medicare is the worst aspect of this bill, but that’s not the end of the dishonest roll of this bill.

Three million retirees with good coverage through a former employer will lose it as the result of this legislation.

Six million of the poorest of the poor elderly and disabled people will face higher costs for the drugs they need and less access to medical care the day this legislation is effective.

The gravy train will be prohibited from bargaining to obtain reasonable drug prices for senior citizens.

The bill imposes a cruel and demeaning assets test that disqualifies millions of the lowest income elderly from the special help they need.

The bill provides $6 billion in tax subsidies for health savings accounts, a program that has nothing to do with Medicare but everything to do with benefiting the healthy and wealthy while increasing insurance premiums for other Americans.

Rejecting this misbegotten legislation is not a rejection of our senior citizens’ needs for prescription drugs. It is an affirmation of their need for Medicare and of their right to choose the doctors and hospitals they trust. If this legislation is rejected today, the pending business before the Senate will be the good, bipartisan prescription drug benefit we passed last July. Let us make the vote today, a new start to do the right thing rather than a conclusion to do the wrong thing.

In its own way, this is as historic as the debate that enacted Medicare. Medicare is the heart and soul of our society’s commitment to compassion and fairness. Today, the Senate will decide whether that commitment will be abandoned for other values—the values that are measured in the cold coins of profit and power rather than on the scales of humanity and justice.

The Senate should reject this mischosen take. It should stand with the elderly and their families, not with HMOs and insurance companies and pharmaceutical industries. It should reject this legislation.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. I yield the remainder of my time to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized for 3 minutes.

Mr. HATCH. I have been listening to the rather remarkable remarks from the other side, that this legislation has been rammed through the Congress, that it is partisan, when it is bipartisan. It has taken us 15 years to get here. It could take another 15 years if we do not support this bill right now.

We have been working on Medicare prescription drug legislation for 15 solid years. We have worked day in day out, hours, weeks, and months in order to get to this point. It is bipartisan. It was bipartisan in the House; when it passed today it will be bipartisan in the Senate.

The opponents of this bill keep saying that seniors will be worse off if this Medicare bill becomes law. Give me a break. We are going to put $400 billion out there for senior citizens so they will have a Medicare drug benefit. We are giving seniors a choice in coverage. Medicare beneficiaries may stay in traditional Medicare or they may choose to participate in one of the new Medicare Advantage plans.

We are improving health care for rural communities, something our friends on the other side have ignored for years. The fact is, it is time to realize that we are going to have to pass this legislation because it is the right thing to do and it will be a bipartisan vote.

We are devoting close to a quarter of this bill’s funding to retiree health coverage. CBO told us that 37 percent of retirees would have lost their coverage if S. 1, the bill sponsored by the Senate earlier this year, had become law. This bill reduces that number to under 20 percent. I don’t know how anyone can say this bill is going to be harmful to retirees when we are devoting $80 billion towards retaining retiree health coverage.

We are also improving access to less expensive, generic drugs by improving Hatch-Waxman.

The real reason our colleagues do not like this bill is that it is not an $800 billion bill. Our bill is $400 billion which provides for some private sector models. Our opponents do not like our legislation because they do not believe in the private sector.

With regard to their argument that some of the big companies are going to benefit from this legislation, of course they will benefit. The argument I find most amusing is the claim this bill will lead to increased drug company profits.

The reason the bill is so desperately needed is because beneficiaries with low incomes are unable to afford their prescriptions today. They have to choose between food, rent, and taking their medicines. When this prescription drug benefit goes into effect, low-income beneficiaries will be able to get their prescriptions filled. This legislation includes generous subsidies so the low-income will be able to receive their prescription drugs without worrying about how to pay for them.

Of course, this is going to lead to increased drug sales. Surely this is no surprise to anyone. Any prescription drug bill that works is going to lead to increased drug sales. Where are the medicines supposed to come from, except from the manufacturers of those medicines? Every single Medicare prescription drug bill introduced by these naysayers also would have increased drug sales, and they know it.

This bipartisan conference report has the same basic drug benefit structure that passed the Senate by a vote of 76 to 21—the same one—and we are hearing these arguments here today? My distinguished friend from Massachusetts voted for that bill, and the legislation before us has the same drug benefit structure contained in S. 1 earlier this year.

The Congressional Budget Office has concluded that the competitive approach of this bipartisan drug benefit will be better at controlling drug costs than other proposals.

To suggest that no one support a Medicare drug benefit because it will lead to increased drug sales turns logic on its head.

If this were our basic principle, then we should not have food stamps, because that would lead to increased profits of grocery stores and farmers. What about housing subsidies? This would lead to increased profits for construction companies, utility companies and increased sales of lumber, bricks and nails! So, this is just an absurd issue and it is easy to see why.

I am here to tell you that this bill will strengthen and improve the Medicare program. The spending in this bipartisan prescription drug bill goes toward more improved health benefits for
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America's seniors and the disabled. This is a good bill and I urge my colleagues to support it.

The PRESIDING OFFICER. The time has expired.

The minority leader.

Mr. DASCHLE. Mr. President, I will use my leader time because I know we are out of the allotted time.

I'm told that when Medicare was passed 38 years ago, the House and Senate galleries were filled with senior citizens who felt a great deal of hope, optimism and excitement about what that bill meant for them and for future Americans.

I don't see any senior citizens in the galleries today. And I think that is a real reflection on what this bill really means.

Why are there no senior citizens in the galleries for this vote? Why isn't there the hope and excitement and enthusiasm and optimism that we saw so vividly 38 years ago?

Mr. President, I think we all know the reason: because there is no excitement. There is no enthusiasm. There is no optimism. There is no real confidence that what we are doing today will help the vast majority of senior citizens, not optimistically. They are watching with dismay at the vote we are about to take.

I'll tell you what rooms are filled—not the galleries but the lobbies. The drug companies and the insurance companies are watching with dismay at the vote we are about to take.

Mr. President, I think we all know the reason: because there is no excitement. There is no enthusiasm. There is no optimism. There is no real confidence that what we are doing today will help the vast majority of senior citizens, not optimistically. They are watching with dismay at the vote we are about to take.

I heard a report on the radio this morning that the final vote was going to be taken early today. Well, that report was wrong. Mr. President. This is not the final vote on prescription drugs for seniors or on Medicare. This is only the beginning, not the end. We will see many, many more votes.

I promise you that we will be back within the next 12 months. Senators will demand that we correct the many deficiencies in this bill, and they will not rest until we do.

This may be the end of this debate. But I predict that a longer debate will begin tomorrow as senior citizens start to fully understand the magnitude of the problems this legislation creates for them.

This bill is deeply flawed. There is a poll in this morning's South Dakota Rapid City Journal. The poll simply asked the question, Do you think the legislation the Senate is about to pass is adequate? Mr. President, 64.5 percent of those who responded said no, it is not adequate. Those of us who have been working on this legislation should not be surprised.

Senior citizens with private coverage already know they could lose those benefits as early as tomorrow as the result of this bill. Seniors on Medicare already know that they are going to have to pay more for drugs, and may even be refused some of the drugs they need. Seniors in South Dakota already know they may be coerced into an HMO they disdain and out of a Medicare plan they now count on.

Seniors already know they are about to be subjected to a scheme for benefits they cannot even understand, much less afford. They already know they could lose those protections.

Taxpayers already know they are going to be giving huge handouts to insurance companies, drug companies, and special interests, even though our country is faced with deficits unlike we have ever known.

Many Senators know this is lousy legislation, that we may spend the rest of our careers repairing the flaws of this disappointing bill.

We are going to be called upon to vote today. My father admonished me many years ago never to put my signature on something I was not proud of. Mr. President, I am not proud of this legislation. I cannot put my signature on this bill. And I do not think anyone else should.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the majority leader is recognized for 5 minutes.

Mr. FRIST. Mr. President, today is an extraordinary day for 40 million seniors. For too long, our medical and health care advances have raced ahead, especially in the last 10 to 15 years, but Medicare, as a health security program for seniors, has stood still.

But today that will change. And it will change today with overwhelming support. On this chart are 358 organizations who support this change, such as the Seniors Coalition, the AARP, the American Medical Association, the American Hospital Association, the Family Physicians, the American College of Cardiology, the National Alliance for the Mentally Ill, the Rural Hospital Association, the Sickle Cell Foundation, the Society of Thoracic Surgeons—and the list goes on and on.

It has been a long time coming, but it is finally here. With a bipartisan majority, the U.S. Senate will enact prescription drug coverage for the first time under Medicare.

Forty million seniors and individuals with disabilities will finally have the prescription drug coverage they need and the Medicare choices they deserve. They will finally be able to take full advantage of the tremendous medical advances that have been made in the almost 40 years since Medicare was enacted.

I do not think it can be overstated that today marks a truly historic advance for America.

As a physician, I have written hundreds of prescriptions that I knew would go unfilled because patients simply would not be able to afford them. With this bill, that will change.

As a U.S. Senator, I have watched a decades-old Medicare program operate without fines, without comprehensive care, without coordinated care, without preventive care, without disease management and catastrophic protection against out-of-pocket medical costs.

By expanding opportunities for private sector innovation, this Medicare bill offers the possibility of genuine reform that can dramatically improve the health and well-being of our seniors and for those baby boomers who will be seniors in the not too distant future.

At the same time, it preserves traditional Medicare. It will also strengthen our seniors and those with catastrophic drug costs.

It also dramatically expands health care choices for seniors today. It lowers drug costs for seniors today, but also tomorrow's seniors.

The legislation provides all seniors with access to more affordable prescription drugs and targets more substantial assistance to lower income seniors and those with high catastrophic drug costs.

While it does expand these choices and those opportunities to choose, choices that seniors simply do not have today, it also ensures that those seniors can keep exactly what they have. They do not have to choose that new type of health care plan that we might have in the U.S. Senate or that Federal employees have.

They don't have that option today, but they can choose that or they can keep exactly what they have today. All of the options in this legislation, including prescription drug coverage, are voluntary. Beyond increasing competition, we will also take steps to control health care costs both within the Medicare Program and within the broader health care system. For the first time, we will ask those seniors who can afford to do so to pay a higher portion of their Medicare costs. We will increase and index the Medicare Part B deductible for the first time in over a decade.

We will make health savings accounts available to all Americans so that they have greater control over their own health care choices and so they can plan and save, tax free, for future health care needs.

We will make other responsible changes such as speeding generic drugs to the marketplace so that seniors will have access to these lower cost prescription drugs.

Indeed, today is an extraordinary day. Today is a fateful day. Today is a red letter day for seniors.

In conclusion, today's historic action is possible because of the hard work of many dedicated Members of the Senate and the House of Representatives, and the administration.
I would like to take a moment to thank those whose commitment was critical to this effort. First and foremost, President Bush deserves credit for his bold leadership and commitment to improving the health of America’s seniors and individuals with disabilities.

Tommy Thompson, the Secretary of Health and Human Services, and Tom Scully, the Administrator of the Centers for Medicare and Medicaid Services, spent hundreds of hours working on this legislation. Senator John Breaux also deserves credit. He and I have worked together for the better part of 6 years on legislation to improve Medicare. Today, we have finally reached that goal.

All members of the conference committee showed a degree of dedication and resolve seldom seen in either Chamber, especially Senators Orrin Hatch, Don Nickles and Jon Kyhl. We would not have reached this point without building on the strong foundation laid by Members who worked as hard on this issue during the past several years, especially Senators Snowe, Jeffords, Gregg, Hagel, Ensign and Wyden. Senators Bunning, Thomas, Smith, Lott, and Santorum also made major contributions to this legislation through their work on the Senate Finance Committee.

Members of this body who voted against final passage, but nonetheless worked to improve this legislation at every step of the way and help pave the way to final passage also deserve great respect and appreciation.

The House Leadership, especially Speaker Dennis Hastert and Leader Tom Delay, also deserves special recognition for their leadership of the Conference, Chairman Bill Thomas, and the Chairman of the House Energy and Commerce Committee, Chairman Billy Tauzin. We would not be here without them.

Finally, I want to thank my hard working and dedicated staff: Dean Rosen, Elizabeth Scanlon, Rohit Kumar, and Craig Burton. They have put in thousands of hours and poured over thousands of details.

To every one of you who has worked so hard and given so much to this effort, I thank you. America thanks you. And, most of all, America's seniors thank you.

I ask unanimous consent that a long list of staff who made major contributions to this legislation be printed in the RECORD.

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

Passage of a Medicare prescription drug benefit would be impossible without the hard work and dedication of the White House staff and the staff at the Department of Health and Human Services, House and Senate staff, as well as House and Senate Legislative Counselors, the Congressional Budget Office and the Congressional Research Service.

I would like to thank several other individuals who have played a critical role in this legislation.

On my staff, Dean Rosen, Elizabeth Scanlon, Craig Burton, Rohit Kumar, Eric Ufola, Doug Shaw, Chris Green, Nick Smith, Amy Cal, Bill Hoagland, Bill Wichterman, Allison Winnike, Jennifer Romans, Dr. Susan Goelzer, and Tina Thomas deserve recognition.

On the Senate Finance Committee, Linda Fishman, Mark Hayes, Leah Kegler, Jennifer Bell, Colin Roskey, Ted Totman, Mark Prater, Dianne Howland and Alicia Ziemekci tirelessly worked on this legislation.

On the Senate Finance Committee Minority Staff, Liz Fowler, Jonathan Blum, Stacey Hughes, Dan Stat Bommersbach, Dan Stein, and Jeff Forbes made important contributions to this effort.

The House Leadership staff, Darren Wilcox, Brett Shogren, Joe Traugler, Shailla Ross, Andrew Shore, John DeStefano and Sam Gejdenson made the way for House passage of the Conference Agreement.

On the Senate Finance Committee Means Majority staff members, John McMans, Madeline Smith, Joel White, Deb Williams, John Kellihier, and Shahira Knight were invaluable to reaching a bipartisan agreement. House Ways and Means staff, Patrick Morrisey, Kathleen Weldon, Chuck Clapton, Pat Ronan, Jeremy Allen, Bill Burg, John Brouillette and Jim Barnette also deserve recognition.

Additionally, Senator Breaux’s staff, Sarah Walter, Michelle Easton and Paige Jennings; Senator Nickles’ staff, Stacey Hughes and Hazon Marshall; Senator Hatch’s staff, Pattie DeLoatch, Bruce Artim, Patricia Knight, Chris Campbell and Dr. Mark Carlson; and Senator Kyhl’s staff, Don Dempsey, Diane Major, Lisa Wolski and Elizabeth Maier have all been dedicated to this effort. As have Health Education, Labor and Pensions Committee staff, Don Underhill, Iriszarry, Kim Monk and Senate Leadership staff Sarah Berk, Mike Solon, Kyle Simmons, Laura Pemberton, Amy Swonger, Malloy McDaniel, Brian Lewis, and Scott Raab.

The work of Members and staff would have been moot without the support of the House and Senate Legislative Counselors, the Congressional Budget Office and the Congressional Research Service. Those deserving recognition include Legislative Counsels, Edward Grossman, John Goetchius, Pierre Poisson, James Scott, and Ruth Ernst; staff of the Congressional Budget Office, Doug Holtz-Eakin, Steve Lieberman, Tom Bradley, Bob Sunshine, David Auerbach, James Baumgardner, Anna Cook, Sandra Christensen, Philip Ellis, Carol Frost, Samuel Kina, Lyle Nelson, Robert Nguyen, Rachel Schmidt, Daniel Wilmoth, Shawn Bishop, Niall Brennan, Julia Christensen, Jeanne De Sa, Brianne Hutchinson, Margaret Novak, Eric Rollins, Shizuo Suzuki, Christopher Topoleski, and Robert Murphy; and Congressional Research Service staff, Richard Price, Jennifer O’Sullivan, Sibyl Tilson, Hinda Chalkin, James Hahn, Paulette Morgan, Chris Peterson and Susan Thail.

Finally, we could not have done this without the leadership of President George W. Bush, the White House Staff, particularly Tom Daschle, Centers for Medicare and Medicaid Services Administrator Tom Scully and Food and Drug Administration Commissioner Mark McClellan. White House staff deserve recognition including Matt Kirk, Keith Henney, Doug Badger, Jim Capretta, David Hobbs, Ziad Oveisi, Amy Johnson, and Mike Meaco. Department of Health and Human Services staff deserve credit include Jennifer Young, Rob Foreman, Amit Sachdev, Dan Troy, Fred Gleich, Elizabeth Edelman, Jim Mital, Megan Hauck, Ann Marie-Lynch, Dan Durham, Andrew Cosgrove, Jim Mathews, Michael Keilly, Rob Stewart, Jim Hart, Susan Levit-Bogasky, Garry Nicholson, Lynnon Nonnemaker, Peter Urbanowicz, Donald Kosin, Robert Jaye, Leslie Norwalk, Don Johnson, Susan McNally, Sharmar Stephens, Jeff Fox, David Krewe, Ira Burney—a technical guru we could not have done without—Richard Foster, Dennis Smith, Charlene Brown, Marilyn Sawyer, Robert Blick, Sue Rohan, Mary Ellen Stahlman, Gary Bailey, Tom Hutchinson, Robert Donnelly, Tom Grissen, Liz Richter, Tom Gustafson, Marty Corry, Teresa Housea, Tim Trysia, Teresa Decaro, Greg Savor and Crystal Kunz.

To all of those I have acknowledged here, I extend my gratitude and the gratitude of the entire United States Senate. You have made a historic moment stronger by standing behind the Medicare program and improve the lives of millions. Thank you.

The PRESIDING OFFICER. Under the previous order, the hour of 9:15 having arrived, the Senate will proceed to the yeas and nays.

The PRESIDING OFFICER. Are there a sufficient second?

The question is on agreeing to the conference report. The clerk will call the roll.

The legislative clerk called the roll.

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

The result was announced—yeas 54, nays 44, as follows:

[Repoll Vote by 459 Leg.]
The conference report was agreed to. Mr. FRIST. Mr. President, I move to reconsider the vote.

Mr. BOND. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, this is an extraordinary day for seniors and indeed all Americans. The legislation that we just passed is consequential. It is far reaching for every American. It touches all of us in material ways, in meaningful ways. It is epical in the sense that it modernizes Medicare to provide 21st century care for our seniors, with preventive care, with disease management, especially with prescription drugs. This bill is notable in its 54-to-44 vote in being a bipartisan bill.

For the information of our colleagues, we will have no more rollcall votes. We currently remain in discussion on the appropriations bills. The bill will not be filed until later today in the House of Representatives. I will be in discussion with the Democratic leadership as to what appropriate time we will be addressing those appropriations bills. There will be no more rollcall votes today. I wish everybody a very happy, enjoyable, and especially safe Thanksgiving.

ADMINISTRATION EFFORTS TO GUT THE "COMPETITIVE SOURCING" COMPROMISE

Mrs. MURRAY. Mr. President, I rise to alert my colleagues and the public to a secret effort by the White House to anend Federal workers. Several Federal employees and private contractors submit bids to retain Federal work and how those bids are compared. In some cases, the amendments reflected language that the President had already signed into law or that the Congress had already adopted on the Department of Defense and Department of Interior appropriations bills.

When the conference committee convened to reconcile these two very different bills, we all recognized that the Van Hollen amendment could not be included in the conference report because of the President veto threat, so we put together a thoughtful and fair compromise. Our compromise was designed to provide a level playing field between Government contractors and Federal employees. Our compromise ensured fairness in five ways.

First, the compromise ensured that the rules pertaining to all the Federal agencies would be the same. Second, the compromise ensured that the administration would have to demonstrate that there are real cost savings that would result from a privatization effort before Federal employees lost their jobs to the private sector. Third, the compromise ensured that Federal employees—not just private contractors—would have the opportunity to appeal a potentially wrongful decision to contract out work. Fourth, the compromise ensured that no jobs that are contracted out would be transferred overseas. And fifth, the compromise ensured that Government employees have the opportunity to put together their best and most efficient bid in order to compete to keep their jobs.

In other words, they do not just need to submit a bid based on the way they currently operate. They could propose new efficiencies to make their bid competitive so that all taxpayers benefit.
As I said, this was a thoughtful, carefully crafted compromise in which neither side got everything they wanted. Mr. President, I ask unanimous consent that at the conclusion of my remarks, the bill language reflecting this bipartisan compromise be printed in the Record.

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

(See exhibit 1.)

Mrs. MURRAY. Mr. President, I am placing this language in the Record because I have been given reason to believe that some very different language will appear in the omnibus appropriations act, once it is actually filed.

A lot of credit belongs to Chairman ISTOOK, Chairman STEVENS, and Chairman SHELBY for allowing the conferees on the Transportation/Treasury bill to work through the issues and develop our original compromise.

When I left the Capitol building late in the evening on Wednesday, November 12, all the conferees expected that compromise to be incorporated into the conference agreement on the Transportation/Treasury bill that was to be filed the next day. Each and every Senator: Republican and Democrat, that participated in the conference agreement was content with the compromise and signed the conference report. What has happened since then has been one of the most astonishing and deplorable processes that I have ever witnessed in my 11 years in the Senate.

When the Bush White House learned that the conferees decided to insist upon a level playing field and some demonstration of taxpayer benefits for Federal jobs to be contracted out, they began a quiet but relentless campaign to gut the compromise. Despite the fact that the conference committee adjourned well over a week and a half ago, the White House has seen to it that the bipartisan conference agreement was content with the compromise and signed the conference report. What has happened since then has been one of the most astonishing and deplorable processes that I have ever witnessed in my 11 years in the Senate.

The administration’s alternative language makes their true motives clear. One language change that the Bush administration has been promoting would effectively eliminate the requirement that the administration demonstrate any cost savings before throwing Federal employees out onto the unemploy-ment line. Indeed, the loophole language being slipped would allow them to award Federal work to private contractors even if the contractor’s costs are considerably higher than letting Federal employees keep the work.

Could it be that we are seeing yet another attempt by the Bush-Cheney administration to use Federally appropriated resources to reward their friends?

I am told that the administration has even voiced reservations about the language in our compromise prohibiting Federal jobs from being shipped overseas. Where does it stop?

This administration seems to see no problem with senior citizens picking up a phone to call Social Security Administration and the phone being answered by a Federal contractor in India—and it could actually cost taxpayers more. That’s absurd.

On another provision, the administration is hoping to language allowing Federal employees to put forward their best and most efficient bid in order to keep their jobs. Why? Because the administration doesn’t want Federal employees to retain this work no matter what the benefit to the taxpayer.

This is the first year that I have served as the senior Democrat on the Appropriations Subcommittee overseeing these Government-wide procurement issues. Over the course of this year, I have been increasingly appalled by the disrespect and disdain that the Bush administration holds for the thousands of Americans that come to work for us every day.

As of today, I regret to inform the Senate that the Bush administration appears to be making meaningful progress in its campaign to gut the bipartisan compromise that was agreed to as part of the Transportation/Treasury conference agreement. The language being slipped into the omnibus appropriations bill. That language guts our original compromise in three fundamental ways.

First, the rules included in the Transportation/Treasury bill will no longer apply to all Federal agencies. They will only apply to the agencies funded in the Transportation/Treasury bill. So these provisions will apply only to jobs being contracted out in the Department of Transportation, the Treasury Department, the General Services Administration, the Department of Labor, all Federal management, and a few smaller, related agencies.

None of these protections will apply to the hundreds of thousands of employees in the other major Federal civilian agencies, such as the State Department, Commerce Department, Agriculture Department, Labor Department, and the Health and Human Services Department. There will be a distinctly different set of rules for jobs in the Department of the Interior and still different rules for jobs in the Department of Defense.

This makes a sham of our Federal contracting-out policy, but the Bush administration certainly doesn’t seem to care.

The first major change is in the scope of the agreement. Instead of applying to all civilian agencies, it would just apply to a few. The second major change is in the stringency of our agreement. The language being slipped into the omnibus bill would now deny Federal employees the legal standing to appeal a wrongful decision to contract out their jobs. Under current regulations, only contractors can appeal a decision that doesn’t go their way. Federal employees who are losing their jobs have no such right.

The administration obviously does not want its decision to ever face a truly fair appeals process.

The third major change effectively eliminates the requirement that there be any meaningful cost savings to the taxpayer before jobs are contracted out. That is deplorable.

No wonder the Bush administration will only push for these changes in back rooms. I think this result is bad enough. However, I am now being told that the administration has not given up on weakening our provision even further.

As I stand here today, the conference agreement on the Appropriations bill, including the Transportation/Treasury section, has still not been filed. The back-room dealing continues and the basic principle of fairness and respect for our Federal employees continues to be under attack.

I have to say that in my many years on the Appropriations Committee, I have never witnessed such a cynical effort to undermine a fair and equitable conference agreement.

I want to emphasize that if it is not the fault of Chairman ISTOOK, Chairman SHELBY, Chairman STEVENS, Chairman YOUNG, or any of the other members of the Transportation/Treasury conference. Those honorable gentlemen reached a deal at the conference room table and, I believe, had every intention of standing by our compromise.

This attack on Federal workers, on fairness and on taxpayers has only one source—the administration of George Bush. It is the White House that is keeping our compromise from being enacted—or even filed—that the American public can read and understand it.

Next year, I hope that our Transportation/Treasury Subcommittee will hold hearings with the appropriate administration officials so that they can explain to us why it is so important to them to deny Federal employees even the most basic rights when competing to keep their jobs. I hope they will explain why it is important to the Bush administration that different Federal workers be subjected to a hodgepodge of differing rules depending on where they work. Perhaps they could also explain why they think it is appropriate that only contractors—and not Federal employees—have the right to appeal a ‘contracting out’ decision.

This issue will not go away. I can guarantee you that efforts will be made on next year’s Transportation/Treasury bill to rectify this situation and restore a government-wide policy based on fairness and savings for the taxpayer.

I only hope the Bush administration will have the decency to articulate its position before the public—and on paper—rather than in the back rooms in the dark of night.

EXHIBIT 1

FINAL A-76 COMPROMISE LANGUAGE FOR CONFERENCE REPORT ON THE TRANSPORTATION, TRANSIT, AND INDEPENDENT AGENCIES APPROPRIATIONS ACT.

SEC. 7. (a) LIMITATION ON CONVERSION TO CONTRACTOR PERFORMANCE—None of the
funds appropriated by this or any other Act shall be available to convert to contractor performance an activity or function of an executive agency, on or after the date of enactment of this Act, that is performed by more than ten federal employees unless the

1) the conversion is based on the result of a public-private competition plan that included efficiency and cost effectiveness; the competition plan developed by such activity or function; and

2) The Competitive Sourcing Official determined that over all performance periods stated in the solicitation of offers for performance of the activity or function, the cost of performance of the activity or function should be less costly to the executive agency by an amount that equals or exceeds the lesser of—

(A) the most efficient organization's personnel-related costs for performance of that activity or function by federal employees; or

(B) $10,000,000.

(b) EXCEPTIONS FOR THE DEPARTMENT OF DEFENSE.—

(1) This section and subsections (a), (b), and (c) of section 2461 of title 10, United States Code do not apply with respect to the performance of a commercial or industrial type function of the Department of Defense that—

(A) is included on the procurement list established pursuant to section 2 of the Javits-Wagner-O'Day Act (41 U.S.C. 440b(e)); or

(B) is to be converted to performance by a qualified nonprofit agency for the blind or by a qualified nonprofit agency for other severely handicapped individuals in accordance with that Act; or

(C) is planned to be converted to performance by a qualified firm under at least 51 percent owned by an Indian tribe, as defined in section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15)).

(2) This section shall not apply to depot contracts for depot maintenance as provided in sections 2369 and 2474 of title 10, United States Code.

3) Treatment of Conversion.—The conversion of any activity or function of the Department of Defense under the authority provided by this section shall be credited to the cost of performance of the activity or function under Office of Management and Budget Circular A-76 or any other policy, directive, or regulation, to automatically limit to 5 years or less the performance period in a letter of assignment, or other agreement, issued to executive agency employees, if such a letter or other agreement was issued as the result of a public-private competition conducted in accordance with the circular.

(e) Hereafter, the head of an executive agency may expend funds appropriated or otherwise made available for any purpose to the executive agency under this or any other Act to monitor (in the administration of responsibilities under Office of Management and Budget Circulars A-76 or any related policy, directive, or regulation) the performance of an activity or function of the executive agency that has previously been subjected to a public-private competition under such circular.

(f) For the purposes of subsection (b) of section 2384 of title 10, United States Code, for the competition or outsourcing of commercial activities.

(c) Not later than 120 days following the enactment of this Act and not later than December 31 of each year thereafter, the head of each executive agency shall submit to Congress (instead of the report required by section 621) a report on the competitive sourcing activities conducted in the previous fiscal year by Federal Government sources. The report shall include—

1) the total number of competitions completed;

2) the total number of the competitions announced, together with a list of the activities or functions subject to those competitions;

3) the total number (expressed as a full-time employee equivalent number) of the Federal employees that are being studied under competitions announced but not completed;

4) the total projected number of competitions that were performed for such executive agency during the previous fiscal year by the contractor at a location outside the United States except to the extent that such activity or function was or may be performed by Federal Government employees outside the United States.

Mr. BOND. The distinguished Senator from Kentucky makes a very valid point. The time is now to get that money into the voting system in every

MORNING BUSINESS

Mr. FRIST. I ask unanimous consent that there now be a period for morning business with Senators permitted to speak for up to 10 minutes each.

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

APPROPRIATIONS

Mr. BOND. Mr. President, I commend our leaders, Senator Frist, as well as Senator Grassley, Senator Baucus, and Senator Breaux, for the tremendous work in passing this very difficult bill. This is a tremendous milestone. It is great news for the seniors of our Nation.

I also ask and plead with the leadership and the Members to realize that we have not yet finished work on the vitally important appropriations bills. It is extremely important we get these bills passed this year prior to the start of next year because this is the last budget in these bills that must be passed now.

The Appropriations Committees, under the leadership of Chairman Stevens and Senator Byrd, have worked long and hard to produce these bills. Senator Mikulski and I fought to get an increase in veterans health of $2.9 billion. We did that because of the pressing need for our veterans.

Our high-priority veterans are waiting sometimes six months just to get an appointment. We need that money in the VA system now, not sometime next year. We are also seeing more and more veterans coming back from the conflicts in Afghanistan and Iraq with serious injuries, long-term injuries, that that money in health care. We have to come to some agreement to get these bills passed this year, not sometime next year, not January or February or March. We cannot afford to miss a half a year.

In addition to that, the distinguished Senator from Kentucky and the Senator from Connecticut put in the over $1 billion needed for the Help America Vote Act.

Mr. McConNEll. Will the Senator yield for a question?

Mr. BOND. I would be happy to yield.

Mr. McConNEll. I ask my friend from Missouri, is it not true that if we do not get this omnibus bill funded, the election reform money, which guarantees that next year it will be easier to vote and harder to cheat, as the Senator from Missouri has said on so many occasions, that that money simply will not be there in time to begin this lengthy process of getting the money out to States and getting the reforms made in time for the 2004 election.

Mr. BOND. The distinguished Senator from Kentucky makes a very valid point.
State. We cannot delay any longer. Every week, every month we delay, means less likelihood that we will make the changes that were promised.

This body overwhelmingly adopted the Help America Vote Act which, as Senator MCCONNELL has said, will make it easier to vote and tougher to cheat. This is a commitment we made to the people of America that we would provide these reforms and we would fund them. If this money has to wait until the approval of these appropriations bills sometime in February or March and getting the money out in March or April, we are not going to get it done in time. They are not going to be able to implement these vitally important reforms in election.

I know many people want to get their voting machines improved. Frankly, I want to see the end of dogs and dead people voting. They are still trying that in St. Louis. There was a nice 180-count indictment issued by the prosecuting attorney in the city of St. Louis, the circuit attorney. That problem needs to stop and the only way we can get it to stop is by funding the Help America Vote Act.

There are many other good arguments, but I urge the leadership to come together to work on this matter. If we could do it by unanimous consent, that would be the best, but if we have to come back the second week in December, we have an obligation to the people of Missouri to do our job. I plead with the leadership to come to some agreement so we can finish these bills.

I yield the floor.

PASSAGE OF H.R. 1

Mr. SPECTER. Mr. President, I rise to comment briefly about the legislation which we have just passed and also about the omnibus appropriations bill. I compliment all of those involved in this Medicare bill. It is a long time in coming. It will provide much needed relief to America’s seniors on the high cost of prescription drugs. It will eliminate the cuts in Medicare which were supposed to take effect in 2004 and 2005. It will, in fact, give the doctors an increase of 1.5 percent.

There was also a mechanism for changing the wage index classification for metropolitan statistical areas, the MSAs, so that the Secretary will have discretion to make that correction.

OMNIBUS APPROPRIATIONS

Mr. SPECTER. Mr. President, with respect to the omnibus appropriations bill, the Senator from Missouri is correct that we ought to complete it. He has pointed out the importance of having the increases for veterans. I would add to that the importance of increases in the appropriations bill for Labor, Health and Human Services, and Education. I reserve my remarks to make these funds available.

I would like to comment briefly on two points in the appropriations bill for my subcommittee. One of them involves the issue of overtime pay. The Senate passed, by a decisive majority, 54 to 45, a prohibition on any expenditures to implement the regulation on overtime which would cut out overtime for many Americans who really need that time. This is in light of the fragility of the economy at the present time.

In the House of Representatives, the regulations stood by three votes. Then there was a later vote of the representatives, by 18 votes, the House directed the conference, not to fund it until September 30, 2004. When the omnibus was in the final stages of preparation last week, it was apparent to me that any course of action would leave the regulation in effect. If Senator HARKIN and I had insisted on keeping in the Senate amendment striking funding for the regulation, then our appropriations bill would still continue to do that. The omnibus and our three Departments, Health, Education, and Labor, would be funded on a continuing resolution and the regulation would remain in effect. If we agreed to remove the amendment striking funding, then course the regulation would go into effect. So either way, the regulation was going to go into effect. By having our bill included in the omnibus, we had $4 billion more for vital programs in NIH, for NIH, for Health, for Food and Child, for Workers’ safety. So in effect we did not have a Hobson’s choice, we had no choice at all. Either way we went, the regulation would remain in effect. If we agreed to take it out so we would be included in the omnibus, then the prohibition against funding would fall. If we were taken out and made a part of the continuing resolution, then the regulation would stay in effect.

It is this choice, when this matter goes forward, the vote in the Senate will remain and the provision remains in the Senate bill to strike the funding for the regulation. So that battle is not over. We intend to continue to fight it right down to the wire, until the omnibus appropriations bill is adopted.

One other point, and I will be brief. I know my other colleagues are waiting to speak. One other point, and that involves the House language to prohibit funding for patents for human tissue. That provision in the appropriations bill for the Departments of Commerce, Justice, and State is going to cause enormous uncertainty. It is very expensive, and a very long process, to have a patent. There will be many people who will not be interested in proceeding with patents, who will not understand the ramifications of the language on human tissue.

I am against human cloning. I made that point emphatically clear in our debate. It is an amendment, a motion to strike the House language, which passed on the Senate side 18 to 8, but the House refused to agree. So the language remained in the bill. But I believe the scientific community in America is going to march on the Congress to stop the meddling with scientific research with vague prohibitions which can only lead to grave difficulties and which impede medical progress.

One concluding thought. I thank those on the other side of the aisle who, as I understand it, have removed the holds on all of the pending nominees. Just a word in support of Pennsylvania Attorney General Michael Fisher, who is up for confirmation for the Third Circuit. I have known Attorney General Fisher for the better part of three decades. He has an extraordinary record in the Pennsylvania Legislature and as the State attorney general and as candidate for Governor.

I ask unanimous consent that a full statement of his resume be printed in the RECORD at the conclusion of these remarks. For those who see no objection, the material was ordered to be printed in the RECORD, as follows:

ATTORNEY GENERAL MIKE FISHER

Mike Fisher, the Attorney General of Pennsylvania since 1997, was nominated on March 3, 1997, by President Bush to serve on the United States Court of Appeals for the Third Circuit, which covers Delaware, New Jersey, Pennsylvania and the Virgin Islands. The nomination is subject to a major- ity confirmation by the United States Senate.

Currently serving his second four-year term, Attorney General Fisher is only the third elected Attorney General in State history. His top priorities have included protecting Pennsylvanians from crime, reducing the use of illegal drugs, stopping the tobacco industry from marketing to children, and expanding consumer protection services.

Attorney General Fisher personally argued major cases in State and Federal appellate courts. In March 1998, he successfully argued before the United States Supreme Court a precedent-setting case involving parole violators in which criminals meet the conditions of their release.

Attorney General Fisher has worked to improve the quality of justice in Pennsylvania. He is an active member of the Pennsylvania Bar Association (PBA), serving in its House of Delegates and on various committees. Working with the PBA, he has co-sponsored an innovative violence prevention program in Pennsylvania elementary schools called Project PEACE, which helps young people learn to resolve conflicts. Attorney Fisher also encourages PBA participation by the attorneys in his office.

Before his election as Attorney General, Mike Fisher served for 22 years in the Pennsyl-

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vania General Assembly, serving six years in the State House and 16 years as a member of the State Senate. As a member of the House and Senate Judiciary Committees, the Chair of the Senate Environmental Resources and Energy Committee and the Majority Whip of the Senate. During his legisla- tive career, he was a leader in criminal and civil justice reform and an architect of many major environmental laws.

Attorney General Fisher began his legal career in his hometown of Pittsburgh following his graduation from Georgetown University in 1986 and Georgetown University Law Center in 1989. As District Attorney for Allegheny County, he handled nearly 1,000 cases, including 25 homicides. He
continued to practice law during his career in the General Assembly and was a shareholder or partner in various firms, including Houston Harbaugh, where he practiced from 1964 to 1995. His law practice included civil litigation, commercial law, estate planning and real estate.

Mike Fisher was Pennsylvania's Republican nominee in 2002, a hard-fought campaign, he raised key issues and helped shape current public debate on matters such as Pennsylvania's growing medical malpractice insurance crisis, the need to improve public education and the necessity of property tax reform.

Attorney General Fisher and his wife, Carol, consultant, have two children, Michelle, 27 an attorney in Pittsburgh, and Brett, 24, an information technology sales consultant in the Washington, D.C. area.

Mr. SPECTER. Mr. President, since Medicare was established in 1965, people are living longer and living better. Today Medicare covers more than 40 million Americans, including 35 million over the age of 65 and nearly 6 million younger adults with permanent disabilities.

Congress now has the opportunity to modernize this important Federal entity to create a 21st century Medicare Program that offers comprehensive coverage for pharmaceutical drugs and improves the Medicare delivery system.

The Medicare Prescription Drug and Modernization Act would make available a voluntary Medicare prescription drug plan for all seniors. If enacted, Medicare beneficiaries would have access to a discount card for prescription drug purchases starting in 2004. Projected savings from cards for consumers would range between 10 to 25 percent. A $600 subsidy would be applied to the card, offering additional assistance for low-income beneficiaries defined as 160 percent or below the Federal poverty level. Effective January 1, 2006, the optional Medicare prescription drug benefit would be established under Medicare Part D.

This bill has the potential to make a dramatic difference for millions of Americans living with lower incomes and chronic health care needs. Low-income Medicare beneficiaries, who make up 44 percent of all Medicare beneficiaries, would be provided with prescription drug coverage with minimal out-of-pocket costs. In Pennsylvania, this benefit would be further enhanced by increasing the prescription discount for the Elderly (PACE) program which will work in coordination with Medicare to provide increased cost savings for low-income beneficiaries.

For medicaid services, Medicare beneficiaries will have the freedom to remain in traditional fee-for-service Medicare, or enroll in a Health Maintenance Organization (HMO) or a Preferred Provider Organization (PPO), also called Medicare Advantage. These programs offer beneficiaries a choice of health care providers, while also coordinating health care effectively, especially for those with multiple chronic conditions. Medicare Advantage health plans would be required to offer at least the standard drug benefit, available through traditional fee-for-service Medicare.

We already know that there are many criticisms directed to this bill at various levels. Many would like to see the prescription drug program cover all of the costs without deductibles and without co-pays. There has been allocated in our budget plan $400 billion for prescription drug coverage. That is, obviously, a very substantial sum of money. There are a variety of formulas which could be worked out to utilize this funding. The current plan, depending upon levels of income has several levels of coverage from a deductible to almost full coverage under a "catastrophic" illness. One area of concern is the so-called "donut hole" which requires a recipient to pay the entire cost of rug coverage.

As I have reviewed these projections and analyses, it is hard to say where the line ought to be drawn. It is a value judgement as to what deductibles and what the co-pays ought to be and for whom. Though I am seriously troubled by the whole concept, by the way this is calculated to encourage people to take the medical care they really need, and be affordable for those with lower levels of income. Then, when the costs move into the "catastrophic" illness range, the plan will pay for nearly all of the medical costs.

I am pleased that this bill contains a number of improvements for the providers of health care to Medicare beneficiaries. Physicians who are scheduled to receive cuts in 2004 and 2005 will receive a 1.5 percent increase over that time. Moreover, rural health care providers will receive much needed increases in Medicare reimbursement through increases to disproportionate share hospitals and standardized overall Medicare labor and capital wage index.

I am pleased that the Senate, in conference have worked in coordination with Medicare to provide increased cost savings for low-income beneficiaries.

What are some of the outstanding issues? The conference committee has worked tirelessly to get some of these issues worked out. There has been legislation that was passed on the floor of both houses which would have been passed. What are some of the outstanding issues? The conference committee has worked tirelessly to get some of these issues worked out. There has been legislation that was passed on the floor of both houses which would have been passed.

Perhaps some of the outstanding items in this bill that are causing problems? We have over here 15 holds on this bill if it ever came to me. Regardless of the Federal Communications Commission, the House and the Senate have agreed. We had two votes in both bodies, overwhelming votes that determined what would happen. But the White House is not happy with that. The White House is not happy with that. We didn't want to change it in the normal process, by having hearings, et cetera; they want to do it in the conference—even

OMNIBUS APPROPRIATIONS

Mr. REID. Mr. President, people have to understand the process here. We are being criticized for not agreeing to this omnibus bill.

I first of all want the RECORD to be spread with the fact that the Chairman of the Appropriations Committee, Senator STEVENS, has worked tirelessly to get this done. He has worked, not a matter of hours or days but weeks. I have spoken to him on this legislation at least 50 times. So my remarks are not in any way to criticize the distinguished President pro tempore of the Senate.

Here it is, November 25, and there have been no final papers filed. What does that mean? There is no final draft of this bill. The House, in conference, has worked tirelessly to get this done. He has worked, not a matter of hours or days but weeks. I have spoken to him on this legislation at least 50 times. So my remarks are not in any way to criticize the legislative branch of Government, as to what is happening.

What do I mean by that? The Congress has agreed on these appropriations bills. The Congress, the House and the Senate, in conference have agreed on these bills. What has been the problem is the interference—and I say that word purposely—by the executive branch of Government.

What are some of the outstanding issues in this bill that are causing problems? We have over here 15 holds on this bill if it ever came to me. Regardless of the Federal Communications Commission, the House and the Senate have agreed. We had two votes in both bodies, overwhelming votes that determined what would happen.
Some people badly want to pass this omnibus bill, and the reason is quite clear. My friends have come to me and indicated that they agreed to do this in the Energy bill, or in this bill we just passed, because they were told they would get things in the omnibus. I understand the process. I have no qualms about arrangements being made. I believe legislation is the art of compromise. That is how we work with different legislation. There is nothing wrong with that. It is not illegal or immoral. We have to understand that it will be a difficult time. I favor the omnibus. I want to get it done. I have worked very hard on the omnibus. The Senator from New Mexico and added money in our energy and water bill. There was no problem at all. We have worked with Senator BYRD and Senator STEVENS to make sure we were part of the deal. We didn't want to interfere with getting a bill. Were told there were certain things that needed to come out of our bill and which could only come from our part of the omnibus. We agreed to do that.

But I repeat: If we only had appropriations in this bill, this thing would whip out of here in a second because the chairman and the ranking members of the appropriations committees are Members of the Senate who are appreciated and respected. They know we wouldn't jam things into those bills. I speak for all of the other 12 appropriations subcommittees on the Democratic side.

But we don't have that situation. We have a situation where the two legislative bodies agreed to overwhelmingly. But the White House won't leave them alone. That is why the House hasn't given us a bill because the White House won't leave them alone. They keep wanting other things stuffed in it.

When we come back in January, I hope this is the first bill we take up. I hope the second bill we take up is the highway bill. I hope we get to this bill. It is so important to do something for the months of December and January. It would be better for the American people, and it would be better for my State. But we can't agree to this because we have so many problems dealing with FCC and outsourcing. We swallow hard and take the across-the-board cuts that Senator STEVENS said we have to do. That is fine. There are issues such as dealing with guns, abortion, and overtime. People don't have to come and tell us what is in this bill. We know what is in it. We know how important the bill is. Go down 16 blocks from here and tell them to leave us alone and let us go back to the constitutional basis of this country and have a Congress that does what it is supposed to do. If the President doesn't like it, let them veto the bill. But they have no right, in my opinion, to start stuffing things in the bill that the House has overridden—overtime, FCC, outsourcing, for example.

I want this bill to pass. We want the omnibus bill to pass. But we are not going to under the constraints we have.
Energy Regulatory Commission determines singularly and solely, the question will be: How can they do that? My friend, Senator CRAIG from Idaho, knows how they can do that. That is their authority without an Energy bill. We have to take into account the differences in our energy system. That is gone. Between now and the time we get a chance to take another look at this bill, perhaps we will have a few of those mandates. What will take place? The people will ask: Why did that happen? I will say: Well, there was nothing we could do about it. The Senate chose not to pass the bill.

I acknowledge that the Senate worked its will at least temporarily in an interim decision, but I am hopeful that in the next couple of months as we watch things get worse in the energy field we will find a way to come back to this bill and pass it substantially as it is. Adjustment has to be made, that we will find ways to do that.

It isn't going to be easy. But neither has it ever been easy to pass an energy policy for the country. We have looked for it, looking at it, staring at it, watching it evolve and doing nothing for many years. We passed a bill about 10 or 12 years ago. But it wasn't like this bill. It wasn't a dramatic change in the policy of our land in terms of energy production and energy efficiency and energy alternatives. Those are temporary—while the winter season hits. Those are out there with no action. They have a big NA after them—no action—or a big nothing done by Congress after each of those episodes that could occur and that will embarrass us because we didn't do our job.

I yield the floor to the distinguished Senator, Mr. CRAIG.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Idaho.

Mr. CRAIG. I thank my colleague, the senior Senator from New Mexico, for yielding.

Let me first and foremost thank him for the phenomenal time and effort he has put into a national energy policy. We missed getting closure by just two votes. Again, a majority of the Senate supports your work. It is full, it is comprehensive, it is revolutionary in driving this country toward having reliable energy once again.

As the average American got up this morning and flipped the light switch, the lights came on. They expect that to happen every day. What they do not understand is that there is now a risk in our country that might not happen. Why? Because over the last decade we have not allowed the energy sector to reinvest, to reconnect, to change the way it did business in the past. Government regulation, in almost every instance, stood in the way and created a superstition and sometimes total obstruction in the ability of a company to invest back into the energy sector.

During the decade of the 1990s, if you wanted to generate electricity, how did you do it? You used natural gas because the Clean Air Act said you could do it no other way. So we did. But on the other side, we were not producing more natural gas so we used up the surplus capacity, and a couple of months ago gas spiked—at $5 to $6 per million British thermal units. The question is: What happened? The chemical companies shut down and sent their work overseas. Of course, those electrical plants that were built in the decade of the 1990s, that were generating electricity, turned out they could not afford in the marketplace to be able to generate electricity. The bill we have in the Senate today, that we have been denied passage of, would go a long way toward remedying that problem.

If the American consumer believes you pass a bill tomorrow and the light switch is reliable, they better remember its reliability is based on a decade of investment, that it does not happen just overnight. What the Senator from New Mexico has driven is that investment forward for decades to come to create reliability.

The other morning I woke up to the announcement that the President of the nation of Georgia had just resigned. What mean in it relates to our energy? We want the oil out of the Caspian Sea to flow into the energy markets of this world to drive down overall prices and to create availability. Guess what happened. Compatriots and friends, through pipelines, pipelines flowing across Georgia. They invested heavily in the politics of this President. He resigned. Georgia is almost in revolution. Yet that $2 billion pipeline that is going to start producing about 1.2 million barrels of oil a day into the world market may not produce.

The significance of the resignation of Shevardnadze, the President of Georgia, is quite simple. He, by that action, created some degree of instability in the world. We are going to continue to rely on our supply flowing from unstable areas of the world, then the American consumer can expect broad fluctuations at the fuel pump—$1.50, $2, $2.50. The passage of this legislation would stabilize that kind of action. There is no question. If this Senate thinks we will rely on the nation of Georgia or the Caspian Sea or Saudi Arabia or anywhere else to be a reliable, continual supplier of hydrocarbons into our system to fuel the gas pumps and to fuel our chemical industry, they ought to think twice again.

The passage of this legislation would stabilize that kind of action. The Senate Energy Committee has fought long and hard about this for the last decade. In the last 5 years we have worked hard, in the last 2 years we have kept the lights burning all night to try to craft a bill.

The Senate from New Mexico got that job done. We missed by just two votes in the Senate. It is the President's program. He thinks like we think, if we do not make a major move in the direction of beginning to supply energy to the country once again, the availability of jobs, our cost of living, our lifestyles, our standards, all that we hold dear as Americans will have to change because so much of what we do today is based on a relatively low cost, reliable supply of energy to all sectors, all segments of our economy.

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The Senate Energy Committee has fought long and hard about this for the last decade. In the last 5 years we have worked hard, in the last 2 years we have kept the lights burning all night to try to craft a bill.

The Senate from New Mexico got that job done. We missed by just two votes in the Senate. It is the President's program. He thinks like we think, if we do not make a major move in the direction of beginning to supply energy to the country once again, the availability of jobs, our cost of living, our lifestyles, our standards, all that we hold dear as Americans will have to change because so much of what we do today is based on a relatively low cost, reliable supply of energy to all sectors, all segments of our economy.

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very much for his comments and his help on the bill thus far.

He made a great point about the future in terms of investment and the infrastructure. This bill would have encouraged that. That is just one item.

There is an ancient piece of legislation called PUCHA, and it would have been repealed. People have been saying it should have been repealed for decades. It makes it hard to get the kind of investment in this industry that most industries can get. We finally repealed it this year. It was stuck in the mud of an ancient bill. We are scared to let money get invested in utilities and utility investment in business.

Everywhere you looked there were things to be fixed. That is why it is a big bill.

There is an issue, Senator, regarding the MTBE, the substance approved by the United States Government as an oxidizer for gasoline. There is no question Senators brought issues with reference to it to the attention of the Senate. We have to take a look at that with the House because the Senate has many Members who are worried about that issue. We know we get no bill or we take that in conference.

I believe the House will look at that in January because when this bill dies, there is no protection for the producers of MTBE. When it dies, the hold harmless clause that we put in—and we can sit around a table and with enough time and thought, as well as diminishing their quality of life in their senior years.

We go out on somewhat of a high here. And as it should be, because we have accomplished a lot this year. If you go back to when this session started, and the Senator from Tennessee became the majority leader in the transfer of power, if you will, here in the Senate, the first thing he said we would do was clean up the mess that did not get accomplished last year.

We had no budget last year, which meant we could not really pass any of our appropriations bills. The Government spending was locked into last year’s level, and we did not have a whole lot of new initiatives at the time, when we were looking at a whole new Department of Homeland Security, a war on terror, and a war on the horizon in Iraq.

There was a lot of uncertainty going on here, and we did not have the fiscal discipline in place to be able to get our fiscal house in order here in Washington, DC.

So the first thing we said we would do was we would clean up that mess and pass the spending bills, and fight off repeated attempts, in almost $1 trillion in amendments on the other side, of adding spending to these appropriations bills and then subsequently to the budget that we passed after we passed the appropriations bills from the prior year.

So we passed the appropriations bills from the prior year. On top of that, we put a new budget in place, and we passed a budget. We thought that was important. Many here thought another budget could never pass in the Senate because of the practice of last year and the difficulty in trying to get a budget into the framework of seeing really slow growth compared to what we have seen in the past 7 or 8 years.

That was accomplished. It was tough, and a lot of tough votes. We were able to stand tall and fight back amendments from many on the other side of the aisle. And some on the other side of the aisle joined us. I thank those Members who have stood up, just as many did today, to what appears to be, from the Democratic leadership point of view, obstructionist tactics are used here in the Senate on almost—I almost want to go back and maybe reconsider the term “almost”—I will say almost everything, but it is almost everything to the point where you think it is almost everything. But some cooperation from many Democrats, and certainly enough to get some of the more important bills that we considered here done. I thank those who participated in that bipartisan cooperation.

We were able to accomplish a budget. We were able to accomplish, as a result of the budget, a tax plan, again, done in a bipartisan way, here on the floor reducing capital gains tax, but also reducing the double taxation of dividends, it has caused a $2 trillion increase—a $2 trillion increase—in valuations of equities in this country. That is an enormous turnaround.

I was watching the news this morning, and someone was talking about their retirement savings having been eroded, and the impact on seniors, and the impact on those who are approaching those senior years and their ability to have a stable retirement. When you add $2 trillion back to the value of those equities, you do a lot to stabilize people’s retirement and give them the peace of mind they are going to be able to get through their retirement years with a fair—hopefully, good—standard of living.

That was as a result of the budget, the leadership here in the Senate and of the Senate Republicans, and ultimately the tax reduction that was passed as a result of the great leadership of our President.

We were able to provide resources for, obviously, the war on terrorism and homeland security, which is a new appropriation. The Senator from Mississippi, Mr. Cochran, who chairs that subcommittee, was just in the Chamber. We passed that bill in a timely
fashion so those increased resources would go out to help fight the war on terrorism here at home, as well as, obvioulsy, provide resources we need for our men and women in uniform in Afghanistan and in Iraq to fight the battle of terrorism on the front line over in the Middle East.

Another historic accomplishment of this Congress, which is yet to be fully realized is the AIDS bill. We were able to pass a bill that authorized money for AIDS. And now we are talking about fulfilling that promise to come up with the money that was in the authorization to fund AIDS in Africa and several countries in the Caribbean that are faced with outrageous, just abolutely incredible suffering and the destruction of the family unit in those countries, with infection rates of double digits in the country, with literally millions of people infected with this disease, and transmitting it, in some cases, to their children.

We need to do something about prevention, and we need to do something about the transmission of AIDS. We also need to do something about treatment. With the appropriations bill that is now going to be filed in the House in about 60 minutes, we have the President's AIDS proposal fully funded: $2 billion in bilateral aid and $400 million to meet our obligations under the Global Fund—for every $1 we put up, $2 of international funds. And I know we will meet that obligation as of this time.

We will have in place the commitment we made to those less fortunate in Africa and in the Caribbean for the needed help on prevention, transmission, and treatment of those who are suffering with AIDS or hopefully will not get AIDS. That is a huge accomplishment for this Senate. Candidly, it is probably one of most important things we can do for humanitarian relief back in the early 80s, there really isn't a humanitarian crisis, a health crisis that will match what is going on today in Africa and sub-Saharan Africa. I am glad to be part of a Senate which on a bipartisan fashion stood up and made a huge financial commitment. It is not an easy thing to do in a country that feels a lot of suffering here at home and wants more resources directed here at home, to be able to set that money aside for those really dying by the thousands each day from this pandemic that has struck sub-Saharan Africa. The commitment of the President, followed up by the commitment here in the Congress, is something of which we should all be very proud.

We passed the partial-birth abortion act. We are stopping this horrendous procedure from occurring anymore. There are those who are taking that bill to court. We expected that, but the Senate, with the President's leadership, has been able to pass this bill that is overwhelmingly supported by the American public and is a real step in the right direction. We haven't had very many steps in the right direction with respect to this culture in America. This is a step in the right direction to put some humanity back in the treatment of those innocent children in the womb.

We repealed some antismap legislation. As someone who has young kids and is bombarded daily with e-mails of not the most wholesome nature, pop-up ads and the like, this is a tool we can give to authorities to try to limit the amount of information and the中國 falling into the homes of families. It is a very serious problem to have this wonderful tool of the Internet be infected by this disease of pornography and violence and other things that are marketed to our children through e-mails and through other types of advertising. The Senate has begun the slow process. It will be a slow process, as maybe it should be, because we have to balance the rights of free speech. Freedom is something that needs to be used properly. Women who voted the founding documents of this country believed freedom to be an absolute. With rights come responsibilities. That freedom, more properly defined as liberty, is a balancing of those rights and responsibilities to do that in the case of the Internet, which I find to be a wonderful tool but at the same time a very dangerous vehicle for information to flow to people who may not handle it well and may be scarred or changed for life as a result of some of this activity.

As I went down that list, I think you can see it is a list of great accomplishments. Yet at the same time there is so much left to be done and so much that was blocked by the other side. So when you hear, as you will hear, the term "obstructionism" about things that could have been—the Senator from Idaho is here and talked eloquently about the Energy bill—could have been done of that, keen, but for the procedural tactics of raising the requirement to pass this bill by 60 votes instead of an up-or-down vote of 51. That is their right to do. But as the Senator from Idaho and the Senator from New Mexico said earlier, it is going to have severe consequences for the long-term future of our economy.

Energy is not something you turn off and on like we do the stove or the thermostat. It is something that takes a long time. It takes investment, a lot of people, a lot of steps in the process, as it should, even environmental steps in the process to be able to extract the resources we need. We are not moving in that direction. We are not moving toward energy independence. For a country that is as much dependent upon cheap energy as this country and this economy are, to continue to turn a blind eye towards the needs of our economy and the impact on the quality of life here is a very dangerous thing.

Again, I suggest while I understand the rights of the minority, we need to find a way to get the 60 votes necessary to get this piece of legislation moved forward for our children and for our future economy.

We have the omnibus appropriations bill. One of the victories was the AIDS authorization bill where we were able to pass. And now one of the reasons why I am candidly, I think the most important thing is funding that program. There are a whole host of things: An increase in VA health care, which is in the omnibus appropriations bill, an increase in NIH funding is in the Labor-HHS.

There are so many important priorities in this bill. Yet we have been told we are just not going to be able to get to it until January. I know the leader later is going to ask unanimous consent to bring up this bill when the House passes it. The House will pass it first, as it does customarily with appropriations bills. They are coming back December 8. We hope to reconvene the Senate shortly thereafter to bring up this legislation so we can pass it. Why? Well, because if we don't pass it, those increases in VA health care funding, those increases in AIDS funding, those increases in NIH, and a whole host of other things in this bill simply will not go into effect until at the earliest the end of February.

If you are for those increases and you are for the realignment of budget priorities in these appropriations bills, we should take a little time out of our break, come back here for a day. We have had seven hours to look at this. The bill will be filed in an hour and 10 minutes. Take a look at it. If you have problems with it, you certainly have the opportunity to voice that opposition and vote no. But that is going to be the up-or-down vote we are going to have. We should take the opportunity to come back and do it in a timely fashion. We have been told by the other side they will object to us coming back. So this bill will sit there for roughly 2 months with a variety of different things happening. People in this Chamber agree with and that the American public has asked us for, including increased funding for education, DC choice, allowing students in the District of Columbia to have the opportunity to go to the schools of their choosing. All of those things will be in this bill, and we will not be able to have a vote because of the power—it is a wonderful thing when you are the minority—of indicule Senators to stop things from happening. That is another obstruction.

We spent 3 days here on the floor of the Senate 10 days ago, 12 days ago, debating the issue of judges. Here we are again. We have six qualified terrific nominees—not turkeys, not lemons, not neanderthals. Those were words used here in the Senate to refer to distinguished people who are judges in their own right today, justices of supreme courts today, reelected by overwhelming numbers in some States, gone through the ABA approval process and were considered to be either qualified or unanimously well
qualified. These folks were referred to by the people here in the Senate as neanderthals, as lemons, and in some respects as turkeys.  

I can understand where there may be a difference as to the qualifications of these judges. They have every right to suggest their deficiencies. But to use that kind of terminology to describe people of distinguished legal records and careers calls into question the propriety of Senators’ remarks and whether they don’t in fact meet the standard of what is referred to as rule XIX. Rule XIX refers to a Senator. I don’t think we should be able to refer to nominees, who put themselves out to serve the public, in a way that is callous and cavalier and disrespectful as that.  

So I suggest that there is another area of obstructionism—changing the rules. For 214 years, the rule was that every man who walked onto the Senate floor got an up-or-down vote. Since we put the filibuster in place in the early 1930s, 2,370 nominees have come to the floor of the Senate, and zero were filibustered. None. None were blocked.  

Now, there are several on that side of the aisle who have taken to putting a chart up that shows 168 to 6, as if 6 is somehow a good number out of 174, whereas zero out of 2,370 was the norm. I think the Senator from Georgia, SAXBY Chambliss, suggested the right answer to that. They said they were doing a great job in approving them 95 percent of the time. The Senator from Georgia suggested that if he went home to his wife and said he was faithful to her 95 percent of the time, that would not be adequate in her eyes. It is not adequate, when the Constitution requires an up-or-down vote, for those people who believe in the sanctity of that Constitution to say we are upholding it 95 percent of the time. But that is what is happening on judicial nominations, and it is another case of obstruction.  

Mr. SESSIONS. Will the Senator yield?  

Mr. SANTORUM. I am happy to yield for a question.  

Mr. SESSIONS. Mr. President, during the debate on the judges, the opponents, the Democrats who were obstructing an up-or-down vote, asserted that these judges were “extremist,” and they repeated that. They used that word repeatedly. They really cited no specific reason where extreme. I ask the Senator from Pennsylvania, who has been so eloquent on this issue, how he can explain, in light of the groups we now know are opposing these nominees, who are extreme? I think we can demonstrate, without any doubt, those folks as J. Arch Brown of California, who got 76 percent of the vote, and Judge Priscilla Owen, who got 84 percent of the vote are not extreme. Is the Senator from Pennsylvania aware that among the groups blocking these judges, and actually appearing to pull the strings of Members of the Senate, they have views on their Web sites?  

For example, they say there should be no pornography laws, even child pornography. They oppose any change in abortion whatsoever, even partial-birth abortion, which 84 percent of the American people believe ought to be dealt with. Some of them believe in legalizing the drug trade. I ask the Senator, who is extreme here?  

Mr. SANTORUM. Obviously, by definition, a Republican who gets 76 percent of the vote in a State such as California, not be extreme. Only, if they are extreme in the State of California, the only chance I would think in my mind that someone could get that high a vote if they were extremely liberal. California, let’s admit, is a fairly liberal State. It is a very heavily Democratic State. So for a Republican “extremist” in California to get 76 percent of the vote—I don’t think Republican extremists can get 76 percent of the vote in a State such as California. I argue that, by definition, that doesn’t exist.  

The fact is, what the Senator said is true. When you have these organizations who, in these memoirs that have leaked out, are sort of giving marching orders to Members of the Senate Judiciary Committee to vote against certain nominees, the Democrats who were obstructionist, the Democrats who were obstructing, the Democrats who were filibustering, the Democrats who were opposed—  

Mr. SESSIONS. If the Senator will yield, does he think it is possible they saw Miguel Estrada as a threat because he is a brilliant mainstream lawyer, a Hispanic, who would make a highly qualified appointment to the Supreme Court?  

Mr. SANTORUM. That is exactly what they said. He is all of the things I talked about—highly qualified, very bright, and a great story of integrity and overcoming obstacles. It is a compelling story. As a result of his ethnicity, he would be a threat because he might be elevated to a higher court someday.  

This is the kind of activity I think really does debase this institution. We should not be involved in blocking people who, 10 years ago, would have probably not even required a vote on the floor of the Senate to be confirmed. We have gotten to the point where the special interests—you hear so much on the Medicare bill about the special interests that were involved in the Medicare bill. I cannot think of any area where special interests have had more impact that has been contrary to the interests of ordinary citizens in America than asbestos and mesothelioma. It is a disease that comes with exposure to asbestos, and a respiratory disease. These people are sick and they are dying and they are not able to get a proper jury award. In fact, they have gotten their money was eaten up by the trial lawyers. It is a horrible situation.  

We need to get the people who are sick the compensation for their disease and the treatment for their disease, and those who are not sick, they need to be set aside. If they get sick, they will be compensated, but we are all exposed to lots of dangerous things in our lives. That doesn’t mean you can sue for them. Only if it causes you harm should you be able to sue. There is another area again being blocked.  

Class action: I see the Senator from Delaware, Mr. CARPER, here, who is one
of the leaders in trying to get a bipartisian bill together. I give him a lot of credit. It is another attempt like we did with Medicare, on which he was involved, trying to bring the sides together. So far, we have not been able to get to that 60-30 threshold. We need to get that bill done to try to help our economy move forward.

Medical liability, frivolous lawsuits: Again, this is plaguing the system when it comes to health care, driving up our cost of pharmaceuticals and of health care. Massachusetts and other states are moving to Delaware, moving to other places where the laws are more beneficial, where the legislatures have put caps in place to try to limit the amount of cases where runaway jury awards end up bankrupting the health care system.

That is another area where we have been blocked over and over.

Another area we have been blocked, something on which I have been working, is the welfare to work program. We are trying to pass a charitable giving bill, a bill in which I have been involved. We are talking about giving $10 billion over the next 2 years in incentives for people to give more money to charities at a time when we are still sitting completely out of the recession that hit us in 2001 and 2002.

Again, we have not been able to get the cooperation necessary to get a bipartisan bill to help social service providers, to help the nonprofit groups meet the humanitarian needs of people.

I can go on. The bioshield bill is being blocked. There are a lot of other issues on which we are being obstructed. I wanted to balance the accomplishments we have been able to achieve in the Senate and this Congress, and they have been substantial. We have a lot to go back home and talk about as to what we have been able to work out in a bipartisan way in the Senate. There is still a lot of work to be done that the House has accomplished and that is sitting in the Senate not being done. It is very important to our economy and very important to the future of our country.

One further comment. The Senator from Idaho has been very patient. I don’t know if the Senator from Idaho or the leader is going to propose momentarily a unanimous consent request to vote on a resolution. This is a resolution that has to do with marriage.

As my colleagues know, the Massachusetts Supreme Court handed down a 4-to-3 decision that said is now a constitutional right in the State of Massachusetts to same-sex marriage, which is a remarkable turn of events, within a few months of a case in the U.S. Supreme Court, the Lawrence v. Texas case, which took an act—which for 214 years in many States has been seen as an illegal act and in the vast majority of the American public’s mind virtually a criminal act—into the judgment of sodomy and turned that act into a constitutional right. That is what the Court did. It turned this act that is considered by many to be illegal in States and, by most Americans, immoral with no tradition of acceptance of the history of the United States since our Constitution was written. They have taken that act and turned that into a constitutionally protected act.

Many of us said there would be consequences for doing so. When we said that, we thought it would be years down the line. It has not taken years; it has taken a matter of a few months for the Supreme Court to cite Lawrence v. Texas and say now that this is a constitutionally protected right to engage in this behavior, how can we discriminate two people who engage in this behavior under the equal protection clause, to protect everybody equally, how can we discriminate against these people who are practicing a constitutional right under the rights and privileges of marriage? It would be unequal treatment if we didn’t treat constitutionally protected actions the same way we treat traditional marriage.

I suggested before Lawrence v. Texas was decided that if it was decided in the way it was, we would be heading down a slippery slope. I was wrong. We are heading off a cliff. This is not a slippery slope; it is a cliff.

If we do not respond to this decision, other States will be forced to accept the dictates of the Massachusetts Supreme Court—the court of appeals in this case. A Massachusetts, get married, come back to Pennsylvania, Idaho, Alabama, or Delaware, and say: I demand under the full faith and credit clause of the Constitution that you recognize this marriage?

What is the State to do, because the Constitution demands it. So we are in a situation where de facto, we could have that policy of Massachusetts by an unelected group of judges, by a vote of 4 to 3 being forced on the entire country unless we do something in the future.

The Defense of Marriage Act goes back to a constitutional amendment which defines marriage and describes it in the Constitution.

I happen to think we put a lot in the Constitution that are building blocks of society, certain freedoms, certain truths that we establish in the Constitution. I cannot imagine anything more fundamentally important to the stability of our society than having stable families in which to raise stable children, and anything that undermines that, to me, undermines the core of who we are as Americans.

We will ask for a vote on the resolution. I ask unanimous consent to print the resolution in the RECORD.

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

RESOLUTION

Whereas, marriage is a fundamental social institution that has been tested and reaffirmed over thousands of years; and whereas, families consisting of the legal union of one man and one woman for the purpose of bearing and raising children remains the basic unit of society; and whereas, families consisting of the legal union of one man and one woman for the purpose of bearing and raising children remains the basic unit of society; and whereas, the power to regulate marriage lies in the legislature and not in the judiciary and the Constitution of the Commonwealth of Massachusetts specifically states that the judiciary “shall never exercise the legislative and executive powers, or either of them: to the end it may be a government of laws and not of men;” and whereas, in 1996, Congress overwhelmingly passed, and President Bill Clinton signed, the Defense of Marriage Act under which Congress exercised its rights under the Effects Clause of Article IV Section 1 of the United States Constitution: Now, therefore, be it.

Resolved. That it is the Sense of the Senate:

(1) That marriage in the United States shall consist only of the union of one man and one woman; and that same-sex marriage is not a right, fundamental or otherwise, recognized in this country, and that neither the United States Constitution nor any Federal law shall be construed to require that marital status or legal incidents thereof be conferred upon unmarried couples or groups; and

(2) The Defense of Marriage Act is a proper and constitutional exercise of Congress’s powers under the Effects Clause of Article IV Section 1 and that the power, authority, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage under the laws of such State, territory, possession, or tribe, or a right or claim arising from such relationship.

Mr. SANTORUM. Mr. President, I won’t read the whereases, but I will read the resolved clause:

. . . it is the sense of the Senate . . .

The marriage in the United States shall consist only of the union of one man and one woman; and that same-sex marriage is not a right, fundamental or otherwise, recognized in this country; and that neither the United States Constitution nor any federal law shall be construed to require that marital status or legal incidents thereof be conferred upon unmarried couples or groups. . . .

Second, because we already passed a statute in the Congress that accomplishes pretty much what I just read—it was the Defense of Marriage Act, supported by 90-some Senators and signed by President Clinton. The resolution says:

(2) The Defense of Marriage Act is a proper and constitutional exercise of Congress’s powers under the Effects Clause of Article IV Section 1 and that no State, territory, or possession of the United States, or Indian tribe, shall be required to give effect to any public act, record, or judicial proceeding of any other State, territory, possession, or tribe respecting a relationship between persons of the same sex that is treated as a marriage
under the laws of such state, territory, possession, or tribe, or a right or claim arising from such relationship.

In other words, we are going to go back on record in the sense of the Senate—and I hope to be more full debate—that no State should be forced to adopt the marriage laws of another State such as Massachusetts. It should be, as this constitutional amendment which I will advocate will be, the decision. If the people decide, by constitutional amendment or otherwise, we are going to change what marriage is, I will fight against that, but I will respect that decision because that is the way we decide issues in America.

What I am concerned about is that the Commonwealth of Massachusetts and their courts are going to create a new constitutional right; they are going to change the Constitution without going through the Senate. To ratify this amendment, the Constitution demands for change, and that is a constitutional amendment.

So we will take up that mantle. We will do it the right way. We are only going to change the Constitution in the way the Framers intended, not the way it has been practiced recently with the courts taking on that mantle themselves and changing it without the benefit of having any public input on the process.

We will offer an amendment to get the constitutional majority that is necessary to pass it, which is two-thirds of the Members of this body and of the House, and then three-quarters of the States, to ratify this amendment.

I believe this is a fundamentally important issue, one I guarantee we will be discussing at length next year, and I hope the American public will begin to engage in this debate, not as an attempt to stop anybody from doing anything but as an attempt to solidify what is the basic building block of our society.

This is not being done as against anybody. It is being done for something that we know has intrinsic value and is a stabilizing and important element of any successful society, and that is healthy stable families in which children can be raised in that environment, so we can raise the leaders of the next generation.

This is an important debate. I hope we will not be obstructed. I hope we will have an opportunity to have a full and fair debate on this issue, that the public will have an opportunity to see the Senate at its finest on an issue that will have an opportunity to have a full vote of the Members of this body and of the House, and then three-quarters of the States, to ratify this amendment.

The Senator from Pennsylvania. I appreciate his leadership and the accomplishments he has helped guide us through this past year in the first session of the 108th Congress. They are many, and there are yet many to accomplish.

Yes, we have had substantial obstructionism on the part of our colleagues on the other side. Why? It is politics to them in many instances. They see those as defining lines between their party and ours. I do not think objecting to an obstetrician that I think it is an act that is unconstitutional in its character. I think it is now broaching on a constitutional crisis in our country to suggest that it takes a supermajority when any one individual decides to confirm or at least bring to the floor the vote of a judge.

Mr. CRAIG. Mr. President, the Senator from Pennsylvania was talking about marriage. I come to the floor to talk about families for just a moment, and I will be brief. The Senator from Delaware has been waiting patiently also.

This is November. This is the month of Thanksgiving. Hopefully, most of us are a few days away from the opportunity and the privilege to go home and sit down with our families and have a Thanksgiving dinner of some proportion; most importantly, to be with our families. That is what this country is all about and certainly that is what Thanksgiving is all about.

November is, in my opinion, another special month. For the last month, I have been wearing on my lapel—and I do not have it on today—a little gold word that says “adopt.” November is National Adoption Month. I am a proud adoptive father, and I am going home to be with them and our grandchildren for Thanksgiving.

We have three children and seven grandchildren now. My wife Suzanne and I are tremendously proud of that.

I became a father through adoption. Well, this month of November is National Adoption Month. It is a time to celebrate special families, the families of more than 2 million children in America who are adopted, according to the U.S. Census Bureau. In fact, it is estimated that more than half of the population of America has been personally touched by adoption, whether they are adopted or have adopted or have a close friend or family member who is adopted or has adopted. In other words, many, many of us have adopted children and that is a phenomenally viable option when it comes to forming a family.

Just this past week, we added to those numbers. November 22, last Tuesday, was the fourth annual National Adoption Day. On that day, the courthouses of the nation, where volunteers helped, over 3,000 children found permanent, loving homes and new parents through the adoption system of our country. Think what this Thanksgiving is going to be to those 3,000 children who will now sit down at a table to have Thanksgiving dinner with new parents who are offering them permanence and stability in their life.

While this is wonderful news, there are still far too many children waiting for permanent, safe, and loving homes. Our foster care system provides temporary care for more than 800,000 oftentimes abused and neglected children. Among those children, 120,000 of them are waiting for adoption. For anybody who reads this Record or might be watching at the moment, listen up. There are 126,000 kids in America who would love to have one of you as their parent, their mother or their father, who would love to have you offer them a permanent and loving home.

Sadly, every year 25,000 children age out of foster care. What does that mean? They become 18 years of age. They leave the foster care system, never having known a permanent, caring, loving home. Foster parents are caring, but it is not permanent and the child knows that. So they graduate out. They are out on the street at age 18. They are out there on their own at age 18.

I would not have wanted to be on my own at age 18. Now I might have thought I could have been. But how many times did I go home to mom and dad to ask for their advice, their help, or their counsel? Well, innumerable times.

So I hope Americans will consider opening their homes and their hearts to children through adoption. As an adopted child, I can say this experience has changed my life, and this Thanksgiving I will be reminded of all of that. I think what this Thanksgiving is all about. I want to encourage all Americans to make sure that this Thanksgiving we simply cannot let children have to wait. They are our future, and we are going to do everything in our power to make sure that you, too, can become an adoptive parent.

I want to thank the Senator from Idaho for his diligence in listening to me go on for a while, as well as the Senator from Delaware, although he had to indulge less than the Senator from Idaho.

I yield the floor.

THE PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I was pleased to sit and wait and listen to
Resolved, That the resolution from the House of Representatives (H. Con. Res. 339) entitled ‘‘Concurrent resolution providing for the sine die adjournment of the first session of the One Hundred Eighth Congress.’’ do pass with the following amendment: Page 1, line 2, strike out all after ‘‘concurring’’ over to and including line 3 on page 3 and insert: That when the House adjourns on any legislative day from Tuesday, November 25, 2003, through the remainder of the first session of the One Hundred Eighth Congress, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die, or until such day and time as may be specified by its Majority Leader or his designee in the motion to adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; that when the Senate recesses or adjourns at the close of business on any day from Monday, November 24, 2003, through the remainder of the first session of the One Hundred Eighth Congress, on a motion offered by its Majority Leader or his designee, it stand adjourned sine die, or until such day and time as may be specified by its Majority Leader or his designee in the motion to adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; that when the Senate recesses or adjourns at the close of business on any day from Monday, November 24, 2003, through the remainder of the first session of the One Hundred Eighth Congress, on a motion offered by its Majority Leader or his designee, it stand adjourned sine die, or until such day and time as may be specified by its Majority Leader or his designee in the motion to adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, before my friend and colleague from Idaho leaves the floor, I want to express my thanks on behalf of those 190,000-plus kids who are looking for a home of their own with loving, adoptive parents. Thank you, and my friend Senator Landrieu, from Louisiana, for the wonderful leadership you have shown. Not just talking the talk but, in the walking of the walk. Happy Thanksgiving to you.

I certainly express that same sentiment to our colleagues here. As we approach Thanksgiving in 2 days, in spite of our problems in this country, we have much for which to be grateful. I very much appreciate the chance to work here with our colleagues, and am grateful for the staffs who help us serve our constituents back home in Delaware and Alabama and Idaho and Rhode Island and other places. We are thankful for the opportunity our constituents have given us this Thanksgiving and every Thanksgiving and throughout the year to serve them.

Mr. CRAIG. I thank my colleague.

MEDICARE DEBATE

Mr. CARPER. I don’t know that Winston Churchill, one of the great leaders of Britain, ever said anything about Thanksgiving or turkeys. He is somebody we like to quote a lot. He used to say there are two things people should not see made: One of them is sausages and the other is laws.

That could be said of the process we have gone through to modernize Medicare and add a prescription drug benefit. It has been a difficult debate and a difficult process.

Churchill also said democracy is the worst form of government except for all the rest. That is also something I would have us keep in mind today as we reflect on this bill.

Mr. President, 38 years ago a Democratic President, President Johnson, signed into law legislation creating Medicare. At the time it was hailed as a milestone. It was hailed as a landmark in providing a benefit to millions of our senior citizens who did not have access to health care, did not have access to hospitals, did not have access to doctors and nursing care. With the signing of that bill by then-President Johnson, the whole world changed for millions of Americans. Today it continues to change for tens of millions more.

Initially, Medicare, when it was fashioned, was designed to provide access to hospitals for people who needed to get hospitalized to get well. They would have that under Medicare if they were old enough. Similarly, if folks were in need of access to a doctor’s care or nurse’s care, they would have it under that legislation he signed 38 years ago.

Now there are a number of things that bill did not provide. It did not provide for home health care. It did not provide for outpatient care. It did not provide for access to prescription medicines or enable senior citizens, those Medicare eligible, to obtain help buying prescription medicine. Over time Medicare has evolved, as we know. Over time we have learned. Today we are a lot smarter. We can keep people out of hospitals and treat them on an outpatient basis. We are far wiser about the things we do, because we are willing to help them keep in mind today as we reflect on this legislation today is an example of not letting the perfect be the enemy of the good.
There are a number of principles I have said for some time we should attempt to adhere to when putting in place a Medicare prescription drug benefit. Foremost among these is that the program should be voluntary. If senior citizens want to participate, they can. If they choose not to participate, then they will not have to.

Second, I suggested that among the principles we adhere to is the prescription drug plan we adopt be one that would provide help where the help is most needed—for folks who do not have any kind of coverage, those whose incomes were very low, and those whose need for prescription drugs is exorbitantly high.

A third principle I have suggested is that middle-income senior citizens should find some help, some benefit from this legislation.

A fourth principle is we should do our very best to stimulate competition and market forces, to use those market forces to help contain the dramatic increase in the cost of prescription medicines.

A fifth principle is there should be no gaps and no caps in coverage. We violated that principle in this legislation. We violated one other principle that I have talked about as well, and that is this prescription drug plan should be consistent with a balanced budget. The unfortunate reality is that a plan with no gaps or caps has become inconsistent with a balanced budget. We find ourselves today as a country in a huge hole, a fiscal hole, because of unwieldy tax cuts, a war on terrorism, a war in Afghanistan, a war in Iraq, and a slumbering economy that is slow to revive. Because of the size of that budget deficit, we are unable to pass the kind of prescription drug program many of us believe in and have talked about, one that has no gaps and one that has no caps.

I have listened with some fascination to the debate here in the Senate and raging across Capitol Hill and across the country, and I have heard my friends on the left say the bill we have just adopted here is the end of Medicare as we know it. They say that it is not just the nose of the camel under the tent, it is the camel under the tent. On the other hand, I have heard folks from the far right, who oppose this legislation includes substantial incentives for employers and States to do just what I have described. For every dollar that a private sector employer provides in qualified prescription drug benefits for their pensioners, I think we ought to consider supplementing and enhance the Medicare benefit in this bill—they will realize, as a result of the incentives in this legislation, an after-tax benefit of 50 to 70 cents on that dollar. That is keeping all those employers and all those State and local governments in the game? No, it is not. But in the absence of that kind of incentive, what has happened? Well, go back in time. In 1988, roughly two-thirds of the large companies in America provided health benefits for their pensioners and provided a prescription drug benefit for their pensioners—roughly two-thirds, 15 years ago.

Today, in 2003, that two-thirds is no longer two-thirds. Today, roughly one-third of the larger employers in this country provide a prescription drug benefit for their pensioners. Without this legislation we are adopting today, we have seen a reduction almost by half of those employers that provided a benefit 15 years ago. They have stopped doing so today. If you run it out over the next 15 years, if this trend continues, by the time 2018 rolls around you may have no private sector employers providing benefit.

That would be a awful thing. We need to do something about it. We need to provide the kind of incentives to employers we have provided in this legislation. We desperately need private sector employers to continue to provide a prescription drug benefit for their pensioners. We desperately need States and local governments to do the same with respect to their pensioners.

There is another source of prescription drug benefits I want to talk about. When I was the Lieutenant Governor of Delaware, I signed into law legislation to create the Prescription Assistance Program in our State. For pensioners...
whose incomes go up to 200 percent of poverty, they are eligible for a benefit each year that is worth about $2,500.

We also have in our State a wonderful program called the Nemours Program, funded by a trust left by a wealthy family a long time ago. They provide help for the very low income seniors who are not covered by the Medicare plan but who are living in poverty. The Nemours Plan also provides a prescription drug plan for senior citizens whose income runs from 0 to 135 percent of poverty. They also provide eyeglasses and dentures.

We have to be smart enough in our little State of Delaware to make sure the dollars being spent for prescription medicines under the Nemours Plan continue to be spent on prescription assistance for Delaware seniors. It does not make much sense to the State and they between 135 percent and 200 percent of poverty. If we are smart in our State, we will take those dollars and redirect them—not necessarily to cover the gaps and make more generous the basic Medicare plan, which will be, at best, modest.

Similarly, the millions of dollars the State of Delaware is spending on the prescription assistance plan that we put in place in 1999 and that we now spend between 135 percent and 200 percent of poverty. If we are smart in our State, we will take those dollars and redirect them—not necessarily to cover the gaps; we will not need to. Some of those people who will be advantaged by virtue of the Medicare plan won’t need the kind of help they get under the Delaware Prescription Assistance Plan. But we should take those dollars now being spent through that program and redirect them to fill the gaps around the basic Medicare plan.

Similarly, the dollars spent by private sector employers and by public sector employers should no longer, starting in 2006, be spent exactly in the same way. But to the extent that we are smart and wise and farsighted, we can redistribute those dollars to build around the basic Medicare plan, to fill the gaps that obviously are there that need to be filled, and be able to provide in the future to benefit in the same way that we can all feel good about and be proud of.

I close by going back to where I started. If we had gathered here this year and had no Medicare Program, and we said let us start from scratch, we would include a prescription drug plan. In 1965, we didn’t have the ability to provide prescription medicines for the sort of things we do today. If we had, a lot of people would have lived a lot longer and healthier and better lives.

A couple of days from now, I will be with my own mother. I look forward to being with her, probably the day after Thanksgiving. She is alive today in part because of the love that surrounds her. She is also alive today. I am convinced, because of prescription medicines to which she has access. She has heart failure and takes medicine for that. She has arthritis. She is able to take the medications that allow her to lead a better life. My mom suffers from Alzheimer’s disease. She and literally hundreds of thousands of Alzheimer’s victims around the country today have access to medicines that are beginning to slow and to relieve the suffering that many of us do not end up living the last years of our lives in a state of dementia. She has a better quality of life today because of prescription medicine. She gets a fair amount of help through the employer that my dad used to work for. They provide a prescription benefit and hopefully will continue to do that. We are thankful for the assistance that she gets. For a lot of people in our country who do not have anything at all, who do not have the kind of modesty of benefit, who are elderly and need that help, a lot of them will get this help as a result of the legislation we have adopted here today.

Is this legislation all we would like it to be? No. Is this the end of the road? No. Is this a decent beginning? It is. It is incumbent upon Congress to make it a beginning, a good beginning, but not the end. I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

IN MEMORY OF JUDGE RAYMOND J. PETTINE

Mr. REED. Mr. President, on Monday, November 17, 2003, Rhode Island, the judicial community and the entire Nation lost a great jurist, a great scholar and a great man. United States District Court Judge Raymond J. Pettine passed away leaving behind a legacy of protecting individual liberties and constitutional rights.

Judge Pettine was born July 6, 1912 on America Street in Federal Hill, one of the original Italian neighborhoods in Providence; a fitting place to be born for someone who would champion the Constitution that distinguishes this country, America, from so many others. His father was a wigmaker in Italy who immigrated to find a better life for his family and to make a better America through his labors and his sacrifice. Judge Pettine was sustained and inspired by the example of these good people, his mother and father. The hard work, the great patriotism, the unwavering decency and integrity, the deep respect for both family and faith, the gracious manners of a true gentleman were learned in that home on America Street.

Early in his life, Judge Pettine became fascinated with the law. As a child of eight, he scrawled a note to the Dean of Harvard Law School and asked him, "What do you have to do to become a lawyer?" The Dean wrote in reply "study hard, be a good boy, always have a dream." His dream led him to Providence College and Boston University Law School. Soon after graduation, he enlisted in the United States Army and served on active duty from 1941 until 1946 rising to the rank of major. He later would be promoted to colonel in the Judge Advocate General Corps as a reservist.

After his discharge from active duty and a brief stint in private practice, Judge Pettine began a thirteen year career as a prosecutor in Rhode Island Attorney General’s office. Like every task he undertook, he brought great passion and determination to his endeavor. He understood that our adversarial system of justice requires that both the prosecution and the defense must bring the full weight of the facts and the law before the jury so that they may have the benefit of principled and forceful advocacy of their decision. He was a touch and uncompromising prosecutor determined to enforce the law. His reputation and his record as a prosecutor earned him appointment as the Federal Attorney for the District of Rhode Island in 1961. His service as Federal Attorney won him the praise of U.S. Attorney General Robert F. Kennedy as one of the nation’s top three federal prosecutors. And, this prosecutorial experience would help make him a superb judge appointed with the Constitution and the Bill of Rights. He recognized that our democracy, in his words, "prizes itself in having a Bill of Rights designed to protect us against despotic abuse of authority by the government."

There was no more courageous, forceful or principled defender of the Constitution than Raymond Pettine. In 30 years on the federal bench, and as chief judge from 1971 to 1982, Judge Pettine was highly regarded as an individual who stood up for the rights enshrined in the Constitution. He said the Constitution should be interpreted in ways that "give meaning to the heart and soul of what it’s all about: a kinder, more understanding Constitution that recognizes the disenfranchised, the poor and under-privileged."

In his rulings, he repeatedly upheld the Bill of Rights’ freedom of speech, of religion and of privacy. Judge Pettine stood by the Constitution and showed courage even in the face of controversy when he, a practicing Catholic, ruled that municipalities could not erect Christmas nativity scenes on public
land. As he said, “I firmly believe with great conviction that there has to be a separation between church and state—that one of the saving graces of this country is the fact that we are tolerant of all religions, and even of those who have no religion. And, if we start breaking that, then we are going to be in an awful lot of trouble.”

His wise defense of the Constitution and its protections for individual conscience brought him vicious criticism and personal scorn. But, no amount of criticism or scorn could deter him from his obligation to extend the protections of the Constitution to the poor as well as the powerful, to the maligned as well as the popular. Judge Pettine embraced his judicial duties with remarkable dedication. He became a scholar of the law and, in order to insulate himself from even the appearance of partiality, he led a life focused on his family and the lonely rigors of his judicial responsibilities. Nevertheless, he was a figure in Rhode Island. He was a man of great culture and erudition who exuded style and panache.

Judge Raymond J. Pettine has left a remarkable legacy. His wisdom, his integrity and his selfless devotion to the Constitution made him a judge of extraordinary achievement. His love of family and his compassionate regard for all he met made him a man of singular worth. I admire him greatly. He has given us the example and the confidence. And, his presence will continue to be felt whenever we stand up in defense of the Constitution and in defense of those who are “disenfranchised, the poor and underprivileged.”

My deepest condolences go out to his family and friends, especially his daughter, Lee Gillespie, his grand-daughter, Lauren Gillespie and his son-in-law, Thomas Gillespie.

Mr. BYRD. Mr. President, I have the floor; do I not?

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I note on the floor the distinguished senior Senator from the State of Montana. I am sure he has a desire to speak and fill other appointments. I ask the Senator, without losing my right to the floor, how much time does the Senator desire?

Mr. BAUCUS. My guess is I will consume a maximum of 10 minutes.

Mr. BYRD. Mr. President, I have the floor; do I not?

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I yield the floor to the distinguished Senator from Montana not to exceed 10 minutes, with the understanding that upon the completion of his remarks I retain my right to the floor.

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

Mr. BYRD. I ask that the Senator from Montana be limited to 10 minutes.

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

The Senator from Montana.

THANKING STAFF FOR HARD WORK ON MEDICARE

Mr. BAUCUS. Mr. President, I thank my good friend, Senator Byrd, from West Virginia.

There have been many comments about the Medicare bill that just passed, all the time and effort, and the controversies that surround it. My personal view is that it is not just a good bill, it is a very good bill. It will help senior citizens and a lot of others who need help.

I understand some of the criticisms made against the bill. Some of them are overdrawn and exaggerated. But I understand the core points some critics have made. As with all legislation, and as with all things human, there is some truth all the way around. I pledge my time and effort to work to correct any imperfections in this legislation that may arise. But all in all, we have to make decisions. We have made a decision; and that is, to pass this legislation. I think it is a good bill that is going to help a lot of people. It is a major advance to the Medicare Program.

The Medicare Program, which was enacted 38 years ago and signed by President Lyndon Johnson in Independence, MO, has been a tremendous success for our senior citizens.

This bill is the next major advancement. It is a new entitlement for prescription drug benefits for our seniors not contained in the original Medicare Act that passed 38 years ago.

There are a lot of people to thank. And my point here today is not to dwell on the bill but, rather, to thank people who worked so hard and who ordinarily receive so little credit.

The most noble human endeavor is service. It is service to church, to community, to family, to children. It is service in whatever way makes the most sense for each one of us. There are many people who served to the maximum in helping to write good legislation, and I shall mention their names.

Members of the House and the Senate who serve get the benefit of their names in newspapers and shown on TV—usually it is a benefit, sometimes it is not—but at least they get the credit or the blame. But there are other people who work very hard behind the scenes. That is, the staff, who probably work even harder and receive little or no recognition. So I would like to recognize a few of those people who played a central role in this legislation.

First, my Finance Committee health care team, led by the wonderful Liz Fowler. Those of you who have worked with Liz Fowler know what I mean. There is none better. She works so hard, she is so smart, and she has a wonderful disposition, working hard to help provide better health care for Americans.

Jon Blum. He was the ace numbers guy. I think in many cases he knew more about the various intricacies of this bill than anyone else; an amazing man.

Pat Bousliman, the same. Pat worked extremely hard and knew the ins and outs of all the provider positions—the physician and the hospital payment provisions, and home health care, so well.

Andy Cohen, who worked primarily on Medicaid and low-income issues, and then Dan Stein, who was the clean-up hitter—he is wonderful. And I'd like to recognize former staff persons, who also worked so hard on this bill earlier in the process, but have since taken advantage of different jobs or opportunities.

Kate Kirchgraber. Kate was our Medicaid specialist.

Mike Mongan is a young man, who is brilliant. I was able to hold onto him for one extra year before he finally decided to go off to law school.

Those are the members of my Finance Committee health care team who worked so hard.

Others in the Finance Committee who played a very key role are Jeff Forbes, the minority staff director, and Bill Dauster. Many people know both Jeff and Bill. Bill has served the Senate in many capacities, particularly with his expertise in budget matters and Senate procedures. He was invaluable to me.

Russ Sullivan is my top tax person. And Judy Miller. Judy is from my State of Montana and she knows pension issues better than anyone I can think of. The two of them worked on the tax provisions in this bill.

Laura Hayes handled press for the Finance Committee.

Tim Punke is my chief trade person. And Brian Pomper, also on the trade staff. There are several trade provisions that came up in this bill, particularly with respect to reimportation from Canada.

Two of my former staff who left a year ago, or less than that, are wonderful people and also deserve recognition. One is my former staff director, John Angell; and my chief counsel, Mike Evans, who, during the course of this bill, would call in. They would call in and give lots of advice.

Senator GRASSLEY, Chairman of the Committee—his health team have all been wonderful to work with. Linda Farnell, Mark Hunkin, Jennifer Bell, and Leah Kegler—all working so hard. And others on Senator Grassley’s team, Ted Totman, who has been with Senator Grassley for many years, and Kolan Davis, who is Chairman Chuck Grassley’s staff director.

Senator BREAUX, my chief negotiating partner: On his staff is Sarah Walter. Sarah is very smart. She is very good. Michelle Easton and Paige Jungmann, both of whom have also contributed significantly to this bill.

Other conference members, of course, were Chairman BILL THOMAS and
Chairman BILLY TAUSIN, Majority Leader FRIST, Speaker HASTERT, and Majority Leader TOM DELAY in the House played a great role. Their staffs did, too, especially John McManus, who is the chief health staff for Chairman THOMAS, and his staff, Madeline Smirnoff and Deb Williams; Pat Morrissey, the deputy staff director for Chairman BILLY TAUSIN, and his staff Kathleen Weldon, Chuck Clapton, Pat Ronan and Jeremy Allen; and then for Majority Leader BILL FRIST, Dean Rosenfield and John McManus and Matt Kirk and Jennifer Young all played a significant and helpful role. And Erik Ueland on Senator FRIST's staff played a valuable role in the coordinating between the Congress and the White House.

Senator JOHN McCAIN, Senator Kyl, Senator HATCH, Congresswoman NANCY JOHNSON, and Congressman MIKE BILIRAKIS and their staffs played an immeasurable part in this bill.

Other conferees who were, unfortunately, not mentioned by name.

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On my personal staff: Zak Andersen, Larry Sabato, Rebecca DeSanto, and Jennifer Young who is my scheduler; and Sara Johnston, my scheduler; and Sara Kuban—all in the office here in Washington, DC. And back home in my State of Montana: Barrett Kaiser, Jim Foley, and Melodee Hanes, working all the time to answer tons of telephone calls about this bill and coordinating all of our outreach and education efforts.

Others here in my DC office, two persons who work in the receptionist area, Megan Mikelsons and Rachel Sherouse answered many telephone calls, too, and handled them all very directly and with great grace.

There are many others, Mr. President, on other staffs who I have not mentioned, but I mention these people because I know personally how hard they have worked. I also mention them as representative of all the other people who have worked for Senators, who have worked in different capacities up here in the Senate and over in the House and who have just poured their hearts out. They are here because they believe in this policy. They are here because they want to help people. They are here because they want to make this a better place. Essentially, they are here because they are fulfilling a very deep moral obligation. I think we all have an obligation to make this place as good or even better than we found it, in whatever way we do that. For some of us, it is health care legislation, and for some of us it is some other area.

The names I have mentioned are the names of people who I hope are remembered and recognized. I urge everyone to dwell a little more on the people who really do the work, those I have mentioned, and others who work in similar capacities in this body.

Mr. BAUCUS, Mr. President, 38 years ago, President Lyndon B. Johnson signed the Medicare Act in Independence, MO. For millions of senior and disabled Americans, the enactment of this legislation heralded an era of hope, health, and improved financial security.

At the signing of the Medicare Act, President Johnson said, "No longer will older American be denied the healing miracle of modern medicine . . . . And no longer will this Nation refuse the hand of justice to those who have given a lifetime of service and wisdom and labor to the progress of this progressive country.

Over the past several decades, the Medicare Program has fulfilled President Johnson's vision. Through Medicare, more than 100 million Americans have received the protection of health insurance during their most vulnerable years. Today, Medicare covers more than 36 million seniors and 6 million disabled Americans. Medicare provides assurances to these millions of Americans that their health care needs will be taken care of.

And Medicare has stood the test of time. Thirty-eight years after its enactment, Medicare remains one of the most extraordinary acts of legislation in the history of Congress.

But we all know that the program is not perfect. It is at times slow to adapt to the evolving health care market place. We owe it to our seniors to ensure that Medicare changes with the times and continues to serve their needs today and into the future.

The practice of medicine has changed dramatically over the past 4 decades. Outpatient prescription drugs were not included in Medicare's original benefit package. In 1965, medical care emphasized hospital-based and physician-provided care. Today, medical care increasingly relies on the use of prescription drugs.

As the role and expense of prescription drugs has skyrocketed dramatically over the past several decades, the lack of a prescription drug benefit in Medicare has become a critical flaw.

Seniors will spend an estimated $2,300 on average for prescription drugs this year, in addition to $1,900 coming directly from their pockets. And while many seniors are fortunate to have coverage through retiree health plans, Medicare, Medigap, and Medicare managed care plans—over 35 percent of Medicare beneficiaries currently lack any coverage for outpatient prescription drugs.

The lack of prescription drug coverage in Medicare, coupled with the rising cost of prescription drugs, is forcing seniors across America to make difficult choices. In the wealthiest nation in the world, millions of elderly Americans are forced to choose between much-needed prescription drugs and basic necessities of daily living.

Our seniors deserve better.

With the passage of this bill, we have the opportunity to uphold our commitment to America's seniors. With this conference report, we can deliver on our promise to add a prescription drug benefit to Medicare.

This bill provides seniors with much-needed prescription drug coverage and protection against high out-of-pocket prescription drug expenses. Under Medicare Part D, seniors will have access to prescription drug insurance for a modest monthly premium. This benefit will provide up-front coverage for prescription drug expenditures up to $2,500 annually, and catastrophic coverage for out-of-pocket spending above $3,600.

For the millions of seniors with lower incomes and costly medical illnesses, this legislation offers the promise of comprehensive affordable prescription drug coverage through Medicare. Low-income seniors, more than a third of all Medicare beneficiaries, will receive generous assistance for all their prescription drug expenses, including premium subsidies, reduced deductibles, and affordable cost-sharing.

And we have designed a bill that will provide coverage in every part of the country. If private drug plans elect not to participate in any area of the country, our seniors will have guaranteed access to a government fallback, backed by the solemn commitment of Medicare.
Thus, all seniors will have equal access to a drug benefit, regardless of whether they choose to join a managed care plan or remain in traditional fee-for-service Medicare.

This legislation offers more than a Medicare drug benefit. It will finally address many of the Medicare reimbursement inequities that have plagued America's rural health care providers. It will increase payments to local physicians and community hospitals to improve health care services across the nation, and this legislation will better foster competition between generic and brand-name pharmaceuticals.

I have heard from many of my colleagues regarding some of the imperfections in the conference report—for example, the gap in coverage, the risk that the bill may cause employers to drop retiree drug coverage, the potential state shortfalls in the early years of the benefit, the increased payments to private plans, and the "premium support" pilot program.

While I remain committed to addressing these potential shortcomings in the legislation during the upcoming months and years, we must not forget that this bill provides a $400 billion expansion of the Medicare Program. We must not squander this historic opportunity to fundamentally improve the lives of millions of American seniors.

We would not have this opportunity without the fine leadership in the Senate, Senator Grassley, chairman of the Finance Committee, skillfully led this effort through the committee, on the floor, and in the conference negotiations. Majority Leader Trent Lott was willing to put aside party differences to focus on achieving bipartisan consensus. Senator Breaux's efforts helped bridge differences. The work of Senator Breaux, my steadfast partner in the difficult negotiations, as well as Senators Jeffords, Graham, and Baucus have greatly contributed to the debate over prescription drugs throughout the past several years.

And Senator Kennedy, the health care expert of the Senate. For over 25 years, Senator Kennedy has fought to include prescription drug coverage within Medicare. Through his continued leadership, prescription drugs for seniors are now within reach.

Senator Kennedy played a key role in getting a good bill out of the Senate and through conference. The 76 votes in the Senate are a tribute to his efforts, and whatever is positive in this bill is due to his dedication and hard work.

And there is much that is positive in this bill, in my view. Of course, the conference report is not perfect by any means. There are elements that I would not include if I were writing this bill on my own. But it is a true compromise. It reflects a near evenly split Congress.

Let us not forget that the original Medicare Act also represented a compromise—in the way that the program was financed through a combination of payroll taxes, premiums, and general revenue, and in the way it was organized, with fiscal intermediaries and carriers making payments for separate Part A and Part B benefits.

In the full analysis, let us not forget why this bill is important. Millions of seniors live today without prescription drug coverage. They live in greater pain, and they live shorter lives, because of that.

With this bill, we will take an important step to make their lives better. To help them live longer, fuller lives. That is our purpose here today, and that is why I support this conference report.

For 38 years, Medicare has been a covenant—a pact between the generations. All Americans—young and old, rich and poor—pay into the promise of Medicare. And the Congress has the responsibility to uphold this commitment to those who benefit from it. As part of that responsibility, we must continue to improve the program and keep up with modern medical care.

This conference report represents an historic opportunity to strengthen Medicare. And as elected officials, we have the obligation to take advantage of this opportunity. Of course, we also have the responsibility to ensure timely implementation in a way that fulfills congressional intent.

On the day of this historic vote, we take a step to ensure that Medicare continues to fulfill Lyndon Johnson's vision. We take an important step to deliver on our promise to America's senior citizens.

I yield the Floor, and I again thank my good friend from West Virginia, The PRESIDING OFFICER, The Senator from West Virginia. Mr. BYRD. Mr. President, I thank my friend from Montana, Mr. BAUCUS.

INVASION OF IRAQ

Mr. President, it was the prophet Hosea who lamented of the ancient Israelites, "For they have sown the wind, and they shall reap the whirlwind." I wonder if it will come to pass that the President's flawed and dangerous doctrine of preemption on which the United States predicated its invasion of Iraq will some day come to be seen as a modern-day parable of Hosea's lament. The President's administration, in its disdain for the rest of the world, elected to sow the wind, and is now reaping the whirlwind.

I ponder this as the casualties in Iraq continue to mount, long past the end of major conflict, and as the vicious attacks against American troops, humanitarian workers, and coalition partners increase in both intensity and sophistication. I ponder this as the number of terrorists attacks bearing the hallmarks of al-Qaeda appear to be increasing, not diminishing. In Bahrain, in Egypt, in Lebanon, in Jordan, in Sweden, in the United Kingdom, in Spain, in the Philippines, in Indonesia, and in Tanzania. It is Osama bin Laden who continues to taunt the United States and who continues to plot against us, with a sorrowful heart, what the President has wrought. By failing to win international support for the war in Iraq and by failing to plan effectively for an orderly post-war transition of power, the President managed to create in Iraq the very situation he was trying to avoid.

The deaths of three more American soldiers in Iraq over the weekend, and the vicious mob attack on the bodies of two of them, are but the latest evidence of a plan gone tragically awry. The death toll of American military personnel in Iraq since the beginning of the war has now reached 427, and it continues to climb on a near-daily basis. Most troubling of all is the fact that more than two-thirds of those soldiers who have died in Iraq have been killed since the end of major combat operations. At that time, 138 American fighting men and women had died in Iraq, at the time major combat operations had ended. Instead of making headway in the effort to stabilize and demilitarize post-war administration seems to be losing ground. If the current violence cannot be curbed, if Iraq is allowed to descend unchecked into a holy hell of chaos and anarchy, the implications could be catastrophic for the region and the world.

An article earlier this month in the Los Angeles Times, entitled "Iraq Seen As Al Qaeda's Top Battlefield," raises the alarming specter that Iraq already is replacing Afghanistan as the global center of Islamic jihad. According to the article, as many as 2,000 Muslim fighters from a number of countries, including Sudan, Algeria and Afghanistan, may now be operating in Iraq. No one knows the numbers for certain, but foreign Islamic terrorists are suspected in some of the deadliest attacks in Iraq, including the bombing of the United Nations headquarters and the Red Cross offices in Baghdad.

It seems only yesterday that the President and his advisers were warning the United Nations that Saddam Hussein must be disarmed at once, preferably if necessary, to prevent Iraq from becoming the next front in the war on terrorism. On May 1, when the President announced the end of major combat operations in Iraq as he basked in the glow of a banner that was waving overhead proclaiming "Mission Accomplished," he described the liberation of Iraq as "a crucial advance in the campaign against terror."

What a difference a few months makes. Before the war, it was Afghanistan and al-Qaeda, not Iraq, that constituted the central front in the war on terror. It was Osama bin Laden, not Saddam Hussein, who orchestrated the September 11 attacks on the United States, and it was Osama bin Laden, not Saddam Hussein, who orchestrated earlier attacks on the USS Cole and on the American embassy in Nairobi and Tanzania. It is Osama bin Laden who continues to taunt the United States and who continues to plot against us.
and it is Osama bin Laden who has ex-horted his followers to gather in Iraq to avenge the U.S. invasion.

Today, while the Taliban appears to be regrouping in Afghanistan, it is Iraq that has become the most powerful magnet for Islamic terrorists. Indeed, Saddam Hussein loyalists and his henchmen are more of a threat to the United States today than they were before the war began.

Could it be that the war on Iraq, while succeeding in chasing one monster into hiding, has created another, equally vicious, monster in his stead, a hydra-headed monster that is spewing terrorism against both the Iraqi people and their would-be liberators? Could it be that the convergence of Islamic jihadists and Baathist loyalists constitutes a far more virulent adversary than we ever imagined possible in Iraq?

Could it be, instead of providing a "crucial advance" in the war on terrorism, as the President suggested, the war on Iraq has provided crucial new resources—money, weapons, and power, as well as motivation—for the terrorists themselves? Could it be that instead of curbing terrorism, the war on Iraq has served to fan the flames of terrorism?

If only the President had listened more closely to his father, and his father's advisers. In the 1998 book that he co-authored with former National Security Adviser Brent Scowcroft, A World Transformed, the first President Bush said of his decision to end the 1991 Gulf War without attempting to remove Saddam Hussein from power, "We would have been forced to occupy Baghdad and, in effect, rule Iraq. . .there was no viable "exit strategy" we could devise, violating another of our principles."

The former President Bush and his national security adviser further cautioned that, "Going in and occupying Iraq, thus unilaterally exceeding the United Nations' mandate, would have destroyed the precedent of international response to aggression that we hoped to establish. Had we gone the invasion route, the United States could conceivably still be an occupying power, in a bitingly hostile land. It would have been a dramatically different—and perhaps barren—outcome."

Clearly the situation in Iraq today is far more difficult and dangerous than the administration ever envisioned or prepared for before the war. Although the President declared an end to major combat operations more than six months ago, U.S. forces in Iraq have recently been forced to resort to a new bombing campaign in and around Baghdad—the most intense aerial offensive since Operation Desert Storm—in an effort to stem the insurgency. More than 6 months after the end of major combat operations, the situation in Iraq appears to be deteriorating, not improving.

While the President and his military advisers remain upbeat about Iraq, the top CIA official in Baghdad appears to have reached a far bleaker assessment of the situation on the ground. According to new reports, a secret CIA analysis from Baghdad has concluded that growing numbers of Iraqi citizens are turning against the American occupation and supporting the insurgents. It may well be that this report that prompted the President to recall the U.S. administrator of the Coalition Provisional Authority to Washington two weeks ago for a hastily arranged round of meetings on accelerating the transition of power to an Iraqi provisional government.

Nothing could do more to spotlight the Administration's abysmal failure to rally international support for the stabilization and rebuilding of Iraq than this frantic scramble to arrange a Hail Mary pass of power from the United States to a provisional government in Iraq that does not yet exist. The Administration has slapped a new deadline on the democratization of Iraq—an Iraqi "transitional assembly" must be in place by June 1—but it has come up with no blueprint as to how that assembly is to function or how it can be expected to stem the violence in Iraq.

Once again, the administration is ignoring the obvious—the United States cannot go it alone in Iraq. The United Nations and NATO need to be brought on board as full partners with a personal stake in the governance, the stabilization, and the future of Iraq.

Every day that the administration continues to spurn the United Nations is another day that the insurgents have to choreograph their attacks in Iraq and further isolate the United States from the rest of the world. The pattern is becoming systematic, including those against the United Nations and the Red Cross headquarters in Baghdad and the Italian military police headquarters in Nasiriyah, have succeeded in driving most humanitarian workers from Iraq and have rocked the resolve of U.S. allies to support the Iraq operation. In the wake of the attack on the Italian troops, Japan is reconsidering its offer to send troops to Iraq, and South Korea continues to procrastinate. Help from the other coalition countries to the United States had pinned its hopes, including Turkey and Pakistan, has evaporated.

Even in the streets of London, the seat of government of America's strongest ally, tens of thousands of demonstrators marched on Trafalgar Square last week to protest President Bush's state visit and his policies in Iraq.

Because of the administration's arrogance and impatience, the United States may have entered into a make-or-break force in Iraq. Could it be that the President, in his haste to impose his will on the rest of the world, has inadvertently sown the wind and must now confront the whirlwind? Mr. President, in a short time—perhaps the next day or so—the Senate will adjourn for the year. We are privileged and blessed to return to the comfort of our families for the holidays. Not knowing whether families in America will share in our blessings.

Many families will wait out the holidays in fear and tension as they worry about their loved ones in Iraq and Afghanistan.

We in the Senate will not be here to absorb the news from the battle fronts in Iraq and Afghanistan or to voice our response to these developments. I pray that all will be calm, that "Silent Night, Holy Night" will be more than the strain of a familiar carol. But I worry it will not be so, that reality will be harsher than sentimentality.

The war in Iraq is far from over. When we will ultimately be able to declare victory, I do not know and I dare not predict. I do know that the President will be able to put the good of the Nation over the pride of his administration and accept a helping hand from the United Nations to turn the tide of anarchy in Iraq. Perhaps he may finally be pressed into realizing that growing numbers of senior administration officials have been quoted as suggesting that the United States is preparing to seek another U.N. resolution endorsing a new plan for the transition of power in Iraq. I urge the President to do so without delay. This time around, the effort must be genuine, and the resolution must be meaningful.

The facts are stark and hard to accept. If not outright losing, the United States is far from winning the peace in Iraq. Only a significant turnabout in the handling of the security and reconstruction effort, centered on giving the United Nations a leading role in the transition of power, holds any hope for a constructive course change in Iraq. It is a course change that is desperately needed.

As the crisis in Iraq deepens, leadership and statesmanship are urgently needed. I pray that the President, in his desperate quest for a new solution to the chaos in Iraq, will demonstrate those qualities, abandon the U.S. stranglehold on Baghdad, and forge a meaningful partnership with other nations of the world, a partnership with the United Nations so that a swift, orderly, and effective transition of power in Iraq can be achieved and American fighting men and women can come home.

THE APPROPRIATIONS PROCESS

Mr. BYRD. Mr. President, I join with my colleagues to decry this appropriations process. This process has fallen apart. Despite the hard work of the chairman of the Senate Appropriations Committee and the bipartisan effort of members of the House and Senate Appropriations Committees, the omnibus bill is parked and the engine is cold.
There are many provisions that are controversial and were not considered by the Senate. There is language that permits overfishing in the Northeast fishery. There is language that would mandate that the Justice Department destroy background checks records for the purchase of guns within 24 hours of the gun purchase. These matters were never debated in the Senate because the Commerce/Justice/State bill was never debated in the Senate. It is a bad bill.

President's disrespect for the Congress.

Why is it that health care, law enforcement, mental health, airport, embassy security, job training, farmers are put off, day after day? It is because the White House has insisted on legislating. The White House has overplayed its hand and, as a result, is not serving.

On Thursday, the Nation will pause to celebrate Thanksgiving. But our colleagues on the other side of the aisle have decided to deliver to the Senate a turkey of an omnibus appropriations conference report. This turkey is filled with stuffing and all the trimmings, but as we stand here today, few Senators know what it is stuffed with. What we do know is that this turkey has been specially carved for special interests.

The process for producing this bill was just one more example of the President's disrespect for the Congress. My way or the highway is the President's mantra. He expects the Congress to rubber stamp his budget.

Initially, the conference process was bipartisan. Chairman STEVENS wanted to do the right thing in producing this bill. The ranking members on the seven bills were at the table and worked out reasonable compromises on the bills. I commend Chairman TED STEVENS and House Chairman BILL YOUNG for their efforts to get this bill done in a balanced way.

But when it came time to make the tough decisions, the leadership went behind closed doors with the White House at the table. And they served up a turkey.

They took a balanced package that was worked out by the conference and at the eleventh hour insisted that they had to have it all. They insisted on changes that were not even contemplated when the bills were before the House and Senate.

The President prevailed on every one of his veto threats.

The overtime rule prohibition, which passed the Senate by vote of 54–45 was dropped; virtually identical Cuba sanction provisions that were in both the House and Senate versions of the Agriculture bill, the Commerce bill, the Treasury bill were dropped, as was a Cuba sanction provision in the Senate version of the Agriculture bill; the 1 year limitation on the FCC media ownership rules was turned into a permanent cap at 39 percent; the House language in the Transportation bill, blocking OMB's plan to contract out 400,000 Federal workers was dropped. A bipartisan compromise that was worked out by the conference was rejected by the White House and what remains provides so many loopholes for OMB that little protection is provided for Federal workers.

This is a bad bill.
sourcing is President Bush’s euphemism for throwing a federal employee onto the unemployment line for the purpose of contracting out his work to a private company.

Division F of this Omnibus Appropriations Act includes the Transportation, Treasury and General Government Appropriation bill. One will find in that division of the bill, under section 647, a largely meaningless and ineffective that is now rife with loopholes intended to mask the Bush administration’s determined efforts to fire thousands of Federal employees. This provision did not always read this way. Indeed, the conference on the Transportation, Treasury and General Government Appropriations bill met in open conference on Wednesday, November 12th and it was anticipated at that time that the conference agreement would be sent to the President as a freestanding bill. That conference was chaired by the very able Subcommittee Chairman Senator SHELBY. I was a conferee on that bill and I was proud to sign the conference report when it was presented to 

The original conference agreement reached by the members of that conference committee included a sound and balanced policy to govern the President’s competitive sourcing initiative. The conference agreement ensured that there would be uniform rules for this initiative across all agencies of the Federal Government. It also ensured that the administration would have to demonstrate meaningful cost savings before taxpayers benefited in contracting out federal work. The agreement also provided Federal employees an opportunity to appeal a wrongful contracting out decision. Under the Bush administration’s regulations, only private contractors have that appeal right.

That tentative conference agreement was agreed to as a substitute for the amendment that was included in the House-passed Omnibus Appropriations Act, chaired by the very able Congressman VAN HOLLEN of Maryland. The Bush White House made it quite clear to all the conferees that inclusion of the Van Hollen amendment would result in the Transportation/Treasury bill being vetoed. Ever since the day that conference concluded—Wednesday, November 12th—we have been waiting for the conference agreement on the Transportation-Treasury bill to be filed in the House and Senate. Instead, the White House has made an unpardonable effort by the Bush White House to dismantle this agreement as it pertains to its beloved “competitive sourcing” initiative.

Why did the administration not like this agreement? Because they do not care to have to demonstrate to the taxpayers that any real dollar savings will accrue to the taxpayer when they contract out Federal jobs; they do not want Federal employees to have the opportunity to appeal a decision that was made in error; and they do not want a consistent and fair policy for all Federal agencies in this area.

Believe it or not, the Bush administration complained about provisions in the Transportation-Treasury conference agreement that were identical to provisions that President Bush had already signed into law on the Department of Defense Appropriations Act and the Department of Interior Appropriations Act. When one now reviews the Omnibus Appropriations bill, it is clear that the Bush administration has succeeded in neutralizing the original conference agreement in this area. Never mind that we met in full and open conference and agreed to a meaningful set of safeguards. Never mind that all the members of the conference committee signed on to that agreement—Democrats and Republicans alike. This White House would have none of it. So, working through the offices of the House and Senate Republic leadership, the White House has succeeded in undermining the provisions of the original conference agreement—rendering them largely hollow. The Bush administration has made a sham of our Federal procurement process and a sham of the appropriations process. So, on the Transportation Appropriations bill, the President says he has won. Never mind that the president says it is my way or the highway.

Finally, there is the matter of the across the board cuts. The President set an arbitrary topline for discretionary spending of $786 billion. In the President’s latest budget, he has requested $1.7 trillion dollars of tax cuts. When it comes to the Medicare bill, we can afford $12 billion for subsidies for private insurance companies. When it comes to the energy bill, we can afford over $25 billion of tax cuts and $5 billion of mandatory spending for big energy corporations. But when it comes to discretionary programs that help average Americans, the President insists on cuts. A cut of 0.59 percent would reduce funding for No Child Left Behind program by $150 million, $25,000 fewer kids being served by Title I. Overall, the Title I Education for the Disadvantaged program would be $6 billion below the level authorized by the No Child Left Behind Act that the President signed in January of 2002. Another promise unfulfilled.

The across-the-board cut would reduce Head Start funding by $390 million, resulting in 5,500 fewer kids attending Head Start. Veterans Medical Care funding would be cut by $350 million, resulting in 26,500 fewer veterans receiving medical care or 198,000 veterans not getting the drugs they need. Funding for highway construction would be cut by over $170 million. Well, for this President, it is my way or the highway, but fewer Americans will be building highways next year.

Chairman STEVENS and I tried very hard to produce thirteen bills to send to the President. I commend him for this effort. This process was kidnapped by the White House and the leadership. Instead of sending thirteen fiscally responsible appropriations bills to the President, the House is filing a turkey of a conference report. That is no way to govern. That is no way to serve the American people.

I wish all Senators a happy Thanksgiving and a happy Christmas. I hope they stay safe for the holidays.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, no one deserves that holiday more than Senator BYRD who constantly reminds us of what this wonderful, interesting discussion is all about; that is, stand up for the Constitution, and stand up for the people we represent. To Senator BYRD and his wonderful wife, we wish an especially warm and cheerful holiday.

Mr. BYRD. Mr. President, I thank again the Senator.

THANKFUL FOR THANKSGIVING

Mr. BYRD. Mr. President, Thanksgiving is one of the oldest and most cherished American holidays. Along with the Fourth of July, it is a uniquely American holiday. I realize that other countries and other cultures have their days of feasts, some even have them in autumn to glorify their harvests. But our Thanksgiving, our day of thanksgiving, is a truly American holiday.

Thanksgiving is our special day. It is a day on which we celebrate with Turkey dressing, cranberry sauce. You should try Erma’s cranberry sauce; there is nothing like it anywhere in the world, my wife’s cranberry sauce. Just to think of it, just to think of it makes me want to go home now—cranberry sauce, sweet potatoes, pumpkin pie.

In addition to being a time of family togetherness, it is a day of football games, parades, and the beginning of the Christmas holiday season—a little early for the Christmas holiday season, but that is the way it is in this commercial time in which we live.

But more profoundly, Thanksgiving is a day for recognizing and celebrating our Pilgrim heritage—that small group of men and women who left their homeland, crossed a mighty ocean, and settled in a wilderness so that they could worship God as they chose.

Before disembarking from the ship that brought them to these lands, the famous and legendary Mayflower, this gallant group of early American settlers gathered together and they formulated a government for their new world—a government based on the principle of self-rule. It was also a government under God—a government that created that new government, the Mayflower Compact—we should have on our office walls. That government was anticipated in the Mayflower Compact. The Compact read in part—listen to this:

In the name of God, amen, we whose names are underwritten . . . Do by these Presents, solemnly and mutually in the Presence of
God and one another, covenant and combine ourselves together into a civil Body Politik.

How about that? That was the Mayflower Compact. A copy of that Compact ought to hang or appear in every home in this country. I know there are a few atheists around who wouldn’t like it, but who cares that they wouldn’t like it? Maybe we could win them over.

But let us read it again. How wonderful it is. We take that. I wonder if there would be those who would say it is unconstitutional.

In the name of God, amen, we whose names are underwritten . . . Having undertaken for the Glory of God . . . Do by these Presents, solemnly and mutually in the Presence of God and one another, covenant and combine ourselves together into a civil Body Politik.

A year after landing—after months of privation, suffering, sickness, hunger, and death—these men and women set aside time to express their gratitude to God for protecting them and for the preservation of their community. With all the hardships and agony they had endured, they set aside time to give greater—nay, of whom there is no peer, George Washington.

On October 11, 1782, Congress proclaimed “the twenty-eight day of November next, as a day of solemn THANKSGIVING to God for all his mercies.”

Think about that. On October 11, 1782, Congress proclaimed “the twenty-eight day of November next, as a day of solemn THANKSGIVING to God for all his mercies: and they do further recommend to all ranks, to testify to their gratitude to God for his goodness.”

I was just verifying from the fine man who serves on my staff that this coming Thanksgiving again falls on the calendar on the day of November 28.

The proclamation further stated: It being the indispensable duty of all Nations, not only to offer up their supplication to ALMIGHTY GOD, the giver of all good, for his gracious assistance in a time of distress, but also in a solemn and public manner to give him praise for his goodness in general, and especially for great and signal interpositions of his providence in their behalf.

Following the establishment of the new government of the United States, the greatest of all accomplishments, the Continental Congress used Thanksgiving as the day to give thanks to the Giver of Good Preservation. That was George Washington.

On November 28, 1789, President George Washington—he is now President; the President is George Washington—issued the first Presidential proclamation calling for a day of public Thanksgiving and prayer. He asked that the public observe that day “by acknowledging with grateful heart the many favors of Almighty God.” At President Washington’s request, Americans assembled in churches on the appointed day and thanked God for his blessings.

Then during the Civil War, President Abraham Lincoln officially asked the people of the United States to set aside the last Thursday of November “as a day of Thanksgiving and praise to our beneficent Father.” In the midst of a civil war of unequal magnitude and severity, President Lincoln proclaimed in 1863 that the country should take a day to acknowledge the gracious gifts of the most high God.

Perhaps we have noticed that in every one of these proclamations, the Founders and the early leaders of our country carefully and purposely recognized and thanked Almighty God for their blessings.

So in a year when we have been told that it is wrong to post the Ten Commandments in our courthouses, and we have Federal courts ruling that ours is not a nation under God. It is well to remember how the Founders of our country, going back to the Pilgrims, continuing through the Continental Congresses and our foremost Presidents, Washington and Lincoln, certainly considered ours to be a nation under God.

There you have it, June 7, 1954, the words “under God” were inserted in the Pledge of Allegiance, and 1 year from that day, June 7, 1955, they put the words “In God We Trust” on the currency and coins of these United States. June 7, 1955, was.

Do you think we would ever have to remove those words from the walls of this Chamber? Let us trust in God that those words will never be removed. No court will ever think that it can remove those words “In God We Trust” from the walls of this Chamber.

Two years later in 1925, the Pilgrims made this day of thanks a tradition. The spirit of that glorious day, which endured, they still set aside time to talk of how appropriate it was to thank God for being good to them. They were not only men and women of great courage, they were also men and women of great religious faith.

Two years later, in 1623, the Pilgrims claimed “the twenty-eight day of November next, as a day of solemn THANKSGIVING to God for all his mercies.”

There you have it, June 7, 1954, the words “under God” were inserted in the Pledge of Allegiance, and 1 year from that day, perhaps just coincidentally, when the House voted to place the words “In God We Trust” on the currency and coins of these United States, June 7, 1955, that was.

The acknowledgment of divine blessing did not stop there. After 1863, President Lincoln issued other Thanksgiving proclamations, and subsequent Presidents who followed him, followed his example.

In 1955, President Theodore Roosevelt talked of how appropriate it was to “set apart one day in each year for a special service of thanksgiving to the Almighty.” “It is eminently fitting,” he proclaimed, “that once a year our people should set apart a day of praise and thanksgiving to the Giver of Good . . . [therefore] I ask that through the land the people gather in their homes and places of worship and in rendering thanks unto the Most High for the manifold blessings of the past year.”

In his 1938 Thanksgiving proclamation, President Franklin Roosevelt noted:

[From the earliest recorded history, Americans have thanked God for their blessings. In our deepest natures, in our very souls, we, like all mankind, since the earliest origin of mankind, turned to God in time of happiness.

Mr. President, 20 years later in his 1958 Thanksgiving proclamation, President Eisenhower noted:

Let us be especially grateful for the religious heritage bequeathed to us by our forefathers, as exemplified by the Pilgrims, who,
Look at that man sitting in the chair, presiding over this Senate. Yes, there he is. I can see his mouth is watering like mine is watering. Sweet potatoes, creamed onions. Well, I like my onions just plain onions, not creamed, but that was on the menu. Squash, pumpkin pie, plum pud- ding, mince pie, milk, and coffee.

Does that sound familiar? How about it, does it sound familiar? I hope my wife Erma is watching right at this moment because nobody in my lifetime can spread a table like my wife Erma. She has been spreading that table in my family now for 66 years, bless her heart.

But does it sound familiar? It sure sounds like the 2003 Thanksgiving menu at the Byrd house. Boy, how I look forward to it. I am getting hungry just thinking about it. I am getting hungry. How about that?

I hope that my listeners are getting hungry also, and thinking about the first Thanksgiving. The first Thanksgiving, how would you have to like to have sat with that incredible, intrepid band of men and women? So I am going to stop talking now, and I am going to head home, before too long, for our great Thanksgiving meal with my wife Erma and our two daughters and their husbands and our five grandchildren, their spouses, and our three great-grandchildren and our little dog, Trouble.

Happy Thanksgiving, everyone. Happy Thanksgiving.

The PRESIDING OFFICER. The Senator from New Mexico, Mr. DOMENICI. Mr. President, I note the presence of Senator BURNS. Does he wish to speak? I will tell him how long I will be.

Mr. BURNS. Mr. President, not on the Senator's time. Mr. DOMENICI. I will only be a few moments.

GREAT ECONOMIC NEWS

Mr. DOMENICI. Mr. President, economic growth is the lifeblood of this country. Economic growth is what gets rid of deficits. Economic growth is what provides jobs. Economic growth is what causes investments. Economic growth is what gives our people hope.

Today, the Government just released news that our economy grew by an amazing 8.2 percent last quarter, up from an adjustment in the same quarter of 7.2 percent. I recall when it went up 7.2 percent. We were all saying: Isn't that fantastic? The economy is really booming.

Well, it turns out there is always an adjustment, and they made the adjustment. Frequently, the adjustment is downward. In this case, the adjustment is upward, an astronomical 8.2 percent growth in the domestic product last quarter. This means solid growth this quarter and into next year. This is a triumph for the free market, a triumph for American econom- omy and to the fiscal policy pursued by the President and the Republican-led Congress.

The naysayers, principally on the other side of the aisle, have been the ones saying we should not have cut taxes. Taxes create deficits. On everything the President chose to ask us to do about the economy, the naysayers were wrong. Now they have been proven wrong and we have the second basket on the floor in the nature of great big positive news for the American people. Even more important to the future, confidence among the American consumers soared. They know when things are going well. I got 92 percent, a full 10 percent gain from last month. We remember when we were all worried because it was extremely low, into 60 percent, and the naysayers were saying: It is all President Bush's fault. Well, if that is the case—it is 92 per- cent now—is that not his fault? Or is that not to his credit? I would think so.

The kind of extraordinary growth I am talking about obviously cannot continue for years and years, perhaps not for very long. But it does mean that most estimates of growth for the year 2004 will prove to be pessimistic. They will prove to be too low. If we get a solid 3 and 3/8 percent growth rate each of the next quarters, an entire fiscal year, then we will see Federal deficits also decline. Employment will increase and invest- ments will improve.

The naysayers will be stuck. How will they answer all of these items of good news when employment starts coming down, which it already has but will come down more; when Federal deficits, instead of going up, which they run around talking about President Bush created, which everybody knows we have a huge expenditure for our military men and equipment because we have been in a series of war-like efforts from Somalia, Afghanistan, and now this one. Nothing can be done without spending a lot of money. But we are going to see the deficit come down if these growth numbers continue up.

Yes, we have all been worried about American business: Where is it going? First, we have to give American business some credit. I used the words ‘‘re- silient economy’’ awhile ago. When there is a recession, American business takes action. They are not like us. They do not have all of the money to spend. They have to stop spending. They have to make changes.

Mr. President, I am not saying what happened. Productivity went through the roof, and enormous productivity growth normally is accompanied by great GDP growth, and that has happened. But I believe it seems as if productivity growth is probably going to stop. They have taken about as much as they can out of their businesses, and now we are going to have the growth that will follow it, the job increases that will follow it, and the deficits that will dimin- ish.

I close where I started, by saying it seems as if good news comes in bushels.
Good news comes not one thing at a time but two things and maybe three at a time, and the two pieces of great news are before us today. Let us hope there is more to come because, clearly, we are on the path upward.

I yield the floor.

CAN-SPAM ACT OF 2003

Mr. BURNS. Mr. President, as my good friend from New Mexico was pointing out some of the good news, I have asked that the Chair lay before the Senate a message from the House on S. 877.

The PRESIDING OFFICER laid before the Senate the following message:

S. 877

Resolved, That the bill from the Senate (S. 877) entitled “An Act to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet”, pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003”, or the “CAN-SPAM Act of 2003”.

SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.

(a) FINDINGS.—The Congress finds the following:

(1) Electronic mail has become an extremely important and popular means of communication, relied on by millions of Americans on a daily basis for personal and commercial purposes. Its low cost and global reach make it extremely convenient and efficient, and offer unique opportunities for the development and growth of frictionless commerce.

(2) The convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial electronic mail. Unsolicited commercial electronic mail is currently estimated to account for over half of all electronic mail traffic, up from over one fourth in 2001, and the volume continues to rise. Most of these messages are fraudulent or deceptive in one or more respects.

(3) The receipt of unsolicited commercial electronic mail may result in costs to recipients who cannot refuse to accept such mail and who incur costs for the storage of such mail, or for the time spent accessing, reviewing, and discarding such mail, or for both.

(4) The receipt of a large number of unwanted messages also decreases the convenience of electronic mail and creates a risk that wanted electronic mail messages, both commercial and non-commercial, will be lost, overlooked, or discarded amidst the larger volume of unwanted messages.

(5) Some commercial electronic mail contains material that many recipients may consider vulgar or pornographic in nature.

(6) The growth in unsolicited commercial electronic mail imposes significant monetary costs on providers of Internet access services, businesses, and other recipients of such electronic mail.

(b) CONGRESSIONAL DETERMINATION OF PUBLIC POLICY.—On the basis of the findings in subsection (a), the Congress determines that—

(1) there is a substantial government interest in regulation of commercial electronic mail on a nationwide basis for law-abiding businesses to know with which of these disparate statutes they are required to comply.

(2) The problems associated with the rapid growth and content of commercial electronic mail cannot be solved by Federal legislation alone. The development and adoption of technological approaches and the pursuit of cooperation with other countries will be necessary as well.

(3) The inclusion of a reference to a commercial electronic mail message does not include a transactional or relationship message.

(c) REGULATIONS REGARDING PRIMARY PURPOSE.—

(1) there is a substantial government interest in regulation of commercial electronic mail on a nationwide basis for law-abiding businesses to know with which of these disparate statutes they are required to comply.

(2) The problems associated with the rapid growth and content of commercial electronic mail cannot be solved by Federal legislation alone. The development and adoption of technological approaches and the pursuit of cooperation with other countries will be necessary as well.

(3) The inclusion of a reference to a commercial electronic mail message does not include a transactional or relationship message.

In this Act:

(A) AFFIRMATIVE CONSENT.—The term “affirmative consent”, when used with respect to a commercial electronic mail message, means that—

(A) the recipient expressly consented to receive the message, either in response to a clear and conspicuous request for such consent or at the recipient's own initiative; and

(B) if the message is from a party other than the party to which the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient's electronic mail address could be transferred to such other party for the purpose of initiating commercial electronic mail messages.

(B) COMMERCIAL ELECTRONIC MAIL MESSAGE.—

(a) IN GENERAL.—The term “commercial electronic mail message” means any electronic mail message, including the originating domain and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.

(b) INITIATE.—The term “initiate”, when used with respect to a commercial electronic mail message, means to originate or transmit such message.

(c) REGULATIONS REGARDING PRIMARY PURPOSE.—

(1) SENDER.—

(2) DESTINATION.—

(3) RELATIONSHIP MESSAGE.—

(4) TRANSACTIONAL OR RELATIONSHIP MESSAGE.—

(5) REGULATIONS REGARDING PRIMARY PURPOSE.—

(A) IN GENERAL.—The term “commercial electronic mail message” means any electronic mail message which is the primary purpose of which is the commercial advertisement or promotion of a commercial product or service.

(B) TRANSACTIONS OR RELATIONSHIP MESSAGES.—The term “commercial electronic mail message” does not include a transactional or relationship message.

(C) REGULATIONS REGARDING PRIMARY PURPOSE.—

Not later than 12 months after the date of the enactment of this Act, the Commission shall issue regulations pursuant to section 13 further defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.

(D) REFERENCE TO COMPANY OR WEBSITE.—The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this Act, when the context or circumstances of the message indicate a primary purpose other than commercial advertisement or promotion of a commercial product or service.

COMMUNICATION.—The term “communication” means the Federal Trade Commission.

(4) DOMAIN NAME.—The term “domain name” means any alphanumeric designation which is registered with or assigned by any domain name registrar, domain name registry, or other domain name registration authority as part of an electronic address on the Internet.

(5) ELECTRONIC MAIL ADDRESS.—The term “electronic mail address” means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the “domain part”), whether or not displayed, to which an electronic mail message can be sent or delivered.

(6) ELECTRONIC MAIL MESSAGE.—The term “electronic mail message” means a message sent for the purpose of delivering content to an electronic mail address.


(8) HEADER INFORMATION.—The term “header information” means the source, destination, and routing information attached to an electronic mail message, including the originating domain and originating electronic mail address, and any other information that appears in the line identifying, or purporting to identify, a person initiating the message.

(9) INITIAL.—The term “initial”, when used with respect to a commercial electronic mail message, means to originate or transmit such message.

(10) INITIATE.—The term “initiate”, when used with respect to a commercial electronic mail message, means to originate or transmit such message.

(11) INTERNET ADDRESS.—The term “Internet address” means a reference to a commercial electronic mail message for purposes of this Act.

(12) INTERNET ACCESS SERVICE.—The term “Internet access service” has the meaning given in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 151 note).

(13) IP ADDRESS.—The term “IP address” has the meaning given in section 231(e)(4) of the Communications Act of 1934 (47 U.S.C. 151 note).

(14) PROTECTED COMPUTER.—The term “protected computer” has the meaning given in section 1332 of title 18, United States Code.

(15) RECIPROCITY.—The term “reciprocity”, when used with respect to a commercial electronic mail message, means an agreement between two or more persons or entities to exchange electronic mail messages with each other.

(16) SENDER.—
TRANSMISSION INFORMATION.—It is unlawful for

SEC. 4. PROHIBITION AGAINST PREDATORY AND ABUSIVE COMMERCIAL E-MAIL.

(a) OFFENSE.—

(1) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by adding at the end the following new section:

"§1037. Fraud and related activity in connection with electronic mail

(a) IN GENERAL.—Whoever, in or affecting interstate or foreign commerce, knowingly and intentionally initiates the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names, or

(4) registers, using information that materially falsifies the identity of the actual registrant, for 5 or more electronic mail accounts or domain names, or

(5) falsely represents oneself to be the registrant for purposes of this Act, shall be punished as provided in subsection (b).

(b) PENALTIES.—The punishment for an offense under subsection (a) is:

(1) a fine under this title, imprisonment for not more than 5 years, or both, if—

(A) the offense is committed in furtherance of any felony under the laws of the United States or of any State; or

(B) the defendant has previously been convicted under section 1032, or under the law of any State for conduct involving the transmission of multiple commercial electronic mail messages or unauthorized access to a computer system;

(2) a fine under this title, imprisonment for not more than 3 years, or both, if—

(A) the offense is an offense under section (a)(3), (a)(4), or (a)(5); or

(B) the offense is an offense under section (a)(4) and involved 20 or more falsified domain names, as defined in section (a)(1);

(3) a fine caused to 1 or more persons aggregating $5,000 or more in value during any 1-year period;

(4) as a result of the offense any individual received $1,000 or more in value during any 1-year period;

(5) if the offense was undertaken by the defendant in concert with 3 or more other persons acting in concert with the defendant occupied a position of organizer or leader; and

(6) a fine under this title or imprisonment for not more than 1 year, or both, in any other case.

(c) FORFEITURE.—

(1) IN GENERAL.—The court, in imposing sentence under this section, shall consider providing sentencing enhancements for—

(A) those convicted under section 1037 of title 18, United States Code, who obtained electronic mail addresses through improper means, including—

(i) harvesting electronic mail addresses of the unsubscribe, proprietary service, or other online web forum operated by another person, without the authorization of such person; and

(ii) randomly generating electronic mail addresses by computer;

(B) those convicted of other offenses, including offenses involving fraud, identity theft, obscenity, child pornography, and the sexual exploitation of children, if such offenses involved the sending of large quantities of unsolicited electronic mail.

SENSE OF CONGRESS.—It is the sense of Congress that—

(1) Spam has become the method of choice for those who distribute pornography, perpetrate fraud, run pyramid schemes and confidence games, promote viruses, worms, and Trojan horses into personal and business computer systems; and

(2) the Department of Justice should use all existing law enforcement tools to investigate and prosecute those who send bulk electronic mail to facilitate the commission of Federal crimes, including the tools contained in chapters 47 and 95 of title 18, United States Code (relating to fraud and false statements); chapter 71 of title 18, United States Code (relating to obscenity); chapter 110 of title 18, United States Code (relating to the sexual exploitation of children); and chapter 95 of title 18, United States Code (relating to racketeering), as appropriate.

SEC. 5. OTHER PROTECTIONS FOR USERS OF COMMERCIAL ELECTRONIC MAIL.

(a) REQUIREMENTS FOR TRANSMISSION OF MESSAGES.

(1) PROHIBITION OF FALSE OR MISLEADING TRANSMISSION INFORMATION.—It is unlawful for any person to initiate the transmission, to a protected computer, of a commercial electronic mail message, or a transactional or relationship message, obtained by means of false or fraudulent pretenses or representations that is materially false or materially misleading. For purposes of this paragraph—

(1) the head information that is technically accurate but includes an originating electronic mail address, domain name, or Internet protocol address the access to which is for purposes of initiating false or fraudulent pretenses or representations shall be considered materially misleading;
generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

(B) DISCLAIMER.—Nothing in this paragraph creates or reflects any ownership or proprietary interest in such electronic mail addresses.

(2) AUTOMATED CREATION OF MULTIPLE ELECTRONIC MAIL ACCOUNTS.—It is unlawful for any person knowingly to relay or retransmit a commercial electronic mail message that is unlawful under subsection (a), through the provision or selection of addresses to initiate the transmission of any electronic mail message to a protected computer, or enable another person to transmit a commercial electronic mail message to a protected computer, or network, or cause a computer or computer network that such person has accessed without authorization.

(c) SUPPLEMENTARY RULEMAKING AUTHORITY.—The Commission shall by rule, pursuant to section 13—

(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or the Commission determines that a different period would be more reasonable after taking into account—

(A) the purposes of subsection (a);

(B) the interests of recipients of commercial electronic mail; and

(C) the burdens imposed on senders of unlawful commercial electronic mail, and

(ii) specify additional methods or practices to which subsection (b) applies if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection (a).

(d) REQUIREMENT TO PLACE WARNING LABELS ON COMMERCIAL ELECTRONIC MAIL CONTAINING SEXUALLY ORIENTED MATERIAL.

(1) IN GENERAL.—No person may initiate or affecting interstate commerce the transmission, to a protected computer, of any commercial electronic mail message that includes sexually oriented material and—

(A) fail to include in subject heading for the electronic mail message the marks or notices prescribed by the Commission under this subsection; or

(B) fail to provide at the message header that the message is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes—

(iii) the information required to be included in the message pursuant to subsection (a)(5); and

(ii) in the case of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(b) AGGRAVATED VIOLATIONS RELATING TO COMMERCIAL ELECTRONIC MAIL.

1. ADDRESS HARVESTING AND DICTIONARY ATTACKS.—

(a) IN GENERAL.—It is unlawful for any person to initiate the transmission, to a protected computer, of any commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such message.

(b) SUBSEQUENT AFFIRMATIVE CONSENT.—The provisions in subparagraphs (A), (B), and (C) do not apply to the initiation of transmission of any commercial electronic mail message to a protected computer, or enable another person to transmit a commercial electronic mail message to a protected computer, or network, or cause a computer or computer network that such person has accessed without authorization.

(c) REQUIREMENT TO PLACE WARNING LABELS ON COMMERCIAL ELECTRONIC MAIL CONTAINING SEXUALLY ORIENTED MATERIAL.

(1) IN GENERAL.—No person may initiate or affecting interstate commerce the transmission, to a protected computer, of any commercial electronic mail message that includes sexually oriented material and—

(A) fail to include in subject heading for the electronic mail message the marks or notices prescribed by the Commission under this subsection; or

(B) fail to provide at the message header that the message is initially viewable to the recipient, when the message is opened by any recipient and absent any further actions by the recipient, includes—

(iii) the information required to be included in the message pursuant to subsection (a)(5); and

(ii) in the case of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(c) SUPPLEMENTARY RULEMAKING AUTHORITY.—The Commission shall by rule, pursuant to section 13—

(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or the Commission determines that a different period would be more reasonable after taking into account—

(A) the purposes of subsection (a);

(B) the interests of recipients of commercial electronic mail; and

(ii) in the case of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(c) SUPPLEMENTARY RULEMAKING AUTHORITY.—The Commission shall by rule, pursuant to section 13—

(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or the Commission determines that a different period would be more reasonable after taking into account—

(A) the purposes of subsection (a);

(B) the interests of recipients of commercial electronic mail; and

(ii) in the case of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(c) SUPPLEMENTARY RULEMAKING AUTHORITY.—The Commission shall by rule, pursuant to section 13—

(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or the Commission determines that a different period would be more reasonable after taking into account—

(A) the purposes of subsection (a);

(B) the interests of recipients of commercial electronic mail; and

(ii) in the case of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

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(1) modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or the Commission determines that a different period would be more reasonable after taking into account—

(A) the purposes of subsection (a);

(B) the interests of recipients of commercial electronic mail; and

(ii) in the case of an electronic mail message if the recipient has given prior affirmative consent to receipt of the message.
whole, the remainder of which is not primarily
dedicated to sexual matters.

(4) PENALTY.—Whoever knowingly violates paragraph (1) shall be fined under title 18, United States Code, or imprisoned not more than 5 years, or both.

SEC. 6. BUSINESSES KNOWINGLY PROMOTED BY ELECTRONIC MAIL WITH FALSE OR MISLEADING TRANSMISSION INFORMATION.

(a) In General.—It is unlawful for a person to promote, by means of electronic mail, an offer to sell, lease or offer for lease, or otherwise make available through electronic mail a thing that violates subsection (a) of section 5 of this Act, if that person—

(1) knows, or should have known in ordinary course of that person's trade or business, that the goods, products, property, or services sold, offered for sale, leased or offered for lease, or otherwise made available through that trade or business were being promoted in such a message;

(2) received or expected to receive an economic benefit from such promotion; and

(3) took no reasonable action—

(A) to prevent the transmission; or

(B) to detect the transmission and report it to the Commission.

(b) LIMITED ENFORCEMENT AGAINST THIRD PARTIES.—

(1) IN GENERAL.—Except as provided in paragraph (2), a person (hereinafter referred to as the "third party") that provides goods, products, property, or services to another person that violates subsection (a) shall not be held liable for such violation.

(2) EXCEPTION.—Liability for a violation of subsection (a) shall be imposed on a third party that provides goods, products, property, or services to another person that violates subsection (a) if that third party—

(A) knew, or had a greater than 50 percent ownership or economic interest in, the trade or business of the person that violated subsection (a); or

(B) has actual knowledge that goods, products, property, or services are promoted in a commercial electronic mail message the transmission of which is in violation of section 5(a)(1); if

(i) receives, or expects to receive, an economic benefit from such promotion.

(c) EXERCISE OF CERTAIN POWERS.—Subject to sections (f) and (g) of section 7 do not apply to violations of this section.

(d) SAVINGS PROVISION.—Subject to section 7(f)(7) of this section may be used to limit or prevent any action that may be taken under this Act with respect to any violation of any other section of this Act.

SEC. 7. ENFORCEMENT GENERALLY.

(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Except as provided in subsection (b), this Act shall be enforced by the Commission as if the violation of this Act were an unfair or deceptive act or practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) IN GENERAL.—Each practice of any other agency or--

(1) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—

(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches and Federal agencies of foreign banks), commercial lending companies owned or controlled by foreign banks, organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601 and 611), and bank holding companies, by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation; and

(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision;

(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of the National Credit Union Administration with respect to any federally insured credit union;

(3) under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) by the Securities and Exchange Commission with respect to the commission's powers under this section; and

(4) subject to subsection (a) of its powers under any Act referred to in subsection (b), each of the agencies referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of a Federal statute.

(c) EXCLUSIVE ENFORCEMENT BY FTC.—For the purpose of enforcement of this Act by the FTC—

(1) the Attorney General for the United States of appropriate jurisdiction—

(A) to bring a civil action on behalf of the residents of the State in a district court of the United States of appropriate jurisdiction—

(i) to enjoin further violation of section 5 of this Act by the defendant; or

(ii) to obtain damages on behalf of the residents of the State, in an amount equal to the greater of—

(I) the actual monetary loss suffered by such residents; or

(II) the amount determined under paragraph (2)

(B) AVAILABILITY OF INJUNCTIVE RELIEF WITHOUT SHOWING OF NOGEOLOGY.—Notwithstanding any other provision of this Act, in a civil action under paragraph (1)(A) of this subsection, the attorney general, official, or agency of the State shall not be required to allege or prove the state of mind required by section 5(a)(2), subparagraph (B) or (C) of section 5(a)(4), or section 5(b)(1)(A), neither the Commission nor the Federal Communications Commission shall be required to allege or prove the state of mind required by such section or paragraph.

(d) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the court may award the costs of the action and reasonable attorney fees as determined by the court.

(e) RIGHTS OF FEDERAL REGULATORS.—The Commission may serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and, upon request of the appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such request upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—
(A) to intervene in the action; (B) upon so intervening, to be heard on all matters arising therein; (C) to remove the action to the appropriate United States district court; and (D) to file petitions for appeal.

(5) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to prohibit an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(A) correct violations; (B) administer oaths or affirmations; or (C) compel the attendance of witnesses or the production of documents or other evidence.

(6) VENUE, SERVICE OF PROCESS.—(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States for the State in which an applicable requirement relating to venue under section 1391 of title 28, United States Code, is met.

(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

(i) is an inhabitant; or (ii) maintains a physical place of business.

(7) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission or any other appropriate Federal agency under subsection (a) of section 5(a) of this Act, or an administrative action for violation of this Act, instituted by the attorney general of a State pursuant to paragraph (5)(B), is pending, the attorney general of the State from exercising the powers conferred on the attorney general by the laws of that State to—

(A) correct violations; (B) administer oaths or affirmations; or (C) compel the attendance of witnesses or the production of documents or other evidence.

(8) R EQUISITE SCIENTER FOR CERTAIN CIVIL ACTIONS.—Except as provided in subsections (a)(2), (a)(4)(B), (a)(4)(C), (b)(1), and (d) of section 5, and paragraph (2) of this subsection, in a civil action or an administrative action for violation of this Act, no State attorney general, or official or agency of a State, may bring an action under this subsection in the absence of written consent of the defendant named in the complaint of the Commission or the other agency for any violation of this Act alleged in the complaint.

(9) REQUIRE SCIENTER FOR CERTAIN CIVIL ACTIONS.—Except as provided in subsections (a)(2), (a)(4)(B), (a)(4)(C), (b)(1), and (d) of section 5, and paragraph (2) of this subsection, in a civil action or an administrative action for violation of this Act, no State attorney general, or official or agency of a State, to recover monetary damages for a violation of this Act, the court shall not grant the relief sought unless the attorney general, official, or agency establishes that the defendant acted with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, of the act or omission that constitutes the violation.

(10) ACTION BY PROVIDER OF INTERNET ACCESS SERVICE.—(A) ACTION AUTHORIZED.—A provider of Internet access service adversely affected by a violation of section 5(a) or of section 5(b), or a pattern or practice that violates paragraph (2), (3), (4), or (5) of section 5(a), may bring a civil action in any district court of the United States with jurisdiction over the defendant—

(A) to enjoin further violation by the defendant; and (B) to recover damages in an amount equal to the greater of—

(i) actual monetary loss incurred by the provider of Internet access service as a result of such violation; or (ii) the amount determined under paragraph (5).

(11) SPECIAL DEFINITION OF "PROCURE".—In any action brought under paragraph (1), the term "procure" shall be applied as if the definition of the term "procure" in section 3(12) contained, after "behold" the words "with actual knowledge, or by consciously avoiding knowing, whether such person is engaging, or will engage, in a pattern or practice that violates this Act".

(12) VENUE AND SERVICE OF PROCESS.—(A) VENUE.—Any action brought under paragraph (1) may be brought in the district court of the United States for the State in which—

(i) the recipient is within the United States; or (ii) the defendant is located.

(B) SERVICE OF PROCESS.—In any action brought under paragraph (1), process may be served in any district in which the defendant—

(i) is an inhabitant; or (ii) maintains a physical place of business.

SEC. 9. DO-NOT-E-MAIL REGISTRY.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Commission shall promulgate a regulation establishing a nationwide marketing Do-Not-E-mail Registry.

(b) AUTHORIZATION TO IMPLEMENT.—The Commission may establish and implement the plan, but not earlier than 9 months after the date of enactment of this Act.

SEC. 10. STUDY OF EFFECTS OF COMMERCIAL ELECTRONIC MAIL.

(a) IN GENERAL.—Not later than 24 months after the date of the enactment of this Act, the Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the effectiveness and enforcement of the provisions of this Act and the need (if any) for the Congress to modify such provisions.

(b) REQUIRED ANALYSIS.—The Commission shall include in the report required by subsection (a) an analysis of the extent to which technological and marketplace developments, including changes in the nature of the devices through which consumers access their electronic mail messages, may affect the practicality and effectiveness of the provisions of this Act.

(c) NO EFFECT ON POLICIES OF PROVIDERS OF INTERNET ACCESS SERVICE.—Nothing in this Act shall be construed to prevent an action brought under paragraph (1) from including or alleging violations of state, local, or foreign laws; or to otherwise affect any action brought under paragraph (1) against any party.

(d) PROHIBITION.—Nothing in this Act shall be construed to require Internet access service providers to—

(i) forward or return messages that fail to comply with this Act; or (ii) condition access to Internet access service facilities or computers in other nations, including the United States, on the content of messages that originate in or are transmitted through or to foreign or domestic computer networks.

SEC. 11. IMPROVING ENFORCEMENT BY PROVIDING REWARDS FOR INFORMATION ABOUT VIOLATIONS; LABELLING.

The Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce—

(1) a report, within 9 months after the date of enactment of this Act, that sets forth a system for providing awards or other financial incentives to individuals or organizations that the Government or a State government could pursue through international negotiations, fora, organizations, or institutions; and

(2) a report and recommendations concerning options for protecting consumers, including children, from the receipt and viewing of commercial electronic mail that is obscene or pornographic.

SEC. 12. REDUCTIONS ON OTHER TRANSMISSIONS.

Section 227(b)(1) of the Communications Act of 1934 (47 U.S.C. 227(b)(1)) is amended, in the matter preceding subparagraph (A), by inserting "in the case of messages that constitute a violation of this Act", after "the recipient is", in the second sentence.
Mr. BURNS. Mr. President, this is a good day, not only for me personally but many of us who serve in this Senate, especially my friend from Oregon whom I see across the aisle.

The amendment (No. 2219) was agreed to.  
(The amendment is printed in today’s RECORD under “Text of Amendments.”)  

Mr. BURNS. Mr. President, this is a good day, not only for me personally but many of us who serve in this Senate, especially my friend from Oregon whom I see across the aisle.

The amendment (No. 2219) was agreed to.  
(The amendment is printed in today’s RECORD under “Text of Amendments.”)
spam. Clearly, consumers have been demanding control over their e-mail inboxes, and the passage of the CAN-SPAM today will give those consumers a key victory in the battle against criminal spammers.

Again, I thank my good friend with whom I served on the Commerce Committee, Senator Wyden of Oregon, who has absolutely been a knight in shining armor in negotiations and working this through the Congress. Also on the floor is Senator Schumer of New York. Senator Schumer has offered important provisions in this bill. We have had a great time debating that. But nonetheless, his contribution is clearly in this bill and we appreciate his work. Of course, when I say it is a bipartisan effort, that is usually the way we get legislation passed around here, legislation that has any kind of future at all.

I thank them both. It gives me great pleasure to yield the floor for my friend from the great State of Oregon, Senator Wyden.

Mr. Wyden. Mr. President, I will be very brief. I know my colleague from New York, Senator Schumer, has a plane to catch.

Senator Burns and I have worked for more than 4 years on this legislation, and it is particularly important that it pass today. Every single day, the flood of pornographic and sleazy spam grows. With this legislation, Congress is beginning to stem the tide. We understand that this is going to be a difficult battle because the kingpin spammers are not technological simpletons. No matter what law Congress passes, they are going to be very aggressive about trying to find evasive strategies to get around that. But I am of the view that with the passage of this legislation, if our prosecutors, the Federal Trade Commission, and the Attorney General come down on the kingpin spammers with hobnail boots, we can put in place a strategy that can stem this tide.

Suffice it to say, the spammers are going to go to great lengths to try to get around this law. We know, for example, that many of them are going to try to move offshore. It is going to be important to have international agreements that will also bring together U.S. authorities and international authorities against those who would try to get around this legislation.

It is important to remember what Congress did in 1995. That is, Congress is saying spamming is an outlaw business. It is an outlaw business that is going to be treated as an area of priorities for prosecutors and law enforcement officials. That has not been the case in the past. Essentially, when Senator Burns and I pursued this problem of spamming a number of years ago, a lot of people asked: Why in the world would a couple of U.S. Senators be tackling this issue? They intimated that it really wasn’t worthy of the Senate’s attention. It was given disparingly in the last few years, and now people have been clamoring about why the Senate isn’t moving ahead with this legislation that they think is important because spam is such an intrusion into their lives every single day.

We have continued work to do. Senator Schumer will speak next. He has a very important point with respect to trying to put in place the Do Not Spam list. It is a promising one. I think all of us would acknowledge there are some details to be worked out with the Federal Trade Commission. Senator Corzine has done some very good work looking at some creative ideas for the future. I intend to work closely with him because he has been a leader in the technology area. But I think we ought to understand that this effort today is the culmination of more than 4 years of hard work. It is not just needed, it is overdue.

We are not going to pretend this legislation is a silver bullet because we know that no piece of legislation is. But when this bill takes effect, the big-time spammer is going to have to find a new way of doing business. It is an outlaw business that is going to be treated as an area of priority. It is important to understand that spamming is an outlaw business, and the big-time spammers will face consequences when they flood our citizens and our families with the trash and the pornography.

That is why this is an important step forward.

He is going to speak next, but I commend my colleague, the Senator from New York, for his usual persistence. He stayed at it by saying this was an important issue. We have wrestled with this question with respect to the Do Not Call list as well. I happen to think that the Senator from New York is certainly talking about a principle we need to address in the communications area. I happen to think the first amendment is special. People ought to have the right to communicate. But citizens also ought to have the right to say: We have had enough. We don’t want to have people flooded with this kind of information. That is the principle that is at stake here. I commend the Senator from New York.

My part on the telecommunications subcommittee, is not in the Chamber. But I am proud to serve with him. He has been an exceptionally gracious ally on this for many years.

I am glad that this proconsumer measure, a measure that I think makes a beginning in efforts against big-time spammers, is passing. It will be of great benefit to consumers.

I yield the floor.

Mr. SCHUMER. Thank you, Mr. President.

First, let me thank my colleague from Oregon for his leadership on this issue, for his persistence—done in a slightly different way, the Oregon way, not the New York way, but it is effective, if not more effective—and for his understanding. There is no one in this Congress who better understands technology issues and yet has a political grasp of politics and blends the two. I thank him for his leadership.

I thank the Senator from Montana, as well, who has worked long and hard on this issue; and the chairman from Arizona, the chairman of the Commerce Committee, also.

This is going to be a good Thanksgiving for consumers. We are dealing with spam today. The portability rules for cell phones have been enacted. I worked long and hard on those. Both antispamming legislation and portability rules are very important things we have done for consumers. As technology changes, we need to adapt the rules, not simply try to bang them on the books. The basic principles we have always have to be applied in new and different ways. That is what we are trying to do today.

E-mail is one of the great inventions of the 20th century. But, unfortunately, if we did nothing, e-mail would not be around within a few years and no one could use it. What was an annoyance a few years ago has become a major problem this year and could really cripple e-mail a few years from now. So this Congress has acted. We acted in a thoughtful and careful way.

Is this bill going to solve everything? No. But will it make a real difference? You bet. Spammers: Be put on notice. Within a few months you will be committing a criminal act if you do what you are doing now.

With this bill, Congress is saying that if you are a spammer, you can wind up in the slammer. That is the beginning of the movement. This is why we can say: We have had enough. We don’t want to have people flooded with this kind of junk. It is a beginning, but not the end. There will be criminal penalties and real prosecution. Will we go after every spammer, somebody who makes a mistake here and there? No. But the studies show us—this is what gives all of us such hope—that maybe 250 spammers send out 90 percent of the e-mail. And we are saying to those 250, no matter where you are, or how you try to hide your spam, we will find you. This bill gives the FTC and the Justice Department the tools to go after you.

That is why this bill is so important. This is such a good day, not only for those who use computers but for technology in general.

I became familiar with this issue when I noticed my daughter on her computer. My wife and I have always said to one another: Isn’t it great that instead of watching television, our kids are always on the computer? Then we saw what was popping up in their e-mail—things that we wouldn’t want our kids to see. I have a 14-year-old granddaughter. As we looked into it, we saw what was happening. Spam is annoying, crippling commerce, and pornographic. All of
that has to end while we preserve the essence of spam itself, which is ease of communication.

There is no single solution. That is why this bill is correct in taking the eclectic approach. I wanted to put a few more provisions in. I have talked to my friends from Montana and Oregon. We are going to monitor this. If new things are needed, we will add them. But there are many different ways we can go after spammers after this legislation is signed by the President.

The part for which I fought fiercely is the No Spam Registry. It will provide prosecutors with the best tools to create the case. They won’t have to prove intent. They won’t have to prove anything other than as they do with the No Call Registry. Day after day, spammers have relentlessly sent hundreds and thousands of spam e-mails to people who have explicitly said they do not want spam.

I believe that it will work. I know that the FTC has some doubts. Although, fortunately, they now say it is technically feasible, and they are not worried about the list being stolen, they are worried about the evidence.

The FTC says, ‘‘Try it.’’ They know we do not have anything better. It is not going to solve everything, but it is the best tool we have.

When they come back to us in 6 months with their proposal, which they must under the legislation, I have been assured by both Chairman McCain and Ranking Member Hollings, as well as Senators Wyden and Burns, that we will make sure they implement it. We will either do it statutorily or by pressure from the appropriators and others.

So the FTC may disagree with the vast majority of Americans and the unanimity of the Congress—I guess unanimously in the Senate, not quite in the House—but we are going to make this spam registry a reality within a year.

So the bottom line is simple: For the first time there is some light at the end of the tunnel in the fight against spam. This legislation—not a panacea—will greatly reduce the burden of spam, the difficulty of spam, and the pornographic aspects of spam.

So again, I thank all of my colleagues in the Senate in letting this legislation go through. Again, it is a happy day to be giving up to computer users everywhere.

I thank my colleagues from Montana and Oregon for their leadership. I thank Senators McCain and Hollings, as chairman and ranking member of the committee, for their support.

With my friends from Idaho tried to rip the registry out of the legislation, these folks stood firm, the Senate stood firm, and that is why we have it in here today.

With that, Mr. President, let me just conclude by wishing you, my colleagues from Maine and Oregon, and all of my colleagues, and all those who work here, a very happy Thanksgiving.

For me, God has given me much to be thankful for, and I will dwell on that over the next few days. I hope everyone here feels the same way about their fortune and good fortune.

With that, I yield the floor.

Mr. BURNS. Mr. President, I would like to engage the gentleman from Oregon, Mr. Wyden, in a colloquy regarding some details of the anti-spam legislation approved by the Senate. We have worked tirelessly on S. 877, and it is important that we know whether the FTC can get around the definitions of electronic mail address and electronic mail message that will be regulated under this law. The definitions in the bill require electronic mail addresses to contain a domain part. This requirement is important to make sure we only capture e-mail and do not regulate other communications platforms, such as Instant Messaging. However, I want to be clear that the intent of Congress, as expressed in the bill, is that term is commonly understood. This includes e-mail messages sent within the same domain that may not actually display the domain part of the e-mail address.

Mr. WYDEN. Thank you, Mr. BURNS. I thank the gentleman from Montana for raising this important issue. Yes, the intent of S. 877 is to capture all e-mail messages as that term is commonly understood. This includes e-mail messages where the domain part may not be displayed. That is why the bill’s definition of e-mail address, in referring to the domain part, contains the phrase ‘‘whether or not displayed.’’ We certainly do not want to create any loopholes that spammers could potentially exploit. I am happy to appreciate the opportunity to clarify this point.

Mr. BURNS. I would like to flag one other aspect of the bill. Under section 6, the FTC can bring enforcement actions against merchants whose products or services are promoted in spam e-mails, even if the merchant is not the spammer. Isn’t that correct?

Mr. WYDEN. I agree with the Senator.

Mr. BURNS. But isn’t it also true that section 5 can be used against merchants whose products are promoted in spam e-mails? Can’t the FTC, State A.G.s, and Internet Service Providers bring actions under section 5 against parties who, although themselves not the spammers, do use them to hire spammers to promote their products or services?

Mr. WYDEN. Absolutely. The bill’s definition of ‘‘initiate’’ makes that clear, because it applies not only to the spammer that originates the actual e-mail, but also to a party who has hired or otherwise induced the spammer to send the e-mail on its behalf. If the e-mail message violates the bill, both parties would be on the hook under section 5, and enforcement would be possible against both parties.

Mr. BURNS. That confirms my understanding. So what is different about section 6, as I understand it, is that section 6 does not require any showing that the merchant actually hired or induced the spammer to send the spam. In other words, if the spammer is hard to find and his contractual relationship with the merchant has been obscured by under-the-table dealings, the FTC does not have to expend the effort in trying to prove the relationship.

Mr. WYDEN. I share the Senator’s understanding of how section 6 differs from the provisions of section 5. I would only add that the drafters considered whether the FTC has the discretion to enforce the bill in the manner set forth in section 6, and decided that section 6 should be enforced by the FTC only.

Mr. BURNS. I thank my colleague from Oregon.

Mr. LEAHY. Mr. President, I am pleased that the Senate is passing legislation to help staunch the torrent of unwanted electronic mail—commonly known as spam. During the past few years, I worked closely with Senator HATCH and other members of the Judiciary Committee to craft criminal penalties for a variety of spammer tactics. Those penalties, which we introduced in June as part of the Criminal Spam Enforcement Act of 2004, are included in the broader anti-spam legislation that we pass today. The bill will now go back to the House of Representatives for final approval, and then to the President for signing.

There is much more than a technological nuisance. In the past few years, it has become a serious and growing problem that threatens to undermine the vast potential of the Internet.

Businesses and individuals currently wade through tremendous amounts of spam in order to access e-mail that is of relevance to them—and this is after Internet Service Providers, businesses, and individuals have spent time and in some cases enormous amounts of money blocking a large percentage of spam from reaching its intended recipients.

In my home State of Vermont, one legislator recently found that two-thirds of the 96 e-mails in his inbox were spam. And this occurred after the legislature had installed new spam-blocking software on its computer system that seemed to be catching 80 percent of the spam. The assistant attorney general in Vermont was forced to complain to computer companies following means to avoid these unsolicited commercial e-mails: ‘‘It’s very bad to reply, even to say don’t send anymore. It tells the spammer they have a live address . . . The best thing you can do is just keep deleting them. If it gets really bad, you may have to change your address.’’ This experience is echoed nationwide.

E-mail users are having the online equivalent of the experience of the woman in the Monty Python skit, who seeks to order a Spam-free breakfast at a restaurant. Try as she might, she cannot get the waitress to bring her the meal she desires. Every dish in the
restaurant comes with Spam; it is just a matter of how much. There is “egg, bacon and Spam”; “egg, bacon, sausage and Spam”; “Spam, bacon, sausage and Spam”; “Spam, egg, Spam, Spam, bacon and Spam”; “Spam, sausage, Spam, Spam, Spam, bacon, Spam, tomato.” And so on and so on. The perturbed, the woman finally cries out: “I don’t like Spam! . . . I don’t want ANY Spam!”

Individuals and businesses are understandably reacting similarly to electronic spam. A Harris poll taken in the spring of last year found that 80 percent of respondents view spam as “very annoying,” and fully 74 percent of respondents favor making mass spamming illegal.

Earlier this month, more than three out of four people surveyed by Yahoo! Mail said it was “less aggravating to clean a toilet” than to sort through spam. Americans are fed up.

Some states now have anti-spam laws, but the globe-hopping nature of e-mail makes it difficult to enforce. Technology will undoubtedly play a key role in fighting spam, but a technological solution to the problem is not likely in the foreseeable future. ISPs block billions of unwanted e-mails each day, but spammers are winning the battle.

Millions of unwanted, unsolicited commercial e-mails are received by American businesses and individuals each day, despite their own, additional filtering efforts. Ferris Research has estimated that spam costs U.S. firms $3.9 billion annually in lost worker productivity, consumption of bandwidth, and the use of technical support to configure and run spam filters and provide helpdesk support for spam recipients.

The costs of spam are significant to individuals as well, including time spent identifying and deleting spam, inadvertently opening spam, installing and maintaining anti-spam filters, tracking down legitimate messages mistakenly deleted by spam filters, and paying for the ISP's blocking efforts.

And there are other prominent and equally important costs of spam. It may introduce viruses, worms, and “Trojan horse” programs—that is, programs that unsuspecting users download onto their computers that are designed to take control of those computers—into personal and business computer systems, including those that support our national infrastructure.

Spammers are constantly in need of new machines through which to route their garbage e-mail, and a virus makes an efficient delivery mechanism for the envelope they use for their mass mailings. Some analysts said the SoBigF virus may have been created with a more malicious intent than most viruses, and may even be linked to spam e-mail schemes that could be a source of cash for those involved in the scheme.

The interconnection between computer viruses and spam is readily apparent: Both flood the Internet in an attempt to force a message on people who would not otherwise choose to receive it. Criminal laws I wrote prohibiting the former have been invoked and enforced from the time they were passed. It is the latter dilemma we must pass legislation to address.

Spam is also fertile ground for deceptive trade practices. The FTC has estimated that 90 percent of the spam involving investment and business opportunities, and nearly half of the spam advertising business and personal services, and travel and leisure, contains false or misleading information.

This rampant deception has the potential to undermine Americans' trust of valid information on the Internet. Indeed, it has already caused some Americans to refrain from using the Internet to the extent they otherwise would. For example, some have chosen not to participate in public discussion forums, and are hesitant to provide the addresses in legitimate business transactions, for fear that their e-mail addresses will be harvested for junk e-mail lists. And they are right to be concerned.

The FTC found spam arriving at its computer system just 9 minutes after posting an e-mail address in an online chat room.

I have often said that Congress must exercise great caution when regulating in cyberspace. Any legislative solution to spam must tread carefully to ensure that spam, like more traditional forms of commercial speech, is protected.

The FTC must prove that the header information that accompanied the e-mails was altered or concealed in a manner that would impair the ability of a recipient to distinguish the true origin of the e-mail message from any other.

The Internet is a valuable asset to our Nation, to our economy, and to the lives of Americans, and we should act prudently to secure its continued viability and vitality.

On June 19 of this year, Senator Harkin introduced S. 1293, the Criminal Spam Act, together with several of our colleagues on the Judiciary Committee. On September 25, the Committee unanimously voted to report S. 1293 to the floor. On October 22, the Senate unanimously adopted the criminal provisions of the bill as amendments to S. 877, the CAN Spam Act. Today, the Senate is passing these same criminal provisions as section 4 of a modified version of S. 877, as passed by the House last week.

The Hatch-Leahy legislation prohibits five principal techniques that spammers use to evade filtering software and hide their trails.

First, our legislation prohibits hacking into another person’s computer system and sending bulk spam from or through that system. This criminalizes the common spammer technique of obtaining access to other people’s e-mail accounts on an ISP’s e-mail network, so as to bypass spam filters.

Second, our legislation prohibits using a computer system that the owner makes available for other purposes as a conduit for bulk spam, with the intent of deceiving recipients as to the spam’s origin. This prohibition criminalizes another common spammer technique—the abuse of third parties’ “open” servers, such as e-mail servers that have the capability to relay mail, or Web proxy servers that have the ability to generate “form” mail.

Spammers commandeering these servers to send bulk commercial e-mail without the server owner’s knowledge, either by “relaying” their e-mail through an “open” e-mail server or by abusing an “open” Web proxy server’s capability to generate form e-mails as a means to originate spam, thereby exceeding the owner’s authorization for use of that e-mail or Web server. In some instances the servers are even completely shut down as a result of tens of thousands of undeliverable messages generated from the spammer’s e-mail list.

The legislation’s third prohibition takes a different and another way that outlaw spammers evade ISP filters: Falsifying the “header information” that accompanies every e-mail, and sending bulk spam containing that fake header information. More specifically, the legislation prohibits forging information regarding the origin of the e-mail message, and the route through which the message attempted to penetrate the ISP filters.

At the suggestion of the Department of Justice, this third offense has been amended since the Senate last considered it to require a showing of materi'ality. This means the Government must prove that the header information was altered or concealed in a manner that would impair the ability of a recipient of the message, an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this title, or a law enforcement agency, to identify, locate, or respond to the person who initiated the e-mail or to investigate the alleged violation.

Fourth, the Hatch-Leahy legislation prohibits registering for multiple e-mail accounts or domain names using false identities, and sending bulk e-mail from those accounts or domains. This provision targets deceptive “account churning,” a common outlaw spammer technique that works as follows. The spammer registers—usually by means of an automatic computer program—hundreds of e-mail accounts or domain names, using false registration information, then sends bulk spam from one account or
domain after another. This technique stays ahead of ISP filters by hiding the source, size, and scope of the sender’s mailings, and prevents the e-mail account provider or domain name registrant from identifying the registrant as a spammer and denying his registration. For example, spamming companies and spammers who obtained e-mail address information for domain names also violate a basic contractual requirement for domain name registration falsification. As with the last offense, this offense now requires that the registration information be falsified “materially.”

Fifth and finally, our legislation addresses a major hacker spammer technique for hiding identity that is a common and pernicious alternative to domain name registration—hijacking un-used expandes of Internet address space and using them as launch pads for junk e-mail. Hijacking Internet Protocol—IP—addresses is not difficult: Spammers simply falsely assert that they have the right to use a block of IP addresses, and obtain an Internet connection for those addresses. Hiding behind those addresses, they can then send vast amounts of spam that is extremely difficult to trace. Penalties for violations of these new criminal prohibitions are tough but measured. Recidivists and those who send spam in furtherance of another felony may be imprisoned for up to 5 years. Large-volume spammers, those who hack into another person’s computer system to send bulk spam, and spam “kingpins” who use others to operate their spamming operations may be imprisoned for up to 3 years. Other offenders may be fined and imprisoned for no more than one year. Convicted offenders are also subject to forfeiture of proceeds and instrumentalities of the offense.

In addition to these penalties, the Hatch-Leahy legislation directs the Sentencing Commission to consider providing sentencing enhancements for those convicted of the new criminal provision who obtained e-mail addresses through improper means, such as harvesting, and those who knowingly sent spam containing or advertising a falsely registered Internet domain name. We have also worked with Senator Nelson on language directing the Sentencing Commission to consider enhancements for those who commit other crimes that are facilitated by the sending of spam.

I should note that the Criminal Spam Act, from which these provisions are taken, enjoys broad support from ISPs, direct marketers, consumer groups, and civil liberties groups alike. Again, the purpose of these criminal provisions is to deter the most pernicious and unscrupulous types of spammers—who use trickery and deception to induce others to relay and view their messages. Ridding America’s inboxes of deceptively delivered spam will help the electronic channels for Internet users from coast-to-coast. But it is not a cure-all for the spam pandemic.

The fundamental problem inherent to spam—its sheer volume—may well persist even in the absence of fraudulent routing information and false identities. In a recent survey, 82 percent of respondents considered unsolicited bulk e-mail, even from legitimate businesses, to be spam. Given this public opinion, and in light of the fact that spam is, in essence, cost-shifted advertising, we need to take a more comprehensive approach to our fight against spam.

While I am generally supportive of the CAN SPAM Act, it does raise some concerns. For one thing, it may not be tough enough to do the job.

The bill takes an “opt out” approach to spam—that is, it requires all commercial e-mail to include an “opt out” mechanism, by which e-mail recipients may opt out of receiving further unwanted spam. My concern is that this approach authorizes spammers to send at least one piece of spam to each e-mail address within their database, while placing the burden on e-mail recipients to respond. People who receive dozens, even hundreds, of unwanted e-mails each day may have little time or energy for anything other than opting out from unwanted spam. Meantime, CAN SPAM will sweep away dozens of State anti-spam laws, including some that were substantially more restrictive.

I am also troubled by the two labeling requirement in the CAN SPAM Act. The first makes it unlawful to send an unsolicited commercial e-mail message unless it provides, among other things, “clear and conspicuous identification that the message is an advertisement or solicitation,” and “a valid physical postal address of the sender.” The second—as added by a floor amendment during Senate consideration of the bill in October—requires “warning labels” on any commercial e-mail that includes “sexually oriented material.”

While we all want to curb spam and protect our children from inappropriate material, there are important first amendment concerns to regulating commercial e-mail in ways that require specific labels on protected speech. Such requirements inhibit both the speaker’s right to express and the listener’s right to access constitutionally protected material.

In addition, the bill’s definition of “sexually oriented material” as any material that “depicts” sexually explicit conduct seems overly broad. According to Webster’s dictionary, “depict” may mean either to represent by a picture or to describe in words. It is my hope that the FTC, which has some rulemaking authority with respect to this labeling requirement, will clarify that it applies to “visual” depictions only.

The CAN SPAM Act may not be perfect, but it is necessary to address a difficult and urgent problem. I support its passage today, and commend the bipartisanship that was needed to get this done.

Mr. BURNS. Mr. President, I rise today to support the final passage of the CAN–SPAM bill, which will help to stem the tide of junk e-mail that is flooding the Nation’s inboxes. I want to specifically thank my colleague Senator Wyden, the coauthor of the bill, who has been working tirelessly on this issue for years. Thanks to discussions over the past few days, many of the already-strong proconsumer provisions in CAN–SPAM have been enhanced. The bill that the Senate considered today contains substantial statutory damages for spammers and additional notice requirements on commercial e-mail.

The extent of bipartisan cooperation on this issue is no surprise given the deluge of spam consumers face in their inboxes everyday. The costs to businesses and individuals are escalating and widespread. Businesses lose money from lost time and energy, and public services are forced to pay long distance charges for their time on the Internet. Spam makes it nearly impossible for those in rural America to realize the tremendous economic and educational benefits of the online era.

The CAN–SPAM bill empowers consumers and grants additional enforcement authority to the Federal Trade Commission to take action against spammers. The bill requires the senders of commercial e-mail to include a “clear and conspicuous identification” to allow consumers to be removed from mass e-mail lists. This “opt-out” must also be clearly described in the e-mail itself, so that users of e-mail are not forced to sift through pages of legalese to determine where they can stop unwanted e-mail.

The senders of commercial e-mail must also provide a valid physical postal address so that they are not able to hide their identities. Finally, e-mail marketers must include notice that the e-mail is an advertisement. Simply put, the CAN–SPAM bill finally gives consumers a measure of control over their inboxes.

I am pleased where e-mail marketers don’t comply with the CAN–SPAM bill, the penalties are severe. Spammers are on the hook for damages up to $250 per spam e-mail with a cap of $2 million. This already high penalty can be tripled if particularly unethical methods are used, such as “computer hijacking” to send spam by taking control of the computers of legitimate users without their knowledge or for harvesting addresses from legitimate Web sites to send spam. For criminal spammers who try to hide their identities by using false header information, damages are not capped.
The CAN–SPAM bill also includes enhanced enforcement authority for the FTC to close possible loopholes for spammers and to keep up with technological developments. Granting the Commission the ability to keep pace with the new techniques of spammers is essential because it has become clear in recent years that these criminals are growing increasingly sophisticated in their methods.

The passage of CAN–SPAM today will help to stem the tide of the toxic sea of spam. Clearly, consumers have been demanding control over their e-mail inboxes and the passage of CAN–SPAM today will give consumers a key victory in the battle against criminal spammers.

The PRESIDING OFFICER (Mr. Cor- nyn). The Senator from Maine.

Ms. COLLINS. Mr. President, let me first return the Thanksgiving greetings of my colleagues. I hope that they, too, are able to have a happy holiday with their families and friends.

INVESTIGATION INTO THE LACK OF COORDINATION BETWEEN FEDERAL AGENCIES

Ms. COLLINS. Mr. President, last week NBC News aired a report indicating that suspected terrorists had been granted American citizenship or permanent residency at the same time they were under investigation by the FBI for their involvement in terrorism. This well-researched piece reached the NBC piece parallel to the茄ives. A huge threat has not really been mitigated.

As the chairman of the Committee on Government Affairs, to follow up on these allegations, I have made repeated requests to the Department of Justice for information that would allow my committee to assess this potentially serious threat to our national security.

We have a saying up in Maine: You can’t get there from here. You may have heard it, Mr. President. But when it comes to travel in my home State, it is not really true. The roads may be winding, and the route may not be all that direct, but with persistence and patience, you can always get where you need to go.

However, when it comes to dealing with the Department of Justice on this very serious matter, it seems that you cannot get anywhere. I have been persistent, but my patience has pretty much run out.

The allegations that I received in January were these: In the course of investigating foreign-born individuals for terrorism-related offenses, the FBI learned that some of these individuals were in the process of applying for naturalization or permanent residency.

FBI agents requested permission to share that critical important information with the INS. Their FBI supervisors, however, refused those requests. This information has been confirmed by NBC News’s chief investigative reporter, Lisa Myers, in her thoroughly researched piece that aired last week.

My requests to the Department of Justice for information that would define the size of this alleged hole in national security and of this possible gap in interagency cooperation have been refused repeatedly. I have modified my requests in order to accommodate the specific objections raised by the Department. My modified requests have also been refused due to new objections or, in some cases, old ones simply rephrased.

Here is a brief travelogue of my 10-month journey in the bureaucracy of the Department of Justice: On January 21, shortly after these allegations came to my attention, I wrote to the FBI Director, Robert Mueller, and asked that he provide the committee with the names, dates of birth, INS registration numbers, and start dates of investigations of all persons who have been the subjects of terrorism investigations from September 10, 2001, in the 15 largest FBI field offices. I asked to have this information delivered to my office by February 4.

Well, I received no response at all until February 28, when I received a reply from the Department categorically denying my request. The primary reason cited was that the Department had a longstanding policy of not providing committee members with information about people who have been investigated but not prosecuted.

Among the other supporting reasons were the separation of powers and—I am not making this up, Mr. President—that “the Justice Department’s argument about the separation of powers and—basically refers to the fact that an executive branch agency cannot provide information to Congress with information that could help it understand and remedy a situation so potentially damaging to our Nation’s security could, and I quote, ‘gravely damage the nation’s security’.”

The Department did, however, at that point, to work with me to see if there was an alternative. I eagerly took the Department up on that offer, and I wanted to try to accommodate whatever legitimate concerns the Department might have.

Thus, my staff talked repeatedly with the Department during the next few months to craft a mutually agreeable alternative for providing information.

On May 21, I submitted another much narrower request proposing that the Department of Justice would conduct its own review, a review I would think that the Department would be very interested in. The threat was brought to the Department’s own attention. Moreover, the length of the review would be reduced from a decade to 5 years, and the scope would be reduced from 15 field offices to just 5.

Now, by this time, of course, the INS had been moved from the Department of Justice to the new Department of Homeland Security.

It had been renamed as the Bureau of Citizenship and Immigration Services. I suggested the FBI provide the results of its internal review to the BCIS so it could determine who had been granted citizenship or permanent residency through these expedited journeys. Again, I would think the Department would be very concerned about the serious breakdown and lapse in communication and would be eager to review its own files to quickly unmask the names of individuals who might have become citizens or permanent residents while they were under investigation for terrorism-related activities.

After months of negotiations between my staff and the Department’s staff, I believe I had finally come up with a solution that addressed all of the Department’s concerns.

On July 3—keep in mind how much new voluntary immigration—Mr. President, I received a reply. Much to my astonishment, the answer once again was no.

Two new concerns were raised: First, when the FBI and the INS were part of the same overall Department of Justice, they could simply be given for this purpose legally; although, as we well know, they didn’t. Now that they are in two different departments, the Justice Department claims the Privacy Act prevents the sharing of this critical information.

The second reason advanced was the FBI simply did not have the time or resources to review its own files. Again, keep in mind how important it is for the Department to know how many people were in this situation where they were under investigation for terrorism and yet received either American citizenship or permanent residency. I would think the FBI, on its own volition, yet didn’t—received a reply. Much to my astonishment, the answer once again was no.

At this point some of my Senate colleagues may be asking themselves a few questions, if they have had some experience with congressional oversight. First, hasn’t the Department tried many times in the past provided Congress with information such as interview summaries and documentary evidence related to individuals who have been investigated but not prosecuted? Second, does this refute the Justice Department’s argument about a supposedly sacrosanct longstanding policy? Would such a policy, if it existed and were adhered to as strictly as the Justice Department now asserts, be consistent with the other measures Congress has put in place to accommodate the specific objections?

The answer to these questions is obvious.

Although the Justice Department would not review its own files to determine the extent of individuals who have been investigated but not prosecuted, it would not be referring to the Justice Department from effective congressional oversight? The answer to these questions is obvious.

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We appreciate the Committee’s interest in the question of whether individuals were naturalized or received permanent residence status while they were subjects of foreign counterintelligence investigations. In fact, we have indicated in conversations with Committee staff our belief that this likely occurred prior to September 11, 2001. We do not have access to this information. But it is based upon our knowledge of how Bureau and then Immigration and Naturalization Services systems interfaced, we do not dispute the premise.

This is serious. In other words, suspected terrorists most likely received citizenship or permanent residency in the country they swore to destroy because the FBI and INS did not talk to each other. This is extraordinary.

During my negotiations with the Department of Justice, I had suggested the Privacy Act concern the Department raised could be dealt with if the FBI passed the sealed findings of their review through my committee which then, in turn, pass the findings along to the BCIS. That wouldn’t work. Justice said, because it would violate—you got it—their longstanding policy against providing information to Congress about investigations that did not result in prosecution.

If you think we have been driving around in circles, you are right. The Justice Department refuses to provide my oversight committee with information because of a “longstanding policy.” We suggest a way to avoid the Privacy Act concerns, and we find ourselves back to the longstanding policy.

This is simply unacceptable. We know some terrorists and supporters of terrorism seek out the protective guise of American citizenship. We know a lack of coordination between the relevant agencies allowed this unacceptable situation to occur. What we don’t know is how many times it has happened, how broad this problem is, how many people are involved and, most important of all, what has been done to stop it, to close that communications gap.

The Committee on Governmental Affairs will pursue this matter by continuing its investigation. I have again written to the FBI Director to request the records needed by the committee. I have now focused my request on those individuals who volunteered to stay beyond the time that was originally scheduled for their experience in the Senate. I wanted to join with him in expressing our heartfelt gratitude to each of those pages, not only those who served as volunteers but to those pages who have been with us this past session.

Pages play a very important role in the Senate. They are not only spectators to the democratic experiment, but they are real participants. Each of them becomes all the more adept at all sorts of participation as he or she becomes familiar with the Senate. They are not only those pages who stayed as volunteers but to those pages who have been with us this past session.

Pages have now focused my request on those individuals who were named in the documents to the committee.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DASCHLE. Mr. President, the other day the distinguished majority leader came to the floor to call attention to the special contribution made by a number of our pages who volunteered to stay beyond the time that was originally scheduled for their experience in the Senate. I wanted to join with him in expressing our heartfelt gratitude to each of those pages, not only those who served as volunteers but to those pages who have been with us this past session.

I have always been an admirer of our pages because of the great job they do and the little attention they get. I hope they leave with an appreciation of Government.

When we have graduation for our pages, I oftentimes urge them to consider coming back, not only as members of their families but to the Senate. They are not only spectators to the democratic experiment, but they are real participants. Each of them becomes all the more adept at all sorts of participation as he or she becomes familiar with the Senate. They are not only those pages who stayed as volunteers but to those pages who have been with us this past session.

I will never forget Senator David Pryor, Mark Pryor’s father, telling the story that when he was a page he left a penny as an elected official. He did. I think it was a testament to the dreams, aspirations, and remarkable persistence that oftentimes our pages have.

As I noted, there are a number of pages who not only surpassed the time that was expected of them but stayed on afterward to accommodate the elongated Senate schedule. Many others offered to stay, but because they had schedules that were in conflict were not able to. These are seven pages who stayed to full commitments of days and in a couple of cases all the way up until today. Margaret Leddy, Melissa Meyer, Krista Warner, Yael Bortnick, Emily Holmgren, Farrell Oxley, and Sarah Smith all went above and beyond the call of duty. They all have served the Senate in their capacity as pages superbly. I did not want this day or this session to end without publicly acknowledging their remarkable contribution, the quality with which they did their work and the gratitude we have for the job they did.

Yesterday was Melissa Meyer’s birthday. I wish her a happy birthday besides, but to each of our pages—those who may still be here and those who have gone, those who served—again let me express on behalf of the entire Senate our heartfelt thanks, our best wishes for a happy holiday season, and, perhaps most importantly, our sincere wish that they come back again in some other capacity, because we need them.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

SENATE PAGES

Mr. DASCHLE. Mr. President, the other day the distinguished majority leader came to the floor to call attention to the special contribution made by a number of our pages who volunteered to stay beyond the time that was originally scheduled for their experience in the Senate. I wanted to join with him in expressing our heartfelt gratitude to each of those pages, not only those who served as volunteers but to those pages who have been with us this past session.

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When we have graduation for our pages, I oftentimes urge them to consider coming back, not only as members of the staff, but hopefully one day as elected Members themselves. I am absolutely confident at some point someone will.

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The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

HELP AMERICA VOTE ACT

Mr. BOND. Mr. President, earlier today I spoke briefly about the need to get our appropriations bills, many of which are now included in the so-called omnibus appropriations measure—some of us think it is an “omnibus” appropriations measure—passed prior to the end of calendar year 2003. Among the things I pointed out were some very important measures. This body passed something called the Help America Vote Act, which I think focused attention on two very important problems. My colleagues on the other side of the aisle wanted to make sure we had up-to-date voting machines to make sure everyone who was entitled to vote could vote to remove barriers to voting. We supported that.

We also got support for something I thought was very important as well, and that was to stop the rampant fraud that has come back as a result of postcard registration.

I have the honor of representing an area that has probably the dubious distinction of being the center of fraud centers perhaps in the universe. The city of St. Louis, as I have said many times before, is famous for voting rolls clogged with people registered one, two, three, even four times; vacant lots with small cities worth of registered voters; and even entire white dog, Ritzie Meckler, a 13-year-old Springer Spaniel who was registered there.

We have had some great theological experiences. For the last general election, a very prominent and outstanding citizen of the city of St. Louis registered to vote on the 10th anniversary of his death. It is a wonderful theological statement. It does not much
Senator MUKULSKI and I fought long and hard to get the funding that we needed to try to catch up to the backlog in the VA. People with service-related injuries, permanent disabilities, low-income people, homeless people, who are being denied, for months, the ability to get in because so many new enrollees have come into the system. This body expanded the eligibility. We expanded the eligibility, but the money has not kept up. So we are trying to play catchup, and there is an addition to $200 million this year’s funding level for the VA that cannot begin until the bill is signed. We are already a couple of months into the fiscal year 2004. We would be 6 or 7 months in before we could get funding if we wait until next year.

My staff tells me there are a number of other things that will happen. Specifically, noninstitutional long-term care cannot be increased. The VA has placed a high priority, providing a high quality of life care for each veteran. The VA planned to expand the program by over 20 percent this year because of the demand. The VA, without these funds, will not be able to expand the long-term care services under the fiscal year 2003 funding authority. Second, pharmacy costs will continue to increase. For fiscal year 2003, pharmacy costs rose over 11 percent and the VA is incurring increasing demands for prescriptions each month. The continued growth for prescriptions is stripping funds from other priority areas as VA continues to operate under last year’s funding levels.

Third, new community-based outpatient clinics will be curtailed. The VA has 48 high-priority community-based outpatient clinics ready to go that can’t move forward because they don’t have the funds under the continuing resolution.

Finally and most important, and something that is significant to each one of us here, the waiting lists will continue to lengthen. Continued operations under a continuing resolution will force VA to curtail hiring of new physicians and nurses. The VA experiences about a 1-percent normal attrition rate of physicians per month. By January, VA’s waiting list will rise by over 10,000 from the projected level. VA patients, who should be getting our top priority attention, are going to take the wait longer. That is why I renew my appeal to the leaders on both sides to deal with the omnibus appropriations, to come to some agreement, either to take this on UC, or take it by voice vote, with the distinguished chairman and ranking member on our side and the other side to come to closure on it, or, if need be, bring us back in session.

The House is going to come back into session on December 8, I understand, and vote on the bill. We have an obligation to come in—or if there is a unanimous consent agreement granted to do it by voice vote or if there is not—and do what we are paid to do and that is to vote up or down and pass the appropriations that are so essential for many areas where continuing resolution funding will be inadequate. I urge the leadership to work on this. We need it in many areas.

I yield the floor.

The PRESIDING OFFICER (Mrs. DOLE). The Senator from New Mexico.

Mr. BINGAMAN. I thank the Chair.

(The remarks of Mr. BINGAMAN pertaining to the introduction of S. 1966 are located in today’s RECORD under “Statements on Introduced Bills and Joint Resolutions.”)

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Madam President, I have some remarks I would like to make shortly, but I know Senator LAVENBERG got here before I did. He told me he had about 10 minutes. I know the majority leader may have some remarks, and, of course, I would defer to him.

Unless there is objection, I would like to ask—well, I will just defer to the majority leader at this time.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Madam President, if I could just take 3 or 4 minutes, and then I know the distinguished Senator from New Jersey has his comments to make.

THANKING THOSE WHO WORKED ON THE MEDICARE PRESCRIPTION DRUG AND REFORM BILL

Mr. FRIST. Madam President, I, just very briefly, want to thank people for a lot of hard work over the last several months.

Earlier today, we did pass a historic bill that is notable for the fact that it does help so many people in a very direct way. I think it is gratifying to all of us as U.S. Senators. But that outcome is made possible by a lot of hard work. I will be very brief, but I do want to thank the appropriate people. Again, I leave out so many people.

But, first, I thank the President of the United States. President Bush does deserve credit for making this vision of being able to reach out and help people as soon as possible in a direct way with prescription drug coverage possible. That vision really did set the template for all of us. We pulled together and passed this bipartisan bill.

Secretary Tommy Thompson, the Secretary of Health and Human Services, and Tom Scully, the Administrator of the Centers for Medicare & Medicaid Services, spent literally hundreds of hours working on this legislation.

I participated on the conference committee and had the wonderful opportunity of working side by side with them, consulting with them, seeking counsel, receiving their input in the Senate. Finance Committee chairman, Chuck GRASSLEY, and ranking member, MAX BAUCUS, really did put partisanship aside from day 1,
when we first started this Senate bill, and worked tirelessly from beginning to end to deliver on the promise that we all have to the American people. In large part it was accomplished because of their work and their partnership in many ways.

Senator John Breaux deserves huge credit. I have worked with Senator Breaux over the last 7 years. There was a Breaux-Frist bill that came out of the Bipartisan Commission. He has demonstrated real leadership and, in my mind, has hit it in terms of the final product longer than anybody in the Senate, working together on the model we ended up with.

All members of the conference committee showed a degree of dedication and resolve that is seldom seen in either Chamber. There were Senators Orrin Hatch and Don Nickles and John Kyl. We simply would not have reached this point if we had not worked together with strong leadership on the part of the conference.

In addition, there were people such as Senators Jeffords, Gregg, Hagel, Ensign, Wyden, and Snowe, who have focused on a tripartisan, bipartisan approach to health care reform, which has benefited the final product in many ways.

Senators Bunning, Thomas, Smith, Lott, and Santorum all made huge contributions working through the Finance Committee.

Members of this body who voted against final passage also contributed in remarkable ways to this product.

I do also want to mention, just in passing, the House leadership because the House leadership, especially Speaker Dennis Hastert and Leader Tom DeLay, deserve very special recognition. I worked very closely, and our leadership worked very closely with them, especially in the final 2 weeks of that conference.

I had the opportunity to call yesterday Governor Mitt Romney. He is truly the mind behind what we accomplished. He was able to assimilate very complex policy and put it into a portrait that ultimately became the substrate for this bill. He demonstrated real leadership, real patience.

Also, chairman of the House Energy and Commerce Committee, Chairman Billy Tauzin, we simply would not be here without his active participation as well.

My dedicated staff—Dean Rosen, Elizabeth Scanlon, Rohit Kumar, and Craig Burton—put in hundreds of hours and poured over thousands of details. Lee Rawls, Eric Ueland, David Craig Burton—and poured over thousands of details. Elizabeth Scanlon, Rohit Kumar, and David Burton—put in hundreds of hours and poured over thousands of details. Elizabeth Scanlon, Rohit Kumar, and David Burton—put in hundreds of hours and poured over thousands of details. Elizabeth Scanlon, Rohit Kumar, and David Burton—put in hundreds of hours and poured over thousands of details.
cannot yet bring to closure the terrible tragedy that befell their families. They are just not emotionally ready to begin the process of closure by applying to the victims compensation fund while their grief is still surrounding them. Imagine the next Thanksgiving able without a son or a daughter or a mother or a father or a child. How sad that is. And we walk away from here not yet completing the task.

I quickly point out, there are no additions required. Those funds were allocated 2 years ago when the fund was established. It is a rather confusing application, 40 pages. The difference is, if one applies to the fund, there is a settlement available. But in some cases, it may seem better for them to resort to the courts. That is why we have the system we have.

It is hard to proceed and leave here without trying to do something about the condition in which we leave these families. We should help them get through this period and encourage them a little bit further. The fund was estimated to cost $5 billion by Mr. Feinberg, who is the master in charge of the distribution. He is an outstanding lawyer who took this job, volunteered it. He notes that only $1 billion out of $5 billion that might be required or available were expended. Many others have been waiting to receive the required information from their loved ones’ former employers in order to complete the forms.

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S. 15952

The PRESIDING OFFICER. Objection?

Mr. CORNYN. I object, Madam President.

The PRESIDING OFFICER. Objection is heard.

Mr. LAUTENBERG. Madam President, I know I have to surrender the microphone. I do it sadly, because I don’t believe that the Senator from Texas on behalf of half of the Republican Party, really would object to extending a deadline—no more money and nothing else has to be done except to say to these people that we have not forgotten. We remember that you died when America’s invincibility was shattered. That is a day that will mark our coming and going forever. One need only remember what happens every time you take your shoes off at the airport, or you are forced to show your ID, or you are searched with a magnetic wand, or whatever, or the fence surrounding the Washington Monument so you cannot see it at ground level when you pass by on Constitution Avenue and fortresses are being built out there. They did this to us and we are going to have to live with that.

I wish reconsideration would be taken here in a discussion with the majority leader and the Senator from Texas, if he cares to be involved, and that we can pass that bill.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.
Let me go over a few of the examples. You will see here on this chart to my left, one internal memorandum, dated November 2001. It was reported that liberal special interest groups urged Senate Democrats to oppose the nomination of Miguel Estrada “because he is a Mexican-American, a Latino, and the White House seems to be grooming him for a Supreme Court appointment.”

Such comments discredit the claim made by those who object to this nomination that Miguel Estrada’s confirmation to the DC Circuit Court of Appeals and who say that ethnicity played no part in their obstruction. This memo stands in stark contrast to that claim. But the one thing I hope we can all agree to is that the Senate should not make any decisions about judicial nominees, or anyone else, period, based on their ethnicity or their race. Such actions demean not only this body but all of us, and the American people did not elect us to do any such thing.

Yet this memo makes clear—or at least adds credence to the argument that but for his ethnicity Miguel Estrada would be on the Federal bench today.

In another memo, dated November 7, 2001, Democratic staff asked the question, “Who to fight?” Which of President Bush’s judicial nominees should be opposed? The answer: Texas Supreme Court Justice Priscilla Owen. Why? Because “...she is from Texas and was appointed to the Supreme Court by Bush, so she will appear parochial and out of the mainstream.”

I served for 4 years on the Texas Supreme Court with Priscilla Owen. I know Priscilla Owen. It is obvious to me that the people who wrote this memorandum do not.

Nevertheless, they decided to use the terms “parochial” and out of the mainstream, and to socall her heritage simply because she was from Texas, she could be cast in an ignorant and unfair stereotype, which should never be appropriate, even in discussing judicial nominees.

I firmly believe that these nominees should be judged on their merits, not on their home state, and certainly not on the basis of any ignorant or ill-informed stereotype.

An April 2002 memorandum indicates some Democrats’ intention to delay judicial nominees, not because of any lack of qualifications but because they wanted to influence the outcome of particular cases, a very troubling suggestion.

According to one memorandum, Elaine Jones of the NAACP Legal Defense Fund would like the committee to hold off on any Sixth Circuit nominees until the University of Michigan case regarding the constitutionality of affirmative action and higher education decisions on the Sixth Circuit. The memo writer appears to have understood that such tactics were highly improper but chose to proceed with those plans anyway. The memorandum expressed concern about the propriety of scheduling hearings based on the resolution of a particular case but went on to say, “nevertheless, we recommend that Sixth Circuit nominee Julia Scott Gibbons be scheduled for a late hearing.”

Even acts that are widely recognized as improper and inappropriate seem to have become fair game for obstructionists today.

Not only have we seen obstruction, we have seen destruction when it comes to the reputation of the nominees who have been proposed by the President by the use of vicious ad hominem character attacks. In public, leading Democrat Senators have called this President’s judicial nominees everything from turkeys to neanderthals, to kooks, to selfish, despicable, and mean.

In memos, Democrats—the ones in the minority who obstruct the President’s judicial nominees and who have become fair game for obstructionists today. Let me go over a few of the examples. You will see here on this chart to my left, one internal memorandum, dated November 2001. It was reported that liberal special interest groups urged Senate Democrats to oppose the nomination of Miguel Estrada “because he is a Mexican-American, a Latino, and the White House seems to be grooming him for a Supreme Court appointment.”

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does this mean? Why should we care? In the brief moments remaining, I will address why the American people should care and why we should care.

We have too often seen an unelected, lifetime-tenured judiciary make decisions based on dubious constitutional grounds, and we can no longer afford the support of the vast majority of the American people. Just one that comes to mind is a recent ruling of the Ninth Circuit Court of Appeals saying that the words “under God” in the Pledge of Allegiance may not be uttered in a classroom because it violates the first amendment separation of church and state.

That does not make any sense. It certainly cannot be the law. Yet we have lifetime-tenured judges who are stating that as if it were the law. Thank goodness that decision will be reviewed, and I hope expeditiously reversed, by the U.S. Supreme Court.

We have all sorts of strange things happening today. One recent article caught my attention: When current Supreme Court Justices in a recent speech said the decisions of other countries’ courts should be persuasive authority in America’s courts when interpreting what our law is, we ought to look to the law of the European Union or other countries, perhaps, to guide these American judges in interpreting American law and the American Constitution. Justice Breyer recently found useful, in interpreting the American Constitution, decisions by the Privy Counsel of Jamaica and the Supreme Courts of India and Zimbabwe.

Later, Justice Kennedy of the United States Supreme Court cited a decision of the European Court of Human Rights in a decision handed down this month. Justice Ginsburg, joined by Justice Stevens, dissented in a decision by the International Convention on the Elimination of All Forms of Racial Discrimination in a recent case. It goes on and on.

Anyone who is paying attention to what Federal judges are doing today and what they view in terms of their obligation to interpret the law have to ask the question: What is going on? What would James Madison, Alexander Hamilton, Thomas Jefferson—what would our Founding Fathers say about what is happening in our Federal Judiciary today? We all know the answer. They would be shocked. We should be shocked as well.

Finally, this is an important debate because this determines what kind of country we are and what kind of country we will become. My hope and prayer is that in the intervening 2 months, when we come back, this debate will take on a new civil tone, we will de- plore and avoid these tactics of the past and embrace the fresh start we so earnestly sought just a few short months ago.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan.

UNEMPLOYMENT COMPENSATION

Mr. LEVIN. Madam President, after the Senate adjourns for the year, the plan is for the Senate to reconvene on January 20 of next year. Unless Congress acts to extend Federal unemployment benefits, the so-called Temporary Extended Unemployment Compensation Program for 1993, hundreds of thousands of unemployed Americans face the holidays with the prospect of losing their unemployment benefits on January 1. This lack of action would put us exactly the same situation as we found ourselves in last year: running home to our loved ones without helping jobless Americans during the holiday season.

At a minimum, we should extend the current Federal Unemployment Assistance Program for 6 months. At a minimum, we should stand by America’s workers and help the unemployed during this holiday season.

According to the Center for Budget and Policy Priorities, in January, about 900,000 current unemployed workers are likely to exhaust their regular State benefits each week. Absent congressional action, starting January 1 next year, workers who exhaust their regular State benefits will no longer be eligible for any Federal benefits. The only people who will continue to receive those benefits will be those who have begun to receive their Federal benefits by January 1.

This chart shows where we are in terms of the usual. In the recession of 1974–1975, there were Federal benefits accumulating to 29 weeks. That is in addition to the 26 weeks of State benefits. In the 1981–1982 recession, again, 29 weeks of Federal benefits. In the 1990–1991 recession, 28 weeks of Federal benefits. Currently, until December 31 of this year, there will be 13 weeks of Federal benefits that are offered in addition to the 26 weeks in each of our States. That is what will disappear December 31.

This is the latest program we have going. This is half of what we have done in the prior two recessions in terms of Federal benefits, slightly less than half of what we did in the recessions of 1974–1975 and 1981–1982, but exactly half of what we did in the 1990–1991 recession.

Currently, we only have 13 weeks of Federal benefits. This is going to run out on December 31 unless we act before we leave this Congress.

Some contend the issue of whether or not to extend the program and in what form can be dealt with when we return on January 20. I believe, however, by the time January 20 rolls around, it is going to be too late. In fact, we know it will be too late for thousands of unemployed who will have exhausted their benefits. So action is needed today. It is needed now or else this Federal benefit program, which is a modest program—again, I emphasize, half of what we had in prior recessions—unless this is reauthorized today, it is going to run out and hundreds of thousands of unemployed Americans are going to see their benefits exhausted without the benefit of the Federal program.

In the month of January alone—this coming January—as many as 400,000 unemployed workers are going to exhaust their State benefits if we don’t act.

The number of long-term jobless—that is the people who have been jobless 6 months or more—grew in October to over 2 million workers; for the first time since this recession began. That represents an increase of over 700,000 workers compared to March 2002 when the current Federal unemployment program was most recently authorized.

The Federal extended benefits program which was implemented in the last recession did not end until the economy had added nearly 3 million jobs to the prerecession level. The current unemployment program is scheduled to end, although there are 3 million fewer private sector jobs than when this recession began.

Renewing this Temporary Emergency Unemployment Compensation Program, the Federal benefits program, is essential under these circumstances. The comparison on this chart is dramatic between what we did in prior recessions and this recession.

In prior recessions, we had twice the level of Federal benefits as we do now. We have a modest 13 weeks, half the level, and in the prior recession we waited to end the Federal program until millions of new jobs had been created.

Unless we act today, we will have lost 3 million jobs and still will be ending a Federal program which is so critically essential to those people who are unemployed.

The Department of Labor’s announcement that 125,000 jobs were created in October and that the unemployment rate dropped to 6 percent, the first decline since I don’t know how long—I don’t have the exact date here, but a long time—does not reassure the summer of hope. It is a glimmer of hope at least in some places, but in my home State of Michigan the unemployment rate is 7.6 percent.

We, like most other States, are very dependent upon a minimum level of unemployment benefits. It would be unconscionable for this Congress to leave without renewing this program.

Factory employment in America declined for the 29th consecutive month by eliminating approximately 24,000 manufacturing jobs. So even though we had that slight increase in jobs in October, for the first time really, we are seeing a slight up-tick in the total number of jobs. We have at least some jobs in the manufacturing sector, the 39th consecutive month, we lost tens of thousands of manufacturing jobs.

America’s manufacturing core has shed an average of over 50,000 jobs a month in the last 12 months. These manufacturing jobs, which build and sustain America’s middle class, are disappearing. A total of over 2.5 million
November 25, 2003

CONGRESSIONAL RECORD — SENATE

S15955

UNANIMOUS CONSENT REQUEST— S. 1339

Ms. CANTWELL. Madam President, I rise to echo the comments of the Senator from Michigan. I think it critically important that Congress not adjourn for the year without addressing unemployment benefits for Americans who, unfortunately, have been out of work for some time now.

The Senator from Michigan is very conscious of the fact that his State, with 7.6 percent unemployment, has not seen much economic recovery in this jobless recovery. I can tell him that the State of Washington has seen very little relief, as we are at 7 percent unemployment rate. The States around us—Oregon is at 7.6 percent unemployment; Alaska is at 7.3 percent unemployment—also continue to suffer.

The Pacific Northwest has been very hard hit by the downturn in our economy. While some people would like to say that is part of the process, I would argue that losing jobs in the aerospace industry after 9/11—35,000 jobs just at Boeing alone—is no fault of individual workers.

I guarantee you, individual workers in my State would rather have a paycheck than an unemployment check. But if they are not getting an unemployment check, if they do not have the ability to take care of mortgage payments and other bills, it affects our overall economy. That is why for a long period of time, not only have people believed that those who pay into unemployment benefits should get a package for taking care of them during downturns in our economy but they also think unemployment benefits are a great stimulus for an economy that is sagging.

My colleagues on the other side of the aisle continue to refuse to bring up an extension of unemployment benefits. That means by that December 31 of this year, some 90,000 unemployed people, not just will exhaust their regular benefits. That means in the first 6 months of 2004 there may be as many as 2 million people affected by this loss of benefits.

This issue is so important to me because we were in this same situation last year. This side of the aisle said, given that this country has lost so many jobs, we must do something to take care of laid off workers. We must extend the Federal unemployment benefits program. In my State, through no fault of individual workers, we are seeing many individuals being laid off and hence exhausting their regular unemployment benefits. On December 31 of last year, we were successful in convincing the Senate, with Senator NICKLES’ help, to pass a bill out of the Senate extending unemployment benefits, but the Republicans in the House refused to take up the measure and people were forced to trade off short-term security for short-term economic need, only because the Federal Government did not stand up and do its job.

We had a similar situation in the 1990s in which we had high unemployment. What did we do to act responsibly? For 30 months, the Federal program offered to unemployed Americans a richer benefit than we are offering today—20 weeks in the 1990s, compared to 13 weeks today. What was different in the 1990s? During that time period, 2.9 million net jobs were created. Since this recession started, we’ve lost 2.4 million jobs.

The 1990s recession covered both a Republican administration—the first Bush administration—and a Democratic administration. Both those administrations committed—for 30 months, and with a richer Federal program of 20 weeks—to take care of those out of work and to recoup.

As the economy recovered and 2.9 million new jobs were added, then we ended the program.

How do our actions today compare to that recession? Well, we have only had 22 months of this program, so it has not lasted as long as the previous program of Federal unemployment benefits. It has been 8 months shorter. The benefits are less, only 13 weeks instead of 20. So it is not as rich a program. As I said earlier, we have lost 2.4 million jobs during this time period, instead of 2.9 million.

The 1990s recession resulted in new jobs. In the meantime, while we are fighting the battle for manufacturing jobs, we should not go home for the holidays having failed to act to maintain the very modest Federal unemployment benefits program. I know there are many in this body who are determined to see us have the opportunity to act to extend this program before we leave for the recess.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.
pay for the various essentials they need to do to exist. And that is what they are basically doing. They are just getting by. They are just getting by until new jobs are created.

I say to the administration: Where are all these new jobs? The bottom line is still 2.4 million jobs lost. If the administration wants to curtail this economic program, at least stand up and be as responsive as the last two administration were and create the new jobs. In that recession, 2.9 million jobs were created and so, of course, Americans could go back to work and, of course, they could get off the Federal program.

We have a big challenge before us. And although this bill does not directly address this, we must recognize that parts of our economy are retooling. Parts of our economy are demanding more creative approach to jobs that are lost. If we are going to get these new jobs, it will take almost 2 years to regain the jobs we have lost. Why not prop up our economy by adding needed stimulus? Why not give American workers a return on a program they paid into, and why not go by admitting they would rather have job creation than unemployment checks and get about going back to stimulating our economy with real job creation?

None of that is happening. We are all now about ready to adjourn to some date uncertain. I do not know if it is January or a sooner time, but America was listening last year. At the holiday season, as December 31 rolled around, Americans were furious that this program was being curtailed. People made very serious decisions. Why make them live through those circumstances again and then come back in January or February? After we have all made it clear this week that these are transitional, but they will take almost 2 years to regain the jobs we have lost. Why not prop up our economy by adding needed stimulus? Why not give American workers a return on a program they paid into, and why not go by admitting they would rather have job creation than unemployment checks and get about going back to stimulating our economy with real job creation?

I hope this body will come to its senses, address this very important issue, and not leave any Americans at the end of the year without the resources to pay their bills and without helping them be an effective part of our economic recovery.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The Assistant Legislative Clerk proceeded to call the roll.

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

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

CONTRIBUTIONS OF THE 101st AIRBORNE AIR ASSAULT DIVISION OF THE GLOBAL WAR ON TERRORISM

Mr. McCONNELL. Mr. President, I rise to honor the Screaming Eagles of the 101st Airborne, Air Assault Division, based at Fort Campbell, Ky. As you all know, two Black Hawk helicopters from this division collided in the night sky over Mosul, Iraq on November 15, 2003. Tragically, all 17 soldiers on board the helicopters perished in the incident. This last Saturday, two additional soldiers from the Division were killed while they patrolled the streets of Mosul.

These tragic incidents bring the total number of Screaming Eagles lost in Iraq to 55. My prayers and deepest sympathies go out to the families and friends of these brave Americans.

Last month, in one of the most moving experiences of my career, I met with some of these soldiers in Mosul, where the 101st is responsible for keeping the peace in the northern part of Iraq.

These heroes shared with me their thoughts about America’s struggle to bring peace and security to a long-oppressed nation, and their patriotism and passion for their mission shone through the dust and grime that accumulates with sustained operations far from the comforts of home.

Truth be told, I did not expect to encounter the extraordinary high levels of dedication and morale I witnessed in Mosul and elsewhere in Iraq. Throughout that country, I conversed with soldiers who witnessed first-hand the reality of war, and who knew friends injured or killed in combat.

It was obvious that the thoughtful young men and women I met in Iraq have spent long hours preparing to grips with these harsh realities, yet remain committed to their mission and deeply believe that what they are doing is right and just. An example: at the 101st Airborne’s headquarters in Mosul, I witnessed a video that detailed the Division’s operations. The moving video is dedicated to—and features footage of—Screaming Eagles who have lost their lives during the liberation of Iraq, and it is clear these lost heroes are never far from the thoughts of the soldiers of the 101st. Indeed, these heroes remain a source of poignant motivation for their comrades.

For our Armed Forces, sad memories of war and colleagues killed are hard, but so too is the evidence that the Screaming Eagles are on the right side of history. From water coolers in Washington, D.C. to New York City newsrooms, many of us forget that our troops were present at the moment in history when liberation from the tyrannical grip of Saddam Hussein. They have since witnessed firsthand the birth of a democratic process and the reawakening of a people enslaved for generations by fear and oppression. The Screaming Eagles have worked side by side with Iraqis to help rebuild a shattered country, and their joint success in this regard is truly remarkable.

The brave soldiers I met in Mosul know America is in Iraq for the right reasons, and that despite death and tragic incidents we are winning the peace in Iraq, just as surely as we won the war.

At one point during my visit, one of the Screaming Eagles came up to me and introduced himself. He was a Captain who hailed from my hometown of Louisville. In the entryway of one of Saddam’s former palaces—now serving as the 101st Airborne’s division headquarters—he presented me with a flag from the Commonwealth of Kentucky, and recalled how he brought it with him as the division left Fort Campbell and fought north from Kuwait, up through Baghdad, and on to Mosul.

This captain spoke with well-earned pride about the role he and his fellow soldiers played in liberating the Iraqi people and winning the war. And he spoke of the progress they were making in winning over the hearts and minds of these newly free people by telling them the Iraqis, with a level of dignity and respect they have not received for generations.

While in Mosul, I met with the newly elected governing council of Iraq’s Nineveh Province, and I can tell you that the respect and appreciation these democratically elected leaders have for the U.S. efforts is ample evidence the Screaming Eagles are indeed winning the hearts and minds of the Iraqi people.

Indeed, both this democratically elected new government and that young captain would want us all to understand that America did the right thing to help 25 million Iraqis to realize a life without fear. I can assure you that this captain and his fellow soldiers—although aware of the great risks and danger inherent in their work—are committed to finishing the job by winning the peace and helping the Iraqis to get back on their feet.

I keep this soldier’s flag—still covered in dirt and dust from historic travels—in my office as a reminder that when America sets out to accomplish a difficult task, it finishes the
Mr. President, the entire Fort Campbell community grieves the loss of this young captain’s dedication to this mission, and know that America must—and will—stay the course.

Mr. President, the entire Fort Campbell community grieves the loss of this young captain’s dedication to this mission, and know that America must—and will—stay the course.

Mr. President, Iraq is now free—and an evil despot no longer threatens the United States and his neighbors—because of the selfless actions of the individual soldiers of units like the 101st Airborne. I pray that the families of those Americans who have lost their lives in this conflict find comfort and solace in their time of need. Their loved ones are American heroes, and I will never forget their sacrifice.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the order for the roll call be rescinded.

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

KEY ACCOMPLISHMENTS IN THE FIRST SESSION OF THE 108TH CONGRESS

Mr. McCONNELL. Mr. President, as the first session of the 108th Congress draws to a close, the score of accomplishments of this Senate comes into a clearer view. By any historical comparison, this Senate’s record of accomplishments is remarkable. But when one considers the slender majority that this party holds in the Senate, and the numerous unforeseen challenges that have risen, the record of accomplishments is truly extraordinary.

Our efforts, the efforts of this Senate in the first session of the 108th Congress, have improved the security of America and the lives of all Americans in significant ways.

While the homeland and national security of America has been strengthened, the economic and retirement security of all Americans has also dramatically improved.

America’s security has benefited from the first funding of the Department of Homeland Security, the confirmation of the first Secretary of Homeland Security, full funding of the war on terrorism, passage of a modern-day Marshall plan for Iraq, and passage of both the Defense authorization and appropriations bills.

The security of the American people in their work and their retirement has dramatically improved as well. The economic growth package passed earlier this year has pushed the economy to the highest quarterly growth rate in almost 20 years, while the promise of prescription drugs for our seniors on Medicare, thwarted for 38 long years, is just hours—just hours—away from becoming the law of the land with the stroke of the President’s pen.

These major legislative victories have been part of a litany that has been time consuming. Yet that did not stop the majority leader from getting the work of the people done.

In an extraordinarily tenacious manner that should make all Tennesseans proud, the Senator from Tennessee, confronted not just the challenges of last year’s business but also the present demands of the war on terrorism.

As I think back on the first year of Senator Frist’s position as our leader, I think we can say that no Senator has ever been more proud of his many accomplishments in holding this somewhat fractious body together in order to advance the agenda.

The Senate, as we all know from working here, and as many Americans know from studying the history books, was basically constructed not to function very well or certainly not very quickly. At one time or another, virtually every Senator takes advantage of that to add on to the top of that fact that the American people dealt a very narrow majority to the majority party.

Many thought at the beginning of the year the prospect of very much success was quite limited indeed. But as you look back over the year, under Senator Frist’s extraordinary leadership, we have been able to make enormous progress for the American people.

It all began back in January, when we had to pass appropriations bills, uncompleted from the previous year. Under Senator Frist’s leadership, we completed the emergency wartime supplemental appropriations bill. He brought to a successful conclusion the fire and NASA disaster supplemental appropriation. Then he pulled together the conference to pass a very tough Iraq reconstruction supplemental appropriations bill—all of this in the past year.

Even though, as of today, it is not exactly clear when our remaining appropriations bills will be approved, what we can say is this: That under Senator Frist’s leadership, all but 1 of the 13 appropriations bills have gone through the Senate. Six bills are the law of the land and the remaining seven could be just hours away from being successfully concluded, or might be concluded in a couple of weeks. But, in any event, they are largely completed and are awaiting the desire of the Senate to pass this omnibus report and move it along.

When that happens, the Senate will have passed 27 normal and supplemental appropriations bills into law—not a bad year’s work.

With this record on appropriations, with passage of the economic growth package, and with passage of the Medicare prescription drug bill, expecting anything more from this Senate would not be reasonable. But in fact much more has been delivered to the American people by this Senate under the leadership of Senator BILL FRIST. We have banned the horrific practice of partial-birth abortion. We have passed the No Child Left Behind Act. We have passed the Homeland Security bill. We have passed the Con- gressional Accountability Act. We provided tax relief to military families.

We passed the Healthy Forests Act to stop the catastrophic wildfires we have witnessed raging across the western lands. We have enacted free trade agreements with Chile and with Singapore. The Senate has passed the Federal Aviation Administration reauthorization to revitalize an air transport industry suffering from the effects of the terrorist attack of 9/11. We pushed a comprehensive Energy bill to within two votes of breaking a filibuster.

One thing we can say today: This is only the end of the first session. We have a second session of the 108th Congress, full funding of the Department of Homeland Security, the conference to pass a very tough Iraq reconstruction supplemental appropriations bill—this bill currently being negotiated. We believe there will be two additional Senators who will see their way to supporting an Energy bill something like the one we currently have before us in order to prevent America from having another experience we had last summer with the blackout.

After more than a decade of repres- sion, the Senate has passed the Burmese Freedom and Democracy Act. In addition, we secured resources to improve the Nation’s elections systems and, hopefully, we will finish the job through the omnibus appropriations bill currently being negotiated. We made a commitment to our States to be a partner in this endeavor, and we took the first step to honor that commitment.

I want to linger a moment on this whole election reform issue. Senator
CHRIS DODD of Connecticut) deserves an enormous amount of credit, as does Senator KIT BOND of Missouri. The three of us worked long and hard to produce an election reform bill, the theme of which was to make it easier to vote and tougher to cheat. There is, in the money, the key to get out the door, and that is another reason we need to wrap up this omnibus appropriation at the earliest possible moment. States and localities all over America are waiting so they can implement this mandate, which is a funded mandate—not an unfunded mandate, a funded mandate—only when the money gets to the States. The sooner we pass the omnibus, the sooner that will happen, and the more likely it is that we will have the most efficiently conducted election in American history next November of 2004.二期

The money must get out the door, and that is another reason we need to wrap up this omnibus appropriation at the earliest possible moment. States and localities all over America are waiting so they can implement this mandate, which is a funded mandate—not an unfunded mandate, a funded mandate—only when the money gets to the States. The sooner we pass the omnibus, the sooner that will happen, and the more likely it is that we will have the most efficiently conducted election in American history next November of 2004.

Numerous other legislative accomplishments have been reached during this session. Specifically, the Senate has passed the President's faith-based initiative. We have funded the efforts to eradicate the scourge of global AIDS. We acted to guard our children against abduction and exploitation by passing the PROTECT Act. We improved safeguards from foreign terrorists by enacting the FISA bill. We expanded NATO to include almost all of the former Warsaw Pact countries. We also passed a significant arms reduction treaty with our former enemy, Russia. We took steps to bridge the digital divide by providing needed funds to historically Black colleges.

We awarded a congressional gold medal to U.K. Prime Minister Tony Blair for his leadership in the constitutionality of using the term “under God” in the Pledge of Allegiance.

We have a solemn responsibility to the American people to improve their lives, to protect their homeland, and build a future filled with hope and opportunity. This year, we have made excellent progress in fulfilling our obligations to the American people. Next year, it is our hope and intention to do even more.

Let me say in closing, again, how much I admire and how much all of us appreciate the extraordinary leadership of our majority leader, Senator Frist. He has been very skillful in advancing our legislative agenda in a body which is designed to thwart almost every initiative. He has done it with a very narrow majority. So as we wrap up the first session, plaudits to the leader, to all of our colleagues, not only on the Republican side but throughout the Senate, who have worked as a team to make this work.

We had 459 votes this year. We were doing a lot of voting on a lot of issues during the course of the year. In fact, we had more votes in the Senate this year than any time since 1995, the first year of the Contract with America. We had a lot of very close votes, a lot of dramatic experiences in the Senate.

Back during the budget, we had three votes on which the Vice President had to break the tie in the chair. So for those who were interested in drama and who typically think of the Senate as a place where you go to watch paint peel, there was a good deal of excitement this year at various intervals in our legislative session. I hope all Members will enjoy the Thanksgiving holiday and Christmas with their families and come back to Washington refreshed to tackle the agenda that remains in the second session of the 108th Congress.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

INTERNET TAX MORATORIUM

Mr. FRIST. Mr. President, on November 1, 2003, the most recent Internet tax moratorium lapsed. We were prior to and following this expiration date, I have been trying to broker a compromise between those who, like me, support making the moratorium permanent and those who oppose a permanent extension. Unfortunately, we have been unable to reach resolution on legislative language that would allow us to make the moratorium on Internet access technology neutral and permanent. However, I remain committed to passing a revised moratorium next year which ensures that all Americans can receive Internet access tax free, regardless of technology.

I respect the arguments of those Senators who are concerned that the language in S. 150, the Internet Tax Non-Discrimination Act, will infringe on the ability of States to tax traditional telecommunication services. Because of their concerns, I allowed the bill to be fully debated on the floor of the Senate for several days. In the end, after spirited discussions, the relevant parties could not reach agreement on appropriate language and the current moratorium had expired.

After that process failed to achieve a resolution, I sought to broker a compromise by laying out a menu of options from which the parties could choose. None of these options were perfect, and none went as far as I would have liked. But in the spirit of compromise, I believed that taking some additional steps was better than doing nothing at all. Unfortunately, the various relevant parties disagreed. Every option I suggested was rejected by both sides and both indicated that no deal was better than any of the options I had set forth. As an aside, this was the first, last and only moment when the various parties were able to reach agreement with respect to anything having to do with taxing the Internet.

At this point it became clear to me that no agreement was in the making with respect to a permanent or even multiyear extension of the Internet tax moratorium. I therefore suggested that we pass, as a part of the omnibus appropriations bill, a so-called “Internet-tax CR”—basically an extension of the existing statute to cover the gap between November 1 and the second session of the 108th Congress when the Senate would be able to return to this issue.

My concern was that if we did not extend the moratorium, the Internet would be open to multiple and discriminatory taxes for the first time since 1999. And while a simple extension would not have addressed the troubling efforts in several States to begin taxing DSL access, I still believed that doing something was better than doing nothing. Further, I intended to make it clear that the spirit of the original moratorium was intended to make all Internet access tax free, and that extending the current moratorium should not be an invitation for any State to continue or begin anew taxing DSL.

Much to my disappointment, even a simple extension of the original moratorium failed to gain consensus support. And even when we agreed to consider modifying the original language to prevent states from taxing DSL for the duration of this Internet-tax CR, the House of Representatives was unwilling to agree.

As the strong bipartisan support of the Internet moratorium indicates, there is a growing consensus that the Internet should never be singled out for multiple or discriminatory taxation and that all forms of Internet access should be tax free. Rather than finding new ways to tax the Internet, the unprecedented benefits it offers to our society and economy should be encouraged by policymakers at the Federal, State and local level. And we will not allow differences over details of the moratorium to result in tax policies which damage this critical economic engine of the future. The Internet is too important.

I specifically thank Senator MCCAIN, Senator SUNUNU, and Senator ALLEN for their excellent ideas. We must dedication to this issue. Their efforts have ensured that this important technology issue receives the attention it deserves from Congress. As majority leader, it is my intention to work hard to get the strongest, longest ban on Internet taxation in the world on the books, I will make passing a meaningful, revised Internet tax moratorium a priority for next year.
CADET NURSING CORPS

Mr. REID. Mr. President, some of us are barely old enough to recall the end of World War II. And we remember that it was an effort that involved the entire Nation in a monumental struggle against the evil of fascism. During World War II the United States sent more than 250,000 nurses to the front lines to care for our wounded Allied troops. By 1942, the country was experiencing a shortage of nurses for domestic medical needs. In fact, the shortage was so serious that many clinics were forced to close.

To alleviate our domestic medical crisis, Congresswoman Frances Payne Bolton introduced legislation creating the United States Cadet Nurse Corps in 1943. Over the next 5 years, the Corps recruited about 125,000 young women to assume the duties of nurses who had been dispatched to the front lines. Throughout World War II, cadet nurses accounted for 80 percent of the nursing staff at our domestic medical facilities. Cadet nurses completed rigorous training under the jurisdiction of the Public Health service. They also pledged to serve at any time during the war, at any hospital or clinic where they might be needed. They were often required to leave their families and fill vacant positions across the country. They acted as both caregivers and medical doctors—as there was also a scarcity of doctors—to the sick and wounded.

The Cadet Nurse Corps provided the support of health care system needed. By putting the needs of the Nation ahead of their own, these young women made it possible for Allied troops to receive the best possible medical care during a time of war. Although the uniforms of these dedicated cadet nurses were decorated with patches certified by the Secretary of the Army, and they served under the authority of commissioned officers, the Cadet Nurse Corps has never been recognized as a military organization.

Today, many of these cadet nurses are no longer living. Those who do survive are in their seventies and eighties. Ironically, they are not entitled to use the veterans health care system, nor do they receive other benefits such as disability pay.

Even more important, they rarely receive the recognition they deserve for their commitment to their country. And every year, as more of the cadet nurses pass away, it becomes too late to recognize them.

These women served their country in a time of war. I believe they deserve to be recognized as veterans of that war effort. Therefore, I support veterans status for members of the Cadet Nurse Corps.

I have introduced legislation that would accomplish this goal. I hope my colleagues will support this effort so we can finally properly recognize the cadet nurses for their outstanding service to this country.

SUPPORTING OUR TROOPS AND THEIR FAMILIES

Mr. DOMENICI. Mr. President, as we approach the Thanksgiving Day holiday, we as Americans have much for which to be thankful. Around dinner tables this year, there will be added joy of loved ones returning home especially in the families of members of our Armed Forces. Other homes may not be as joyful, as those who have chosen to defend our Nation are stationed abroad, particularly in Iraq and Afghanistan. Both of these scenes will occur in my home State, NM.

We as a Nation are ever grateful to the men and women of our military and the families they leave behind to serve. Today, I rise in support of an important effort to assist these dedicated military personnel and their families.

The Armed Forces Relief Trust, AFRT, is a non-profit fund established to help ease financial burdens on our service personnel and their families. With so many of our troops on extended overseas deployments, the benefit provided by the Trust is needed more than ever.

Today nearly 140,000 soldiers, sailors, airmen and marines are deployed overseas in the war on terror. Thousands more are stationed abroad guarding our freedom. For the families left behind, the financial burden of caring for children and meeting other demands can be a strain. An increased number of National Guardsmen and Reservists currently overseas, the number of families facing such hardship is even greater.

In my own home State of New Mexico, many have been affected by the frequent and lengthy deployments associated with the war on terror. Most recently, 60 National Guardsmen from the 515th Corps Support Battalion out of Springer, NM, were activated to support combat operation in Iraq and Freedom. They join more than 900 other New Mexico Guardsmen already deployed worldwide, including those from the Army’s 717th Medical Company and the 720th Transportation Company—both from Santa Fe. And only recently did we welcome home to Las Cruces the 281st Transportation Company following its service in the Persian Gulf. These many deployments from New Mexico represent what is happening all over the country. Clearly, many military members and their families face burdens that are compounded by months of separation and tight budgets. For example, a soldier overseas might face the unexpected cost of airfare to attend his father’s funeral; a deployed airman’s expectant wife might incur costs for special medical care; or a sailor’s child may need assistance to cover burdensome costs associated with attending college. These situations are what the Armed Forces Relief Trust is designed to address.

It seems to me that these are the sorts of things that we ought to be doing to help boost the morale of our troops. Many endure months away from home and, in some cases, face the pressure of operating daily in a combat zone. The kind of benefit provided by the Trust gives them some peace of mind and allows them to focus on their vital mission. I salute the Military Aid Societies representing the Army, Navy, Air Force and Marine Corps for coming together to create the Armed Forces Relief Trust. Perhaps more importantly, I salute all those who have donated to the Trust and are helping to ensure that the needs of our brave military personnel and their dedicated families are being met.

As we all gather with our families this Thanksgiving and count our blessings, I believe we should remember our brave men and women in uniform, and consider supporting the Trust and its work to these personnel and their families in need.

AIR POLLUTION CLOSE TO HOME

Mr. JEFFORDS. Mr. President, I would like to ask my colleagues and the American public some serious questions today—questions about air pollution and its impacts closer to home.

Many of us listening today have children and grandchildren. How many of the children asthma attacks? How many of us have taken children to the emergency zone? How many of our own children or grandchildren yearn to play outdoors during school recess, only to have their teachers warn them the air is too unhealthy?

How many Americans know young children who depend on their asthma inhalers to get safely through a simple game of baseball? Their asthma attacks could be one of the six hundred thousand caused by air pollution every year.

How many of our own children or grandchildren yearn to play outdoors during school recess, only to have their teachers warn them the air is too unhealthy?

How many of us have parents or siblings with emphysema? Or chronic lung disease? Reduced lung function, or lung cancer? Air pollution decreases lung function and causes asthma and asthma attacks, lung disease, emphysema, lung cancer, and heart problems.

Americans ever worry that their own lives may be shortened by three or four years, just because the air is so dirty?

Sixty thousand people die prematurely in this country every year because of air pollution. It’s hard to believe, isn’t it? Let me put it another way.

Air pollution is responsible for more deaths than breast cancer, colon cancer, pancreatic cancer, skin cancer, prostate cancer, brain cancer, lymphoma, or leukemia.

Half of the deaths caused by air pollution are due to power plants alone. In

Do Americans ever worry that their own lives may be shortened by three or four years, just because the air is so dirty?
fact, power plant-related deaths are so numerous that they far outnumber drunk driving fatalities in all but one of the 15 dirtiest States.

Have Americans ever wondered how close they live to a powerplant? A Harvard University study showed that those who live near powerplants, who are often the poorer, less educated, uninsured, or minority populations, tend to be the most affected by pollution. Fortunately for some of us here, we are probably not among them. We live far away, we live more comfortably, and we have access to quality health care.

But does that sound like a fair and equitable distribution of the impacts of pollution? Hardly.

Americans can experience pollution very differently. Although 58 percent of white Americans live in counties violating Federal air pollution standards—an unacceptably high percentage—71 percent of African Americans do. Even worse, twice as many African Americans die from pollution than whites. Does that sound like a fair allocation of the impacts?

If these appeals do not strike a chord, perhaps the economic impact of all these health problems will.

I have mentioned before that over 30,000 premature deaths can be blamed on powerplant pollution every year. An EPA consulting firm using EPA methodology estimated that this loss of life hurts the U.S. economy by $170 billion each year. I ask unanimous consent that a table from this firm’s recent report be printed in the Record.

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

<table>
<thead>
<tr>
<th>Health effect</th>
<th>Attributable incidence</th>
<th>Mean economic impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mortality</td>
<td>35,100</td>
<td>$170,000,000,000</td>
</tr>
<tr>
<td>Chronic Bronchitis</td>
<td>18,400</td>
<td>6,100,000,000</td>
</tr>
<tr>
<td>COPD—Hospitalization</td>
<td>12,400</td>
<td>41,000,000</td>
</tr>
<tr>
<td>Pneumonia—Hospitalization</td>
<td>4,090</td>
<td>59,000</td>
</tr>
<tr>
<td>Asthma—Hospitalization</td>
<td>1,005</td>
<td>21,000,000</td>
</tr>
<tr>
<td>Cardiovascular—Hospitalization</td>
<td>5,725</td>
<td>179,000,000</td>
</tr>
<tr>
<td>Asthma Di 2000</td>
<td>3,960</td>
<td>20,000,000</td>
</tr>
<tr>
<td>Acute Bronchitis</td>
<td>10,00</td>
<td>3,000,000</td>
</tr>
<tr>
<td>Upper Respiratory Symptoms</td>
<td>679,000</td>
<td>16,000,000</td>
</tr>
<tr>
<td>Lower Respiratory Symptoms</td>
<td>635,000</td>
<td>10,000,000</td>
</tr>
<tr>
<td>Asthma Attacks</td>
<td>603,000</td>
<td>25,000,000</td>
</tr>
<tr>
<td>Work Loss Days</td>
<td>5,130,000</td>
<td>543,000,000</td>
</tr>
<tr>
<td>Minor Restricted Activity Days</td>
<td>26,300,000</td>
<td>1,270,000,000</td>
</tr>
</tbody>
</table>

Total ........................................ 178,000,000,000


Mr. JEFFORDS. When you add in the economic impact of the tens of thousands of cases of asthma, bronchitis, pneumonia, heart problems, and lost work days, you reach a pretty staggering conclusion.

Powerplant pollution alone is responsible for $176 billion in damage to our health and our economy each year, burdening our already taxed Medicare program and draining American productivity.

There are even more ways in which air pollution hurts our way of life.

How many Americans seek peace and enjoyment in our national parks, only to find the vistas clogged with haze? Do families go hiking in our national forests, only to reach bald stands of trees that have been killed by acid rain?

I know many people from my State of Vermont and other States are avid skiiers. Do they wonder why ski resorts must make their own snow more now than ever before, and why the ski season continues to come later each year? Global warming will threaten more than our future; it threatens every year near future. Global warming and rising sea levels could mean life and death to those in our society who live on the margins.

Do those listening today enjoy fishing trips with their families? Do their husbands and wives, daughters and sons, and grandchildren eat the fish that are caught?

I am sorry to say that the fish being caught, speckled problems, attention disorders, loss of muscle coordination, memory problems, poor visual spatial skills, vision problems, hearing loss, seizures, mental retardation, or cerebral palsy? Have they ever wondered whether doctors could be due to mercury exposure?

We all saw what happened when a teen spilled less than a cup of mercury at Ballou High School in Southeast Washington. The metal is so toxic to humans that officials closed the school for over a month and evacuated 17 nearby homes.

Do we feel comfortable knowing that U.S. powerplants emit 50 tons of toxic mercury every year, so in every year, that it may fall in our backyards, in our children’s sandboxes, and in the lakes where we fish?

How many Americans depend on fish in tainted waters for their livelihood? In one of the 44 States in the Nation with fish advisories for mercury and other toxic pollutants. Chances are also likely that they are unaware that eating fish polluted by mercury can damage their nervous system, kidneys, and immune system.

Sadly, some ethnic groups and anglers who rely on high amounts of fish to protect our air quality.

Unfortunately, this administration’s recent and upcoming actions to dismantle our clean air laws mean we all have to be vigilant. I will fight to protect those 60,000 lives and those 300,000 newborns. I will fight to bring down the $178 billion in costs to human health and to our precious environment. But Americans will need all of my colleagues’ help, too.

Senators should send a message to the President and EPA Administrator Leavitt right now. It needs to be loud, and it needs to be clear.

The Clean Air Act says utility emissions of air toxics, especially mercury, have to stop. And ethically, EPA is already years behind in regulating.

There should be no further delay.

In the coming weeks, EPA is likely to propose a rule on mercury that is not legal or sanctioned by the Clean Air Act. Senators should tell Administrator Leavitt and the President that these ongoing assaults on air quality have to stop.

I call on the President to do the right thing for once on clean air—cut toxic air emissions from powerplants. Do it right. Do it as the law requires. And do it now.

DIETARY SUPPLEMENTS

Mr. DORGAN. Mr. President, I express my support for an amendment offered by my colleagues Mr. HATCH, Mr. HARKIN, and DURBIN earlier this year that provides funding for the Food and Drug Administration to implement the dietary supplements law.

I sponsored and voted for the Dietary Supplement Health and Education Act, DSHEA, of 1994 and continue to support it today because it gives consumers the power to make informed decisions about whether they use dietary supplements. Millions of Americans take vitamins, minerals, and other dietary supplements every day, knowing that if there is a problem with a particular product the FDA has the authority to step in to protect the public.

Ever since the tragic death of Baltimore Orioles pitcher Steve Bechler earlier this year there has been increased interest in the potential dangers of taking ephedra. In the wake of that tragedy, the FDA has opened an investigation into the use of ephedra.

I support the enforcement efforts and urge the FDA to act as expeditiously as possible. I know some of my colleagues
would simply like to see ephedra banned by legislation. My own view is that we already have a review process in place under DSHEA and now it is important for Congress to help the agency do its job. I support the amendment offered by my colleagues because it does just that. We must continue to provide consumers with informed choices about dietary supplements and one way to do that is to make sure the FDA has the resources to do the job as expeditiously as possible.

The FDA should conclude its review on ephedra, as well its “good manufacturing practices” rules, and move forward as quickly as possible so that consumers can be better informed.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about support for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

On Saturday, October 25, 2003, an off-duty officer in Austin, TX, was attacked in an apparent anti-gay hate crime. The victim, his partner, and a friend were at a stop sign in a vehicle with a rainbow flag on the license plate. Two pedestrians in the crosswalk blocked the vehicle while six to eight other men approached and began pounding the car. Witnesses say one man struck the victim in the face and pulled him from the passenger seat while yelling, “faggot.” The officer fell to the ground, and the attackers picked him up only to beat him again. He suffered broken teeth and puncture wounds on his lower lip.

I believe that Government’s first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

HONORING OUR TROOPS AND LOCAL BROADCASTERS

Mrs. LINCOLN. Mr. President, I rise today to recognize a program that provides an important service to the men and women serving in our military. With our Armed Forces deployed for extended tours of duty in both Iraq and Afghanistan, the pressures borne on family members left behind can be enormous. While the military is dedicated to taking care of its own, the need continues to escalate.

Today, more than 140,000 troops are fighting the war on terrorism in Iraq, in Afghanistan, and around the world.

Many of our brave men and women have now been deployed much longer than expected. Some active units served in Afghanistan, returned home for 6 months, and were immediately redeployed to Iraq.

Reservists are facing extended deployment as well. Arkansas reservists in the 38th Infantry Brigade, for instance, were called up for what could be a 1-year rotation in Iraq beginning early next year. In many cases, the sole breadwinner in a family is deployed, making it difficult for the families left behind to cope with medical, educational costs and outstanding expenses.

Today, I would like to recognize an effort undertaken by local radio and television stations to help address these issues. The National Association of Broadcasters is leading its local television and radio stations in a partnership with the Armed Forces Relief Trust to raise funds for military families in need.

By producing, distributing, and airing radio and television public service announcements, the NAB and its radio and television broadcast members are helping raise funds for those military families in need.

Last year, the four emergency assistance programs representing the Army, Navy, Air Force, and Marine Corps distributed more than $109 million in interest-free loans and grants to military families. Now that the four programs have joined together into the one trust, and more importantly, now that the broadcast media, with the resources to get the airwaves to get out its message, they will undoubtedly be able to provide yet more assistance.

All of us count on our service people who are far from home protecting us. Their families are enduring hardship enough in waiting for them to return. It is incumbent upon all of us to ensure their families do not want financially during this most difficult time. I would like to compliment the local radio and television stations involved in this effort. As small business people, they are dedicating a valuable resource—airtime—to a timely and important cause. I salute their efforts.

TRIBUTE TO CPT RANDALL L. ZELLER

Mr. WARNER. Mr. President, I rise today to pay tribute to a dedicated patriot, sailor, husband and father, CPT Randy Zeller, a dedicated instructor at the Naval Submarine League.

CPT Randy Zeller was born in Fort Belvoir, VA. Continuing this family tradition of military service, Randy earned his commission to the United States Naval Academy in Annapolis, graduating in 1975 with a bachelor of science degree in marine engineering. Following commissioning, he completed the nuclear power training program and the Submarine Officer Basic Course.

This promising young officer was assigned to four tours aboard nuclear attack submarines, one tour on an aircraft carrier, a tour as commander of the USS Gato (SSN 615) and, as commander of the Trident Submarine Refit Facility. His tours of duty have included assignments to the USS Grotan (SSN 694) as Division Officer in 1977; Submarine Training Department Head and submarine procurement officer at the Fleet Anti-Submarine Warfare Training Center Atlantic in Norfolk, Virginia, 1980–1982; and, Chief Engineer on the USS Phoenix (SSN 702), from February 1983–1985. In November 1985, he reported to Carrier Group Two (CGG-2) aboard the USS Coral Sea (CV-49), as a Tactical Action Officer and the Battle Force Anti-Submarine Warfare Officer. While assigned to CGG-2, he served on the Fleet Strike Warfare Commanders’ staff during the surface attack against Libya in 1986. In December 1987, he returned to the USS Grotan as Executive Officer, serving until July 1990. During this tour, the USS Grotan earned the COMSIXTHFLT ‘Hook’ em Award” for anti-Submarine Warfare excellence and played a key role in contingency operations near Lebanon.

Captain Zeller’s first command was the USS Gato in March 1992. Not surprisingly, his ship executed several “First of their kind” missions, demonstrating the utility of the attack submarine in the post cold war era. For her service during the U.N. embargo of Haiti, USS Gato was awarded the Joint Meritorious Unit commendation. The USS Gato was also awarded the Navy Meritorious Unit commendation for exemplary performance from June 1993 to June 1994. In June 1994, Captain Zeller was the Naval Submarine League RADM Jack Darby national award recipient for inspirational leadership and excellence of command.

After Captain Zeller left command in November 1994, he served in several important staff positions, during which he began his association with the Congress. From January 1995 to March 1997 he served in the Department of the Navy’s Office of Legislative Affairs in the Pentagon (OLA). At OLA he was instrumental in the Navy’s successful effort to gain Congressional authorization for the third and final Seawolf class. In May 1997 he was appointed to the first ship of the Virginia Attack Submarine class. Recognizing his leadership talents and potential to assume greater...
CONGRESSIONAL RECORD — SENATE

November 25, 2003

REMARKS OF SENATOR HILLARY RODHAM

WASHINGTON, Oct. 29, 2003.—Thank you, Mr. President. It is with great pride that I rise today to complement you all for the hard work that you have put into the historic effort for American Progress, an institution that I am convinced will be a tremendous force in engaging all countries around the world in our future’s challenges. And there is no better leader for that effort than John Podesta who has the ability to bring people together. And thank you, Bob Kutner at the American Prospect and Dick Leone at the Century Foundation for their work on this conference.

While the conference, “American Strategies for Security and Peace” comes at a critical point in our nation’s history and I commend the Center for American Progress, the American Prospect and the Century Foundation for putting together from what is, by all accounts, an outstanding program.

Today is a critical moment, not just in our history, but in the history of the world. As we seek to build democratic institutions in Iraq, and we in this room push for us to reach out to our global partners in this endeavor, this nation must reflect on the tenets of the democratic process that we advocate.

In terms of the issue I’d like to address is whether we apply the fundamental principles of democracy—the rule of law, transparency and accountability, informed consent—not only to what we do at home but to what we do in the world.

There can be no real question that we must do so because foreign policy involves the most important decisions a democracy—which is to engage with the world, and our use of power in that world.

But the fact is that new doctrines and actions by the Bush administration undermine these core democratic principles—both at home and abroad. I believe they do so at a severe cost.

In our efforts abroad, we now go to war as a first resort against perceived threats, not as a necessary final resort. Preemption is an attempt by the international community to meaningfully address the global problem of climate change and global warming. The biological weapon enforcement protocol. The Comprehensive Test Ban Treaty. This unwillingness to engage the international community on problems that will require international cooperation undermines our ability to solve these and other problems.

The Comprehensive Test Ban Treaty. This unwillingness to engage the international community on problems that will require international cooperation undermines our ability to solve these and other problems.

We should all be proud of this accomplishment because it’s a part of our history. The Bill of Rights is a symbol of who we are and the values we hold dear. It ties us to our past and reminds us of those principles that will guide us into the future.

CENTER FOR AMERICAN PROGRESS’S NEW AMERICAN STRATEGIES FOR SECURITY AND PEACE CONFERENCE

Mr. LEAHY. Mr. President, in the end of October, the Center for American Progress, in conjunction with The American Prospect magazine and The Century Foundation, held a conference on U.S. national security titled, “New American Strategies for Security and Peace.” Three of my fellow senators—Senator Hillary Rodham Clinton, Senator Joe Biden, and Senator Chuck Hagel—and Dr. Zbigniew Brzezinski made incisive remarks at this conference about the direction of our country’s foreign policy and its effects on Americans at home and abroad. They also spoke about how to restore America to respected international leadership. I ask unanimous consent that the remarks of Senator Clinton and Dr. Brzezinski be printed in the RECORD.

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

DELAWARE’S BILL OF RIGHTS COMES HOME

Mr. BIDEN. Mr. President, it is with tremendous pride that I rise today to commemorate that after 213 years, Delaware’s original copy of Bill of Rights ratified in 1790, is returning home.

This is a story steeped in history, mixed with some modern-day political negotiations—worth celebrating.

While Delaware holds the distinction as the first state to ratify the Constitution, on December 7, 1787, it was the third state to ratify the Bill of Rights—on January 28, 1790. The two signors of this historic document were Jehu Davis and George Mitchell. And they were quite efficient. Instead of drafting a separate letter, as most States did, to notify Congress of Delaware’s ratification of the Bill of Rights, they simply penned their signatures on the Bill of Rights document and sent it whole cloth to Congress. Thus, Delaware had no copy of what Davis and Mitchell signed.

The National Archives, to its immense credit, considered Delaware’s request for the Bill of Rights in pristine condition for more than two centuries. However, two years ago Delaware’s Public Archives, State House Majority Leader Wayne Smith, and the Delaware General Assembly asked the congressional delegation to help negotiate the return of our Bill of Rights document. We all agreed that this historic document should be displayed for all to see in Delaware, not stored in the basement of the National Archives in Washington, DC.

The National Archives is, justifiably, quite protective of its documents. Suffice to say that it took ten months of negotiations, meetings, letters and conferences to reach an agreement that returns this document to Delaware, while retaining the National Archives legal and preservation rights to it.

Starting this December 7, on my State’s 216th birthday, its original Bill of Rights will be on display for all to see. It will be on view at our new, state-of-the-art Public Archives Building in Dover, DE. And that is exactly where this document belongs—on public display where school students and adults alike can appreciate its historic significance.

We should all be proud of this accomplishment because it’s a part of our history. The Bill of Rights is a symbol of who we are and the values we hold dear. It ties us to our past and reminds us of those principles that will guide us into the future.
international cooperation, but the propensity for an aggressive unilateralism that alienates our allies and undermines our ter-

ties. It deeply saddens me, as I speak with friends and neighbors around the world, to be told that the reasons that America truly is a good and benign na-
tion. Their children, too often, have seen an America that disregards their concerns, insist-
s on their being heard, and forces them to be with us or against us. Our Decla-
ration of Independence calls for a "decent respect" for the opinions of mankind. Yet, this administration quite simply doesn't listen to our friends and allies. From our most important allies in Europe to relations with our most powerful ally in the Middle East, this administra-
}
abide by those basic principles that we hold dear and demonstrate that we are willing to be open and have partnerships and build coalitions that are more than just in a name.

I think we should look back in American history is wrought with danger and challenge. If you look back at our security and goals in WWII they were clear, the Cold War was clear, the post of the post-Cold War was more muddier because it wasn’t as obvious what our strategic objectives were and how we would achieve them.

Now I do have, once again, a very clear adversary. But just proclaiming the evil of our adversary is not a strategy; just assuming that everyone will understand that we are right is not a strategy. Our people are beyond the range of human experiences that I understand. This administration is in danger of squandering not just our surplus which is already gone in financial terms, but the surplus of good feeling and hopefulness and care and that we had in almost global unanimity after 9/11. We are a resilient, optimistic and effective people and I’m confident that we can regain our footing, but it needs to be the first order of business, not only for the administration, but also for Congress and that the world will come to appreciate is my feeling. This conference will provide more ammunition and more support for those of us who are trying to get back on track and to give America the chance to lead consistent with our values and more support for those of us who are trying to take account two troubling conditions.

Since the tragedy of 9/11 which understandably shook and outraged everyone in this country, we have increasingly embraced at the highest official level what I think fairly clearly can be described as a paranoiac view of the world. Summarized in a phrase repeatedly used at the highest level, “he who is not with us is against us.” I say repeatedly because actually some member check to see how often it’s been used at the very highest level in public statements.

The point simply put really was 99. So it’s a phrase which obviously reflects a deeply felt perception. I strongly suspect the person who uses that phrase doesn’t know its historical or intellectual origins. It is a phrase popularized by Lenin when he attacked the social democrats on the grounds that they were anti-Bolshevik and therefore he who is not with us is against us and can be handled as treacherous.

Phrases in a way is part of what might be considered to be the central defining focus that our policy-makers embrace in determining the American position in the world and is summed up by the words “war on terrorism.” War on terrorism defines the central preoccupation of the United States in the world today, and it does reflect in my view a rather narrow and extremist vision of foreign policy of the world’s first super-power, of a great democracy, with genuinely idealistic traditions.

The second condition, troubling condition, which contributes in my view to the crisis of confidence and an image in which the United States finds itself today is due in part because that skewed view of the world is intensified by a fear that periodically verges on panic that is in itself blind. By this I mean the absence of a clearly, sharply defined perception of what is transpiring abroad regarding particularly such critically important issues as the existence or the spread or the availability or the readiness in all hands of weapons of mass destruction.

We have actually experienced in recent months a dramatic demonstration of an unprecedented intelligence failure, perhaps the most significant intelligence failure in the history of the United States. That failure was contributed to and was compensated by extremist demagogy which emphasizes the worst case scenarios which stimulates fear, which induces a very simple dichotomic view of world reality.

I think it is important to ask ourselves as citizens to ask ourselves as part of the administration, but as citizens, whether a world power can really provide global leadership on the basis of fear and anxiety? Can it provide the kind of leadership we need to support our friends when we tell them that if you are not with us you are against us?

I think that calls for serious debate in America about the role of America in the world, and I do not believe that that serious debate is satisfied simply by a very abstract, with abstract paradox regarding the American position on war on terrorism as the central preoccupation of the United States in today’s world. That formulation of the view simply narrows down and over-simplifies a complex and varied set of challenges that needs to be addressed on a broad front.

We deal with abstract paradoxes. It recognizes the challenge. It doesn’t point directly at the problem. It talks about a broad phenomenon, terrorism, as the enemy over looking the fact that terrorism is a tactic for some people. That doesn’t tell us who the enemy is. It’s as if we said that World War II was not against Nazi Germany. We need to ask who is the enemy, and the enemies are terrorists.

But not in an abstract, theologically-defined fashion, people, to quote again our highest spokesman, “people who hate things, whereas we love things”—literally. Not to put the French President and then said to him at the end of the briefing, I would now like to show to see how often it’s been used at the very highest level in public statements.

The count then quietly Billy was 99. So it’s a phrase which obviously reflects a deeply felt perception. I strongly suspect the person who uses that phrase doesn’t know its historical or intellectual origins. It is a phrase popularized by Lenin when he attacked the social democrats on the grounds that they were anti-Bolshevik and therefore he who is not with us is against us and can be handled as treacherous.

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maturely declaring the Iraqi authority as today is nominal. Any number of countries has really no specific meaning. Sovereignty is not a cause for emphasis that it is important that we must succeed. Failure is not an option.

I think we should be sensitive to that even if they do arrest oligarchs with whom some of our friends on K Street have shared interests. That is not to be approved. It is to be condemned, but surely there are deeper causes for emphasizing that it is important that we have more friends engaged in meeting it and if more I'm going to feel that they are responsible for the key decisions pertaining to their country.

We will not turn the Middle East into a zone of peace instead of a zone of violence unless we more clearly identify the United States with the pursuit of peace in the Israeli/Palestinian relationship. Palestinian terrorism has to be rejected and condemned.

Let us not kid ourselves. At stake is the destiny of a democratic country, Israel, to the security of which, the well-being of which, the United States has been committed since the fiftieth or a century for very good historical and moral reasons.

Soon the reality of the settlements, which are colonial fortifications on the hill with swimming pools next to favelas below where there's no drinking water and where the population is 50 percent unemployed, there will be no opportunity for a two-state solution with a wall that cuts up the West Bank even more and creates more human suffering.

For four years I was the principal channel of communication between the Israelis and the Americans. I think I'm well positioned to say that I'm not sure how much more we can hope to do if we are not willing to adopt a peaceful solution to the conflict.

I think we should be willing to accept peace. Israel, who want peace and are prepared to accept peace, the sooner the better.

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Soon the reality of the settlements, which are colonial fortifications on the hill with swimming pools next to favelas below where there's no drinking water and where the population is 50 percent unemployed, there will be no opportunity for a two-state solution with a wall that cuts up the West Bank even more and creates more human suffering.

For four years I was the principal channel of communication between the Israelis and the Americans. I think I'm well positioned to say that I'm not sure how much more we can hope to do if we are not willing to adopt a peaceful solution to the conflict.
Mr. BENNETT. Mr. President, this past Saturday, November 22, 2003, the Senate passed the Fair and Accurate Credit Transactions Act of 2003. Section 214 of the conference report, entitled "Affiliate Sharing," adds a new requirement for a notice and an opportunity for a consumer to opt-out of receiving solicitations from a person based on information that has been shared from an affiliate of that person. Several exceptions to the notice and opt-out requirement are included in the bill. The first, and most logical one, is an exception for a business sending solicitations to its own customers. The conference report defines this as a "pre-existing business relationship." The conference report further defines categories of relationships that qualify as a "pre-existing business relationship" and directs the regulators, including the Federal Trade Commission, to use regulatory discretion to deem any "any other pre-existing customer relationship" as qualifying for the definition that may be appropriate but not clear from the statute. The first category of relationships that the conference report definition of "pre-existing business relationship" includes a contractual relationship between a consumer and a person which is in force. "Financial contract," however, is not defined and it is not clear on its face what the term describes. In any case, I believe the operative concern is that it must be a contract in force. As a conference, I believe the conference report intends that the term "pre-existing business relationship" includes a contractual relationship between a consumer and a person, where the consumer has requested the provision of a good or service, or affirmatively registered to receive a service, whether or not a fee is assessed. Certain business models, such as those in the online world, do not follow the traditional fee for services model that characterizes the brick and mortar world. Financial consideration may not exchange up front with a customer, or at all for that matter. Accordingly, I urge the regulators to follow new and innovative business models when issuing the regulations implementing section 214 of the Fair and Accurate Credit Transactions Act of 2003, particularly with regard to the definition of "pre-existing business relationship."
companies now rule the roost, and can essentially dictate terms to the ISO—because their participation in the regional pool is voluntary. These are the regional monopolists—who is our ability to regulate them on a regional basis made subject to their voluntary agreements.

For another example, this bill is deferring to States by holding back FERC from mandating regional markets; but it harms States by repealing PUHCA. For instance, a new transmission technologies. Two years after the Enron disaster, and associated revelations and bankruptcies of many other major players, why are we are repealing PUHCA without any serious look at what would be needed instead?

Of course, at a more fundamental level, a bill that gives enormous benefits to fossil extraction industries and does not improve CAFE standards is an embarrassment. The failure is mirrored on the electricity side, where it gives incentively side electricity production and delivery with merely face-saving measures to advance efficiency and renewables. The list could go on.

My recommendation to the Senate is to put the Frankensteina bill out of its misery. Stop it any way you can. A filibus is in order—and it should be about a lot more than MBTE.

These examples serve to express my constituents’ frustration with this legis-
lation. The president himself is reported by communication that I have had with other energy sector experts as well. Ralph Nader, long regarded as an expert in vehicle fuel economy, is deep-
ly concerned that this bill does nothing to increase the average fuel efficiency of our passenger cars, which is the worst in 20 years.

Steven M. Nadel, executive director of the American Council for an Energy-Efficient Economy, said in the New York Times on November 21, 2003, that

Mr. ROCKEFELLER. Mr. President, this past Friday I voted against the Energy bill conference report that was before the Senate. I did this despite having worked for many years on some of the bill’s components that I believe will be good for West Virginia and the Nation, such as tax incentives and related research and development of clean coal technologies, incentives to increase domestic energy production through an expansion of existing credit-
izes for production from non-conven-
tial grid runs are then passed with the support of 57 Senators, and should have been added to this bill.

As I have said before, the American people deserve better than this bill, and I cannot vote in favor of it as currently drafted. Both the environmental and the energy provisions of this measure will need to be greatly improved when we return next year to get my vote.

Mr. ROBERTS. Mr. President, I want to discuss the case with natural gas exploration in the Appalachian Basin that I have promoted by working to extend tax incentives for the types of non-conven-
tional terrain common there. It should include common-sense programs to protect workers and other energy indus-
try workers who do the dangerous work that allows our economy to grow.

An energy policy we can all support would do more than pay lip service to improving the reliability of our electric grid, or to the efficiency and conservation measures that must be part of an effective national energy strategy.

I am sad to say that the Energy conference report misses the mark. We would have done a better job to simply pass the much more balanced bill the Senate passed in 2002, and again this year. I encourage my Republican colleagues in the strongest terms possible to use that bill as a guide, and to move quick-
ly, with active bipartisan cooperation, on this important issue early next year. This will produce a bill that will enjoy support on both sides of the aisle. I will not hesitate to oppose an-
other flawed bill, like the one we re-

As a Senator from a State where coal is not merely a home state industry, but a part of the spirit of the place, I did not come to this conclusion easily. Many parts of this bill will have little or no direct impact on my State, while parts of the bill could help West Vir-

A filibus is in order—and it should be about a lot more than MBTE.
R&D goal of $2 billion over 10 years was cut, and then further diluted by includ- ing earmarked loan guarantees, includ- ing one to strip clean coal technology out of an Alaska demonstration project and reconfigure it as a conventional coal plant. The tax provisions unilaterally reduced from a level coal and utility industry experts project as necessary to truly drive technological develop- ment, were cut further. That money was shifted to allow the oil and gas in- dustry to receive 49 percent of all tax incentives, while coal, which produces more than 50 percent of the nation’s electricity, has to be satisfied with only about 10 percent of the ben- efit of the bill.

What is probably most troubling for my State of West Virginia is that this bill would tilt a playing field that is far from level already dramatically in the direction of western coal. Under this legislation, companies out west that mine coal on public lands will be re- quired to conduct much less stringent environmental analysis, and then be reimbursed by taxpayers for any costs incurred. At the same time, these companies will be able to mine this coal the true and pay lower royalties than have been required until now. Coal from the Powder River Basin is already cost-competitive in parts of the eastern United States with coal mined in Appalachia. Finally, this bill includes a completely unjustified re- peal of a 4.3 cent per gallon excise tax railroads pay on diesel fuel, which will make it even cheaper for western coal companies to flood the eastern United States with their product.

Further, I am simply astonished that in a bill that gives an unprecedented amount of taxpayer money to special interests, and which purports to sup- port coal, that House conferees not from coal states demanded that a small but cost of mine from the last year’s Senate bill be removed. This provision, which would have added no additional cost to the bill, called upon the Secretary of Labor to hire, train, and deploy as many Mine Safety Inspectors as she is currently authorized to have. This was meant to overcome a decline in the number of mine inspect- tors, and therefore, in mine inspec- tions, that predate this administra- tion. This situation, where mine in- spectors spend far more time on the road than in the mines, despite the fact that they ever spend inspecting them for compliance with federal health and safety rules, will become untenable if the nearly 25 percent of inspectors scheduled to retire in the next three to five years actually leave the already- depleted workforce. Let me reiterate: No new authorization; no demand for additional personnel to make sure the coal mines in this country are safe for the miners producing the fuel that gen- erates more than half our electricity. Just the planned retirements do not leave our miners unprotected by qualified Mine Safety Inspectors. Secretary Chao signed off on the provision last year, and in 2003, Senator DOMENICI included it in his version of the bill. But it’s not in the conference report. I wonder how, in an energy bill that is supposed to be about maximizing our domestic pro- duction, we can look the other way at miners’ safety.

I would be remiss, if I did not give credit where credit is due. I have worked for many years on incentives to promote natural gas development from non-potential sources such as the Appalachian Basin, lower the production costs and increase the safety of coal mining, and help the struggling American steel in- dustry get back on its feet. I have ad- vocated for these incentives during my entire career because I understand how much they would help my State of West Virginia. I was proud, both last year and in 2003, to lead a broad bipartisan coalition in the Senate pushing for extension and expansion of section 29. With regard to these provisions I commend the conferees. Unlike many pieces of our bill that went into con- fference with the House, I believe the section 29 provisions in the conference report have been greatly improved.

I trust that few Senators cast many votes in this year’s Senate bill that governs the future direction of our energy policy. And for this Sena- tor, at least, figures tend to be oblit- erated by the people our actions are helping. We had a chance in this con- fference report to help a group of people I have taken into my heart, and for whom I probably have spent more hours working than any other. I am speaking of retired coal miners and their surviving spouses.

The Coal Act was created to protect the promise of lifetime health benefits for coal miners, who fueled the nation’s post World War II economic growth, and who made salary and pension con- cessions in exchange for those health benefits. The Coal Act fulfilled a prom- ise first made by President Truman in his 1946 agreement with legendary UMWA President John L. Lewis. In re- sponse to a coal strike in the late 1980s and in light of the mine miners’ health funds, the first Bush adminis- tration created the Coal Commission to find a long term solution. Those rec- ommendations became the basis for the Coal Act, which protected the health benefits of more than 100,000 retired miners. Today, there are almost 50,000 retired miners and widows who depend on the Coal Act for their health care security—their average age is about 78. Since enactment, the Coal Act has faced many challenges, but the com- bination of health care drug costs and a series of negative court de- cisions have resulted in a serious defi- cit in the Funds. That deficit will mean a cut in health benefits next year if Congress does not act to stop it.

We had a chance, in the Energy con- ference, to shore up the Combined Ben- efit Fund while also helping make states whole with regard to what was shifted to the Abandoned Mine Land contributions. I have heard promises that both Senate and House Chairmen have made to deal with this issue next year, when the AML Fund is up for reauthorization. For the 80-year old miners’ widows who are facing a benefit cut next February, they have heard promises before, but in their be- half I must say that I sincerely hope that next year is not too late.

I am not happy that I must vote against this bill. I am sorry for my State of West Virginia, because it de- serves better than this bill gives it. I’m sorry that our balanced bill of 2002 has been replaced with this lopsided mon- strosity. I will continue to push my colleagues for a balanced and respon- sible energy policy for our country. I look forward to a time, hopefully soon, when I can vote for such a bill.
American produce or livestock could cause mass panic and long-lasting fear of American produced food products. Dr. Chalk cited a study conducted in California that concluded that “each day of delay in instituting effective eradication and control measures would cost the state $1 billion in trade sanctions.” The economic repercussions are almost unimaginable.

Yet within the Federal Government, no agency has the clear responsibility for protecting and containing an agroterrorist attack. Over 30 Federal agencies have jurisdiction over some part of the response process. This bifurcation of jurisdiction contributes to confusion among local and State officials as to where to turn for assistance and advice. According to a recent General Accounting Office, GAO, report Federal agencies are confused about the chain of command. The report states that neither the Food and Drug Administration, FDA, nor the Department of Agriculture, USDA, believe that they have the authority to enforce security at U.S. food processing plants. GAO states that “both FDA and USDA have instructed their field inspection personnel to refrain from enforcing any aspects of the security guidelines because the agencies generally believe that they lack such authority.”

When questioned at the Governmental Affairs Committee hearing last week, Dr. Penrose Albright, Assistant Secretary for Homeland Security, DHS, indicated that the responsibility of leadership would likely fall to DHS in the event of an intentional attack on the Nation’s agriculture and stated that DHS “takes these responsibilities seriously.” but stopped short of asserting that the new department had overall responsibility. I have asked DHS for clarification on this issue.

Dr. Albright also said that an unenforceable provision of Agriculture’s bill, the Agriculture Security Assistance Act, and the Agriculture Security Preparedness Act, establishes senior level liaisons in the Department of Homeland Security and Health and Human Services to coordinate with USDA on agricultural disease and emergency response. The bill also requires DHS and USDA to work with the Department of Transportation to address the risks associated with transporting Animals, plants, and people between and around farms.

No doubt a terrorist attack on American agriculture could have a devastating effect on the United States. Our Nation’s capability to counter such an attack is increasing, but more needs to be done. My two bills would help our Nation act now so that a future agroterrorist attack can be avoided or quickly responded to before the damage in lives or livestock is too great. I urge my colleagues to support this overdue legislation.

OVERTIME PAY

Mr. HARKIN. Mr. President, we are here here to do the people’s business, but one critical piece of the people’s business is missing in this omnibus bill that was filed today. There is one shameful omission.

Both Houses of Congress, on a bipartisan basis, voted for my amendment to block the administration’s proposed new rule on overtime. Both Houses voted to block the administration’s radical rewrite of the Nation’s overtime laws. That amendment passed 54 to 45 in the Senate, and 221 to 203 in the House. The Congress of the United States spoke up—clear as a bell—and said, “No, the administration must not strip overtime rights from 8 million American workers.”

The administration refused to accept this act of defiance by Congress. The administration ordered its foot soldiers in the House of Representatives to strip this provision from the omnibus. Senator SPECTER and I fought to keep it in, but the administration refused any cooperation or compromise. In the end, just like that, the administration nullified the clear will of both Houses of Congress and the American public.

I believe this is an abuse of power, and there is a clear pattern to this abuse of power. Time and again, we see this administration dictating to Congress, nullifying the work of Congress, running roughshod over the will of Congress.

This administration seems to believe in Government by one branch—the executive branch. When the executive branch speaks, the administration’s allies in Congress must obediently fall in line. And, time and again, they do. They act as a rubber stamp. They give the President a blank check.

This is dangerous to our constitutional system. The Founding Fathers did not talk about blank checks. They talked about checks and balances. In The Federalist Papers they specifically talked about not allowing any one branch to reign supreme.

Instead of independent, coequal branches of Government, today the executive branch does, indeed, reign supreme. Time and again, this administration dictates to Congress and Congress submits—even when both Houses of Congress have previously voted to the contrary.

The problem with having the executive branch dictating to the legislative branch—the problem with discarding checks and balances—is that it results in bad public policy, and that is exactly what we see here, today.

Both Houses of Congress, with bipartisan majorities, voted to block the administration’s proposed new rule. This was the right thing to do. It was the correct public policy choice because this new rule is a stealth attack on the 40-hour workweek, pushed by the White House without a single public hearing. It will effectively end overtime pay for dozens of occupations, including nurses, police officers, firefighters, clerical workers, air traffic controllers, social workers, and journalists.

This proposal is a slap in the face to the millions of American workers who depend on overtime pay to support their families and make ends meet. We’re not talking about spare change, here. We are talking about taking away some 25 percent of the income of many American workers.

Now that Congress’s vote and voice have been nullified, we are hearing that the Department of Labor could issue this new rule in the coming weeks. But I am here to serve notice that I will not give up, nor will others who have fought this.

The American people will not allow us to drop this issue. They have been watching this issue closely, because it hits so close to home. I pledge that I will offer the overtime amendment to every piece of legislation until we succeed.

Let’s be clear. This is not just about reversing a destructive, misguided measure. It is also about this Congress administration’s independence and refusing to have its votes nullified at the whim of this administration.

BLOCKING THE ENFORCEMENT OF OUR NATION’S GUN SAFETY LAWS

Mr. LEVIN. Mr. President, the House-passed version of the Commerce, Justice and State Departments Appropriations Bill included provisions that, if adopted, would severely hamper enforcement of the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATTF) to enforce our nation’s gun safety laws.
Oregon Health Care Hero

Mr. SMITH. Mr. President, I rise today to salute a trio of Oregon Health Care Heroes. Three agencies, El Programa Hispano, the Desarrollo Integral de la Familia, and the Oregon Council for Hispanic Advancement, are working together to provide much needed mental health services to Oregon’s growing Latino community. Their combined effort is helping clients improve relationships, find a listening ear and appropriate services they need to live healthier lives.

Funded by a grant from Multnomah County, the agencies work with Latino families and individual clients facing a variety of challenges: depression and anxiety to post-traumatic stress and domestic abuse. Part of the success of this project is that counselor and client share language and culture. Before these agencies began serving clients, they could not speak Spanish or understands Mexican and Latin American cultures was next to impossible.

In a recent profile published by the Portland Oregonian, counselor Marcos T. Sanchez discussed the importance of sharing language and culture with clients.

It makes such a big difference when you come in and the receptionist can speak to you in Spanish. People walking by can say, “Have you been helped?” When you go to the clinic, you’re already feeling alienated. But if you don’t have to risk as much to get these services, you are much better off.

The project is also successful because it networks within the Latino community and employs nontraditional methods to help clients. Therapists conduct home visits to work with whole families and to better understand the needs of individual clients. This individualized approach to care, combined with culturally sensitive services, will ensure that quality care reaches those who need it most. As the service expands, it will serve as a national model for bringing together the best in community care and mental health services.

Through the vision of the Latino Network and the resources of Multnomah County, these agencies are reaching people in need. They connect with people and care for clients in a unique way that is making a real difference in the lives of Latino Oregonians. I thank El Programa Hispano, the Oregon Council for Hispanic Advancement and the Desarrollo Integral de la Familia for their excellent work. They are heroes to the people they serve and to all Oregonians.

Tribute to C. Booth Wallentine

Mr. HATCH. Mr. President, I give tribute to my dear C. Booth Wallentine, who, just days ago, began a very well earned retirement after serving for 41 years in the Farm Bureau. Thirty-one of those years he served as the executive director of the Utah Farm Bureau. Booth is an institution in my State, and I have to say that when agriculture issues come up, my first question often is, “What’s Booth’s take on this?” Even on rare occasions when we have disagreed on an issue, I found it valuable to understand his perspective. As far as I am concerned, nobody knows agriculture in my State like Booth Wallentine, and I dare say that no state Farm Bureau director knows Congress and the legislative process like Booth Wallentine, either.

This combination of expertise in the substance and in the process of agriculture policy-making has helped to set us apart as an advocate on behalf of Utah agriculture interests. It has also helped him to provide service in various other ways. He served as vice chairman of the Salt Lake Chamber of Commerce as well as chairman of the board of Utah State University. Remarkably, both institutions awarded him their respective distinguished service awards. He also served as the president of the Utah Council on Economic Education and chaired the Utah Farm Service Agency Committee on Risk Management. Somehow he found the time to help establish the National Mormon Pioneer Trail Foundation and was asked to chair the Department of the Interior’s Historic Trail Commission.

But wait a minute, there’s more. Booth Wallentine was Utah State University’s very first inductee in their Agriculture Hall of Fame, he was named the Future Farmers of America Farm Leader of the Year, a Friend of the Cattlemen, a Friend of Utah Wool Growers, and he earned the Utah State Extension Leadership Award. Booth was also officially recognized by the Environmental Protection Agency for his environmental leadership in helping farmers to improve Utah’s water quality.

I should point out that this is not a complete list, but it serves to make the point that Booth Wallentine is a great American. He has helped Utah in so many ways.

I know that I will miss him dearly, but I gain some comfort knowing that while he goes into retirement, we continue to benefit from the wisdom he shared with us and the legacy he has left. I thank C. Booth Wallentine for serving so long and so well. I pray that the Lord will bless him and his sweet wife, Raeda, in their retirement.

Tribute to Philip Shannon

Mr. DODD. Mr. President, I rise in tribute to Philip J. Shannon, of Norwich, CT, passed away on Tuesday, November 11, 2003, at the age of 85. Philip was a dedicated public servant, a loyal Democrat, and above all, a good friend.

He was a Norwich native who would dedicate much of his life to serving the people of his hometown. He graduated from St. Patrick’s School and the Norwich Free Academy. Like so many in
Norwich and across the State of Connecticut, he would go on to work in the manufacturing industry as a machinist at Pratt and Whitney and as a partner at the Norwich Machine and Tool Company.

During his decades of work as a public official in Norwich, Philip was never one to stay silent on any issue that he felt was important to the citizens of that city. That approach won him many allies, and it certainly earned him his share of critics. But everyone admired the passion and dedication that Philip Shannon brought to his many years of public service.

He helped spearhead a series of important local projects, including the Norwich Golf Course and development along route 82. He also had the foresight to successfully campaign against selling the city’s public utilities department to a private corporation. The decision to keep the department ultimately made the city more money than it would have received from the sale.

Those are only a few of Philip Shannon’s many accomplishments. In the words of Bill Stanley, a former State Senator from Norwich, “No one will ever know.”

His work on behalf of the Democratic Party in Norwich was so tireless that he became known as “Mr. Democrat.” He served as Democratic town chairman for 20 years and represented Connecticut’s 19th District on the Democratic State Central Committee. In his role as a party leader, he recruited numerous candidates who went on to hold local and State offices.

Philip was as good to his friends as he was to the Democratic Party. He was a longtime friend of my father, and I will never forget how he supported me when I first ran for the Senate back in 1980.

Norwich is a better place today because of the efforts of Philip Shannon. He will be greatly missed, both by the people he served and by everyone who knew and loved him.

I offer my most heartfelt sympathies to Philip’s wife Cresencia, his four children, six grandchildren, three great-grandchildren, and his entire family.

JOSEPH W. MCCracken

Mr. SMITH. Mr. President, I rise today to acknowledge the passing of Joseph W. McCracken on October 26, 2003.

For over 4 decades, Mr. McCracken represented the forest products industry—Oregon and other Western States, as the Executive Vice President of Western Forest Industries Association. Mr. McCracken represented a sector of the industry that I hold in particularly high esteem—a sector comprised of small, family-owned sawmills and plywood plants.

These are the mills that traditionally depended on our Federal forest lands for their supply of timber. These are the mills that are located in small rural communities where they provide the backbone of the local economy. During his years of service to his industry, Joe McCracken was a fixture in his town and served as an advisor and mentor to many of our predecessors in this body. Warren Magnuson, Scoop Jackson, Mark Hatfield, Bob Packwood, Frank Church, Jim McClure, Jim Melcher, and other stalwarts of our western Senate delegation looked to Joe for counsel and advice on public land issues affecting his constituents. He represented them with a passion and commitment that was exemplary. Joe McCracken was a visionary and determined, a responsible and influencing countless pieces of legislation and regulations that benefitted his industry, the people that work in it and the communities that depend on it.

The Small Business Set Aside Program, as just one example, assured small, family-owned mills a fair share of the Federal timber sold from our national forests and lands manager by the Bureau of Land Management. Joe McCracken was a pioneer in drafting the policies and regulations affecting the Oregon and California Railroad lands in western Oregon, today known as the “O & G” lands. He did this both as a professional staff person for the Department of the Interior and as an advocate for his trade association.

Under Joe McCracken’s representation, the small, family-owned mills expanded their operations throughout the West. Prosperous. Many of them are under second and even third generation management. Unfortunately, many of them no longer exist.

After Joe’s retirement in the early 90s, a sea change in Federal policies regulating the management of public lands unfolded to the point that very little timber is being provided from these forest lands and many of the mills have closed.

Unfortunately, these were the mills Mr. McCracken fought so hard to preserve. Those that have survived owe their existence largely to Joe McCracken.

Joe was born in Butte, MT in 1925. He served his country as a lieutenant in the United States Marines. He attended Princeton University where he earned a masters degree in science.

He had a distinguished career with the Department of Interior, and specifically, the Bureau of Land Management prior to taking the leadership position with the Western Forest Industries Association.

Joe McCracken was a unique individual who left a profound imprint on the growth and evolution of public forest policy and the industry that is so closely dependent on public forest lands. His contributions to this body in assisting us in the thoughtful debate and deliberation of these important matters are worthy of our formal recognition.

I extend my heartfelt sympathy to Joe McCracken’s wife Janet and his two children, Jon and Tamsen.

THE LIFE OF BRIAN HOWELL

Mr. FEINGOLD. Mr. President, today I pay tribute to a friend who lived his life in the service of his community and his family.

Brian Howell was a committed journalist, and his activities reached far beyond reporting and editing. He wrote eloquently about the importance of honest government and voiced outrage when news broke of political corruption in Wisconsin’s State legislature.

Brian worked his way to become editor of Madison Magazine, a position he took after serving as features editor of the Wisconsin State Journal.

Brian Howell’s dedication extended to the University of Wisconsin-Madison, where he taught a course on public campaigns and publicity. Shortly after the attacks of September 11, Brian worked closely with students to publish an issue of their student magazine that captured the circumstances, changes, and emotions surrounding the attacks. Always eager to engage young writers, Brian knew the power of good journalism.

Brian’s voice remained strong, even into his last days. He wrote openly about his disease, lung cancer. In calling for increased research about the disease, Howell knew that despite lung cancer’s stigma and common association with tobacco, its sufferers deserved the same scientific dedication that other patients received.

Right before he passed, Brian received by telephone the UW-Madison journalism school’s Director’s Award for Distinguished Service to Journalism. He greatly deserved this high honor.

My wife Mary and I will truly miss Brian. He was a friend of ours for many years and my wife had the distinct pleasure of working with him at Madison Magazine. His friendship is something we will always treasure and hold close to our hearts.

Brian’s death is a great loss to the Madison community and to Wisconsin as a whole. I am saddened by his passing, but am also heartened by his achievements. I know that he will live on through all that he accomplished, and through everything that he taught those of us fortunate enough to call him a friend.

TRIBUTE TO PAUL WALLACE-BRODEUR

Mr. JEFFORDS. Mr. President, today I pay tribute to Paul Wallace-Brodeur, an outstanding Vermonter and a national leader in the area of health care reform. As he prepares to retire from his position as director of the Office of Vermont Health Access in Waterbury, VT, it is important to reflect on how much one person can accomplish in serving others.

Paul has been on the forefront of supporting Vermont’s health care delivery system. As he prepares to retire from his position as director of the Office of Vermont Health Access in Waterbury, VT, it is important to reflect on how much one person can accomplish in serving others.

Paul has been on the forefront of providing individuals with greater access to the health care delivery system. As the State Medicaid director, which is...
Vermont’s second largest insurance program, Paul helped Vermont obtain the distinction of having one of the lowest uninsured rates in the country. Under Paul’s leadership, Vermont broadened its eligibility standards and was one of the first States in the country to expand Medicaid services to children under the Dr. Dynasaaur program. During his tenure, Medicaid programs grew to cover 143,313 Vermonters.

Paul began his career in Vermont as a social worker at the Brandon Training School. He quickly rose to leadership positions as a direct provider and then consultant in the field of mental health, followed by his position as the chief social worker for the Vermont State Hospital. It came as no surprise to those of us who know Paul that he was selected in the mid-1980s to lead the State of Vermont’s efforts in creating universal access to health care as the executive director of the Vermont Health Policy Council and through his work with the Vermont Health Care Authority. Also during the mid-1980s he spearheaded the creation of the Vermont Ethics Network, an organization dedicated to increasing the understanding of ethical issues, values, and choices in health and health care.

Over the course of 40 years, Paul has been involved with virtually every health policy initiative in Vermont, particularly the State’s efforts to expand health coverage. He is personally responsible for authoring Vermont’s 1115 waiver, which over the years, and with many amendments, has provided more expansive and flexible Medicaid services to Vermonters. In his quiet, unassuming way, Paul is an integral part of the health care delivery system in Vermont and has gained recognition for being a national health policy leader and mentor. He has always brought a steadfast commitment and institutional knowledge to solving the problem at hand while maintaining a vision for improving Vermont’s health care system.

Paul’s unwavering commitment toward improving the health status of every Vermont citizen is a great lesson for all public servants. Vermont is truly indebted to him. His deep commitment to the citizens of the Green Mountain State has endeared him to us. He has our best wishes for the future.

ALBERT W. BILLINGTON

• Mr. CHAFEE. Mr. President, I am pleased today to draw the Senate’s attention to a public servant who has given meritorious service to Rhode Island and to the Nation.

Since 1981, Albert W. Billington has been a Special Agent with the Naval Criminal Investigative Service (NCIS). In December, Mr. Billington will retire from the NCIS. He leaves a record of achievement, and his service will be missed. Al Billington graduated from North-eastern University in 1977 with a bachelor’s degree in Criminal Justice. Beginning his career as a Special Agent, his first assignment was the San Francisco office where he investigated general criminal matters. Just 2 years later, he began a one-year assignment as the Special Agent Afloat aboard the USS Enterprise. During the tour, he led several high-profile investigations while the ship and battle group were deployed in the Western Pacific, and for this he received the NCISRA San Francisco Special Agent of the Year Award for Distinguished Service.

Later, Mr. Billington graduated from the Department of Defense Polygraph Institute in Amniston, AL, and was reassigned as a Special Agent Polygraph Examiner to the NIS Northeast Region Polygraph Site in New London, CT. He rose through the ranks first as the Site Manager and later as the Special Agent in Charge of The Polygraph Office.

As Division Head at NISHQ, he conducted oversight of all polygraph matters for the Department of the Navy.

In 1994, Al Billington was appointed Assistant Special Agent in Charge of the Northeast Field Office in Newport, RI, handling all criminal and fraud investigations.

In 1997, he was promoted and reassigned as the Special Agent in Charge of the NCIS Middle East Field Office in Bahrain. He served with distinction during this time of heightened alert and terrorist activity and was awarded the Navy Superior Civilian Service Award by VADM C.W. Moore, Commander Fifth Fleet, USN.

Two years later, he was transferred to NCIS Headquarters and served as the Deputy Assistant Director for Investigative Support.

In 2001, Mr. Billington assumed his present position as the Special Agent in Charge of the NCIS Washington, DC, Field Office.

Upon his retirement, Mr. Billington will be returning to his home in Portsmouth, RI, spending time with his wife, Bonnie, and son, Matthew.

I join with Al Billington’s colleagues in expressing thanks for his dedication and valuable service to our Nation, and in wishing him success in all his future endeavors.

70TH BIRTHDAY OF SAM MAYNES

• Mr. CAMPBELL. Mr. President, I rise today to congratulate Sam Maynes of Durango, CO, on his 70th birthday, although it would be more appropriate to congratulate those with the good fortune to have had Sam for an advocate or friend for 65 years. I have been lucky enough to count him as both.

While others have lived as many years, very few have achieved a legacy as significant and lasting as his will prove to be. The Southern Ute Tribe, Ute Mountain Ute Tribe, and all of southwestern Colorado will be enjoying the fruits of Sam’s hard work long after the struggles and acrimony he endured these past decades have been forgotten. Those who time and again pronounced Animas-La Plata a lost cause obviously didn’t know the stuff Sam was made of. I knew—and I knew that so long as there was any chance at all, he would keep fighting. Sam has a warrior’s heart, and it was an honor to do battle alongside him.

There are generations of Coloradoans not yet born, who may never know the name of Sam Maynes, but who will live better lives because of his tenacity. So congratulations to them, Sam, and happy birthday to you.

TRIBUTE TO VERMONT ASSOCIATES FOR TRAINING AND DEVELOPMENT, INC.

• Mr. JEFFORDS. Mr. President, today I would like to pay tribute to Vermont Associates for Training and Development, Inc., for providing more than 20 years of service in meeting the employment needs of Vermonters, age 55 and older, who are ready, willing, and able to work.

I also acknowledge the organization’s founding executive director, Pat Elmer, for her vision, leadership, and management skills as she has guided the organization during the past two decades. The agency has developed a number of programs related to career counseling, job search, and computer training in order to prepare individuals for the work place. In addition, they provide on-the-job training stipends to allow people the opportunity to build their resumes through real-life work experiences.

Too often employers may overlook this valuable, and often untapped, resource, which older workers have to offer the workplace. I commend Vermont Associates for leading the way in changing the mindset of many companies by creating new opportunities for employees and employers alike.

As a member of the Senate Committee on Health, Education, Labor, and Pensions, HELP, which has jurisdiction over the Older Americans Act, I commend Vermont Associates for their wise and prudent use of funding from this act. Vermont Associates, and their colleagues across the country, were very helpful to me as I chaired the HELP Committee during the long-awaited reauthorization of this legislation.

I have a strong admiration for Pat’s dedication and the many others, including board members and volunteers, who have built Vermont Associates. Vermont is grateful to Vermont Associates for their steadfast commitment to equal access to employment. Collectively, they have worked to improve the quality of life in our small State. For that, Vermont owes a great deal of gratitude.

TRIBUTE TO JOHN R. (JACK) CHAILLET

• Mr. WARNER. Mr. President, I rise today to pay tribute to an outstanding
Virginia and patriotic American who died of lung cancer on November 8, 2003—John R. (Jack) Chaillet, of Fairfax, VA.

Jack, age 69, was a retired D.C. Police detective, who investigated many of the murder cases of the 1960’s and ’70’s. He served 21\(\frac{1}{2}\) years on the Metropolitan Police Department before he retired in 1978, serving most of his career as a detective in the Homicide Division.

In 1977, he was a lead investigator in the Hanafi Muslim murders in which seven persons were slain and then D.C. Council member Marion Barry and two others were wounded after 12 Hanafis seized the District Building and two other facilities to avenge the death of members of their sect. Over two days, the group held 134 people hostage.

Among hundreds of other cases, he and his partner were first on the scene of the car-bomb murder in 1976 at Sheridan Circle of Chile’s former Ambassador to the United States, Letelier. This case was taken over by the FBI. In one of his cases involving the murder of a young female child, he collected the largest number of pieces of evidence ever gathered in a homicide case in D.C. including doorframes and bathtub.

During his years in the Homicide Division, Mr. Chaillet developed a reputation as an investigator with patience and thoroughness in the vital collection of evidence and the thoroughness of his work. He was a dedicated officer who retired from the force with the highest recommendation. After retirement, he was told that many homicide detectives reviewed his reports for guidance in their cases and considered him a legend in homicide investigation. He was profiled, along with others, in a Washington Post weekend magazine article as one of the most outstanding D.C. homicide detectives. He worked many round-the-clock days and nights knowing the case must be pursued while the trail was hot. There was no overtime pay and the reward was in knowing the case was closed and another criminal was taken off the streets.

Mr. Chaillet helped organize and lectured in a homicide school sponsored by the D.C. Police Department which detectives from all parts of the country attend and, therefore, made his name known through departments across the U.S. In these classes, he had a flair for presentations in slide shows which kept the classes interesting, dramatic and shocking. He also lectured at Criminal Justice classes at several community colleges and universities. Prosecutors liked to work with him as they knew they could count on him to help make their case with his meticulous notebooks, eloquent speaking voice and unflappability. He developed many contacts in the street and at Lorton Reformatory who provided him with information on open cases even after his retirement.

After retiring from the Police Department, he performed security work for Drug Fair, former Regency Hotel, and the National Press Building. He also did background investigations of Federal job applicants, field investigations for the Environmental protection Agency, and court security assignments for the U.S. Marshal’s Office.

He was a native of Washington and a graduate of Anacostia High School. When he was an outstanding football player and received the All-Metro Award for two consecutive years. He served in the Army as a military police officer in Germany.

He was a member of the American Legion, Almas Temple Shriners, Scottish Rite, Masons, and the Fraternal Order of Police. He was a football coach for the Camp Sprights (Maryland) Boys Club for many years and a volunteer for charitable golf tournaments sponsored by the Fraternal Order of Police and Heroes, Inc.

Survivors include his wife, Marie, of Fairfax; his sons, Kurt of Fairfax and Kyle of Berryville, daughters-in-law, Karolyn and Caroline; and one grandchild, Logan James as well as many other relatives and a host of friends in the metropolitan area.

My sincerest condolences are offered to his family and friends.

**DEDICATION OF THE BURCH TRIBAL OFFICE BUILDING**

- **Mr. CAMPBELL.** Mr. President, today I rise to observe the dedication and naming of a building by the Southern Ute Indian Tribe in Ignacio, CO, a place I am privileged to call home.

On December 1, 2003—about a week from now—the Tribe will dedicate a new tribal office building to the memory of its former chief, Mr. Leonard Burch, who passed away earlier this year. The building will bear his name. Leonard Burch was a quiet man of enormous vision, who led the Southern Ute Indian Tribe for nearly three decades, from a little-known, mostly poor tribe to the pre-eminent energy-producing nation in the world. Mr. Burch was an outstanding leader among tribes, just as Leonard was a leader among men.

Leonard’s dream for the Tribe was audacious, but he believed in his vision and he believed—believed in his vision, but more important, believed in his people: his faith in the inherent strength of the Southern Utes was unshakeable. It speaks volumes of the Southern Ute Tribe that they were perceptive enough to know a great leader when they saw one, and continued following his lead even when the way was difficult. Leonard and the Tribe deserved each other, and their mutual commitment was rewarded in a community transformed. Leonard Burch will be missed by the Southern Ute Indians, by me, and by all who call southwest Colorado home. He remains in our hearts and, with the dedication of the Southern Ute Indian Tribal Office Building, his memory will be forever honored by the tribe he loved.

**HONORING LTC DARWIN EDWARDS**

- **Mr. CHAMBLISS.** Mr. President, I wish to speak about my friend, Darwin Edwards, curator of the Museum of Aviation at Robins Air Force Base for the past 14 years who passed away Saturday after a lifetime of service.

Lieutenant Colonel Edwards was born in Whigham, Georgia 67 years ago. Over the past 40 years, he attended the United States Air Force Academy in Colorado as a member of its fourth class. He then served in the Air Force for 33 years, including a tour in Vietnam where he earned the Silver Star, the Distinguished Flying Cross and many other honors from the United States and foreign governments.

Darwin Edwards was able to combine his love of aviation and his desire to serve his fellow Americans by joining the Museum of Aviation at Warner Robins. This museum, with 93 aircraft and missiles, is a first-rate facility with aircraft spanning World War II though the Cold War, including fighters, bombers, and trainer aircraft. It also includes helicopters and missiles.

Darwin Edwards worked hard to build up the museum. His personal touch was a big reason the museum has developed into the fourth largest aviation museum in the United States. Until he was stricken ill at his home several weeks ago, he was working on its $30 million Century 2000 Next Generation expansion program.

I have known Darwin Edwards for many years and sincerely express my admiration and respect for him. Several times, I used the museum to hold Christmas receptions for cadets who had received nominations to the service academies. Each time, Darwin took the time to take the young men and women on a personal guided tour of the museum, providing his insight and detailed knowledge of this outstanding facility.

Darwin Edwards leaves behind his wife, Virginia, his children, Howard and Howard, as well as a granddaughter, and six sisters and three brothers. He also leaves behind many friends as well as a grateful Nation.

We will miss Darwin Edwards greatly and we extend to his family and friends our heartfelt condolences.

**TRIBUTE TO NORMAN TOLVIN**

- **Mr. LAUTENBERG.** Mr. President, I rise to commemorate the passing of Norman Tobin on October 12, 2003, someone I respected and admired for many years. Norman and I belonged to the same synagogue for decades.

He was a talented, generous person who was a leader in philanthropy and the Jewish community. I considered Norman and his wife Zelda good friends and know how strong the ties were in the Tobin family.

I sent my deepest sympathy to the Tobin family and an acknowledgement of my gratitude for having been enriched by my contact with this great man.

I ask to print a copy of the obituary that appeared in the Star Ledger in the RECORD.
There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Newark (N.J.) Star-Ledger, Oct. 12, 2003]

NORMAN TOBIN, PRESIDENT OF REALTY APPRAISAL FIRM, ACTIVE IN COMMUNITY
Norman L. Tobin, 81, of West Orange died yesterday at home.

Services will be at 9:30 a.m. Tuesday in Temple Sharey Tefilo-Israel, South Orange. Arrangements are by the Menorah Chapels at Millburn, Union.

A self-employed realtor and appraiser, Mr. Tobin was president of Norman Tobin & Co. in Maplewood for more than 35 years.

He was a graduate of the Newark School of Fine & Industrial Arts.

Mr. Tobin served in the Army Signal Corps during World War II.

A former president of Temple Sharey Tefilo-Israel, he was a member of the Friends of the Memorial Library, the Chamber of Commerce and the Unity Club, all in Maplewood.

He was also a member of the Board of Realtors of the Oranges and Maplewood.

Mr. Tobin was currently president of the Appraisers of America and served as a judge on the Condemnation Court of Essex County for 35 years.

He was the dinner chairman of the Lautenberg Cancer Research Foundation and was instrumental in raising two million dollars for the Berg Cancer Research Foundation and was an executive of the Essex County Appraisers of America and served as a judge on the Condemnation Court of Essex County for 35 years.

At 12:35 p.m., a message from the United States Fire Administration, and for other purposes.

H.R. 421. An act to reauthorize the United States Institute for Environmental Conflict Resolution, and for other purposes.

H.R. 1828. An act to halt Syrian support for terrorism, end its occupation of Lebanon, and stop its development of weapons of mass destruction, and condemn Syria accountable for the serious international security problems it has caused in the Middle East, and for other purposes.

H.R. 1940. An act to improve the capacity of the Security of Agriculture and the Secretary of the Interior to conduct hazardous fuels reduction projects on National Forest System lands, and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to prevent and protect against threats to forest and rangeland health, including catastrophic wildfire, across the landscape, and for other purposes.

H.R. 2115. An act to amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes.

H.R. 2171. An act to authorize appropriations for fiscal year 2004 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.


H.R. 3140. An act to provide for availability of contact lens prescriptions to patients, and for other purposes.

H.R. 3166. An act to designate the facility of the United States Postal Service located at 57 Old Tappan Road in Tappan, New York, as the "John G. Dow Post Office Building".

H.R. 3185. An act to designate the facility of the United States Postal Service located at 38 Spring Street in Nashua, New Hampshire, as the "Hugh Gregg Post Office Building".


H.R. 3490. An act to establish within the Smithsonian Institution the National Museum of African American History and Culture, and for other purposes.

The enrolled bills were signed subsequently by the President pro tempore (Mr. STEVENS).

At 1:32 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1768. An act to extend the national flood insurance program.

S. 1367. An act to authorize the Secretary of Agriculture to implement a loan repayment program regarding the provision of veterinary services in shortage situations, and for other purposes.

The enrolled bills were signed subsequently by the President pro temore (Mr. STEVENS).

At 3:49 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the amendment of the Senate to the resolution (H. Con. Res. 339) providing for the sine die adjournment of the first session of the One Hundred Eighth Congress.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on November 25, 2003, she had presented to the President of the United States the following enrolled bills:

S. 189. An act to authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes.

S. 578. An act to reauthorize the National Transportation Safety Board, and for other purposes.

S. 1156. An act to amending title 38, United States Code, to improve and enhance the provision of health care for veterans, to authorize major construction projects and other facilities matters for the Department of Veterans Affairs, to enhance and improve authorities relating to the administration of personnel of the Department of Veterans Affairs, and for other purposes.

S. 1152. An act to reauthorize the National Transportation Safety Board, and for other purposes.

S. 1768. An act to extend the national flood insurance program.

S. 1989. An act to temporarily extend the programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Ms. COLLINS, from the Committee on Governmental Affairs:
Report to accompany S. 1567, a bill to amend title I, United States Code, to improve the financial accountability requirements applicable to the Department of Homeland Security, and for other purposes (Rept. No. 108-211).

By Ms. COLLINS, from the Committee on Governmental Affairs, with an amendment:
S. 1287. A bill to amend the District of Columbia Home Rule Act to provide the District of Columbia with autonomy over its budgets, and for other purposes (Rept. No. 108-211).

By Mr. CAMPBELL, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:
S. 420. A bill to provide for the acknowledgment of the Lumbee Tribe of North Carolina, and for other purposes (Rept. No. 108-213).
By Ms. COLLINS, from the Committee on Governmental Affairs, with amendments:


By Mr. MCCAIN, from the Committee on Commerce, Science, and Transportation, without amendment:

S. 1453. A bill to authorize the publication and distribution of the National Health Map of the United States, and for other purposes; to the Committee on Commerce, Science, and Transportation.

S. 1753. A bill to establish a technology, education, and workforce training program for benefits of military families in the United States, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

S. 1755. A bill to modify the definition of participating State to provide for a more broad-based participation in the Asian American and Pacific Islander Health Disparities Research Initiative, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DASCHLE (for himself and Mr. KENNEDY):

S. 1809. A bill to establish a congressionally authorized pilot program for the study of benefits available to members of the military's Reserve forces and their families, and for other purposes; to the Committee on Governmental Affairs, with an amendment.

S. 1812. A bill to establish a technology, equipment, and information transfer within the Department of Homeland Security.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. DASCHLE (for himself and Mr. JOHNSON):

S. 1851. A bill to promote rural safety and improve rural law enforcement; to the Committee on Commerce, Science, and Transportation.

By Mr. GRASSLEY:

S. 1853. A bill to direct the United States Trade Representative to enforce United States rights, under certain trade agreements, to the Committee on Finance.

By Ms. COLLINS, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 1172. A bill to establish grants to provide health services for improved nutrition, increased physical activity, obesity prevention, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 1545. A bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents; to the Committee on Governmental Affairs, with an amendment.

By Ms. COLLINS, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 1556. A bill to amend sections 102, 210, and 410 of title 9 of title I of the Social Security Act to substitute the term "individual" for the term "handicapped individual"; to the Committee on Governmental Affairs, with an amendment in the nature of a substitute.

S. 1558. A bill to provide for an extension of temporary protected status for nationals of El Salvador; to the Committee on Homeland Security and Governmental Affairs, with an amendment.

S. 1569. A bill to authorize the inclusion of Federal judges appointed by the President under the Emergency Appointments Act of 1983 in the jurisdiction of the Judicial Conference of the United States; to the Committee on the Judiciary.

S. 1612. A bill to establish a technology, education, and workforce training program for benefits of military families in the United States, and for other purposes; to the Committee on Governmental Affairs, with an amendment in the nature of a substitute.

S. 1674. A bill to extend the human rights provisions of the Helms-Burton Act to include Cuba; to the Committee on the Judiciary.

S. 1676. A bill to provide for the incarceration of an alien in lieu of the detention of an alien, and for other purposes; to the Committee on Governmental Affairs.

S. 1677. A bill to provide for the incarceration of an alien in lieu of the detention of an alien, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

S. 1688. A bill to authorize the Secretary of the Interior to cooperate with the States on the border with Mexico and other appropriate entities in conducting a hydrogeologic characterization, mapping, and modeling program for priority transboundary aquifers, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. DASCHLE (for himself and Ms. LANDRIEU, Ms. MUKULSKI, and Mr. ALLEN):

S. 1698. A bill to amend the Federal Water Pollution Control Act and the Water Resources Development Act of 1992 to provide for the restoration, protection, and enhancement of the environmental integrity and social and economic benefits of the Anastasia Watershed in the State of Florida, and for other purposes; to the Committee on Environment, Public Works and Related Agencies.

By Mrs. BOXER:

S. 1699. A bill to exempt airports in economically depressed communities from matching grant obligations under the Airport Improvement Program; to the Committee on Commerce, Science, and Transportation.

By Mr. HOLLINGS (for himself, Ms. COLLINS, Mr. CARPER, Mr. SPECTER, Mr. Jeffords, Mr. Lautenberg, and Mr. Bunning):

S. 1701. A bill to provide for the revitalization and enhancement of the American passenger and freight rail transportation system; to the Committee on Commerce, Science, and Transportation.

By Mr. GRASSLEY (for himself, Mr. BACUS, Mr. Bunning, and Mr. Breaux):

S. 1702. A bill to amend the Internal Revenue Code of 1986 to provide for excise tax reform and simplification, and for other purposes; to the Committee on Finance.

By Mr. SPECTER (for himself and Mrs. Boxer):

S. 1703. A bill to amend the Communications Act of 1934 to provide for the privatization of subscribers to wireless communication services; to the Committee on Commerce, Science, and Transportation.

By Mr. GRASSLEY:

S. 1704. A bill to provide for the revitalization and enhancement of the American passenger and freight rail transportation system; to the Committee on Commerce, Science, and Transportation.

By Mrs. SNOWE:

S. 1705. A bill to provide for the revitalization and enhancement of the American passenger and freight rail transportation system; to the Committee on Commerce, Science, and Transportation.

By Mr. DASCHLE:

S. 1706. A bill to make improvements to the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; to the Committee on Finance.

By Mr. DODD (for himself and Mr. McCaIN):

S. 1707. A bill to amend the Internal Revenue Code of 1986 to allow tax credits for new jobs and for job training programs, and for other purposes; to the Committee on Finance.

By Mr. BINGAMAN (for himself, Mr. DOMENICI, Mr. Jeffords, Ms. Cantwell, Mr. Akaka, Mr. Reed, Mr. Chafee, and Mr. Inouye):

S. 1708. A bill to amend title XXI of the Social Security Act to permit qualifying States to use a portion of their allotments under the State children's health insurance program for many fiscal year for certain medical expenditures, and for other purposes; to the Committee on Finance.

By Ms. SNOWE (for herself and Mr. Voinovich):

S. 1709. A bill to promote the manufacturing industry in the United States by establishing an Assistant Secretary for Manufacturing within the Department of Commerce, an Interagency Manufacturing Task Force, and a Small Business Manufacturing Task Force, and for other purposes; to the Committee on Small Business and Entrepreneurship.

By Mr. McCaIN:

S. 1710. An original bill to authorize funds for highway safety programs, motor carrier safety programs, hazardous materials transportation safety program, boating safety programs, and for other purposes; to the Committee on Commerce, Science, and Transportation; placed on the calendar.
By Mr. GRASSLEY (for himself and Mr. BAUCUS):
S. 790. A bill to amend the Internal Revenue Code of 1986 to prevent the fraudulent avoidance of fuel taxes; to the Committee on Finance.

By Mr. ALLARD (for himself, Mr. BROWNBACK, Mr. SESSIONS, Mr. BUNNING, Mr. CORNYN, Mr. SANTORIUM, and Mr. ALLARD):
S. Res. 26. A joint resolution proposing an amendment to the Constitution of the United States relating to marriage; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS
The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. NICKLES (for himself, Mr. BROWNBACK, Mr. SESSIONS, Mr. BUNNING, Mr. CORNYN, Mr. SANTORIUM, and Mr. ALLARD):
S. Res. 275. A resolution to affirm the Defense of Marriage Act; to the Committee on the Judiciary.

By Mrs. FEINSTEIN (for herself, Mr. CHAFEE, Mr. NELSON of Florida, Mr. LEAHY, and Mr. LUTENBERG):
S. Res. 276. A resolution expressing the sense of the Senate concerning recent terrorist attacks and embracing efforts to achieve Israeli-Palestinian peace; to the Committee on Foreign Relations.

By Mr. FRIST (for himself, Mr. GRASSLEY, Mr. HATCH, Mr. BREAUX, Mr. BAUCUS, and Mr. NICKLES):
S. Res. 277. A resolution tendering the sincere thanks of the Senate to the staffs of the Offices of the Legislative Counsel of the Senate and the House of Representatives for their dedication and service to the legislative process; considered and agreed to.

By Mr. RINGAMAN:
S. Res. 278. A resolution expressing the sense of the Senate regarding the anthrax and smallpox vaccines; to the Committee on Armed Services.

By Ms. LANDRIEU (for herself and Mr. BURST):
S. Con. Res. 86. A concurrent resolution congratulating the people and Government of the Republic of Kazakhstan on the twentieth anniversary of independence of Kazakhstan and praising the longstanding and growing friendship between the United States and Kazakhstan; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS
S. 527
At the request of Ms. COLLINS, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 527, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 694
At the request of Mr. SMITH, the name of the Senator from South Dakota (Ms. LANDRIEU) was added as a cosponsor of S. 694, a bill to create an office within the Department of Justice to undertake certain specific steps to ensure that all American citizens harmed by terrorism overseas receive equal treatment by the United States Government regardless of the terrorists’ country of origin or residence, and to ensure that all terrorists involved in such attacks are pursued, prosecuted, and punished with equal vigor, regardless of the terrorists’ country of origin or residence.

S. 736
At the request of Mrs. DOLE, her name was added as a cosponsor of S. 736, a bill to amend the Animal Welfare Act to strengthen enforcement of provisions relating to animal fighting, and for other purposes.

S. 972
At the request of Mr. COLEMAN, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 972, a bill to clarify the authority of States to establish conditions for insurers to conduct the business of insurance within a State based on the provision of information regarding Holocaust-era insurance policies of the insurer, to establish a Federal cause of action for claims for payment of such insurance policies, and for other purposes.

S. 1109
At the request of Mr. TALENT, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 1109, a bill to provide $50,000,000,000 in new transportation infrastructure funding through Federal bonding to empower States and local governments to complete significant infrastructure projects across all modes of transportation, including roads, rail, transit, aviation, and water, and for other purposes.

S. 1353
At the request of Mr. DOMENICI, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1353, a bill to establish new special immigrant categories.

S. 1380
At the request of Mr. SMITH, the names of the Senator from Montana (Mr. BAUCUS) and the Senator from New Mexico (Mr. DOMENICI) were added as cosponsors of S. 1380, a bill to distribute universal service support equitably throughout rural America, and for other purposes.

S. 1395
At the request of Mr. KERRY, the name of the Senator from South Dakota (Mr. DASCHLE) was added as a cosponsor of S. 1395, a bill to amend the Internal Revenue Code of 1986 to allow small businesses or partnerships to credit against income tax withheld with respect to employees who participate in the military reserve components and are called to active duty and with respect to replacement employees and to allow a comparable credit for active military reserve component self-employed individuals, and for other purposes.

S. 1483
At the request of Mr. LEAHY, the name of the Senator from Vermont (Mr. FEINGOLD) was added as a cosponsor of S. 1483, a bill to extend for 6...
months the period for which chapter 12 of title 11 of the United States Code is reenacted.

S. 1926

At the request of Ms. STABENOW, the names of the Senator from California (Mrs. BOXER), the Senator from South Carolina (Mr. HOLLINGS) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 1926, a bill to amend title XVIII of the Social Security Act to restore the medicare program and for other purposes.

S. 1937

At the request of Mr. RAUSCH, the names of the Senator from New Mexico (Mr. BINGAMAN), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Vermont (Mr. JEFFORDS) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 1937, a bill to amend the Internal Revenue Code of 1986 to curtail the use of tax shelters, and for other purposes.

S. 1945

At the request of Mr. MCCAIN, the name of the Senator from Florida (Mr. GRAHAM) was added as a cosponsor of S. 1945, a bill to repeal the Intelligence Reform and Terrorism Prevention Act of 2004 and to authorize $170 million for a National Intelligence Program.

S. 1950

At the request of Mr. LEVIN, the names of the Senator from Illinois (Mr. DURBIN), the Senator from California (Mrs. FEINSTEIN), the Senator from Colorado (Mr. B荐RT) and the Senator from Wisconsin (Mr. FEINGOLD), the Senators from Maryland (Mr. SARBANES), the Senator from Mississippi (Mr. LOTT), the Senator from New Mexico (Mr. BINGAMAN), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Virginia (Mr. HAGEL), the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Indiana (Mr. BAYH), the Senator from Indiana (Mr. GRASSLEY), the Senator from Illinois (Mr. FITZGERALD), the Senator from Illinois (Mr. DURBIN), the Senator from California (Mrs. FEINSTEIN), the Senator from Massachusetts (Mr. KERRY) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. Res. 82, a resolution recognizing the importance of Ralph Bunche as one of the great leaders of the United States, the first African-American Nobel Peace Prize winner, an accomplished scholar, a distinguished diplomat, and a tireless campaigner for civil rights for people throughout the world.

S. RES. 392

At the request of Mr. CAMPBELL, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. Res. 392, a resolution expressing the sense of the Senate regarding the genocidal Ukrainian famine of 1932-33.

S. RES. 273

At the request of Mr. LAUTENBERG, his name was added as a cosponsor of S. Res. 273, a resolution condemning the terrorist attack on the Turkish Parliament, on November 15 and 16, 2003, expressing condolences to the families of the individuals murdered in the attacks, expressing sympathies to the individuals injured in the attacks, and expressing solidarity with the Republic of Turkey and the United Kingdom in the fight against terrorism.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRASSLEY:

S. 1926. A bill to direct the United States Trade Representative to enforce Special Agent rights, under certain trade agreements with respect to Mexico, pursuant to title III of the Trade Act of 1974, to the Committee on Finance.

Mr. GRASSLEY. Mr. President, I rise today to introduce the Mexican Agricultural Trade Compliance Act. This bill directs the U.S. Trade Representative to retaliate against Mexico over that country’s de facto prohibition on the importation of U.S.-produced high fructose corn syrup.

I introduce this bill reluctantly. For months I have made it clear, through letters, floor statements, a hearing, and a trade roundtable, that the Mexican Government should lift its tax on high fructose corn syrup. They have failed to do so. Mexico’s actions have hurt American farmers and consumers. It has prevented the United States from fully utilizing our trade agreements.

The primary purpose of the bill is to address the Mexican tax on high fructose corn syrup. This tax is not just a tax on sugar, but a tax on U.S. agriculture. It is a tax on farmers who produce the raw sugar that is used to make high fructose corn syrup. It is a tax on U.S. consumers who use high fructose corn syrup in a variety of products, from soft drinks to cakes to infant formula.

The United States has worked diligently, and patiently with Mexico on this issue. U.S. Trade Representative Robert Zoellick and Ambassador Allen Johnson, our Chief Agricultural Negotiator, have put in countless hours trying to convince Mexico to stop this tax and come into compliance with its trade obligations regarding high fructose corn syrup. But still, the tax remains in place. My colleagues on both sides of the aisle, and
in both the Senate and the House, have repeatedly contacted Mexican officials reminding them of Mexico’s trade commitments with regard to this issue. But still, the tax remains in place.

I too have worked hard, since the beginning, to try to convince Mexico to lift its de facto ban on imports of U.S.-produced high fructose corn syrup. During a hearing of the Finance Committee on September 23, I stated clearly that if the Mexican tax on soft drinks containing high fructose corn syrup was not lifted—and soon—I would be forced to consider introducing retaliatory legislation. But still, the tax remains in place.

So now, at the end of our legislative session, I see no alternative but to introduce the Mexican Agricultural Trade Compliance Act.

The Mexican Agricultural Trade Compliance Act establishes that the Government of Mexico has engaged in a pattern of activity that has continuously denied the rights of U.S. exporters of high fructose corn syrup under existing trade agreements. Further, the denial of these rights is unjustifiable and burdens or restricts U.S. commerce. Therefore, Mexico’s actions meet the statutory criteria under section 301 of the Trade Act of 1974 for retaliatory action.

The Mexican Agricultural Trade Compliance Act requires the U.S. Trade Representative to retaliate, pursuant to section 301, against imports from Mexico within 60 days of enactment of the Act. However, the U.S. Trade Representative shall not take such action if he certifies, within 30 days after enactment of the Act, that Mexico has eliminated its tax on soft drinks containing high fructose corn syrup and is according the U.S. high fructose corn syrup industry the benefits of all applicable trade agreements. Furthermore, the denial of these rights is unjustifiable and burdens or restricts U.S. commerce. Therefore, Mexico’s actions meet the statutory criteria under section 301 of the Trade Act of 1974 for retaliatory action.

The Mexican Agricultural Trade Compliance Act requires the U.S. Trade Representative to retaliate, pursuant to section 301, against imports from Mexico within 60 days of enactment of the Act. However, the U.S. Trade Representative shall not take such action if he certifies, within 30 days after enactment of the Act, that Mexico has eliminated its tax on soft drinks containing high fructose corn syrup and is according the U.S. high fructose corn syrup industry the benefits of all applicable trade agreements. Furthermore, the denial of these rights is unjustifiable and burdens or restricts U.S. commerce. Therefore, Mexico’s actions meet the statutory criteria under section 301 of the Trade Act of 1974 for retaliatory action.

I fully hope that prior to the return of the U.S. Senate in January, the Mexican Congress will act rationally and bring Mexico into compliance with its international trade obligations regarding high fructose corn syrup. If it does not, I’ll work hard to advance the Mexican Agricultural Trade Compliance Act through the Senate. Given the action if he certifies, within 30 days after enactment of the Act, that Mexico has eliminated its tax on soft drinks containing high fructose corn syrup and is according the U.S. high fructose corn syrup industry the benefits of all applicable trade agreements. Furthermore, the denial of these rights is unjustifiable and burdens or restricts U.S. commerce. Therefore, Mexico’s actions meet the statutory criteria under section 301 of the Trade Act of 1974 for retaliatory action.

I hope they repeal their illegal tax to demonstrate their commitment to living up to the letter and spirit of Mexico’s promises under NAFTA and the WTO. I hope they repeal their illegal tax to improve relations between the United States and Mexico and to bring the benefits of free trade to consumers and producers in both countries. And, Mr. President, I hope they repeal their illegal tax so the Mexican Agricultural Trade Compliance act is no longer needed. But, if that’s what it takes, then that’s what we should do.

S. 1955. A bill to make technical corrections to laws relating to Native Americans, and for other purposes; to the Committee on Indian Affairs.

Mr. CAMPBELL. Mr. President, today I am introducing the Native American Technical Corrections Act of 2004 to provide amendments to certain Federal statutes affecting Indian tribes and Indian people.

Though a modest bill, when it is enacted it will provide real relief to the affected tribes that seek Congress’ help in removing the many obstacles that block the paths to greater levels of advancement.

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

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

S. 1955

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Native American Technical Corrections Act of 2004”.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definition of Secretary.

TITLE I—TECHNICAL AMENDMENTS AND OTHER PROVISIONS RELATING TO NATIVE AMERICANS

Sec. 101. National Fund for Excellence in American Indian Education.
Sec. 102. Indian Financing Act Amendment.
Sec. 103. Exchanged Indian land.
Sec. 104. Indian tribal justice technical and legal assistance.
Sec. 105. Tribal justice systems.
Sec. 106. Authorization of 99-year leases for the Prairie Band of Potawatomi.
Sec. 107. Navajo healthcare contracting.
Sec. 108. Crow Tribal Trust Fund.
Sec. 109. Fallon Paiute-Shoshone Tribe Settlement Fund.
Sec. 110. ANCSA amendment.

TITLE II—COWLITZ INDIAN TRIBE DISTRIBUTION OF JUDGMENT FUNDS ACT

Sec. 201. Cowlitz Indian Tribe Distribution of Judgment Funds Act.
...
(6) TRIBAL MEMBER.—The term "tribal member" means an individual who is an enrolled member of the Cowlitz Indian Tribe in accordance with tribal enrollment procedures that may be promulgated by the Secretary under this Act, the judgment funds awarded in Indian Claims Commission Docket No. 218 and interest earned on those funds as of the date of enactment of this Act shall be distributed and used in accordance with this title.

SEC. 204. DISTRIBUTION AND USE OF FUNDS.

(a) Scope of Distribution.—The payment to the Cowlitz Tribal Council of 21 percent of the judgment made under this Act, interest earned on the amount set aside—

(1) SETASIDE.—From the principal, the Secretary shall set aside 10 percent for an elderly assistance program.

(2) PAYMENTS.—The Secretary shall be—

(A) shall be distributed annually in a lump sum to the Cowlitz Tribal Council and (B) shall be used to provide emergency assistance to tribal members identified on the list under subparagraph (A).

(b) ELDERLY ASSISTANCE PROGRAM.—

(1) SETASIDE.—From the current judgment fund, the Secretary shall set aside 20 percent for an elderly assistance program.

(2) PAYMENTS.—The Secretary shall—

(A) shall be disbursed annually in a lump sum to the Cowlitz Tribal Council and (B) shall be used—

(i) property acquisition for business or other activities that are likely to benefit the Tribe, (ii) design, construction, maintenance, and operation of all funds available under this title to fund the program for the first year after the date of enactment of this Act.

(c) REQUEST FOR DISBURSEMENT.—The Cowlitz Tribal Council may make a request for disbursement of judgment funds for the elderly assistance program.

(d) DEATH OF TRIBAL ELDER.—If a tribal elder whose funds as of the date of enactment of this Act be distributed or provided for the purposes of funding tribal administration for the Tribe, including collateralization of loans for the purchase or operation of businesses, matching funds for economic development grants, joint venture partnerships, and other similar ventures that are likely to produce profits for the Tribe; and

(ii) design, construction, maintenance, and operation of tribal centers and cultural centers.

(e) HOUSING ASSISTANCE PROGRAM.—

(1) SETASIDE.—From the principal, the Secretary shall set aside 5 percent for a housing assistance program.

(2) DISTRIBUTION OF INTEREST.—Beginning the second year after the date of enactment of this Act, interest earned on the amount set aside—

(A) shall be disbursed annually in a lump sum to the Cowlitz Tribal Council; and

(B) shall be used to provide for—

(i) property acquisition for business or other activities that are likely to benefit the Tribe, (ii) design, construction, maintenance, and operation of tribal and cultural centers.

(f) ECONOMIC DEVELOPMENT, TRIBAL, AND CULTURAL CENTERS.

(i) PROPERTY ACQUISITION.—From the principal, the Secretary shall set aside 21.5 percent—

(A) for economic development; and

(B) if other funding is not available or not adequate (as determined by the Tribe), for the construction and maintenance of tribal and cultural centers.

(ii) BUSINESS DEVELOPMENT.—The principal and interest, 21 percent, and of the principal, the Secretary shall set aside 4 percent for cultural resources.

(iii) AVAILABILITY OF INTEREST.—Of the initial interest, 7.5 percent shall be available on the date of enactment of this Act; and of the initial interest, 5 percent shall be available on the date of enactment of this Act.

(iv) BUSINESS DEVELOPMENT.—The principal and interest, 21 percent, and of the principal, the Secretary shall set aside 5 percent for renewable natural resources.

(g) NATURAL RESOURCES.—

(i) SETASIDE.—From the principal, the Secretary shall set aside 7.5 percent for natural resources.

(ii) DISTRIBUTION OF INTEREST.—Beginning the second year after the date of enactment of this Act, interest earned on the amount set aside—

(A) shall be disbursed annually in a lump sum to the Cowlitz Tribal Council; and

(B) shall be used to—

(i) maintain artifacts; (ii) collect documents; and (iii) archive and identify cultural and tribal significance.

(h) CULTURAL RESOURCES.—

(i) SETASIDE.—From the principal, the Secretary shall set aside 4 percent for cultural resources.

(ii) DISTRIBUTION OF INTEREST.—Beginning the second year after the date of enactment of this Act, interest earned on the amount set aside—

(A) shall be disbursed annually in a lump sum to the Cowlitz Tribal Council; and

(B) shall be used for—

(i) maintain artifacts; (ii) collect documents; and (iii) archive and identify cultural sites of tribal significance.

(i) AVAILABILITY OR INTEREST.—Of the initial interest, 4 percent shall be available on the date of enactment of this Act; and of the initial interest, 10 percent shall be available on the date of enactment of this Act.

(j) HEALTH.—

(i) SETASIDE.—From the principal, the Secretary shall set aside 21 percent for health.

(ii) DISTRIBUTION OF INTEREST.—Beginning the second year after the date of enactment of this Act, interest earned on the amount set aside—

(A) shall be disbursed annually in a lump sum to the Cowlitz Tribal Council; and

(B) shall be used for the health needs of the Tribe.

(k) AVAILABILITY OF INTEREST.—21 percent of the initial interest shall be available on the date of enactment of this Act; and of the initial interest, 10 percent shall be available on the date of enactment of this Act.

(l) TRIBAL ADMINISTRATION PROGRAM.—

(i) SETASIDE.—From the principal, the Secretary shall set aside 21 percent for tribal administration.

(ii) DISTRIBUTION OF INTEREST.—Beginning the second year after the date of enactment of this Act, interest earned on the amount set aside—

(A) shall be distributed annually in a lump sum to the Cowlitz Tribal Council; and

(B) shall be used for—

(i) property acquisition for business or other activities that are likely to benefit the Tribe, (ii) design, construction, maintenance, and operation of tribal centers.

(m) ADMINISTRATIVE COSTS.—Not more than 10 percent of the interest earned on the principal designated for the program under any subsection, except the programs under subsections (i) and (j), may be used for the administrative costs of the program.

(n) No Service Area.

(1) In General.—No service area is implied or imposed under any program under this title.
TITLE III—ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION

SEC. 301. SHORT TITLE.

This title may be cited as the “Assiniboine and Sioux Tribes of the Fort Peck Reservation Judgment Fund Distribution Act of 2003.”

SEC. 302. FINDINGS.

Congress finds that—
(1) on or about February 14, 2001, in accordance with the Court-approved stipulation, $943,186.73 was transferred to an account established by the Secretary for the benefit of the Tribe; and
(2) that transferred amount represents—
(A) 54.2 percent of the Tribe’s estimated 26-percent share of the amount referred to in paragraph (6) with respect to the judgment amount; (B) the Tribe will most likely receive additional payments from the distribution amount once the identification of all individuals eligible to share in the distribution amount is completed and the pro rata shares are calculated; and
(C) those additional payments would include—
(i) the balance of the share of the Tribe of the distribution amount and investment income earned on the distribution amount;
(ii) the portion of the distribution amount that represents income derived from funds in special deposit accounts that are not attributable to the Tribe or any individual Indian; and
(iii) the portion of the distribution amount that represents shares attributable to individual Indians that—
(I) cannot be liquidated for purposes of accepting payment; and
(II) will not be bound by the judgment in the case referred to in paragraph (1); and
(10) under the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the share of the Tribe of the distribution amount, and such additional amounts as may be awarded to the Tribe by the Court with respect to the case referred to in section 302(1)(A) (including any interest accrued on those amounts)—
(1) shall be made available for tribal health, education, housing, and social services programs of the Tribe, including—
(A) educational and youth programs;
(B) programs for improvement of facilities and housing;
(C) programs to provide equipment for public utilities;
(D) programs to provide medical assistance or health care, optical, or convalescent equipment; and
(E) programs to provide senior citizen and community services; and
(2) shall not be available for per capita distribution to any member of the Tribe.

SEC. 305. APPLICABLE LAW.

Except as provided in section 304(a), all funds distributed under this title are subject to sections 7 and 8 of the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1407, 1408).

TITLE IV—UTU UTU GWAITU PAIUTE INDIAN LAND TRANSFER

SEC. 401. TRANSFER.

Section 902(b) of the California Indian Land Transfer Act (114 Stat. 2021) is amended—
(1) by striking “3,525.8” and inserting “3,765.8”; and
(2) by adding at the end the following:
(9) UTU UTU GWAITU TRIBE.—Lands to be held in trust for the Utu Utu Gwaitu Paiute Tribe, Benton Paiute Reservation are comprised of approximately 240 acres described as follows:
“Mount Diablo Base and Meridian Township 2 South, Range 31 East; Section 11; “56% and 8% of SW1⁄4.”

By Mrs. BOXER. S. 1956. A bill to provide assistance to States and nongovernmental entities to conduct public and outreach campaigns to reduce teenage pregnancies; to the Committee on Health, Education, Labor, and Pensions.

Mrs. BOXER. Mr. President, today, I am proud to introduce the HOPE Youth Pregnancy Prevention Act.

While teen pregnancy rates in the United States have dropped significantly in the last decade, we still have the highest teen pregnancy rates among industrialized nations. American teens are twice as likely to become pregnant as teenagers in Great Britain and four times more likely than teens in Sweden and France. At the same time, the teen pregnancy rates for Hispanic and other minority teens in the United States are significantly higher than the national average.

The HOPE Youth Pregnancy Prevention Act would provide resources to help prevent teen pregnancy among at-risk and minority youth.

Specifically, my bill would provide grants to States, localities, and non-
Mr. BINGAMAN. Mr. President, today I am pleased to introduce the United States-Mexico Transboundary Aquifer Assessment Act.

This bill is the result of a field hearing I held in Las Cruces, NM, yet years ago during my tenure as the Chairman of the Energy and Natural Resources Committee. The focus of the hearing was water resource issues that were developing along the U.S.-Mexico border—particularly the area encompassing Las Cruces, El Paso, Texas, and Juárez, Mexico.

There had long existed an ongoing effort to address water quality issues and waste-water infrastructure needs in the border region, but I was concerned that issues regarding the availability of future water supplies were growing. The testimony at that hearing made clear that there exists little consensus on how growing communities in the border region will address their future water needs. In particular, I was concerned by the lack of agreement on the long-term viability of future groundwater sources, many of which involve aquifers underlying communities in both the United States and Mexico. Given the rapid population growth along the U.S.-Mexico border and the increasing demand for water, there is a strong need to gain a common understanding of the limits of our shared groundwater resources. A thorough understanding of the resource is the first step to avoiding conflicts similar to those that have arisen between the United States and Mexico over shared surface waters—e.g., the Rio Grande.

The United States-Mexico Transboundary Aquifer Assessment Act is intended to address the lack of binational consensus regarding the source and availability of future water supplies along the border. It will do this by establishing a scientific program, involving entities on both sides of the border, to comprehensively characterize priority transboundary aquifers. The information and scientific tools developed by this program will be extremely valuable to State and local water resource managers in the border region. This effort is to be led by the United States Geological Survey (USGS) working closely with the border states and local entities. Over the last several years the USGS has been working with key stakeholders in the border region to develop this technical program.

I understand that establishing this scientific program and accurately assessing our shared water resources is just a step towards developing the long-term plans and solutions that will help avoid future international disputes concerning scarce water supplies. This small step, however, is an important one, and is recognized by a number of organizations familiar with the need for cooperative efforts between the United States and Mexico on shared water resources. In its 6th Report on the U.S.-Mexico Border Environment, the Good Neighbor Environmental Board, an independent federal advisory committee managed by the U.S. Environmental Protection Agency, recommended the initiation of a scientific program to systematically analyze priority trans-boundary aquifers. Also, the Center for Strategic and International Studies, in a January 2003 report of its U.S.-Mexico Binational Council, included as one of its recommendations that Mexico and the United States “improve data collection, information gathering, and transparency as the first step to developing a long-term strategy for water management.”

Ultimately, the necessary long-term strategy will have to be developed by the communities and other water users who reside along the border. Working with each other and their state water resource agencies, I believe successful strategies can be developed so long as the information that is the basis for the plans is the most accurate possible. In that respect, the USGS has a strong and important role to play. This bill will ensure that the USGS will be able to fulfill this role which, in turn, will enhance the prospects for our border communities in their quest for their future and manage their growth in a manner that ensures their long-term viability and prosperity.

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. 1957

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 “United States-Mexico Transboundary Aquifer Assessment Act.”

SEC. 2. FINDINGS AND PURPOSE

(a) Findings.—Congress finds that—

(1) rapid population growth in the United States-Mexico border region over the last decade has placed major strains on limited water supplies in the region;

(2) water quantity and quality issues are likely to be the determining and limiting factors affecting future economic development, population growth, and human health in the border region;

(3) increasing use of groundwater resources in the border region by municipal and other state water users has raised serious questions concerning the long-term availability of the water supply;

(4) cooperation between the United States and Mexico in assessing and understanding transboundary aquifers is necessary for the successful management of shared groundwater resources by State and local authorities in the United States and appropriate authorities in Mexico, including management that avoids conflict between the United States and Mexico;

(5) there have been some studies of binational groundwater resources along the United States-Mexico border, additional data and analyses are needed to develop an accurate understanding of the long-term availability of useable water supplies from transboundary aquifers; and

(b) Purpose.—The purpose of this Act is to direct the Secretary of the Interior to establish a United States-Mexico transboundary aquifer assessment program to—

(1) systematically assess priority transboundary aquifers; and

(2) provide the scientific foundation necessary for State and local officials to address pressing water resource challenges in the United States-Mexico border region.

SEC. 3. DEFINITIONS.

In this Act:—

(a) AQUIFER.—The term “aquifer” means a subsurface water-bearing geologic formation from which significant quantities of water may be extracted.

(b) BORDER STATE.—The term “Border State” means each of the States of Arizona, California, New Mexico, and Texas.

(c) INDIAN TRIBE.—The term “Indian tribe” means an Indian tribe, band, nation, or other group of Indians.

(A) (A) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(B) the reservation of which includes a transboundary aquifer within the exterior boundaries of the reservation.

D) PROXY TRANSBOUNDARY AQUIFER.—The term “priority transboundary aquifer” means a transboundary aquifer that has been...
designated for study and analysis under the program.

(5) PROGRAM.—The term "program" means the United States-Mexico transboundary aquifer assessment program established under section 4(a).

(6) RESERVATION.—The term "reservation" means land that has been set aside or that has been set aside as having been set aside by the United States for the use of an Indian tribe, the exterior boundaries of which are more particularly defined in a final determination, executive order, Federal statute, secretarial order, or judicial determination.

(7) SECRETARY.—The term "Secretary" means the Secretary of the Interior, acting through the Director of the United States Geological Survey.

(8) TRANSBOUNDARY AQUIFER.—The term "transboundary aquifer" means an aquifer that underlies the boundary between the United States and Mexico.

(9) TRI-REGIONAL PLANNING GROUP.—The term "Tri-Regional Planning Group" means the binational planning group comprised of—(A) the Juntas Municipal de Agua y Saneamiento de Juarez; (B) the El Paso Water Utilities Public Service Board; and (C) the Lower Rio Grande Water Users Organization.

(10) WATER RESOURCES RESEARCH INSTITUTES.—The term "water resources research institutes" means the institutes within the Border States established under section 104 of the Water Resources Research Act of 1984 (42 U.S.C. 10303).

SEC. 4. ESTABLISHMENT OF PROGRAM.

(a) IN GENERAL.—The Secretary, in consultation and cooperation with the Border States, the Water Resources Research Institutes, the Sandia National Laboratories, and other appropriate entities in the United States and Mexico, shall carry out the United States-Mexico transboundary aquifer assessment program to characterize, map, and model transboundary groundwater resources along the United States-Mexico border at a level of detail determined to be appropriate for the particular aquifer.

(b) OBJECTIVES.—The objectives of the program are to—

(A) conduct joint scientific investigations; (B) archive and share relevant data; and (C) carry out any other activities consistent with the program; and

(2) provide scientific products for each priority transboundary aquifer to provide the scientific information needed by water managers and natural resource agencies on both sides of the United States-Mexico border to effectively accomplish the missions of the managers and agencies.

(c) DESIGNATION OF CERTAIN AQUIFERS.—For purposes of this Act, the program, the Secretary shall designate the Hueco Bolson and Mesilla aquifers underlying parts of Texas, New Mexico, and Mexico as priority transboundary aquifers.

(d) COOPERATION WITH MEXICO.—To ensure a comprehensive assessment of transboundary aquifers, the Secretary shall, to the maximum extent practicable, work with appropriate Federal agencies and other organizations to develop partnerships with, and receive input from, relevant organizations in Mexico to carry out the program.

(e) GRANTS AND COOPERATIVE AGREEMENTS.—The Secretary may provide grants or other cooperative agreements and other agreements with the Water Resource Research Institutes and other Border State entities to carry out the program.

SEC. 5. STATE AND TRIBAL ROLE.

(a) COORDINATION.—The Secretary shall coordinate the activities carried out under the program with—

(1) the appropriate water resource agencies in the Border States; and (2) any affected Indian tribes.

(b) NEW ACTIVITY.—After the date of enactment of this Act, the Secretary shall not initiate any field studies to develop data or develop any groundwater flow models for a priority transboundary aquifer under the program and am before coordinating the activity with, the Border State water resource agency that has jurisdiction over the aquifer.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated to carry out this Act $50,000,000 for the period of fiscal years 2005 through 2014.

(b) DISTRIBUTION OF FUNDS.—Of the amounts made available under subsection (a), 50 percent shall be made available to the Water Research Resource Institutes to provide funding to appropriate entities in the Border States (including Sandia National Laboratories, universities, the Tri-Regional Planning Group, and other relevant organizations) and Mexico to conduct activities under the program, including the bionatural collection and exchange of scientific data.

SEC. 7. REPORTS.

Not later than 5 years after the date of enactment of this Act, and on completion of the program in fiscal year 2014, the Secretary shall submit to the appropriate water resource agency in the Border States, an interim and final report, respectively, that describes—

(1) any activities carried out under the program; (2) any conclusions of the Secretary relating to the status of transboundary aquifers; and (3) the level of participation in the program of entities in Mexico.

By Mr. DASCHLE (for Mr. KERRY (for himself and Mr. KENNEDY)): S. 1958. A bill to prevent the practice of late trading by mutual funds, and for other purposes; to the Committee on Banking, Housing, and Urban Af-
fees, an average of more than $700 per investor. There is a significant disparity between the rate of advisory fees charged to mutual fund investors and the rate paid by institutional investors, even though they provide the same services. Currently, mutual fund managers are under no obligation to negotiate advisory and management fees that are in the best interest of their shareholders. In some instances, mutual fund managers have a financial relationship with the contractor which receives a no-bid contract from the same mutual fund.

In a September 2003 complaint, New York Attorney General Eliot Spitzer alleged that Canary Capital Partners, a New Jersey hedge fund, engaged in illegal and unethical trading in mutual funds, such as late trading and market timing. After the New York State complaint, the SEC ordered a preliminary investigation, which found that half of the 88 mutual fund companies and brokerage firms had arrangements to make market-timing trades. These arrangements occurred even though about half of the fund companies have policies specifically barring market timing. Other investigations of mutual fund companies began, and it appears as though many mutual fund companies have been involved directly or indirectly in late trading and market-timing schemes.

I am very concerned that the actions of the SEC in response to the State investigations of late trading and market timing have been inadequate and show a bias in favor of mutual fund companies at the expense of small investors. For example, earlier this year the SEC conducted a four-month investigation of Putnam Investments’ record keeping, internal controls, and ability to comply with Federal securities laws. During that review, a Putnam employee informed the SEC that the company had failed to stop improper market-timing trades. Despite the tip, SEC examiners did not identify any problems with market timing in its report on Putnam. The Putnam employee, after being rejected by the SEC, brought the same information to the Massachusetts Secretary of State’s office, which began an investigation. Only after the Commonwealth of Massachusetts began an investigation did the SEC begin its own investigation of market timing at Putnam. In October, both the Commonwealth of Massachusetts and the SEC charged Putnam with securities fraud, only months after the SEC gave Putnam a clean bill of health. Only a few weeks later, Putnam reached a partial settlement of the securities fraud charges with the SEC which did not include the Commonwealth of Massachusetts. Under the settlement, Putnam agreed to make restitution only for losses to investors attributable to excessive short-term trading by Putnam employees and to make structural reforms. Under the agreement, Putnam neither admitted nor denied wrongdoing and the SEC still has not investigated whether outside investors were engaged in market-timing activities. New York Attorney General Eliot Spitzer said that Putnam’s agreement with the SEC does not address crucial issues involving restitution to fund shareholders. William Galvin, the Massachusetts Secretary of State said that the agreement clearly demonstrates that the SEC is more interested in protecting the mutual fund industry than the average investor.

These actions by the SEC highlight a fundamental problem in the Bush Administration’s hands-off approach to regulating financial markets and the danger it poses to small investors and the national economy.

Compounding this danger and lack of responsible leadership, President Bush has repeatedly nominated individuals to important economic positions notable for their corporate sympathies. The President selected a lobbyist for financial regulation to head pay of the federal mortgage lender Freddie Mac. His first SEC chairman was an accounting industry who was forced to resign in a storm of public outrage over his lenient treatment of his former business. Even after the accounting scandals that felled Enron and WorldCom, it was last year’s Democratic Senate that pushed to enact an historic corporate reform law and the President who joined the effort, only once his passage was all but ensured. It was state attorneys general who exposed dubious conflicts of interest at brokerage houses. And when energy companies gauged ratepayers in the West through questionable trades, the Administration sat on its hands for months.

The message from the White House to the regulatory agencies, in actions if not words, is don’t ask and don’t tell when it comes to protecting investors and consumers.

Justice demands that we fully prosecute Wall Street insiders that steal from Americans saving for retirement, education or simply a brighter future. And we can only hope to revive our economy if we restore investor confidence in the markets so that capital flows to business growth and job creation.

To stop the erosion of trust in our financial markets and to help restore confidence in the mutual fund industry, I am introducing the Mutual Fund Investor Protection Act to update federal securities laws to curb late-trading and market-timing abuses and institute new limits on mutual fund fees paid by investors.

The legislation by the SEC show that it is incapable of protecting investors from securities fraud by mutual fund companies and will not prosecute this type of fraud to the full extent of the law. Therefore, we must take the day-to-day responsibility of protecting investors away from the SEC and develop a new Mutual Fund Oversight Board to provide oversight, examination and enforcement of mutual funds. This new board will be similar to the Public Company Accounting Oversight Board developed in the Sarbanes-Oxley Act. It will be charged with identifying potential problems in the mutual fund industry and ensuring that fund boards are acting in the best interest of shareholders—before they spread. It would promulgate guidance regarding current regulatory issues and best practices regarding how to deal with them, and it would examine mutual funds to ensure that they are taking necessary steps to protect shareholders. The Board itself would determine how to provide an adequate and reliable source of funding for its investigations.

I believe that every investor has the right to know how much their mutual fund takes away from their investment for advisory, management, and investment service fees. Under this legislation, each investor will receive in their statement a regular accounting of what types of fees they are paying in order to invest in their mutual fund. This will help investors shop around and find the mutual funds that have the lowest fees. Mutual funds will have to respond to the changing marketplace by paying fair charges that are absolutely necessary to the management of the fund. Also, this legislation requires mutual fund managers to negotiate fee contracts that are reasonable and in their investors’ best interest and to receive a no-bid contract from an outside investor. This bill requires each mutual fund to hire a compliance officer to ensure that the mutual fund complies with all relevant laws and makes sure that they provide any information on scams to the independent mutual fund directors to stop abuse. Taken together, these provisions will help investors by making it much more difficult for mutual funds to charge unreasonable and unnecessary fees.

Today, mutual funds are valued once a day, the Net Asset Value or NAV, usually at 4 p.m. EST, when the New York market closes. The bill will require that all mutual fund companies receive an order prior to the time the fund sets a share price or NAV for an investor to receive that day’s price. This will make it much more difficult for big investors to use brokers to send trades after the 4 p.m. dead line.

We should include late-trading laws as an offense under the Racketeer Influenced and Corrupt Organization (RICO) provisions of the criminal code. First used to prosecute the Mob, RICO should now be used to stop organized crime on Wall Street. This will help limit mutual fund employees and big investors from attempting to defraud small investors. It will also help investors who lose money due to late trading to sue for treble damages, costs and attorneys’ fees.

The SEC recently found that many mutual fund companies and brokerage
firms had arrangements with big investors allowing them to make market-timing trades even though these fund companies have policies specifically barring market timing. My legislation bars mutual fund employees from engaging in market timing mutual funds. It requires fund prospectuses to explicitly disclose market-timing policies and procedures to stop abuse.

Then, it increases penalties for mutual funds which do not follow their own policies and procedures to limit abuse. In order to help stop the mutual fund abuse, this legislation increases the penalties and jail time for current securities laws including: defrauding the offer or sale of securities, failing to keep current and accurate records of brokerage transactions, and not selling or redeeming fund shares at a price based on current Net Asset Value (NAV). These changes will make criminals think twice before committing violations of securities laws.

In order to help stop market-timing trades, the additional fines collected by this legislation will be put into a fund to assist the victims of their crimes.

Today, individual mutual funds are effectively dominated by their advisers. My legislation strengthens the influence of independent directors on fund boards by requiring that independent directors comprise at least three-quarters of the board. It will also require mutual funds to have an independent chairman with the authority and ability to demand and receive all information from the fund advisory and management companies. This will increase the voice investors have in fund management and limit mutual fund abuses.

By developing a new structure to provide appropriate oversight and enforcement mechanisms to fight abuse in the mutual fund industry, this legislation restores the confidence of investors in mutual funds. Ultimately, investor confidence will increase investment and enhance economic growth. I ask all my colleagues to support this legislation.

By Mr. SARBANES (for himself, Ms. LANDRIEU, Ms. MIKULSKI, and Mr. ALLEN):

S. 59. A bill to amend the Federal Water Pollution Control Act and the Water Resources Development Act of 1982 to provide for the restoration, protection, and enhancement of the environmental integrity and social and economic benefits of the Anacostia watershed in the State of Maryland and the District of Columbia, to the Committee on Environment and Public Works.

Mr. SARBANES. Mr. President, today I am introducing legislation to bolster efforts to restore the Anacostia River. Joining me in sponsoring this measure are my colleagues Senators LANDRIEU, MIKULSKI and ALLEN. A companion bill has been introduced in the House, sponsored by Representative ELEANOR HOLMES NORTON and other members of the Washington metropolitan area Congressional Delegation.

Mr. President, the Anacostia River is a resource rich in history and with tremendous natural resources and recreational potential. It is home to 42 species of fish and 100 species of birds, as well as more than 800,000 people whose neighborhoods border the watershed. Flowing through Montgomery and Prince George’s Counties in Maryland and emptying into the Potomac at the District of Columbia, the Anacostia watershed consists of a 176-square-mile drainage area. One of the most urbanized watersheds in the United States, the Anacostia suffers a series of problems including trash, toxic pollution from urban runoff, sewage pollution from leaking sewer lines and combined sewer overflows, sediment pollution from erosion, and loss of fish and wildlife and recreational resources.

It is a resource that has long been abused and neglected, but from these, in my view, can and must be protected and restored.

Efforts to begin rejuvenating the Anacostia watershed began formally in 1987 when the State of Maryland, Montgomery and Prince George’s Counties, and the District of Columbia signed an Anacostia Watershed Restoration Agreement. The agreement authorized the Washington Area Council of Governments, COG, to manage the restoration program and the Interstate Commission on the Potomac River Basin, ICPRB, to protect the resources and facilitate public participation. COG created an Anacostia Watershed Restoration Committee, AWRC, to coordinate and implement restoration projects throughout the watershed. Since that time, local, State, and Federal Government agencies, as well as the Anacostia Watershed Society, the Anacostia Citizens Advisory Committee and other environmental organizations and dedicated private citizens contributed significant resources toward re-establishing the Anacostia watershed ecosystem.

Thanks to this cooperative and coordinated Federal, State, local and private effort, we are beginning to make some progress in restoring the watershed. A Six Point Action Plan was signed in 1991 setting ambitious and broad-reaching goals for the river’s restoration. In 1993 we celebrated the success of 22 of the 60 points of emergent tidal wetlands by the Army Corps of Engineers at Kenilworth marsh. The project has shown significant results in improving tidal water flow through the marsh, and reducing the concentration of nitrogen and phosphorus in the area and demonstrates what can be achieved in urban river restoration. There have been other success stories as well in urban stream restoration in Montgomery and Prince George’s counties, removing barriers to fish passage and restoration efforts throughout the watershed, to name only a few. In 1999, a new Anacostia Watershed Agreement was signed to strengthen the regional governmental commitment to Anacostia restoration. There are today more than 60 local, State and Federal agencies involved in Anacostia watershed restoration. And more than $100 million has been spent cleaning up the Anacostia River, which we can all be proud. But the job of restoring the Anacostia watershed is far from complete. The Anacostia is still one of North America’s most endangered and threatened rivers. It is described as one of the “regions of concern” for toxics in the Chesapeake Bay watershed.

The legislation which we are introducing authorizes more than $200 million in Federal assistance over the next 10 years to restore the Anacostia. Of these funds, $170 million is authorized to address the biggest pollution problems in the watershed—stormwater runoff and failing wastewater infrastructure. My colleagues and I will be working with the leadership of the original infrastructure and a major user, the Federal Government has an important responsibility to help stem the flow of this pollution and comply with the Clean Water Act. The remaining funds will allow every actor of EPA, working together with an “Anacostia Watershed Council” of State and local officials, to develop a comprehensive environmental protection and resource management plan for the watershed, for several Federal agencies to join in the implementation of the plan.

Mr. President, the Anacostia River suffers from centuries of impacts and challenges. Once a thriving river, it is today severely degraded. This legislation is urgently needed if we are to achieve the goal of making the Anacostia and its tributaries swimable and fishable again. I urge my colleagues to join me in supporting this measure and ask unanimous consent that a section-by-section analysis of the legislation be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS OF THE “ANA- COSTIA WATERSHED INITIATIVE ACT OF 2003”

Section 1—Title—“The Anacostia Watershed Restoration Act of 2003”

Section 2—Findings—Describes the attributes and challenges of the watershed, addresses the economic and natural potential of the watershed to Maryland, DC and the United States; relates the history of efforts to restore the Anacostia River and watershed; and suggests that the importance of the Anacostia River combined with the need for concerted sustained actions among the affected jurisdictions, requires the development of comprehensive environmental protection and resource management action plan.

Section 3—Anacostia Watershed Initiative—Amends Federal Water Pollution Control Act (Clean Water Act) by adding a new section 123 that:

a. Provides definitions.
b. Establishes the “Anacostia Watershed Restoration Initiative” in the U.S. Environmental Protection Agency to restore the environmental integrity and social and economic benefits of the Anacostia watershed and plan and fund restoration improvements.
c. Establishes the Anacostia Watershed Council (comprised of the Administrator of the EPA, the Interior Secretary, the Secretary of the Army, the Governor of Maryland, the Mayor of the District of Columbia, and the County Executives from Prince Georges and Montgomery Counties) that provides minimum meeting requirements.

d. Establishes objectives and guidelines for the development, review and approval, within one year after enactment, of a 10-year multi-jurisdictional Comprehensive Action Plan for restoration of the Anacostia watershed. Directs that the comprehensive action plan must achieve the goals of the 1991 Anacostia Watershed Restoration Agreement; provide for public input; identify annual, subregional, and community based actions that are to be taken; and establish appropriate measures and standards for the quality of air, water, wildlife, and recreation and other resources.

e. Requires the Anacostia Watershed Council to report annually to the Congressional authorizing and appropriating committees.

f. Directs the Administrator, in cooperation with the Anacostia Watershed Council, to develop and implement the Comprehensive Action Plan.

g. Directs Under or Assistant Secretaries of the Interior, Agriculture, Commerce, Army, HUD, and Transportation acting through designated agencies to support the Initiative and Comprehensive Action Plan.

h. Requires the Initiative shall not affect existing obligations.

i. Authorizes appropriations for fiscal years 1993 through 1997 of $100,000,000 to the Administrator for development and implementation of the Initiative and $6,000,000 of which shall be used for administrative expenses of the Initiative and Comprehensive Action Plan.

Section 4—Water Infrastructure—Amends title 33 (the Water Resources Development Act of 1986) to provide a total of $75,000,000 to the Administrator for projects to be carried out by the Corps of Engineers to address water quality issues.

By Mrs. BOXER:

S. 1598. A bill to exempt airports in economically depressed communities from matching grant obligations under the Airport Improvement Program; to the Committee on Commerce, Science, and Transportation.

Mrs. BOXER. Mr. President, last summer I visited Del Norte County—in the most northern part of my State. Del Norte County has been hit particularly hard during these tough economic times. Unemployment in the county tops 7.6 percent. Local officials are working hard to revitalize the economy, and one of their top priorities is to renovate Del Norte County’s airport. And they would like federal assistance.

However, under the federal Airport Improvement Program, federal grants must be matched with local funds. In general, I support that policy. But, for communities facing severe economic problems, this match is prohibitive. It’s a bit of a Catch-22. The Federal funds that would help the local economy rebound are not available because the local economy is in such bad shape that the community can’t match the federal grants.

The bill that I am introducing today would address this by eliminating the match required under the Airport Improvement Program for economically depressed communities.

To be considered an economically depressed community, a community would have a variety of ways to qualify. First, for the last two years, the unemployment rate would be one percent higher than the nation’s unemployment rate. Second, the per capita income of the community could be 80 percent or less of the nation’s per capita income. Third, the Federal-aid highway projects in the community could consist of more than 50 percent of the cost. Finally, the community could be chosen at the discretion of Transportation.

To provide some examples of what this legislation could do, I am very optimistic about the future of Del Norte County and other areas in California and across the Nation that are facing tough economic times. This bill will provide that little bit of help.

By Mr. HOLLINGS (for himself, Ms. COLLINS, Mr. CARPER, Mr. SPETSBERGER, Mr. JEFFORDS, Mr. LUTENBERGER, and Mr. BIDEN):

S. 1960. A bill to provide for the revitalization and enhancement of the American passenger and freight rail transportation system; to the Committee on Commerce, Science, and Transportation.

Mr. HOLLINGS. Mr. President, I rise today to introduce the American Railroad Revitalization, Investment, and Enhancement Act of the 21st Century, S. 1960. This legislation is of vital importance to rail transportation because it provides steady, dependable funding for our beleaguered national passenger rail system. It also provides funding for infrastructure improvements for rail transportation, including Amtrak and Amtrak's feeder systems. It also strengthens the Anacostia Watershed Council.

We somehow figured this out a long time ago with regard to every other mode of transportation. We funded the development of the interstate highway system; we subsidized airport construction; we dredged harbors and channels; and we built locks and dams. And the result of all that investment is that our citizens and our government move goods and people, from big cities and from small towns, efficiently and relatively cheaply. We have today a national transportation system with many impressive components.

You might even say we have been a little too successful with these modes of transportation because many of them are now strained to capacity in many areas of the country. This situation presents not only an economic dilemma, but also a genuine security risk. The atrocious events of September 11th, and the aftermath that followed, has exposed to the world our infrastructure. We are now being looked to as a model. We are looked to as a leader. We are looked to as having rail transportation become limited and our mobility is diminished. Effective transportation security means that, as a Nation, we nurture all transportation modes. We allow our industry as a whole, including freight railroads. And it establishes a financing mechanism to ensure that our rail system benefits from a steady stream of funding, just like our airline industry, our transit systems, and our national highway system.

For the past 30 years, Amtrak has provided us with a valuable public service, even though it was forced year after year to come back for more from Congress. And year after year, the Congress gave it just enough money to barely survive another 12 months. Sometimes Congress didn’t appropriate even enough money to last 12 months, and Amtrak had to come back and beg for a supplemental appropriation just to remain in business until the end of the fiscal year. Never mind having enough money to grow the railroad; more often than not, we needed to run a first-class passenger railroad. And never mind having enough money to keep the infrastructure in a state of good repair. All Amtrak has been able to do for 30 years is stay alive. It’s time to give Amtrak the tools and funding it needs to do the job we keep asking it to do.

Last year I introduced the National Defense Rail Act of 2002 which was approved by the Senate Commerce Committee by a vote of 20–3. We have shown that bipartisan support exists for authorizing a strong rail program, however the main obstacle we have faced has been securing funding to live up to the authorized amounts. This legislation attempts to address the lack of funding for Amtrak passenger railroad programs and establishes a framework to address freight needs where there is a clear public benefit.

It’s a foregone conclusion that transportation development requires money. We somehow figured this out a long time ago with regard to every other mode of transportation. We funded the development of the interstate highway system; we subsidized airport construction; we dredged harbors and channels; and we built locks and dams. And the result of all that investment is that our citizens and our government move goods and people, from big cities and from small towns, efficiently and relatively cheaply. We have today a national transportation system with many impressive components.

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By Mr. BOXER:

S. 1961. A bill to provide for the revi-
about financing passenger rail service and designed to grow our passenger rail system into the world-class system it should be. The bill creates Federal/ State and public/private partnerships to promote infrastructure development for both passenger and freight rail. It provides $20-$25 billion in grants over six years to States and State compacts for capital projects to provide for a safe, secure, and efficient rail transportation system. It enhances Federal and State rail transportation policy, and it promotes intermodal transportation investment.

ARRIVE–21 creates a non-profit Rail Infrastructure Finance Corporation (RIFCO) to issue $30 billion in tax-credit bonds over six years for the purpose of providing grants to States for capital investment in freight and passenger rail infrastructure and facilities. RIFCO will establish a trust account made up of bond proceeds and contributions from States that receive RIFCO grants. Bond proceeds and State contributions in excess of the amount required to maintain the trust account will then be available for grants to the States through a competitive process.

Alarnor, in his closing remarks, stated that he fully understood the needs authorized in this legislation by straight federal spending. It has become clear that over the last thirty years that there is no pot of gold at the end of the rainbow when it comes to railroads. There is not much money in the scant pot available for discretionary spending on transportation programs. We have established dedicated trust funds for the airlines with their ticket taxes, and we have the trust fund for the highways and transit programs, which are funded through the gas tax. But when it comes to passenger railroads, there is no such revenue stream. The establishment of RIFCO was not my first choice to finance the publicly needed improvements in the railroad system, but it is an option for the Congress to debate and consider as we attempt to address what we need the rail system to do for this country.

RIFCO is set up to assist the States fund both passenger and freight projects that benefit the public on a State, regional or national basis. State or State compacts may apply for RIFCO funds for discretionary and formula funds for capital projects in four categories: (1) Urban Rail Corridor Development, including equipment, stations, and facilities; (2) State Freight Rail Infrastructure Development Projects, including capital projects that primarily benefit freight rail transportation; States may use a percentage of these formula funds to manage State rail programs. National System Improvement Projects, including projects that significantly benefit the national passenger rail system, Amtrak-sponsored projects, and Northeast Corridor Projects, including projects with major public policy benefits to the national rail system or significantly expand rail intermodal capacity in connection with maritime, aviation, and highway facilities.

Eligible capital projects would include new rail line development, planning and environmental reviews, track upgrades, signaling improvements, environmental impact mitigation, acquisition of passenger rail equipment, and security improvements. Projects to receive discretionary funding would be selected by RIFCO according to selection criteria contained in the bill. The projects would require a 20 percent non-Federal contribution paid to RIFCO for bond repayment.

ARRIVE–21 also directs the Federal Railroad Administration to develop a National Rail Plan and to work with States in developing State rail plans, so that we have a comprehensive and coordinated long-range plan for rail development for the whole country. The bill also directs the Office of Intermodal Transportation to develop a blueprint for a "50-Year Blueprint" for the development of a national intermodal transportation system and provide a vision of emerging trends and opportunities for the future of passenger and freight transportation.

Before I close, I would be remiss if I did not recognize the work of Nancy Lummens Lewis, a detailie from the Federal Railroad Administration, who has worked on the Commerce Committee since January. We have appreciated her professionalism, competency, and her willingness to work and share her time with us. I thank Nancy for her time spent on this bill, as well as her efforts on the reauthorization of the Surface Transportation Board Act of the 21st Century, The Federal Railroad Safety Improvement Act, and The Surface Transportation Board Act of 2003. We wish her well in her future endeavors.

ARRIVE–21 presents a smart and efficient solution to a very important transportation dilemma. I am joined by several of my colleagues, including Senators Collins, Specter, Carper, and Jeffords, in introducing this bipartisan legislation. As we have passed this week, approximately $15 billion annually for aviation for the next four years, and plan to take up a highway bill next year which will spend $10 to $15 billion annually on highways and transit over six years, we must not leave rail out. It is critical that the Senate take this bill up, and pass it, to ensure that our railroad transportation system, especially our passenger rail system, can grow and develop to meet our current and future transportation needs.

Attached is an amendment that the sponsors of ARRIVE–21 intend to offer during floor consideration of the bill. I ask unanimous consent that the amendment and the text of the bill be printed in the Record.

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

**AMENDMENT**

**TITLE VIII—RAIL INFRASTRUCTURE TAX CREDIT BONDS**

**SEC. 801. CREDIT TO HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.**

(a) IN GENERAL.—Part IV of chapter 1 of the Internal Revenue Code of 1986 (relating to credits against tax) is amended by adding after the end the following new subpart:

"Subpart II—Nonrefundable Credit for Holders of Qualified Rail Infrastructure Bonds."

SEC. 54. Credit to holders of qualified rail infrastructure bonds.

"SEC. 54. CREDIT TO HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS."

"(A) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a qualified rail infrastructure bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such credit allowance dates during such year on which the taxpayer holds such bond.

"(B) AMOUNT OF CREDIT.—"(1) IN GENERAL.—The amount of the credit determined under this subsection with respect to any credit allowance date for a qualified rail infrastructure bond is 20 percent of the annual credit determined with respect to such bond.

"(2) ANNUAL CREDIT.—The annual credit determined with respect to any qualified rail infrastructure bond is the product of—

"(A) the applicable credit rate, multiplied by

"(B) the outstanding face amount of the bond.

"(3) APPROPRIATE CREDIT RATE.—For purposes of paragraph (2), the applicable credit rate with respect to an issue is the rate, equal to the average market yield (as of the day before the date of sale of the issue) on outstanding long-term corporate debt obligations of comparable duration prescribed by the Secretary.

"(4) CREDIT ALLOWANCE DATE.—For purposes of this section, the term ‘credit allowance date’ means—

"(A) March 15, "(B) June 15, "(C) September 15, and "(D) December 15.

Such term includes the last day on which the bond is outstanding.

"(5) SPECIAL RULE FOR ISSUANCE AND REDEMPTION.—In the case of a bond which is issued during the 3-month period ending on a credit allowance date, the amount of the credit determined under this subsection with respect to such bond shall be a ratable portion of the credit otherwise determined based on the portion of the 3-month period during which the bond is outstanding. A similar rule shall apply when the bond is redeemed.

"(c) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

"(1) the sum of the regular tax liability (as defined in section 26(b)) plus the tax imposed by section 55, over

"(2) the sum of the credits allowable under this part (other than this subpart and subpart C).\n
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**CONGRESSIONAL RECORD — SENATE**

November 25, 2003

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**ARRIVE–21 presents a smart and efficient solution to a very important transportation dilemma. I am joined by several of my colleagues, including Senators Collins, Specter, Carper, and Jeffords, in introducing this bipartisan legislation. As we have discussed this week, approximately $15 billion annually for aviation for the next four years, and plan to take up a highway bill next year which will spend $10 to $15 billion annually on highways and transit over six years, we must not leave rail out. It is critical that the Senate take this bill up, and pass it, to ensure that our railroad transportation system, especially our passenger rail system, can grow and develop to meet our current and future transportation needs.**
(d) Credit Included in Gross Income.—Gross income includes the amount of the credit allowed to the taxpayer under this section (determined without regard to subsection (e) or (g)) so amount so included shall be treated as interest income.

(c) Qualified Rail Infrastructure Bond.—For purposes of this part, the term ‘qualified rail infrastructure bond’ means any bond issued as part of an issue if—

(1) the bond is issued by the Rail Infrastructure Finance Corporation and is in registered form,

(2) the term of each bond which is part of such issue does not exceed 20 years,

(3) the principal with respect to such bond is the obligation of the Rail Infrastructure Finance Corporation and not an obligation of the United States,

(4) the sale of the issue are for the purposes set forth in section 507(c)(5) of the Revive 21 Act, and

(5) 95 percent or more of the net spendable proceeds from the sale of such issue are to be used for expenditures incurred after the date of enactment of this Act for any qualified project described in section 601, 602, or 603 of the Revive 21 Act.

(1) IN GENERAL.—If any bond which when issued purported to be a qualified rail infrastructure bond ceases to be such a qualified bond, the issuer shall pay to the United States (at the option of the Secretary) an amount equal to the sum of—

(A) the aggregate of the credits allowable under this section with respect to such bond; and

(B) the amount (determined without regard to subsection (c)) for taxable years ending during the calendar year in which such cessation occurs and the preceding calendar years.

(2) NONCULPABLE DISQUALIFICATIONS.—If a qualified rail infrastructure bond ceases to qualify as such a bond due to action taken by the recipient of a grant made under section 601, 602, or 603 of the Revive 21 Act, the issuer may seek compensation under paragraph (1) of this subsection.

(b) Rail Infrastructure Finance Trust.—

(1) IN GENERAL.—The following amounts shall be held in a trust account by the Rail Infrastructure Finance Corporation:

(A) An amount of the proceeds from the sale of a bond issued for purposes of this section that, when combined with amounts described in subparagraphs (B), (C), and (D), is sufficient—

(i) to ensure the Corporation’s ability to redeem all bonds on maturity; and

(ii) to pay the administrative expenses of the Corporation and the Trust;

(B) The amount of any on-Federal contributions required under section 604(b) of the Revive 21 Act;

(C) The temporary period investment earnings on proceeds from the sale of such bonds;

(D) Any earnings on any amounts described in subparagraph (A), (B), or (C);

(2) USE OF FUNDS.—Amounts in the trust account may be used only for investment purposes to generate sufficient funds to redeem qualified rail infrastructure bonds at maturity and pay the administrative expenses of the Corporation and the Trust;

(3) USE OF REMAINING FUNDS ON TRUST ACCOUNT.—If the Corporation determines that the amount in the trust account exceeds the amount required for the purposes of this section, the Corporation may transfer the excess to the Rail Infrastructure Investment account to be available for awarding grants as provided for in section 507(c)(5) of the Revive 21 Act.

(4) REVERSION OF REMAINING FUNDS.—Upon retirement of all bonds issued by the Corporation, any remaining proceeds from the sale of such bonds shall be covered into the general fund of the United States as miscellaneous receipts.

(5) SPECIAL RULE FOR HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.—For purposes of this section, the credit allowed by section 54 to a taxpayer by reason of holding a qualified rail infrastructure bond on a credit allowance date shall be treated as if it were a payment of estimated tax made by the taxpayer on such date.

(c) Corporation.—Section 6655 of such Code (relating to failure by individual to pay estimated income tax) is amended by adding at the end of subsection (b) the following new paragraph:

(5) REPORTING.—Issuers of qualified rail infrastructure bonds shall submit reports similar to the reports required under section 6601 to subparagraph (a) of such section.

(6) REPORTING TO CORPORATIONS, ETC.—Except as otherwise provided in regulations, in the case of any interest described in subparagraph (A), subsection (b)(4) shall be applied without regard to subparagraphs (A), (B), (H), (I), (J), (K), and (L)(i) of such subsection.

(C) Regulatory Authority.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.

(2) Treatment for Estimated Tax Purposes.—

(A) Individual.—Section 6654 of such Code (relating to failure by individual to pay estimated income tax) is amended by adding at the end of subsection (a) the following new paragraph:

(5) REPORTING.—Subsection (d) of section 6051 of the Internal Revenue Code of 1986 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

"(B) Reporting to Corporations, Etc.—The Secretary may prescribe such regulations as are necessary or appropriate to carry out the purposes of this paragraph, including regulations which require more frequent or more detailed reporting.".

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(A) Individual.—Section 6654 of such Code (relating to failure by individual to pay estimated income tax) is amended by adding at the end of subsection (a) the following new paragraph:

(5) REPORTING.—Subsection (d) of section 6051 of the Internal Revenue Code of 1986 (relating to returns regarding payments of interest) is amended by adding at the end the following new paragraph:

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Title VIII—Rail Infrastructure Tax Credit Bonds
Sec. 801. Credit to holders of qualified rail infrastructure bonds.
Sec. 802. Issuance of regulations.
Sec. 803. Effective date of grant program.
Sec. 804. Credit to holders of qualified rail infrastructure bonds.

TITLE VI—Rail Development Grant Programs
Sec. 601. Intercity passenger rail development grant program.
Sec. 602. Freight rail infrastructure development grant program.
Sec. 603. High priority projects grant program.
Sec. 604. Grant program requirements and limitations.
Sec. 605. Standards and conditions.
Sec. 606. Grant program funding.

TITLe VII—Authorizations of Appropriations
Sec. 701. Authorization of Appropriations.

Exempt from Title I of title 40 and title III of the Federal Credit Act.
Sec. 801. Credit to holders of qualified rail investment, and enhancement Act of the 21st century.
Sec. 802. Interstate rail improvements.
Sec. 803. High-speed rail corridors.
Sec. 804. Rehabilitation, improvement, and security financing.
Sec. 805. Repayment of loan to National Railroad Passenger Corporation.

TITLE III—Intermodal Policy
Sec. 301. 50-year intermodal blueprint.
Sec. 302. Intermodal transportation policy.

TITLE IV—Amtrak Authorizations
Sec. 401. National Railroad Passenger Transportation system defined.
Sec. 402. Restructuring of long-term debt and capital leases.
Sec. 403. General Amtrak authorizations.
Sec. 404. Excess railroad retirement.
Sec. 405. Authorizations for environmental compliance and station improvements.
Sec. 406. Tunnel life safety.
Sec. 407. Authorization for capital and operating expenses.
Sec. 408. Establishment of grant program.
Sec. 409. State-supported routes.
Sec. 410. Re-establishment of Northeast Corridor Safety Committee.
Sec. 411. Amtrak board of directors.
Sec. 412. Establishment of financial accounting system for Amtrak operations by independent auditor.
Sec. 413. Development of 5-year financial plan.
Sec. 414. Independent auditor to establish methodologies for Amtrak rail service and planning decisions.
Sec. 415. Metrics and standards.
Sec. 416. On-time performance.

Title V—Rail Development Grant Programs
Sec. 501. Establishment of corporation.
Sec. 502. Board of directors.
Sec. 503. Officers and employees.
Sec. 504. Nonprofit and nonpolitical nature of the corporation.
Sec. 505. Purpose and activities of corporation.
Sec. 506. Regulations.
Sec. 507. Administrative matters.
Sec. 508. Rail Infrastructure Finance Trust.

Title IV—Rail Development Grant Programs
Sec. 401. National Railroad Passenger Transportation system defined.
Sec. 402. Restructuring of long-term debt and capital leases.
Sec. 403. General Amtrak authorizations.
Sec. 404. Excess railroad retirement.
Sec. 405. Authorizations for environmental compliance and station improvements.
Sec. 406. Tunnel life safety.
Sec. 407. Authorization for capital and operating expenses.
Sec. 408. Establishment of grant program.
Sec. 409. State-supported routes.
Sec. 410. Re-establishment of Northeast Corridor Safety Committee.
Sec. 411. Amtrak board of directors.
Sec. 412. Establishment of financial accounting system for Amtrak operations by independent auditor.
Sec. 413. Development of 5-year financial plan.
Sec. 414. Independent auditor to establish methodologies for Amtrak rail service and planning decisions.
Sec. 415. Metrics and standards.
Sec. 416. On-time performance.
(a) REQUIREMENT FOR PROGRAM.—Chapter 249 is amended by adding at the end the following:

"(a) Establishment.—In consultation with the heads of the appropriate Federal departments and agencies, the Secretary shall establish the advisory board to advise on research, technology, and technology transfer activities related to rail passenger and freight transportation.

"(b) Members.—The advisory board shall include:

(A) representatives of State transportation agencies;

(B) transportation and environmental economists, scientists, and engineers; and

(C) representatives of Amtrak, the Alaska Railroad, freight railroads, transit operating agencies, intercity rail passenger agencies, railroad labor organizations, and environmental organizations.

"(d) National Academy of Sciences.—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in subsection (b) as the Secretary determines appropriate.

"(2) CLERICAL AMENDMENT.—The chapter analysis for chapter 249 is amended by adding at the end the following:

"24910. Rail cooperative research program;—

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation $5,000,000 for each of fiscal years 2004 through 2009 to carry out the rail cooperative research program under section 24910 of title 49, United States Code.

SEC. 293. STATE RAIL PLANS.

(a) IN GENERAL.—Part B of subtitle V is amended by adding at the end the following:

"CHAPTER 225—STATE RAIL PLANS AND HIGH PRIORITY PROJECTS

"Sec. 22501. Authority

"Sec. 22502. Purposes

"Sec. 22503. Transparency; coordination; review

"Sec. 22504. Definitions

"22501. Authority

"(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this chapter.

"(b) REQUIREMENTS.—In preparing and periodically revising a State rail plan, a State shall—

"(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

"(2) establish or designate a State rail plan approval authority to approve the plan;

"(3) submit the State's approved plan to the Secretary of Transportation for approval; and

"(4) prepare and resubmit a State-approved plan no less frequently than once every 5 years for reapproval by the Secretary.

"22502. Purposes

"(a) Purposes.—The purposes of a State rail plan are as follows:

(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

(2) To establish the period covered by the State rail plan.

(3) To present priorities and strategies to preserve, enhance, or expand rail service in the State that benefits the public.

(4) To serve as the basis for Federal and State rail investments within the State.

(5) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and set forth rail transportation's role within the State transportation system.

(6) TRANSPARENCY; COORDINATION; REVIEW

(7) PREPARATION.—A State shall provide adequate and reasonable notice and opportunity for comment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

"22503. Transparency; coordination; review

(8) INTERGOVERNMENTAL COORDINATION.—A State shall review the freight and passenger rail service activities and initiatives...
by regional planning agencies, regional transportation authorities, and municipalities within the State, or in the region in which the State is located, while preparing the plan, include any recommendations made by such agencies, authorities, and municipalities as deemed appropriate by the State.

(c) ANNUAL REVIEWS.—Each State shall transmit an annual report on its plan to the Secretary of Transportation. The report shall include, for the year preceding the year in which the report is submitted, the following matters:

(1) A review of progress made, and actions taken, under the plan during the year, including the budget and financing for each project on the freight or passenger rail capital project list compiled under section 22504(a) of this title.

(2) Any modifications made in the plan after approval of the plan by the Secretary or after the submission of the most recent annual report on the plan to the Secretary, including any modifications made to the priority freight or passenger rail capital list required by section 22504(b).

(d) APPROVAL OF MODIFIED PLANS.—Modification of a plan that is determined substantive by the Secretary, including any modification to a priority freight or passenger rail capital project list required by section 22504(b), is subject to approval by the Secretary.

§ 22504. Content

(a) GENERAL.—Each State rail plan shall contain the following:

(1) An evaluation of the existing overall rail transportation system and rail services and the resultant rail lines, strategy, and a prioritization of such services and facilities in terms of their contributions to the State’s rail and transportation system.

(2) A comprehensive review of all rail lines within the State, including proposed high-speed rail corridors and significant rail line segments not currently in service, containing an overview of the transportation services provided by those lines, their ownership, operating characteristics, and the general state of their infrastructure.

(3) A statement of the State’s freight and passenger rail service objectives, including minimum service levels, for rail transportation routes in the State.

(4) An analysis of rail’s transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

(5) A long-range rail service and investment program for current and future freight and passenger services in the State that meets the requirements of subsection (b).

(6) A statement of public financing issues for rail projects and service in the State, including a list of current and prospective capital and operating funding resources, public subsidies, State taxation, and other financial policies, if any, having to do with rail service and rail infrastructure development.

(7) A statement of rail service issues within the State, including congestion, capacity, and current system deficiency, on a regional, intrastate, and interstate basis, that reflects consultation with neighboring States and describes any coordination of regional rail services.

(8) A review of major passenger and freight intermodal rail connections and facilities, including accessibility, station capacity, and current system deficiencies on a regional, intrastate, and interstate basis, that reflects consultation with neighboring States and describes any coordination of regional rail services.

(9) A description of new technology that relates to rail transportation within the State, including logistics and process improvements.

(10) A review of publicly funded projects within the State to improve rail transportation system and rail safety, and major projects funded under section 130 of title 23.

(11) A performance evaluation of passenger rail services operating in the State, including possible improvements in those services, and a description of strategies to achieve those improvements.

(12) A systematic review, and reporting on high-speed rail corridor development within the State not included in a previous plan under paragraph (1), and a plan for funding any recommended development of such corridors in the State.

(13) A statement that the State is in compliance with the requirements of section 22102.

(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—(1) PROGRAM CONTENT.—A long-range rail service and investment program included in a State rail plan under subsection (a)(5) shall include the following matters:

(A) A description of the anticipated public and private benefits of each such project; and

(B) A statement of the correlation between—

(i) public funding contributions for the project; and

(ii) the public benefits.

(2) PROJECT LIST CONTENT.—The ranked list of freight and intercity passenger rail capital projects shall contain—

(A) A description of the anticipated public and private benefits of each such project; and

(B) A detailed funding plan for the projects.

(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the ranked list of freight and intercity passenger rail capital projects, a State rail transportation authority shall take into consideration the following matters:

(A) Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

(B) Rail capacity and congestion effects.

(C) Effects to highway, aviation, and maritime capacity, congestion, or safety.

(D) Regional balance.

(E) Environmental impact.

(F) Competitive and service impacts for rail carriers and shippers.

(G) Preservation of rail service.

(H) Economic development impacts.

(I) Projected ridership and other service measures for passenger rail projects.

(4) WAIVER.—The Secretary may waive any requirement of subsection (a) upon application under circumstances that the Secretary determines appropriate.

§ 22505. Approval

(a) CRITERIA.—The Secretary may approve a State rail plan for the purposes of this chapter if—

(1) the plan meets all of the requirements applicable to State plans under this chapter;

(2) for each ready-to-commence project listed on the ranked list of freight and intercity passenger rail capital projects under the plan—

(A) the project meets all safety and environmental requirements including those prescribed under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) that are applicable to the project under law; and

(B) the State has entered into an agreement with any owner of rail infrastructure affected by the project that provides for the State to proceed with the project; and

(3) the content of the plan is coordinated with—

(A) State transportation plans developed pursuant to the requirements of section 135 of title 23; and

(B) the national rail plan, the 50-year intermodal blueprint developed under section 5503(e) of this title, (if either is available) and any other transportation plan of the Federal Government that is required by law deemed relevant by the Secretary.

(b) PROCEDURES FOR STATE RAIL PLAN SUBMISSION AND APPROVAL.—The Secretary shall prescribe procedures for States to submit State rail plans for review under this title. The procedures shall include the submission of data and requirements and procedures for resubmittal if a State rail plan is disapproved. The procedures shall provide for the Secretary to review a State rail plan and issue a record of decision of approval or disapproval, with comment, on such plan within 180 days after the plan is submitted.

§ 22506. High priority projects

(a) DESIGNATION OF PROJECTS.—In reviewing by the Secretary of Transportation, the Secretary of Transportation may designate as a high priority project any project submitted by a State or group of States that meets both of the following criteria:

(1) The project focuses on key rail congestion points that are selected by the Secretary on the basis of national benefits to the rail transportation system; and

(2) The project is on a ranked list of priority freight and passenger rail capital projects that is included in a State rail plan under section 22504(a)(5) of title 49, United States Code, unless this criterion is waived by the Secretary.

(b) PREFERENCE PROJECTS.—The Secretary, in designating high priority projects, shall give preference to—

(1) projects that have national significance for—

(A) improving the national rail network and the Nation’s transportation system; and

(B) ensuring particularly high levels of safety;

(2) improving intermodal connectivity by providing or improving direct connections between rail facilities and other modes of transportation;

(3) significantly improving highway, aviation, or maritime capacity, congestion, or safety;

(4) improving intercity passenger rail service by increasing ridership, reducing trip time, or other significant enhancements;

(5) improving both intercity passenger rail and freight rail services simultaneously;

(6) improving freight rail service for shippers;

(7) creating positive economic and employment results;

(8) producing significant environmental or community benefits; and

(9) receiving federal financial commitments and other support from non-Federal entities such as States, local governments, or private entities;

(10) enhancing international trade;

(11) enhancing national security; or

(12) using any other criteria in subsection (a).

(c) REGIONAL BALANCE AND COMPATIBILITY.—(1) The Secretary, in designating high priority projects, shall ensure that—

(i) the geographic distribution of the designated high priority projects is balanced...
among the geographic regions of the United States and a disproportionate number of such projects is not concentrated in a single State; and

'(2) Projects are—

'(A) compatible with State transportation plans developed pursuant to the requirements of section 135 of title 23; and

'(B) carried out in conformance with the national rail plan.

'(d) ADDITIONAL PROJECTS.—The Secretary may designate projects submitted to the Office by a State or other entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, services, or other means as defined by the Secretary. The Secretary may seek the advice of the states and rail carriers in further defining this term.xxx

'(e) SEEK ADVICE.—The Secretary may provide planning assistance to States and rail carriers in further defining this term.

'(f) RECORD OF DECISION.—Upon completion of planning activities funded under this section, the Secretary shall make a recommendation on the record of whether to proceed with the implementation of the corridor.

(b) CONFORMING AND OTHER AMENDMENTS TO SECTION 26101.—Section 26101 is further amended—

'(1) by striking subsection (c)(2) and inserting the following:

'(2) the extent to which the proposed planning focuses on high-speed rail systems, giving a priority to systems which will achieve sustained speeds of 125 miles per hour or greater and projects involving dedicated rail passenger rights-of-way;

'(3) by inserting "after the semicolon in subsection (c)(12)"

'(4) by striking "completed; and" in subsection (c)(13) and inserting "completed."

'(5) by striking subsection (c)(14)

(c) CONFORMING AMENDMENT.—Section 26102(a) is amended by striking "more than 125 miles per hour;" and inserting "90 miles per hour or more.

(d) FINANCIAL ASSISTANCE TO INCLUDE LOANS.—Section 26105(1) is amended by inserting "loans, loan guarantees," after "contracts."

(e) SPECIAL TRANSPORTATION CIRCUMSTANCES.—Section 26105 is amended by adding at the end the following:

'(f) SPECIAL TRANSPORTATION CIRCUMSTANCES.—In carrying out this section, the Secretary may allocate an appropriate portion of the amounts available for planning assistance to provide appropriate transportation-related assistance in any State in which the rail transportation system—

'(1) is not physically connected to rail systems in the continental United States; and

'(2) may not otherwise qualify for high speed rail implementation assistance due to the constraints imposed on the railway infrastructure by the unique characteristics of the geography of that State or other relevant considerations, as determined by the Secretary.

'(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation $50,000,000 for each of fiscal years 2004 through 2009 to provide planning assistance under section 26101(a) of title 49, United States Code.

SEC. 202. DESIGNATED HIGH-SPEED RAIL CORRIDORS.

(a) IN GENERAL.—The Secretary of Transportation shall give priority in allocating funds authorized by section 26104 of title 49, United States Code, to designated high-speed rail corridors or

(b) DESIGNATED HIGH-SPEED RAIL CORRIDORS.—For purposes of subsection (a), the following shall be considered to be designated high-speed rail corridors:

(1) California Corridor connecting the San Francisco Bay area and Sacramento to Los Angeles and San Diego.

(2) Chicago Hub Corridor Network with the following spokes:

(A) Chicago to Detroit.

(B) Chicago to Minneapolis/St. Paul, Minnesota, via Milwaukee, Wisconsin.

(C) Chicago to Kansas City, Missouri, via Springfield, Illinois, and St. Louis, Missouri.

(D) Chicago to Louisville, Kentucky, via Indianapolis, Indiana, and Cincinnati, Ohio.

(E) Chicago to Cleveland, Ohio, via Toledo, Ohio.

(F) Cleveland, Ohio, to Cincinnati, Ohio, via Columbus, Ohio.

(G) Empire State Corridor from New York City, New York, through Albany, New York, to Buffalo, New York.

(H) Florida High-Speed Rail Corridor from Tampa through Orlando to Miami.

(I) Gulf Coast Corridor from Houston Texas, through New Orleans, Louisiana, to Mobile, Alabama, with a branch from New Orleans, Louisiana, through Meridian, Mississippi, and Birmingham, Alabama, to Atlanta, Georgia.


(K) Northeast Corridor from Washington, District of Columbia, through New York City, New Haven, Connecticut, and Providence, Rhode Island, to Boston, Massachusetts, with a branch from New Haven, Connecticut, to Springfield, Massachusetts.

(L) New England Corridor from Boston, Massachusetts, to Portland and Auburn, Maine, and from Boston, Massachusetts, through Concord, New Hampshire, and Montpelier, Vermont, to Montreal, Quebec.


(N) South Central Corridor from San Antonio, Texas, through Dallas/Fort Worth to Little Rock, Arkansas, with a branch from Dallas/Fort Worth through Oklahoma City, Oklahoma, to Tulsa, Oklahoma.

(O) Southwest Corridor from Washington, District of Columbia, through Richmond, Virginia, Raleigh, North Carolina, Columbia, South Carolina, Savannah, Georgia, and Jacksonville, Georgia, to Jacksonville, Florida, with

(A) a branch from Raleigh, North Carolina, through Charlotte, North Carolina, and Greenville, South Carolina, to Atlanta, Georgia;

(B) a branch from Jacksonville, Florida, to Jacksonville, Georgia;

(C) a connecting route from Atlantic, Georgia, to Jessup, Georgia;

(D) a connecting route from Atlantic, Georgia, to Charleston, South Carolina; and

(E) a branch from Raleigh, North Carolina, through Florence, South Carolina, to Charleston, South Carolina, and Savannah, Georgia, with a connecting route from Florence, South Carolina, to Myrtle Beach, South Carolina.

(2) Southwest Corridor from Los Angeles, California, to Las Vegas, Nevada.

(c) OTHER HIGH-SPEED RAIL CORRIDORS.—For purposes of this section, subsection (b) does not apply to the following:

(1) does not limit the term "designated high-speed rail corridor" to those corridors described in subsection (b); and

(2) does not limit the Secretary of Transportation’s authority—

(A) to designate additional high-speed rail corridors; or

(B) to designate the designation of any high-speed rail corridor.

SEC. 203. IN GENERAL.—The term ‘State rail transportation agency’ means the Governor of the State or a State law for preparation, maintenance, coordination, and administration of a rail plan.

(b) CLERICAL AMENDMENT.—The table of contents for title V is amended by inserting the following after "Continued."

XXV. STATE RAIL PLANS AND HIGHER PRIORITIES PROJECTS 

SEC. 204. INTERSTATE RAILROAD PASSENGER HIGH-SPEED TRANSPORTATION POLICY.

(a) IN GENERAL.—Chapter 261 is amended by inserting before section 26101 the following:

"26101- Policy.

"The Congress declares that it is the policy of the United States that designated high-speed railroad passenger transportation corridors are the building blocks of an interconnected National railroad passenger system."

(b) CONFORMING AMENDMENT.—The chapter for chapter 261 is amended by inserting before the item relating to section 26101 the following:

"26101. Policy."
SEC. 207. REHABILITATION, IMPROVEMENT, AND SECURITY FINANCING.

(a) Definitions.—Section 102(7) of the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. 822(7)) is amended to read as follows:

"(7) ‘railroad’ has the meaning given that term in section 2002 of title 49, United States Code; and"

(b) General Authority.—Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. 822(7)) is amended—

(1) by striking “Secretary may provide direct loans and loan guarantees to State and local governments, interstate compacts entered into under section 20102 of title 49, the Intermodal Surface Transportation Efficiency Act of 1991 (49 U.S.C. 24101 note),”;

(b) and (e) of section 22301 of title 49, United States Code, to their projects.

(2) by striking “or” in subsection (b)(1)(B);

(3) by redesigning subparagraph (C) of subsection (b)(1) as subparagraph (D); and

(4) by inserting after subparagraph (B) of subsection (b)(1) the following:

“(C) to acquire, improve, or rehabilitate road safety and security equipment and facilities; or”;

(c) Extent of Authority.—Section 502(d) of the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. 822(d)) is amended by adding at the end the following:

“Not later than 180 days after receiving a complete application for a direct loan or loan guarantee under this section, the Secretary shall approve or disapprove the application.”

(d) Cohorts of Loans.—Section 502(b) of the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. 822(b)) is amended—

(1) in paragraph (2)—

(A) by striking “and” at the end of subparagraph (D); and

(B) by redesigning subparagraph (E) as subparagraph (F); and

(2) by adding after subparagraph (D) the following new subparagraph:

“(E) the size and characteristics of the cohort of which the loan or loan guarantee is a member; and”;

and

(3) by adding at the end of paragraph (4) the following:

“A cohort may include loans and loan guarantees under this section that may be used for a single loan or loan guarantee.”

(e) Coaches of Assistance.—Section 502(a) of the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. 822(a)) is amended—

(1) by striking “offered,” in subsection (c) and inserting “offered, if any;”;

(2) by inserting “(1)” before “The Secretary in subsection (b) and redesignating paragraph (1) as (2), and”;

(3) by adding at the end of subsection (b) the following:

“(2) The Secretary may not require an applicant for a direct loan or loan guarantee under this section to provide collateral.”

(4) The Secretary shall require recipients of direct loans or loan guarantees under this section to apply the standards of subsections (b) and (c) of section 20102 of title 49, United States Code, to their projects.

(5) The Secretary shall require recipients of direct loans or loan guarantees under this section to comply with—

“(A) the standards of section 24312, as in effect on September 1, 2003, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with such standards for construction work financed under an agreement made under section (a); and

“(B) the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed by direct loans or loan guarantees.”

(f) Time Limit for Approval or Disapproval.—Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. 822) is amended—

(1) by adding at the end of subsection (k) the following:

“(F) the economy and employment; and

(E) congestion; and

(D) the plan described in subparagraph (A).”

(2) by redesignating subsections (e) and (f) as subsections (g) and (h), respectively; and

(3) by inserting after subsection (d) the following:

“(G) 50-YEAR INTERMODAL BLUEPRINT.—

“(1) IN GENERAL.—The Secretary, in consultation with the advisory board established under section 20102(h) of this title, and any other appropriate advisory boards, will develop and establish a 50-year intermodal blueprint, which shall—

(A) set forth a plan to develop a national intermodal transportation system, including all major modes of transportation; and

(B) identify potential opportunities to fulfill the future passenger and freight transportation needs of the United States;

and shall illustrate and estimate the potential results of current policies, possible policy improvements, and directives for achieving the goals set forth in the document;

(2) forecast the impact of current and future transportation policies on mobility, safety, energy consumption, the environment, technology, international trade, economic activity, and the quality of life in the United States; and

(E) identify sources of funding to implement the plan described in subparagraph (A).”

(3) by redesignating paragraph (2) as paragraph (3); and

(h) Substantive Criteria and Standards.—Not later than 180 days after the enactment of this Act, the Secretary shall—

(1) by redesignating subsections (e) and (f) as subsections (g) and (h), respectively; and

(2) by adding at the end of the preceding sentence the following:

“(I) Operators Deemed Rail Carriers; Loans and Loan Guarantees for Non-Railroad Entities.—Section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. 822), as amended by subsection (d)(1) of this section, is amended by adding at the end the following:

“(J) Operators Deemed Rail Carriers.—Any entity providing railroad transportation services (within the meaning of section 105(5)), that begins operations after the date of enactment of the Act, and that is acquired pursuant to the Railway Labor Act (45 U.S.C. 151 et seq.) and is considered a carrier for purposes of such Act, shall be eligible for loans or loan guarantees under this section.”

SEC. 208. REIMBURSEMENT OF LOAN TO NATIONAL RAILROAD PASSENGER CORPORATION.

The Secretary of Transportation may not collect any partial interest on the direct loan made to the National Railroad Passenger Corporation under section 502 of the Railroad Revitalization and Regulatory Reform Act of 1976 (49 U.S.C. 822) with respect to repayment for the direct loan.

SEC. 209. FEE REMUNERATION. —

(a) General.—Section 5503(b) is amended—

(1) by redesigning subsections (e) and (f) as subsections (g) and (h), respectively; and

(2) by inserting after subsection (d) the following:

“(G) the economy and employment; and

(E) energy consumption; and

(D) the operation and efficiency of the transportation system;”

SEC. 210. INTERMODAL POLICY.

TITLE III—INTERMODAL POLICY

SEC. 201. 50-YEAR INTERMODAL BLUEPRINT.

(a) In General.—Section 5503 is amended—

SEC. 202. SEVEN-YEAR INTERMODAL BLUEPRINT.
(b) NEW DEBT PROHIBITION.—Except as approved by the Secretary of Transportation, Amtrak may not enter into any obligation secured by assets of the Corporation after the date of enactment of this Act. This section does not prohibit unsecured lines of credit used by Amtrak or any subsidiary for working capital purposes.

(c) DEBT.—The Secretary of Transportation, in consultation with the Secretary of the Treasury, shall enter into negotiations with the holders of Amtrak debt, including obligations outstanding on the date of enactment of this Act for the purpose of redeeming or restructuring that debt. The Secretary, in consultation with the Secretary of the Treasury, shall secure agreements for repayment on such terms as the Secretary deems favorable to the interests of the Government. Payments for such redemption may be made after October 1, 2004, in either a single payment or a series of payments, but in no case shall the repayment period extend beyond September 30, 2006.

(d) CRITERIA.—In redeeming or restructuring Amtrak’s indebtedness, the Secretary and Amtrak shall ensure that the restructuring imposes the least practicable burden on taxpayers; and take into consideration repayment costs, the term of any loan or loans, and market conditions.

(e) AUTHORIZATION.—There are authorized to be appropriated to the Secretary such sums as may be necessary for fiscal years 2005 through 2008 to reimburse Amtrak’s secured debt.

(f) AMTRAK PRINCIPAL AND INTEREST PAYMENTS.—

(1) PRINCIPAL ON DEBT SERVICE.—Unless the Secretary of Transportation and the Secretary of the Treasury restructure or redeem the debt, there are authorized to be appropriated such sums as may be necessary for fiscal years 2005 through 2008 to reimburse Amtrak’s secured debt.

(2) INTEREST ON DEBT.—Unless the Secretary of Transportation and the Secretary of the Treasury restructure or redeem the debt, the interest on Amtrak’s debt is authorized to be appropriated such sums as may be necessary for fiscal years 2004 through 2008 to reimburse for the use of Amtrak for retirement of principal on loans for capital equipment, or capital leases, not more than the following amounts:

(A) For fiscal year 2004, $116,900,000.
(B) For fiscal year 2005, $109,500,000.
(C) For fiscal year 2006, $114,700,000.
(D) For fiscal year 2007, $130,500,000.
(E) For fiscal year 2008, $154,300,000.
(F) For fiscal year 2009, $155,800,000.

(2) AMTRAK REFORM AND ACCOUNTABILITY ACT OF 1997 (49 U.S.C. 24101 nt) is amended by striking section 24104(a).

(3) COMMON STOCK REDEMPTION DATE.—Section 415 of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24304 nt) is amended by striking subsection (b).
Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the National Council on Disability by September 30, 2010. The recommendations for funding the necessary improvements.

**SEC. 406. TUNNEL LIFE SAFETY.**

(a) LIFE SAFETY NEEDS.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for fiscal year 2004: (1) $677,000,000 for the 6 New York tunnels built in 1870 to provide ventilation, electrical, and fire safety technology upgrades, emergency communication and lighting systems, and emergency access and egress for passengers.

(b) INFRASTRUCTURE UPGRADES.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak $3,000,000 for fiscal year 2004 for the preliminary design of options for a new tunnel on a least cost to augment the capacity of the existing Baltimore tunnels. Amtrak, the Secretary shall identify in writing that the request is still incomplete or deficient, the Secretary shall immediately notify Amtrak of the reason for disapproval or the incomplete items or deficiencies. Within 15 days after receiving notification from the Secretary under the preceding sentence, Amtrak shall submit a modified request for the Secretary's review.

(c) Financial Contribution From Other Transportation Carriers.—There are authorized to be appropriated for fiscal year 2004, and in each fiscal year thereafter, amounts equal to grants provided by the Rail Infrastructure Finance Corporation for fiscal years 1998 through 2003, for the purposes for which it is intended. The Inspector General shall review the accounting information in sufficient detail—

1. To assess Amtrak's financial accounting and reporting system and practices,

2. To design and assist Amtrak in implementing a modern financial accounting and reporting system, on the basis of the assessment, that will produce accurate and timely financial information in sufficient detail—

   (a) to enable Amtrak to assign revenues and expenses appropriately to each of its lines of business and to each major activity of the rail service, including line of business operations, train operations, equipment maintenance, ticketing, and reservations;

   (b) to aggregate expenses and revenues related to infrastructure work and apportion them from expenses and revenues related to rail operations; and

   (c) to provide ticketing and reservation information to Amtrak for use in grant applications and the purposes for which it is intended. The Inspector General shall report his findings and recommendations to the Senate Committee on Commerce, Science, and Transportation and the...
SEC. 413. DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.
(a) DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.—The Amtrak board of directors shall submit an annual budget for Amtrak, and a 5-year financial plan for the fiscal year to which that budget relates and the subsequent 4 years, prepared in accordance with this subsection, to the Secretary of Transportation and the Inspector General of the Department of Transportation no later than—
   (1) the first day of each fiscal year beginning after the date of enactment of this Act; or
   (2) the date that is 80 days after the date of enactment of an appropriation Act for the fiscal year, if later.
(b) CONTENTS OF 5-YEAR FINANCIAL PLAN.—The 5-year financial plan for Amtrak shall include at a minimum—
   (1) all projected revenues and expenditures for Amtrak, including governmental funding sources;
   (2) projected ridership levels for all Amtrak passenger operations;
   (3) revenue and expenditure forecasts for nonpassenger operations;
   (4) requirements and expenditures necessary to maintain passenger service which will accommodate predicted ridership levels and predicted sources of capital funding;
   (5) operational funding needs, if any, to maintain current and projected levels of passenger service, including state-supported routes and identified sources; and
   (6) projected capital and operating requirements, ridership, and revenue for any new passenger service operations or service expansions;
   (7) an assessment of the continuing financial stability of Amtrak, as indicated by factors such as: the viability of the federal government to adequately meet capital and operating requirements, Amtrak’s access to long-term and short-term capital markets, Amtrak’s maintenance of a sufficient workforce, and Amtrak’s ability to effectively provide passenger train service;
   (8) lump sum expenditures of $10,000,000 or more and a budgeting plan;
   (9) estimates of long-term and short-term debt and associated principle and interest payments (both current and anticipated);
   (10) annual cash flow forecasts; and
   (11) a statement describing methods of estimation and significant assumptions.
(c) STANDARDS TO PROMOTE FINANCIAL STABILITY.—In meeting the requirements of subsection (b) with respect to a 5-year financial plan, Amtrak shall—
   (1) apply sound budgetary practices, in including reducing costs and other expenditures, improving productivity, increasing revenues, or combinations of such practices; and
   (2) use the categories specified in the financial accounting and reporting system developed under section 412 when preparing its 5-year financial plans prepared by Amtrak under this section to determine whether they meet the requirements of subsection (b) and may suggest revisions to any components thereof that do not meet those requirements.

SEC. 414. INDEPENDENT AUDITOR TO ESTABLISH METHODOLOGIES FOR AMTRAK ROUTE AND SERVICE PLANNING DECISIONS.
(a) REVIEW.—The Secretary of Transportation shall, in consultation with the Federal Railroad Administration, execute a contract to obtain the services of an independent auditor or consultant to research, define Amtrak’s past and current methods in intercity passenger rail route and services.
(b) RECOMMENDATIONS.—The independent auditor or consultant shall recommend objective methodologies for determining such routes and services, including the establishment of new routes, the elimination of existing routes, the increase or decrease in service, and the definition of new routes, the elimination of existing routes, and the movement of new services or frequencies over such routes.
(c) SUBMITAL TO CONGRESS.—The Secretary shall submit recommendations received under subsection (b) to Amtrak, the House of Representatives Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation.
(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of Transportation, for such purposes as determined by the Secretary, such sums as may be necessary to carry out this section.

SEC. 415. METRICS AND STANDARDS.
The Administrator of the Federal Railroad Administration shall, in consultation with Amtrak and host railroads, develop new or improve existing metrics and minimum standards for on-time performance, quality of intercity train operations, including on-time performance, on-board services, stations, facilities, equipment, and other services.
attending meetings of the Board or while engaged in duties related to such meetings or other activities of the Board pursuant to this Act, be entitled to receive compensation at the rate of $100 a day while away from their homes or regular places of business, Board members shall be allowed travel and actual, reasonable, and necessary expenses.

(i) Meetings Open to Public.—All meetings of the Board, its officers, the directors of the Corporation, including any committee of the Board, shall be open to the public under such terms, conditions, and exceptions as the Board may establish.

(j) Quorum and Proceedings.—Five members of the Board shall constitute a quorum for the Board to conduct business. All decisions of the Board shall be entered upon the records of the Board.

SEC. 503. Officers and Employees.

(a) In General.—The Rail Infrastructure Finance Corporation shall have a President, and such other officers as may be named and appointed by the Board for terms and at rates of compensation fixed by the Board. No individual shall be a citizen of the United States or an officer or employee of the Corporation if he is an officer of another corporation, partnership, or organization in which there is a direct or indirect financial interest. Board members shall recuse themselves from Board decisions that directly affect either them or entities they represent and other financial assistance provided to States by the Board.

SEC. 504. Purpose and Nonpolitical Nature of the Corporation.

(a) Stock.—The Rail Infrastructure Finance Corporation shall have no power to issue any shares of stock, or to declare or pay any dividends.

(b) No Private Benefit.—No part of the income or assets of the Corporation shall inure to the benefit of any director, officer, employee, or any other individual except as salary or reasonable compensation for services.

(c) Political Activity Prohibited.—The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.

(d) Conflicts of Interest.—No director, officer, or employee of the Corporation shall in any manner, directly or indirectly, participate in the deliberation upon the determination of any question affecting his or her personal interests or the interests of any corporation, partnership, or organization in which he or she is an officer, director, or employee, or in which there is a direct or indirect financial interest. Board members shall recuse themselves from Board decisions that directly affect either them or entities they represent and other financial assistance provided to States by the Board.

SEC. 505. Purpose and Activities of Corporation.

(a) Purpose.—The Rail Infrastructure Finance Corporation shall, through the issuance of bonds, provide for the purpose of providing capital for rail infrastructure projects, such bonds in accordance with section 54 of the Internal Revenue Code of 1986 and this title, shall provide financial support for rail transportation capital projects under title VI of this Act.

(b) Bond Issuance Authority.—(1) In General.—In order to carry out its purposes, the Corporation is authorized to issue qualified rail infrastructure bonds (as defined in section 54(e) of the Internal Revenue Code of 1986) and any other bonds of the Corporation to finance such projects.

(2) Limitation.—The total face amount of the bonds outstanding on any date at any time may not exceed $30,000,000,000.

(3) No Federal Guarantee.—(A) Obligations Insured by the Corporation.—No obligation that is insured, guaranteed, or otherwise backed by the Corporation shall be deemed to be an obligation that is insured by the full faith and credit of the United States.

(4) Authority.—To carry out the foregoing purposes and engage in the foregoing activities, the Corporation shall have the usual powers conferred upon a nonprofit corporation under the laws of the State of Delaware.

(c) Securities Offered by the Corporation.—No debt or equity securities of the Corporation shall be deemed to be guaranteed by the full faith and credit of the United States.

(d) Authority.—To carry out the foregoing purposes and engage in the foregoing activities, the Corporation shall have the usual powers conferred upon a nonprofit corporation under the laws of the State of Delaware.

(e) Financial Assistance.—The Corporation shall be entitled to receive discretionary grants, contracts, gifts, contributions, or technical assistance from any department or agency of the Federal Government, but only to the extent permitted by law and to the extent necessary to carry out the purposes set forth in subsection (a) and the activities described in subsection (b).

(f) Status Under Federal Securities Laws.—(1) In general.—For purposes of the Securities Act of 1933, the Securities Exchange Act of 1934 or the Trust Indenture Act of 1939, the Rail Infrastructure Finance Corporation shall be deemed an agency or instrumentality of the United States or any State or Territory thereof or an entity described in section 3(a)(4) of the Securities Act of 1933 and shall not be entitled to rely on any exemption from those laws. Any security offered or sold or guaranteed by the Rail Infrastructure Finance Corporation shall not be offered or sold in reliance on any exemption from those laws.

(2) Financial Assistance.—The Corporation shall have the usual powers conferred upon a nonprofit corporation under the laws of the State of Delaware.

(3) Jurisdiction.—The Corporation shall be entitled to receive discretionary grants, contracts, gifts, contributions, or technical assistance from any department or agency of the Federal Government, but only to the extent permitted by law and to the extent necessary to carry out the purposes set forth in subsection (a) and the activities described in subsection (b).

SEC. 507. Administrative Matters.

(a) Budget.—The Rail Infrastructure Finance Corporation shall establish an annual budget for the Corporation, including the Rail Infrastructure Investment Account under sections 506 and 507, for each fiscal year, by the end of the month of January of each year, which shall be submitted to the Committee on Transportation and Infrastructure not later than 180 days after the date on which the Corporation is established. Under any law by which the Corporation is established, the Corporation shall implement the plan during the first fiscal year beginning after the period in which the plan is submitted to Congress.

(b) First Year Operations.—The Corporation may consult with representatives of State and local governments, railroads, and other similar entities.

(c) Federal Assistance.—The Corporation may consult with representatives of State and local governments, railroads, and other similar entities.

(d) Grants and Contract.—The Corporation may accept grants, contracts, gifts, contributions, or technical assistance from any department or agency of the Federal Government, but only to the extent permitted by law and to the extent necessary to carry out the purposes set forth in subsection (a) and the activities described in subsection (b).

(e) Financial Assistance.—The Corporation may accept discretionary grants, contracts, gifts, contributions, or technical assistance from any department or agency of the Federal Government, but only to the extent permitted by law and to the extent necessary to carry out the purposes set forth in subsection (a) and the activities described in subsection (b).

(f) Use of Account Funds.—Funds in the Rail Infrastructure Investment Account established under section 506 of each year shall be used in selecting, appointing, promoting, or otherwise backing the Corporation's obligations to comply with the requirements of this Act.

SEC. 508. Report to Congress.

(a) In General.—Not later than May 15 of each year, the Rail Infrastructure Finance Corporation shall submit an annual report for the fiscal year ending on September 30 of the preceding year to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. The report shall include a detailed and documented report of the Corporation's operations, activities, financial condition, and accomplishments under this title and such recommendations as the Corporation deems appropriate.

(b) Availability for Testimony.—The officers and directors of the Corporation shall be available to testify before the Committees with respect to the report or any other matter which such committees may determine.

SEC. 509. Administrative Matters.

(a) Budget.—The Rail Infrastructure Finance Corporation shall establish an annual budget for the Corporation, including the Rail Infrastructure Investment Account under sections 506 and 507, for each fiscal year, by the end of the month of January of each year, which shall be submitted to the Corporation to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure not later than 180 days after the date on which the Corporation is established. Under any law by which the Corporation is established, the Corporation shall implement the plan during the first fiscal year beginning after the period in which the plan is submitted to Congress.

(b) First Year Operations.—The Corporation may consult with representatives of State and local governments, railroads, and other similar entities.

(c) Federal Assistance.—The Corporation may consult with representatives of State and local governments, railroads, and other similar entities.

(d) Grants and Contract.—The Corporation may accept grants, contracts, gifts, contributions, or technical assistance from any department or agency of the Federal Government, but only to the extent permitted by law and to the extent necessary to carry out the purposes set forth in subsection (a) and the activities described in subsection (b).

(e) Financial Assistance.—The Corporation may accept discretionary grants, contracts, gifts, contributions, or technical assistance from any department or agency of the Federal Government, but only to the extent permitted by law and to the extent necessary to carry out the purposes set forth in subsection (a) and the activities described in subsection (b).

(f) Use of Account Funds.—Funds in the Rail Infrastructure Investment Account established under section 506 of each year shall be used in selecting, appointment, promotion, or otherwise backing the Corporation's obligations to comply with the requirements of this Act.

(g) Federal Assistance.—The Corporation may accept discretionary grants, contracts, gifts, contributions, or technical assistance from any department or agency of the Federal Government, but only to the extent permitted by law and to the extent necessary to carry out the purposes set forth in subsection (a) and the activities described in subsection (b).

(h) Use of Account Funds.—Funds in the Rail Infrastructure Investment Account established under section 506 of each year shall be used in selecting, appointment, promotion, or otherwise backing the Corporation's obligations to comply with the requirements of this Act.

SEC. 510. Non-Federal Contributions.—The Board shall deposit all non-Federal contributions received into the Account. For so long as the Rail Infrastructure Finance Corporation is in existence, the Corporation shall have the usual powers conferred upon a nonprofit corporation under the laws of the State of Delaware.

SEC. 511. Establishment.—The Board of Directors for the Corporation shall establish an account to be known as the Rail Infrastructure Investment Account.

SEC. 512. Deposit of Bond Proceeds.—The Corporation shall deposit the proceeds of sales of any bonds issued under section 54 of the Internal Revenue Code of 1986 into the Account.

SEC. 513. Use of Non-Federal Contributions.—The Board shall deposit all non-Federal contributions received into the Account.

SEC. 514. Disbursements.—The Board may make available and may disburse, during the first fiscal year beginning after the date of enactment of this Act and during each succeeding fiscal year thereafter, such funds as may be available for obligation and expenditure from the Account.

SEC. 515. Use of Account Funds.—Funds in the Account shall be used by the Corporation for investment purposes through the trust established under section 508 to generate an economic benefit.

(i) To repay the principal of the bonds at their maturity; and
(ii) to pay the administrative costs of the Corporation and the Rail Infrastructure Finance Trust under section 508; and

(2) shall, to the extent of the net spendable proceeds, be held in and managed by the Rail Infrastructure Finance Trust established under section 508 and be available for distribution as grants of financial assistance under this section.

(6) **Net spendable proceeds defined.**—In this subsection, the term ‘net spendable proceeds’, with respect to the Rail Infrastructure Finance Trust established under section 508 and be available for distribution as grants of financial assistance under this section, means the proceeds in the account, be held in the Rail Infrastructure Finance Trust, equal to the excess of—

(A) the total amount in such Account, over

(B) the amount in such Account that is needed for uses under paragraph (5)(A).

(7) **Definitions and rules.**—

(1) IN GENERAL.—The account of the Corporation shall be audited annually in accordance with generally accepted auditing standards by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State or other political subdivision of the United States. The audits shall be conducted at the place or places where the accounts of the Corporation are normally kept. All books, accounts, financial records, reports, audits, other papers, things of value or property belonging to or in use by the Corporation and necessary to facilitate the audits shall be made available to the person or persons selected by the independent auditors; and full facilities for verifying transactions with the balances or securities held by depositories, fiscal agents and custodians shall be afforded to such independent auditors.

(2) **Audit report.**—The report of each such independent audit shall be included in the annual report required by section 506. The audit report shall reflect the accuracy of the accounts to the audit and include such statements as are necessary to present fairly the Corporation’s assets and liabilities, surplus or deficit, with an analysis of the changes therein during the year, supplemented in reasonable detail by a statement of the Corporation’s income and expenses during the year, and a statement of the sources and application of funds, together with the independent auditor’s opinion of those statements.

(3) **Interpretations under Act.**—Not later than 1 year after the date of the enactment of this Act, the Corporation shall develop accounting principles which shall be used uniformly by all entities receiving funds under this Act, taking into account organizational differences among various categories of such entities. Such principles shall be designed to account fully for all funds received and expended for purposes of this Act by such entities.

(4) **Requirements for recipients.**—Each entity receiving funds under this Act shall—

(A) keep its books, records, and accounts in such form as may be required by the Corporation;

(B) if neither

(i) undergo an annual audit by independent certified public accountants or independent licensed public accountants certified or licensed by a regulatory authority of a State, nor

(ii) submit a financial statement in lieu of the audit required by subparagraph (A), if the Corporation determines that the cost burden of such an audit or financial statement is excessive, in light of the financial condition of such entity; and

(C) furnish biennially to the Corporation a copy of the audited or unaudited financial statements required pursuant to the subparagraph (B), as well as such other information regarding finances (including an annual financial report) as the Corporation may require.

(5) **Additional recordkeeping.**—Any recipient of assistance by grant or contract shall, during the term of the assistance, and for 3 years after such assistance is terminated by such recipient of such assistance, that total cost of the project or undertaking in connection with which such assistance is given or used, and the manner and nature of that portion of the cost of the projects or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(6) **Corporation or any of its duly authorized representatives shall have access to any books, documents, papers, and records of any recipient of assistance for the purpose of auditing and examining all funds received from the Corporation.

(7) **Public inspection.**—The Corporation shall maintain the information described in paragraphs (4), (5), and (6) at its offices for public inspection and copying for at least 3 years, in accordance with such reasonable guidelines as the Corporation may issue. This public file shall be updated regularly.

**SECTION 508. RAIL INFRASTRUCTURE FINANCE TRUST**

(a) **Establishment.**—The Board of Directors of the Rail Infrastructure Finance Corporation shall establish the Rail Infrastructure Finance Trust from the assets in the Trust as assets of the Trust and the duties of the Trustee, respectively (hereafter in this section referred to as the "Trust") as a trust domiciled in the State of Delaware before the issuance of bonds under section 505(b). The Trust shall, to the extent not inconsistent with this Act, be subject to the laws of the State of Delaware that are applicable to trusts. The Trust shall manage and invest the assets in the account, pursuant to such reasonably prudent guidelines as the Corporation may issue. This public file shall be updated regularly.

(b) **Appointments.**—The Board of Directors shall appoint to the Board of Trustees—

(A) 3 members of the Board of Directors of the Rail Infrastructure Finance Corporation, for bond repayment and administrative expenses; and

(B) a Board of Trustees, to serve as the Board of Directors of the Trust from the assets in the Trust.

(6) **Record transfer.**—The transferor of the assets to the Board of Directors shall discharge the duties of the Transferor and the duties of the Trustee, respectively (including the voting of proxies), with respect to the assets of the Trust solely in the interests of the Rail Infrastructure Finance Corporation and the programs funded under this Act.

(c) **Board of Trustees.**—The Board of Directors shall appoint to the Board of Trustees—

(A) 3 members of the Board of Directors of the Rail Infrastructure Finance Corporation, for bond repayment and administrative expenses; and

(B) a Board of Trustees, to serve as the Board of Directors of the Trust from the assets in the Trust.

(7) transfer net spendable proceeds to the Board of Directors to be used for grants under title VI of this Act after determining that adequate trust funds are available, or that there is a trust income stream sufficient to allow the Board of Trustees to meet its obligations under paragraphs (5) and (6).
(A) deal with the assets of the Trust in the Trustee’s own interest or for the Trustee’s own account;

(B) act in an individual or in any other capacity, in any transaction involving the assets of the Trust on behalf of a party (or represent interests adverse to) to the interests of the Trust and the Rail Infrastructure Finance Corporation; or

(C) receive any consideration for the Trustee’s own benefit from any party dealing with the assets of the Trust.

(3) EXCLUSIVE PROVISIONS AND INSURANCE.—Any provision in an agreement or instrument that purports to relieve a Trustee from responsibility or liability for any responsibility, obligation, or duty under this Act shall be void. Nothing in this paragraph shall be construed to preclude—

(A) the Trust from purchasing insurance for its Trustees or for itself to cover liability or losses occurring by reason of the act or omission of any person who handles funds or other property of the Trust (hereafter in this section referred to as “Trustee”) for his own account; or

(C) an employer or any employee organization from purchasing insurance to cover potential liability of 1 or more Trustees with respect to their fiduciary responsibilities, obligations, and duties under this section.

(4) TRUSTEES, EMPLOYEES.—(A) REQUIREMENT.—Each Trustee and every person who handles funds or other property of the Trust (hereafter in this section referred to as “Trustee official”) shall be bonded.

The bond shall provide protection to the Trust against loss by reason of acts of fraud or dishonesty on the part of any Trustee official, directly or through the connivance of others.

(B) AMOUNT.—The amount of the bond for a Trustee official under this paragraph shall be fixed at the beginning of each fiscal year of the Trust by the Board of Directors of the Rail Infrastructure Finance Corporation. The amount required for the performance of the duties of any Trustee official shall be 10 percent of the amount of the funds administered by the Trust.

(C) UNLAWFUL CONDUCT.—It shall be unlawful for—

(i) any Trust official to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of the Trust or of the Trustee’s own funds or accounts; or

(ii) any person to procure any bond required by this subsection from any surety or other company; or through any agent or broker in whose business operations such person has any control or significant financial interest, direct or indirect.

(5) ADMINISTRATIVE MATTERS.—(1) AUTHORITY.—The Board of Trustees shall have the authority to make rules to govern its operations, employ professional staff, and contract with outside advisors (including the Rail Infrastructure Finance Corporation) to provide legal, accounting, investment advisory, or other services necessary for the proper administration of this section. In the case of a contract for investment advisory services, compensation for such services shall be paid on a fixed contract fee basis or on such other terms and conditions as are customary for such services.

(a) QUORUM AND PROCEEDINGS.—Three members of the Board shall constitute a quorum for the Board to conduct business. Investment guidelines shall be adopted by a unanimous vote of the entire Board of Trustees. All decisions of the Board of Trustees shall be decided by a majority vote of the quorum present. All decisions of the Board of Trustees shall be entered upon the records of the Trust.

(b) COMPENSATION OF TRUSTEES AND EMPLOYEES.—The salaries of the Trustees are subject to the limitations of section 502(b) of this Act.

(c) COMPENSATION ARRANGEMENTS.—The Board of Trustees may compensate investment advisory service providers and employees of the Board of Trustees for their services.

(6) CONSTRUCTION.—Sections 501 of the Internal Revenue Code of 1986 are applicable for purposes of this Act.

(7) REQUIREMENT FOR ANNUAL AUDIT.—The Trust shall annually engage an independent qualified public accountant to audit the financial statements of the Trust as the Rail Infrastructure Finance Corporation required under section 506. The management report under this paragraph shall include the following matters:

(A) A statement of financial position.

(B) A statement of income and expenses.

(C) A statement of cash flows.

(D) A statement on internal accounting and administrative control systems.

(E) The report resulting from an audit of the financial statements of the Trust conducted under paragraph (1).

(F) Any other information necessary to inform Congress about the operations and financial condition of the Trust.

(h) ENFORCEMENT.—The Rail Infrastructure Finance Corporation may commence a civil action—

(1) to enjoin any act or practice by the Trust, its Board of Trustees, or its employees or agents that violates any provision of this title; or

(2) to obtain other appropriate relief to redress such violations, or to enforce any provisions of this Act.

(i) EXEMPTION FROM TAX FOR RAIL INFRASTRUCTURE FINANCE TRUST.—Subsection (c) of section 561 of the Internal Revenue Code of 1986 is amended by striking at the end the following new paragraph:

“(29) The Rail Infrastructure Finance Trust established under section 408 of the Act and Title IV of the Act;” and adding at the end the following new paragraph:

“(29) The Rail Infrastructure Finance Trust established under section 408 of the Act;”

SEC. 601. INTERCITY PASSENGER RAIL DEVELOPMENT GRANT PROGRAMS.

(a) GRANTS TO STATES.—The Board of Directors of the Rail Infrastructure Finance Corporation may make grants to a State, a group of States, or the National Railroad Passenger Corporation for, or in connection with, 1 or more intercity passenger rail projects that—

(1) in accordance with section 22504(a)(5) of title 49, United States Code, are listed in a State rail plan approved for such State under chapter 225 of such title; and

(2) as determined by the Board, would primarily benefit intercity passenger rail infrastructure or services or the development of passenger rail corridors (including high-speed rail corridors designated by the Secretary under section 104(d) of title 23, United States Code) and provide significant public benefits.

(b) PURPOSES ELIGIBLE FOR GRANT FUNDS.—The purposes for which grants may be made under subsection (a) are—

(i) projects that demonstrate a significant favorable impact on air or high-speed rail congestion, capacity, or safety;

(ii) projects that have significant environmental benefits.
SEC. 602. FREIGHT RAIL INFRASTRUCTURE DEVELOPMENT GRANT PROGRAM.

(a) GRANTS TO STATES.—The Board of Directors of the Rail Infrastructure Finance Corporation shall, by grant, provide financial assistance to a State or group of States for—

(1) for, or in connection with, 1 or more freight rail capital projects that—

(A) in accordance with section 22904(a)(5) of title 49, United States Code, are listed in a State rail plan approved for such State under chapter 225 of such title; and

(B) as determined by the Board, would primarily benefit freight rail transportation infrastructure or services, but also would provide significant public benefits; or

(2) for other freight rail projects that—

(A) are associated with the management of State rail programs and the development and updating of State rail plans under chapter 225 of title 49, United States Code; and

(B) are identified by the Board as having the potential to enhance freight rail public services or safety.

(b) PURPOSES.—The purposes for which grants may be made under this section are—

(1) Planning, including activities described in section 602(c)(1) of title 49, United States Code, and environmental impact studies.

(2) New rail line development, including infrastructure acquisition and construction of track and facilities.

(3) Track upgrades and restoration.

(4) Highway-rail grade crossing improvement or elimination.

(5) Track, infrastructure, and facility relocation.

(6) Intermodal facilities.

(7) Tunnel and bridge repair or replacement.

(8) Communications and signaling improvements.

(9) Environmental impact mitigation.

(10) Security improvements.

(11) Supplemental funding for direct loans or loan guarantees made under title V of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 821 et seq.) for projects described in the last sentence of section 520(b)(4) of such Act.

(12) Payment of credit risk premiums, to lower rates of interest, or to provide for a holiday on principal payments on loan or financing directly associated with capital projects described paragraphs (1) through (9).

(c) STATE GRANT FUNDING FORMULA.—Of the total amount reserved for a grant program under section 606(b)(2) for a fiscal year, there shall be reserved for each State (to fund grants made to such State under this section) the amount determined for such State in accordance with a formula prescribed by the Board to weigh equally for—

(1) the number of rail miles in active use in the State;

(2) the number of rail cars loaded in the State;

(3) the number of rail cars unloaded in the State; and

(4) the amount of grants made under this section solely to the National Railroad Passenger Corporation in a fiscal year.

(d) PREFERRED PROJECTS.—In selecting the projects to receive financial assistance under this section, the Board shall give preference to projects that—

(1) have commitments of funding from non-Federal entities, but also would provide significant public benefits; or

(2) have significant environmental benefits; or

(3) are performed by the National Railroad Passenger Corporation; or

(4) if a project is performed by a State, would primarily benefit freight rail transportation infrastructure or services, but also would provide significant public benefits; or

(5) have significant public benefits; or

(6) involve donated property interests or services.

(e) LIMITATIONS.—

(1) TWO-YEAR AVAILABILITY.—If any amount provided as a grant to a State under this section is not obligated or expended for the purposes described in subsection (a)(1) or (b) within 2 years after the date on which the grant is received, such amounts shall be returned to the Board for other freight rail capital projects under this section at the discretion of the Board.

SEC. 603. HIGH PRIORITY PROJECTS GRANT PROGRAM.

(a) GRANTS TO STATES.—The Board of Directors of the Rail Infrastructure Finance Corporation may, by grant, provide financial assistance to a State or group of States for—

(1) the purposes described in subsection (a)(1) and subparagraphs (A) and (B) of subsection (b) of this section; and

(2) the purposes described in subsection (a)(2) and subparagraphs (A) and (B) of subsection (b) of this section.

(b) LIMITATIONS.—

(1) FOR THE NEXT TWO FISCAL YEARS.—If any amount is provided as a grant to a State or the National Railroad Passenger Corporation under this section is not obligated or expended for the purposes described in subsection (a)(1) and subparagraphs (A) and (B) of subsection (b) of this section, the Board shall give preference to the projects that—

(A) are associated with the management of State rail programs and the development and updating of State rail plans under chapter 225 of title 49, United States Code;

(B) are identified by the Board as having the potential to enhance freight rail public services or safety;

(C) have commitments of funding from non-Federal entities, but also would provide significant public benefits; or

(D) involve donated property interests or services.

(c) PREFERRED PROJECTS.—In selecting the purposes for which grants may be made under this section, the Board shall give preference to projects that—

(1) have significant economic and employment impacts;

(2) have significant environmental benefits; or

(3) are performed by the National Railroad Passenger Corporation.

(d) AMTRAK ELIGIBILITY.—To receive a grant under this section, the National Railroad Passenger Corporation may, by grant, provide financial assistance to a State, a group of States, or the National Railroad Passenger Corporation for other freight rail infrastructure or services, but also would provide significant public benefits, or projects described paragraphs (1) through (9) of subsection (c).

(e) LIMITATIONS.—

(1) TWO-YEAR AVAILABILITY.—If any amount provided as a grant to a State or the National Railroad Passenger Corporation under this section is not obligated or expended for the minimum amount of the non-Federal contribution required for the project.

(2) Projects for the next two fiscal years.

(3) Projects that have commitments of funding from the Federal Government, but also would provide significant public benefits, or projects described paragraphs (1) through (9) of subsection (c).

(4) Projects that have significant public benefits, or projects described paragraphs (1) through (9) of subsection (c).

(5) CANCELLATION OF GRANTS.—If any amount provided as a grant to a State under this section is not obligated or expended for the purposes described in subsection (a)(1) or (b) within 2 years after the date on which the State received the grant, such amounts shall be returned to the Board for other freight rail capital projects under this section at the discretion of the Board.

SEC. 604. RAIL HOLIDAY LOAN PROGRAM.

(a) APPLICABILITY.—The Corporation may, under this section, make loans to a State or group of States for—

(1) the purposes described in subsection (a)(1) and subparagraphs (A) and (B) of subsection (b) of this section; and

(2) the purposes described in subsection (a)(2) and subparagraphs (A) and (B) of subsection (b) of this section.

(b) PERIOD OF AVAILABILITY.—The domestic holiday loan program under this section is available for—

(1) THREE-YEAR RESERVATION.—The amount reserved for grants made under this section shall be available for projects developed under section 22504(a)(5) of title 49, United States Code, or may submit an independent application for a grant for any eligible project under this section. Any such application request shall be subject to the same selection criteria as apply for grants under this section to projects of States, except the criteria set forth in subsection (a)(1) and subparagraphs (A) and (B) of subsection (b) of this section.

(2) TWO-YEAR AVAILABILITY.—If any amount provided as a grant to a State under this section is not obligated or expended for the purposes described in subsection (a)(1) and subparagraphs (A) and (B) of subsection (b) of this section, the amount determined for such State under this section is not obligated or expended for the grant program under section 606(b)(2) for the next fiscal year.

(c) PREFERRED PROJECTS.—In selecting the projects to receive financial assistance under this section, the Board shall give preference to—

(1) projects that—

(A) are associated with the management of State rail programs and the development and updating of State rail plans under chapter 225 of title 49, United States Code;

(B) are identified by the Board as having the potential to enhance freight rail public services or safety;

(C) have commitments of funding from non-Federal entities, but also would provide significant public benefits; or

(D) involve donated property interests or services.

(d) AMTRAK ELIGIBILITY.—To receive a grant under this section, the National Railroad Passenger Corporation may, by grant, provide financial assistance to a State or group of States for—

(1) the purposes described in subsection (a)(1) and subparagraphs (A) and (B) of subsection (b) of this section; and

(2) the purposes described in subsection (a)(2) and subparagraphs (A) and (B) of subsection (b) of this section.

(e) LIMITATIONS.—

(1) TWO-YEAR AVAILABILITY.—If any amount provided as a grant to a State or the National Railroad Passenger Corporation under this section is not obligated or expended for the minimum amount of the non-Federal contribution required for the project.

(2) Projects for the next two fiscal years.

(3) Projects that have commitments of funding from the Federal Government, but also would provide significant public benefits, or projects described paragraphs (1) through (9) of subsection (c).

(4) Projects that have significant public benefits, or projects described paragraphs (1) through (9) of subsection (c).

(5) CANCELLATION OF GRANTS.—If any amount provided as a grant to a State under this section is not obligated or expended for the purposes described in subsection (a)(1) or (b) within 2 years after the date on which the State received the grant, such amounts shall be returned to the Board for other freight rail capital projects under this section at the discretion of the Board.

SEC. 605. RAIL HOLIDAY LOAN PROGRAM.

(a) APPLICABILITY.—The Board of Directors of the Rail Infrastructure Finance Corporation may, by grant, provide financial assistance to a State, a group of States, or the National Railroad Passenger Corporation for other freight rail infrastructure or services, but also would provide significant public benefits, or projects described paragraphs (1) through (9) of subsection (c).

(b) LIMITATIONS.—

(1) FOR THE NEXT TWO FISCAL YEARS.—If any amount is provided as a grant to a State or the National Railroad Passenger Corporation under this section is not obligated or expended for the purposes described in subsection (a)(1) and subparagraphs (A) and (B) of subsection (b) of this section, the Board shall give preference to the projects that—

(A) are associated with the management of State rail programs and the development and updating of State rail plans under chapter 225 of title 49, United States Code;

(B) are identified by the Board as having the potential to enhance freight rail public services or safety;

(C) have commitments of funding from non-Federal entities, but also would provide significant public benefits; or

(D) involve donated property interests or services.

(c) PREFERRED PROJECTS.—In selecting the projects to receive financial assistance under this section, the Board shall give preference to—

(1) projects that—

(A) are associated with the management of State rail programs and the development and updating of State rail plans under chapter 225 of title 49, United States Code;

(B) are identified by the Board as having the potential to enhance freight rail public services or safety;

(C) have commitments of funding from non-Federal entities, but also would provide significant public benefits; or

(D) involve donated property interests or services.

(d) AMTRAK ELIGIBILITY.—To receive a grant under this section, the National Railroad Passenger Corporation may, by grant, provide financial assistance to a State or group of States for—

(1) the purposes described in subsection (a)(1) and subparagraphs (A) and (B) of subsection (b) of this section; and

(2) the purposes described in subsection (a)(2) and subparagraphs (A) and (B) of subsection (b) of this section.

(e) LIMITATIONS.—

(1) TWO-YEAR AVAILABILITY.—If any amount provided as a grant to a State or the National Railroad Passenger Corporation under
(1) is not physically connected to rail systems in the continental United States; and
(2) may not otherwise qualify for assistance under section 601 or 602 due to the conventional nature of the rail system, including the low infrastructural density in that State due to the unique character-
tistics of the geography of that State or other relevant considerations, as determined by the Board.
(c) Applications.—To seek a grant under this title, an applicant or any successor to the applicant shall file an application with the Board.
(d) Procedure for Grant Award.—The Board shall prescribe procedures and schedules for the awarding of grants. Each application for a grant under this title, including application and qualification procedures and a record of decision on applicant eligibility. The procedures shall include the establishment of eligibility requirements, the terms of the grants, and the criteria for determining the amount of the grants.
(e) Domestic Buying Preference.—(1) Requirement.—(A) In general.—In carrying out a contract for a project under this title, the contractor shall purchase only—
(i) unmanufactured articles, material, and supplies mined, produced, or manufactured in the United States; or
(ii) manufactured articles, material, and supplies manufactured in the United States substantially from articles, material, or supplies mined, produced, or manufactured in the United States.
(B) Minimum amount.—Subparagraph (1) applies only to a purchase in an amount that is not less than $1,000,000.
(2) Exemptions.—On application of a recipient, the Board may exempt a recipient from the requirement of this subsection if the Board decides that, for particular articles, material, or supplies—
(A) such requirements are inconsistent with the public interest;
(B) the cost of imposing the requirements is unreasonable; or
(C) the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States; or
(D) for reasons of national interest, particularly the security of the United States; or
(E) for reasons of economic necessity.
(f) Flexible.—Notwithstanding any other provision of this title, amounts made available under section 506 may be combined and used in a manner that significantly ben-
efit either freight rail service, intercity pas-
senger rail service, or both.
(g) Suballocation.—A State may allocate funds under this section to any entity described in paragraph (1) of this subsection.
(h) Grant Conditions.—(1) Requirement.—(A) In general.—The Board shall require that any grant made under this title contain such information as the Board determines is necessary for the purpose of ensuring compliance with the requirements of this section.
(B) Grant awards.—The Board shall prescribe procedures and schedules for the awarding of grants.
(i) Accessibility.—In awarding grants to States for eligible projects under this section, the Board shall limit the amount of any grant made for a particular project in a fiscal year to not more than 20 percent of the total amount of the funds available for grants under this section for that fiscal year.
(j) Funding.—Amounts reserved for grants for a fiscal year under section 506(b)(3) shall be available for grants under this section.
(k) Authorization.—The proceeds of a grant made for a project under this title may be used to defray the costs of the project or to reimburse the recipient for the costs of the project paid by the recipient.
(l) Non-Federal contribution.—The proceeds of any grant for a project under this title may not be used to defray the costs of the project or to reimburse the recipient for the costs of the project paid by the recipient.
(m) Grant conditions.—(1) Requirement.—(A) In general.—In carrying out a project funded in whole or in part with a grant under this title, the grant recipient shall purchase only—
(i) unmanned aircraft articles, material, and supplies mined, produced, or manufactured in the United States; or
(ii) manufactured articles, material, and supplies manufactured in the United States substantially from materials, articles, material, or supplies mined, produced, or manufactured in the United States.
(B) Minimum amount.—Subparagraph (1) applies only to a purchase in an amount that is not less than $1,000,000.
(2) Exemptions.—On application of a recipient, the Board may exempt a recipient from the requirement of this subsection if the Board decides that, for particular articles, material, or supplies—
(A) such requirements are inconsistent with the public interest;
(B) the cost of imposing the requirements is unreasonable; or
(C) the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States; or
(D) for reasons of national interest, particularly the security of the United States; or
(E) for reasons of economic necessity.
set forth in subparagraphs (A) through (D) of paragraph (1) as described in subparagraph (A) of this paragraph, the parties shall select an arbitrator. If the parties are unable to agree on such selection within 5 days, either or both parties shall notify the National Mediation Board, which shall provide a list of seven arbitrators with experience in arbitrating railroad labor disputes. Within 5 days after such notification, the parties shall alternate strike names from the list until only 1 name remains, and that name shall serve as the neutral arbitrator. Within 45 days after selection of the arbitrator, the arbitrator shall conduct a hearing on the dispute and shall render a decision with respect to each unresolved issue among the matters set forth in subparagraphs (A) through (D) of paragraph (1). This decision shall be final, binding, and conclusive upon the parties. The salary and expenses of the arbitrator shall be borne equally by the parties; all other expenses shall be paid by the party incurring them. (3) SERVICE COMMISSION.—A replacing entity under this subsection shall commence service only after an agreement is entered into with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1) or the decision of the arbitrator has been rendered.

(4) SUBSEQUENT REPLACEMENT OF SERVICE.—If the replacement of existing rail passenger service takes place within 3 years after the replacing entity assumes intercity passenger service, the replacing entity shall notify the collective bargaining agent or agents for the employees of the predecessor provider that enters into an agreement with respect to the matters set forth in subparagraph (A) through (D) of paragraph (1) or the decision of the arbitrator has been rendered.

(d) INAPPLICABILITY TO CERTAIN RAIL OPERATIONS.—Nothing in this section applies to—

(1) passenger transportation (as defined in section 2102(6) of title 49, United States Code) operations of a State or local government authority (as those terms are defined in section 2102(11) and 2106(1), respectively, of that title) eligible to receive financial assistance under section 5307 of that title, or to its contractor performing services in connection with commuter rail passenger operations (as so defined); or

(2) the Alaska Railroad or its contractors.

(3) The National Railroad Passenger Corporation is to railroad right-of-way and facilities under current law for projects funded under this title where train operating speeds do not exceed 79 miles per hour.

SEC. 606. GRANT PROGRAM FUNDING.

(a) ANNUAL RESERVATION OF FUNDS.—Each fiscal year, the Board of directors of the Rail Infrastructure Finance Corporation Board shall reserve for grants under each of the grant programs authorized under sections 601, 602, and 603 the amount determined by multiplying the potential of the rail infrastructure preservation, high-speed intercity passenger rail, and freight rail investment—then the public sector, through the Federal Government and the States, shall fund infrastructure development grant program under section 602, 40 percent.

(2) FREIGHT INFRASTRUCTURE DEVELOPMENT GRANT PROGRAM.—For the freight infrastructure development grant program under section 602, 40 percent.

(4) HIGH PRIORITY PROJECTS GRANT PROGRAM.—For the high-priority projects grant program under section 606, 40 percent.

(b) APPLICABLE PERCENT.—The percent applicable to a grant program under subsection (a) is as follows:

(1) INTERCITY PASSENGER RAIL DEVELOPMENT GRANT PROGRAM.—For the intercity passenger rail development grant program under section 601, 40 percent.

(2) FREIGHT INFRASTRUCTURE DEVELOPMENT GRANT PROGRAM.—For the freight infrastructure development grant program under section 602, 40 percent.

(4) HIGH PRIORITY PROJECTS GRANT PROGRAM.—For the high-priority projects grant program under section 606, 40 percent.

TITLE VII—AUTHORIZATION OF APPROPRIATIONS

SEC. 701. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated $5,000,000 for fiscal year 2004 for the establishment and administration costs of the Rail Infrastructure Finance Corporation, including the Rail Infrastructure Finance Trust.

Mr. CARPER. Mr. President, I rise today to join Senators Hollings, Collins, Specter, Jeffords and Lautenberg in introducing "ARRIVE 21," the American Railroad Revitalization, Investment, and Enhancement Act of the 21st Century. ARRIVE 21 is a comprehensive proposal that creates a new public/private partnership to fund rail infrastructure development, reauthorizes and improves Amtrak, and enhances Federal and State rail policy and planning efforts.

As our Nation faces a mobility crisis of staggering proportions, with freight movements expected to double and our highways and airways already overrun with congestion, ARRIVE 21 will give our States a new and powerful tool to unlock the full potential of passenger rail, bringing high-speed rail to viable corridors across the country while providing capital funding for freight rail projects that deliver public benefits. Today's passenger and freight railroads are already essential components of our surface transportation system and I believe that greater use of rail offers one of the best opportunities to augment the capacity of our existing transportation network, while benefitting the environment by reducing our dependency on foreign oil.

Historically, railroads have been built, maintained and operated outside of the publicly funded programs that finance our other transportation modes, relying almost exclusively on the private sector to fund their infrastructure. However, today's railroads face restricted access to capital and capacity constraints that limit service quality and expansion, all while facing ever-growing modal competition for fewer dollars available for transportation investments. The Texas Transportation Institute's "Urban Mobility Report," which looks at transportation mobility in 75 cities of varying sizes, concludes that the average annual transportation delay time per person climbed from "16 hours in 1982 to 60 hours in 2001" due to the congestion of our surface system. A safe, quality and high-speed intercity passenger service, especially in intercity corridors of 500 miles or less where rail can offer competitive trip times, offers a tremendous opportunity to relieve such congestion by shifting travelers who currently drive and fly onto trains. Today, roughly 80 percent of all trips of more than 100 miles are less than 500 miles in length. Successful rail corridors in California, the Pacific Northwest, and in the Northeast have shown that rail can be viable option for traveling long distances while capturing significant market share and in some cases becoming the dominant mode when frequent and high-quality service
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is offered. Where intercity passenger rail is successful, congestion in our airports and on our highways is reduced, smart development is induced, jobs are created and citizens’ safety and quality of life are improved.

These facts lead to the obvious conclusion that leveraging modest public investment in our rail system will reap benefits to our entire surface transportation system and to our Nation as a whole. In my State of Delaware, we have clearly seen the value that high-quality passenger and freight rail service brings and we have made significant investments to upgrade both Amtrak facilities and infrastructure and enhance freight capacity for the railroads that serve Delaware industries. But despite of all the good reasons to invest in our railroad infrastructure, Delaware and other States are limited in what they can do on their own without the benefit of the financing partnership that our Federal Government provides for all other transportation investments. ARRIVE 21 is designed to change that.

ARRIVE 21 will empower our States to make rational investments in our rail system when such investments provide public benefits. Through the creation of the Rail Infrastructure Finance Corporation (RIFCO) a non-profit, non-Federal, congressionally-chartered corporation that can issue $30 billion in tax-credit bonds, States will have a new partner to assist them in undertaking rail capital projects. RIFCO will award, using a portion of the proceeds from the bond issuance, discretionary capital matching grants to States and Amtrak for high-speed rail and intercity passenger railroad projects and State formulas matching grants for freight capital projects. Prior to issuing grants, a portion of the bond proceeds will be deposited in a secure and continually monitored fund that will be managed by the RIFCO investment trust to retire the debt over the life of the bonds.

Passenger and freight rail projects eligible for funding through RIFCO include planning and environmental review, rail line rehabilitation, upgrades and development, safety and security projects, passenger equipment acquisition, station improvements, and intermodal facilities development. In order to receive grants, States must prepare a State rail plan and provide a 20 percent non-Federal match to RIFCO, thereby replicating the cost sharing relationship our States currently have for investments in other modes.

ARRIVE 21 will promote jobs and economic growth through the rehabilitation and expansion of rail infrastructure, the manufacture and procurement of new rail equipment and the enhancement of mobility and development in and around cities and towns. Our bill provides a total $42 billion for U.S. rail infrastructure and service to expand high-speed passenger rail in congested corridors, strengthen Amtrak, and improve freight mobility. Such investment will revitalize the U.S. rail supply industry and create thousands of jobs. According to U.S. Transportation Secretary Mineta, every $1 billion invested in transportation infrastructure creates roughly 2,000 jobs. That means ARRIVE 21 stands to create roughly 2 million jobs, if enacted.

ARRIVE 21 reauthorizes and reforms Amtrak. Designed to improve upon Amtrak’s current congressional and State funding processes our bill authorizes approximately $1.5 billion annually for 6 years to Amtrak for the basic capital and operating needs required to run and maintain the current system. In addition to these funds, the States and Amtrak can pursue major capital improvements and equipment acquisition through RIFCO, with reductions in Amtrak’s capital authorizations for projects funded through RIFCO capital grants. Through this process, the amount needed for annual Amtrak appropriation for capital will be reduced over the life of the reauthorization, as RIFCO begins to finance a growing share of Amtrak’s capital needs. As is the case today, operating costs for longer distance travel will be covered by Amtrak annual appropriations, while States will share the costs with Amtrak for operations of short distance corridors.

For such shot distance corridors, ARRIVE 21 authorizes $515 million in 2004 for rail security threat assessments and grants through the Department of Homeland Security.

In total, ARRIVE 21 provides the needed funding for the more than $5 billion in rail infrastructure investment cited by AASHTO Bottom Line Report without involving the Highway Trust Fund or sapping funds away from other important transportation priorities. This bill will provide our States and the Nation with a fiscally responsible and innovative opportunity to enhance our entire transportation system. We owe it to the American people to support this bill and move towards the type of high-speed, high-speed to reliability the rail service that Americans desire and deserve, while meeting the ever-growing demands that trade and our economy are placing on our freight system.

I ask my colleagues to join me in supporting ARRIVE 21.

Mr. JEFFORDS. Mr. President, I have frequently reiterated my conviction that investment in transportation is a means to an end. Our national transportation policy must be designed to view the outcomes we seek are a strong economy, safe and healthy communities, and a clean environment. A balanced transportation system, including a strong freight and passenger rail system, is necessary for us to attain these goals.

As ranking member of the Committee on Environment and Public Works, I have been highly involved in the Senate’s efforts to revitalize the nation’s surface transportation program. Over the past two years, I have traveled around the country, visiting local examples of national transportation challenges. I have heard criticisms and suggestions from dozens of transportation officials, users, and advocates.

In order to best serve the needs of this country, we must reauthorize our investment in an essential rail transportation system. I have often expressed my view that the success of our surface transportation program rests on four fundamental pillars:

First, asset management. We must maintain and preserve existing infrastructure. Second, we must enhance access and mobility, particularly for Americans living in our most congested urban areas.

The third pillar is freight and trade. We need new and improved facilities to accommodate the quantity of goods moving through our system.

Fourth, I believe that rail is the final component of a successful surface transportation system. We are not currently meeting the nation’s freight and passenger rail needs. We must invest in a modern national rail system, comparable to our highway and aviation systems. The bill that we are introducing today will help us achieve that goal.

The American Railroad Revitalization, Investment, and Enhancement
Act of the 21st Century (ARRIVE 21) strives to provide sustainable, meaningful, and continuous funding opportunities for states that want to improve and expand their rail systems. Currently, the federal government provides funding sources to assist states in their efforts to maintain and improve freight and passenger rail service. This bill creates a nonprofit, public-private partnership—the Rail Infrastructure Finance Corporation (RIFCO)—with the authority to issue $30 billion in credit for up to 15 years. With the resulting revenue, RIFCO will award capital grants to states and to Amtrak.

My State of Vermont has long displayed a commitment to maintaining an effective and efficient freight and passenger rail system. This legislation would provide Vermont a significant new source of revenue to fund capital projects such as rail line rehabilitation, safety and security projects, and development of multimodal facilities. In fact, grants awarded by RIFCO could be used to reimburse States for the capital investments they’ve already made, a provision that is particularly helpful to States, like Vermont, that have invested State money into eligible projects.

For Amtrak, this legislation introduces financial and policy commitments to dramatically improve passenger rail service in this country. We envision a future that includes a healthy and efficient passenger rail system and provides the resources to move Amtrak in that direction.

ARRIVE 21 authorizes approximately $1.5 billion per year, for six years, for capital and operating expenses. We have under-funded Amtrak for too long. This funding level will provide Amtrak the resources it needs to address urgent infrastructure needs and system-wide service improvements.

Amtrak will also benefit from provisions in this bill that encourage long-term sustainability and enhanced operations. ARRIVE 21 requires improved accounting procedures and oversight. Additionally, states that currently share responsibility with Amtrak for supporting services through or within their states will see changes to equalize their cost burden. This bill requires that Amtrak, in collaboration with the Department of Transportation, adopt fair and uniform standards for cost sharing between service providers that states contract with Amtrak to provide.

ARRIVE 21 also directs an independent study to research Amtrak’s current and past procedures for determining intercity passenger rail routes and services. The study will recommend changes to that process to improve the efficiency, accessibility, and effectiveness of our national rail service.

I have long been a strong advocate for rail. I firmly believe that nationwide investment in freight and passenger rail infrastructure will invite rewards in the form of reduced congestion, improved environmental quality, and improved mobility options for our nation’s travelers. ARRIVE 21 encourages States, and the Federal Government, to more fully integrate freight and passenger rail into the surface transportation system. Improved rail planning policy, at both the Federal and State levels, will enhance the efficiency and longevity of our transportation system and will promote safe, efficient, and environmentally sound transportation.

Mr. LAUTENBERG. Mr. President, I am proud to be a cosponsor of ARRIVE-21. I believe rail is a vital component of our national transportation system, and investment in our Nation’s rail infrastructure is necessary for our economy, our security, and the effective and safe movement of people and goods in our country.

The importance of rail service became apparent in the Northeast long before the nation faced issues such as transportation planning and congestion issues that many other States are now just facing. These States are joining us northeasterners in looking to the Federal Government to provide the leadership needed to ensure that passenger rail is given the priority it deserves.

It took Federal money, not just gasoline taxes, to build the Dwight D. Eisenhower Interstate Highway System. It took Federal money to build our national rail infrastructure.

Here in the Northeast, the first part of the country to become densely populated, we faced congestion problems long ago, and passenger rail service became a mainstay. In the Northeast, we rely heavily on Amtrak’s high-speed service between Boston and Washington, D.C. The Northeast Corridor serves cities with four of the Nation’s seven most congested airports: Logan, LaGuardia, Newark, and Reagan National. Amtrak serves millions of passengers between New York and Washington than all of the airlines combined and, unlike airline passengers, rail travelers are able to stop in Trenton and Newark, New Jersey, and in other places along the way.

Next month, New Jersey Transit will open for service a new rail station in Secaucus, NJ. As a result of this opening, more than 15,000 cars will be diverted from our roads each day by 2010. That will reduce carbon monoxide emissions by nearly 70,000 tons each year. New Jersey riders who switch to rail because of this one station will cut their gasoline consumption by 1.3 million gallons each year.

Also, in this post-9/11 environment we have a new perspective about the national security interest in ensuring that there is more than one way to get from here to there, and this includes passenger rail. September 11 underscored just how important passenger rail is to America’s economy and security.

New Jersey’s economy is so dependent on passenger rail and mass transit as a result of being the most densely populated State in the Nation. New Jersey needs federal assistance for passenger rail infrastructure. But New Jersey is not alone. As metropolitan areas across the country continue to swell with people, our airports become more and more congested. I think the prudence of increasing our investment in another way to move people—passenger rail—has become more and more obvious. And ARRIVE 21 provides this investment opportunity.

The benefits of rail service are not limited to urban areas. In rural towns across America, passenger trains may be the only option for intercity travel for many people.

From 1987 through 2000, I was the Chairman or Ranking Member of the Senate Appropriations Subcommittee on Transportation. During that time, I helped to secure 10.3 billion dollars in operating funds for AMTRAK and an additional 2.2 billion dollars in tax-advantaged financing for capital improvements. Unfortunately, during that time, we have not been able to make the capital investments necessary to bring Amtrak’s infrastructure up to a state of good repair.

ARRIVE-21 gives the Federal Government the impetus to step up and take charge with a strong program to invest in our rail infrastructure. The States are interested, the traveling public is interested. This kind of investment will lay the tracks for the future of rail and Amtrak. We have travel options, provide a national security role, and support our economy.

For these reasons, I am proud to be a cosponsor ARRIVE-21.
legislation I am introducing today along with Senator BOXER ensures that consumers expectations will be preserved.

An important reason that Americans increasingly trust their cell phone service providers is that they have a greater sense of privacy on their cell phone numbers. For more than 20 years of cellular service, consumers have become accustomed to not having their wireless phone numbers available to the public. The protection of wireless telephone numbers is important. For example, wireless customers are typically charged for incoming calls. Without protections for wireless numbers, subscribers could incur large bills, or use up their allotted minutes of use, simply by receiving calls they do not want—from telemarketers and others. Because consumers often take their cell phones with them everywhere, repeated unwanted calls are particularly disruptive, and may even present safety concerns for those behind the wheel.

It may surprise my colleagues that today, no federal or state law or regulation prohibits a carrier from divulging your wireless telephone number. And with the industry poised to introduce wireless directory assistance services, it is important for Congress to act now to preserve the expectation of privacy that consumers have in their wireless phone numbers. Because wireless directory assistance offers great benefits to wireless consumers, and raises privacy concerns, the legislation I am introducing today strikes an important balance. It enables those consumers who want to be reached to be accessible, while providing privacy protections that are important to consumers.

First, this legislation permits wireless subscribers to choose not to be listed in wireless directory assistance databases. This feature gives consumers the ultimate ability to keep their wireless numbers private. Second, for those in the directory assistance database, the bill requires wireless providers to use systems that give users privacy protections and control over the use of their wireless numbers. These services must not divulge a subscriber’s wireless number (unless the subscriber consents to disclosure), the service must provide identifying information to the wireless subscriber so that the subscriber knows who is calling (if desired), and the service must give a subscriber the option of rejecting or accepting each incoming call. Finally, this legislation prohibits wireless carriers from charging any special fees to consumers who wish to receive the privacy protections provided by the bill. Customers should not have to pay extra for the privacy protections that they have come to expect. There should be no “privacy tax” for consumers to continue the privacy protection they have long enjoyed, and this bill ensures that will be the case.

I urge my colleagues to join me in supporting this important legislation. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

SEC. 1. SHORT TITLE. This Act may be cited as the “Wireless 411 Privacy Act”.

SEC. 2. FINDINGS. Congress finds that—

(1) there are roughly 150 million wireless subscribers in the United States, up from approximately 15 million subscribers just a decade ago;

(2) wireless phone service has proven valuable to millions of Americans because of its mobility, and the fact that government policies have expanded opportunities for new carriers to enter the market, offering more choices and even lower prices for consumers;

(3) in addition to the benefits of competition and mobility, subscribers also benefit from the fact that their wireless numbers are not publicly available; and

(4) up until now, the privacy of wireless subscribers has been safeguarded and thus vastly diminished the likelihood of subscribers receiving unwanted phone call interruptions on their wireless phones;

(b) measure, because their wireless contact information, such as their phone number, has never been publicly available in any directory assistance service database, or from any directory assistance service.

(5) the wireless industry has been poised to implement a directory assistance service that will enable calls to wireless subscribers, including subscribers who have not given such callers their wireless phone number;

(c) some wireless subscribers may find such directory assistance service useful, current subscribers deserve the right to choose whether they want to participate in such a directory;

(d) because wireless users are typically charged for incoming calls, consumers must be afforded the ability to maintain the maximum amount of control over how many calls they may expect to receive, and, in particular, control over the disclosure of their wireless phone number;

(e) current wireless subscribers who elect to participate, or new wireless subscribers who decline to be listed, in any new wireless directory assistance service database, including the service provider who also elect not to receive forward calls from any wireless directory assistance service database, should not be charged for exercising such rights;

(f) the marketplace has not yet adequately explained an effective plan to protect consumer privacy rights;

(g) Congress previously acted to protect the wireless location information of subscribers by enacting prohibitions on the disclosure of such sensitive information without the express prior authorization of the subscriber; and

(h) the wireless industry has not yet adequately explained an effective plan to protect consumer privacy rights.

SEC. 2. FINDINGS. Congress finds that—

(1) current subscribers mean any subscriber to a commercial mobile service, or any direct or indirect affiliate or agent of such a provider, who may include the wireless telephone number information of any new subscriber in a wireless directory assistance service database only if the commercial mobile service provider—

(i) provides a conspicuous, separate notice to the subscriber, the time of entering into an agreement to provide commercial mobile service, and at least once each calendar year thereafter, informing the subscriber of the right not to be listed in any wireless directory assistance service database; and

(ii) provides the subscriber with convenient mechanisms by which the subscriber may decline or refuse to participate in such database, including mechanisms at the time of entering into an agreement to provide commercial mobile service, in the billing of such service, and when receiving any connected call from a wireless directory assistance service.

(2) new subscribers mean any subscriber to a commercial mobile service, or any direct or indirect affiliate or agent of such a provider, who may include the wireless telephone number information of any new subscriber in a wireless directory assistance service database only if the commercial mobile service provider—

(i) provides a conspicuous, separate notice to the subscriber, the time of entering into an agreement to provide commercial mobile service, and at least once each calendar year thereafter, informing the subscriber of the right not to be listed in any wireless directory assistance service database; and

(ii) provides the subscriber with convenient mechanisms by which the subscriber may decline or refuse to participate in such database, including mechanisms at the time of entering into an agreement to provide commercial mobile service, in the billing of such service, and when receiving any connected call from a wireless directory assistance service.

(3) call forwarding—A provider of commercial mobile services, or any direct or indirect affiliate or agent of such a provider, may connect a calling party from a wireless directory assistance service to a commercial mobile service subscriber only if—

(i) such subscriber is provided prior notice of the calling party’s identity and is permitted to accept or reject the incoming call on a per-call basis;

(ii) such subscriber’s wireless telephone number information is not disclosed to the calling party; and

(iii) such subscriber is not an unlisted commercial mobile service subscriber.

(4) publication of directory information prohibited.—A provider of commercial mobile services, or any direct or indirect affiliate or agent of such a provider, may not publish, in printed, electronic, or other format, any contents of any wireless directory assistance service database, or any portion or segment thereof.

(5) no consumer fee for retaining privacy.—A provider of commercial mobile services may not charge any subscriber for exercising any of the rights under this paragraph.

(F) definitions.—For purposes of this paragraph—

(i) the term ‘current subscriber’ means any subscriber to a commercial mobile service as of the date when a wireless directory assistance service is implemented by a provider of commercial mobile service;

(ii) the term ‘new subscriber’ means any subscriber to commercial mobile service who becomes a subscriber after the date when a wireless directory assistance service is implemented by a provider of commercial mobile service, and includes any subscriber to a different provider of commercial mobile service.
service who subsequently switches to a new provider of commercial mobile service;

“(iii) the term ‘wireless telephone number information’ means the telephone number, electronic address or any other identifying information by which a calling party may reach a subscriber to commercial mobile services, and which is assigned by a commercial mobile service provider to such subscriber or to the directory assistance service database of such subscriber, and includes such subscriber’s name, phone number private.

“(iv) the term ‘wireless directory assistance service’ means a service for connecting calling parties to a subscriber of commercial mobile service when such calling parties themselves do not possess such subscriber’s wireless telephone number information; and

“(v) the term ‘calling party’s identity’ means the telephone number of the calling party or the name of subscriber to such telephone, or an oral or text message which provides sufficient information to enable a commercial mobile services subscriber to determine who is calling;

“(vi) the term ‘unlisted commercial mobile services subscriber’ means—

“(I) a current subscriber to commercial mobile services, and which is assigned by a commercial mobile service provider to such subscriber or to the directory assistance service database; and

“(II) a subscriber to commercial mobile service who has exercised the right contained in subparagraph (B)(ii) to decline or refuse to such inclusion.’’.

Mrs. BOXER. Mr. President, I am pleased to join Senator SPECTER in introducing the Wireless 411 Privacy Act of 2003.

About 150 million Americans subscribe to wireless telephone service. They are aware that their service provider can store a call log, which allows them to stay in touch with friends, family, and the workplace. As a cellular phone user myself, I value the privacy of my wireless number. I want to have control over who can reach me on my cell phone.

However, the wireless phone industry is planning to list customers in a wireless phone directory starting sometime next year. The Specter-Boxer bill would protect consumers by providing them with the right not to have their cell phone number listed in the directory and the right not to be charged a fee for being unlisted.

As we saw with the strong consumer support for the right to keep a cell phone when you switch carriers, consumers consider their cell phone number their property. It is not the property of the carrier to hand out to whomever the carrier wishes, and the carrier should not be allowed to charge consumers the right to keep that number private.

This is especially important when you consider that wireless users pay for both their incoming and outgoing calls. Having your number listed could easily lead to receiving calls that you did not want but for which you will have to pay. That seems wrong to me.

To date, the wireless phone industry has been unclear on how they will address these valid concerns when they move forward with their directory plans next year. To avoid any confusion or uncertainty, Congress must make clear to the cell phone companies that the rights of consumers to keep their cell phone numbers private is paramount.

B. Ms. STABENOW (for herself and Mr. GRAHAM of South Carolina). S. 1964. A bill to amend the Internal Revenue Code of 1986 to comply with the World Trade Organization rulings on the FSC/ETI benefit in a manner that preserves jobs and production activities in the United States, and for other purposes; to the Committee on Finance.

Ms. STABENOW. Mr. President, I rise today to introduce the Manufacturing Opportunities to Revitalize our Economy’s JOBS Act, or the MORE JOBS Act. We are facing a manufacturing job crisis in this country, and that is why I am introducing this bill to help our U.S. manufacturers to create manufacturing jobs here at home.

Since January of 2001, the State of Michigan has faced devastating losses in the manufacturing sector. While the U.S. has lost 3.3 million private sector jobs—2.5 million in the manufacturing sector, Michigan has lost 162,300 manufacturing jobs. That is 18 percent of the state’s manufacturing employment. In other words, 1 in 6 Michiganders has lost their manufacturing job in the last 2 years.

It is an unfortunate fact that Michigan is one of the leading states in the country in manufacturing job loss. Indeed, while the U.S. employment rate is currently around 7.6 percent, in the state of Michigan, the unemployment rate is currently around 7.6 percent. In some parts of Michigan, the unemployment rate is as high as 12 percent.

The people of Michigan and the people of the United States need relief to help revitalize our economy. In the midst of these troubling times, we are faced with a new challenge: complying with a World Trade Organization (WTO) decision finding that our Foreign Sales Corporations (FSC) and Extraterritorial Income (ETI) tax code must be reformed to meet international trade law requirements. I understand that our colleagues on the Senate Finance Committee have been and continue to work diligently on this issue. Our country is one that plays by the rules and we will ultimately fix our tax code.

The tax benefits of the FSC and ETI, however, are valued at nearly $50 billion over 10 years. We cannot just take away these benefits to our American manufacturers without creating new tax relief for them. The practical effect of that would be a $50 billion tax increase. And, that is why we must create a new tax credit for our U.S. manufacturers.

The MORE JOBS Act that I am introducing today lays out a vision on how I believe we should reform the code. First of all, it phases out the non-compliance FSC and ETI tax code over the next three years.

Then, to help our U.S. manufacturers, the bill creates a Manufacturers’ Tax Credit for domestic companies. A company, under my proposal, would be allowed to deduct 9 percent of its domestic production income before it has to figure its tax liability. In effect, this would result in a new tax rate for our U.S. manufacturers that are 1 percent lower than the rate of 35 percent. And, my bill would make this effective immediately, not phased in as others have suggested.

The credit would be extended to a wide array of companies—businesses, large businesses and agricultural cooperatives. So whether it is a small furniture manufacturer in western Michigan, a tool and die company in Grand Rapids, or one of our auto-makers in metro Detroit, companies will be rewarded for their domestic production. And, our farmers will benefit, too.

I often say that we in Michigan pride ourselves on what we make and what we grow. These two activities are vital to the economy and Michigan farmers would also benefit under my bill.

Farmers themselves, if they have at least one employee, will directly benefit under my bill, since they qualify for the tax benefit as manufacturers. In addition, agriculture cooperatives would also receive this tax benefit. Farmers often belong to an agricultural cooperative which is covered under my bill. Agricultural cooperatives do the processing, handling, storing, and marketing of farmers’ products. For example, a farmer will sell his specialty crop to the cooperative. The cooperative then takes the farmer’s crop and puts it with other farmers’ produce and then stores and prepares the produce for sale to a food processing company. The coop passes its profits on to the members of the cooperative based on the amount of business each member does with the cooperative. So the tax benefits for the cooperative can be passed-through to farmer members of the coop.

Finally, one of the cornerstones of my legislation is that my bill would create incentives for companies to keep jobs in the U.S. and to bring more jobs to our country. The MORE JOBS Act would encourage companies to keep their manufacturing in the U.S. by basing the amount of their tax credit on how much of their manufacturing is done in the U.S. Companies that have all of their manufacturing in the U.S. would receive the full 3 percent tax credit. Companies that have much of their manufacturing outside of the U.S. would receive a reduced credit in proportion to their U.S. manufacturing. While other proposals being circulated in Congress to eliminate this incentive, my bill would make this incentive permanent.

Why would we want to reward companies if they send their jobs overseas? We want to reward those who are committed to our economy, and putting Americans to work here at home.

I want to work closely with my colleagues to reform our manufacturing
By Mr. BAYH.

S. 25

To provide for the creation of private-sector-led Community Workforce Partnerships, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. BAYH. Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.

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

SEC. 1. SHORT TITLE.

This bill may be cited as the “Community Workforce Development and Modernization Partnership Act”.

SEC. 2. AUTHORIZATION.

(a) From amounts made available to carry out this Act, the Secretary of Labor (referred to in this Act as the “Secretary”), in consultation with the Secretary of Commerce and the Secretary of Education, shall award grants on a competitive basis to eligible entities described in subsection (b) to assist each entity to:

(1) improve those job skills that are necessary for employment by businesses in the industry in which the entity is established;

(2) help dislocated workers find employment; and

(3) upgrade the operating and competitive capacities of businesses that are members of the entity.

(b) ELIGIBLE ENTITIES.—An eligible entity described in this subsection is a consortium (either established prior to the date of enactment of this Act or established specifically to carry out programs under this Act) that—

(1) shall include—

(A) 2 or more businesses (or nonprofit organizations) representing businesses that are facing similar workforce development or business modernization challenges;

(B) labor organizations, if the businesses described in subparagraph (A) employ workers who are covered by collective bargaining agreements; and

(C) 1 or more businesses (or nonprofit organizations) that represent businesses with resources or expertise that can be brought to bear on the workforce development and business modernization challenges referred to in subparagraph (A) and (B);

(2) grants under this Act in any amount for any fiscal year; or

(f) maximum amount of grant.—No eligible entity shall, in carrying out the activities described in section 3, provide for development of, and tracking of performance according to, performance outcome measures.

(e) ADMINISTRATIVE COSTS.—Each eligible entity may use not more than 10 percent of the amount made available through a grant awarded under this Act for training and development activities for senior management, unless that entity certifies to the Secretary that the expenditures for the activities are—

(1) an integral part of a comprehensive modernization plan; or

(2) dedicated to team building or employee involvement programs.

(d) PERFORMANCE MEASURES.—Each eligible entity shall, in carrying out the activities described in subsection (b), provide for development of, and tracking of performance according to, performance outcome measures.

(c) SUPPORT FOR EXISTING OPERATIONS.—

(1) IN GENERAL.—In making grants under this Act, the Secretary may use a portion of the funds appropriated to carry out this Act for a fiscal year, to support the existing training and modernization operations of existing eligible entities.

(2) ENTITIES.—The Secretary may award a grant to an existing eligible entity for existing training and modernization operations only if the entity—

(A) currently offers (as of the date of the award of the grant) a combination of training, modernization, and business assistance services; and

(B) has demonstrated success in accomplishing the objectives of activities described in section 3.

(3) APPLICATION.—Paragraph (1) shall not apply to support for the expansion of training and modernization operations of existing eligible entities.

(4) DEFINITIONS.—In this subsection:

(A) EXISTING TRAINING AND MODERNIZATION ACTIVITY.—The term “existing training and modernization activities” means—

(b) OUTREACH AND PROMOTIONAL ACTIVITIES.—The Secretary may undertake such outreach and promotional activities as the Secretary determines will best carry out the objectives of this Act.

(c) LIMITATIONS ON EXPENDITURES.—The Secretary may not use more than 10 percent of the amount authorized to be appropriated under section 8 to carry out this section.

SEC. 4. APPLICATION.

To be eligible to receive a grant under section 2, an entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

SEC. 5. SEED GRANTS AND OUTREACH ACTIVITIES.

(a) SEED GRANTS.—The Secretary shall provide technical assistance and award financial assistance (not to exceed $150,000 per award) on such terms and conditions as the Secretary determines to be appropriate—

(1) to businesses, nonprofit organizations representing businesses, and labor organizations, for the purpose of establishing an eligible entity; and

(2) to entities described in paragraph (1) and established eligible entities, for the purpose of preparing such entities as may be required under section 4.

(b) OUTREACH AND PROMOTIONAL ACTIVITIES.—The Secretary may undertake such outreach and promotional activities as the Secretary determines will best carry out the objectives of this Act.

(c) LIMITATIONS ON EXPENDITURES.—The Secretary may not use more than 10 percent of the amount authorized to be appropriated under section 8 to carry out this section.

SEC. 6. LIMITATIONS ON FUNDING.

(a) REQUIREMENT OF MATCHING FUNDS.—The Secretary may not award a grant under this Act to an eligible entity unless such entity agrees that the entity will make available non-Federal contributions toward the costs of carrying out activities funded by that grant in an amount that is not less than $2 for each $1 of Federal funds made available through the grant.

(b) IN-KIND CONTRIBUTIONS.—The Secretary—

(1) shall, in awarding grants under this Act, give priority consideration to those entities whose members offer in-kind contributions; and

(2) may not consider any in-kind contribution in lieu of or as any part of the contributions required under subparagraph (1) in determining the amount of any grant awarded under this Act.

(c) SENIOR MANAGEMENT TRAINING AND DEVELOPMENT.—An eligible entity may not use any amount made available through a grant awarded under this Act for training and development activities for senior management, unless that entity certifies to the Secretary that the expenditures for the activities are—

(1) an integral part of a comprehensive modernization plan; or

(2) dedicated to team building or employee involvement programs.

(d) PERFORMANCE MEASURES.—Each eligible entity shall, in carrying out the activities described in section 3, provide for development of, and tracking of performance according to, performance outcome measures.

(e) ADMINISTRATIVE COSTS.—Each eligible entity may use not more than 10 percent of the amount made available through a grant awarded under this Act for administrative costs.

(f) MAXIMUM AMOUNT OF GRANT.—No eligible entity may receive—

(1) a grant under this Act in an amount of more than $1,000,000 for any fiscal year; or

(2) grants under this Act in any amount for more than 3 fiscal years.

(g) SUPPORT FOR EXISTING OPERATIONS.—

(1) IN GENERAL.—In making grants under this Act, the Secretary may use a portion of the funds appropriated to carry out this Act for a fiscal year, to support the existing training and modernization operations of existing eligible entities.

(2) ENTITIES.—The Secretary may award a grant to an existing eligible entity for existing training and modernization operations only if the entity—

(A) currently offers (as of the date of the award of the grant) a combination of training, modernization, and business assistance services; and

(B) has demonstrated success in accomplishing the objectives of activities described in section 3.

(3) APPLICATION.—Paragraph (1) shall not apply to support for the expansion of training and modernization operations of existing eligible entities.

(4) DEFINITIONS.—In this subsection:

(A) EXISTING TRAINING AND MODERNIZATION ACTIVITY.—The term “existing training and modernization operations” means—

...
modernization activity" means a training and modernization activity carried out prior to the date of enactment of this Act.

(B) EXISTING ELIGIBLE ENTITY.—The term "existing eligible entity" means an eligible entity that was established prior to the date of enactment of this Act.

SEC. 7. GENERAL ACCOUNTING OFFICE STUDY.

(a) In general.—Beginning 3 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study concerning the activities carried out under this Act. In conducting the study, the Comptroller General shall assess the effectiveness of the activities and suggest improvements to the grant program established under this Act, including recommending whether the program should be administered by the Department of Labor or by another agency or an alternative entity.

(b) Report.—Not later than 3 years and 6 months after the date of enactment of this Act, the Comptroller General of the United States shall prepare and submit to Congress a report containing the results of the study.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out the Act:

(1) $15,000,000 for fiscal year 2004;
(2) $20,000,000 for fiscal year 2005;
(3) $25,000,000 for fiscal year 2006; and
(4) $30,000,000 for fiscal year 2007.

By Mr. BINGAMAN.

S. 1966. A bill to require a report on the detainees held at Guantanamo Bay, Cuba, to the Committee on Armed Services.

Mr. BINGAMAN. Mr. President, I want to speak for just a few minutes today on an issue on which I have introduced a bill. The bill is S. 1966. It is a bill to require a report on the detainees being held at Guantanamo Bay, Cuba.

The purpose of this legislation is to shed some light on the process that is being used by this administration to determine the status of so-called enemy combatants who are held by our Government at Guantanamo Bay Naval Base. It has now been nearly 2 years since the first detainees arrived at Guantanamo as prisoners of the United States. Individuals are still being held in what most would refer to as legal limbo.

My colleagues will recall that on July 16, I urged the Senate to adopt an amendment to the Defense appropriations bill. That amendment was tabled 52 to 42. It is essentially the same provision—it contained the same provisions I have now put into S. 1966, this freestanding legislation I have introduced.

The day after that amendment was defeated I sent a letter to Secretary Rumsfeld expressing my concern over the apparent lack of any kind of legal process being extended to the detainees being held at Guantanamo. Only recently I received a reply from the Department of Defense. In that letter, the Department of Defense maintains that it: . . . reviews on a regular basis the continued detention of each enemy combatant and assesses the appropriate disposition of each individual case.

According to the Defense Department, at the time they wrote back to me, they said that the review had resulted in the release of 64 detainees who were determined to no longer pose a threat to the United States, and more releases were expected.

However, the letter fails to address the more important question, which is whether a review of these detainees is being done in accordance with any recognized civilian or military legal process.

I ask unanimous consent to have the letter printed in the RECORD at the conclusion of my remarks.

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

(See Exhibit 1.)

Mr. BINGAMAN. What prompted me to come to the floor of the Senate today was an article I saw in the morning paper. This appeared in various papers around the country, but the one I have here in front of me is from the Boston Globe. It says:

The U.S. military sent home 20 "enemy combatants" who were being held without trial at Guantanamo Bay Naval Base in Cuba, only to replace them with the same number of new prisoners.

It has a quote from a spokesperson for the military saying:

We cannot talk about any of the individuals that may have departed the island due to security concerns.

According to this article, all those transferred last week have been released from Guantanamo to Saudi Arabia, and the remaining 650 or 700 are still there. As this article indicates, we are adding additional people to this prison we are operating there at Guantanamo.

The figure now, as I understand it, is there are 88 suspects who have been transferred out of Guantanamo Bay. Four were released, 4 were handed over to Saudi Arabia, and the remaining 650 or 700 are still there. As this article indicates, we are adding additional people to this prison we are operating there at Guantanamo.

There are various complaints described in the article by foreign diplomats about the process we are following. There is a statement by the attorney for one of the human rights organizations that has complained bitterly about the improvisational policy decisions and the arbitrary power over prisoners at the base.

My motives for offering this legislation are very simple. While I obviously have concerns about judicial treatment and the failure of any kind of legal process being followed in the treatment of these detainees in Guantanamo, I am even more concerned about the implications of this treatment for our foreign fighting forces as well as our international reputation.

The bill I filed here in the Senate today requires the Secretary of Defense to report on the status of these detainees, including the appropriate dispositions available for each individual case.

The bill requires the Secretary to provide information related to this release, how long they were detained, the conditions of their release, if any, the explanations of why the Department of Defense has determined these individuals could be released after what in many cases has been a very long detention.

For the remaining detainees—those who are still at Guantanamo—the administration has still refused to provide "access to an impartial tribunal to determine whether any legal basis exists for [detainees] continued detention." The detainees have not been allowed to speak with their families or their counsel, nor have they been informed of any charges against them, as far as I am informed.

The bill I filed requires that within 90 days of its enactment the Secretary of Defense provide the Senate with information related to the process used to categorize and hold these detainees. It does not call for release of the detainees. It does not in any way, shape, or form require the release of any classified information other than to the chairman and vice chairman of the Senate and House committees. The amendment merely seeks to clarify for the Senate and for the Committee the process by which the detainees' status is determined.

Like most Americans, I have always thought that what distinguished our country from what has happened to other countries is our commitment to individual freedom and to the rule of law; that the bedrock of a free society is the obligation taken by the Government to afford individuals with certain legal protections, and as a Nation committed to these principles we have been instrumental in the formulation and enforcement of international law, particularly when it came to the treatment of prisoners of war. For over 75 years, the United States has adhered to the Geneva Convention. Even during wars with insurgents and irregular forces, we have adhered to the Geneva Convention. Whenever our Nation has gone to war, we have taken pride in going above and beyond the requirements of international law as set out in the third Geneva Convention of 1929. In fact, the Department of Defense has adopted its own detailed regulations and doctrine and field manuals built on the provisions of the Geneva Convention which have guided our military through many conflicts regardless of size and scope and duration.

These regulations we have in our own military, like international law, do not contemplate the legal limbo we are holding these detainees in at Guantanamo. Neither the Geneva Convention nor the established military regulations define or use the term the President is using here. This term, unlawful combatant, is a new term which has come up in order to sidestep the regulations of both the Geneva Convention and of our own military regulations. Army Regulation 190-8 provides an effective and efficient process to
categorize the detainees on the battlefield. According to that provision, detainees must be classified either as an enemy prisoner of war, a recommended retained person entitled to enemy prisoner-of-war protections, an innocent civilian who is immediately returned to his or her home or released, or a civilian internee who, for reasons of operational security, or probable cause incident to criminal investigation, should be retained. Such internees have no appeal of the order directing their internment by challenging the existence of imperative security reasons that led to their detention.

The President’s unilateral determination of the detainee's status at Guantanamo Bay signals a significant departure from the spirit of the Geneva Convention and a significant departure from the letter of established military regulations. In stark contrast to our Government’s previous commitment to adhere to the rule of law and human rights, this administration has adopted a position that once the President designates that a person is a so-called enemy combatant or unlawful combatant, a term created by the administration, that person can be locked up and held incommunicado as long as the President desires, with absolutely no legal rights; no right to review of that decision. This means even if the administration makes a mistake or is given faulty information, it is virtually impossible for the person involved to prove his or her innocence because not only can they not talk to a lawyer or to family members, but they do not have the right even to know what they are being charged with.

The U.S. Supreme Court has agreed to consider the narrow question of whether the Federal courts have the power to hear challenges to the detainees’ imprisonment. This is a significant move toward enlisting the system of checks and balances, which needs to be restored—the system of checks and balances our Founders felt was essential to preserving liberty in the country. Similarly, the bill I have filed begins to fulfill Congress’s constitutional responsibility to oversee what the executive branch does. It calls on the administration to tell us whether its actions are in accordance with military regulations and doctrine.

Our goal is to bring transparency to the issue and to fulfill Congress’s constitutional role of oversight of the executive. We should know what process the administration is using to determine the status of these detainees.

My concern is much broader than what happens to these particular detainees. I am concerned about the impact of our treatment of these detainees on the treatment of our own military personnel who are captured in future conflicts. Former U.S. diplomats and military personnel who are captured in future conflicts, with an excuse not to comply with the Geneva Conventions, may very well result in arbitrary confinement of any type of hearing or judicial review. The United States played a major role in the development and adoption of the Geneva Conventions. The requirements of those Conventions are incorporated directly into American Military Regulations. American failure to provide foreign prisoners with the protections of the Geneva Conventions may very well diminish the United States' authority to demand fair and humane treatment for any future Americans detained by foreign authorities, in current or future conflicts, with an excuse not to comply with the Geneva Conventions with respect to captured enemy prisoners.

Just as compelling are the stories told in the “friends of the court” brief filed by former prisoners of war. They argue that as a result of their own experience as prisoners of war, the United States has an interest “in fostering the development and upholding of international norms pursuant to which prisoners of war and others captured during armed conflicts will be treated humanely and in accordance with the rule of law.” They emphasize, that in particular, they “wish to ensure that the treatment by the United States of foreign detainees . . . is such that the United States and former American POWs retain the moral authority to demand fair and humane treatment for any future Americans detained by other states.” However, nothing more clearly demonstrates this point than the actual stories themselves. Leslie H. Jackson, Edward Jackfert, and Neal Harrington are former prisoners of war. Mr. Jackson was captured and interned by the Germans, who adhered to the Geneva Conventions. Mr. Jackfert and Mr. Harrington were held by Japan, which had not ratified and did not purport to follow the Geneva Conventions. Mr. Harrington was also forced into slave labor in a Japanese coalmine, and saw his compatriots starved, beaten and killed. Mr. Jackfert was also forced into slave labor and suffered the extreme effects of heavy labor, cruelty and inadequate nourishment, going from 125 pounds to 90 pounds in a matter of months. There was no Geneva sign, no recognition of prisoner rights, and virtually no Red Cross access.

Nor were the experiences of Mr. Harrington and Mr. Jackfert atypical. Many detainees determined that the death rate of U.S. military personnel interned by Japan was as high as 40 percent while the death rate of personnel captured and interned by Germany was little more than 1 percent. Moreover, while it was rare for American POWs detained in Germany to be tortured, the opposite was true for American POWs detained by Japan. No one can adequately impart the suffering most allied prisoners endured in Japan. They were beaten, kicked, robbed . . . and were buried alive. . . . The overwhelming majority endured “hell on earth.”

Again, let me say, I am in no way suggesting that the detainees are not being treated humanely. In fact, from all information I have received, they are being treated humanely. But what I and these briefs that were filed in the Supreme Court are suggesting is that our failure to adhere to some recognized legal process in determining the status of these detainees opens the door for other countries to refuse to adhere to any legal process as well. It may very well result in arbitrary confinement and harsh treatment or other inhumane practices applied to our own citizens.

This bill will help Congress fulfill its duties and obligations as outlined in the Constitution and in U.S. law and regulation. I hope we can quickly pass this legislation when we return for the second session of the Congress in January.

I yield the floor.

EXHIBIT 1

(From the Boston Globe, Nov. 25, 2003)

US RELEASES 20 DETAINERS, TRANSFERS 20 MORE TO CUBA

(By Charlie Savage)

WASHINGTON—The U.S. military sent home 20 “enemy combatants” last weekend who were being held without trial at Guantánamo Bay naval base in Cuba—only to replace them with the same number of new prisoners.

The prisoner transfer, the first such movement since the Administration’s July determina-

_The OUTgoing group “either no_
Ken Hurwitz of the Lawyers Committee for Human Rights, a New York-based organization, said that the surprise release reflected the military’s “improvisational” policy decisions and the contrary power over the prisoners at the base.

“It’s the rule of law that’s the point,” he said. “They’re saying, ‘Trust us, and we’ll do the right thing,’ unless it’s pursuant to some kind of ordered, lawful proceeding.”

Challenges to the detentions that have been filed in federal court have so far been dismissed because the base is located on Cuban soil—it has been leased and controlled by the United States for a century—and outside the jurisdiction of U.S. sovereignty. Two weeks ago, the Supreme Court said it would review the question of whether federal court jurisdiction may extend there.

In a related development, the lawyer for Army Captain James “Yousef” Yee, the former Muslim chaplain at Guantanamo who was arrested in September in the alleged mishandling of classified material, sent a letter to President Bush yesterday asking that his client be released from pretrial detention for Thanksgiving and his daughter’s birthday.

“These charges do not warrant pretrial confinement of any kind,” Eugene Fidell wrote in the letter. “While military sources initially reported a wide variety of suspected offenses, such as spying or aiding the enemy, these have now been reduced to two relatively minor [charges]... Nonetheless, he is being treated as if the original laundry list of charges was the legal basis for his confinement. This is totally wrong and unfair.”

By Mr. HAGEL (for himself and Ms. SNOWE):

S. 1967. A bill to allow all businesses to make up to 24 transfers each month from interest-bearing transaction accounts to other transaction accounts, to require the payment of interest on reservable balances, to extend the term “business” to include certain nonprofit organizations, to extend the term “transaction account” to include account types not subject to the interest prohibition, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. HAGEL. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1967

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 “Interest on Business Checking Act of 2003.”

SEC. 2. INTEREST-BEARING TRANSACTION ACCOUNTS AUTHORIZED FOR ALL BUSINESS ACCOUNTS. (a) In General. Section 2(a) of Public Law 93–100 (12 U.S.C. 1832(a)) is amended by inserting after paragraph (2) the following: “(3) Withholding any other provision of law, any depositor institution may permit the owner of any deposit or account which is a deposit or account on which interest or dividends are paid and is not a deposit or account governed by paragraph (2) to make not more than 24 transfers per month (or such greater number as the Board of Governors of the Federal Reserve System may determine by rule or order), for any purpose, to another account of the owner in the same institution. An account offered pursuant to this paragraph shall be a transaction account for purposes of section 19 of the Federal Reserve Act, unless the Board of Governors of the Federal Reserve System determines there is no right thing—" (b) CONFORMING AMENDMENTS.—

(1) In General.—Section 2(a) of Public Law 93–100 (12 U.S.C. 1832(a)), as amended by subsection (a), is further amended—

(A) in paragraph (1), by striking “but subject to paragraph (2);”

(B) by amending paragraph (2) to read as follows:

“(2) No provision of this section may be construed as conferring the authority to offer demand deposit accounts to any institution that is prohibited by law from offering demand deposit accounts;” and

(C) in paragraph (3), by striking “and is not a deposit or account described in paragraph (2)”.

(2) EFFECTIVE DATE.—The amendments made by paragraph (1) shall take effect on the date which is 2 years after the date of enactment of this Act.

SEC. 3. AUTHORIZATION OF INTEREST-BEARING TRANSACTION ACCOUNTS. (a) REPEAL OF PROHIBITION ON PAYMENT OF INTEREST ON BUSINESS ACCOUNTS. (1) FEDERAL RESERVE ACT.—Section 19(i) of the Federal Reserve Act (12 U.S.C. 371a) is repealed.

(2) HOME OWNERS’ LOAN ACT.—Section 5(b)(1)(B) of the Home Owners’ Loan Act (12 U.S.C. 1464(b)(1)(B)) is amended by striking “savings association may not—” and all that follows through “(ii) permit any”—and inserting “savings association may not permit any”.

(3) FEDERAL DEPOSIT INSURANCE ACT.—Section 18(g) of the Federal Deposit Insurance Act (12 U.S.C. 1828(g)) is repealed.

(b) JOINT RULEMAKING REQUIRED.—

(1) IN GENERAL.—No later than 2 years after the date of enactment of this Act, the Secretary of the Treasury and the Federal banking agencies shall issue joint final regulations authorizing the payment of interest on and reserves on transaction accounts at depository institutions that are subject to regulation by those entities.

(2) CONTENTS.—Regulations required by this subsection shall—

(A) establish the scope of the authorization described in paragraph (1) and the types of transaction accounts to which that authorization shall apply; and

(B) include any appropriate limitations, exceptions, or restrictions on that authorization, consistent with the purposes of this section.

(3) EFFECTIVE DATE OF REGULATIONS.—The regulations required by this subsection shall take effect not later than 2 years after the date of enactment of this Act.

(4) DEFINITIONS.—As used in this subsection—

(A) the terms “depository institution” and “transaction account” have the meanings given such terms in subparagraphs (A) and (C), respectively, of section 19(i)(1) of the Federal Reserve Act (12 U.S.C. 1813); and

(B) the term “Federal banking agency” has the meaning the term in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) EFFECTIVE DATE OF REPEAL.—The amendments made by subsection (a) shall become effective on the earlier of—

(1) 2 years after the date of enactment of this Act; or

(2) the date on which final regulations required to be issued under subsection (b) become effective.
SEC. 4. PAYMENT OF INTEREST ON RESERVES AT FEDERAL RESERVE BANKS.

(a) In General.—Section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)) is amended by adding at the end the following:

"(12) Earnings on Reserves.—

(A) In General.—Balances maintained at a Federal reserve bank by or on behalf of a depository institution may receive earnings to be paid by the Federal reserve bank at least once each calendar quarter at a rate or rates not to exceed the general level of short-term interest rates.

(B) Regulations relating to Payments and Distribution.—The Board may promulgate regulations concerning—

"(i) the payment of earnings in accordance with this paragraph;

"(ii) the distribution of such earnings to the depository institutions which maintain balances at such banks or on whose behalf such balances are maintained; and

"(C) Depository Institution Defined.—For purposes of this paragraph, the term ‘depository institution’, in addition to any institution described in paragraph (1) or agency of a foreign bank (as defined in section 25A or having an agreement with the Board under section 25, or any branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978), includes any trust company, corporation organized under section 25A or having an agreement with the Board under section 25, or any branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978), that is not a Federal reserve bank.

(b) Authorization for Pass Through Reserves for Member Banks.—Section 19(c)(1)(B) of the Federal Reserve Act (12 U.S.C. 461(c)(1)(B)) is amended by striking "which is not a member bank".

(c) Technical and Conforming Amendments.—Section 19 of the Federal Reserve Act (12 U.S.C. 461) is amended—

(1) in subsection (b)(4),

(A) by striking subparagraph (C); and

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

(2) in subsection (c)(1)(A), by striking "subsection (b)(4)(C)" and inserting "subsection (b)(4)(C)".

SEC. 5. INCREASED FEDERAL RESERVE BOARD FLEXIBILITY IN SETTING RESERVE REQUIREMENTS.


(1) in clause (i), by striking "the ratio of 3 per cent" and inserting "a ratio not greater than 3 percent (and which may be zero)"; and

(2) in clause (ii), by striking "and not less than 6 per cent," and inserting "and (which may be zero);".

SEC. 6. TREATMENT OF CERTAIN ESCRROW ACCOUNTS.

(a) In General.—In the case of an escrow account maintained at a depository institution for the purpose of completing the settlement of a real estate transaction, activities described in subsection (b) shall not be treated as the payment or receipt of interest for purposes of this Act or any other provision of law relating to the payment of interest on accounts maintained at depository institutions, including such provisions in—

(1) Public Law 93–100;

(2) the Federal Reserve Act;

(3) the Home Owners’ Loan Act; or

(4) the Federal Deposit Insurance Act.

(b) For purposes of subsection (a), activities described in this paragraph are—

(1) the absorption, by the depository institution, of expenses incidental to providing a normal banking service with respect to an escrow account described in subsection (a); or

(2) the forbearance by the depository institution, from charging a fee for providing any such banking function; and

(3) any benefit which may accrue to the holder of the escrow account as a result of an action of the depository institution described in paragraph (1) or (2) or a similar action.

By Mr. ENZI (for himself, Mr. AKAKA, Mr. CORSZINE, and Mr. SARBANES):

S. 1968. A bill to amend the Higher Education Act of 1965 to enhance literacy in finance and economics, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.
SEC. 3. COORDINATION.

In carrying out the financial and economic literacy activities authorized under this Act and the amendments made by this Act, the Secretary of Education, to the greatest extent practicable, shall coordinate such activities with the financial and economic literacy efforts of a Federal commission comprised of the following:

(1) The Secretary of the Treasury;
(2) the respective head of each of the following:
   (A) Each of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));
   (B) The National Credit Union Administration;
   (C) The Securities and Exchange Commission;
   (D) Each of the Departments of Education, Agriculture, Defense, Health and Human Services, Housing and Urban Development, Labor, and Veterans Affairs;
   (E) The Federal Trade Commission;
   (F) The General Services Administration;
   (G) The Small Business Administration;
   (H) The Social Security Administration;
   (I) The Commodity Futures Trading Commission;
   (J) The Office of Personal Management.

(3) At the discretion of the President, not more than 5 individuals appointed by the President from among the administrative heads of any other Federal agencies, departments, or other Government entities, whom the President determines to be engaged in a serious effort to improve financial literacy and education.

SEC. 4. ENHANCEMENT OF FINANCIAL LITERACY AND ECONOMIC LITERACY.

The Higher Education Act of 1965 (20 U.S.C. 1001 et seq.) is amended—

(1) in section 201(a)(3), by inserting “personal finance,” after “economics,”;

(2) in section 311(c)—
   (A) by redesignating paragraphs (7) through (12) as paragraphs (8) through (13), respectively; and
   (B) by inserting after paragraph (6) the following:
   “(7) Education or counseling services designed to improve the financial literacy and economic literacy of students and their parents.”;

(3) in section 316(c)(2)—
   (A) by redesignating subparagraphs (G) through (L) as subparagraphs (H) through (M), respectively;
   (B) by inserting after subparagraph (F) the following:
   “(G) education or counseling services designed to improve the financial literacy and economic literacy of students and their parents;”;

(4) in subparagraph (M), as redesignated by paragraph (A), by striking “subparagraphs (A) through (K)” and inserting “subparagraphs (A) through (L)”;

(5) in section 323(a)—
   (A) by redesignating paragraphs (7) through (12) as paragraphs (8) through (13), respectively; and
   (B) by inserting after paragraph (6) the following:
   “(7) Education or counseling services designed to improve the financial literacy and economic literacy of students and their parents.”;

(6) in section 326(c)—
   (A) by redesignating paragraphs (5) through (7) as paragraphs (6) through (8), respectively; and
   (B) by inserting after paragraph (4) the following:
   “(5) education or counseling services designed to improve the financial literacy and economic literacy of students and their parents.”;

(7) in section 503(b)—
   (A) by redesignating paragraphs (5) through (14) as paragraphs (6) through (15), respectively; and
   (B) by inserting after paragraph (4) the following:
   “(5) Education or counseling services designed to improve the financial literacy and economic literacy of students and their parents.”;

(8) in section 402B(b)—
   (A) by redesignating paragraphs (3) through (10) as paragraphs (4) through (11), respectively;
   (B) by inserting after paragraph (2) the following:
   “(3) education or counseling services designed to improve the financial literacy and economic literacy of students and their parents.”;

(9) in section 402C—
   (A) in subsection (b)—

(ii) by redesignating paragraphs (2) through (12) as paragraphs (3) through (13), respectively;

(iii) by inserting after paragraph (1) the following:
   “(2) education or counseling services designed to improve the financial literacy and economic literacy of students and their parents;

(10) in section 402E(b)—
   (A) by redesignating paragraphs (7) and (8) as paragraphs (8) and (9), respectively; and
   (B) by inserting after paragraph (6) the following:
   “(7) education or counseling services designed to improve the financial literacy and economic literacy of students and their parents.”;

(11) in section 402F(b)—
   (A) by redesignating paragraphs (4) through (10) as paragraphs (5) through (11), respectively;
   (B) by inserting after paragraph (3) the following:
   “(4) education or counseling services designed to improve the financial literacy and economic literacy of students and their parents.”;

(12) in section 402F(b)—
   (A) by redesignating paragraphs (2) through (10) as paragraphs (3) through (11), respectively;

(13) in section 402G(d)(2)(A)(i), by striking “academic counseling” and inserting “academic counseling, and financial and economic literacy education or counseling”; and

(14) by striking section 418a(c)(1)(B)(1) and inserting the following:
   “(1) personal, academic, career, and economic education or personal finance counseling as an ongoing part of the program;”;

(15) in section 428F, by adding at the end the following:
   “(c) FINANCIAL AND ECONOMIC LITERACY.—
   Where appropriate, each program described under subsection (b) shall include making available financial and economic education materials for the borrower.”;

(16) in section 432(k)(1), by striking “and otherwise” and all that follows through the period and inserting “, offering loan repayment matching provisions as part of employee benefit packages, and providing employees with financial and economic education and counseling.”;

(17) in section 441(c)—
   (A) in paragraph (1), by inserting “financial literacy and economic literacy,” after “social services,” and
   (B) in paragraph (4)(C), by striking the period at the end and inserting “and counseling for the purposes of improving financial literacy and economic literacy.”;

(18) in section 485—
(A) in subsection (a)(1)(D), by striking the semicolon at the end and inserting “, including the merits of taking a personal finance course, if the institution offers such a course and the financial aid officer is not connected to a mainstream financial institution, counseling the borrower could open a low-cost account in a federally insured credit union or bank.”;

(B) in subsection (b)—

(1) by striking “and” after the semicolon;

(ii) P ERMISSIVE USE.—Grant funds received under this paragraph may be used to pay for personal finance counseling for students enrolled at such institutions.

(C) in subsection (c), by adding at the end the following:

(III) if it is determined during the counseling that the borrower is not connected to a mainstream financial institution, information about low-cost financial services and the benefits of using such services, and where and how the borrower could open a low-cost account in a federally insured credit union or bank.”; and

(D) in paragraph (4), by striking “and” after the semicolon.

(III) STUDY.—An institution of higher education that receives a grant under this paragraph shall conduct a study to evaluate the impact of the financial literacy activities on students’ levels of savings and indebtedness, and creditworthiness, and such activities’ effectiveness in reducing the incidence of problems with handling credit, including bankruptcy filing and student financial loan default.

(IV) INTERIM REPORT.—Not later than 90 days after the date of completion of the pilot program under subsection (a), the Secretary shall report the results of such study to the Committee on Education, Labor, and Pensions of the Senate, the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Education and the Workforce of the House of Representa-

(C) in subsection (c), by adding at the end the following:

(II) MINORITY SERVING INSTITUTIONS.—In awarding grants under this paragraph, the Secretary shall give priority to minority serving institutions of higher education that are located in geographically different parts of the United States to enable the institutions to provide services for students enrolled at such institutions.

(D) AUTHORIZATION OF APPROPRIATIONS.—

(1) MINORITY SERVING INSTITUTIONS.—In addition to making available exit counseling under paragraph (1), an institution of higher education that receives a grant under this paragraph shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(2) USE OF FUNDS.—

(I) IN GENERAL.—In addition to making available exit counseling under paragraph (1), an institution of higher education that receives a grant under this paragraph shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(II) MINORITY SERVING INSTITUTIONS.—In awarding grants under this paragraph, the Secretary shall give priority to minority serving institutions of higher education that are located in geographically different parts of the United States to enable the institutions to provide services for students enrolled at such institutions.

(III) IN GENERAL.—The Secretary shall establish a pilot program that awards a total of 5 grants to institutions of higher education that are located in geographically different parts of the United States to enable the institutions to provide annually while the borrower is enrolled at the institution services for students enrolled at such institutions.

(IV) MINORITY SERVING INSTITUTIONS.—In awarding grants under this paragraph, the Secretary shall give priority to minority serving institutions of higher education that are located in geographically different parts of the United States to enable the institutions to provide services for students enrolled at such institutions.

(2) AUTHORIZATION OF APPROPRIATIONS.—

(III) INTERIM REPORT.—Not later than 90 days after the date of completion of the pilot program under paragraph (1), the institution of higher education shall report the results of such study to the Secretary.

(IV) Study.—An institution of higher education that receives a grant under this paragraph shall conduct a study to evaluate the impact of the financial literacy activities on students’ levels of savings and indebtedness, and creditworthiness, and such activities’ effectiveness in reducing the incidence of problems with handling credit, including bankruptcy filing and student financial loan default.

(5) SEC. 5. EVALUATION.

Not later than 6 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committees on Education, Health, Education, Labor, and Pensions of the Senate, the Committee on Banking, Housing, and Urban Affairs of the Senate, the Committee on Education and the Workforce of the House of Representa-

By Mr. ROCKEFELLER:
Mr. ROCKEFELLER. Mr. President, over the last several years as the economy came down from the high of the 1990s, we have seen how devastating it can be for workers when their companies declare bankruptcy. From the enormous Enron bankruptcy at the end of 2001 to the bankruptcies of Wheeling-Pitt and then Weirton Steel in my own home State, every bankruptcy has brought heartache for workers who had dedicated themselves to their employers. In many cases, employees and retirees have very limited ability to recover the wages, severance, or benefits they and their companies seek protection from creditors.

Workers deserve better. So today I am introducing the Bankruptcy Fairness Act to strengthen workers’ rights in bankruptcy and to provide greater authority to bankruptcy courts to ensure a fair distribution of assets. Specifically, my bill will do three things. It will ensure that retirees whose promised health insurance is taken away receive at least some compensation for their lost benefits. Second, my legislation would allow employees to recover more of the back-pay or other compensation that is owed to them at the time of the bankruptcy. And lastly, I would provide bankruptcy courts the authority to recover company assets in cases where company managers flagrantly paid excessive compensation to favored employees just before declaring bankruptcy.

I am proposing this legislation as a way to start a dialogue about how we can better protect workers whose companies file for bankruptcy. I do not pretend to have all the answers. But I do know that we must do a better job of easing the burden that bankruptcy imposes on employees and retirees. And I believe that we can do so in creative ways that do not make it more difficult for companies to successfully reorganize and emerge from bankruptcy. I look forward to the ideas and suggestions my colleagues will share.

In the simplest economic terms, employees sell their labor to their companies. They toil away in offices, plants, factories, mills, and mines, because they are promised that at the end of the day they will receive certain compensation. One of the most important types of compensation that workers earn is the right to enjoy certain benefits when they retire. Pensions, life insurance, or health care coverage are earned by workers—addition to their weekly paychecks. Yet, sadly, we have seen many companies in the last few years abandon these promises when they declare bankruptcy.

More and more we see companies taking the easy road to profitability by abandoning commitments that they made to workers. For retirees who have planned for their golden years based on the benefits they have earned, losing the company’s promise is a devastating blow. Retirees must have the right to reasonable compensation if the company seeks to break its promise to provide health insurance. Under current law, these retirees receive what is called a general unsecured claim for the value of the benefits they lost. As any creditor will tell you, a general unsecured claim is essentially worthless in most bankruptcies. It means you are at the end of the line, and there are not enough assets to go around. This law allows companies to essentially rescind compensation that retirees have earned with virtually no cost to the company. Of course that is a great deal for the company, but it is spectacularly unfair to the retirees.

Recognizing that so-called legacy costs are often an impossible burden for a company that is trying to emerge from bankruptcy, my legislation would still allow companies in some circumstances to alter the health coverage of retirees. Moreover, it would require that the company pay a minimum level of compensation to retirees. Under this bill, each retiree would be entitled to a payment equal to the cost of purchasing comparable health insurance for 18 months. Of course, 18 months of health insurance coverage is a lot less than many of these retirees are losing, but it can ease the transition as retirees make alternative plans, and it will discourage companies from thinking that terminating retiree health coverage is an easy solution. The retirees would still be entitled to a general unsecured claim for the value of the benefits lost in excess of this one time payment. If the company is still in bankruptcy, the fact that it is retirees, even while not being made whole on lost benefits, will at least receive some compensation for the broken promises.

Many active workers, too, have a difficult time recovering what is owed to them by their employer when the company files bankruptcy. Under current law, employees are entitled to a priority claim of up to $4,650. But that figure is usually not enough to cover the back-wages, vacation time, severance, and other compensation that is at Enron. Reducing these amounts. Under my legislation, employees are owed for work done prior to the bankruptcy. Congress needs to update the amount of the priority claim to ensure that more workers are able to receive what is rightfully theirs.

The Bankruptcy Fairness Act would establish a priority claim for the first $15,000 of compensation owed to an employee.

In most cases, employees have been working their hardest to help the company avoid the nightmare of bankruptcy—only to find that they will not be compensated for their services as promised. As we saw so clearly with the Enron case, employees are often left holding the bag when their company declares bankruptcy. In that case, employees were owed an average of $35,000 in back-wages, severance, and other promised compensation. They deserved to recover more than a mere priority claim. As one Enron employee put it in a letter to me: "It is unconscionable that employees would grant themselves undeserved bonuses and then weeks later claim that the company did not have the resources to pay its rank and file employees.

My legislation provides bankruptcy courts greater authority to recover excessive compensation that was paid just prior to the bankruptcy filing. If workers are not treated fairly, this bill will provide a priority claim of up to $15,000 to ensure that employers pay their workers what they have earned. This is not a new obligation for companies that have not had the resources to go bankrupt.

I understand that many creditors or investors are not able to recover what is rightfully owed to them in bankruptcy, but employees deserve protection that recognizes the unique nature of their dependence on their employer. Any smart investor diversifies his or her portfolio so that a bankruptcy at one company does not bankrupt the investor. Likewise, suppliers and creditors are often the first to be paid in bankruptcy and to provide greater stability to the company and the employees. That is not the case with workers. They cannot diversify away from the risk of working for a bankrupt company, and the financial hardship a bankruptcy can cause is often more devastating to an average worker than the average creditor or supplier.

Now, I know that some of my colleagues listening to this may be worrying that this legislation is insensible, that the most egregious recent examples of companies that are trying to reorganize in order to emerge from bankruptcy and go forward as successful businesses. I am fully aware that sometimes, too often in the real world, the bankruptcy process can help companies stay open and maintain jobs by restructuring obligations to creditors. Too many companies in West Virginia have had to go through the painful process of Chapter 11 reorganization. I completely understand the need to keep the factories open. And I have always worked side by side with companies to help them recover.

I will continue that important work, and I have included a provision in this bill to help bankrupt companies that are struggling to survive to recover assets that have been pilfered from the corporate coffers. In too many cases, company executives reward themselves even as their companies careen toward bankruptcy. The most egregious recent example is at Enron. Days and weeks leading up to the bankruptcy filing, executives granted large bonuses to themselves and their favored employees. Millions of dollars were paid to a select group of employees just before the company declared bankruptcy. It is unconscionable that executives would grant themselves undeserved bonuses and then weeks later claim that the company did not have the resources to pay its rank and file employees.

My legislation provides bankruptcy courts greater authority to recover excessive compensation that was paid just prior to the bankruptcy filing. If
the court finds that compensation was out of the ordinary course of business or was unjust enrichment, the court can recover those assets for the bankrupt company, ensuring that more creditors, employees, and retirees can receive what is rightfully owed to them by the company.

The reforms I have outlined are modest. They will not take the sting out of bankruptcy. By definition a bankruptcy is a failure, and it is painful for the company’s employees, retirees, and business. But the Bankruptcy Fairness Act I am introducing today would make progress toward ensuring that bankruptcies are more fair to the workers who gave their time and energy and sweat to the company in exchange for certain promised compensation. And by helping a company recover assets that should not have been paid out as undeserved bonuses just before bankruptcy the bill ensures that more of a company’s assets are paid to the company, retirees, and creditors who are rightfully owed.

It is my hope that this legislation will receive serious consideration from my colleagues, and that this can open an important debate about how workers and retirees can be better protected from the ugly side of prolonged economic downturns.

By Mr. CORZINE (for himself, Mr. DODD, and Mr. LIEBERMAN):

S. 1999.

To provide transparency relating to the fees and costs associated with mutual funds; to the Committee on Banking, Housing, and Urban Affairs.

Mr. DODD. Mr. President, I rise today, with my colleague from New Jersey, to introduce a measure that is critical to improving the investing public’s faith in our capital markets.

This legislation, the “Mutual Fund Investor Confidence Restoration Act,” will fundamentally strengthen protections for the millions of investors who rely on mutual funds for their financial security.

America is the land of opportunity. Millions of Americans and countless others around the world seek the opportunity to participate in the economic life of our nation. Mutual funds are a principal pathway through which most investors achieve financial security. Moreover, the fund industry has historically lived up to, but in many cases exceeded, the grand expectations of investors. They are a true success story of our securities markets and our system of securities regulation.

However, in recent months, a series of revelations has shaken investor confidence in the promise of mutual funds. We must restore the faith of investors in mutual funds and those who manage them. This legislation is designed to address some of the abuses and shortcomings that have received so much recent attention.

There are five broad areas which this legislation addresses: corporate governance, disclosures to investors, late trading and market timing, increased regulatory oversight, and financial literacy.

This legislation significantly improves corporate governance standards at mutual fund; requires mutual fund officers to lose faith that their hard earned savings are not being managed with their best interests in mind. Mutual fund boards must have greater independence from fund managers and be more accountable to shareholders of the fund must be required to exercise greater oversight to ensure that funds are run in the interest of their shareholders—and be accountable to shareholders for failing to do so. Additionally, this legislation directs the SEC to determine whether directors and chairmen need additional tools to carry out that job.

This legislation mandates that corporate governance requirements created in the Sarbanes-Oxley Act, such as director independence requirements, financial expertise, and certification measures apply to mutual funds. Of particular note, this legislation mandates that funds employ a chief compliance officer to ensure that internal controls and personnel procedures are met by the fund in the interest of shareholders.

We need to improve the disclosures to investors about the fees and costs associated with mutual funds. Current disclosure provisions and practices fail to improve investors the information necessary to understand the true costs of investing through mutual funds. The current expense ratio by no means includes all of the fund’s expenses.

This legislation requires that currently unaccounted for expenses, such as brokerage commissions, advertising fees and research costs, among others, are fully disclosed.

Additionally, the legislation requires the commission of those respective costs to be displayed as a graph provided to shareholders that will enable them to compare the costs associated with owning shares of different mutual funds. The ability to compare the total costs of mutual funds with each other will drive competition and lower costs for investors.

Investors deserve to know if their broker has a financial incentive to steer them into particular mutual funds. Under the current fund’s mandate, greater disclosure of financial incentives provided to intermediaries and requires fund companies and investment advisors to fully disclose certain sales practices, including revenue-sharing and directed brokerage arrangements and to disclose the value of research and other services paid for as part of brokerage commissions.

The recent abuses that we have seen with respect to late trading and market timing must be stopped to restore investors faith in mutual funds. Insider dealings at mutual funds must never recur. Fund insiders must be prohibited from trading against their own shareholders’ interest. Neither fund insiders nor preferred customers must enjoy privileges like market timing that are denied to the millions of average mutual fund investors.

Late trading is already illegal, but we now know it is pervasive. The system for prohibiting late trading in mutual funds must be strengthened, so all mutual fund investors are treated fairly. This legislation creates new requirements for intermediaries and funds to ensure that illegal late trading activities are stopped.

As a result of the recent widespread scandals in this area, we must rededicate our regulatory oversight of the mutual fund industry. Due to the tremendous size of mutual funds and how critical an investment tool they are to small investors, this legislation directs the General Accounting Office to consider the value of creating a new self regulatory body and/or independent regulator for mutual fund oversight.

Lastly, this legislation calls for improved efforts to promote financial literacy among mutual fund shareholders. Ensuring that investors have the resources available to them to understand the benefits and risks of mutual funds is a fundamental importance.

The Mutual Fund Investor Confidence Restoration Act is an important step in the right direction of restoring the integrity of the mutual fund industry and will greatly improve the basic protections given to investors who rely upon these investment vehicles for their economic security.

Mr. CORZINE, Mr. President, I rise along with my colleague from Connecticut, Senator Dodd, to introduce the Mutual Fund Investor Confidence Restoration Act of 2003, a bill that would improve the oversight of the mutual fund industry, enhance fund governance, and protect the millions of Americans who invest in these funds.

Mutual funds are the primary means for investors to participate in the market. Approximately 95 million Americans invest in mutual funds, and investments total near $7 trillion dollars. The industry, one of our oldest and most-revered, is entrusted by those shareholders with their dreams of a comfortable retirement, the ability to pay their children’s college tuition, buy a home or pursue other life-long goals.

It’s not a stretch to say that in many ways the mutual fund industry has been the standard bearer for ethical behavior, strong oversight and governance committed to investor protection in our capital markets. Few, if anyone, would dare to have suggested that our mutual fund industry could become fertile ground for the types of ‘infected greed’ we witnessed during the governance and accounting scandals a few years ago.

But that is just what has happened.

Today, the mutual fund industry faces its own litany of scandals centered on allegations of investor fraud,
flawed corporate governance, financial conflicts of interest and outright investor abuse. Names like Putnam and Canary Capital have become synonymous with Enron, Tyco and WorldCom in terms of the financial harm inflicted upon investors, undermining their confidence and trust in America's financial markets.

The vast majority of those who work in this industry are decent, hard-working individuals who make a significant contribution to the betterment of our nation.

Unfortunately, there are also far too many associated with this profession—including some investment advisors, fund board members, and those in fund company management—who are all too willing to disregard their fiduciary obligation to shareholders in order to pursue their own personal self-enrichment.

Investors should not perceive that the deck is stacked against them. They should not think that there are different rules—one that applies to them and a different and considerably less stringent set that applies to wealthy industry insiders.

The legislation we are introducing today, the Mutual Fund Investor Confidence Restoration Act will make sure that the playing field stays level.

This bill has five primary themes: improving mutual fund governance; enhancing cost, fee and other important disclosures to shareholders; preventing abusive mutual fund practices such as late trading and market timing; strengthening mutual fund industry oversight; and promoting fund shareholder literacy.

Let me give a more detailed summation of what this legislation would do and why it is so important.

Boards of directors for mutual funds have been criticized recently for the high number of directorships that members hold, the lack of board independence from fund management and the failure of several to fulfill their fiduciary responsibility to shareholders.

This legislation would strengthen fund governance by establishing truly independent mutual fund boards, chairmen, nominating committees and independent audit committees that conform to Sarbanes-Oxley Act requirements for those at publicly traded companies.

The bill would also improve fund governance by requiring Sarbanes-Oxley-like "certification" from Board Chairmen and newly-designated Chief Compliance Officers that shareholders safeguards are in place within the fund.

Also, it would ensure that accurate disclosures to shareholders, including cost and fee information, are contained in the prospectus.

The legislation includes other "certifiable" requirements for board chairmen and chief compliance officers, including disclosures that internal controls, a code of ethics and personnel designated to ensure adherence to stated policies and compliance with relevant securities laws, including measures preventing market-timing and late trading abuses, are in place at the fund and with the investment adviser.

Additionally, the legislation calls for the disclosure of insider transactions by mutual fund managers and Board members to the Securities and Exchange Commission (SEC) deficiency letters.

Another issue of concern with the mutual fund industry is the inadequate and confusing disclosure provided to shareholders regarding expenses. Fund shareholders are responsible for paying various fees and costs related to the operation and trading activity of the fund. While funds provide investors with certain fee-related disclosure, shareholders are largely in the dark about many other costs that impact the value of their fund's assets.

The legislation includes numerous provisions aimed at improving the cost, fee and other disclosures shareholders receive.

The legislation would require a breakdown of these respective costs to shareholders regarding expenses. Fund shareholders are responsible for paying the actual cost borne by each shareholder for the operating expenses of the fund and the estimated expenses paid for costs associated with management of the fund that reduces the fund's overall value, including brokerage commissions, revenue sharing and directed brokerage arrangements, transactions costs another fees.

The legislation would require a breakdown of these respective costs to be displayed graphically, in order to provide shareholders with the requisite information to compare the costs associated with owning shares of various mutual funds.

In addition to these requirements, the legislation would require fund companies and investment advisers to fully disclose certain sales practices, including revenue-sharing and directed brokerage arrangements, shareholder eligibility for these fee waivers and the value of research and other services paid for as part of brokerage commissions, directing the SEC to study so-called "soft-dollar" arrangements.

As I mentioned earlier, Mr. President, this bill includes measures aimed at preventing abusive mutual fund practices, such as late trading and market timing, that diminish the shareholders' assets of a particular fund. First, the legislation seeks to ensure that fund and investment advisers have adequate shareholder safeguards in place, and that they "certify" these internal control procedures. Those would include establishing a code of ethics, improving the accurate disclosure of fund company policies and ensuring compliance efforts are overseen by the chief compliance officer.

The bill also would also take steps aimed at directly preventing abusive practices and conflicts of interest. The recent scandals surrounding mutual funds primarily focus on brokers and fund officials that have engaged in the improper trading of mutual fund shares through late trading and market timing. Late trading refers to the practice of placing orders to buy or sell mutual fund shares after 4 p.m., and market timing is short-term trading in and out of stocks in the hope of exploiting an inefficiency in the fund's share price.

To address the issue of market timing, the legislation requires the SEC to ensure that fund companies are in compliance with the Investment Company Act rules requiring a fair value calculation to determine the net asset value a fund company's securities when market quotations are otherwise unavailable or do not accurately reflect the companies fair market value.

This provision would eliminate the stale pricing that allows market timers to profit, often illicitly, from the inaccurate pricing of a fund's shares.

The legislation would also require the SEC to establish a rule requiring fund companies and investment advisers to develop and disclose formal policies related to market timing and short term trading. Certification by fund company management would further ensure that policies are being adhered to.

To address late trading, the bill requires the SEC to issues rules and establishes guidelines for trades in fund securities that go through newly established "permitted intermediaries", such as broker-dealers. The rules would allow these permitted intermediaries to execute trades of a fund after the funds net asset value has been derived, if the intermediary has a policy in place that the company cannot permit late trades, mechanisms in place to detect late-trades and if that intermediary make those procedures available for inspection by the SEC. Non-permitted intermediaries would be required to submit their transactions to the fund company prior to market close.

To reduce other conflicts, the legislation would prohibit mutual fund managers from jointly managing a hedge fund and would prohibit short-term trading by fund and investment company management and requires disclosure of insider transactions.

In seeking to bolster mutual fund industry oversight, this legislation would require the SEC to review the allocation of the resources it has dedicated to industry oversight and the General Accounting Office (GAO) to study the feasibility of establishing a new, independent regulator-Fund Oversight Board. The bill also would direct the SEC to establish incentives and protections for whistleblowers and would require the GAO to independently review and report to Congress on the effectiveness of law enforcement efforts between the SEC, its regional offices, and state regulators.

Finally, this bill calls for a study into ways in which we can improve and promote financial literacy among mutual fund shareholders. And the legislation, through its enhanced disclosures to shareholders, already makes a significant contribution to improving.
section 1. short title; table of contents.
(a) short title.—this act may be cited as the "mutual fund investor confidence restoration act of 2003".
(b) table of contents.—the table of contents provided follows:

sec. 1. short title; table of contents.
title i—enhancing cost, fee, and other disclosures to shareholders
sec. 101. improved transparency of mutual fund costs.
sec. 102. obligations regarding certain distribution and soft dollar arrangements.
sec. 103. definition of no-load mutual fund.
sec. 104. disclosure of incentive compensation and mutual fund sales.
title ii—mutual fund governance
sec. 201. independent mutual fund boards.
sec. 202. audit of the internal management of investment companies.
sec. 203. informing directors of significant deficiencies.
sec. 204. certification by chairman and chief compliance officer.
title iii—preventing abusive mutual fund practices
sec. 301. prevention of fraud; internal compliance and control procedures.
sec. 302. record and reportkeeping requirements for investment companies.
sec. 303. restrictions on short term trading and mandatory redemption fees.
sec. 304. elimination of stale prices.
sec. 305. formal policies and procedures related to market timing.
sec. 306. prevention of late trades.
sec. 307. disclosure of insider transactions.
title iv—strengthening mutual fund industry oversight
sec. 401. study of mutual fund oversight board.
sec. 402. study of coordination of enforcement efforts.
sec. 403. review of commission resources.
sec. 404. commission study and report regulating soft dollar arrangements.
sec. 405. report on adequacy of regulatory response to late trading and market timing.
sec. 406. study of arbitration claims.
title v—promoting shareholder literacy
sec. 501. financial literacy among mutual fund investors study.
title i—enhancing cost, fee, and other disclosures to shareholders
sec. 101. improved transparency of mutual fund costs.
(a) regulations promulgated required.—
(1) in general.—not later than 180 days after the date of enactment of this act, the securities and exchange commission shall promulgate rules or regulations under the securities act of 1933, the securities exchange act of 1934, or the investment company act of 1940, or any combination thereof, to require, consistent with the public interest, improved disclosure with respect to an open end management investment company, in the quarterly statement or other periodic report to shareholders or other appropriate disclosure document, of—
(a) the actual dollar amount, borne by each shareholder, of the expenses of the company;
(b) the structure of, method used to determine, and the total amount of the compensation or other fees, costs, and expenses paid by an investment adviser of the company to manage the portfolio of the company, and the ownership interest of such individuals in the securities of the company, including when such individuals have no ownership interest in the company;
(c) whether the chairman of the board of directors of the open-end investment company or any directors of the investment adviser of such company employed to manage the portfolio of the company do not own any securities of the company;
(d) the estimated total annual dollar amount of fees, costs, expenses, and any other payments made by the company for any purpose, excluding only pro rata distributions to shareholders, and set forth in a manner that facilitates comparison among different companies;
(e) information concerning the company’s policies and procedures with respect to the payment of commissions for effecting securities transactions to a member of an exchange, including when such services are furnished, either directly or through publications or writings, as to the value of securities, the advisability of investing in, purchasing, or selling securities, and the availability of securities or purchasers or sellers of securities;
(f) furnishes advice, either directly or through publications or writings, to the best interest of the shareholders of the company;
(g) that such revenue sharing arrangements adhere to the fund's stated policies and are in the best interests of the shareholders of the company; and
(h) the direction of such brokerage arrangements and soft dollar arrangements, and that the direction of such brokerage arrangements and soft dollar arrangements, that such revenue sharing arrangements adhere to the fund’s stated policies and are in the best interests of the shareholders of the company; and
(b) appropriate disclosure document.—
(1) in general.—for purposes of subsection (a), the disclosures required to be made in an appropriate disclosure document if the disclosure is made exclusively in a prospectus or statement of additional information, or both such documents.
(2) exceptions.—notwithstanding paragraph (1), the disclosures required by paragraph (1)(a), (b), and (e) of subsection (a) may be considered to be made in an appropriate disclosure document if the disclosure is made exclusively in a prospectus or state-
with regulations prescribed by the Commission under paragraph (4), annual reports to shareholders of a registered investment company shall include a summary of the most recent annual report submitted to the board of directors under paragraph (1).

(4) REGULATIONS.—The Commission shall adopt rules and regulations implementing this section, and such rules and regulations shall, among other things, prescribe the content of the required reports.

(5) DEFINITION.—For purposes of this subsection, "(A) the term ‘brokerage and research services’ has the same meaning as in section 28(e)(3) of the Securities Exchange Act of 1934; and

"(B) the term ‘research services’ means the services described in subparagraphs (A) and (B) of such section."

SEC. 103. DEFINITION OF NO-LOAD MUTUAL FUNDS

Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule adopted by the Commission or a self-regulatory organization, or both:

(1) clarify the definition of “no-load” as such term is used by investment companies that impose any fee under a plan adopted pursuant to section 17 of the rules of the Securities and Exchange Commission (17 C.F.R. 270.12b–1); and

(2) require disclosure to prevent investors from being misled by the use of such terminology by the company or its adviser or principal underwriter.

SEC. 104. DISCLOSURE OF INCENTIVE COMPENSATION AND MUNICIPAL FUND FEES

(a) IN GENERAL.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

"(11) CONFIRMATION OF TRANSACTIONS FOR MUTUAL FUNDS.—

"(A) IN GENERAL.—Each broker shall disclose in writing to customers that purchase the shares of an open-end company registered under section 8 of the Investment Company Act of 1940 (15 U.S.C. 80a–8) within the preceding 10 fiscal years, of any entity that is likely to impair the independence of any associate person therewith in connection with such sale; and

"(B) any compensation or other payments by persons other than the investment company that are intended to facilitate the sale and distribution of the securities, and by commissions for effecting portfolio securities transactions, or other payments, paid to such broker or dealer, or municipal securities broker or dealer, or associated person thereof in connection with such sale; and

"(C) any conflicts of interest that any associated person of the broker, dealer, or municipal securities broker or dealer of the investment company may have due to the receipt of differential compensation in connection with such sale; and

"(D) information about the estimated amount of any asset-based distribution expenses incurred, or to be incurred, by the investment company in connection with the purchase of securities by the investor; and

"(E) any reasonable information as the Commission determines appropriate.

"(B) TIMING OF DISCLOSURE.—The disclosure required under subparagraph (A) shall be made no later than the date of the completion of the transaction.
“(II) a close familial relationship with any natural person who is an affiliated person of such investment company; or
“(III) any other reason determined by the Commission.”

(2) in subparagraph (B)—

(A) in clause (iv), by striking “two” and inserting “three”; and

(B) by striking clause (v) and inserting the following:

“(v) any natural person who is a member of a class of persons that the Commission, by rule or order, determines is exercising an appropriate degree of independence as a result of—

(I) a business relationship with such investment adviser or principal underwriter or affiliated person of such investment adviser or principal underwriter;

(II) any other reason as determined by the Commission.”.

(d) DEFINITION OF SIGNIFICANT SERVICE PROVIDER.—Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)) is amended by adding at the end the following:

“(5) SIGNIFICANT SERVICE PROVIDER.—The term ‘significant service provider’ means—

(A) in clause (iv), by striking “two” and inserting “three”;

(B) by striking clause (v) and inserting the following:

“(v) any natural person who is an affiliated person of such investment adviser or principal underwriter; or

“(III) any other reason as determined by the Commission.”.

SEC. 202. AUDIT COMMITTEE REQUIREMENTS FOR INVESTMENT COMPANY.

(a) AMENDMENTS.—Section 32 of the Investment Company Act of 1940 (15 U.S.C. 80a–31) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1) and (2) and inserting the following:

“(1) each such officer shall have been selected at a meeting held within 30 days before or after the beginning of the fiscal year or before the annual meeting of stockholders in that year by the vote, cast in person, of a majority of the members of the audit committee of such registered company; and

(2) such selection shall have been submitted for ratification or rejection at the end of such meeting of stockholders for such meeting be held, except that any vacancy occurring between annual meetings, due to the death or resignation of the accountant, may be filled by the vote of a majority of the members of the audit committee of such registered company, cast in person, at a meeting called for the purpose of voting on such action;”;

and

(B) by adding at the end the following sentence: “The Commission, by rule, regulation, or order, may require a registered management company or registered face-amount certificate company subject to this subsection from the requirement in paragraph (1) that the votes by the members of the audit committee be cast at a meeting in person when such a requirement is impracticable, subject to such conditions as the Commission may prescribe.”

(2) by adding at the end the following:

“(d) AUDIT COMMITTEE REQUIREMENTS.—

(1) REQUIREMENTS AS PRECURSOR TO FILING PROSPECTUS.—Any registered management company or registered face-amount certificate company that files with the Commission any financial statement signed by an independent public accountant shall comply with the requirements of paragraphs (2) through (6) of this subsection and any rule or regulation of the Commission issued thereunder.

(2) RESPONSIBILITY RELATING TO INDEPENDENT PUBLIC ACCOUNTANTS.—The audit committee of each registered company, in its capacity as a committee of the board of directors, shall be directly responsible for the appointment, compensation, and oversight of the work of the independent public accountant employed by such registered company (including resolution of disagreements between management and the auditor regarding matters within the scope of the audit committee’s stated responsibilities). The audit committee shall also be directly responsible for the evaluation of the internal controls and the audit of the financial statements of the company and, shall otherwise be independent.

(3) INDEPENDENCE.—

(A) IN GENERAL.—Each member of the audit committee of each registered company shall be a member of the board of directors of the company, and shall otherwise be independent.

(B) CRITERIA.—In order to be considered to be independent for purposes of this paragraph, a member of an audit committee of a registered company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee—

(i) accept any consulting, advisory, or other compensating fee from the company, or from any entity under common control with the company, for services provided to such entity as an audit or nonaudit client;

(ii) be an ‘interested person’ of the registered company or the investment adviser or principal underwriter of the registered company; or

(iii) be an ‘interested person’ of the audit committee, as such term is defined in section 2(a)(39).

(4) COMPLAINTS.—The audit committee of the registered company shall establish procedures for—

(A) the receipt, retention, and treatment of complaints regarding accounting and financial reporting; internal accounting controls, or auditing matters; and

(B) the confidential, anonymous submission by employees of the registered company and its investment adviser or principal underwriter of concerns regarding questionable accounting or auditing matters.

(5) AUTHORITY TO ENGAGE ADVISERS.—The audit committee of the registered company shall have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

(6) FUNDING.—The registered company shall provide appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation—

(A) to the independent public accountant employed by the registered company for the purpose of rendering or issuing the audit report; and

(B) to any advisers employed by the audit committee under paragraph (5).

(7) AUDITOR’S CERTIFICATE.—In the event of the resignation of the independent public accountant employed by the registered company, the entire board of directors of the company shall require the chairman of the board of directors of each registered open-end investment company to certify, in the case of any such resignation, that the company used in computing periodically the current price for the purpose of purchase, redemption, and sale complies with the requirements of the Investment Company Act of 1940 and the rules and regulations thereunder, and the company is in compliance with such procedures; and

(C) procedures are in place for the oversight of the flow of funds into and out of the securities of the company, and the company is in compliance with such procedures; and

(D) procedures are in place to ensure that investors are receiving any applicable discounts on front-end sales loads that are disclosed in the company’s prospectus; and

(E) procedures are in place to ensure that, if the company’s shares are offered as different classes of shares, such classes are designed in the interests of investors, and compliant for purposes of the securities laws or the company’s code of ethics;
“(F) the members of the board of directors who are not interested persons of the company have reviewed and approved the compensation of the company’s portfolio manager and its consideration of each of the investment advisory contract under section 15(c);

(G) the company has established and enforced a code of ethics as required by paragraph (2) of this subsection;

(H) the company is in compliance with the additional requirements of paragraph (3) of this subsection.

(1) the report submitted to the board of directors under section 15(g)(1) is complete and accurate; and

(2) the board of directors has fulfilled its obligations under section 15(g)(2).”

“(5) CERTIFICATION BY CHIEF COMPLIANCE OFFICER.—The rules and regulations established under paragraph (1) shall require the chief compliance officer of each registered open-end investment company to certify, on an annual basis, that

(1) appropriate internal controls are in place for the review required under subparagraphs (A) through (H) of paragraph (4); and

(2) such internal controls have been reviewed to achieve their stated purpose, by the chief compliance officer.

(6) REVIEW OF ADVISORY CONTRACTS.—The rules and regulations established under paragraph (1) shall require that the chairman of the board of directors and the chief compliance officer of a registered open-end investment company, in an annual basis, that any advisory contract entered into by the company and associated management fees have been negotiated and are in the best interest of the company.

(b) DEADLINE FOR RULES.—Not later than 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall require

(1) rules to implement subsection (a); and

(2) minimum standards for compliance with the certification requirements of paragraphs (4) and (5) of section 17(j) of the Investment Company Act of 1940 (15 U.S.C. 80a-17(j)).

TITLE III. PREVENTION OF ABUSIVE MUTUAL FUND PRACTICES

SEC. 301. PREVENTION OF FRAUD; INTERNAL COMPLIANCE AND CONTROL PROCEDURES.

(a) AMENDMENT.—Subsection (j) of section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a-17(j)) is amended to read as follows:

“(j) D ETECTION AND PREVENTION OF FRAUD.—

(1) COMMISSION RULES TO PROHIBIT FRAUD, DECEPTION, AND MANIPULATION.—It shall be unlawful for any affiliated person of or principal underwriter for a registered investment company or any affiliated person of an investment adviser of or principal underwriter for a registered investment company, in contravention of such rules and regulations as the Commission may adopt to define, and prescribe means reasonably necessary to prevent, such acts, practices, or courses of business. Such rules and regulations may require each such registered investment company to disclose such codes of ethics (and any changes therein) in the periodic report to shareholders of such company if such company is a member of such additional 1 form and manner as the Commission shall require by rule or regulation.

(2) ADDITIONAL COMPLIANCE PROCEDURES.—The rules and regulations established under paragraph (1) shall—


(B) require each such company and adviser to review such policies and procedures annually for their adequacy and the effectiveness of their implementation;

(C) require each such company to appoint a chief compliance officer to be responsible for overseeing such policies and procedures; ensure that the company adheres to those policies and procedures, and promote the interest of shareholders—

(i) whose compensation shall be approved by the members of the board of directors of the company who are not interested persons of such company;

(ii) who shall report directly to the members of the board of directors of the company who are not interested persons of such company, privately as such members request, but no less frequently; and

(iii) whose report to such members shall include any violations or waivers of, and any other significant issues arising under, such policies and procedures; and

(D) require each such company to establish policies and procedures reasonably designed to protect any officer, director, employee, contractor, subcontractor, or agent of such company from retaliation, including discharge, demotion, suspension, harassment, or any other manner of discrimination in the terms and conditions of employment, because of any lawful act done by such officer, director, employee, contractor, subcontractor, or agent to provide information, cause information to be provided, or otherwise assist in an investigation that relates to any conduct which such officer, director, employee, contractor, subcontractor, or agent reasonably believes to be a violation of the securities laws or the code of ethics of such investment company.

(b) DEADLINE FOR RULES.—Not later than 90 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe rules to implement subsection (a).

SEC. 302. BAN ON JOINT MANAGEMENT OF MUTUAL FUNDS AND HEDGE FUNDS.

(a) AMENDMENT.—Section 15 of the Investment Company Act of 1940 (15 U.S.C. 80a–15) is further amended by adding at the end the following:

“(b) BAN ON JOINT MANAGEMENT OF MUTUAL FUNDS AND HEDGE FUNDS.—It shall be unlawful for any individual or entity to act as the portfolio manager or investment adviser of a registered open-end investment company or act as the portfolio manager or investment adviser of an investment company that is not registered, or of such other categories of open-end investment companies as the Commission shall prescribe by rule in order to prohibit conflicts of interest, such as conflicts in the selection of the portfolio security, or in the selection of any other investment; and

“(c) BAN ON LOANING OF FUNDS.—The Securities and Exchange Commission shall prescribe rules to implement the amendment made by this section.

(b) MANDATORY REDemption FEES.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe rules to implement the amendment made by subsection (a) of this section within 90 days after the date of enactment of this Act.

SEC. 303. RESTRICTIONS ON SHORT TERM TRADING AND MANDATORY REDemption FEES.

(a) SHORT TERM TRADING ProHIBITED.—Section 17 of the Investment Company Act of 1940 (15 U.S.C. 80a–17) is amended by adding at the end the following:

“(k) SHORT TERM TRADING ProHIBITED.—It shall be unlawful for any officer, director, partner, or employee of a registered investment company, any affiliated person, investment adviser, or principal underwriter of such company, or any officer, director, partner, or employee of such an affiliated person, investment adviser, or principal underwriter, to engage in short-term transactions, as such term is defined by the Commission by rule, in any securities of which such company is a member or any affiliated person is the issuer, except that this subsection shall not prohibit transactions in money market funds, other funds the investment policy of which expressly permits short-term transactions, or such other categories of registered investment companies as the Commission shall specify.

(b) MANDATORY REDemption FEES.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe rules to require that any investment company that does not allow for market timing practices to charge a redemption fee upon the short-term redemption of any security.
Act, the Securities and Exchange Commission shall prescribe rules to implement the amendment made by subsection (a) of this section.

SEC. 304. ELIMINATION OF STATE PRICES.

(a) In General.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall prescribe rules, regulations, and guidelines concerning the obligation of registered open-end investment companies under the Investment Company Act of 1940 to apply and use fair value methods of accounting for registered open-end investment companies, and to report such value.\footnote{This rule, regulation, or guideline would relate to the manner in which the value of assets of a registered open-end investment company is determined.} Such rules, regulations, or guidelines may provide, for example, that fair value determinations of securities in the nature of short-term trading, such as listed securities and debt securities with remaining maturity of 180 days or less, shall be made pursuant to circumstances that would be applied in such events, conditions, and circumstances.

(b) Formal Policies and Procedures.—

(1) in General.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule or regulation—

(A) require each registered open-end investment company and registered investment advisor to establish formal policies with respect to the compliance with the rules established under subsection (a); and

(B) require such policies to be publicly disclosed.

(2) Changes to Policies.—Any policies established pursuant to paragraph (1) shall be subject to ongoing review and audit by the company and the investment adviser to ensure compliance with such policies.

(c) Definition of Terms.—For purposes of this section, the term "registered open-end investment company" includes a mutual fund.

SEC. 305. FORMAL POLICIES AND PROCEDURES RELATED TO MARKET TIMING.

(a) In General.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall, by rule, require that—

(1) each registered open-end investment company and registered investment advisor establish formal policies with respect to the prevention of market timing and short-term trading, and under what circumstances such practices will be permitted,

(2) require such policies to be publicly disclosed, prior to the actual time of purchase, any intended sale or purchase of securities of an open-end management investment company that is being managed by an investment adviser as the company with which such senior executive officer is employed; and

(3) provide that any intermediary that is not a permitted intermediary shall be required to submit all transactions to the open-end investment company before the determination of the related net asset value.

(b) Markets.—Title IV—Strengthening Mutual Fund Industry Oversight

SEC. 401. STUDY OF MUTUAL FUND OVERSIGHT BOARD.

(a) In General.—The General Accounting Office shall conduct a study to determine the feasibility of, and assess what, if any, benefits to shareholders, mutual fund governance and mutual fund supervision would result from establishing a Mutual Fund Oversight Board that would—

(1) have inspection, examination, and enforcement authority over mutual fund boards of directors;

(2) be funded by assessments against mutual fund assets or management fees;

(3) have members selected by Commission; and

(4) have rulemaking authority.

(b) Report.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall submit a report on the study required under paragraph (1) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 402. STUDY OF COORDINATION OF ENFORCEMENT EFFORTS.

(a) In General.—The General Accounting Office shall conduct a study of enforcement efforts related to allegations of misconduct by open-end management companies between the headquarters of those companies and the Securities and Exchange Commission, the regional offices of the Commission, and appropriate State regulatory and law enforcement agencies, as well as the U.S. Department of Justice, the Federal Bureau of Investigation, and the Office of the Comptroller of the Currency.

(b) Report.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall submit a report on the study required under subsection (a) to Congress.

SEC. 403. REVIEW OF COMMISSION RESOURCES.

(a) In General.—The Securities and Exchange Commission shall conduct a study on the allocation and adequacy of the supervision and enforcement resources of the Commission dedicated to the oversight of open-end management companies.

(b) Report.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall submit a report on the study required under subsection (a) to—

(1) the Committee on Banking, Housing, and Urban Affairs of the Senate; and

(2) the Committee on Financial Services of the House of Representatives.

SEC. 404. COMMISSION STUDY AND REPORT REGULATING SOFT DOLLAR ARRANGEMENTS.

(a) Study Required.—

(1) In General.—The Commission shall conduct a study of the use of soft dollar arrangements by investment advisers as contemplated by section 28(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)).

(2) Areas of Consideration.—The study required by this section shall consider—

(A) the trends in the average amounts of soft dollar commissions paid by investment advisers and investment companies in the past 3 years;

(B) the types of services provided through soft dollar arrangements;

(C) the benefits and disadvantages of the use of soft dollars for investors, including the extent to which use of soft dollar arrangements affects the ability of mutual fund investors to compare the expenses of different mutual funds;

(D) the potential or actual conflicts of interest (or both potential and actual conflicts) created by soft dollar arrangements, including whether certain potential conflicts are being managed effectively by other laws and regulations specifically addressing those situations, the role of the board of directors in managing these potential or actual (or both) conflicts, and the effectiveness of the SEC in regulating such conflicts; and

(E) whether such section 28(e) should be modified, and whether other regulatory or legislative changes should be considered and adopted to benefit investors.

(b) Report Required.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit a report on the study required under subsection (a) to the Committee on Financial Services of the House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the Senate.
a) **REPORT REQUIRED.—**Not later than 180 days after the date enactment of this Act, the Securities and Exchange Commission shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate on market timing and late trading of mutual funds.

b) **REQUIRED CONTENTS OF REPORT.—**The report required by this section shall include the following:

1. The economic harm of market timing and late trading of mutual fund shares on long-term mutual fund shareholders.
2. The actions taken by the Commission’s Office of Compliance, Inspections and Examinations, and the actions taken by the Commission’s Division of Enforcement, regarding—
   a) illegal late trading practices;
   b) illegal market timing practices; and
   c) market timing practices that are not in violation of prospectus disclosures.
3. When the Commission became aware that the use of market timing practices was harming long-term shareholders, and the circumstances surrounding the Commission’s discovery of that activity.
4. The steps the Commission has taken since becoming aware of market timing practices to protect long-term mutual fund investors.
5. Any additional regulatory or legislative action that is necessary to protect long-term mutual fund shareholders against the detrimental effects of late trading and market timing practices.

**SEC. 406. STUDY OF ARBITRATION CLAIMS.**

(a) **STUDY REQUIRED.—**The Securities and Exchange Commission shall conduct a study of the increased rate of arbitration claims and decisions involving mutual funds since 1995 for the purposes of identifying trends in arbitration claim rates and, if applicable, the causes of such increased rates and the means to avert such causes.

(b) **REPORT.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall submit a report on the study required by subsection (a) to—

1. the Committee on Banking, Housing, and Urban Affairs of the Senate;
2. the Committee on Financial Services of the House of Representatives;
3. the Committee on Banking, Housing, and Urban Affairs of the House of Representatives;
4. the Committee on Finance of the House of Representatives; and
5. the Committee on Ways and Means of the House of Representatives.

**TITLE V—PROMOTING SHAREHOLDER LITERACY**

**SEC. 501. FINANCIAL LITERACY AMONG MUTUAL FUND INVESTORS STUDY.**

(a) **IN GENERAL.—**The Securities and Exchange Commission shall conduct a study to identify—

1. the existing level of financial literacy among investors that purchase shares of open-end companies, as such term is defined under section 5 of the Investment Company Act of 1940, that are registered under section 8 of such Act;
2. the most useful and understandable relevant information that investors need to make sound financial decisions prior to purchasing such shares;
3. methods to increase the transparency of expenses and potential conflicts of interest in transactions involving the shares of open-end companies;
4. the existing private and public efforts to educate investors; and
5. a strategy to increase the financial literacy of mutual fund investors that results in a positive change in investor behavior.

(b) **REPORT.—Not later than 1 year after the date of enactment of this Act, the Securities and Exchange Commission shall submit a report on the study required under subsection (a) to—

1. the Committee on Banking, Housing, and Urban Affairs of the Senate; and
2. the Committee on Financial Services of the House of Representatives.

By Mrs. BOXER:

S. 1972. A bill to amend the Internal Revenue Code of 1986 to provide for a tax credit for small employer-based health insurance coverage in States in which such coverage is mandated, and for other purposes; to the Committee on Finance.

Mrs. BOXER. Mr. President, today, I am introducing the “Small Business State Mandated Health Insurance Assistance Act.”

The legislation would provide a tax credit to small businesses in states where the law mandates that they provide health insurance to their employees. The credit would be for 50 percent of the amount the employer spends providing health insurance for his or her employees.

In California 6.4 million people are uninsured. That’s more than 18 percent of the state. To deal with the issue, the state legislature recently passed a law mandating that employers provide their workers with health insurance.

Many smaller businesses have told me that they do not object to the law itself, they have a hard time financially complying with the mandate—especially in these tough economic times. Furthermore, there is concern that neighboring States without such a mandate will recruit our small businesses entrepreneurs to move to their states where they would not have to provide insurance for their workers.

While businesses can currently deduct from federal taxes, as costs of doing businesses, the costs of the health insurance provided to their employees, this assistance is simply not large enough to provide the help that small businesses truly need. That is why I am introducing this bill today. I encourage my colleagues to join me in this effort.

By Mr. DASCHLE:


Mr. DASCHLE. Mr. President, by adopting the Medicare Conference Report today, the Senate has done great work to one of our most successful and controversial “premium support” demonstration projects in Medicare. It allows Americans to obtain US-made drugs at lower prices safely from other industrialized countries.

I noted earlier today when we voted on the Conference Report that there were few, if any, seniors looking on expectantly from the gallery. And in fact, we have heard from them in large numbers that they do not support the Conference bill. In contrast, the lobbies were made up of well-paid lobbyists— and the big drug companies and the HMOs are the ones celebrating the passage of the Conference bill. The Republicans got it backwards. The Medicare Preservation and Drug Price Fairness Act is a first step toward the bill Congress should have passed that truly benefits America’s seniors.

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

S. 1974

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,
SEC. 2. AUTHORITY TO NEGOTIATE PRICES.

Subsection (b) of section 1806A(c) of the Social Security Act, as added by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is repealed.

SEC. 3. REPEAL OF COMPARATIVE COST ADJUSTMENT (CCA) PROGRAM.

Subtitle E of title II of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and the amendments made by such subtitle, are repealed.

SEC. 4. PHARMACEUTICAL MARKET ACCESS.

(a) Importation of Prescription Drugs.—Section 804 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 384) is amended—

(1) in subsection (a)—

(A) by striking "The Secretary" and inserting "Not later than 180 days after the date of the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the Secretary;" and

(B) by striking "pharmacists and wholesalers" and inserting "pharmacists, wholesalers, and qualifying individuals";

(2) in subsection (b)—

(A) by amending paragraph (1) to read as follows:

"(1) require that each covered product imported pursuant to such subsection complies with sections 501, 502, and 505, and other applicable requirements of this Act; and"

(B) in paragraph (2), by striking ", including subsection (d); and" and inserting a period; and

(C) by striking subsection (c), and inserting "by pharmacists and wholesalers (but not qualifying individuals) after "importation of covered products":"

(3) in subsection (d)—

(A) by striking paragraphs (3) and (10);

(B) in paragraph (4), by striking ", including the professional license number of the importer, if any";

(C) in paragraph (6)—

(i) in subparagraph (C), by inserting "(if required under subsection (e))" before the period; and

(ii) in subparagraph (D), by inserting "(if required under subsection (e))" before the period; and

(D) in paragraph (7)—

(i) in subparagraph (A), by inserting "(if required under subsection (e))" before the period; and

(ii) by amending subparagraph (B) to read as follows:

"(B) Certification from the importer or manufacturer of such product that the product meets all requirements of this Act;"

(E) by redesignating paragraphs (4) through (9) as paragraphs (3) through (8), respectively; and

(F) in amending subsection (e) to read as follows:

"(e) Testing.—

(1) IN GENERAL.—Subject to paragraph (2), regulations prescribed under this subsection—

(A) require that testing referred to in paragraphs (5) through (7) of subsection (d) be conducted by the importer of the covered product, unless the Secretary determines that it is appropriate to conduct the test using a prescription drug subject to the requirements of section 505B for counterfeit-resistant technologies.

(2) EXCEPTION.—The testing requirements of paragraph (1) do not apply to a prescription drug subject to the requirements of section 505B for counterfeit-resistant technologies.

SEC. 5. ASSURING ACCESS TO COVERAGE.

Paragraph (3) of section 1860D–3(a), as added by section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is amended by striking "."

SEC. 6. REPEAL OF MA REGIONAL PLAN STABILIZATION FUND.

(a) IN GENERAL.—Section 1858 of the Social Security Act, as added by section 221(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is amended—

(1) by striking subsection (e);

(2) by redesigning subsections (f), (g), and (h) as subsections (e), (f), and (g), respectively; and

(3) in subsection (e), as so redesignated, by striking "subject to subsection (e)."

(b) CONFORMING AMENDMENT.—Section 1851(a)(1) of the Social Security Act (42 U.S.C. 1395w–21(i)(2)), as amended by section 222 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, is amended by striking "1858(h)" and inserting "1858(g)."

SEC. 7. REPEAL OF HEALTH SAVINGS ACCOUNTS.

Section 201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, and the amendments made by such section, are repealed.

SEC. 8. EFFECTIVE DATE.

(a) IN GENERAL.—The amendments made by this Act shall take effect as if included in the enactment of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003.

(b) APPLICATION OF LAWS.—If any amendment to any provision of law that is repealed by this Act, such provision shall be applied and administered as if the amendment had never been enacted.
Mr. DODD. Mr. President, I rise today to introduce important legislation designed to ensure that corporate wrongdoers are held fully responsible for their illegal actions and that investors are given fair compensation for such actions.

As most of my colleagues are aware, in April of this year, 10 large securities firms agreed to pay a total of $1.4 billion in fines and payments for giving their investment clients tainted and misleading advice—advice which cost those clients hundreds of millions of dollars.

The "global settlement" was initially lauded as a historic victory against corporate wrongdoers. And indeed, thanks to the efforts of Federal and State securities regulators, and New York State Attorney General Eliot Spitzer, the settlement has the potential to fundamentally change pernicious business practices that were so harmful to so many.

But the settlement's impact could be significantly weakened by a loophole that would allow the firms to avoid paying taxes on nearly $900 million of the penalties—by deducting them as standard business costs.

One-third of the total settlement is specifically prohibited by law from being tax-deductible. If the firms are able to write off the remainder of the costs as business expenses, then the total price tag of the settlement will be much smaller than advertised.

However, there is much more at stake. America's financial markets are the most vibrant in the world for one reason—investor confidence. The securities laws of the 1930's built the foundation for the deepest, most liquid markets in the world. They have created a public trust in our markets among investors worldwide who know that we have a zero-tolerance policy towards corporate malfeasance.

If we do not write off fines as the cost of doing business, then we will perpetuate the idea that fraud is no longer a crime, but an accepted business practice. And we will compromise the very principles on which our markets are based—credibility, honesty, and responsibility.

We need to send the strongest possible message to corporate America that defrauding people of their life savings can never—under any circumstance—be considered "business as usual." Our tax code should not reward these practices—it should discourage and punish them, to the greatest extent possible. Otherwise, the victims of corporate misconduct will include not only individual investors, but the credibility of our capital markets. And if our markets suffer, so will America's place in the world economy.

That is why I rise today to introduce my legislation. This legislation takes two important steps towards fixing this problem:

First, it expressly prohibits any tax deduction on payments for violations of securities laws, including those required by the global settlement. Second, it directs all of the tax revenues gained from these payments into existing funds administered by the Securities and Exchange Commission which repay money to defrauded investors. Under my bill, the perpetrators of corporate misdeeds will be fairly punished and the victims will be fairly compensated.

Everyone agrees that restoring investor confidence is a crucial part of getting our economy back on the right track. The vitality of 10 largest securities firms is an important piece of this puzzle. But Americans will only be willing to trust them with their hard-earned money if they can be sure that they are being dealt with ethically and honestly.

The global settlement represents a tremendous opportunity to help mend the tattered relationship between corporate America and the American people. We can't afford to lose that opportunity in a tax loophole. We need to ensure that corporate fraud is not treated as a real crime—not business as usual. I urge my colleagues to support this bill.

By Mr. BINGAMAN for himself, Mr. DODD, Mrs. MURRAY, Mr. JEFFORDS, Ms. CANTWELL, Mr. AKAKA, Mr. REED, Mr. CHAFEE, and Mr. INOUYE:

S. 2854. A bill to amend title XXI of the Social Security Act to permit qualifying States to use a portion of their allotments under the State children's health insurance program for any fiscal year for certain medical expenditures, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today to introduce legislation with Senators DOMENICI, MURRAY, JEFFORDS, CANTWELL, AKAKA, REED, CHAFEE, and INOUYE entitled the "Children's Health Equity Technical Amendments Act of 2003."

Since the passage of the Children's Health Insurance Program, or CHIP, in 1997, a group of States that expanded coverage to children in Medicaid prior to the enactment of CHIP have been unfairly penalized for that expansion. States are not allowed to use the enhanced matching rate available to other States at similar levels of poverty under the act. As a result, a child in the States of New York, Florida, and Pennsylvania, because they expanded original CHIP or in Iowa, Montana, or a number of other States at 134 percent of poverty is eligible for an enhanced matching rate in CHIP but that has not been the case for States such as New Mexico, Vermont, Washington, Rhode Island, Hawaii, and a number of others, including Connecticut, Tennessee, Minnesota, New Hampshire, Wisconsin, and Maryland.

As the health policy statement by the National Governors Association indicated, "The Governors believe that it is critical that innovative states not be penalized for having expanded coverage to children before the enactment of S-CHIP, which provides enhanced funding to meet these goals. To this end, the Governors support providing additional funding flexibility to states that had already significantly expanded coverage of the majority of uninsured children in their states."

For six years, our group of States have sought to have this inequity addressed. Early this year, I introduced the "Children's Health Equity of 2003" with Senators JEFFORDS, MURRAY, LEAHY, and Mrs. CANTWELL and we successfully fought to get this compromise worked out for inclusion in S. 312 by Senators ROCKEFELLER, and CHAFEE. This compromise extended expiring CHIP allotments only for fiscal years 1998 through 2001 in order to meet budgetary caps.

The compromise allowed States to be able to use up to 20 percent of our State's CHIP allotments to pay for Medicaid eligible children about 150 percent of poverty that were part of the expansion of CHIP. Unfortunately, a slight change was made in the conference language that excluded New Mexico and Hawaii, Maryland, and Rhode Island needed specific changes so an additional bill was passed, H.R. 3288, and signed into law as Public Law 108–107, on November 17, 2003.

The new law included language that I introduced with Senator DOMENICI, S. 1547, to address the problem caused to New Mexico by the conference committee's change.

Unfortunately, one major problem with the compromise was that it would allow the 10 States flexibility with its CHIP funds for allotments between 1998 and 2001 and not in the future. Therefore, the inequity continues with CHIP allotments last year, this year, and beyond.

If we want to ensure that all future allotments give these 11 States the flexibility to use up to 20 percent of our CHIP allotments to pay for health care services of children above 150 percent of poverty in our respective state Medicaid programs.

This rather technical issue has real and negative consequences in States such as New Mexico. In fact, due to the CHIP inequity, New Mexico has been allocated $266 million from CHIP between fiscal years 1998 and 2001 and yet, has only been able to spend slightly over $26 million as of the end of last fiscal year. In other words, New Mexico has been allowed to spend less than 10 percent of its federal CHIP allocations. With the passage of H.R. 3288 and H.R. 3288, that situations will improve somewhat. Unfortunately, the change was not made permanent and does not apply to future CHIP allotments. This legislation would correct this problem.

It is important to note that this initiative includes strong maintenance of effort language as well as incentives for our State to conduct outreach and
enrollment efforts and program simplification to find and enroll uninsured kids because we feel strongly that they must receive the health coverage for which they are eligible.

The bill does not take money from other States’ CHIP allotments. It simply allows our States to spend their States’ specific CHIP allotments from the Federal government on our uninsured children—just as other States across the country are doing.

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. 1976
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 “Children’s Health Equity Technical Amendments Act of 2003.”

SEC. 2. AUTHORITY FOR QUALIFYING STATES TO USE PORTION OF CHIP ALLOTMENTS FOR ANY FISCAL YEAR FOR CERTAIN MEDICAID EXPENDITURES.

(a) In General.—Section 2105(g)(1)(A) of the Social Security Act (42 U.S.C. 1397ee(g)(1)(A)) is amended—

(1) in paragraph (2), by striking “In this subsection” and inserting “In this subsection”;

(2) by striking subsection (b); and

(b) Special Rule for Use of Allotments for Fiscal Year 2002 or Thereafter.—Section 2105(g)(1)(A) of the Social Security Act (42 U.S.C. 1397ee(g)(1)) is amended by striking “(as added by section 1(b) of Public Law 108–74) is amended by striking “, 1999, 2000, or 2001” and inserting “and any fiscal year thereafter”;

(c) Conforming Amendment.—Section 2105(g)(3) of the Social Security Act (42 U.S.C. 1397ee(g)(3)) is amended by striking paragraphs (1) and (2) and inserting “this subsection”;

(d) Effective Date.—The amendments made by this section take effect as if enacted on October 1, 2003.

By Ms. SNOWE (for herself and Mr. VOINOVICH):

S. 1976
A bill to promote the manufacturing industry in the United States by establishing an Assistant Secretary for Manufacturing within the Department of Commerce, an Interagency Manufacturing Task Force, and a Small Business Manufacturing Task Force, and for other purposes; to the Committee on Small Business and Entrepreneurship.

Ms. SNOWE. Mr. President, I rise today to introduce the “Small Manufacturers Assistance, and Trade (SMART) Act,” which responds to the needs of America’s small manufacturers. The bill places emphasis on programs and services within the Federal Government that will provide small companies a better opportunity to survive in these challenging times and compete in our global economy. The SMART Act introduces new resources, improves existing programs, and expands those programs that work to serve a larger constituency. It is critical that we revitalize our country’s manufacturing base and establish an environment for economic growth and job creation.

Small manufacturers constitute over 98 percent of our Nation’s manufacturing enterprises, employ 12 million people, and supply more than 50 percent of the value-added U.S. production. It is a sector we cannot afford to ignore. In addition, no industry has witnessed a more profound erosion of jobs. The damage manufacturing has sustained is nothing short of alarming. Since July 2000, almost 2.8 million U.S. manufacturing jobs have been eliminated. New England alone lost more than 214,000 jobs between June 1993 and June 2003, with 78 percent of those losses, 166,000 jobs, occurring in the past 2 years. Between July 2000 and June 2003 an astounding 17,300 manufacturing jobs were lost. The bottom line is that we must bolster our manufacturing industry, especially with the current 6.0 percent unemployment rate in the United States. To ensure that the road to recovery is robust, we have a special obligation to provide the investment to allow small companies to grow. In fact, it has been reported that for every dollar of final manufacturing output, the Federal Government spends $1.26 is created in other industry sectors such as suppliers of raw materials, marketing, and retail industries.

Looking even more broadly, a healthy manufacturing base is essential to the preservation of our Nation’s security and its status as a world power. We must end the trend of becoming increasingly dependent upon other countries for the products we use and rely upon. Now is the crucial time for everyone—industry representatives, Congress, the President, Republicans and Democrats alike—to work together toward the common goal of revitalizing this industry.

As the Chair of the Committee on Small Business, I have been focusing considerable attention on the concerns of small business manufacturers and efforts to aid in their recovery. Last month, I held a field hearing on this critical subject in Lewiston, ME. I introduced the Assistant Secretary for International Trade of the Commerce Department, and Pamela Olson, Assistant Secretary for Tax Policy of the Treasury Department, to participate and explore with them ways to strengthen and expand this vital industry. Their testimony and comments confirmed that we cannot delay and must act quickly to support our small manufacturing base.

Additionally, I heard from a number of small businesses in the manufacturing industry. Their testimony confirmed the damage sustained by our country’s manufacturing sector, and the sense of urgency that we need to act immediately to assist them. The SMART Act is a vital first step toward helping them do what they do best—create jobs.

The bill I introduce today starts by establishing a strong and influential voice for manufacturers within the Federal Government through the creation of an Assistant Secretary for Manufacturing within the U.S. Department of Commerce. The new Assistant Secretary will be responsible for identifying and addressing the concerns of manufacturers and expanding this vital industrial sector to the common goal of revitalizing the SMART Act creates an Interagency Manufacturing Task Force (IMTF). The SMART Act creates an Interagency Manufacturing Task Force (IMTF). The IMTF will be composed of representatives from the Departments of Commerce, Labor, and Health and Human Services, and the Environmental Protection Agency. The IMTF will be charged with the following:

- Developing a national plan and strategy for manufacturing in the United States
- Identifying and addressing the concerns of manufacturers
- Developing and implementing policies and programs to support manufacturing
- Coordinating the efforts of Federal agencies to support manufacturing
- Reporting regularly to Congress on the status of manufacturing in the United States

To ensure that the government acts on the needs of manufacturers, the SMART Act creates an Interagency Manufacturing Task Force (IMTF). The IMTF will be composed of representatives from the Departments of Commerce, Labor, and Health and Human Services, and the Environmental Protection Agency. The IMTF will report regularly to Congress on the status of manufacturing in the United States.
be chaired by the Commerce Department’s new Assistant Secretary for Manufacturing and will be comprised of representatives from the Federal departments and agencies that directly affect this sector of our economy. In addition, the IMTF will be tasked with the duty of preparing an annual report on their findings and recommendations to the President and the Senate and House Small Business Committees.

In conjunction with this government-wide task force, the SMART Act also continues to improve the Federal infrastructure supporting the industry by establishing a Small Business Manufacturing Task Force (SBMTF) within the Small Business Administration (SBA). The SBA has a wide spectrum of programs and services available to small manufacturers. The mission of the new SBMTF will be to refocus the agency’s programs and services to ensure that they respond to the particular needs of small manufacturers while still serving all aspects of the small business community.

Adding to the information gained from the Committee’s hearing, we have reviewed the SBA’s programs and services to specifically identify those that support manufacturing and international trade. I was alarmed to learn, during this hearing, that small manufacturers were unfamiliar with the SBA programs that can assist them. These findings revealed that the SBA needs to realign its efforts specifically to include manufacturers in the delivery of the agency’s programs and services.

In order to improve existing SBA small business development programs, the agency needs to take its services beyond the traditional small business enterprise. The SMART Act improves the SBA’s entrepreneurial development programs and services so that small manufacturers can grow their business operations, expand their facilities, and purchase new equipment—all of which will result in creating jobs throughout the industry and its supply chain.

Partnerships developed between SBA related organizations and non-SBA related entities will be an additional asset for these producers. The SMART Act directs the SBA to develop partnerships with the Manufacturing Extension Partnership (MEP), community economic development organizations, and other resources providers such as Small Business Development Centers and SCORE—to create new outreach and training programs for small manufacturers and small businesses in the manufacturing supply chain.

The SMART Act requires SCORE, with its long established expertise in counseling, to extend its reach to small manufacturers and exporters through its online counseling services and its community liaison offices. The Act also directs SCORE to recruit more counselors with manufacturing and international trade expertise and increase its partnerships with manufacturing and exporting related organizations, which will help increase the marketing capabilities of these small producers and exporters.

I have also learned that small and medium sized companies are often hesitant to engage in international trade activities, fearing the unpredictability to grow their small business, because they are often fearful of the many unfamiliar intricacies involved in doing business in a foreign market. Small businesses currently account for only 1 percent of yearly export sales—nearly one-third of total U.S. exports. However, according to an Administration survey through the SBA’s Export Trade Assistance Partnership, approximately 30 percent of non-exporting small businesses are interested in exporting their products and services. These businesses hold the potential to be a major source for even more economic activity and job growth.

The SBA is a pivotal resource in delivering financial and business development tools to businesses seeking to export. The SMART Act improves the SBA’s international trade and exporting programs to assist small businesses and manufacturers expand into the export market and play an even greater role in the balance of U.S. trade.

The SMART Act also requires the SBA to establish annual goals that are linked to its trade promotion activities, and to develop programs that will help small manufacturers expand against imports. This objective will be more easily obtained by incrementally increasing the number of SBA representatives at the U.S. Export Assistance Centers (USEACs) over the next 3 years. To ensure that all States have at least one financial specialist dedicated to the international loan programs and providing oversight of trade financing programs, they must be included in this bill as well to increase their chance of being signed into law.

Because Federal assistance for small manufacturers, concerns in trade negotiations and promoting their exports. There are currently 21 Assistant USTRs covering issues from services to telecommunications, labor to telecommunication. While small businesses face many of the same issues that serve as barriers to trade as many of the largest multinational corporations, they do not have the same resources to overcome these barriers, thus blocking them from realizing the benefits of international trade. In particular, small businesses do not have the resources necessary to settle private trade disputes in a timely and cost effective fashion, meet physical requirements, conform to complex customs procedures, or meet off-set exclusions in government procurement. By establishing a new Assistant U.S. Trade Representative, we will ensure that the views and concerns of small businesses will be heard and addressed at the negotiating table and help secure the competitiveness of our small exporters abroad.

The Small Manufacturers Assistance, Resource, and Trade Act, the SMTA, calls for hearings that I have heard too often of late from small manufacturers in this country. These improvements to existing resources within the Federal
government will give these companies a better opportunity to survive in these challenging times and compete in the global economy.

This bill is a critical starting point to revitalize our country's manufacturing base and create an environment that allows them to grow and create jobs again. We must help these businesses access the global marketplace through expanded exporting opportunities and assistance. I intend to work with all groups and interested parties that are committed to improving and passing this bill. There are still many needs that face our Nation's manufacturers—and this is just the beginning.

I look forward to working with my colleagues in the Senate to ensure that the provisions of this bill are enacted so that these companies can continue to grow and reach their full potential.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section analysis be printed in the RECORD.

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

S. 1977

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Small Manufacturers Assistance, Recovery, and Trade Act" or "SMART Act".

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

Sec. 1. Short title; table of contents.

TITLE I—MANUFACTURING AND TRADE REPRESENTATIVES AND TASK FORCE

Sec. 101. Assistant Secretary of Commerce for Manufacturing.

Sec. 102. Interagency Manufacturing Task Force.

Sec. 103. Assistant United States Trade Representative for Small Business.

TITLE II—SMALL BUSINESS ADMINISTRATION

Subtitle A—Manufacturing and Entrepreneurial Development

Sec. 201. Small Business Manufacturing Task Force.

Sec. 202. Entrepreneurial development programs and services.

Subtitle B—Small Business Loan Programs

Sec. 211. Increased loan amounts for exporters.

Sec. 212. Debenture size.

Sec. 213. Job creation or retention standards.

Sec. 214. Clarification of maximum surety bond guarantee.

Subtitle C—International Trade

Sec. 221. Office of International Trade.

TITLE I—MANUFACTURING AND TRADE REPRESENTATIVES AND TASK FORCE

SEC. 101. ASSISTANT SECRETARY OF COMMERCE FOR MANUFACTURING.

(a) ESTABLISHMENT.—There shall be in the Department of Commerce, in addition to the Assistant Secretaries of Commerce provided by law as of the date of enactment of this Act, a representative of the Assistant Secretary of Commerce, to be known as the Assistant Secretary of Commerce for Manufacturing, who shall:

(1) be appointed by the President, by and with the advice and consent of the Senate; and

(2) be compensated at the rate of pay provided for under level IV of the Executive Schedule (5 U.S.C. 5315).

(b) DUTIES.—The Assistant Secretary of Commerce for Manufacturing shall:

(1) identify and address the concerns of manufacturers;

(2) represent and advocate for the interests of United States manufacturing companies; and

(3) aid in the development of policies that promote the vitality and expansion of United States manufacturing;

(4) review policies that adversely impact manufacturers;

(5) identify and address issues that are unique to small manufacturers and those that are exacerbated by limited capital of small manufacturers; and

(6) perform such other duties as the Secretary of Commerce may prescribe.

(c) REPORTING REQUIREMENTS.—The Assistant Secretary of Commerce for Manufacturing shall submit to Congress an annual report that contains:

(1) an overview of the state of the manufacturing sector in the United States;

(2) a forecast of the future state of the manufacturing sector in the United States; and

(3) an analysis of current and significant laws, regulations, and policies that adversely impact the manufacturing sector in the United States.

(d) TECHNICAL AND CONFORMING AMENDMENT.—Section 5315 of title 5, United States Code, is amended by striking "Assistant Secretary of Commerce (11)" and inserting "Assistant Secretaries of Commerce (12)".

SEC. 102. INTERAGENCY MANUFACTURING TASK FORCE.

(a) ESTABLISHMENT.—There is established an Interagency Manufacturing Task Force (referred to in this section as the "IMTF") for the purposes of—

(1) maximizing the efforts and resources of Federal agencies in assisting the manufacturing industry;

(2) improving interagency cooperation in their efforts to assist the manufacturing industry;

(3) encouraging additional efforts to assist United States manufacturers;

(4) coordinating the agencies' efforts to assist the manufacturing industry; and

(5) identifying and addressing collective manufacturing concerns.

(b) MEMBERS.—The IMTF shall be composed of 14 members, including—

(1) the Assistant Secretary of Commerce for Manufacturing, who shall serve as chair of the IMTF;

(2) a representative of the Department of the Treasury, to be designated by the Secretary of the Treasury;

(3) a representative of the Department of Defense, to be designated by the Secretary of Defense; and

(4) a representative of the Department of Education, to be designated by the Secretary of Education.

(c) DUTIES.—Under the direction of the Assistant Secretary of Commerce for Manufacturing, the IMTF shall:

(1) provide advice and counsel to the President and Congress on matters of importance to manufacturers;

(2) monitor, coordinate, and promote the plans, programs, and operations of the department and agencies of the Federal Government that may contribute to the growth of the United States manufacturing industry;

(3) develop and promote new public sector initiatives, policies, programs, and plans designed to foster the manufacturing industry;

(4) review, monitor, and coordinate plans and programs developed in the public sector, which affect the ability of manufacturers to obtain capital, credit, and access to technology;

(5) identify and address regulations that are needlessly burdensome on manufacturers; and

(6) design a comprehensive plan for a joint public-private sector effort to facilitate the growth and development of the United States manufacturing industry.

(d) MEETINGS.—

(1) FREQUENCY.—The IMTF shall meet not less than 4 times per year to perform the duties under subsection (c).

(2) QUORUM.—A majority of the members of the IMTF shall constitute a quorum to approve recommendations or reports.

(e) PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—

(A) FEDERAL EMPLOYEES.—Each member of the IMTF who is an officer or employee of the Federal Government shall serve without compensation in addition to that received for services rendered as an officer or employee of the United States.

(B) OTHER MEMBERS.—Each member of the IMTF who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent for level IV of the Executive Schedule (5 U.S.C. 5315) for each day (including travel time) during which such member is engaged in the performance of the duties of the IMTF.

(2) TRAVEL EXPENSES.—The members of the IMTF shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of Federal agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular place of business in the performance of services for the IMTF.

(3) DETAIL OF FEDERAL EMPLOYEES.—Any employee of the Federal Government may be detailed to the IMTF without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) REPORTS.—

(1) FINDINGS AND RECOMMENDATIONS.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the IMTF shall submit a report containing the findings and recommendations described in paragraphs (1) through (5) of subsection (c) to—

(A) the President;
(B) the Committee on Small Business and Entrepreneurship of the Senate; and
(C) the Committee on Small Business of the House of Representatives.

(2) GROWTH PLAN.—Not later than 1 year after the date of enactment of this Act, the Assistant Secretary of Commerce for Manufacturing shall submit the plan prepared pursuant to paragraph (1)(c) to—
(A) the President;
(B) the Committee on Small Business and Entrepreneurship of the Senate; and
(C) the Committee on Small Business of the House of Representatives.

SEC. 103. ASSISTANT UNITED STATES TRADE REPRESENTATIVE FOR SMALL BUSINESS.
Section 141(c) of the Trade Act of 1974 (19 U.S.C. 2171(c)) is amended by adding at the end the following:
"(6)(A) There is established within the Office the position of Assistant United States Trade Representative for Small Business, which shall be appointed by the United States Trade Representative,
"(B) The Assistant United States Trade Representative for Small Business shall—
"(i) promote the trade interests of small businesses and emerging small manufacturers;
"(ii) identify and address foreign trade barriers that impede small business exporters;
"(iii) enforce existing trade agreements beneficial to small businesses;
"(iv) maintain an open line of communication with the Small Business Administration concerning small business trade issues;
"(v) ensure that small business concerns are considered in trade negotiations and agreements; and
"(vi) perform such other duties as the United States Trade Representative may direct.

"(C) The Assistant United States Trade Representative for Small Business shall be paid the same pay as the member of the Senior Executive Service with equivalent time and service.

TITLE II—SMALL BUSINESS ADMINISTRATION
Subtitle A—Manufacturing and Entrepreneurial Development
SEC. 201. SMALL BUSINESS MANUFACTURING TASK FORCE.
(a) ESTABLISHMENT.—The Administrator of the Small Business Administration (referred to in this section as the "Administrator") shall establish a Small Business Manufacturing Task Force (referred to in this section as the "Task Force") to address the concerns of small manufacturers.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Task Force shall be composed of a representative from—

(A) the Office of Capital Access;

(B) the Office of Entrepreneurial Development;

(C) the Office of Administration and Management;

(D) the Office of Government Contracting and Business Development; and

(E) any other employee of the Small Business Administration, on a temporary basis, as determined necessary by the Administrator to carry out the goals of the Task Force.

(2) CHAIR.—The Administrator shall assign a member of the Task Force to serve as chair of the Task Force.

(c) DUTIES.—The Task Force shall—

(1) develop a program of services and training programs that address the needs of small manufacturers;

(2) report to Congress quarterly on the progress of the Program

(3) actively promote the programs and services of the Small Business Administration that serve small manufacturers; and

(4) identify and study the unique conditions facing small manufacturers and develop and propose policy initiatives to support and assist small manufacturers.

(d) MEETINGS.—

(1) FREQUENCY.—The Task Force shall meet not less than 4 times per year, and more frequently if necessary to perform its duties.

(2) QUORUM.—A majority of the members of the Task Force shall constitute a quorum to approve recommendations or reports.

(e) PERSONNEL ESTABLISHMENT.—

(1) COMPENSATION OF MEMBERS.—Each member of the Task Force shall serve without compensation in addition to that received for services rendered as an officer or employee of the United States.

(2) DETAIL OF SBA EMPLOYEES.—Any employee of the Small Business Administration may be detailed to the Task Force without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(f) REPORT.—Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Task Force shall submit a report containing the findings and recommendations of the task force to—

(1) the President;

(2) the Committee on Small Business and Entrepreneurship of the Senate; and

(3) the Committee on Small Business of the House of Representatives.

SEC. 202. ENTREPRENEURIAL DEVELOPMENT PROGRAMS AND SERVICES.
(a) MANUFACTURING OUTREACH AND TRAINING PROGRAMS.—The Office of Entrepreneurial Development of the Small Business Administration shall develop new outreach and training programs for small manufacturers and small businesses in the manufacturing supply chain, in partnership with 1 or more of the following:

(1) The Manufacturing Extension Partnership.

(2) Community economic development organizations.

(3) Small Business Development Centers.

(4) The Service Corps of Retired Executives.

(5) Women’s Business Centers.

(b) REPORTING REQUIREMENT.—The Small Business Administration shall include "manufacturing" as a category on the scorecard that tracks the Small Business Administration on its annual performance report to Congress.

(c) MANUFACTURING WORKSHOPS.—The Office of Entrepreneurial Development of the Small Business Administration, in consultation with manufacturing and economic development organizations, shall develop workshops to be conducted by district offices, in conjunction with the entities listed in paragraphs (1) through (5) of subsection (a), addressed—

(1) product design and testing;

(2) the patent process;

(3) prototype demonstrations;

(4) product production;

(5) market research; and

(6) business financing.

(d) SCORE.—The Service Corps of Retired Executives shall—

(1) make their counseling services available to small manufacturers and exporters through their on-line counseling services and community-based offices;

(2) recruit counselors with manufacturing and international trade expertise; and

(3) develop additional partnerships with manufacturing organizations.

(e) ENTREPRENEURIAL DEVELOPMENT PROGRAM IMPROVEMENTS.—The Office of Entrepreneurial Development of the Small Business Administration shall develop programs and services to strengthen small business vendors and suppliers that participate in the manufacturing supply chain.

(f) SIMPLIFIED REPORTING REQUIREMENTS.—

The Small Business Administration shall review and simplify, as appropriate, its reporting requirements for the Small Business Development Centers, the Service Corps of Retired Executives, and Women’s Business Centers so that these organizations can maximize the time spent assisting their clients.

(g) DISTRICT OFFICES.—The Small Business Administration shall provide district offices with adequate resources and allocations for outreach and training activities.

Subtitle B—Small Business Loan Programs
SEC. 211. INCREASED LOAN AMOUNTS FOR EXPORTERS.
Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

(1) in paragraph (9)—

(A) in subparagraph (A), by inserting before the semicolon at the end the following:

"and"; and

(B) by striking "$2,000,000''; and inserting "$2,000,000''; and

(2) in paragraph (14), by adding at the end the following:

"(D) The total amount of financings under this paragraph that are guaranteed and committed (by participation or otherwise) to the borrower from the business loan and investment fund established under this Act may not exceed $1,900,000 and the gross loan amount under this paragraph may not exceed $2,900,000.

SEC. 212. DEBENTURE SIZE.
Section 902(2) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)) is amended—

(1) by striking "$3,000,000'' and inserting "$2,000,000''; and

(2) by inserting before the period at the end the following:

"; and loans for which the loan proceeds will be directed toward manufacturing projects, which shall be limited to $1,000,000 for each such identifiable small business concern.

SEC. 213. JOB CREATION OR RETENTION STANDARDS.
Section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695) is amended by adding at the end the following:

"(e) JOB CREATION OR RETENTION REQUIREMENT FOR MANUFACTURING PROJECTS.—A manufacturing project being funded by the debenture is deemed to satisfy the job creation or retention requirement under subsection (d)(1)(A) if the project creates or retains 1 job opportunity for every $100,000 guaranteed by the Administration.

SEC. 214. CLARIFICATION OF MAXIMUM CERTIFICATE OF INDEBTEDNESS.
Section 411(a)(1) of the Small Business Investment Act of 1958 (15 U.S.C. 649(a)(1)) is amended by striking "contract up to'' and inserting "total work order or contract amount at the time of bond execution that does not exceed''.

Subtitle C—International Trade
SEC. 221. OFFICE OF INTERNATIONAL TRADE.
Section 22 of the Small Business Act (15 U.S.C. 649) is amended—

(1) by striking "Sec. 22'' and inserting the following:

"SEC. 22. OFFICE OF INTERNATIONAL TRADE.;''

(2) in subsection (a)—

(A) by inserting "ESTABLISHMENT;'' after "(a);''; and

(B) by inserting "(referred to in this section as the ‘Office’),'' after "Trade'';

(3) in subsection (b)—

(A) by striking "The Office” and inserting the following:

\[This is the end of the document.\]
(B) by adding ("Export Financing Programs") after "provisions" in section (9) as redesignated—

(i) by striking "and" and inserting "or"; and

(ii) by inserting "in each Administration regional office and assigning;" after "assigning;" and

(2) in subsection (c), by striking "and providing" and inserting "office and providing each Administration regional office and assigning;" and

(D) by amending subsection (f) to read as follows:

(1) a description of the participation by the Office in trade negotiations; and

(2) the destinations and benefits to the business community with strong export potential.

Title II—Small Business Administration

Section 201. The Small Business Manufacturing Task Force.

This section establishes a new Assistant Secretary "Manufacturing and Trade Development" to serve the small business administration and to small business concerns and small manufacturers; to facilitate technology transfers; to assist small business concerns and small manufacturers to compete effectively and efficiently against foreign entities; to increase the access to capital by small business concerns; to disseminate information concerning Federal, State, and private programs and initiatives; to ensure that the interests of small business concerns are adequately represented in trade negotiations; to identify subsectors of the small business community with strong export potential; to identify areas of demand in foreign markets; to pre-screen foreign buyers for commercial and credit purposes; and

(2) by striking "mechanism for" and inserting "mechanism for; and"

(D) in paragraph (9), as redesignated—

(1) by striking "full-time export development specialist, who;"

(2) by striking "and" at the end; and

(3) by striking the period at the end and inserting a semicolon; and

(v) by adding at the end the following:

"The SBA's resource partners; (b) directs the SBA to consult with manufacturing consortia, to include "manufacturing" on their scorecards, to assist manufacturers and exporters in obtaining capital, credit and access to technology; and (f) design a comprehensive plan for a joint public-private sector effort to facilitate the growth and development of the U.S. manufacturing industry, which shall be submitted, not later than 1 year after the effective date of the bill, to the President and the Senate and House Small Business Committees. This section also instructs the SBMTF to submit a report of its findings and recommendations to the President and the Senate and House Small Business Committees not later than 1 year after the effective date of the bill and annually thereafter.

Section 103. Assistant United States Trade Representative for Small Business.

This section establishes a new Assistant United States Trade Representative for Small Business, within the Office of the United States Trade Representative (USTR). This new position shall promote trade initiatives that are necessary to serve small manufacturers' needs, or whether additional programs or services are necessary, and that their concerns are considered in trade negotiations and agreements.

Title II—Small Business Administration

Section 201. The Small Business Manufacturing Task Force.

This section establishes a Small Business Manufacturing Task Force (SBMTF) to serve the small business administration and to small business concerns and small manufacturers; to facilitate technology transfers; to assist small business concerns and small manufacturers to compete effectively and efficiently against foreign entities; to increase the access to capital by small business concerns; to disseminate information concerning Federal, State, and private programs and initiatives, used by the Department of Commerce as of the date of enactment of this subsection, to strategically assign Administration employees to all Export Centers based on the needs of exporters.

(3) GOALS.—The Office shall work with the Department of Commerce and the Export-Import Bank, among other Federal entities, to share annual goals for the Export Centers.

(4) OVERSIGHT.—The Office shall designate an individual within the Administration to oversee all activities conducted by Administration employees assigned to Export Centers.

Title II—Small Business Administration

Section 201. The Interagency Manufacturing Task Force.

This provision establishes an Interagency Manufacturing Task Force (IMTF). The IMTF will be chaired by the new Assistant Secretary for Manufacturing and will be comprised of representatives of the Departments of Treasury, Defense, Education, Energy, Health and Human Services, Homeland Security, and the Environmental Protection Agency, the Small Business Administration, the United States Trade Representative, a representative of the Federal Government and two and two additional members designated by the President.

Under the Chair's direction, the IMTF shall:

(a) identify and address regulations that are needlessly burdensome on manufacturers; (b) provide advice and counsel to the President and Congress on matters of importance to manufacturers; (c) monitor, coordinate and promote the plans, programs and operations of the departments and agencies of the Federal Government that contribute to the U.S. manufacturing industry's growth; (d) develop and promote new public sector initiatives, policies, programs and plans designed to support and enhance the manufacturing industry; (e) review, monitor and coordinate plans and programs developed in the public sector that affect manufacturers' ability to operate and conduct specialized processes; and (f) design a comprehensive plan for a joint public-private sector effort to facilitate the growth and development of the U.S. manufacturing industry, which shall be submitted, not later than 1 year after the effective date of the bill, to the President and the Senate and House Small Business Committees.
and services to strengthen small business vendors and suppliers that participate in the manufacturing supply chain; (f) directs the SBA to review and simplify its reporting requirements for the Small Business Development Centers, SCORE, and Women's Business Centers; and (g) directs the SBA to provide adequate resources to the district offices for outreach and training activities that focus on current small business needs for exporting.

Section 211. Increased loan amounts for exporters.

This section increases the maximum size of a loan that an exporter may receive under the SBA's Working Capital Program (EWCP) from $2.3 million (instead of the current maximum loan size of $2 million) by increasing the maximum SBA guaranty from $1.3 million (instead of the current maximum SBA guaranty of $1 million). In order to conform the size of the guaranteed portion of an EWCP loan to that of a loan under the SBA's 7(a) International Trade Loan Program, the section also increases the maximum SBA-guaranteed portion of an ITL Program loan from $1.25 million to $1.3 million.

Section 212. Debenture size.

This section increases the maximum guarantee amount from $1.3 million to $2 million for the debentures that support a public policy goal, which include loans to exporters. The guaranteed amount of $2 million represents 40 percent of the total loan size, so small businesses will be able to receive loans of up to $5 million for these types of projects. This section also increases the maximum size of the SBA's guarantee from $1 million to $4 million. This loan will be used for manufacturing projects (leading to a maximum loan size of $10 million for small manufacturers, because the guarantee represents 40 percent of the maximum loan size).

Section 213. Job retention or retention standards.

This section modifies the job retention or creation standard for small manufacturers (currently one job per $35,000 guaranteed by the SBA) so that the small manufacturers must create or retain one job for each $100,000 guaranteed by the SBA.

Section 214. Clarification of maximum surety bond guarantee.

This section clarifies that the SBA may guarantee surety bonds for specific contracts of $2 million or less when the total range of affiliated contracts exceeds $2 million, or has the potential to exceed $2 million. The surety bond liability, however, may not exceed $2 million.

SUBTITLE C—INTERNATIONAL TRADE

Section 221. Office of International Trade.

This section: (a) establishes annual goals for the Office of International Trade—specifically, to enhance the export ability of small businesses and small manufacturers, to facilitate technological transfers, to enhance small business and small manufacturers' ability to compete against foreign corporations, to increase small businesses' access to capital, to disseminate information on protective programs, and to require that small businesses are represented in trade negotiations; (b) instructs the Office of International Trade and district office export development specialist to participate in an annual training program that focuses on current small business needs for exporting; (c) instructs the district offices to jointly develop training programs for exporters and lenders in cooperation with USEACs, the Department of Commerce, Small Business Development Centers and other agencies; (d) instructs the Office of International Trade's reporting requirements to include a description and justification for the Office of International Trade's expenditures on travel and participation in trade negotiations; and (e) requires that the SBA increase the number of SBA representatives at the United States Export Assistance Centers (USEACs) over the next 3 years according to the Commerce Department's resource allocation methodology and the individual within the SBA to oversee the agency's participation as well as to work with the USEACs partners to establish annual goals for the Export Centers.

By Mr. GRASSLEY (for himself and Mr. BAUCUS):

S. 1979. A bill to amend the Internal Revenue Code of 1986 to prevent the fraudulent avoidance of fuel taxes; to the Committee on Finance.

Mr. GRASSLEY. Mr. President, today we introduce a bill to fight tax fraud. I am not talking about just moving around a few numbers on a tax return. Today we will begin closing the loop holes that have created millions of gallon and billions of dollars of missing fuel and missing tax dollars. This problem not only robs the U.S. Treasury it also robs the American Taxpayer.

We rely on these tax dollars to fund not only the Highway Trust Fund, which is charged with constructing and maintaining our surface transportation system, this also robs money from our Airport Trust Fund.

In light of investigations completed since September 11th, the safety and soundness of maintaining our nation's transportation infrastructure—is now more than ever of the utmost importance. These issues are not just tax fraud—not only are we concerned with the tax loss, but where else is this money going—is it being used to fund terrorism? We need to know where all of this fuel is going. What makes us think that if we cannot find the fuel to collect the tax, that we could find the fuel to stop the terrorists acts. A missing barge could hold ninety tanker truck loads of fuel, that's about $500,000 in Federal taxes left uncollected, its also hundreds of thousands of gallons that we cannot account. That cannot happen, and this bill should help our enforcement officers close the loop holes and collect the tax that builds our highways.

Mr. BAUCUS. Mr. President, today Senator GRASSLEY and I introduce a bill that is the essence of good government. For a few years now the Senate Finance Committee has been working to increase the revenue into the Highway Trust Fund so we can fund a strong national highway program.

The committee has also been looking at preventing several schemes, scams and cons against the federal government. These are schemes that are used by participants in the fuel distribution chain to evade federal and state fuel taxes, fuel fraud prevention marries both those goals-fighting fraud and increasing revenue into the Highway Trust Fund.

It is crucial to ensure that all the taxes that are due to the Trust Fund are actually getting there, not being diverted as part of some scam to defraud the Federal Government.

That is why I am proud to introduce today the Fuel Fraud Prevention Act of 2003.

I am aware that this is a very controversial subject, but one that we must address. This fraud represents money that the federal government is losing while crooked individuals are getting rich on the backs of good honest citizens.

Uncovering this kind of corruption is what good mean by practicing good government. We need to catch these folks and make sure the money is going where it should.

This is money that goes to transportation projects and creates transportation jobs. That is important to Montana and to all states.

As a result of both TEA 21 and AIR 21, revenues collected by the Trust Funds are directly tied to spending on surface and air transportation. Therefore—adequately funding the nation’s transportation infrastructure—both surface and air—is almost entirely based on actually collecting all the taxes that should be collected by law.

By Mr. ALLARD (for himself, Mr. BROWNBACK, Mr. SESSIONS, Mr. BUNNING, and Mr. INHOFE):

S.J. Res. 26. A joint resolution proposing an amendment to the Constitution of the United States relating to marriage; to the Committee on the Judiciary.

Mr. ALLARD. Mr. President, I rise today to submit legislation that would amend the United States Constitution identifying and reaffirming the institution of marriage as a union between a man and a woman. The language I submit today is brief and simple:

Marriage in the United States shall consist only of the union of a man and a woman. Neither this Constitution, nor the Constitution of any State, nor any law (whether enacted by an立法 body or court) of any State or Federal law, shall be construed to require that marital status or the designation of marital status of persons residing in this State be held to include a union between a man and a woman.

This resolution is a starting point for a more comprehensive discussion. I look forward to having an involved, informed debate with the other members of this chamber. I am pleased to be joined in this effort by my colleagues Senator SAM BROWNBACK and Senator JEFF SESSIONS who are original cosponsors of this Resolution.

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

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

S.J. Res. 26

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 the several States within seven years after the date of its submission by the Congress:

"ARTICLE—

"(A) Marriage in the United States shall consist of a man and woman.

"(B) Neither the United States Constitution nor any State, nor Federal law, shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups."

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 276—TO AFFIRM THE DEFENSE OF MARRIAGE ACT

Mr. NICKLES (for himself, Mr. BROWNBACK, Mr. SESSIONS, Mr. BUNNING, Mr. CORNYN, Mr. SANTORUM, and Mr. ALLARD) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 276

Whereas, marriage is a fundamental social institution that has been tested and reaffirmed over thousands of years;

Whereas, historically marriage has been reflected in our law and the law of all jurisdictions in the United States as the union of a man and a woman, and the everyday meaning of marriage and the legal meaning of marriage has always been defined as the legal union of a man and a woman as husband and wife;

Whereas, families consisting of the legal union of one man and one woman for the purpose of bearing and raising children remains the basic unit of our civil society;

Whereas, in Goodridge v. Department of Public Health, the Supreme Judicial Court of Massachusetts ruled 4 to 3 that the Constitution of the State of Massachusetts prohibits the denial of the issuance of marriage licenses to same-sex couples;

Whereas, the power to regulate marriage lies with the legislature and not with the judiciary and the Constitution of the State Massachussetts specifically states that the judiciary shall never exercise the legislative and executive powers, or either of them, to the end it may be a government of laws and not of men;

Whereas, in 1996, Congress overwhelmingly passed, and President Bill Clinton signed, the Defense of Marriage Act under which Congress enshrined its rights under the effects clause of section 1 of Article IV of the United States Constitution when ratified by the legislatures of three-fourths of the several States within seven years after the date of its submission by the Congress:

Resolved, That the sincere thanks of the Senate are hereby tendered to the staff of both the Office of the Legislative Counsel of the Senate and the Office of the Legislative Counsel of the House of Representatives for their outstanding work and dedication to the United States Congress and the people of the United States of America.

SENATE RESOLUTION 277—EX-Pressing the Sense of the Senate Regarding Fighting Terror and Embracing Efforts to Achieve Israeli-Palestinian Peace

Mrs. FEINSTEIN (for herself, Mr. CHAFEE, Mr. NELSON of Florida, Mr. LEAHY, and Mr. LAUTENBERG) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 276

Whereas ending the violence and terror that have devastated Israel, the West Bank, and Gaza since September 2000 is in the vital interests of the United States, Israel, and the Palestinians;

Whereas ongoing Israeli-Palestinian con- flict stands as a threat and as opponents of peace throughout the region, including those who seek to undermine efforts by the United States to stabilize Iraq and those who want to see conflict spread to other nations in the region;

Whereas more than 3 years of violence, ter- ror, and escalating military engagement have demonstrated that military means alone will not solve the Israeli-Palestinian conflict;

Whereas despite mutual mistrust, anger, and pain, courageous and credible Israelis and Palestinians have come together in a private capacity to develop serious model peace initiatives, like the People's Voice Initiative, One Voice, and the Geneve Accord;

Whereas those initiatives, and other simi- lar private efforts, are founded on the deter- mination of Israelis and Palestinians to put an end to decades of confrontation and con- flict and to live in peaceful coexistence, mu- tual dignity, and security, based on a just, lasting, and comprehensive peace and achieving that peace;

Whereas those initiatives demonstrate that both Israelis and Palestinians have a partner for peace, that both peoples want to end the current impasse, and that both peoples are prepared to make necessary compromises in order to achieve peace;

Whereas each of the private initiatives ad- dresses the key requirements of both peoples, including preservation of the Jewish, democratic nature of Israel with sec- ure and defensible borders and the creation of a viable Palestinian state;

Whereas such peace initiatives demon- strate that there are solutions to the con- flict and present precious opportunities to end the violence and respect fruitful peace negotiations: Now, therefore, be it

Resolved, That the Senate—

(1) applauds the courage and vision of Israelis and Palestinians who are working together to conceive pragmatic, serious plans for achieving peace;

(2) calls on Israeli and Palestinian leaders to capitalize on this moment of opportunity offered by these peace initiatives; and

(3) urges the President of the United States to encourage and embrace all serious efforts to move toward a just, durable, and mutual- y toward achieving Israeli-Palestinian peace.

SENATE RESOLUTION 278—EX-Pressing the Sense of the Senate Regarding the Anthrax and Smallpox Vaccines

Mr. BINGAMAN submitted the fol- lowing resolution; which was referred to the Committee on Armed Services:

S. RES. 278

Whereas military personnel are asked to risk and even sacrifice their lives and the well-being of their families in defense of the United States;

Whereas vaccines are an important factor in ensuring force health protection by pro- tecting the military personnel of the United States from both natural health threats and health threats resulting from biological weapons in overseas conflicts;

Whereas vaccines offer significant benefits and protections that must be carefully bal- anced with the reality that vaccines and drugs generally carry rare but serious ad- verse events and life-threatening risks;

Whereas in 2002, the U.S. military's anthrax vaccine required by the Food and Drug Administration was revised to include approx- imately 40 serious adverse events with protection that "approximately 6 percent of the reported events were listed as seri- ous.";
Whereas in 2002, the Food and Drug Administration also compelled the manufacturer of the anthrax vaccine to substantially revise the package insert and changed the risk to pregnant women from Category C (a presumed risk to pregnancy) to Category D (a known risk) because of “positive evidence of human fetal risk based on adverse reaction data from investigational marketing experience or studies in humans”;

Whereas in 2002, the General Accounting Office reported “an estimated 69 percent of the personnel who had anthrax vaccine shots between September 1998 and September 2000 reported having side effects or reactions. This number is double the level cited in the vaccine product insert. Further, about 24 percent of all events were classified as systemic—a level more than a hundred times higher than that estimated in the insert at the time”;

Whereas in June 2003, the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention withdrew its support for expanding the smallpox vaccination program for first-responders after finding that 1 in 500 civilians vaccinated for smallpox had a serious vaccine event;

Whereas in 2002, the General Accounting Office found that 69 percent of experienced pilots and members in the National Guard and the Reserve reported that the anthrax shot was the major influence in their decision to change their military status in 2000, including leaving the military entirely;

Whereas in the war in Iraq that continues as of the date of enactment of this resolution, the British and Australian militaries have conducted voluntary anthrax vaccine programs, and other allies who have offered the anthrax vaccine have declined;

Whereas in November 2003, the National Institutes of Health and the National Institute of Allergy and Infectious Diseases reported in the “Jordan Report 20th Anniversary: Accelerated Development of Vaccines 2000” that no data existed to support the effectiveness of the anthrax vaccine against pulmonary (inhalation) anthrax in humans;

Whereas because anthrax can be prevented and treated with antibiotics and other options are either in clinical trials or development, the current anthrax vaccine is not the only choice for force health protection;

Whereas, in the State of the Union address, President Bush placed a national priority on developing a new anthrax vaccine and a newer and safer smallpox vaccine is also a development goal;

Whereas the threat of anthrax and smallpox attacks against the deployed troops of the United States has significantly diminished since the overthrow of Saddam Hussein and the disruption of Al Qaeda activity in Afghanistan; Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the Secretary of Defense should reconsider the mandatory nature of the anthrax and smallpox immunization programs pending the development of new and better vaccines that are currently under development—reconsider adverse actions taken against service members on the basis of refusal to take the smallpox or anthrax vaccines; and reevaluate, with the intelligence community, the current threat of anthrax and smallpox attacks on our troops, in an effort to reflect current operational realities when considering the continuation of a mandatory vaccination program.

It also urges the Department of Veterans Affairs to assess these adverse events being reported with respect to the smallpox and anthrax vaccines, and to review causal relationships, and estimate a future cost to the Department of Veterans Affairs to treat these conditions.

Vaccines are an important factor in ensuring protection of our nation’s military personnel from health threats—both natural and from biological weapons—in overseas conflicts. However, the current smallpox and anthrax vaccines have real and serious consequences that must be weighed against the potential benefits. This is why the President has made development of a modern anthrax vaccine a national priority in his last two State of the Union addresses and why the Institute of Medicine urged the government to act on the recommendations of its report. What are the consequences of a policy that makes it mandatory that military personnel get the anthrax and smallpox vaccines? First, there are a growing number of adverse events reported in conjunction with these two vaccines, which is in sharp contrast to other vaccines. Second, there is a moratorium in the military associated with the mandatory nature of requiring military personnel to take these shots that has a serious negative impact on the health and well-being of our military personnel. Third, the long-term consequences of the vaccine programs for the health and well-being of our military personnel and our veterans is in question and should be addressed.

Ensuring the health and well-being of our military personnel before, during and after serving our country should always be a top priority for our nation. The major potential benefit of any vaccine would be force protection. Unfortunately, there are major questions that arise with this argument concerning the anthrax and smallpox vaccines. First, even if such a threat against our troops in the conflicts in Iraq and Afghanistan has been significantly diminished. Second, there are other mechanisms to address any potential exposure, including post-exposure vaccination and antibiotics. This was the effective treatment used in the Senate after the anthrax exposure in 2001. Third, we do not even know if the anthrax vaccine works at all on inhalation anthrax or weaponized anthrax, so the vaccine may be completely ineffective anyway.

For our brave men and women serving in harm’s way, all too often the first threat they face is not when their boots hit the ground in Baghdad, Iraq, or Kandahar, Afghanistan—the first threat by our service members believe they face may be in line at the home station when they receive their anthrax and smallpox vaccinations.

There is a growing number of disturbing reports about how some of our servicemembers have contracted health problems shortly after receiving the anthrax and smallpox vaccines. These illnesses include mysterious pneumonia-like illnesses, heart problems, blood clots, and other medical conditions that have stricken otherwise young, healthy, and strong military personnel. It has even resulted in death.

This is not entirely surprising, in light of the fact that the Food and Drug Administration has identified a number of adverse reactions associated with these two vaccines. With respect to the anthrax vaccine alone, in 2002 the FDA required the anthrax vaccine product label be revised and it now includes approximately 40 serious adverse events. As it reads, “Approximately 6% of the reported events were listed as serious. Serious adverse events include those that result in death, hospitalization, permanent disability or are life-threatening.” The FDA also raised the rate of systemic reactions by up to 175 times over the previous 1999 product label, from 0.2 percent to 5-35 percent.

Meanwhile, in light of adverse events that exceed those for other vaccines and other concerns about the smallpox vaccine, both the Institute of Medicine and the Advisory Committee on Immunization Practices recently issued recommendations calling for a pause in the Federal Government’s smallpox vaccination program.
claim point to the anthrax and smallpox vaccines. These include the deaths of Army SP4 Joshua Neusche, Army SGT Michael Tostt, LTC Anthony Sherman, Army SP4 Rachel Lacy, Army SP4 Zeferino Colunga, Army SP4 Cory Leon, Army SP4 Levi Kitchens, Army SSG Richard Edwards Jr., Army PVT Matthew Bush, Army SSG David Loyd, and Army SP4 William Jeffries. Eight of these 11 Army personnel were under the age of 25.

As Dr. Jeffrey Martin, and infectious disease doctor at the Gundersen Clinic in La Crosse, WI, said, “I would say that the number of cases among young healthy troops would seem to be unusual.”

The numbers of those with adverse health events is significantly higher. There have been around 700 adverse events reported in just the first 6 months of this year and this is as part of a reporting system that has been found to significantly under-report adverse events.

In addition, there are the reports of problems at both Ft. Stewart and Ft. Knox with respect to sick and injured soldiers who have been waiting weeks and sometimes months for medical treatment. SENATORS BOND and LEAHY and LCDR should be commended for drawing attention to those problems and getting the military to move to address it.

What remains disturbing is that many of those who are ill and on “medical hold,” never deployed, at Ft. Stewart, Senators BOND and LEAHY and LCDR found that one-third of the 650 soldiers awaiting medical care and follow-up evaluations were not physically qualified for deployment and therefore never deployed overseas.

At Ft. Knox, according to a UPI story, 369 of the 422 soldiers at Ft. Knox did not deploy to Operation Iraqi Freedom because of their illnesses. This includes, according to the story, “strange clusters of heart problems and breathing problems, as did soldiers at Ft. Stewart and other locations.” These are health problems that are often cited as adverse events accompanying the anthrax and smallpox vaccines. Once again, there is a surprising number of such cases in what is otherwise a strong, healthy, and young group of people.

We certainly do not know whether these cases have been caused by the anthrax or smallpox vaccines and that must be addressed. While the military works to address that problem, they should also reconsider the mandatory nature of the anthrax and smallpox vaccines, as they may be contributing heavily to the problem.

In the case of Army SP3 Rachel Lacy, who loved her country and volunteered to deploy to the Persian Gulf, she was ordered to take the anthrax vaccine and did, without objection. Within days, she started to suffer pneumonia and flu-like symptoms. Within weeks, she was dead. The coroner listed “post-vaccine” problems on the death certificate for Rachel Lacy and said, “it’s just very suspicious in my mind . . . that she’s healthy, gets the vaccinations and then dies a couple weeks later.”

The Army is, according to published reports, conducting an investigation of the 100 or more soldiers that have gotten pneumonia in Iraq and southwestern Asia. Of those 100, 2 have died and another 13 have had to be put on respirators.

According to a story published in both the New York Times and Washington Post on November 19, 2003, as part of that investigation, the Advisory Committee on Immunization Practices and the Armed Services Epidemiology Board said the evidence “strongly favors” the belief that vaccines led to the death of Rachel Lacy, and Reserve reported that the anthrax militarily immediately said its vaccination policies would “not be changed.”

Rachel’s father, Moses Lacy, has asked, “Let’s stop this, re-evaluate the risk. . . .” That is a reasonable request and our nation’s servicemembers and families deserve it. We owe it to the Lacy family and to all our military personnel and their families.

As a result of the concerns of servicemembers and their families that these vaccines are having on their health and well-being, it must also be noted that the anthrax and smallpox vaccines are having serious consequences for our nation’s military readiness. In September 2002, the General Accounting Office reported that 69 percent of trained and experienced pilots and aircrew members in the Guard and Reserve reported that the anthrax shot was the major influence in their decision to change their military status in 2002, including leaving the military entirely.

Responding to the serious recruitment and retention problems caused by the mandatory anthrax vaccine policy, in February 2000, my colleague and then Presidential candidate JOHN MCCAIN called for a moratorium of this policy. Unfortunately, the safety concerns Senator MCCAIN noted then have not been resolved. The military continues to deny problems with the vaccine while simultaneously operating a clinic at Walter Reed Army Medical Center to treat the illnesses caused by the vaccine.

Instead of reconsidering its policy, the DOD has, instead, aggressively moved against those who have refused the vaccines. After his testimony before the House Government Reform Committee, Major Sonnie Bates, the highest ranking officer to refuse the anthrax vaccination, was charged under article 15 of the Uniform Code of Military Justice and the Department of Defense moved to court-martial him. After his further appeal came from the Congress, the Department of Defense backed down and discharged Major Bates.

There is also the case of Air Force Captain John Buck, M.D. He was court-martialed for refusing the anthrax vaccine in a trial in which the judge refused to allow the jury to hear the doctor’s views on its safety and efficacy. After he was convicted, fined $21,000, and deprived of a promotion, Dr. Buck deployed to the Indian Ocean after September 11th to support U.S. military operations in Afghanistan. He was awarded a medal for his service in support of Operation Enduring Freedom and subsequently given an honorable discharge.

In fact, the military has court-martialed soldiers throughout the military for refusing the anthrax vaccine, including a case this spring in New York of Private Rhonda Hazley who refused the vaccine because she was breast-feeding her child. One of the things this resolution asks is for the Department of Defense to reconsider adverse actions taken against servicemembers on the basis of refusal to take the smallpox or anthrax vaccines. The court-martialed woman that refused these vaccines because she was breast-feeding is particularly disturbing.

It is important to note that the FDA revised the product label for the anthrax vaccine from “a possible risk” to a “known risk” to pregnant women because of “positive evidence of human fetal risk based on adverse reaction during investigation of potential human experience or studies in humans.”

While Private Hazley was no longer pregnant, the FDA does believe the “pregnancy and lactation are a clinical continuum.” Once again, the risks of the vaccine would appear to far outweigh the benefit to a mother and mechanic in the Army.

The DOD’s actions in such cases have created a climate of distrust and fear within the ranks of the military. This incredibly disruptive and discredited policy is of great concern to our brave young men and women in uniform, and in the case of Private Hazley, to her child. Again, due to this policy, many soldiers, sailors, airmen and marines to reevaluate their commitment to the military.

The military has argued that we need a mandatory program with respect to our nation’s military personnel as part of ensuring force protection. However, both the New York Times and the Washington Post on November 19, 2003, as part of that investigation, the Advisory Committee on Immunization Practices and the Armed Services Epidemiology Board said the evidence “strongly favors” the belief that vaccines led to the death of Rachel Lacy, and Reserve reported that the anthrax militarily immediately said its vaccination policies would “not be changed.”

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long-standing medical practice.” Of interest, British army units that would be responsible for dealing with suspect chemical and biological sites are given the smallpox vaccine but still are not required to get the anthrax vaccine.

Few have agreed to accept the anthrax vaccine among British troops, they are reporting a large number of adverse events. According to a report by the British National Gulf Veterans and Families’ Association, they anticipate an adverse reaction among “at least 6,000 new cases as a result of the Iraq conflict—about 30 percent of the 22,000 troops who had the anthrax vaccination.”

In addition to the policy of our allies that military personnel should be able to make their own decisions regarding the anthrax vaccine, another reason they have made the vaccine voluntary is that we do not even know whether the anthrax vaccine is effective against inhalation or weaponized anthrax.

Punishing if we had truly thought there was strong evidence that the Iraqi government had and was preparing to use biological weapons such as anthrax against the United States military, the report by Weapons inspectors in September indicates that threat has been found to be lacking or non-existent. There appears to be little evidence available that Al Qaeda or Saddam have the capability to deliver anthrax or smallpox against our troops in Iraq or Afghanistan. Even if there was such a threat, it is likely extremely small at this point. Again, if nothing else, this change in the threat to our troops requires an immediate reevaluation of DOD vaccination policy.

Even if you still think there is some potential benefit of these vaccinations, it must be further weighed against whether there is another mechanism available that would have the same effect. We in the Senate, for example, know very well that the treatment of anthrax exposure via antibiotics works very well. The Senate was faced with the choice of having those exposed undergo a course of antibiotics versus getting the anthrax vaccine and the vast majority of those exposed to anthrax choose to take the antibiotic treatment rather than volunteer to take the anthrax vaccine.

In fact, the current Majority Leader, Senator Frist, said at the time the anthrax threat was offered to Senate employees potentially exposed to anthrax, “I do not recommend widespread inoculation for people with the vaccine in the Hart Building. There are too many side effects and if there is limited chance of exposure the side effects would outweigh any potential advantage.”

Again, in weighing the potential benefit of the vaccine versus the option of antibiotics, the vast majority decided in support of the latter option. Our military personnel certainly deserve the option that many Senate personnel chose for themselves and what it seems the Secretary of Defense chose for himself when he acknowledged on October 25, 2001—in the midst of the anthrax attacks—that he was not taking the anthrax vaccine.

When the President was running for our Nation’s highest office, he said he would not get the anthrax vaccine. I do not feel, in the September 2000 issue of U.S. Medicine, “The Defense Department’s Anthrax Immunization Program has raised numerous health concerns and caused fear among the individuals who are to be given it.” Those concerns are echoed in current administration’s anthrax immunization program has taken into account the effect of this program on the soldiers in our military and their families. Under my administration, soldiers and their families will be taken into consideration. Some of our nation’s servicemembers and their families believe that the current policy of this Administration does not adequately take soldiers and their families into consideration. They believe in fact, failing to ensure the health and well-being of our military personnel and we must do better.

Before closing, I would like to particularly note the long-standing work by Congressman CHRISTOPHER SHAYS that will be followed up by the House Committee on Government Reform in April 2000, the report states, “many members of the armed services do not share that faith [that the DOD places in the anthrax vaccine]. They do not believe in fact, failing to ensure the health and well-being of our military personnel and we must do better.

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Many of the findings by Congressman SHAYS, such as the concerns by military servicemembers are even more valid today with the introduction of the smallpox vaccine to the list of vaccines required by the military.

Consequently, I urge the passage of this Sense of the Senate urging the Department of Defense to reconsider the mandatory nature of its smallpox and anthrax vaccination programs and to provide its largest extended family in the Republic of Kazakhstan and consider the country to be an alternative and reliable source of energy; and to work with Kazakhstan to establish a National Center for Military Deployment Health Research. Our nation’s servicemembers deserve our best efforts to assure their health and well-being. As the IOM said in making the recommendation to establish a National Center for Military Deployment Health Research, these organizations were instrumental in developing the idea for a national center for the study of war-related illness and postdeployment health issues, and these organizations continue to support the national center concept.” We owe this to our nation’s servicemembers and veterans and I look forward to working with them.

SENATE CONCURRENT RESOLUTION 86—CONGRATULATING THE PEOPLE AND GOVERNMENT OF THE REPUBLIC OF KAZAKHSTAN ON THE TWELFTH ANNIVERSARY OF THE INDEPENDENCE OF KAZAKHSTAN AND PRAISING THE LONGSTANDING AND GROWING FRIENDSHIP BETWEEN THE UNITED STATES AND KAZAKHSTAN

Ms. LANDRIEU (for herself and Mr. BURNS) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

Whereas, on December 16, 2003, the people of the Republic of Kazakhstan will celebrate 12 years of independence, and on December 25, 2003, the United States and Kazakhstan will mark the 12th anniversary of diplomatic relations between the two countries; Whereas Kazakhstan in a short period of time has managed to shed totalitarian shackles and become a dynamically developing civil society in which public and private institutions are strong, effective democratic mechanisms and the rule of law are established, and basic human rights are respected; Whereas Kazakhstan, an open country where citizens of more than 100 ethnic groups enjoy equal rights and opportunities, made a significant contribution to promoting global peace and harmony by hosting in September 2003 the Congress of the World and Traditional Religions, which brought together leaders of world religions seeking to bridge religious differences; Whereas the Government of Kazakhstan has toughened legislation and taken other concrete steps to prevent human trafficking and end this cruel form of human mistreatment; Whereas Kazakhstan is confidently moving toward integration with the world economic system by establishing the conditions for developing a true market economy; Whereas the United States Government, recognizing the economic progress of Kazakhstan, granted to Kazakhstan “market economy status”, the first such designation for any country in the Commonwealth of Independent States; Whereas United States businesses actively participate in the development of one of the largest economies in Kazakhstan and consider the country to be an alternative and reliable source of energy; Whereas the application to Kazakhstan of chapter 1 of title IV of the Trade Act of 1974 (commonly referred to as the “Jackson-Vanik amendment”) prevents Kazakhstan from achieving permanent normal trade relations status with the United States; Whereas an independent and democratic Kazakhstan is the cornerstone of peace, stability, and prosperity in the vitally important region of Central Asia; Whereas Kazakhstan voluntarily disarmed its nuclear arsenal, the world’s fourth largest, and joined the Treaty on Reduction and Limitation of Strategic Offensive Weapons with Annexes, Protocols, and Memorandum of Understanding, signed at Moscow on July 31, 2000; and

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1901 (START Treaty), and in so doing provided an example of a responsible national approach to nonproliferation;

Whereas the people of Kazakhstan, under the leadership of President Nursultan Nazarbayev, are providing unconditional and firm support in the ongoing allied campaign in Afghanistan by allowing coalition forces to use the air space of Kazakhstan and the largest airport in Almaty, Kazakhstan;

Whereas Kazakhstan is taking an active part in rehabilitating Iraq and is the only country of Central Asia that is providing committed assistance of the people of Kazakhstan in the antiterrorist campaign of the United States; and

Whereas the increasing significance of Kazakhstan to United States foreign policy has resulted in the creation of the United States-Kazakhstan Interparliamentary Friendship Group, which is designed to strengthen relations of strategic partnership between the two countries; and

Whereas Kazakhstan is an important and strategic ally of the United States: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) congratulates the people and Government of the Republic of Kazakhstan on the 12th anniversary of the Independence of Kazakhstan and the establishment of diplomatic relations with the United States;

(2) welcomes and supports political and economic transformations achieved by Kazakhstan during its years of independence;

(3) expresses gratitude for the leadership of Kazakhstan in establishing interreligious dialogue to promote peace and harmony in the world;

(4) commends Kazakhstan on toughening measures to stop human trafficking;

(5) recognizes the need to terminate application to Kazakhstan of title IV of the Trade Act of 1974 (commonly known as the “Jackson-Vanik Amendment”) and extend normal trade relations status to Kazakhstan;

(6) expresses gratitude for the support and assistance of the people of Kazakhstan in the antiterrorist campaign of the United States and commends and thanks for their support for the reconstruction of Iraq;

(7) applauds the wise decision of the leadership of Kazakhstan to renounce the deployment of the nuclear weapons inherited by the country and make the world a safer place;

(8) calls upon the President to actively popularize the example set by Kazakhstan in renouncing the deployment of its nuclear weapons with respect to United States negotiations with countries that are trying to acquire, develop, or deploy nuclear weapons; and

(9) urges further strengthening of strategically important relations between Kazakhstan and the United States, and other issues of importance between the two countries.

AMENDMENTS SUBMITTED & PROPOSED

SA 2217. Mr. CRAIG (for Mr. Frist) proposed an amendment to the concurrent resolution H. Con. Res. 339, providing for the sine die adjournment of the first session of the One Hundred Eighth Congress; as follows:

On page 1, line 2, strike “That” and all that follows through page 3, line 3, and insert:

“That when the House adjourns on any legislative day from Tuesday, November 25, 2003, through the remainder of the first session of the One Hundred Eighth Congress, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned sine die until such day and time as may be specified by its Majority Leader or his designee in the motion to adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and

(c) Each project beneficiary must notify the Secretary, acting through the Commissioner of Reclamation, shall enter into an agreement with each project beneficiary that has chosen to participate in the joint oversight of the modification.

(d) If a project beneficiary elects to participate in the joint oversight of the modification, the Secretary, acting through the Commissioner of Reclamation, shall enter into an agreement with each project beneficiary that has chosen to participate in the joint oversight of the modification.

(e) Prior to submitting the modification reports required in section 5, the Secretary shall consider, and where appropriate implement, alternatives recommended by any project beneficiary that has chosen to participate in the joint oversight of the modification.

(2) During the construction phase of the modification, the Secretary shall provide to the participating project beneficiaries a written response detailing proposed actions to address the recommendations of the Secretary.

(3) Each project beneficiary that has chosen to participate in the joint oversight of the modification shall be credited toward repayment of the reimbursable costs under this Act.
project beneficiaries concerning cost-containment measures and construction management techniques needed to carry out such modification. The Secretary shall keep all project limitations, regardless of whether they have elected to participate in joint oversight, regularly informed of the costs and status of such modification.

SA 2219. Mr. BURNS (for himself, Mr. WYDEN, Mr. MCCAIN, and Mr. HOLLINGS) proposed an amendment to the bill S. 677, to regulate interstate commerce by imposing limits and penalties on the transmission of unsolicited commercial electronic mail via the Internet; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. 2. CONGRESSIONAL FINDINGS AND POLICY.

a. SA 2219.

This Act may be cited as the ‘‘Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003’’, or the ‘‘CAN–SPAM Act of 2003’’.

SEC. 3. DEFINITIONS.

(a) FINDINGS.—The Congress finds the following:

(1) electronic mail has become an extremely popular and widespread means of communication, relied on by millions of Americans on a daily basis for personal and commercial purposes. Its low cost and global reach make it an efficient and effective medium for communication, relied on by millions of Americans on a daily basis for personal and commercial purposes.

(2) The convenience and efficiency of electronic mail are threatened by the extremely rapid growth in the volume of unsolicited commercial electronic mail. Unsolicited commercial electronic mail is currently estimated to account for over half of all electronic mail traffic, up from an estimated 7 percent in 2001, and the volume continues to rise.

(b) CONGRESSIONAL DETERMINATION OF PUBLIC POLICY.—On the basis of the findings in subsection (a), the Congress determines that—

(1) there is a substantial government interest in regulation of commercial electronic mail on a nationwide basis;

(2) senders of commercial electronic mail should not mislead recipients as to the source or contents of such mail; and

(3) recipients of commercial electronic mail have a right to decline to receive additional commercial electronic mail from the same source.

SEC. 4. AFFIRMATIVE CONSENT.

In this Act:

(1) AFFIRMATIVE CONSENT.—The term ‘‘affirmative consent’’, when used with respect to a commercial electronic mail message, means that—

(A) the recipient expressly consented to receive the message in response to a clear and conspicuous request for such consent at the recipient’s own initiative; and

(B) if the message is from a party other than the recipient, the recipient communicated such consent, the recipient was given clear and conspicuous notice at the time the consent was communicated that the recipient’s electronic mail address could be transferred to such other party for the purpose of initiating commercial electronic mail messages.

(2) COMMERCIAL ELECTRONIC MAIL MESSAGE.—

(A) IN GENERAL.—The term ‘‘commercial electronic mail message’’ means any electronic mail message, including the origination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the ‘‘subject’’ or ‘‘To’’ line of the message from an ‘‘importance’’ perspective, so that the message appears to be a message from an entity that is not a commercial entity.

(B) TRANSACTIONAL OR RELATIONSHIP MESSAGE.—The term ‘‘transactional or relationship message’’ means a message sent or delivered to a recipient of any commercial electronic mail message, including the origination, and routing information attached to an electronic mail message, including the originating domain name and originating electronic mail address, and any other information that appears in the ‘‘subject’’ or ‘‘To’’ line of the message from an ‘‘importance’’ perspective, so that the message appears to be a message from an entity that is not a commercial entity.

(C) REGULATIONS REGARDING PRIMARY PURPOSE.—Not later than 12 months after the date of the enactment of this Act, the Commissioner shall promulgate rules pursuant to section 13 defining the relevant criteria to facilitate the determination of the primary purpose of an electronic mail message.

(D) REFERENCE TO COMPANY OR WEBSITE.—The inclusion of a reference to a commercial entity or a link to the website of a commercial entity in an electronic mail message does not, by itself, cause such message to be treated as a commercial electronic mail message for purposes of this Act if the content or primary purpose of the message is not, by itself, treatment of the primary purpose of an electronic mail message.

(E) PROTECTED COMPUTER.—The term ‘‘protected computer’’ has the meaning given that term in section 1030(e)(2)(B) of title 18, United States Code.

(F) PROTECTED COMPUTER.—The term ‘‘protected computer’’ has the meaning given that term in section 1030(e)(2)(B) of title 18, United States Code.

(G) RECIPIENT.—The term ‘‘recipient’’, when used with respect to a commercial electronic mail message, means an authorized user of the electronic mail address to which the message was sent or delivered. If a recipient of a commercial electronic mail message has 1 or more electronic mail addresses in addition to the address to which the message was sent or delivered, the recipient shall be treated as a separate recipient with respect to each such address. If an electronic mail address is allocated to the new user, the new user shall not be treated as a recipient of any commercial electronic mail message sent or delivered to that address before the address was reassigned to the new user.

(H) ROUTINE CONVEYANCE.—The term ‘‘routine conveyance’’ means the transmission,
routing, relaying, handling, or storing, through an automatic technical process, of an electronic mail message for which another person has identified the recipients or provided the recipient addresses.

(b) SENDER.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term "sender", when used with respect to a commercial electronic mail message, means a person who initiates such a message and whose product, service, or Internet web site is advertised or promoted.

(B) SEPARATE LINES OF BUSINESS OR DIVISIONS.—If an entity operates through separate lines of business or divisions and advertises its product, service, or other commercial activity through improper means, including—

(i) the transmission of multiple commercial electronic mail messages to any electronic mail address maintained by an individual, company, or organization;

(ii) the transmission of multiple commercial electronic mail messages to any electronic mail address maintained by any Internet access provider, government, or law enforcement agency.

§ 1037. Fraud and related activity in connection with electronic mail messages

(a) IN GENERAL.—Whoever, in or affecting interstate or foreign commerce, knowingly—

(B) harvests electronic mail addresses of the registrant or the legitimate successor in interest in the transmission of multiple commercial electronic mail messages from any combination of such accounts or domain names, or

(C) materially falsifies header information with respect to such a transaction involving the ongoing purchase or use of a product, service, or other commercial activity by the recipient of the message, an Internet access provider, government, or law enforcement agency.

(2) MATERIALLY.—For purposes of paragraphs (1) and (4) of subsection (a), header information or registration information is materially falsified if it is altered or concealed in a manner that would mislead the recipient of a recipient of the message, an Internet access service processing the message on behalf of a recipient, a person alleging a violation of this Act, or a law enforcement agency to identify, locate, or respond to a person who initiated the electronic mail message or to investigate the alleged violation.

(3) PENALTIES.—(a) In general.—Whoever, in or affecting interstate or foreign commerce, knowingly—

(B) sends or attempts to send, for a 1-year period, more than 10,000 electronic mail messages during a 24-hour period, more than 1,000 electronic mail messages during a 30-day period, or more than 100 electronic mail messages during a 1-year period.

(4) OTHER TERMS.—Any other term has the meaning given that term by section 3 of the CANSPAM Act of 2003.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 47 of title 18, United States Code, is amended by adding at the end the following:

"Sec. 1037. Fraud and related activity in connection with electronic mail."
(a) Requirements for Transmission of Messages.—

(1) Prohibition of False or Misleading Transmission Information.—It is unlawful for any person who initiates a transmission, to a protected computer, of a commercial electronic mail message, or a transactional or relationship message, that contains, or is accompanied by, header information that is materially false or materially misleading.

For purposes of this paragraph—

(A) header information that is technically accurate but includes an originating electronic mail address, domain name, or Internet Protocol address that the recipient reasonably believes will falsely convey a different origin.

(B) a ‘From’ line (the line identifying or purporting to identify a person initiating the message) that accurately identifies any person who initiated the message shall not be considered materially false or materially misleading; and

(C) such information shall be considered materially misleading if it fails to identify accurately a protected computer used to initiate the message because the person initiating the message or selecting of addresses to which the message is sent, or fails to indicate the message is an advertisement or solicitation.

(2) Prohibition of Deceptive Subject Headings.—It is unlawful for any person to initiate the transmission to a protected computer of a non-commercial electronic mail message if such person has actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that a subject heading of the message would be likely to mislead a recipient, acting reasonably under the circumstances, about a material fact regarding the contents or subject matter of the message (consistent with the criteria used in enforcement of section 5 of the Federal Trade Commission Act (15 U.S.C. 45)).

(3) Inclusion of Return Address or Commercial Electronic Mail Address.—

(A) In general.—It is unlawful for any person to initiate the transmission to a protected computer of a commercial electronic mail message that does not contain a functioning return electronic mail address or other Internet-based mechanism, clearly and conspicuously displayed, that—

(i) a recipient may use to submit, in a manner specified in the message, a reply electronic mail message or other form of Internet-based communication requesting not to receive future commercial electronic mail messages from that sender at the electronic mail address where the message was received; and

(ii) remains capable of receiving such messages or communications for no less than 30 days after the transmission of the original message.

(B) More detailed options possible.—The person initiating a commercial electronic mail message may comply with sub paragraphs (A)(i) and (A)(ii) by providing the recipient with a return electronic mail address or other mechanism from which the recipient may choose specific types of commercial electronic mail messages (including messages that contain personal information with respect to the recipient). The recipient of such message may select which categories of commercial electronic mail messages the recipient wants to receive or does not want to receive from the sender.

(C) Temporary inability to receive messages or process requests.—A return electronic mail address or other mechanism does not fail to satisfy the requirements of subparagraph (A) if it is unexpectedly and temporarily unable to receive messages or process requests, because of a problem beyond the control of the sender if the problem is corrected within a reasonable time period.

(4) Prohibition of Misuse of Commercial Electronic Mail After Objection.—

(A) In general.—If a recipient makes a request using a mechanism provided pursuant to paragraph (3), a person who sends or solicits any commercial electronic mail messages from such sender, then it is unlawful—

(i) for the sender to initiate the transmission to the recipient of 10 or more electronic mail messages within 10 business days after the receipt of such request, of a commercial electronic mail message that falls within the scope of the request; or

(ii) for any person acting on behalf of the sender to initiate the transmission to the recipient of more than 10 business days after the receipt of such request, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message falls within the scope of the request; or

(iii) for any person acting on behalf of the sender to initiate the transmission to the recipient of more than 10 business days after the receipt of such request, of a commercial electronic mail message with actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that such message contains, or is an advertisement or solicitation.

(B) Subsequent Affirmative Consent.—A prohibition in subparagraph (A) does not apply if there is affirmative consent by the recipient subsequent to the request under subparagraph (A).

(5) Inclusion of Identifier, Opt-out, and Physical Address in Commercial Electronic Mail.—

(A) In general.—It is unlawful for any person to initiate the transmission of any commercial electronic mail message that does not contain a functional identifier, opt-out, and physical address in the message.

(B) Subparagraph (A)(i) does not apply to the transmission of a commercial electronic mail message if the recipient has given prior affirmative consent to receipt of the message.

(6) Materially.—For purposes of paragraph (1), the term “materially”, when used with respect to a header information, includes the alteration or concealment of header information in a manner that would impair the ability of an Internet access service to detect on behalf of a recipient, a person alleging a violation of this section, or a law enforcement agency to identify, locate, or respond to a person described by the electronic mail message or to investigate the alleged violation, or the ability of a recipient of the message to respond to a person who initiated the electronic mail message.

(7) Aggravated Violations Relating to Commercial Electronic Mail.—

(A) In general.—It is unlawful for any person to initiate a commercial electronic mail message that is unlawful under subsection (a), or to assist in the origination of such message through the provision or selection of means from which such message will be transmitted, if such person had actual knowledge, or knowledge fairly implied on the basis of objective circumstances, that—

(i) the electronic mail address of the recipient was obtained using an automated means from an Internet website or proprietary online service operated by another person, or means from which such website or service included, at the time the address was obtained, a notice stating that the operator of such website or online service will not, sell, or otherwise transfer addresses maintained by such website or online service to any other party for the purposes of initiating, or enabling others to initiate, electronic mail messages; or

(ii) the electronic mail address of the recipient was obtained using an automated means that generates possible electronic mail addresses by combining names, letters, or numbers into numerous permutations.

(B) Disclaimer.—Nothing in this paragraph creates an ownership or proprietary interest in such electronic mail addresses.

(2) Automated Creation of Multiple Electronic Mail Accounts.—It is unlawful for an email operator of an Internet website or online service that enables to register for multiple electronic mail accounts or online user accounts from which to transmit to a protected computer, or enable another person to transmit to a protected computer, a commercial electronic mail message that is unlawful under subsection (a).

(3) Relay or Retransmission through Unauthorized Access.—It is unlawful for any person knowingly to relay or retransmit a commercial electronic mail message that is unlawful under subsection (a) from a protected computer or computer network that such person has accessed without authorization.

(4) Authorized Access.—It is unlawful for any person to knowingly or recklessly to sell, lease, exchange, or otherwise transfer addresses maintained by means from an Internet website or proprietary service processing the message on behalf of the electronic mail address or other mechanism does not contain a functional identifier, opt-out, and physical address in the message.

(c) Supplementary Rulemaking Authority.—The Commission shall by regulation, pursuant to section 18, modify the 10-business-day period under subsection (a)(4)(A) or subsection (a)(4)(B), or both, if the Commission determines that a different period would be more reasonable when taking into account—

(A) the purposes of subsection (a);

(B) the interests of recipients of commercial electronic mail; and

(C) the burdens imposed on senders of lawful commercial electronic mail; and

(2) specify additional activities or practices to which subsection (b) applies if the Commission determines that those activities or practices are contributing substantially to the proliferation of commercial electronic mail messages that are unlawful under subsection (a).

(d) Requirement to Place Warning Labels on Commercial Electronic Mail Transmission.—

(1) In general.—No person may initiate in or affecting interstate commerce the transmission, to a protected computer, of any commercial electronic mail message that includes sexually oriented material and—

(A) fail to include in subject heading for the electronic mail message the marks or other notation prescribed by the Commission under this subsection; or

(B) fail to provide that the matter in the message that is initially viewable to the recipient and absent any further actions by any recipient and absent any further actions by the recipient, includes only—
(i) to the extent required or authorized pursuant to paragraph (2), any such marks or notices;  
(ii) the information required to be included in the message pursuant to subsection (a)(5); and  
(iii) instructions on how to access, or a mechanism to access, the sexually oriented material.

(2) PRIOR AFFIRMATIVE CONSENT.—Paragraph (1) does not apply to the transmission of an electronic mail message if the recipient has given prior affirmative consent to receive the message.

(3) PRESCRIPTION OF MARKS AND NOTICES.—Not later than 120 days after the date of the enactment of this Act, the Commission, in consultation with the Attorney General, shall prescribe clearly identifiable marks or notices to be included in or associated with commercial electronic mail that contains sexually oriented material, in order to inform the recipient of that fact and to facilitate, whenever practicable, the prevention of such transmission.

(4) DEFINITION.—In this subsection, the term ‘sexually oriented material’ means any material that is sexually oriented adult content (as that term is defined in section 2257 of title 18, United States Code), unless the depiction constitutes a small and insignificantly juxtaposed part of the whole, the remainder of which is not primarily devoted to sexual matters.

(5) PENALTY.—Whoever knowingly violates paragraphs (1) and (2), a person (hereinafter referred to in this section as the ‘person’ for the purpose of enforcing compliance with this Act) shall be punished by a fine not to exceed $25,000, or imprisonment for not more than 5 years, or both.

SEC. 6. BUSINESSES KNOWINGLY PROMOTED BY ELECTRONIC MAIL WITH FALSE OR MISLEADING TRANSMISSION INFORMATION.

(a) IN GENERAL.—It is unlawful for a person to promote, or allow the promotion of, that person’s trade or business, or goods, products, property, or services sold, offered for sale, leased or otherwise made available through trade or business, in a commercial electronic mail message the transmission of which is in violation of this Act—  
(i) knows, or should have known in the ordinary course of that person’s trade or business, that the goods, products, property, or services offered for sale, lease, or otherwise made available through trade or business were being promoted for a promotion message;  
(ii) receives, or expects to receive, an economic benefit from such promotion; and  
(iii) took no reasonable action—  
(A) to prevent the transmission; or  
(B) to detect the transmission and report it to the Commission.

(b) LIMITED ENFORCEMENT AGAINST THIRD PARTIES.—  
(1) IN GENERAL.—Except as provided in paragraph (2), a person (hereinafter referred to as the ‘person’ in this section) that provides goods, products, property, or services to another person that violates subsection (a) shall not be held liable for such violation.

(2) EXCERPTION.—For the purpose of subsection (a) shall be imputed to a third party that provides goods, products, property, or services to another person that violates subsection (a) if that third party—  
(A) owns, or has a greater than 50 percent ownership or economic interest in, the trade or business of the person that violated subsection (a); or  
(B) (i) has actual knowledge that goods, products, property, or services are promoted in a commercial electronic mail message the transmission of which is in violation of section 5(a)(1); and  
(ii) receives, or expects to receive, an economic benefit from such promotion.

(c) EXCLUSIVE ENFORCEMENT BY FTC.—Subsections (f) and (g) of section 7 do not apply to violations of this Act.

(d) SAVINGS PROVISION.—Except as provided in section 7(f)(8), nothing in this section may be construed to limit or prevent any action that may be taken under this Act with respect to any violation of any other section of this Act.

SEC. 7. ENFORCEMENT GENERALLY.

(a) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Except as provided in subsection (b), this Act shall be enforced by the Commission if the violation of this Act affects an unfair or deceptive practice proscribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) ENFORCEMENT BY CERTAIN OTHER AGENCIES.—Compliance with this Act shall be enforced—  
(1) under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), in the case of—  
(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;  
(B) member banks of the Federal Reserve System (other than national banks), and Federal branches of foreign banks, by the Federal Reserve System;  
(C) commercial banks in States insured under the Federal Deposit Insurance Act, by the Federal Deposit Insurance Corporation;  
(D) savings associations the deposits of which are insured by the Federal Deposit Insurance Corporation, by the Director of the Office of Thrift Supervision;  
(2) under the Federal Credit Union Act (12 U.S.C. 1751 et seq.) by the Board of Directors of the Federal Deposit Insurance Corporation; and  
(3) under section 6 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.) by the Securities and Exchange Commission with respect to investment companies;  
(4) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) by the Securities and Exchange Commission with respect to any Federally insured credit union;  
(5) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) by the Securities and Exchange Commission with respect to investment companies;  
(6) under section 5(a) of the Gramm-Billet-Leach Act (15 U.S.C. 78c et seq.), except that any State in which the person is domiciled, subject to section 104 of the Gramm-Billet-Leach Act (15 U.S.C. 78q et seq.), may exercise under this section any powers otherwise provided in this Act with respect to that State;  
(8) under the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.) (except as provided in section 201 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act;  
(9) under the Farm Credit Act of 1971 (12 U.S.C. 2001 et seq.) by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, or any immediate branch, warehouse, or production credit association; and  
(10) under the Communications Act of 1934 (47 U.S.C. 151 et seq.) by the Federal Communications Commission with respect to any person subject to the provisions of that Act.

(c) EXERCISE OF CERTAIN POWERS.—For the purpose of the exercise by any agency referred to in subsection (b) to its powers under any Act referred to in that subsection, a violation of this Act is deemed to be a violation of the antitrust laws, of the Federal Trade Commission Act (15 U.S.C. 41 et seq.), of the Federal Deposit Insurance Act, the Federal Reserve Act (12 U.S.C. 611 and 616), and of the Gramm-Billet-Leach Act (15 U.S.C. 78q et seq.) (other than sections 101 and 104), of the Securities Exchange Act of 1934 (15 U.S.C. 78a–1 et seq.), of the Investment Advisers Act of 1940 (15 U.S.C. 80a–1 et seq.), of the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.), of the Federal Deposit Insurance Corporation Act (15 U.S.C. 1861 et seq.), and of the Federal Reserve Act (12 U.S.C. 611 and 616), unless the person subject to the provisions of that Act, or any other entity that the Act authorizes to exercise such power, after due notice and opportunity for hearing, enforces any other provision of this Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.

(d) ACTIONS BY THE COMMISSION.—The Commission shall exercise the powers vested in it by section 5 of this Act to prevent, to enjoin further violation of this Act, and to assess penalties therefor.

(e) AVAILABILITY OF CEASE-AND-DESIST ORDERS AND INJUNCTIVE RELIEF WITHOUT SHOWING OF KNOWLEDGE.—Any person subject to the provisions of any other provision of this Act, in any proceeding or action pursuant to subsection (a), (b), (c), or (d) of this section to enforce compliance, through an order to cease and desist or an injunction, with section 5(a)(1)(C), section 5(a)(1)(C), clause (ii), (iii), (iv) or (v) of section 5(a)(1)(A), section 5(b)(1)(A), or section 5(b)(2), neither the Commission nor the Federal Communications Commission shall be required to allege or prove the state of mind required by such section or subparagraph.

(f) ENFORCEMENT BY THE ATTORNEY GENERAL.—  
(1) CIVIL ACTION.—In any case in which the attorney general of a State, or an official or agency of a State, has reason to believe that an interest of the residents of that State has been or is threatened or adversely affected by any person who violates paragraph (1) or (2) of section 5(a), who violates section 5(d), or who engages in a pattern or practice that violates paragraph (3), (4), or (5) of section 5(a), of this Act, the attorney general, official, or agency of a State, as parens patriae, may bring a civil action on behalf of the residents of that State in a district court of the United States of appropriate jurisdiction.

(A) to enjoin further violation of section 5 of this Act by the defendant; or

(B) to obtain damages on behalf of residents of the State, in an amount equal to the greater of—  
(i) the actual monetary loss suffered by such residents; or  
(ii) the amount determined under paragraph (3).

(2) AVAILABILITY OF INJUNCTIVE RELIEF WHERE SHOWING OF DAMAGES IS WITHSTANDING ANY OTHER PROVISION OF THIS ACT.—In a civil action under paragraph (1)(A) of this subsection, the attorney general, official, or agency of a State shall be deemed to have standing to enjoin further violation of this Act in that subsection, a violation of this Act is deemed to be a violation of the antitrust laws, of the Federal Trade Commission Act (15 U.S.C. 41 et seq.), of the Federal Deposit Insurance Act, the Federal Reserve Act (12 U.S.C. 611 and 616), and of the Gramm-Billet-Leach Act (15 U.S.C. 78q et seq.) (other than section 104), of the Federal Reserve Act (12 U.S.C. 611 and 616), and of the Gramm-Billet-Leach Act (15 U.S.C. 78q et seq.) (other than section 104), unless the person subject to the provisions of that Act, or any other entity that the Act authorizes to exercise such power, after due notice and opportunity for hearing, enforces any other provision of this Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.
(iii), or (iv) of section 5(a)(4)(A), section 5(b)(1)(A), or section 5(b)(3)."

(3) STATUTORY DAMAGES.—

(A) IN GENERAL.—For purposes of paragraph (1)(b)(i), the amount determined under this paragraph is the amount calculated by multiplying the number of violations (with each separately addressed unlawful practice or address to which residents treated as a separate violation) by up to $250.

(B) LIMITATION.—For any violation of section 5 (other than section 5(a)(1)), the amount determined under subparagraph (A) may not exceed $2,000,000.

(4) REDUCTION OF DAMAGES.—The court may reduce the amount of damages assessed pursuant to paragraph (3) if—

(D) the defendant has established that the violation was conducted in good faith and that the defendant has taken appropriate steps to prevent similar violations in the future.

(5) RIGHTS OF FEDERAL REGULATORS.—The State shall provide for the issuance of a written notice of any action taken under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Commission or appropriate Federal regulator with a copy of the notice, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—

(A) to initiate an action; or

(B) upon so intervening, to be heard on all matters arising therein; or

(C) to remove the action to the appropriate Federal court and the right to file petitions for appeal.

(6) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this Act shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State to—

(A) institute investigations; or

(B) issue a cease and desist order; or

(C) compel the attendance of witnesses or the production of documentary and other evidence.

(7) VENUE; SERVICE OF PROCESS.—

(A) VENUE.—Any action brought under paragraph (1) shall be brought in the judicial district of the United States that meets applicable requirements relating to venue under section 1391 of title 28, United States Code.

(B) SERVICE OF PROCESS.—In an action brought under paragraph (1), process may be served in any district in which the defendant—

(i) is an inhabitant; or

(ii) maintains a physical place of business.

(8) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission, or any other Federal agency under section 13(b), has instituted an action or an administrative action for violation of this Act, the action brought by a State attorney general, or any other agency for any violation of this Act alleged in the complaint.

(9) REQUISITE SCIENTER FOR CERTAIN CIVIL ACTIONS.—

(A) IN GENERAL.—A provider of Internet access service, or a pattern of practices or unfair practices in commercial electronic mail messages. (B) AVOIDANCE OF DUTY.—Nothing in this Act shall be construed to preclude the State attorney general, or any other appropriate agency, from exercising the powers conferred on the attorney general by the laws of that State to—

(C) compel the attendance of witnesses or the production of documentary and other evidence.

(10) ACTIONS.—Except as provided in section 1391 of title 28, United States Code.

(11) EFFECTS OF THE ORDER.—In any action brought under paragraph (1) upon the Federal Commission or appropriate Federal regulator determined under subsection (a), the court shall provide the Commission, in consultation with the Department of Justice and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the

SEC. 10. STUDY OF EFFECTS OF COMMERCIAL ELECTRONIC MAIL.

(A) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce a report that—

(1) sets forth a plan and timetable for establishing a nationwide market "Do-Not-E-Mail Registry," and

(2) includes an explanation of any practical technical, technical, technical, privacy, security enforceability, or other concerns that the Commission has regarding such a registry; and

(3) includes an explanation of how the registry would be applied with respect to children with e-mail accounts.

(4) AUTHORIZATION TO IMPLEMENT.—The Commission may establish and implement the plan, but not earlier than 9 months after the date of enactment of this Act.

SEC. 11. STUDY OF EFFECTS OF COMMERCIAL ELECTRONIC MAIL.

(A) IN GENERAL.—Not later than 24 months after the date of enactment of this Act, the Commission, in consultation with the Federal Trade Commission and other appropriate agencies, shall submit a report to the Congress that provides a detailed analysis of the
effectiveness and enforcement of the provisions of this Act and the need (if any) for the Congress to modify such provisions.

(b) REQUIRED ANALYSIS.—The Commission shall include in the report required by subsection (a)—

(1) an analysis of the extent to which technological and marketplace developments, including trends in the nature of the devices through which consumers access their electronic mail messages, may affect the practicability and effectiveness of the provisions of this Act;

(2) analysis and recommendations concerning how to address commercial electronic mail that originates in or is transmitted through facilities or devices in other nations, including initiatives or policy positions that the Federal Government could pursue through international negotiations, fora, organizations, or institutions; and

(3) analysis and recommendations concerning options for protecting consumers, including children, from the receipt and viewing of commercial electronic mail that is obscene or pornographic.

SEC. 11. IMPROVING ENFORCEMENT BY PROVIDING REWARDS FOR INFORMATION ABOUT VIOLATIONS; LABELING.

The Commission shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce—

(1) a report, within 9 months after the date of enactment of this Act, that sets forth a system for rewarding those who supply information about violations of this Act, including—

(A) procedures for the Commission to grant a reward of not less than 20 percent of the total civil penalty collected for a violation of this Act to the first person that—

(i) identifies the person in violation of this Act; and

(ii) supplies information that leads to the successful collection of a civil penalty by the Commission; and

(B) procedures to minimize the burden of submitting a complaint to the Commission concerning violations of this Act, including procedures to allow the electronic submission of complaints to the Commission; and

(2) a report, within 18 months after the date of enactment of this Act, that sets forth a plan for requiring commercial electronic mail to be identifiable from its subject line, by means of compliance with Internet Engineering Task Force Standards, the use of the characters “AD” in the subject line, or other comparable identifier, or an explanation of any concerns the Commission has that cause the Commission to recommend against the plan.

SEC. 12. RESTRICTIONS ON OTHER TRANSMISSIONS.

Section 221(b)(1) of the Communications Act of 1934 (47 U.S.C. 227(b)(1)) is amended, in the matter preceding subparagraph (A), by inserting “or any person outside the United States if the recipient is within the United States” after “United States”.

SEC. 13. REGULATIONS.

(a) IN GENERAL.—The Commission may issue regulations to implement the provisions of this Act, including the requirements made by subsections (a) and (b) of section 15 of this Act.

(b) LIMITATION.—Subsection (a) may not be construed to authorize the Commission to establish a requirement pursuant to section 5(a)(5)(A)(ii) to specify whether the characters, marks, or labels in a commercial electronic mail message, or to include the identification required by section 5(a)(5)(A) in any particular part of such a mail message (such as the subject line or body).

SEC. 14. APPLICATION TO WIRELESS.

(a) EFFECT ON OTHER LAW.—Nothing in this Act shall be construed to preclude or impair the applicability of section 227 of the Communications Act of 1934 (47 U.S.C. 227) or the rules prescribed under section 227 of the Telemarketing and Consumer Fraud and Abuse Prevention Act (15 U.S.C. 6121).

(b) FCC RULEMAKING.—The Federal Communications Commission shall promulgate rules within 270 days to protect consumers from unwanted mobile service commercial messages from the provider—

(1) provide subscribers to commercial mobile services the ability to avoid receiving mobile service commercial messages unless the subscriber has provided express prior authorization to the sender, except as provided in paragraph (3);

(2) allow recipients of mobile service commercial messages to indicate electronically a desire not to receive future mobile service commercial messages from the sender;

(3) take into consideration, in determining whether to subject providers of commercial mobile services to the provision described by the Federal Trade Commission, in promulgating the rules, shall, to the extent consistent with subsection (c)—

(A) provide subscribers to commercial mobile services the ability to avoid receiving mobile service commercial messages unless the subscriber has provided express prior authorization to the sender, as excepted as provided in paragraph (3);

(b) apply only to the portion of a commercial mobile service message that is transmitted directly to a wireless device that is utilized by a subscriber of commercial mobile service; and

(c) allow a person to indicate a desire not to receive future mobile service commercial messages from the recipient—

(1) at the time of subscribing to such service; and

(2) in any billing mechanism; and

(d) determine a sender of mobile service commercial messages may comply with the provisions of this Act, considering the unique technical aspects, including the functional and character limitations, of devices that receive such messages.

(3) OTHER FACTORS CONSIDERED.—The Federal Communications Commission shall consider the ability of a person to use electronic mail messages to reasonably determine that the message is a mobile service commercial message.

(d) MOBILE SERVICE COMMERCIAL MESSAGE DEFINED.—In this section, the term “mobile service commercial message” means a commercial electronic mail message that is transmitted directly to a wireless device that is utilized by a subscriber of commercial mobile service.

SEC. 15. SEPARABILITY.

If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected.

SEC. 16. EFFECTIVE DATE.

The provisions of this Act, other than section 9, shall take effect on January 1, 2004.

SEC. 54. CREDIT TO HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.

(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a qualified rail infrastructure bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such credit allowance date and the credits determined under subsection (b) with respect to such credit allowance date for the taxable year on which the taxpay

(b) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a qualified rail infrastructure bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such credit allowance date and the credits determined under subsection (b) with respect to such credit allowance date for the taxable year on which the taxpay

(c) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(1) the sum of the regular tax liability (as described in section 1(c)) from which any credits allowable under subsection (a) are allowed, and

(2) the sum of the credits allowable under subsection (a) for prior taxable years against the tax imposed by this chapter for such taxable year.

(d) CREDIT INCLUDED IN GROSS INCOME.—The credit allowed under subsection (a) shall be included in the gross income of the taxpayer to the extent determined under section 53(c).

(e) CREDIT ALLOWABLE DURING REDEEMING PERIOD.—The credit allowed under subsection (a) shall be includible in the gross income of a taxpayer during any period during which the bond is outstanding.

(f) CREDITS TO HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.

(a) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a qualified rail infrastructure bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such credit allowance date and the credits determined under subsection (b) with respect to such credit allowance date for the taxable year on which the taxpay

(b) ALLOWANCE OF CREDIT.—In the case of a taxpayer who holds a qualified rail infrastructure bond on a credit allowance date of such bond which occurs during the taxable year, there shall be allowed as a credit against the tax imposed by this chapter for such taxable year an amount equal to the sum of the credits determined under subsection (b) with respect to such credit allowance date and the credits determined under subsection (b) with respect to such credit allowance date for the taxable year on which the taxpay

(c) LIMITATION BASED ON AMOUNT OF TAX.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess of—

(1) the sum of the regular tax liability (as described in section 1(c)) from which any credits allowable under subsection (a) are allowed, and

(2) the sum of the credits allowable under subsection (a) for prior taxable years against the tax imposed by this chapter for such taxable year.

(d) CREDIT INCLUDED IN GROSS INCOME.—The credit allowed under subsection (a) shall be included in the gross income of the taxpayer to the extent determined under section 53(c).

(e) CREDIT ALLOWABLE DURING REDEEMING PERIOD.—The credit allowed under subsection (a) shall be includible in the gross income of a taxpayer during any period during which the bond is outstanding.

(f) CREDITS TO HOLDERS OF QUALIFIED RAIL INFRASTRUCTURE BONDS.
**QUALIFIED RAIL INFRASTRUCTURE BOND.—** For purposes of this part, the term ‘qualified rail infrastructure bond’ means any bond issued as part of an issue if—

1. Issued by the Rail Infrastructure Finance Corporation and is in registered form.
2. The term of each bond which is part of such issue exceeds 20 years.
3. The payment of principal with respect to such bond is the obligation of the Rail Infrastructure Finance Corporation and not an obligation of the United States.
4. All proceeds from the sale of the issue are used for the purposes set forth in section 507(c)(5)(B) of the Arrive 21 Act.

**SPENDABLE PROCEEDS.—**

1. IN GENERAL.—The amounts shall be held in a trust account by the Rail Infrastructure Finance Corporation:
   a. An amount of the proceeds from the sale of all bonds designated for purposes of this section that, when combined with amounts described in subparagraphs (B), (C), and (D) of this paragraph, is sufficient—
      i. To award grants under sections 501, 502, and 503 of the Arrive 21 Act.
      ii. To proceed with due diligence to commence construction, with respect to such projects within the 12-month period beginning after the date of issuance, and
      iii. To expend the total amount of the net spendable proceeds of the issue.

**2. USE OF FUNDS.—** Amounts in the trust account shall be available for awarding grants, proceeding with due diligence to commence construction, and to expend the total amount of the net spendable proceeds of the issue.

**3. USE OF REMAINING FUNDS ON TRUST ACCOUNT.—** If the Corporation determines that the amount in the trust account exceeds the amount required to comply with paragraph (2), the Corporation may transfer the excess to the Rail Infrastructure Investment Account to be available for awarding grants as provided for in section 507(c)(5)(B) of the Arrive 21 Act.

**4. REVERSION OF REMAINING FUNDS.—** Upon retirement of all bonds issued by the Corporation with respect to which proceeds from the sale of such bonds shall be covered into the general fund of the Treasury of the United States as miscellaneous receipts.

**OTHER DEFINITIONS AND SPECIAL RULES.—** For purposes of this section—

1. Bond.—The term ‘bond’ includes any obligation.
2. NET SPENDABLE PROCEEDS.—The term ‘net spendable proceeds’ has the meaning given such term in section 507(c)(6) of the Arrive 21 Act.
3. QUALIFIED PROJECT.—The term ‘qualified project’ means any project that is eligible for grant funding under section 601, 602, or 603 of the Arrive 21 Act.
4. PARTNERSHIP; S CORPORATION; AND OTHER PASS-THRU ENTITIES.—Under regulations prescribed by the Secretary, in the case of a partnership, S corporation, or other pass-thru entity, rules similar to the rules of section 41(g) shall apply with respect to the credit allowable under subsection (a).
5. RAIL INFRASTRUCTURE INVESTMENT COMPANIES.—If any qualified rail infrastructure bond is held by a regulated investment company, the credit determined under subsection (a) shall be allowed to shareholders of such company under procedures prescribed by the Secretary.
SA 2221. Mr. McCONNELL (for Mr. LOTT) proposed an amendment to the resolution S. Res. 177, to direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal representation in the United States Senate, to be placed in the Senate wing of the Capitol, and to authorize the Committees on Rules and Administration to obtain technical advice and assistance in carrying out its duties; as follows:

On page 3, strike lines 2 through 4 and insert the following: "forefathers, to be placed in a location in the Senate wing of the Capitol, and to authorize the Committees on Rules and Administration to obtain technical advice and assistance in carrying out its duties; as follows:"

SA 2222. Mr. McCONNELL (for Mr. LOTT) proposed an amendment to the resolution S. Res. 177, to direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal representation in the United States Senate, to be placed in the Senate wing of the Capitol, and to authorize the Committees on Rules and Administration to obtain technical advice and assistance in carrying out its duties; as follows:

Amend the preamble to read as follows:

Whereas the framers of the Constitution, meeting at Independence Hall, reached a supremely important agreement, providing for a dual system of congressional representation, such that in the House of Representatives, each State would be assigned a number of seats in proportion to its population, and in the Senate, all States would have an equal number of seats, an agreement which became known as the "Great Compromise" and the "Connecticut Compromise"; and

SA 2223. Mr. McCONNELL (for Mr. LOTT) proposed an amendment to the resolution S. Res. 177, to direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal representation in the United States Senate, to be placed in the Senate wing of the Capitol, and to authorize the Committees on Rules and Administration to obtain technical advice and assistance in carrying out its duties; as follows:

Amend the title so as to read: "To direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal representation in the United States Senate, to be placed in the Senate wing of the Capitol, and to authorize the Committees on Rules and Administration to obtain technical advice and assistance in carrying out its duties;"

SA 2224. Ms. CANTWELL submitted an amendment intended to be proposed by her to the bill S. 1839, to extend the Temporary Extended Unemployment Compensation Act of 2002; which was referred to the Committee on Finance; as follows:

Starting on page 1, line one, strike all that follows and replace with the following:

SA 2225. Mr. LEVIN submitted an amendment intended to be proposed by him to the bill S. 1267, to amend the District of Columbia Home Rule Act to provide the District of Columbia with autonomy over its budgets, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 1. SHOULDER TRIGGERS.

This Act may be cited as the "Unemployment Compensation Extension Act of 2003".

SEC. 2. REFERENCES.

Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 26 U.S.C. 3304 note).


(a) Four-Month Extension of Program. —

SEC. 208. APPLICABILITY.

(a) In General. — Subject to subsection (b), an agreement entered into under this title shall apply to weeks of unemployment beginning after May 1, 2004, and ending before May 1, 2005.

(b) Transitory Period.—The amendment made by this section shall take effect as if it had been amended by striking '5' each place it appears and inserting '4'; and

SEC. 4. ADDITIONAL REVISION TO CURRENT TUC-X TRIGGER.

Section 203(c)(2)(B) is amended to read as follows:

"(B) Such a period would then be in effect for such State under such Act if—

(i) section 203(d) of such Act were applied as if it had been amended by striking '5' each place it appears and inserting '4'; and

(ii) with respect to weeks of unemployment beginning on or after the date of enactment of this Act, to section 203(c)(2)(B).

(2) The amendment made by this section shall take effect as if included in the enactment of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 26 U.S.C. 3304 note).

SEC. 5. TEMPORARY STATE AUTHORITY TO WAIVE APPLICATION OF LOOKBACKS UNDER THE FEDERAL-STATE EXTENDED UNEMPLOYMENT COMPENSATION ACT OF 1970.

For purposes of conforming with the provisions of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note), a State may, during the period beginning on the date of enactment of this Act and ending on June 30, 2004, waive the application of either subsection (d)(1)(A) of section 203 of such Act or subsection (f)(1)(A)(ii) of such section, or both.

SEC. 6. COMMISSION ON ART.

The Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers would be assigned a number of seats in proportion to its population, and in the Senate, all States would have an equal number of seats, an agreement which became known as the "Great Compromise" and the "Connecticut Compromise"; and

Whereas an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal representation in the United States Senate, to be placed in the Senate wing of the Capitol, and to authorize the Committees on Rules and Administration to obtain technical advice and assistance in carrying out its duties; as follows:

SEC. 2. REFERENCES.

Except as otherwise expressly provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision, the reference shall be considered to be made to a section or other provision of the Temporary Extended Unemployment Compensation Act of 2002 (Public Law 107–147; 26 U.S.C. 3304 note).


(a) In General.—Except as provided in subsection (b) and not later than 1 year after the date of enactment of this Act, the District of Columbia shall require all taxicabs licensed in the District of Columbia to choose fares by a metered system.

(b) District of Columbia Opt-out.—The Mayor of the District of Columbia may exempt the District of Columbia from the requirement under subsection (a) by issuing an executive order that specifically states that the District of Columbia opts out of the requirement to implement a metered fare system for taxicabs.

SEC. 2226. Mr. AKAKA submitted an amendment intended to be proposed by him to the bill S. 910, to ensure the continuation of nonhomeland security functions of Federal agencies transferred to the Department of Homeland Security; which was ordered to lie on the table; as follows:

On page 3, line 1, beginning with the comma strike all through page 4, line 19, and insert a period.

On page 5, line 5, strike the comma and insert "(except for the Coast Guard)."

On page 5, strike lines 18 through 21, and insert the following:

(4) the Committee on the Judiciary of the Senate;

(5) the Committee on Environment and Public Works of the Senate;

(6) the Committee on Government Reform of the House of Representatives;

(7) the Select Committee on Homeland Security of the House of Representatives;

(8) the Committee on Appropriations of the House of Representatives;

(9) the Committee on Appropriations of the House of Representatives;

(10) the Committee on Transportation and Infrastructure of the House of Representatives;

(11) any other relevant committee of the Senate or House of Representatives that requests a copy of the report.

On page 7, strike lines 1 through 18, and insert the following:

(A) the Committee on Governmental Affairs of the Senate;

(B) the Committee on Appropriations of the Senate;

(C) the Committee on the Judiciary of the Senate;

(D) the Committee on Environment and Public Works of the Senate;

(E) the Committee on Government Reform of the House of Representatives;

(F) the Select Committee on Homeland Security of the House of Representatives;

(G) the Committee on Appropriations of the House of Representatives;

(H) the Committee on the Judiciary of the House of Representatives;

(I) the Committee on Transportation and Infrastructure of the House of Representatives;

(J) any other relevant committee of the Senate or House of Representatives that requests a copy of the report.

(3) Constitutional — The report submitted under paragraph (2) shall contain—
Mr. MCONNELL. Mr. President, I ask unanimous consent that Candace Shelton and Scott Koelker of my staff be granted floor privileges for the duration of my remarks.

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

APPOINTING THE DAY FOR THE CONVENING OF THE SECOND SESSION OF THE ONE HUNDRED EIGHTH CONGRESS

Mr. MCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.J. Res. 80, the convening date of the 102nd Congress; further, that the resolution be read three times and passed and the motion to reconvene be laid upon the table.

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

The joint resolution (H.J. Res. 80) was read the third time and passed, as follows:

H. J. RES. 80

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. AUTHORITY FOR CONVENING OF SECOND REGULAR SESSION. The second regular session of the One Hundred Eighth Congress shall begin at noon on Tuesday, January 20, 2004.

SEC. 2. AUTHORITY FOR CALLING SPECIAL SESSION. If the Speaker of the House of Representatives (or the designee of the Speaker) and the Majority Leader of the Senate (or the designee of the Leader), acting jointly after consultation with the Minority Leader of the House of Representatives and the Minority Leader of the Senate, determine it is in the public interest for Congress to assemble during the period between the end of the first regular session of the One Hundred Eighth Congress at noon on January 3, 2004, and the convening of the second regular session of the One Hundred Eighth Congress as provided in section 1—

(1) the Speaker and Majority Leader, or their designees, shall notify the Members of the House and Senate, respectively, of such determination and of the place and time for Congress to so assemble; and

(2) Congress shall assemble in accordance with that notification.

CONDEMNING THE TERRORIST ATTACKS IN ISTANBUL, TURKEY

Mr. MCONNELL. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of S. Res. 273 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 273) condemning the terrorist attacks in Istanbul, Turkey, on November 15 and 20, 2003, expressing condolences to the families of the individuals murdered in the attacks, expressing sympathy to the individuals injured in the attacks, and expressing solidarity with the Republic of Turkey and the United Kingdom in the fight against terrorism.

There being no objection, the Senate proceeded to consider the resolution.

Mr. LAUTENBERG. Mr. President, last week’s horrific attacks in Istanbul are acts of cowardice targeting both the structures and symbols of Turkish coexistence. I grieve for the families of the 58 victims and wish the 750 injured individuals a speedy recovery.

The terrorists who have attacked Turkey in the name of Islam and its heritage do not know their history. Throughout the Ottoman Empire, Jews, Christians and other minorities were treated with respect and allowed to practice their religion freely. Since Mustafa Kemal Ataturk founded modern Turkey in 1923, Turkey has been admired by western and non-western countries alike as an apotheosis of progressive Muslim democracy.

In Turkey, the common heritage and faith coexist with a desire to globalize and enhance representative democracy and the freedom it brings.

During World War II, as Hitler’s troops were marching from the Balkans and emptying Greek cities of their Jewish populations, Turkey’s president, Ismet Inonu, closed its border. The Jews of Turkey were spared by the principled leadership of their government, who refused to be complicit in murder. In my own travels through Turkey—from Istanbul to Iridne—I have seen the rich fusion of ancient and modern and of religious and secular. I have enjoyed the renowned hospitality offered to all visitors.

The terrorists who attacked the synagogues, consulate, and bank in Istanbul last week seek to undermine the pluralism, diversity, and openness that have long characterized Turkish culture and society. Together, we will prevent the terrorists from achieving this aim. And, particularly New Jerseyans, are intimately familiar with the pain wreaked by a terrorist attack on our homeland.

We in Washington are prepared to offer assistance and support to Prime Minister Recep Tayyip Erdogan and his government in the days ahead as Turkey shores up security and begins healing from these traumatic incidents. The U.S.-Turkish partnership continues to be strong and will stand united in the face of the global threat of terrorism.

Mr. MCONNELL. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and any statements relating to the resolution be printed in the RECORD.

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

The resolution (S. Res. 273) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 273

Whereas, in Istanbul, Turkey, on November 15, 2003, two explosions set off minutes apart during Sabbath morning services devastated Neve Shalom, the largest synagogue in the city, and the consulate, about 3 miles away from Neve Shalom;

Whereas the casualties of more than 20 people killed and more than 300 people wounded in the bombing attacks on the synagogues included both Muslims and Jews;

Whereas, on November 20, 2003, two bombs exploded in Istanbul at the Consulate of the United Kingdom and the HSBC Bank;

Whereas the casualties of more than 25 people killed and 450 people wounded in the November 20, 2003, bombing attacks included Muslims and Christians, and Turks, British diplomats, and visitors to the Republic of Turkey;

Whereas troops of the United Kingdom are part of the United States-led coalition that liberated Iraq from the regime of Saddam Hussein and are now present in Iraq under the auspices of the United Nations Security Council;

Whereas the acts of murder committed on November 15 and 20, 2003, in Istanbul, Turkey, were cowardly and brutal manifestations of international terrorism;

Whereas the Government of Turkey immediately condemned the terrorist attacks in the most forceful terms and promised to bring the perpetrators to justice at all costs;

Whereas the United States and Turkey are allies and are committed to working together to combat terrorism;

Whereas the United States and Turkey are allied by shared values and a common interest in building a stable, peaceful, and prosperous world;

In the aftermath of the tragedies in Istanbul, particularly the large, predominantly Muslim nation with a secular government, has close relations with Israel and is also the only predominantly Muslim member of the North Atlantic Treaty Organization (NATO);

Whereas the acts of murder committed on November 15 and 20, 2003, demonstrate again
that terrorism respects neither boundaries nor borders: Now, therefore, be it
Resolved, That the Senate—
(1) condemns in the strongest possible terms the terrorist attacks in Istanbul, Turkey, on November 15 and 20, 2003;
(2) expresses its condolences to the families of the individuals murdered in the terrorist attack; and
(3) expresses its solidarity with the United Kingdom, Turkey, and all other countries that stand united against terrorism and work together to bring to justice the perpetrators of these and other terrorist at-
tacks.

FEDERAL LAW ENFORCEMENT PAY AND BENEFITS PARITY ACT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Sen-
ate proceed to immediate consideration of Calendar No. 358, S. 1683.

The PRESIDING OFFICER. The assistant legislative clerk read
the bill by title.

The assistant legislative clerk read
as follows:

A bill (S. 1683) to provide for a report on par-
ity of pay and benefits among Federal law en-
forcement officers and to establish an ex-
change program between Federal law en-
forcement employees and State and local law en-
forcement employees.

There being no objection, the Senate pro-
ceeded to consider the resolution.

Mr. MCCONNELL. I ask unanimous consent that the bill be read a third
time and passed, as follows:

S. 1683

Be it enacted by the Senate and House of Re-
presentatives of the United States of America in Con-
gress assembled, SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Law En-
forcement Pay and Benefits Parity Act of 2003”.

SEC. 2. LAW ENFORCEMENT PAY AND BENEFITS PARITY REPORT.

(a) DEFINITION.—In this section, the term “law enforcement officer” means an indi-
nual—

(1) who is a law enforcement officer de-
fined under section 8331 or 8601 of title 5, United States Code;

(B) the duties of whose position include the investiga-
tion, apprehension, or detention of individuals suspected or convicted of of-
fenses against the criminal laws of the United States; and

(2) who is employed by the Federal Govern-
ment.

(b) REPORT.—Not later than April 30, 2004, the Office of Personnel Man-
agement shall submit a report to the President of the Sen-
ate and the Speaker of the House of Rep-
resentatives and the appropriate committees and subcommittees of Congress that in-
cludes—

(1) a comparison of classifications, pay, and benefits among law enforcement officers across the Federal Government; and

(2) recommendations for ensuring, to the maximum extent practicable, the elimi-
nation of disparities in classifications, pay and benefits for law enforcement officers throughout the Federal Government.

SEC. 3. EMPLOYEE EXCHANGE PROGRAM BETWEEN FEDERAL EMPLOYEES AND EMPLOYEES OF STATE AND LOCAL GOVERNMENTS.

(a) DEFINITIONS.—In this section—

(1) the term “employing agency” means the Federal, State, or local government agency with which the participating em-
ployee was employed before an assignment under the Program; and

(2) the term “participating employee” means an employee who is participating in the Program; and

(3) the term “Program” means the em-
ployee exchange program established under subsection (b).

(b) ESTABLISHMENT.—The President shall establish an employee exchange program be-
tween Federal agencies that perform law en-
forcement functions and agencies of State and local governments that perform law en-
forcement functions.

(c) CONDUCT OF PROGRAM.—The Program shall be conducted in accordance with sub-
chapter VI of chapter 33 of title 5, United States Code.

(d) QUALIFICATIONS.—An employee of an employing agency who performs law enforce-
ment functions may be selected to partici-

pane in the Program if the employee—

(1) has been employed by the employing agency for a period of more than 3 years;

(2) has had appropriate training or experi-
ence to perform the work required by the as-
ignment;

(3) has had an overall rating of satisfactory or higher on performance appraisals from the employing agency during the 3-year period before being assigned to another agency under this section; and

(4) agrees to return to the employing agen-
cy after completing the assignment for a pe-
period not less than the length of the assign-
ment.

(e) WRITTEN AGREEMENT.—An employee shall enter into a written agreement regard-
ing the terms and conditions of the assign-
ment before beginning the assignment with another agency.

FEDERAL RAILROAD SAFETY IMPROVEMENT ACT

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Sen-
ate proceed to immediate consideration of Calendar No. 358, S. 1402.

The PRESIDING OFFICER. The assistant legislative clerk read
the bill by title.

The assistant legislative clerk read
as follows:

A bill (S. 1402) to authorize appropriations for activities under the Federal railroad safety laws for fiscal years 2004 through 2006, and for other purposes.

There being no objection, the Senate pro-
ceeded to consider the bill, which had been reported from the Committee on Commerce, Science, and Transpor-
tation, with amendments as follows:

[Srike the part shown in black-

brackets and insert the part shown in

italics.]

S. 1402

Be it enacted by the Senate and House of Rep-
 resentatives of the United States of America in Con-
gress assembled, SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Railroad Safety Improvement Act”.

SEC. 2. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or re-
peal is expressed in terms of an amendment to, or a repeal of, a section or other provi-
sion, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 3. TABLE OF CONTENTS.

The table of contents for this Act is as fol-

ows:

Sec. 1. Short title.
Sec. 2. Amendment of title 49, United States Code.
Sec. 3. Table of contents.

TITLE I—AUTHORIZATION OF APPROPRIATIONS

Sec. 101. Authorization of appropriations.

TITLE II—RULEMAKING, INSPECTION, ENFORCEMENT, AND PLANNING AUTHORITY

Sec. 201. National crossing inventory.
Sec. 202. Grade crossing elimination and consolidation.
Sec. 203. Model legislation for driver behav-
ior.
Sec. 204. Operation Lifesaver.
Sec. 205. Transportation security.
Sec. 206. Railroad accident and incident re-
porting.
Sec. 207. Railroad radio monitoring author-
ity.
Sec. 208. Recommendations on fatigue man-
agement.
Sec. 209. Positive train control.
Sec. 211. Railroad police.
Sec. 212. Federal Railroad Administration employee training.
Sec. 214. Report regarding impact on public safety of train travel in commu-
nities without grade separation.
Sec. 215. Runaway trains emergency response.

TITLE III—MISCELLANEOUS PROVISIONS

Sec. 301. Technical amendments regarding en-
forcement by the Attorney Gen-
eral.
Sec. 302. Technical amendments to civil penalty provisions.
Sec. 303. Technical amendments to eliminate unnecessary provisions.

TITLE I—AUTHORIZATION OF APPROPRIATIONS

Sec. 101. Authorization of appropriations.

Section 20117(a) is amended to read as fol-

ows:

“(a) GENERAL.—There are authorized to be appropriated to the Secretary of Transpor-
tation to carry out this chapter—

“(1) $186,000,000 for the fiscal year ending September 30, 2004;

“(2) $175,000,000 for the fiscal year ending September 30, 2005;

“(3) $185,000,000 for the fiscal year ending September 30, 2006;

“(4) $192,000,000 for the fiscal year ending September 30, 2007; and

“(5) $200,000,000 for the fiscal year ending September 30, 2008.”.

TITLE II—RULEMAKING, INSPECTION, EN-
FORCEMENT, AND PLANNING AUTHORITY

Sec. 201. NATIONAL CROSSING INVENTORY.

(a) IN GENERAL.—Chapter 201 is amended by adding at the end the following:

“(20154. National crossing inventory

“(a) INITIAL REPORTING OF INFORMATION

ABOUT PREVIOUSLY UNREPORTED CROSS-
INGS.—Not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act or 6 months after a new
crossing becomes operational, whichever occurs later, each railroad carrier shall—

"(1) report to the Secretary of Transportation current information, as specified by the Secretary, concerning each previously unreported crossing through which it operates; or

"(2) ensure that the information has been reported by any other railroad carrier that operates through the crossing.

(b) UPDATING OF CROSSING INFORMATION.—(1) On a periodic basis beginning not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act and on or before September 30 of every third year thereafter, or as otherwise specified by the Secretary, each railroad carrier shall—

(A) report to the Secretary current information, as specified by the Secretary, concerning each crossing through which it operates; or

(B) ensure that the information has been reported by any other railroad carrier that operates through the crossing.

(2) A railroad carrier that sells a crossing on or after the date of enactment of the Federal Railroad Safety Improvement Act, shall, not later than the date that is 18 months after the date of enactment of the Act or 3 months after the sale, whichever occurs later, or as otherwise specified by the Secretary, report to the Secretary current information, as specified by the Secretary, concerning the change in ownership of the crossing.

(c) RULEMAKING AUTHORITY.—The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may enforce each provision of the Federal Railroad Administration’s Highway-Rail Crossing Inventory Instructions and Procedures Manual that is in effect on the date of enactment of the Federal Railroad Safety Improvement Act, until such provision is superseded by a regulation issued under this section.

(d) DEFINITIONS.—In this section:

(1) CROSSING.—The term ‘crossing’ means a location within a State, other than a location where one or more railroad tracks cross one or more road or street, or a private roadway, including associated sidewalks and pathways, areas or more railroad tracks either at grade or grade-separated, where—

(A) while highway, road, or street, or a private roadway, including associated sidewalks and pathways, crosses one or more railroad tracks either at grade or grade-separated; or

(B) a dedicated pedestrian pathway that is not associated with a public highway, road, or street, or a private roadway, crossing one or more railroad tracks either at grade or grade-separated.

(2) STATE.—The term ‘State’ means a State of the United States, the District of Columbia or the Commonwealth of Puerto Rico.

SEC. 202. GRADE CROSSING ELIMINATION AND CONSOLIDATION.

(a) CROSSING REDUCTION PLAN.—Within 24 months after the date of enactment of this Act, the Secretary of Transportation shall develop and transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a plan for a joint initiative with States and municipalities to systematically reduce the number of public and private highway-rail grade crossings by 1 percent per year in each of the succeeding 10 years. The plan shall include—

(1) a prioritization of crossings for elimination or consolidation, based on considerations including—

(A) whether the crossing has been identified as high risk;

(B) whether the crossing is located on a designated high-speed corridor or on a railroad right-of-way utilized for the provision of intercity or commuter passenger rail service; and

(C) the existing level of protection;

(2) suggested guidelines for the establishment of new public and private highway-rail grade crossings, with the goal of avoiding unnecessary new crossings through careful traffic, zoning, planning, and

(3) an estimate of the costs of implementing the plan and suggested funding sources.

(b) CONSULTATION WITH STATES.—In preparing the plan required by subsection (a), the Secretary shall seek the advice of State officials, including highway, rail, and judicial officials, with jurisdiction over crossing safety, including crossing closures. The Secretary and State officials shall consider—

(1) the feasibility of consolidating and improving multiple crossings in a single community;

(2) the impact of closure on emergency vehicle response times, traffic delays, and public inconvenience; and

(3) the willingness of a municipality to participate in the elimination or consolidation of crossings.

(c) GUIDE TO CROSSING CONSOLIDATION AND CLOSURE.—Within 1 year after the date of enactment of this Act, the Secretary shall publish, revise, and distribute the publication entitled “A Guide to Crossing Consolidation and Closure.”

(d) PAYMENT FOR AT-GRADE CROSSING CLOSURES.—Section 130(i)(3)(B) of title 23, United States Code is amended by striking “$7,500,” and inserting “$15,000.”

(e) CLOSURE.—The Secretary may authorize by section 20117(a)(1) of title 49, United States Code, to the Secretary, there shall be available $500,000 for fiscal year 2004 to prepare the plan required by this section, such sums to remain available until the plan is transmitted to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure as required by subsection (a).

SEC. 203. MODEL LEGISLATION FOR DRIVER BEHAVIOR.

(a) IN GENERAL.—Section 2051 is amended—

(1) by inserting after the item relating to section 20514(d)(1) and (2), respectively, of title 49 and

(2) by striking all that follows "November 25, 2003" and inserting—

"20151. Strategy to prevent railroad trespassing and vandalism and violation of grade crossing signals;"

(b) STRATEGY TO PREVENT RAILROAD TRESPASSING AND VIOLATION OF GRADE CROSSING SIGNALS.—Within 18 months after November 25, 2003, the Secretary, with the advice of the House of Representatives Committee on Transportation and Infrastructure, shall develop and make available to State and local governments and railroad carriers, a model legislation that provides for civil or criminal penalties, or both, for violations of highway-rail grade crossing signals.

(c) VIOLATION DEFINED.—In this section, the term ‘violation of highway-rail grade crossing signals’ includes any act or omission by a motorist, unless directed by an authorized safety officer—

(1) to drive around or through a grade crossing gate in a position intended to block passage over railroad tracks;

(2) to drive through a flashing grade crossing signal;

(3) to drive through a grade crossing with passive warning signs without determining that the grade crossing could be safely crossed before any train arrived; and

(4) in the vicinity of a grade crossing, that creates a hazard of an accident involving injury or property damage at the grade crossing.

(b) CONFORMING AMENDMENT.—The chapter analysis for the item relating to section 20515 is amended by striking the item relating to section 20515.
for railroad research and development
$1,250,000 for fiscal year 2004, $1,300,000 for fiscal year 2005, $1,350,000 for fiscal year 2006, $1,400,000 for fiscal year 2007, and $1,450,000 for fiscal year 2008 to support Operation Lifesaver, Inc.".

SEC. 205. TRANSPORTATION SECURITY.
(a) MEMORANDUM OF AGREEMENT.—Within 60 days after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Homeland Security shall execute a memorandum of agreement governing the roles and responsibilities of the Department of Transportation and the Department of Homeland Security, respectively, in addressing railroad transportation security matters. The procedures the agreements will follow to promote communications, efficiency, and nonduplication of effort.
(b) RAIL SAFETY REGULATIONS.—Section 20103(a) is amended to read as follows:

"(a) REGULATIONS AND ORDERS.—The Secretary of Transportation, as necessary, shall prescribe regulations and issue orders for every area of railroad safety, including security, supplementary laws and regulations in effect on October 16, 1970. When prescribing a security regulation, the Secretary may engage in the activities authorized by paragraph (1) for the purpose of accident investigation, including, but not limited to, accident investigation.

"(2) LIMITATION.—The Secretary, and officers, employees, and agents of the Department may engage in the activities authorized by paragraph (1) for the purpose of accident investigation, including, but not limited to, accident investigation.

"(3) USE OF INFORMATION.—

"(A) Except as provided in subparagraph (F), information obtained through activities authorized by paragraph (1) shall not be admitted into evidence in any administrative or judicial proceeding except to impeach evidence offered by a party other than the Federal Government regarding the existence, electronic characteristics, content, substance, purport, effect, meaning, or timing of, or identity of parties to, a communication intercepted pursuant to paragraphs (1) and (2) in proceedings pursuant to sections 5122, 20702(b), 20111, 20112, 20113, or 20114 of this title.

"(B) Information obtained through activities set forth in paragraphs (1) and (2) is admitted into evidence for impeachment purposes in accordance with subparagraph (A), the law of evidence, or any other relevant law, rule, or other order from which the proceeding is conducted may make such protective orders regarding the confidentiality or use of the information as may be appropriate in the circumstances to protect privacy and administrative justice.

"(C) Information obtained through activities set forth in paragraphs (1) and (2) shall not be subject to publication or disclosure, or search or review in connection therewith, under section 552 of title 5.

"(D) No evidence shall be excluded in an administrative or judicial proceeding solely because the government would not have learned of the existence of or obtained such evidence but for the interception of information that is not admissible in such proceeding under subparagraph (A).

"(E) Nothing in this section shall be construed to otherwise affect the authority of the United States to intercept a communication, and collect, retain, analyze, disseminate, and use, and to prevent others from obtaining, information obtained thereby, under a provision of law other than this subsection.

"(F) No information obtained by an activity authorized by paragraph (1)(A) that was obtained in the course of an accident investigation may be introduced into evidence in any administrative or judicial proceeding in which civil or criminal penalties may be imposed.

"(G) APPLICATION WITH OTHER LAW.—Section 705 of the Communications Act of 1934 (47 U.S.C. 605) and chapter 11 title 18 shall not apply to conduct authorized by and pursuant to this subsection.

"(H) REASONABLE TIME DEFINED.—In this section, the term "reasonable time" means at any time that the railroad carrier being inspected or investigated is performing its railroad transportation business.".

SEC. 208. RECOMMENDATIONS ON FATIGUE MANAGEMENT.
(a) WORKING GROUP ESTABLISHED.—The Federal Railroad Administration shall convene a working group to consider what legislative or other changes the Secretary of Transportation deems necessary to address fatigue management for railroad employees.
(b) REPORT TO THE SECRETARY.—Not later than 24 months after the date of enactment of this Act, the working group convened under subsection (a) shall submit a report containing recommendations to the Railroad Safety Advisory Committee and the Secretary of Transportation. The Secretary shall transmit the report to the Senate Committee on Commerce, Science, and Transportation and to the House Committee on Transportation and Infrastructure.

SEC. 209. POSITIVE TRAIN CONTROL.
Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall prescribe a final rule addressing safety standards for positive train control systems or other safety technologies that provide similar safety benefits.

SEC. 210. POSITIVE TRAIN CONTROL IMPLEMENTATION.
(a) REPORT ON PILOT PROJECTS.—Within 3 months after completion of the North American Joint Positive Train Control Project, the Secretary of Transportation shall submit a report on the progress and completed projects to implement positive train control technology or other safety technologies that provide similar safety benefits to the Senate Committee on Commerce, Science, and Transportation and to the House Committee on Transportation and Infrastructure. The report shall include recommendations for future projects and any legislative or other changes the Secretary deems necessary.
(b) AUTHORIZATION OF APPROPRIATIONS.—The Secretary shall establish a grant program with a 50 percent match requirement for the implementation of positive train control technology or other safety technologies that provide similar safety benefits. From the amounts authorized to be appropriated for each of fiscal years 2004 through 2008 under section 20117(a) of title 49, United States Code, there shall be made available for the grant program:

(1) $16,000,000 for fiscal year 2004;
(2) $18,000,000 for fiscal year 2005; and
(3) $20,000,000 for each of fiscal years 2006 through 2008.

SEC. 211. SURVEY OF RAIL BRIDGE STRUCTURES.
The Secretary of Transportation shall conduct a survey of the structural integrity of railroad bridges and railroads’ right-of-way inspection and testing procedures. The Secretary shall issue a report to Congress at the completion of the
survey, including a finding by the Secretary concerning whether the Secretary should issue regulations governing the safety of railroad bridges.

SEC. 212. RAILROAD POLICE.
Section 28101 is amended by striking “the railroad police” each place it appears and inserting “railroad police”.

SEC. 213. FEDERAL RAILROAD ADMINISTRATION EMPLOYEE TRAINING.
From the amounts authorized to be appropriated for fiscal year 2004 by section 20117(a)(1) of title 49, United States Code, there shall be made available to the Secretary of Transportation $300,000 for the Federal Railroad Administration to perform a demonstration program to provide centralized employee training. The Secretary of Transportation shall report on the results of such training and provide further recommendations to the Congress.

SEC. 214. REPORT REGARDING IMPACT ON PUBLIC SAFETY OF TRAIN TRAVEL IN COMMUNITIES WITHOUT GRADE SEPARATION.
(a) STUDY.—The Secretary of Transportation shall, in consultation with State and local government officials, conduct a study of the impact of blocked highway-railroad grade crossings on the ability of emergency responders to perform public safety and security duties.

(b) REPORT ON THE IMPACT OF BLOCKED HIGHWAY-RAILROAD GRADE CROSSINGS ON EMERGENCY RESPONDERS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit the results of the study and recommendations for reducing the impact of blocked crossings on emergency response to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

SEC. 215. RUNAWAY TRAINS EMERGENCY RESPONSE.
(a) NOTIFICATION PROCEDURE.—(1) REGULATIONS.—The Secretary of Transportation shall prescribe regulations setting forth procedures for a railroad to immediately notify first responders in communities that lie in the path of a runaway train.

(2) TIME FOR ISSUANCE OF REGULATIONS.—The Secretary shall issue the final regulations under this section not later than 120 days after the date of enactment of this Act.

(3) DEFINITIONS.—In this section, the term “runaway train” means a locomotive or other item of railroad equipment that, at a particular moment in time, is rolling on tracks outside the operations limits of a railroad and is not under the control of the railroad.

(b) RESPONSE PROCEDURE.—Not later than 60 days after the Secretary prescribes the regulations under subsection (a), each railroad shall submit to the Department of Transportation for the Secretary’s approval the procedures proposed by the railroad for providing the notice described in such subsection.

(c) REPORTING OF INCIDENTS REQUIRED.—The Secretary shall require railroads to report to the Department of Transportation each incident of a runaway train.

TITLE III—MISCELLANEOUS PROVISIONS
SEC. 301. TECHNICAL AMENDMENTS REGARDING ENFORCEMENT BY THE ATTORNEY GENERAL.
Section 20112(a)(1) is amended—
(1) by striking “ensures” in clause (ii) of subsection (a);
(2) by striking “subpena” in paragraph (3) and inserting “subpoena” in such paragraph; and
(3) by striking “subpena, request for production of documents or other tangible things, or recovery of property by deposition” and inserting “subpoena, request for production of documents or other tangible things, or recovery of property by deposition”.

Mr. McCONNELL. I ask unanimous consent that the committee amendments be agreed to, the bill as amended be read a third time and passed, the motion to reconsider be laid on the table, en bloc, and any statements relating to the bill be printed in the RECORD.
“(4) $192,000,000 for the fiscal year ending September 30, 2007; and 
“(5) $200,000,000 for the fiscal year ending September 30, 2008.”

**TITLE II—RULEMAKING, INSPECTION, ENFORCEMENT, AND PLANNING AUTHORITY**

**SEC. 201. NATIONAL CROSSING INVENTORY.**

(a) In general.—Chapter 201 is amended by adding at the end the following:

“§ 20154. National crossing inventory

(1) INITIAL REPORTING OF INFORMATION ABOUT PREVIOUSLY UNREPORTED CROSSINGS.—Not later than 6 months after the date of enactment of the Federal Railroad Safety Improvement Act, 6 months after a new crossing becomes operational, whichever occurs later, each railroad carrier shall—

(1) report to the Secretary of Transportation current information, as specified by the Secretary, concerning each previously unreported crossing through which it operates; or

(2) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

(b) UPDATING OF CROSSING INFORMATION.—

(1) On a periodic basis beginning not later than 18 months after the date of enactment of the Federal Railroad Safety Improvement Act and on or before September 30 of every third year thereafter, or as otherwise specified by the Secretary, each railroad carrier shall—

(A) report to the Secretary current information, as specified by the Secretary, concerning each crossing through which it operates; or

(B) ensure that the information has been reported to the Secretary by another railroad carrier that operates through the crossing.

(2) A railroad carrier that sells a crossing on or after the date of enactment of the Federal Railroad Safety Improvement Act, shall, not later than the date that is 18 months after the date of sale, whichever occurs later, or as otherwise specified by the Secretary, report to the Secretary current information, as specified by the Secretary, concerning the change in ownership of the crossing.

(c) RULEMAKING AUTHORITY.—The Secretary shall prescribe the regulations necessary to implement this section. The Secretary may make such regulations if in effect on the date of enactment of the Federal Railroad Safety Improvement Act, until such provision is superseded by a regulation issued under this subsection.

(d) DEFINITIONS.—In this section, the terms ‘crossing’ and ‘State’ have the meaning given those terms by section 20154(d)(1) and (2), respectively, of title 49.

(e) CIVIL PENALTIES.—

(1) Section 23201(a) is amended—

(A) by inserting ‘‘section 20154 or’’ after ‘‘comply’’ in the first sentence; and

(B) by inserting ‘‘section 20154 of this title’’ in the second sentence.

(2) Section 2310(a)(2) is amended by inserting ‘‘The Secretary shall impose a civil penalty for a violation of section 20154 of this title, in accordance with the procedures Manual that is in effect on the date of enactment of the Federal Railroad Safety Improvement Act, until such provision is superseded by a regulation issued under this subsection.’’

(f) MODEL LEGISLATION FOR AT-GRADE CROSSING CLOSURES.—Within 2 years after the date of the enactment of the Federal Railroad Safety Improvement Act, each State shall report to the Secretary a plan and suggested funding mechanisms for the closure of any grade crossing at which the Secretary and State officials shall consider—

(1) the feasibility of consolidating and improving multiple crossings in a single community;

(2) the impact of closure on emergency vehicle response time, traffic delays, and public inconvenience; and

(3) the willingness of a municipality to participate in the elimination or consolidation of crossings.

(g) FUNDING FOR AT-GRADE CROSSING CLOSURES.—Within 1 year after the date of enactment of this Act, the Secretary shall update, reissue, and distribute the publication entitled ‘‘A Guide to Crossing Consolidation and Closure’’.

**SEC. 202. GRADE CROSSING ELIMINATION AND CONSOLIDATION.**

(a) CROSSING REDUCTION PLAN.—Within 24 months after the date of enactment of this Act, the Secretary of Transportation shall develop and transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure as required by subsection (a).

(b) CONSULTATION WITH STATES.—In preparing the plan required by subsection (a), the Secretary shall seek the advice of State officials, including highway, rail, and judicial officials, with jurisdiction over crossing safety, including crossing closures. The Secretary and State officials shall consider—

(1) the feasibility of consolidating and improving multiple crossings in a single community;

(2) the impact of closure on emergency vehicle response time, traffic delays, and public inconvenience; and

(3) the willingness of a municipality to participate in the elimination or consolidation of crossings.

**SEC. 203. MODEL LEGISLATION FOR DRIVER BEHAVIOR.**

(a) In general.—Section 20151 is amended—

(1) by striking the section caption and inserting the following:

“§ 20151. Strategy to prevent railroad trespassing and vandalism and violation of grade crossing signals”;

(2) by striking ‘‘safety,’’ in subsection (a) and inserting ‘‘safety and violations of highway-rail grade crossing signals’’;

(3) by striking the second sentence of subsection (a) and inserting ‘‘The evaluation and review shall be completed not later than 1 year after the date of enactment of the Federal Railroad Safety Improvement Act.’’

(b) Model legislation.—Within 18 months after November 2, 1994, the Secretary shall develop and make available to State officials, including highway, rail, and judicial officials, with jurisdiction over crossing safety, including crossing closures. The Secretary and State officials shall consider—

(1) the feasibility of consolidating and improving multiple crossings in a single community;

(2) the impact of closure on emergency vehicle response time, traffic delays, and public inconvenience; and

(3) the willingness of a municipality to participate in the elimination or consolidation of crossings.

(c) Violation Defined.—In this section, the term ‘violation of highway-rail grade crossing signals’ includes any action by a vehicle driver unless directed by an authorized safety officer—

(1) to drive or overtake through a grade crossing gate in a position intended to block passage after railroad tracks;

(2) to drive through a flashing grade crossing signal;

(3) to drive through a grade crossing with passive warning signs without determining that the grade crossing could be safely crossed before any train arrived; and

(4) to willfully and repeatedly fail to comply with the procedures Manual that is in effect on the date of enactment of the Federal Railroad Safety Improvement Act.
“(d) Reasonable Time Defined.—In this section, the term ‘reasonable times’ means any time before the railroad carrier being inspected or investigated is performing its rail transportation business.”

SEC. 208. RECOMMENDATIONS ON FATIGUE MANAGEMENT.

(a) Working Group Established.—The Railroad Safety Advisory Committee of the Federal Railroad Administration shall convene a working group to consider what legislative or other changes the Secretary of Transportation deems necessary to address fatigue management of railroad employees subject to chapter 211 of title 49, United States Code. The working group shall consist of

(1) the varying circumstances of rail carrier operations and appropriate fatigue countermeasures to address those varying circumstances, based on current and evolving scientific and medical research on circadian rhythms and human sleep and rest requirements;

(2) research considered by the Federal Motor Carrier Safety Administration in devising new hours of service regulations for motor carriers;

(3) the benefits and costs of modifying the railroad hours of service statute or implementing other fatigue management countermeasures for railroad employees subject to chapter 211; and

(4) ongoing and planned initiatives by the railroads and rail labor organizations to address fatigue management.

(b) Report.—Not later than 24 months after the date of enactment of this Act, the working group convened under subsection (a) shall submit a report containing its conclusions and recommendations to the Railroad Safety Advisory Committee and the Secretary of Transportation. The Secretary shall transmit the report to the Senate Committee on Commerce, Science, and Transportation and to the House Committee on Transportation and Infrastructure.

(c) Recommendations.—If the Railroad Safety Advisory Committee does not reach a consensus on recommendations within 24 months after the date of enactment of this Act, the Secretary of Transportation shall, within 36 months after the date of enactment of this Act, submit to the Senate Committee on Commerce, Science, and Transportation and to the House Committee on Transportation and Infrastructure recommendations for legislative, regulatory, or other changes to address fatigue management for railroad employees.

SEC. 209. POSITIVE TRAIN CONTROL.

Within 6 months after the date of enactment of this Act, the Secretary of Transportation shall submit a report on the progress of on-going and planned projects to implement positive train control technology or other safety technologies that provide similar safety benefits.

SEC. 210. POSITIVE TRAIN CONTROL IMPELEMENTATION.

(a) Report on Pilot Projects.—Within 3 months after completion of the North American Joint Positive Train Control Project, the Secretary of Transportation shall submit a report on the progress of on-going and completed projects to implement positive train control technology or other safety technologies that provide similar safety benefits.

(b) Authorization of Appropriations.—The Secretary shall establish a grant program with a 50 percent match requirement.
for the implementation of positive train control technology or other safety technologies that provide similar safety benefits. From the amounts authorized to be appropriated for each of fiscal years 2004 through 2008 under section 20117(a)(1) of title 49, United States Code, there shall be made available for the grant program—

(1) $18,000,000 for fiscal year 2004;

(2) $18,000,000 for fiscal year 2005; and

(3) $20,000,000 for each of fiscal years 2006 through 2008.

SEC. 211. SURVEY OF RAIL BRIDGE STRUCTURES.

The Secretary of Transportation shall conduct a safety survey of the structural integrity of railroad bridges and railroads’ programs of inspection and maintenance of railroad bridges shall issuing a report to Congress at the completion of the survey, including a finding by the Secretary concerning whether the Secretary should issue regulations governing the safety of railroad bridges.

SEC. 212. RAILROAD POLICE.

Section 2601 is amended by striking “the rail carrier” each place it appears and inserting “any railroad carrier”.

SEC. 213. FEDERAL RAILROAD ADMINISTRATION EMPLOYEE TRAINING.

From the amounts authorized to be appropriated for fiscal year 2004 by section 20117(a)(1) of title 49, United States Code, there shall be made available to the Secretary of Transportation $300,000 for the Federal Railroad Administration to perform a demonstration program to provide centralized training for its employees. The Secretary of Transportation shall report on the results of such training and provide further recommendations to the Congress.

SEC. 214. REPORT REGARDING IMPACT ON PUBLIC SAFETY OF TRAIN TRAVEL IN COMMUNITIES WITHOUT GRADE SEPARATION.

(a) STUDY.—The Secretary of Transportation shall, in consultation with State and local government officials, conduct a study of the impact of blocked highway-railroad grade crossings on the ability of emergency responders to perform public safety and security duties.

(b) REPORT ON THE IMPACT OF BLOCKED HIGHWAY-RAILROAD GRADE CROSSINGS ON EMERGENCY RESPONDERS.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit the results of the study required in subsection (a) to Congress and the House and Senate Appropriations Committees on Transportation and Infrastructure.

SEC. 215. RUNAWAY TRAINS EMERGENCY RESPONSE.

(a) NOTIFICATION PROCEDURES.—

(1) REGULATIONS.—The Secretary of Transportation shall prescribe regulations setting forth procedures for a railroad to immediately notify emergency responders in communities that lie in the path of a runaway train.

(2) TIME FOR ISSUANCE OF REGULATIONS.—The Secretary shall issue the final regulations under this section not later than 120 days after the date of enactment of this Act.

(3) DEFINITIONS.—In this section, the term “runaway train” means a locomotive, train, rail car, or any portion of railroad equipment that, at a particular moment in time, is rolling on tracks outside the operations limits of a railroad and is not under the control of the railroad.

(b) RESPONSE PROCEDURES.—Not later than 60 days after the Secretary prescribes the regulations under subsection (a), each railroad shall prescribe and submit to the Department of Transportation for the Secretary’s approval the procedures proposed by the railroad for providing the notice described in such subsection.

(c) REPORTING OF INCIDENTS REQUIRED.—The Secretary shall require railroads to report to the Department of Transportation each incident of a runaway train.

TITLE III—MISCELLANEOUS PROVISIONS

SEC. 301. TECHNICAL AMENDMENTS REGARDING ENFORCEMENT BY THE ATTORNEY GENERAL.

Section 20112(a)(2) is amended—

(1) by striking “this part, except for section 20109 of this title, or” in paragraph (1) after “enforce”;

(2) by striking “21301” in paragraph (2) and inserting “21301, 21302, or 21303”;

(3) by striking “subpena” in paragraph (3) and inserting “subpoena”;

(4) by striking “chapter.” in paragraph (3) and inserting “part.”;

SEC. 302. TECHNICAL AMENDMENTS TO CIVIL PENALTY PROVISIONS.

(a) GENERAL VIOLATIONS OF CHAPTER 201.—Section 21301(a)(2) is amended—

(1) by striking “$20,000.” and inserting “$10,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2672 note).”;

(2) by striking “$20,000.” and inserting “$20,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2672 note).”;

(3) by striking “$20,000.” and inserting “$20,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2672 note).”;

(b) ACCIDENT AND INCIDENT VIOLATIONS OF CHAPTER 201.—VIOLATIONS OF CHAPTERS 203 THROUGH 209.—

(1) Section 21302(a)(2) is amended—

(A) by striking “$10,000.” and inserting “$10,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2672 note).”;

(B) by striking “$20,000.” and inserting “$20,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2672 note).”;

(2) Section 21302 is amended by adding at the end the following:

(c) SUBPOENA.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(d) DEPOSIT IN TREASURY.—A civil penalty collected under this section shall be deposited in the Treasury as miscellaneous receipts.

(e) VIOLATIONS OF CHAPTER 211.—

(1) Section 21303(a)(2) is amended—

(A) by striking “$10,000.” and inserting “$10,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2672 note).”;

(B) by striking “$20,000.” and inserting “$20,000 or the amount to which the stated maximum penalty is adjusted if required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2672 note).”;

(2) Section 21303 is amended by adding at the end the following:

(f) SETOFF.—The Government may deduct the amount of a civil penalty imposed or compromised under this section from amounts it owes the person liable for the penalty.

(g) DEPOSIT IN TREASURY.—A civil penalty collected under this section shall be deposited in the Treasury as miscellaneous receipts.

SEC. 305. TECHNICAL AMENDMENTS TO ELIMINATE UNNECESSARY PROVISIONS.

(a) IN GENERAL.—Chapter 201 is amended—

(1) by striking the second sentence of section 20103(f);

(2) by striking section 20145;

(3) by striking section 20146; and

(4) by striking section 20150 and inserting in the appropriate place in the analysis the following:

&ldquo;20145. [Repealed].

20146. [Repealed].

20150. [Repealed].&rdquo;.

AWARD OF CONGRESSIONAL GOLD MEDALS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3287 which was received from the House and is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3287) to award congressional gold medals posthumously on behalf of Reverend Joseph A. DeLaine, Harry and Eliza Briggs, and Levi Pearson in recognition of their contributions to the Nation as pioneers and.Adherents of civil rights and in honor of the school that led directly to the landmark desegregation case of Brown, et al., v. the Board of Education of Topeka, et al.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD without any intervening action or debate.

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

The bill (H.R. 3287) was read the third time and passed.

STATE CIRCUIT ALIEN ASSISTANCE PROGRAM REAUTHORIZATION ACT OF 2003

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 460, and that the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 460) to amend the Immigration and Nationality Act to authorize appropriation for fiscal years 2004 through 2010 to carry out the State Criminal Alien Assistance Program.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, without interven ing action or debate, and that any statements relating to this measure be printed in the RECORD.
The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 460) was read the third time and passed, as follows:

SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR THE UNITED STATES CONTRIBUTION TO THE UNITED NATIONS VOLUNTARY FUND FOR VICTIMS OF TORTURE.

Of the amounts authorized to be appropriated for fiscal years 2004, 2005, and 2006 pursuant to chapter 3 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2221 et seq.), there are authorized to be appropriated to the President for a voluntary contribution to the United Nations Voluntary Fund for Victims of Torture $6,000,000 for fiscal year 2004, $7,000,000 for fiscal year 2005, and $8,000,000 for fiscal year 2006.

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

The bill (S. 460) was read the third time and passed, as follows:

TORTURE VICTIMS RELIEF REAUTHORIZATION ACT OF 2003

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Foreign Relations Committee be discharged from further consideration of S. 854, and that the Senate proceed to its immediate consideration.

SEC. 1. SHORT TITLE.

This Act may be cited as the “Torture Victims Relief Reauthorization Act of 2003.”


Section 230(b) of the Immigration and Nationality Act (8 U.S.C. 1231(i)(5)) is amended by striking “appropriated” and all that follows through the period and inserting the following: “appropriated to carry out this subsection—

“(A) such sums as may be necessary for fiscal year 2003; 
“(B) $750,000,000 for fiscal year 2004; 
“(C) $950,000,000 for fiscal year 2005; and 
“(D) $950,000,000 for each of the fiscal years 2006 through 2010.”.

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

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 854) to authorize a comprehensive program of support for victims of torture, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 854) was read the third time and passed, as follows:

SEC. 1. SHORT TITLE.

This Act may be cited as the “Torture Victims Relief Reauthorization Act of 2003”.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR FOREIGN TREATMENT CENTERS FOR VICTIMS OF TERROR.

(a) Authorization of Appropriations.—

Section 5(b)(1) of the Torture Victims Relief Act of 1988 (22 U.S.C. 2152 note) is amended to read as follows:

“(1) Authorization of Appropriations.—

Of the amounts authorized to be appropriated for fiscal years 2004, 2005, and 2006 pursuant to chapter 3 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2221 et seq.), there are authorized to be appropriated to the President to carry out section 130 of such Act $11,000,000 for fiscal year 2004, $12,000,000 for fiscal year 2005, and $13,000,000 for fiscal year 2006.

(b) Effective Date.—The amendment made by subsection (a) shall take effect October 1, 2003.

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

The bill (H.R. 1813) was read the third time and passed, as follows:

HOMETOWN HEROES SURVIVORS BENEFITS ACT OF 2003

Mr. MCCONNELL. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill S. 459, to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

The President Of the Senate laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 459) entitled “An Act to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits”, do pass with the following amendment:

Strike out all after the enacting clause and insert:

SEC. 1. SHORT TITLE.

This Act may be cited as the “Hometown Heroes Survivors Benefits Act of 2003”.

SEC. 2. FATAL HEART ATTACK OR STROKE ON DUTY PRESUMED TO BE DEATH IN LINE OF DUTY FOR PURPOSES OF PUBLIC SAFETY OFFICER SURVIVOR BENEFITS.

Section 1201 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796) is amended by adding at the end the following:

“(k) For purposes of this section, if a public safety officer dies as the direct and proximate result of a heart attack or stroke, that officer shall be presumed to have died as the direct and proximate result of a personal injury sustained in the line of duty, if—

“(1) that officer, while on duty—

“(A) engaged in a situation, and such engagement involved nonroutine stressful or strenuous physical law enforcement, fire suppression, rescue, hazardous material response, emergency medical services, prison security, disaster relief, or other emergency response activity; or

“(B) participated in a training exercise, and such participation involved nonroutine stressful or strenuous physical activity; 

“(2) that officer died as a result of a heart attack or stroke suffered—

“(A) while engaging or participating as described under paragraph (1);

“(B) while still on that duty after so engaging or participating; or

“(C) not later than 24 hours after so engaging or participating; and

“(3) such presumption is not overcome by competent medical evidence to the contrary.

“(d) For purposes of subsection (k), ‘nonroutine stressful or strenuous physical’ excludes actions of a clerical, administrative, or nonmanual nature.”.

Mr. LEAHY. Mr. President, I am pleased that the Senate again is taking up and passing the Hometown Heroes Survivors Benefits Act of 2003, S. 459. This bill, as amended and passed by the Senate, will improve the Department of Justice’s Public Safety Officers Benefits, PSOB, program by allowing survivors of public safety officers who suffer fatal heart attacks or strokes while participating in nonroutine stressful or strenuous physical activities to qualify for Federal survivor benefits.

I want to pay special thanks to Congressman BOB ETHEREDGE, the author of the House companion bill, and House Judiciary Committee Chairman SEN. JOHN CONKRENSKRITZER for their leadership and fortitude while negotiating this legislation. Without their perseverance and willingness to find bipartisan compromise language, passage of this bill in the House would not have happened.

I also commend Congressman COBLE, Congressman BOBBY SCOTT, the Fraternal Order of Police, FOP, and the Congressional Fire Services Institute, CFSI, for working with us on bipartisan compromise language so that we could pass the Senate bill through the House.

I thank Senator THURMANN HATCH, Senator LINDSEY GRAHAM, the lead Republican cosponsor of this bill, and Senate leadership for quickly
passing the Senate bill, as amended by the House, and to send it to the President’s desk for enactment into law.

I thank Senators Collins, Jeffords, Sariannes, Schumer, Duren, Landrieu, Nelson of Florida, Clinton, Snowe, Enzi, Stabenow, Kennedy, Dayton, Miller and Kenedy for joining me as cosponsors of this multi-partisan legislation.

Public safety officers are our most brave and dedicated public servants. I applaud all members of all members of fire, law enforcement and EMS providers nationwide who are the first to respond to more than 1.6 million emergency calls annually—whether those calls involve a crime, fire, medical emergency, spill of hazardous materials, natural disaster, act of terrorism, or transportation accident—without reservation. Those men and women act with an unwavering commitment to the safety and protection of their fellow citizens, and forever willing to selflessly sacrifice their own lives to provide safe and reliable emergency services to their communities.

Sadly, that kind of dedication can result in tragedy, which we all witnessed on September 11th as scores of firefighters, police officers and medics raced into the burning World Trade Center and Pentagon with no other goal than to save lives. Every year, hundreds of public safety officers nationwide lose their lives and thousands more are injured while performing duties that subject them to great physical risks. And while we know that PSOB benefits can never be a substitute for the loss of a loved one, the families of all our fallen heroes deserve to collect these funds.

The PSOB program was established in 1976 to authorize a one-time financial payment to the eligible survivors of Federal, State, and local public safety officers for all line of duty deaths. In 2002, Congress improved the PSOB regulations by streamlining the process for families of public safety officers killed or injured in connection with prevention, investigation, rescue or recovery efforts related to a terrorist attack. We also retroactively increased the total benefits available by $100,000 as part of the USA PATRIOT Act, to $267,494 in PSOB.

Unfortunately, the issue of covering heart attack and stroke victims under PSOB regulations was not addressed at that time.

Service-connected heart, lung, and hypertension conditions are serious killers of public safety officers nationwide. The enormous hidden health and medical costs dealt with by police officers, fire fighters and EMS personnel are widely recognized, but officers face these dangers in order to serve and protect their fellow citizens.

The intent of the legislation Senator Graham and I introduced earlier this year was to cover officers who suffered a heart attack or stroke as a result of nonroutine stressful or strenuous physical activity. As drafted and passed by the Senate by unanimous consent on May 16, however, members of the House Judiciary Committee felt the bill’s language would cover officers who did not engage in any physical activity, but merely experienced illness resulting from a heart attack while at work. Chairman Sensenbrenner, Congressman Etheridge, Congressman Coble, Congressman Scott, FOP, CFSI and I worked out a substitute amendment to address those concerns.

The substitute amendment to S. 459 will create a presumption that an officer who died as a direct and proximate result of a heart attack or stroke died as a direct and proximate result of a personal injury sustained in the line of duty if the following is established: that officer participated in a training exercise that involved nonroutine stressful or strenuous physical activity or responded to a situation and such participation or response involved nonroutine stressful or strenuous physical law enforcement, hazardous material response, emergency medical services, emergency, rescue, security, disaster relief or other emergency response activity; that officer suffered a heart attack or stroke while engaging or within 24 hours of engaging in the physical activity and such presumption cannot be overcome by competent medical evidence.

For the purposes of this act, the phrase “nonroutine stressful or strenuous physical” will exclude actions of a personal or non-manual nature. Included in the category of “actions of a clerical, administrative or non-manual nature” are such tasks including, but not limited to, the following: sitting at a desk; typing on a computer; talking on the telephone; reading or writing paperwork or other literature; watching a police or correction facility’s monitors of cells or grounds; teaching a class; cleaning or organizing an emergency response vehicle; traveling in or out a prisoner; driving a vehicle on routine patrol; and directing traffic at or participating in a local parade.

Such deaths, while tragic, are not to be considered in the line of duty deaths. The families of officers who died of such causes would therefore not be eligible to receive PSOB.

For the purposes of this act, the phrase “nonroutine stressful or strenuous physical actions” will include actions of a nonroutine stressful or strenuous physical nature. Included in the category of “actions of a nonroutine stressful or strenuous physical nature” are such tasks including, but not limited to, the following: engaging in any physical activity; that officer suffered a heart attack or stroke while engaging or within 24 hours of engaging in the physical activity; and such presumption cannot be overcome by competent medical evidence.

For the purposes of this act, the phrase “nonroutine stressful or strenuous physical actions” will include actions of a nonroutine stressful or strenuous physical nature. Included in the category of “actions of a nonroutine stressful or strenuous physical nature” are such tasks including, but not limited to, the following: engaging in any physical activity; that officer suffered a heart attack or stroke while engaging or within 24 hours of engaging in the physical activity; and such presumption cannot be overcome by competent medical evidence.

That are considered to be in the line of duty. The families of officers who died in such cases are eligible to receive PSOB.

The changes to PSOB law and regulations brought about by the Hometown Heroes Survivors Benefits Act will take effect after the date the President signs the legislation into law. As a result, the survivors of public safety officers who suffer heart attacks or strokes while performing nonroutine stressful or strenuous physical actions will be eligible for PSOB.

Heart attacks and strokes are a reality of the high-pressure jobs of police officers, firefighters and medics. These are killers that first responders contend with in their jobs, just like speeding bullets and burning buildings. They put their lives on the line for us, and we owe their families our gratitude, our respect and our help. No amount of money can fill the void that is left by the loss of a loved one, but ending this disparity can help these families keep food on the table and shelter over their heads.

I thank the Senate for taking up and passing the Hometown Heroes Survivors Benefits Act, S. 459, as amended and passed by the House, and showing its support and appreciation for these extraordinarily brave and heroic public safety officers.

Mr. McConnell. I ask unanimous consent that the substitute amendment to S. 459 be agreed to; the preamble be agreed to; the preamble, title.

The assistant legislative clerk read a resolution (S. Res. 177) to direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal State representation in the United States Senate, to be placed in the lunette space in the Senate reception room immediately above the entrance into the Senate chamber lobby, and to authorize the Committee on Rules and Administration to obtain technical advice and assistance in carrying out its duties.

There being no objection, the Senate proceeded to consider the resolution.

Mr. McConnell. I ask unanimous consent that the amendment at the desk be agreed to; the resolution, as amended, be agreed to; the amendment to the preamble be agreed to; the preamble,
as amended, be agreed to; the amendment to the title be agreed to, the motion to reconsider be laid upon the table en bloc and statements be printed in the RECORD.

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

The amendment (No. 2221) was agreed to, as follows:
(Purpose: To permit the painting to be placed in the Senate wing at a location determined by the Committee on Rules and Administration.)

On page 3, strike lines 2 through 4 and insert the following: “forefathers, to be placed in the Senate wing at a location determined by the chairman and ranking member of the Committee on Rules and Administration.”

The amendment (No. 2222) was agreed to, as follows:
Amend the preamble to read as follows:
Whereas on July 16, 1787, the framers of the United States Constitution, meeting at Independence Hall, reached a supremely important agreement, providing for a dual system of representation, such that in the House of Representatives, each State would be assigned a number of seats in proportion to its population, and in the Senate, all States would have an equal number of seats, an agreement which became known as the “Great Compromise” or the “Connecticut Compromise”; and

Whereas an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal representation in the United States Senate should be placed in the Senate wing of the Capitol: Now, therefore, be it

The amendment (No. 2223) was agreed to, as follows:
Amend the title so as to read: “To direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal representation in the United States Senate, to be placed in the Senate wing of the Capitol, and to authorize the Committees on Rules and Administration to obtain technical advice and assistance in carrying out its duties.”

The resolution (S. Res. 177), as amended, was agreed to.

The preamble, as amended, was agreed to.

The title amendment, as amended, was agreed to.

The resolution, with its preamble, reads as follows:
S. Res. 177

Whereas on July 16, 1787, the framers of the United States Constitution, meeting at Independence Hall, reached a supremely important agreement, providing for a dual system of congressional representation, such that in the House of Representatives, each State would be assigned a number of seats in proportion to its population, and in the Senate, all States would have an equal number of seats, an agreement which became known as the “Great Compromise” or the “Connecticut Compromise”; and

Whereas an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal State representation in the United States Senate should be placed in the Senate wing of the Capitol: Now, therefore, be it

Resolved, SECTION 1. COMMEMORATION OF THE GREAT COMPROMISE.
(a) In GENERAL.—The Senate Commission on Art, established under section 901 of the Arizona-Idaho Conservation Act of 1968 (40 U.S.C. 188b) (in this section referred to as the “Commission”) shall select an appropriate scene commemorating the Great Compromise of our forefathers, to be placed in a location in the Senate wing to be determined by the chairman and ranking member of the Committee on Rules and Administration.
(b) CONSIDERATION.—The Commission is authorized to seek the advice of and recommendations from historians and other sources in carrying out this section, and to reimburse such sources for travel expenses, in accordance with Senate Travel Regulations.
(c) TIMING.—The Commission shall make its selection pursuant to this section, and shall commission an artist to begin work, not later than the close of the 112th Congress.
(d) DELEGATION.—For purposes of making the selection required by this section, a member of the Commission may designate another Senator to act in place of that member.
(e) FUNDING.—The expenses of the Commission in carrying out this section shall be made available from appropriations under the subheading “MISCELLANEOUS ITEMS” under the heading “CONTINGENT EXPENSES OF THE SENATE”, on vouchers signed by the Secretary of the Senate and approved by the Committee on Rules and Administration.

SEC. 2. TECHNICAL ADVICE AND ASSISTANCE.
(a) IN GENERAL.—The Chairman of the Committee on Rules and Administration may seek technical advice and assistance to the Committee in carrying out its duties from individuals from the public and private sectors, who shall serve without compensation, at the pleasure of the Chairman.
(b) NON-GOVERNMENTAL STATUS.—Individuals providing advice and assistance described in subsection (a) shall not be deemed to be:
(1) Members, officers, or employees of the Senate; or
(2) providing services for the Senate, for purposes of the Senate Code of Official Conduct.
(c) EXPENSES.—Upon submission to the Committee on Rules and Administration of a routine voucher for actual transportation expenses incurred in the performance of providing advice and assistance to the Committee, individuals described in subsection (a) may be reimbursed in accordance with Senate Travel Regulations.

PRINTING THE PRAYERS OF REVEREND LLOYD JOHN OGLIVIE
Mr. MCCONNELL. I ask unanimous consent that the Rules Committee be discharged from further consideration of S. Res. 157, and the Senate now proceed to its consideration.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:
A resolution (S. Res. 157) to authorize the printing of the prayers for the Reverend Lloyd John Oglvie.

There being no objection, the Senate proceeded to consider the resolution.
Mr. MCCONNELL. I ask unanimous consent the resolution be agreed to, the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The resolution (S. Res. 157) was agreed to, as follows:

S. Res. 157

SECTION 1. AUTHORIZATION OF PRINTING.
(a) IN GENERAL.—There shall be printed with an appropriate illustration as a Senate document, the prayers of the Reverend Lloyd John Oglivie, Doctor of Divinity, the Chaplain of the Senate, at the opening of the daily sessions of the Senate during the One Hundred and Fifth Congress, One Hundred and Sixth Congress, One Hundred and Seventh Congress, and One Hundred and Eighth Congress, together with any other prayers printed by him during his official capacity as Chaplain of the Senate.
(b) ADDITIONAL COPIES.—There shall be printed such additional copies not to exceed $3,000 in cost of such documents for the use of the Joint Committee on Printing.

PHARMACY EDUCATION AID ACT OF 2003
Mr. MCCONNELL. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 370, S. 648.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:
A bill (S. 648) to amend the Public Health Service Act with respect to health professions programs regarding the practice of pharmacy.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:
[Strike the part shown in black brackets and insert the part shown in italic.]

S. 648

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 “Pharmacy Education Aid Act of 2003”.

SEC. 2. FINDINGS.
Congress makes the following findings:
(1) Pharmacists are an important link in our Nation’s health care system. A critical shortage of pharmacists is threatening the ability of pharmacies to continue to provide important prescription related services.
(2) In the landmark report entitled “To Err is Human: Building a Safer Health System”, the Institute of Medicine reported that medication errors can be partially attributed to factors that are indicative of a shortage of pharmacists (such as too many customers, numerous distractions, and staff shortages).
(3) Congress acknowledged in the Healthcare Research and Quality Act of 1999 (Public Law 106-129) a growing demand for pharmacists by requiring the Secretary of Health and Human Services to conduct a study to determine whether there is a shortage of pharmacists in the United States and, if so, to what extent.
(4) As a result of Congress’ concern about how a shortage of pharmacists would impact...
the public health, the Secretary of Health and Human Services published a report entitled ‘The Pharmacist Workforce: A Study in Supply and Demand for Pharmacists’ in December of 2003.

(5) ‘The Pharmacist Workforce: A Study in Supply and Demand for Pharmacists’ found that ‘While the overall supply of pharmacists is increasing in the past decade, there has been an unprecedented demand for pharmacists and for pharmaceutical care services, which has not been met by the currently available.’ and that ‘the evidence clearly indicates the emergence of a shortage of pharmacists over the past two years.

(6) The same study also found that: ‘The factors causing the current shortage are of a nature not likely to abate in the near future without fundamental changes in pharmacy practice and education.’ The study projects that the number of prescriptions filled by community pharmacists will increase by 20 percent by 2004. In contrast, the number of community pharmacists is expected to increase by only 6 percent by 2005.

(7) The demand for pharmacists will increase as prescription drug use continues to grow.

SEC. 3. HEALTH PROFESSIONS PROGRAM RELATED TO THE PRACTICE OF PHARMACY

Part E of title VII of the Public Health Service Act (42 U.S.C. 294 et seq.) is amended by adding at the end the following:

'Subpart 3—Pharmacy Workforce Development

'SEC. 781. LOAN REPAYMENT PROGRAM.

'(a) IN GENERAL.—In the case of any individual—

'(i) who has received a baccalaureate degree in pharmacy or a Doctor of Pharmacy degree from an accredited school, program, or college; and

'(ii) who obtained an educational loan for pharmacy education costs;

the Secretary may enter into an agreement with such individual who agrees to serve as a full-time pharmacist for a period of not less than 2 years at a health care facility with a critical shortage of pharmacists, to make payments in accordance with subsection (b) on behalf of the individual, on the principal of and interest on any loan of that individual described in paragraph (2) which is outstanding on the date the agreement is executed, as follows:

'(b) MANNER OF PAYMENTS.—

'(1) In General.—The payments described in subsection (a) may consist of—

'(i) a fixed amount agreed upon by the Secretary and the individual;

'(ii) a method determined appropriate by the Secretary.

'(2) MANNER OF PAYMENTS.—Any agreement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayment of loan amounts shall be made not later than the end of the fiscal year in which the individual completes such year of service.

'(3) TAX LIABILITY.—For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual—

'(A) the Secretary shall, in addition to such payments, make payments to the individual in an amount equal to 39 percent of the total amount of loan repayments made for the taxable year involved; and

'(B) may make additional payments as the Secretary determines to be appropriate with respect to such payments.

'(4) PAYMENT SCHEDULE.—The Secretary may enter into an agreement with the holder of any loan for which payments are made under this section to establish a schedule for the making of such payments.

'(c) PREFERENCES.—In entering into agreements under this subsection, the Secretary shall give preference to qualified applicants with the greatest financial need.

'(d) REPORTS.—

'(1) ANNUAL REPORT.—Not later than 18 months after the date of enactment of the Pharmacy Education Aid Act, and annually thereafter, the Secretary shall prepare and submit to Congress a report describing the program carried out under this section, including statements regarding—

'(A) the number of enrollees, loan repayments, and recipients; 

'(B) the number of graduates; 

'(C) the amount of loan repayments made; and

'(D) which educational institution the recipients attended;

'(E) the number and placement location of the loan repayment recipients at health care facilities with a critical shortage of pharmacists;

'(F) the default rate and actions required; 

'(G) the amount of outstanding default funds of the program; 

'(H) to the extent that it can be determined, the reason for the default; 

'(I) the demographics of the individuals participating in the loan repayment program; and

'(J) an evaluation of the overall costs and benefits of the program.

'(2) 5-YEAR REPORT.—Not later than 5 years after the date of enactment of the Pharmacy Education Aid Act, the Secretary shall prepare and submit to Congress a report on how the program carried out under this section interacts with other Federal loan repayment programs for pharmacists and determining the relative effectiveness of such programs in increasing pharmacists practicing in areas with a critical shortage of pharmacists.

'(e) BREACH OF AGREEMENT.—

'(1) In General.—In the case of any individual or health facility making an agreement for purposes of paragraph (1), the Secretary shall provide for the waiver or suspension of such subsection if compliance by the individual or the health facility, as the case may be, with the agreements involved is impossible, or would involve extreme hardship to the individual or facility, and if enforcement of the agreements with respect to the individual or facility would be unconscionable.

'(2) WAIVER OR SUSPENSION OF LIABILITY.—

In the case of an individual or health facility making an agreement for purposes of paragraph (1), the Secretary shall provide for the waiver or suspension of such subsection if compliance by the individual or the health facility, as the case may be, with the agreements involved is impossible, or would involve extreme hardship to the individual or facility, and if enforcement of the agreements with respect to the individual or facility would be unconscionable.

'(f) DEFINITION.—In this section, the term ‘health care facility’ means an Indian Health Service health center, a Native Hawaiian health center, a hospital certificated by the Federal Resources and Services Administration, a Health Resources and Services Administration, a nursing home, an ambulatory surgical center, a skilled nursing facility, an ambulatory surgical center, or any other facility determined appropriate by the Secretary.

'(g) AUTHORIZATION OF APPROPRIATIONS.—

For the purpose of payments under agreements entered into under subsection (a), there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 through 2008.

SEC. 782. PHARMACIST FACULTY LOAN PROGRAM.

'(a) ESTABLISHMENT.—The Secretary, acting through the Administrator of the Health Resources and Services Administration, may enter into an agreement with any school of pharmacy for the establishment and operation of a student loan fund in accordance with this section, to increase the number of qualified pharmacy faculty.

'(b) AGREEMENTS.—Each agreement entered into under subsection (a) shall—

'(1) provide for the establishment of a student loan fund by the school involved;

'(2) provide for a deposit in the fund;

'(A) the Federal capital contributions to the fund;
Section 3. Health Professional Shortages Related to the Practice of Pharmacy

Part B of Title VII of the Public Health Service Act (42 U.S.C. 294a et seq.) is amended by adding at the end the following:

"Subpart 2—Pharmacy Program Development"

SEC. 781. LOAN REIMBURSEMENT PROGRAM FOR PHARMACISTS SERVING IN CRITICAL SHORTAGE FACILITIES.

(a) In general.—In the case of any individual—

(1) who has received a baccalaureate degree in pharmacy or a Doctor of Pharmacy degree from an accredited program;

(2) who obtained an educational loan for pharmacy education costs; and

(3) who is licensed without restrictions in the State in which the designated health care facility is located;

the Secretary may enter into an agreement with such individual who agrees to serve as a full-time pharmacist for a period of not less than 2 years at a designated health care facility, to make payments in accordance with subsection (b), for and on behalf of that individual, which is outstanding on the date the individual begins such service.

(b) MANNER OF PAYMENTS.—The payments described in subsection (a) may consist of payment, in accordance with paragraph (2), on behalf of the individual of the principal, interest, and related amounts; loans received by the individual for the purchase of equipment; loans received by the individual for the purchase of educational expenses; and loans received by the individual for the purchase of other expenses.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Pharmacists are an important link in our Nation's health care system. A critical shortage of pharmacists is threatening the ability of pharmacies to continue to provide important prescription related services.

(2) In the last several years the Institute of Medicine entitled "To Err is Human: Building a Safer Health System", the Institute of Medicine reported that medication errors can be partially attributed to factors that influence the practice of pharmacists (such as too many customers, numerous distractions, and staff shortages).
‘(2) PAYMENTS FOR YEARS SERVED.—

‘(a) IN GENERAL.—For each year of obligated service that an individual contracts to serve under subsection (a) the Secretary may pay up to $25,000 of the individual's outstanding educational loans described in paragraph (1), in making a determination of the amount to pay for a year of such service by an individual, the Secretary shall consider the extent to which each such determination—

‘(i) affects the ability of the Secretary to maximize the number of agreements that may be provided under this section from the amounts appropriated for such agreements;

‘(ii) provides an incentive to serve in areas with shortages of pharmacists; and

‘(iii) provides an incentive with respect to the pharmacist involved remaining in the area and continuing to provide pharmacy services after the completion of the period of obligated service under agreement.‘

‘(B) REPAYMENT SCHEDULE.—Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made not later than the end of the fiscal year in which the individual completes such year of service.

‘(C) TAX LIABILITY.—For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual—

‘(a) In general.—For such purposes until expended.

‘(b) ELIGIBLE INDIVIDUALS.—An individual is eligible to enter into an agreement under this section if—

‘(i) the individual is a student enrolled in a pharmacy degree program at a school of pharmacy;

‘(ii) the individual is a graduate of a school of pharmacy;

‘(iii) the individual is a postgraduate student enrolled in a residency program; or

‘(iv) the individual is a postgraduate student enrolled in a fellowship program.

‘(c) PRECONDITIONS.—In entering into an agreement under subsection (a), the Secretary shall give preference to qualified applicants with the greatest financial need.

‘(d) REPORTS.—

‘(1) ANNUAL REPORT.—Not later than 18 months after the date of enactment of the Pharmacy Education Act, and annually thereafter, the Secretary shall prepare and submit to Congress a report on the progress made under this section, including statements regarding—

‘(i) the number of applicants and contract recipients;

‘(ii) the amount of loan repayments made;

‘(iii) which educational institution the recipients attended;

‘(iv) the number and practice locations of the loan repayment recipients at health care facilities with a critical shortage of pharmacists;

‘(E) the default rate and actions required;

‘(F) the amount of outstanding default funds of the loan repayment program;

‘(G) to the extent that it can be determined, the reason for the default;

‘(H) the demographic characteristics of the individuals participating in the loan repayment program; and

‘(i) an evaluation of the overall costs and benefits of the program.

‘(2) 5-YEAR REPORT.—Not later than 5 years after the date of enactment of the Pharmacy Education Act, the Secretary shall prepare and submit to Congress a report on how the program carried out under this section interacts with other Federal loan repayment programs for pharmacists and determining the relative effectiveness of such programs in increasing pharmacists practicing in underserved areas.

‘(e) APPLICATION OF CERTAIN PROVISIONS.—

‘(1) IN GENERAL.—The provisions of section 338C, 338G, and 338I shall apply to the program established under this section to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of title III, including the applicability of provisions regarding reimbursements for increased tax liability and regarding bankruptcy.

‘(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 through 2008.

‘SEC. 782. PHARMACY FACULTY LOAN REPAYMENT PROGRAM.

‘(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program under which the Secretary will enter into contracts with individuals described in subsection (b) and such individuals will agree to serve as faculty members of schools of pharmacy in consideration of the Federal Government agreeing to pay, for each year of such service, an amount equal to 39 percent of the total amount of loan repayments made for the taxable year involved; and

‘(b) REPAYMENT SCHEDULE.—Any arrangement made by the Secretary for the making of loan repayments in accordance with this subsection shall provide that any repayments for a year of obligated service shall be made not later than the end of the fiscal year in which the individual completes such year of service.

‘(c) TAX LIABILITY.—For the purpose of providing reimbursements for tax liability resulting from payments under paragraph (2) on behalf of an individual—

‘(1) A NNUAL REPORT.—Not later than 18 months after the date of enactment of the Pharmacy Education Act, and annually thereafter, the Secretary shall prepare and submit to Congress a report on the progress made under this section, including statements regarding—

‘(i) the number of applicants and contract recipients;

‘(ii) the amount of loan repayments made;

‘(iii) which educational institution the recipients attended;

‘(iv) the number and practice locations of the loan repayment recipients at health care facilities with a critical shortage of pharmacists;

‘(E) the default rate and actions required;

‘(F) the amount of outstanding default funds of the loan repayment program;

‘(G) to the extent that it can be determined, the reason for the default;

‘(H) the demographic characteristics of the individuals participating in the loan repayment program; and

‘(i) an evaluation of the overall costs and benefits of the program.

‘(2) 5-YEAR REPORT.—Not later than 5 years after the date of enactment of the Pharmacy Education Act, the Secretary shall prepare and submit to Congress a report on how the program carried out under this section interacts with other Federal loan repayment programs for pharmacists and determining the relative effectiveness of such programs in increasing pharmacists practicing in underserved areas.

‘(e) APPLICATION OF CERTAIN PROVISIONS.—

‘(1) IN GENERAL.—The provisions of section 338C, 338G, and 338I shall apply to the program established under this section to the same extent and in the same manner as such provisions apply to the National Health Service Corps Loan Repayment Program established in subpart III of part D of title III, including the applicability of provisions regarding reimbursements for increased tax liability and regarding bankruptcy.

‘(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary for each of fiscal years 2004 through 2008.

‘SEC. 783. DEFINITIONS.

‘In this subpart—

‘(1) SCHOOL OF PHARMACY.—The term 'school of pharmacy' means a college or school of pharmacy (as defined in section 799B) that, in providing clinical experiences, requires that the students serve in a clinical rotation in which pharmacist services (as defined in section 331(a)(3)(E)) are provided at or for—

‘(A) a medical facility that serves a substantial number of individuals who reside in or are members of a medically underserved community (as defined);

‘(B) an entity described in any of subparagraphs (A) through (L) of section 340B(a)(4) (relating to the definition of covered entity);

‘(C) a health care facility of the Department of Veterans Affairs or of any of the Armed Forces of the United States;

‘(D) a health care facility of the Bureau of Prisons;

‘(E) a health care facility operated by, or with funds received from, the Indian Health Service; or

‘(F) a disproportionate share hospital operated under section 1923 of the Social Security Act.

‘(2) PHARMACIST SERVICES.—The term 'pharmacist services' includes drug therapy management services furnished by an individual or on behalf of a pharmacy provider, and such services and supplies furnished incident to the pharmacist’s drug therapy management services, that the Secretary is authorized to perform in the State in which the individual performs such services in accordance with State law (or the State regulatory mechanism provided for by State law).

‘Mr. McCONNELL. I ask unanimous consent the committee substitute amendment be agreed to; the bill, as amended, be read the third time and passed; the motion to reconsider be laid upon the table, and any statements be printed in the Record.

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

‘The committee amendment in the nature of a substitute was agreed to.

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

‘The committee amendment in the nature of a substitute was agreed to.

‘Mr. McConnell. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 412, S. 1881.
The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1881) to amend the Federal Food, Drug, and Cosmetic Act to make technical corrections to the amendments made by the Medical Device User Fee and Modernization Act of 2002, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 1881
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECT. 1. SHORT TITLE.
This Act may be cited as the "Medical Devices Technical Corrections Act".

SEC. 2. TECHNICAL CORRECTIONS REGARDING PUBLIC LAW 107-250.


(1) in subsection 737—

(A) in paragraph (4)(B), by striking "and for which clinical data are generally necessary to provide a reasonable assurance of safety and effectiveness" and inserting "and for which clinical data are necessary to provide a reasonable assurance of safety and effectiveness";

(B) in paragraph (4)(D), by striking "manufacturing,"; and

(C) in paragraph (5)(J), by striking "a premarket application or premarket application under section 515 of the Public Health Service Act.";

(2) in section 738—

(A) T ITLE I; F EES RELATING TO MEDICAL DEVICES.—Part 3 of subchapter C of chapter 21 of Public Law 107-250 (116 Stat. 1600), is amended—

(a) CERTAIN AMENDMENTS TO SECTION 515.—

(i) TECHNICAL CORRECTION.—Section 515(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 3574(c)), as added by section 201 of Public Law 107-250 (116 Stat. 1602), is amended—

(A) in paragraph (1), in the first sentence, by striking "conducting inspections" and all that follows and inserting "conducting inspections of establishments that manufacture, process, propagate, compound, or process class II or class III devices, which inspections are required under section 515(h) or are inspections of such establishments required to register under section 515(i).";

(B) in paragraph (6)(A)—

(1) CERTAIN AMENDMENTS TO SECTION 515.—

(A) IN GENERAL.—

(i) TECHNICAL CORRECTION.—Section 515(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 3574(c)), as added by section 201 of Public Law 107-250 (116 Stat. 1602), is amended—

(A) in subsection (a)(1)—

(i) in subparagraph (A)—

(1) in the matter preceding clause (i) by striking "subsection (d)," and inserting "subsections (d) and (e);"

(ii) in clause (iv), by striking "clause (i)," and all that follows and inserting "clause (i), subject to any adjustment under subsection (e)(2)(C)(i)."

(iii) in paragraph (1), in each of clauses (i) and (ii), by striking "application and inserting "application, report,;"

(iv) in subsection (d)(2)(B), beginning in the second sentence, by striking "firms, which show" and inserting "firms, which show;" and

(B) in section (e)—

(i) in paragraph (1), by striking "Where" and inserting "For fiscal year 2004 and each subsequent fiscal year," and

(ii) in the Federal Register, by striking "by the Secretary'" and inserting "by the Secretary'";

(C) in paragraph (2), by striking "show'" and inserting "firms, which show."
[1] Amendment to Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(m)(3)) is amended to read as follows:

"(a) A person submitting a premarket application for a device, which inspections are required under section 510(h) or are inspections of such establishments required to register under section 510(a)."

(b) in paragraph (4)(D), by striking "manufacturing,"

(c) in paragraph (5)(J), by striking "a premarket application," and all that follows and inserting "a premarket application or premarket report under section 515 or a premarket application under section 351 of the Public Health Service Act," and

(d) in paragraph (8), by striking "The term ‘affiliate’ means a business entity that has a relationship with a second business entity" and inserting "The term ‘affiliate’ means a business entity that has a relationship with a second business entity (whether domestic or international)";

2. SEC. 3. HUMANITARIAN DEVICE EXEMPTION AND PEDIATRIC PRODUCTS.

(a) Amendment to Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(m)(3)) of the Federal Food, Drug, and Cosmetic Act is amended to read as follows:

"...the term ‘pediatric patient’ means a patient who is 14 years of age or younger at the time of diagnosis or treatment."
(ii) in the second sentence—
(I) by striking “inspections” and inserting “inspectional findings”; and
(II) by inserting “relevant” after “together with”.

(D) in paragraph (6)(C)(ii), by striking “in accordance with section 510(h), or has not during such period been inspected pursuant to section 510(h)”, and
(E) in paragraph (10)(B)(iii), by striking “a reporting” and inserting “a report”; and
(F) in paragraph (12)—
(i) by striking subparagraph (A) and inserting the following:

“(A) the number of inspections conducted by accredited persons pursuant to this subsection and the number of inspections conducted by Federal employees pursuant to section 510(h) and of device establishments required to register under section 510(f);” and

(ii) in subparagraph (E), by striking “obtained by the Secretary” and all that follows and inserting “obtained by the Secretary pursuant to inspections conducted by Federal employees”;

(2) OTHER CORRECTIONS.—

(A) PROHIBITED ACTS.—Section 301(gg) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(gg)), as amended by section 201(d) of Public Law 107–250 (116 Stat. 1609), is amended to read as follows:

“...The knowing failure to comply with paragraph (7)(E) of section 704(g); the knowing inclusion by a person accredited under paragraph (2) of such section of false information in an inspection report under paragraph (7)(A) of such section; or the knowing failure of such a person to include material facts in such a report...”

(B) ELECTRONIC LABELING.—Section 502(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(e)), as amended by section 206 of Public Law 107–250 (116 Stat. 1613), is amended, in the first sentence—

(i) by inserting “or by a health care professional and required labeling for in vitro diagnostic devices intended for use by health care professionals or in blood establishments” after “in health care facilities”;

(ii) by inserting a comma after “means”;

(iii) by striking “requirements of law and, that and” and inserting “requirements of law and”;

(iv) by striking “the manufacturer affords health care facilities the opportunity” and inserting “the manufacturer affords such users the opportunity”;

(v) by striking “the health care facility”;

(c) 21st CENTURY PATHWAY TO PATIENT SAFETY AMENDMENTS.—

(1) EFFECTIVE DATE.—Section 301(b) of Public Law 107–250 (116 Stat. 1616), is amended by striking “18 months” and inserting “36 months”.

(2) PREMARKET NOTIFICATION.—Section 510(o) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350(o)), as added by section 206 of Public Law 107–250 (116 Stat. 1616), is amended—

(A) in paragraph (1)(B), by striking “adulterated” and inserting “or adulterated”;

(B) in paragraph (1)(B), by striking “semicritical” and inserting “semicritical and critical”;

(C) IN GENERAL.—

(1) TECHNICAL CORRECTION.—Section 515(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(c)), as amended by sections 209 and 302(c) of Public Law 107–250 (116 Stat. 1613, 1618), is amended by redesigning paragraph (3) (as added by section 209 of such Public Law) as paragraph (4).

(2) IN GENERAL.—Section 515(c)(4)(B) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360(c)(4)(B)) is amended by striking “unless an issue of safety” and inserting “unless a significant issue of safety”.

(B) CONFORMING AMENDMENT.—Section 210 of Public Law 107–250 (116 Stat. 1614) is amended by striking—

(A) “the Secretary” and all that follows and inserting all that follows through “by adding” and inserting “is amended in paragraph (3), as redesignated by section 302(c)(2)(A) of this Act, by adding”;

(B) CONFORMING AMENDMENT.—Section 738.—

(A) IN GENERAL.—Section 738(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379(a)), as amended by subsection (a), is amended—

(i) in the matter preceding paragraph (1)—

(I) by striking “(a) TYPES OF FEES.—Beginning” and inserting the following:

“(A) TYPES OF FEES.—

“(1) IN GENERAL.—Beginning on;” and

(II) by striking “section as follows:” and inserting “section”;

(II) by striking “(1) PREMARKET APPLICATION,” and inserting the following: “(2) PREMARKET APPLICATION,”

(B) CONFORMING AMENDMENTS.—Section 738 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379b), as amended by subparagraph (A), is amended—

(i) in subsection (d)(1), in the last sentence, by striking “subsection (a)(1)(A)” and inserting “subsection (a)(2)(A)”;

(ii) in subsection (e)(1), by striking “subsection (a)(1)(A)” and inserting “subsection (a)(1)(A)(vii)”;

(iii) in subsection (c)(2)—

(I) in each clause of (i) and (ii), by striking “subsection (a)(1)(A)(vii)” and inserting “subsection (a)(2)(A)”;

and

(II) in clause (ii), by striking “subsection (a)(1)(D)” and inserting “subsection (a)(2)(D)”;

(C) ADDITIONAL CONFORMING AMENDMENT.—Section 102(b)(1) of Public Law 107–250 (116 Stat. 1616) is amended, in the matter preceding subparagraph (A), by striking “section 738(a)(1)(A)” and inserting “section 738(a)(1)(A)(ii)”.

(3) PUBLIC LAW 107–250.—Public Law 107–250 is amended—


(B) in section 102(b) (116 Stat. 1600)—

(i) by striking paragraph (2);

(ii) in paragraph (1), by redesigning subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(iii) by striking—

“(b) FEE EXEMPTION FOR CERTAIN ENTITIES SUBMITTING PREMARKET REPORTS.—

“(1) IN GENERAL.—A person submitting a premarket report and inserting—

“(B) FEE EXEMPTION FOR CERTAIN ENTITIES SUBMITTING PREMARKET REPORTS.—A person submitting a premarket report”;

and

(C) in section 212(b)(2) (116 Stat. 1614), by striking “such paragraph” and inserting “such subparagraph”.

SEC. 3. REPORT ON BARRIERS TO AVAILABILITY OF DEVICES INTENDED FOR CHILDREN.

Not later than 180 days after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the barriers to the availability of devices intended for the treatment or diagnosis of diseases and conditions associated with children. The report shall include any recommendations of the Secretary of Health and Human Services for changes to existing statutory authority, regulations, or guidance to facilitate the invention and development of such devices.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the committee substitute amendment be agreed to, the bill, as amended, be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to. The bill (S. 1881), as amended, was read the third time and passed.

COMMEMORATING THE 25TH ANNIVERSARY OF VIETNAM VETERANS OF AMERICA

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 120 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 120) commemorating the 25th anniversary of Vietnam Veterans of America.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

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

The resolution (S. Res. 120) was agreed to.

The preamble was agreed to. The resolution, with its preamble, reads as follows:

Whereas the year 2003 marks the 25th anniversary of the founding of Vietnam Veterans of America;

Whereas the history of Vietnam Veterans of America is a story of the United States’ gradual recognition of the tremendous sacrifices of its Vietnam-era veterans and their families;

Whereas Vietnam Veterans of America is dedicated to advocating on behalf of its members;

Whereas Vietnam Veterans of America raises public and member awareness of critical issues affecting Vietnam-era veterans and their families;

Whereas the local grassroots efforts of Vietnam Veterans of America chapters, such as Chapter One in Rutland, Vermont, which was founded 23 years ago in April of 1980, have greatly contributed to the quality of the lives of veterans in our Nation’s community;

Whereas Vietnam Veterans of America promotes its principles through volunteerism, professional advocacy, and claims work; and

Wereas the future of Vietnam Veterans of America will rely not only on its past accomplishments, but also on the future accomplishments of its members, and to ensure that Vietnam Veterans of America remains a leader among veterans advocacy organizations: Now, therefore, be it

The resolution, with its preamble, reads as follows:

S. Res. 120

Whereas the year 2003 marks the 25th anniversary of the founding of Vietnam Veterans of America;

Whereas the history of Vietnam Veterans of America is a story of the United States’ gradual recognition of the tremendous sacrifices of its Vietnam-era veterans and their families;

Whereas Vietnam Veterans of America is dedicated to advocating on behalf of its members;

Whereas Vietnam Veterans of America raises public and member awareness of critical issues affecting Vietnam-era veterans and their families;
Resolved, That the Senate—
(1) commemorates the 25th anniversary of the founding of Vietnam Veterans of America, and commends it for its efforts in the advancement of veterans’ rights, which set the standard for all other veterans organizations around the country;
(2) asks all Americans to join in the celebration of the 25th anniversary of Vietnam Veterans of America, and its 25 years of advocacy on behalf of Vietnam veterans; and
(3) encourages Vietnam Veterans of America to continue to represent and promote its goals in the veterans’ community and on Capitol Hill, and to continue to keep its national membership—consisting of 45,000 members and 600 chapters—strong.

MEASURES DISCHARGED

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of the following:
S. 99, S. 1130, S. 103, S. 484, and S. 541, and that the Senate proceed to their immediate consideration en bloc.

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

The Senate will proceed to the consideration of the measures en bloc.

Mr. MCCONNELL. Mr. President, I further ask unanimous consent that the bills be read three times and passed en bloc, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to these measures be printed in the Record.

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

FOR THE RELIEF OF JAYA GULAB TOLANI AND HITEISH GULAB TOLANI

The bill (S. 99) for the relief of Jaya Gulab Tolani and Hitesh Gulab Tolani, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 99
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PERMANENT RESIDENCE.

Notwithstanding any other provision of law, for purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Jaya Gulab Tolani and Hitesh Gulab Tolani shall be held and considered to have entered and remained lawfully and have entered and remained lawfully and shall be entitled to lawful permanent residence.

SEC. 2. REDUCTION OF NUMBER OF AVAILABLE VISAS.

Upon the granting of permanent residence to Jaya Gulab Tolani and Hitesh Gulab Tolani, as provided in section 1, the Secretary of State shall instruct the proper officer to reduce by the appropriate number during the current fiscal year the total number of immigrant visas available to natives of the country of the aliens’ birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)).

FOR THE RELIEF OF ESIDRONIO ARREOLA-SAUCEDO, MARIA ELANA COBIAN ARREOLA, NAYELEY BIBIANA ARREOLA, AND CINDY JAEL ARREOLA

The bill (S. 1130) for the relief of Esidronio Arreola-Saucedo, Maria Elena Cobian Arreola, Nayeley Bibiana Arreola, and Cindy Jael Arreola, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 1130
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PERMANENT RESIDENT STATUS FOR ESIDRONIO ARREOLA-SAUCEDO, MARIA ELANA COBIAN ARREOLA, NAYELEY BIBIANA ARREOLA, AND CINDY JAEL ARREOLA

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Lindita Idrizi Heath shall be eligible for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for purposes of the Immigration and Nationality Act, by virtue of the application for issuance of an immigrant visa and the application for adjustment of status is filed with appropriate fees within 2 years after the date of enactment of this Act.

(b) REDUCTION OF IMMIGRANT VISAS.—Upon the granting of an immigrant visa or permanent residence to Lindita Idrizi Heath under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of birth of Lindita Idrizi Heath under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of birth of Lindita Idrizi Heath under section 203(a) of the Immigration and Nationality Act of 1986 shall be considered to have satisfied the requirements applicable to adopted children under sections 320 and of the Immigration and Nationality Act of 1986.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status are filed with appropriate fees within 2 years after the date of enactment of this Act.

SEC. 2. ELIGIBILITY FOR CITIZENSHIP

For purposes of section 320 of the Immigration and Nationality Act (8 U.S.C. 1431; relating to the automatic acquisition of citizenship by certain children born outside the United States), Lindita Idrizi Heath shall be considered to have satisfied the requirements applicable to adopted children under section 101(b)(1) of that Act (8 U.S.C. 1101(b)(1)).

SEC. 3. LIMITATION.

No natural parent, brother, or sister, if any, of Lindita Idrizi Heath shall, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

FOR THE RELIEF OF DANIEL KING CAIRO

The bill (S. 848) for the relief of Daniel King Cairo, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 848
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PERMANENT RESIDENCE.

Notwithstanding any other provision of law, for purposes of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Daniel King Cairo shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of enactment of this Act upon payment of the required visa fees.

SEC. 2. REDUCTION OF NUMBER OF AVAILABLE VISAS.

Upon the granting of permanent residence to Daniel King Cairo, the Secretary of State shall instruct the proper officer to reduce by the appropriate number during the current fiscal year the total number of immigrant visas available to natives of the country of the aliens’ birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)).
the alien’s birth under section 203(a) of the Immigration and Nationality Act (8 U.S.C. 1153(a)).

FOR THE RELIEF OF ILKO VASILEV IVANOV, ANELIA MARINOVA PENEVA, MARINA ILKOVA IVANOVA, AND JULIE ILKOVA IVANOVA

The bill (S. 541) for the relief of Ilko Vasilev Ivanov, Anelia Marinova Peneva, Marina Ilkova Ivanova, and Julie Ilkova Ivanova, was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

S. 541

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

SECTION 1. PERMANENT RESIDENCE.

In the administration of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), Ilko Vasilev Ivanov, Anelia Marinova Peneva, Marina Ilkova Ivanova, and Julia Ilkova Ivanova shall be held and considered to have been lawfully admitted to the United States for permanent residence as of the date of the enactment of this Act upon payment of the required visa fees.

SEC. 2. REDUCTION OF NUMBER OF AVAILABLE VISAS.

Upon the granting of permanent residence to Ilko Vasilev Ivanov, Anelia Marinova Peneva, Marina Ilkova Ivanova, and Julia Ilkova Ivanova as provided in this Act, the Secretary of State shall instruct the law enforcement officer to reduce by the appropriate number during the current fiscal year the total number of immigrant visas available to natives of the country of the aliens’ birth under subsection (a) of section 203 of the Immigration and Nationality Act (8 U.S.C. 1153).

THANKING STAFF OF LEGISLATIVE COUNSEL

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 277 introduced earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 277) tendering the sincere thanks of the Senate to the staffs of the Offices of the Legislative Counsel of the Senate and the House of Representatives for their dedication and service to the legislative process.

There being no objection, the Senate proceeded to consider the resolution.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and any statements relating to the resolution be printed in the Record.

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

The resolution (S. Res. 277) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 277

Whereas the Offices of the Legislative Counsel of the Senate and the House of Representatives have demonstrated great expertise, dedication, professionalism, and integrity in faithfully discharging the duties and responsibilities of their positions;

Whereas legislation is a lengthy, arduous, and demanding process requiring a keen intellect, thorough knowledge, stern constitution, and remarkable patience; and

Whereas the staff of the Senate and House Offices of the Legislative Counsel, in particular, Ruth Ann Ernst, John Geetches, Peter Goodloe, Edward G. Grossman, Pierre Poisson, and James G. Scott, have performed above and beyond the call of duty in drafting the Medicare Prescription Drug, Improvement, and Modernization Act of 2003; and

While the staff of the House Offices of the Legislative Counsel have met the legislative drafting needs of the Senate and the House of Representatives with unfailing professionalism, exceptional skill, unwavering dedication, and, above all, patience and good humor as the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 passed through the legislative process: Now, therefore, be it

Resolved, That the sincere thanks of the Senate are hereby tendered to the staffs of the Offices of the Legislative Counsel of the Senate and the House of the Legislative Counsel of the House of Representatives for their outstanding work and dedication to the United States Congress and the people of the United States of America.

BAN ON UNDETECTABLE FIREARMS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3348 which is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (H.R. 3348) to reauthorize the ban on undetectable firearms.

There being no objection, the Senate proceeded to consider the bill.

Mr. KENNEDY. Mr. President, it is gratifying that the Senate is finally acting to renew one of the Nation’s essential protections against terrorism.

The Undetectable Firearms Act—also known as the “plastic gun” law—makes it illegal to manufacture, import, possess, or transfer a firearm that is not detectable by walk-through metal detectors or airport x-ray machines. Only firearms necessary for certain military and intelligence uses are exempt.

This law was first enacted in 1988, long before the attacks of September 11, and it is more important than ever now. It has been extended once since it was first enacted, but it is scheduled to expire on December 10th. Its expiration would result in Americans in all parts of the Nation becoming needlessly vulnerable to gun violence in airlines, airports, schools, office buildings, and many other places, and even to terrorist attacks.

The technology of gun manufacturers has significantly improved since the 1980’s—and the determined terrorist is attacking Americans has soared. We know that terrorists are exploiting the weaknesses and loopholes in our gun laws. In 2000, a member of the Middle East terrorist group Hezbollah was convicted in Detroit on gun charges and conspiracy to ship guns and ammunition to Lebanon. He had purchased many of those weapons at gun shows in Michigan. In the war in Afghanistan, U.S. soldiers discovered a terrorist training manual entitled “How Can I Train Myself for Jihad” in a house in that country. One part of the manual stated: “In other countries, e.g. some states of USA . . . it is perfectly legal for members of the public to own certain types of firearms. If you live in such a country, obtain an assault rifle legally . . . learn how to use it properly and go and practice in the areas allowed for such training.”

Last month, I introduced a bill, S. 1774, to renew the Undetectable Firearms Act and repeal the sunset provision. The bill now before us, H.R. 3348, extends the sunset provision for another 10 years. The danger to security from undetectable firearms won’t sunset, so the law that bans them shouldn’t sunset either. Nevertheless, I am encouraged that Congress is taking action, and I look forward to the renewal of this gun ban being signed into law.

This measure is only one of several steps that Congress should take to protect our citizens from gun violence. We also need to strengthen criminal background checks for gun purchases under the Brady Law, renew the assault weapons ban, and close the “gun show loophole” once and for all. Each of these gun-safety measures is needed to protect our people in communities across the country. I urge my colleagues to support the pending bill, and to act on these other vital measures as well.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the bill be read the third time, passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the bill be printed in the Record.

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

The bill (H.R. 3348) was read the third time and passed.

BANKRUPTCY EXTENSION

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. 1920 and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 1920) to extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted.

There being no objection, the Senate proceeded to consider the bill.
Mr. LEAHY. Mr. President, I am pleased that the Senate is passing legislation to extend family farmer bankruptcy protection through June 30, 2004.

Senator GRASSLEY and I introduced S. 1920 to temporarily extend the protections that our farmers have come to rely upon for another 6 months because Chapter 12 of the Bankruptcy Code is set to expire on January 1, 2004. But this is just a short term fix. We need to stop playing politics and permanently reauthorize Chapter 12 family farmer protections.

Too many family farmers have been left in legal limbo in bankruptcy courts across the country because Chapter 12 of the Bankruptcy Code is still a temporary measure. This is the seventh time that Congress must act to restore or extend basic bankruptcy safeguards for family farmers because Chapter 12 is still a temporary provision despite its first passage into law in 1986. Our family farmers do not deserve these lapses in bankruptcy law that could mean the difference between foreclosure and farming.

In 2000 and 2001, for example, the Senate, then as now controlled by the other party, failed to take up a House-passed bill to retroactively renew Chapter 12. As a result, family farmers lost Chapter 12 bankruptcy protection for eight months. Another lapse of Chapter 12 lasted more than six months in the previous Congress. At the end of June, Chapter 12 lapsed once again.

It is time to end this absurdity and make these bankruptcy protections permanent. Everyone agrees that Chapter 12 has worked. It is time for Congress to make Chapter 12 a permanent part of the Bankruptcy Code to provide a stable safety net for our Nation's family farmers.

I will continue to work hard with Senator GRASSLEY, Senator FEINGOLD and others on both sides of the aisle to pass legislation that once and for all restores these lapses in bankruptcy law that could mean the difference between foreclosure and farming.

In 2000 and 2001, for example, the Senate, then as now controlled by the other party, failed to take up a House-passed bill to retroactively renew Chapter 12. As a result, family farmers lost Chapter 12 bankruptcy protection for eight months. Another lapse of Chapter 12 lasted more than six months in the previous Congress. At the end of June, Chapter 12 lapsed once again.

It is time to end this absurdity and make these bankruptcy protections permanent. Everyone agrees that Chapter 12 has worked. It is time for Congress to make Chapter 12 a permanent part of the Bankruptcy Code to provide a stable safety net for our Nation's family farmers.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of H.R. 1437 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. The assistant legislative clerk read as follows:

A bill (H.R. 1437) to improve the United States Code.

There being no objection, the Senate proceeded to consider the bill.

Mr. McCONNELL. Mr. President, I ask unanimous consent that the bill be read the third time, and passed, the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating to the measure be printed in the RECORD.

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

The bill (H.R. 1437) was read the third time and passed.

AUTHORIZATION FOR MAJORITY LEADER TO SIGN ENROLLED BILLS AND JOINT RESOLUTIONS DURING SENATE'S ADJOURNMENT

Mr. McCONNELL. Mr. President, I ask unanimous consent that, during the Senate's adjournment, the majority leader be authorized to sign enrolled bills and joint resolutions.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXECUTIVE CALENDAR

Mr. McCONNELL. Mr. President, we have been working this afternoon trying to clear the Executive Calendar, regretfully with little or no success. I had a conversation with the Democratic leader about this just a few moments ago. He can represent his own position. But let me say, from my point of view, what is customarily done at the end of the session is we work out understandings under which we are able to, for the most part, except for extremely controversial nominees, clear the calendar. But alas, that will not be the case today. It is a result of another round of obstructionism. As we extend our already extended period of 95 nominees will be languishing here on the Executive Calendar awaiting approval. I hoped that entering the holiday season, we would be able to put aside our differences and work together on legislation that will benefit the American people, and to that end, the politics seems to have overtaken reason once again.

This level of obstructionism on the other side has reached a really stunning new low. An example of the positions that will be left languishing here, dealing with the national security of this country, is the Deputy Attorney General, the Ambassador to Saudi Arabia, a very important country in the war on terrorism, the Under Secretary for Public Diplomacy and the International Trade Commission—all obstructed as we bring this session to an end. From those positions all the way down to such things as members of the African Development Foundation, the Postal Service, the Chemical Safety and Hazard Investigation Board, even the National Commission on Libraries and Information Science—all obstructed.

On a day when the Senate delivered on a 38-year-old promise to 40 million seniors to provide a prescription drug benefit, we end the day woefully short of our obligations. It is somewhat ironic that two of the victims of obstructionist are nominees to the U.S. Institute of Peace.

I hope we can get serious about doing our work around here. Our work includes, at the very least, confirming nominations that are not controversial. This is disturbing. We have an Executive Calendar full of innocent people who are not caught up in any of the games around here who are being held up at the very least until we come back on December 9. And who knows, maybe up until next year and the positions from extremely important positions such as the Ambassador to Saudi Arabia all the way down to boards that are arguably not of any great consequence. It is a sad conclusion to the session.

Hopefully, sometime over the next few weeks we can figure out a way to clear these nominations, these people who deserve better treatment by the Senate. We abuse people and abuse people and abuse people. It is a wonder that anyone is willing to enter into the confirmation process.

Mr. DASCHLE. Mr. President, I rise to do my disappointment with the impasse over nominations. Earlier this afternoon I made clear to the Republican leadership that the Democratic Caucus was ready to confirm the following nominees today for important ambassadorships around the world:

David C. Mulford to be Ambassador to India, William Hudson to be Ambassador to the Republic of Tunisia, Jon
ORGAN DONATION AND RECOVERY IMPROVEMENT ACT

Mr. MCCONNELL. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 419, S. 573.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 573) to amend the Public Health Service Act to promote organ donation, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Health, Education, Labor, and Pension with an amendment.

[Strike the part shown in black brackets and insert the part shown in italic.]

S. 573

S. 573

SEC. 101. INTERAGENCY TASK FORCE ON ORGAN DONATION.

Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended—

(1) by redesignating section 378 (42 U.S.C. 274e) as section 378E; and

(2) by inserting after section 377 (42 U.S.C. 274d) the following:

SEC. 378B. GRANTS REGARDING HOSPITAL ORGAN DONATION COORDINATORS.

(a) Authority.—

(1) IN GENERAL.—The Secretary may award grants to qualified organ procurement organizations under section 371 to establish programs coordinating organ donation activities of eligible hospitals and qualified organ procurement organizations under section 375a such activities shall be coordinated to increase the rate of organ donations for such hospitals.

(b) Administration of Coordination Program.—A condition for the receipt of a grant under subsection (a) is that the applicant involved agree that the program under such grant will be carried out jointly.

(c) Evaluations.—Within 3 years after the award of grants under this section, the Secretary shall ensure an evaluation of programs carried out pursuant to subsection (a) in order to determine the extent to which the programs have increased the rate of organ donation for the eligible hospitals involved. Such evaluation shall include recommendations on whether the program shall be expanded to include other grantee entities, as hospitals. 
(SEC. 376C. STUDIES RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.)

(a) DEVELOPMENT OF SUPPORTIVE INFORMATION.—The Secretary, acting through the Administrator of the Health Resources and Services Administration and the Director of the Agency for Healthcare Research and Quality shall develop scientific evidence in support of interventions aimed at improving the recovery, preservation, and transportation of organs.

(i) through carrying out subsection (a), the Secretary shall—

1. conduct or support evaluation research to determine whether interventions, such as improvements to procurement systems, improve the effectiveness, efficiency, or quality of existing organ donation practice;

2. undertake or support periodic reviews of the scientific evidence to assist efforts of professional societies to ensure that the clinical practice guidelines that they develop reflect the latest scientific findings;

3. develop and maintain infrastructure in underwriting the research and other activities undertaken under this subsection is readily accessible to the organ procurement workforce; and

4. conduct or support evaluation research and operations of organ procurement and transplantation organizations to develop evidence and promote the adoption of such proven practices.

(b) IOM REPORT ON BEST PRACTICES.—The Secretary shall provide information technology and telecommunication to support the clinical operations of organ procurement organizations;

(c) enhance the skill levels of the organ procurement workforce in underwriting quality improvement activities; and

(d) assess specific organ recovery, preservation, and transportation technologies.

SEC. 376D. AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out this section, there are authorized to be appropriated $5,000,000 for fiscal year 2004, and such sums as may be necessary for each of fiscal years 2005 through 2008.

SEC. 104. REPORTS.

Part H of Title III of the Public Health Service Act (42 U.S.C. 274a et seq.) is amended by adding at the end the following:

"(a) IOM REPORT ON BEST PRACTICES.—

(i) In general.—The Secretary shall enter into a contract with the Institute of Medicine to conduct an evaluation of the organ donation practices and procedures. Such evaluation shall include, but is not limited to, assessment of issues related to informed consent and the health risks associated with living donation (including possible reduction of long-term effects).

(ii) Report.—Not later than 18 months after the date of enactment of this section, the Institute of Medicine shall submit to the Secretary a report on the evaluation conducted under this subsection.

(iii) Reimbursement of Organ Donation and Recovery Activities.—

1. In general.—The Secretary shall submit an evaluation to the Secretary concerning the evaluation conducted under this subsection.

2. Provide reports on the extent practicable, each evaluation submitted under paragraph (1) shall—

(A) evaluate the effectiveness of activities, identify best practices, and make recommendations regarding the adoption of best practices with respect to organ donation and recovery; and

(B) assess organ donation and recovery activities that are currently completed, ongoing, or planned.

SEC. 105. TECHNICAL AMENDMENT CONCERNING DONATION AND TRANSPORTATION ORGAN DONATION PURCHASES.

(a) In general.—The Secretary has been made, or can reasonably be expected to be made, with respect to such expenses—

1. under any State compensation program, under an insurance policy, or under any Federal or State health benefits program;

2. provided by an entity that provides health services on a prepaid basis; or

3. by the recipient of the organ.

(b) Authorization of Appropriations.—For the purpose of carrying out this section, there are authorized to be appropriated $5,000,000 for fiscal year 2004, and such sums as may be necessary for each of fiscal years 2005 through 2008.

SEC. 377. REIMBURSEMENT OF TRAVEL AND SUBSISTENCE EXPENSES INCURRED TOWARD LIVING ORGAN DONATION.

(a) In general.—Not later than 6 months after enactment, the Secretary shall establish an advisory committee to study and make recommendations to Congress regarding the costs, benefits, and expansion of such programs.

(b) Membership.—The committee shall be composed of 10 members of whom—

1. at least 1 member shall be a physician with experience performing transplants;

2. at least 1 member shall have experience in organ recovery;

3. at least 1 member shall be representative of an organization with experience conducting national awareness campaigns and donor outreach;

4. at least 1 member shall be representative of a State with an existing donor registry;

5. at least 1 member shall have experience with national information systems where coordination occurs with State-based systems; and

6. at least 1 member shall represent donor families, transplant recipients, and the general population.

(c) Meetings.—The committee shall meet at the call of the Chairman who shall be selected by the Secretary.

(d) Compensation.—No member of the committee shall receive compensation for services provided under this section.
SEC. 377. REIMBURSEMENT OF TRAVEL AND SUBSISTENCE EXPENSES INCURRED TO TOWARD LIVING ORGAN DONATION.

(1) In General.—The Secretary may award grants to States, transplant centers, qualified organ procurement organizations under section 371, or other public or private entities for the purpose of—

(A) providing for the reimbursement of travel and subsistence expenses incurred by individuals toward making living donations of their organs (in this section referred to as ‘‘donating individuals’’); and

(B) providing for the reimbursement of such incidental nonmedical expenses that are so incurred as the Secretary determines by regulation to be appropriate.

(2) Preference.—The Secretary shall, in carrying out subsection (a), give preference to those individuals who are more likely to otherwise unable to meet such expenses.

(3) Certain Circumstances.—The Secretary may, in carrying out subsection (a), consider—

(A) the term ‘‘donating individuals’’ as including individuals who in good faith incur qualifying expenses toward the intended donation of an organ but with respect to whom, for such reasons as the Secretary determines to be appropriate, no donation of the organ occurs; and

(B) the term ‘‘qualifying expenses’’ as including the expenses of having relatives or other individuals, not to exceed 2, who accompany or assist the donating individual for purposes of ensuring the completion of the intended donation for only those types of expenses that are paid for a donating individual.

(4) Relationship to Payments Under Other Authorities.—An award may be made under subsection (a) only if the applicant involved agrees that the award will not be expended to pay the qualifying expenses of a donating individual that have been, or can reasonably be expected to be made, with respect to such expenses—

(A) under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or

(B) by an entity that provides health services on a prepaid basis; or

(C) by the recipient of the organ.

(5) Definitions.—For purposes of this section—

(A) the term ‘‘donating individuals’’ has the meaning indicated for such term in subsection (a)(1), subject to subsection (c)(1).

(B) the term ‘‘qualifying expenses’’ means the expenses authorized under subsection (a), subject to subsection (c)(2).

(C) AUTHORIZATION OF APPROPRIATIONS.—

For the purpose of carrying out this section, there are authorized to be appropriated $5,000,000 for each of the fiscal years 2004 through 2008.

SEC. 377B. GRANTS REGARDING HOSPITAL ORGAN DONATION COORDINATORS.

(1) Authority.—

(A) In General.—The Secretary may award grants to qualified organ procurement organizations and hospitals under section 371 to establish programs coordinating organ donation activities of eligible hospitals and qualified organ procurement organizations under section 371. Such activities shall be coordinated to increase the rate of organ donations for such hospitals.

(B) Eligible Hospital.—For purposes of this section, an eligible hospital is a hospital that meets significant transplant census or hospital or consortium of hospitals that serves a population base of not fewer than 200,000 individuals.

(2) Administration of Coordination Program.—A condition for the receipt of a grant under subsection (a) is that the applicant involved agree that the program under such subsection may be necessary for each of the fiscal years 2005 through 2008.

(3) Evaluations.—Within 3 years after the award of grants under this section, the Secretary shall—

(A) submit to Congress a report describing the progress and results of the demonstration projects; and

(B) if any such demonstration projects are demonstrated to be successful, submit recommendations to the Congress for the implementation of such demonstration projects on a nationwide basis.

(4) Rule of Construction.—Nothing in this section shall be construed to affect any other law relating to the regulation of kidney and organ procurement or allotment of the use of such funds, medical ethics, or the performance of organ transplantation or organ donations.
tributions in cash or in kind, in an amount for which the grant was awarded, the entity agrees that, with respect to costs to be incurred in undertaking quality improvement, communications to support the clinical operations of the Agency for Healthcare Research and Quality, as appropriated, $3,000,000 for fiscal year 2004, and such sums as may be necessary for each of fiscal years 2005 through 2009.

SEC. 5. STUDIES RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.

Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended by inserting after section 371B, as added by section 4, the following:

"SEC. 377C. STUDIES RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.

"(a) DEVELOPMENT OF SUPPORTIVE INFORMATION.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, shall develop scientific evidence in support of efforts to increase organ donation and improve the recovery, preservation, and transportation of organs.

"(b) ACTIVITIES.—In carrying out subsection (a), the Secretary shall—

"(1) conduct or support evaluation research to determine whether interventions, technologies, or other activities improve the effectiveness, efficiency, or quality of existing organ donation practice;

"(2) undertake or support periodic reviews of the scientific literature to assist efforts of professional societies to ensure that the clinical practice guidelines that they develop reflect the latest scientific findings;

"(3) ensure that scientific evidence of the research and other activities undertaken under this section is readily accessible by the organ procurement workforce; and

"(4) work in coordination with the appropriate professional societies as well as the Organ Procurement and Transplantation Network and other existing support and transplantation organizations to develop evidence and promote the adoption of such proven practices.

"(c) RESEARCH AND DISSEMINATION.—The Secretary, acting through the Director of the Agency for Healthcare Research and Quality, as appropriate, shall provide support for research and dissemination of findings, to—

"(1) develop a uniform clinical vocabulary for organ recovery;

"(2) apply information technology and telecommunications to support the clinical operations of organ procurement organizations;

"(3) enhance the skill levels of the organ procurement workforce in undertaking quality improvement activities; and

"(4) assess specific organ recovery, preservation, and transportation technologies.

"(d) AUTHORIZATION OF APPROPRIATIONS.—For the purposes of carrying out this section, there are authorized to be appropriated $2,000,000 for fiscal year 2004, and such sums as may be necessary for each of fiscal years 2005 through 2009.

SEC. 6. REPORT RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.

Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended by inserting after section 377C, as added by section 5, the following:

"SEC. 377D. REPORT RELATING TO ORGAN DONATION AND THE RECOVERY, PRESERVATION, AND TRANSPORTATION OF ORGANS.

"(a) IN GENERAL.—Not later than December 31, 2005, and every 2 years thereafter, the Secretary shall report to the appropriate committees of Congress on the activities of the Department carried out pursuant to this part, including an evaluation describing the extent to which the activities have affected the rate of organ donation and recovery.

"(b) REQUIREMENTS.—To the extent practicable, each report submitted under subsection (a) shall—

"(1) evaluate the effectiveness of activities, identify effective activities, and disseminate such findings with respect to organ donation and recovery;

"(2) assess organ donation and recovery activities that are recently completed, ongoing, or planned;

"(3) evaluate progress on the implementation of the plan required under subsection (c)(4).

"(c) INITIAL REPORT REQUIREMENTS.—The initial report under subsection (a) shall include the following:

"(1) An evaluation of the organ donation practices of organ procurement organizations, states, or other appropriate organizations including an examination across all populations, including those with low organ donation rates, of—

"(A) existing barriers to organ donation; and

"(B) the most effective donation and recovery practices.

"(2) An evaluation of—

"(A) federally supported or conducted organ donation efforts and policies, as well as federally supported or conducted basic, clinical, and health services research (including research on preservation techniques an organ rejection and compatibility); and

"(B) the coordination of such efforts across relevant agencies within the Department and throughout the Federal Government.

"(3) An evaluation of the costs and benefits of—

"(A) the coordination of such efforts across relevant agencies within the Department and throughout the Federal Government.

"(4) An evaluation of the costs and benefits of—

"(A) federal, state, and local activities that are recently completed, ongoing, or planned.

"(5) A plan to improve federally supported or conducted organ donation and recovery activities, including, when appropriate, the establishment of baseline and benchmarks to measure overall outcomes of these programs. Such evaluation shall provide for the ongoing coordination of federally supported or conducted organ donation and research activities.

"SEC. 7. NATIONAL LIVING DONOR MECHANISMS.

Part H of title III of the Public Health Service Act (42 U.S.C. 273 et seq.) is amended by inserting after section 371F, as added by section 6, the following:

"SEC. 371A. NATIONAL LIVING DONOR MECHANISMS.

"(a) IN GENERAL.—Not later than December 31, 2004, the Secretary of Health and Human Services, in consultation with appropriate entities, including advocacy groups representing those populations that are likely to be disproportionately affected by proposals to increase cadaveric donation, shall submit to the appropriate committees of Congress a report that evaluates the ethical implications of such proposals.

"SEC. 8. QUALIFIED ORGAN PROCUREMENT ORGANIZATIONS.

Section 371(a) of the Public Health Service Act (42 U.S.C. 273a) is amended by striking paragraph (2) and substituting the following:

"(2) African Americans on the organ transplant waiting list.

"Mr. KENNEDY. Mr. President, I wish to engage in a colloquy with the distinguished majority leader, the Senator from Tennessee, Mr. FRIST, to appreciate his efforts on the bill before us today, and agree that this is a vitally important area. I believe this bill represents a good first step, but I would point out that minorities comprise over 40 percent of the organ transplant waiting list, even though they represent approximately 25 percent of the population. Half of the patients who needlessly die while awaiting a transplant are minorities.

"African Americans are more likely to have end stage renal disease because they have the highest rate of hypertension in the world. Almost 40 percent of Americans on the waiting list for kidneys are African American, but they represent only 20 percent of available kidneys.

"Evidence suggests that African Americans may face discrimination during the transplantation process. White patients are 5 times more likely than African Americans to receive transplants, even when they are equally qualified.

"We must increase our commitment to ending health disparities. I believe that more must be done to improve the rates of organ donation among minority communities and focus specifically among these populations to determine what the barriers to organ donation and transplantation currently are, as well as devise mechanisms to reduce or eliminate such barriers.

"I would point out that the legislation did not include provisions to directly address the disparity in organ donation and transplantation and the special needs of minority populations. I had hoped to include these provisions.

"Nonetheless, the need to enhance organ donation is too compelling to ignore, and for that reason, I am supporting the current legislation. It is our expectation that recipients of grant awards and contracts authorized under this Act will include consideration of minority concerns in all activities.

"I hope to work with the majority leader next year to address this critical issue.

"Mr. FRIST. I appreciate the remarks of the Senator from Massachusetts. As the Senator knows, the question of health care disparities is a keenly important issue to me. He and I have successfully worked in this area in the past, and I hope we will be able to similarly collaborate in the future.

"Much work in the area of minorities and organ donation is happening today.
These issues were strong recommendations of the Secretary’s Advisory Committee on Transplantation, and COT in fact went further and requested a study from NIH to define the reasons for African Americans to have diminished graft survival. And just earlier this fall, HRSA announced 8 grants that it was funding to test social and behavioral interventions to increase organ and tissue donation—five of these, totaling more than $1.6 million, focused on minority and underserved populations.

And we have a bill today that has been developed through a bipartisan, bicameral process intended to allow us to make quick action on the bill. I appreciate the Senator’s willingness to support this bill, and look forward to working with him in this area next year.

Mr. KENNEDY. I commend his work and congratulate him on passage of this bill. I look forward to working with the Senator from Tennessee and others to build on this important start and draft bipartisan legislation in the next session to address the unique health and health care needs of minority and underserved populations.

Mr. MCCONNELL. I ask unanimous consent that the committee substitute be ordered to; the bill, as amended, be read the third time and passed; the motion to reconsider be laid upon the table, and any statements be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 573), as amended, was read the third time and passed.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. McCONNEL, Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today’s Executive Calendar: Nos. 478, 490, 495 through 508, and all nominations on the Secretary’s desk.

I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate’s action, and the Senate return to legislative session.

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

The nominations considered and confirmed en bloc are as follows:

**NOMINATIONS**

DEPARTMENT OF HOMELAND SECURITY

Michael J. Garcia, of New York, to be an Assistant Secretary of Homeland Security.

DEPARTMENT OF HOMELAND SECURITY

James M. Loy, of Virginia, to be a Deputy Secretary of Homeland Security.

AIR FORCE

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10 U.S.C., section 601:

To be lieutenant general

Maj. Gen. William Welser, III, 0000

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Colonel Paul F. Laffel, 0000

Colonel Floyd L. Carpenter, 0000

Colonel William A. Chambers, 0000

Colonel Paul A. Dettmer, 0000

Colonel David K. Edmonds, 0000

Colonel Jack A. Leland, 0000

Colonel David J. Elchthon, 0000

Colonel David W. Eidsaune, 0000

Colonel Burton M. Field, 0000

Colonel Alfred K. Flowers, 0000

Colonel Randy D. Fullhart, 0000

Colonel Marke F. Gibson, 0000

Colonel Robert H. Holmes, 0000

Colonel Stephen L. Hoog, 0000

Colonel Larry D. James, 0000

Colonel Ralph J. Jodice, II, 0000

Colonel Jan Mare Jousa, 0000

Colonel John M. LaPerle, 0000

Colonel Kay C. McClain, 0000

Colonel Robert H. McMahon, 0000

Colonel Stephen F. McAllister, 0000

Colonel William J. Rew, 0000

Colonel Katherine E. Roberts, 0000

Colonel Kip L. Self, 0000

Colonel Michael A. Smetasny, 0000

Colonel David D. Snyder, 0000

Colonel Larry O. Spencer, 0000

Colonel Robert P. Steel, 0000

Colonel Thomas J. Verbeck, 0000

Colonel James A. Whitmore, 0000

Colonel Bobby J. Wilkes, 0000

Colonel Robert M. Worley, II, 0000

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be brigadier general

Col. Stephen L. Lanning, 0000

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 624:

To be major general

Brigadier General Robert E. Cowley, III, 0000

Brigadier General Michael K. Alexander, 0000

Brigadier General Robert W. Wilkes, 0000

Brigadier General Robert T. Conway, Jr., 0000

Brigadier General Donald K. Bullard, 0000

Brigadier General Albert M. Case, III, 0000

Brigadier General Robert E. Cowley, III, 0000

Brigadier General Jeffrey N. Pfister, 0000

Brigadier General Gary H. Felt, 0000

Brigadier General Gary H. Felt, 0000

Brigadier General Robert H. McMahon, 0000

Brigadier General Michael A. Snodgrass, 0000

Brigadier General William J. Rew, 0000

Brigadier General Kay C. McClain, 0000

Brigadier General John B. Donnelly, 0000

Brigadier General Bruce B. Engelhardt, 0000

Brigadier General John C. Harvey, Jr., 0000

Brigadier General Carlton B. Jewett, 0000

Brigadier General Matthew M. Mott, 0000

Brigadier General Michael P. Nowakowski, 0000

Brigadier General Harold D. Starling, II, 0000

Brigadier General Michael B. Stavridis, 0000

Brigadier General Michael C. Tracy, 0000

Brigadier General John J. Waikczwicz, 0000

AIR FORCE

PN1073 Air Force nomination of Gary H. Sharp, which was received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1074 Air Force nomination of Jeffrey N. Leknes, which was received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1075 Air Force nomination of Samuel B. Echaure, which was received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1076 Air Force nominations (2) beginning THOMAS E. JAHN, and ending RODNEY D. LEWIS, which nominations were received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1077 Air Force nominations (5) beginning SAMUEL C. FIELDS, and ending KEVIN ZERCK, which nominations were received by the Senate and appeared in the Congressional Record of October 23, 2003.

PN1116 Air Force nomination of Robert G. Cates, III, which was received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1117 Air Force nomination of Mary J. Quinn, which was received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1118 Air Force nominations (2) beginning JOHN C. CHERNOFF and ending MARK A. MCCLAIN, which nominations were received by the Senate and appeared in
the Congressional Record of November 17, 2003.

ARMY

PN1087 Army nomination of Lance A. Betro, which was received by the Senate and appeared in the Congressional Record of October 30, 2003.

PN1120 Army nominations (69) beginning THOMAS R. SWEENEY, and ending PAUL L. ZANGLIN, which nominations were received by the Senate and appeared in the Congressional Record of October 30, 2003.

PN1121 Army nominations (2) beginning JOHN D. MCGOWAN, II, and ending KEN- NETTE D. GREGG, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1122 Army nominations (2) beginning VERNAL G. ANDERSON, and ending DON- ALD J. KERR, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1123 Army nominations (5) beginning GASTON P. BATHALON, and ending PAULA J. RUTAN, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1124 Army nominations (3) beginning JOHN E. ATWOOD, and ending WILLIAM E. ZOESCH, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1125 Army nominations (2) beginning CHESTER J. BURTON, and ending THEOPHILUS WASHAM, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1126 Army nominations (9) beginning MICHAEL A. BULEY, and ending GARY M. ZAUCHA, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1127 Army nomination of Gary R. McKeown, which was received by the Senate and appeared in the Congressional Record of November 17, 2003.

COAST GUARD

PN1095 Coast Guard nominations (13) beginning Jeffrey L. Busch, and ending John S. Welch, which nominations were received by the Senate and appeared in the Congressional Record of November 3, 2003.

PN1096 Coast Guard nominations (270) beginning William D. Atkins, and ending Michael S. Zidzik, which nominations were received by the Senate and appeared in the Congressional Record of November 3, 2003.

PN1128 Coast Guard nomination of David B. Morey, which was received by the Senate and appeared in the Congressional Record of October 30, 2003.

NAVY

PN1090 Navy nomination of Patrick J. Nalbantoglu, which was received by the Senate and appeared in the Congressional Record of October 30, 2003.

PN1091 Navy nomination of Lawrence J. Chick, which was received by the Senate and appeared in the Congressional Record of October 30, 2003.

PN1092 Navy nomination of Robert E. Vincent, II, which was received by the Senate and appeared in the Congressional Record of October 30, 2003.

PN1099 Navy nominations (56) beginning RODNEY A. BOLLING, and ending JAY S. VIGNOLA, which nominations were received by the Senate and appeared in the Congressional Record of November 3, 2003.

PUBLIC HEALTH SERVICE

PN1010 Public Health Service nominations (174) beginning Vincent A. Berkley, and ending James A. Symes, which nominations were received by the Senate and appeared in the Congressional Record of October 2, 2003.

NOMINATION OF ADMIRAL JAMES LOY TO BE DEPUTY SECRETARY OF THE DEPARTMENT OF HOMELAND SECURITY

Mr. LIEBERMAN. Mr. President, I commend Admiral Loy for his willingness to take on the position of Deputy Secretary of the Department of Homeland Security, one of the most important and also the most difficult job in the federal government. The fledgling Department of Homeland Security is a critical undertaking for our government and our country. We know that we face real and ongoing threats to our domestic security from terrorism, and the Department is our best hope of bringing the critical focus, resources and leadership to bear on these new and insidious threats. It is a moment of great challenge, and we must give the Department every support we can to achieve its vital task. Unfortunately, in the face of numerous expert reports chronicling the terrible stakes (United States citizens)—and the need for a dramatic infusion of new federal funds—President Bush has consistently failed to embrace the challenge of homeland security with vision or resources. As Deputy Secretary, Admiral Loy will be second-in-command and have influence over the full array of DHS policies and practices. As such, I hope he will work forcefully to close the existing gaps in our security—and in the administration’s efforts on homeland security. I have detailed some of my concerns in other floor statements and in numerous letters to Secretary Ridge and other officials. We are, of course, quite a distinguished report sponsored by the Council on Foreign Relations, “Drastically underfunded, dangerously unprepared” with respect to our state and local first responders and the federal government’s efforts here are falling far short. The administration is thwarting a critical congressional mandate to create a true intelligence fusion center within DHS. On critical infrastructure protection, our government has yet to complete vital threat and risk assessments, much less implement forceful measures to protect these critical assets. I will not repeat all those concerns here, but instead focus on the dangerous gaps I perceive with respect to transportation security—the issue that has been Admiral Loy’s direct responsibility as head of the Transportation Security Administration, TSA, and on which he will continue to exercise considerable influence.

TSA was created in the aftermath of 9/11 in response to the tragic weaknesses in the air security realm that were exposed by the attacks. Indeed, TSA has made important strides to improve certain aspects of aviation security, such as passenger and baggage screening. But critical deficiencies exist in these and other areas of air security, and the agency has barely begun to tackle its broader transportation security mandate. Although Admiral Loy will be leaving his post as Administrator of TSA, I believe it is essential that he continue to place a high priority on resolving these critical issues.

By law, the Transportation Security Administration is responsible for security in all modes of transportation. But TSA has thus far focused almost exclusively on commercial aviation, leaving treacherous weaknesses in other transportation systems—a problem I outlined in a July 9 letter to Secretary Ridge. For fiscal year 2004, the administration sought $4.3 billion for passenger aviation security, but only $86 million for TSA’s maritime and land security efforts. Congressional appropriators added some additional resources for maritime and land security, but there is still a critical gap in the money available for these critical needs.

For instance, with respect to maritime transportation, the Coast Guard has identified billions of dollars worth of necessary improvements—and Congress has mandated greater security—yet the administration requested no money for port security grants to help make the changes and only $125 million for its purpose in the DHS appropriations bill. Indeed, there is not even enough funding for Coast Guard employees to review the security plans mandated under the Maritime Transportation Security Act. This even as expert upon expert has identified the Nation’s 526 commercial ports as a leading cause for concern on the homeland front—in large part because of the valuable goods and energy imports channeled through these ports and because the millions of containers that enter this country by sea can hide untold dangers.

Mass transit systems are another grave source of concern. We all remember the 1995 attack on the Tokyo subway, when members of a Japanese cult released sarin, a lethal chemical nerve gas, on five subway trains during rush hour. Twelve people were killed and thousands injured. Only mistakes by the terrorists kept the death toll from being far higher. In the United States, our transit systems remain vulnerable to such an attack. In many cases, transit officials have already identified steps to make the system more secure, but simply cannot afford to take them. Transit systems typically struggle just to meet their operating costs and are simply not in a position to fund major new security investments on their own. A December 2002 GAO report concluded that “insufficient funding is the most significant
challenge in making ... transit systems as safe and secure as possible."

The administration did recently award some grants to help a number of urban transit systems, but nowhere near the kind of commitment that is needed to combat the problems.

Nor do we see a commitment to improving rail security, although vast quantities of hazardous materials are shipped by rail.

Given this vast amount of work to be done by TSA in the areas of transportation, it is inexplicable to me why the administration actually sought to decrease the agency’s budget in FY’94.

But it is not simply a matter of money. TSA has not formulated the essential strategic plans needed to guide transportation security efforts. Admiral Loy testified last May that the agency was close to finishing such a document—the National Transportation System Security Plan or NTSSP. GAO has testified that this national plan is a “prerequisite” to investing wisely in transportation security. Yet as part of the hearing process for this nomination, Admiral Loy stated that such a plan is still months away from completion.

Even in the area of passenger aviation, where TSA has focused virtually all its resources, troubling gaps remain. Although TSA spent hundreds of millions to recruit and train screeners, thousands have left due to layoffs and attrition and we now face serious screener shortages at some airports. While I recognize that this is a complex question, it simply is not clear that TSA has control of this issue and is implementing a staffing level needed to assure adequate security. There have been other problems. For example, TSA failed to complete background checks of many of the screeners hired before they were trained and deployed, resulting in the discovery last spring that there were thousands of screeners with felony convictions or other disqualifying problems that required their termination. Investigations by the DHS Inspector General and TSA’s Office of Internal Affairs into the baggage screener training program found that trainees were given the questions and answers to the final certification exam and that some of the test questions were “inane” or simply “gave away” the correct response. GAO has reported that thisNat.

Second, I was concerned that Mr. Garcia’s answers to written questions were misleading, whether or not he intended them to be, and I am even more disturbed that after I challenged Mr. Garcia to respond to my continued efforts to increase the resources we devote to these needs. However, TSA has also exercised inadequate oversight of the contracts it has entered into to hire screeners with NCS Pearson, which ballooned from an original estimate of $104 million to over $700 million. I intend to watch closely to make sure that TSA implements stringent management controls and procedures so that we can be assured TSA’s programs are effective, appropriately focused and achieving expected results.

I NOMINATION OF MICHAEL GARCIA

Mr. LIEBERMAN. Mr. President, although I do not intend to object to the confirmation of Michael Garcia to be Assistant Secretary of the Department of Homeland Security, Bureau of Immigration and Customs Enforcement, BICE, I do want to take this opportunity to express my concern about his handling of an issue that arose during the Committee on Governmental Affairs’ consideration of his nomination. Specifically, I would like to describe the manner in which Mr. Garcia responded to questions from the committee related to his bureau’s participation in a search for a plane belonging to a Texas state legislator. My concern about the nominee’s answers occurred in the context of problems we have been having getting clear and comprehensive answers from some other nominees for department positions, and from receiving satisfactory answers to inquiries related to our oversight responsibilities. I believe that by comparing answers to these concerns, I can encourage the Department of Homeland Security, DHS to work with its oversight committees in a more straightforward and cooperative fashion.

In this statement, I intend to describe in some detail the circumstances that I find troubling. To summarize, I have two main concerns. First, it took Mr. Garcia far too long—well after the Governmental Affairs Committee reported his nomination—to acknowledge what until then had been a rather uncontroversial fact: that the penalty of an investigation by an agency’s Inspector General does not preclude an official of that agency from responding to congressional requests for information about matters that are the subject of the IG’s investigation. A significant part of Congress’ work involves overseeing how agencies do their jobs, and this committee in particular often conducts investigations of alleged waste, fraud and abuse by agencies. If the pendency of an internal investigation stood as a per

avation and Transportation Security Act that it do so. Airport perimeter security also requires significant improvement, according to GAO, including the need to guard against possible terrorist use of shoulder-fired, portable missiles from locations near airports. In addition, GAO has raised substantial concerns about the limited progress TSA has made in shoring up security at general aviation airports. To date, general aviation pilots and passengers are not screened before takeoff and the contents of general aviation planes are not screened at any point, leaving general aviation far more open and potentially vulnerable than commercial passenger aviation.

I understand that the administration’s failure to seek adequate funding and TSA’s deadlines have greatly contributed to the challenges TSA faces in remedying these and other gaps in our aviation security. While I continue to applaud this administration’s efforts to increase the resources we devote to these needs, however, I believe that we need to extend the time frame and make the resources available to ensure that TSA is able to address the gaps in our aviation security.

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November 25, 2003

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had issued such a direction and even after one of his advisers was explicitly told by the Assistant Inspector General heading the Texas investigation that such an answer was inaccurate. After the committee reported his nomination, Mr. Garcia ultimately expressed his regret for any confusing reference to the events, explaining that he did not intend to mislead the committee, which is why I will not stand in the way of his nomination. But I once again am forced to observe that this exchange was nowhere near the level of a serious and concerted effort at misleading the committee.

Congress has a right to expect from agency officials. It instead appears to have been an effort at finding any excuse for declining to answer questions and then, when it became apparent that the excuse could not stand, seeking to find any way possible to avoid correcting the mistaken assertion. As mentioned, Mr. Garcia has subsequently expressed his regret for how he answered these questions. I pledged to better cooperate with the Committee in the future. I am hopeful that both he and the department will live up to that pledge.

To provide more detail: when the Committee on Governmental Affairs received a recommendation of Michael Garcia on March 26, 2003, he was already serving as Acting Assistant Secretary for BICE. He was leading the Bureau when, on May 12, 2003, it assisted in a search for the plane belonging to a member of the Texas legislature; that search had been initiated by leaders from the opposing party, as part of a highly political and partisan intrastate redistricting feud. At the time of these events it struck me as inappropriate that homeland security resources were diverted for this purpose, especially as it set a disturbing precedent of misusing the department’s powers and authority to pursue American citizens who had broken no laws. So, as part of the committee’s consideration of Mr. Garcia’s nomination, I submitted a series of written questions about the incident, in my capacity as ranking member of the Committee on Governmental Affairs.

Over the course of several weeks, Mr. Garcia provided answers that were unresponsive, unsatisfactory, and inconsistent. Mr. Garcia’s legal advisers at the Department of Homeland Security appear to have compounded the problem by looking for ways to avoid the questions rather than clear up misunderstandings that became increasingly apparent.

In written questions sent on May 16, 2003, before Mr. Garcia’s committee hearing, I asked the following questions:

1. What action was requested of the AMICC, and by whom?
2. What action, if any, was actually taken by the AMICC? Which federal officials were involved in directing that action be taken?
3. What other federal agencies were involved, if any, and what actions did they take?
4. If any action was taken by the Homeland Security Department, please explain how these actions fall within the Department’s mission.
5. If actions were taken in error, or in contravention of Department policy, what steps will be taken to ensure that similar mistakes will not happen again?

On May 30, 2003, Mr. Garcia responded that because BICE had referred the underlying issue to the Office of the Inspector General, OIG, “it would be inappropriate to offer comment on the questions above.” He attached to his answer a press release BICE had earlier issued, offering comment on the matter, including conclusions that BICE had acted appropriately in the incident. Concerned by the suggestion that the existence of an IG investigation serves as an absolute bar to an Executive Branch official providing any information regarding the incident, on Friday, June 6, 2003, again asked Mr. Garcia about the issue at the bipartisan interview Committee staff routinely conduct in the course of considering nominations. Mr. Garcia again declined to answer the questions. At the staff interview, Mr. Garcia informed the committee that Congress routinely seeks information and testimony about matters under criminal investigation, and is routinely provided the information. Apparently in response to the concern raised at the staff interview, on June 6 the Chief Legal Counselor to the Department of Homeland Security, Lucy Clark, contacted the Counsel to the department’s Acting Inspector General, Richard Reback. According to Mr. Reback, Ms. Clark told him that Mr. Garcia would be appearing for his confirmation hearing and asked how he should respond if questioned about the Texas matter. At Ms. Clark’s request, on June 4, Mr. Reback sent by e-mail a hypothetical question and proposed an answer, in which Reback suggested that Mr. Garcia, if asked “what actions are you taking on the issue of diversion of Department of Homeland Security resources to search for Texas State legislators?” could respond, “The OIG has asked that any questions relating to this matter be directed to them.” Mr. Reback later made clear in a letter to me that he was not aware at the time “that specific questions were pending about this issue.” In that letter, he clearly stated that he did not intend to direct Mr. Garcia to not answer inquiries from Congress. Rather, it was his hope that a referral to his Office could be the beginning of a dialogue with Congress, not the end of the dialogue.

After Mr. Garcia’s nomination hearing, on June 12, 2003, concerned by the suggestion that an IG investigation could immunize Executive Branch officials from Congressional information requests, I therefore submitted post-hearing questions, which included the following inquiries about why Mr. Garcia believed he could decline to answer my questions on the Texas matter:

a. Do you believe it would be inappropriate to comment?
b. Did the Office of Inspector General ask you not to comment?
c. Will you refuse to provide Congress with information on any matter being investigated by an IG in your office? If your answer is yes, will you provide Congress with information on any matter being investigated by an IG at the time the incident occurred, do you have any knowledge of the circumstances of your bureau’s involvement, either directly or second-hand? Did you take any steps to learn about the bureau’s role? Were you involved in deciding how the Bureau should respond to the incident, and to the news reports that described the incident?—

On Friday, June 13, 2003, Mr. Garcia sent his responses to the post-hearing questions. Mr. Garcia stated that he had “received direction from the Inspector General’s Office to refer all inquiries regarding this matter to that office.” He also stated that “the IG’s Office is conducting an investigation into the Texas incident.” He declined to answer, nor did they describe the nature of the communications with the IG’s office. In response to the question about whether he would refuse to provide Congress with information on any matter being investigated by an inspector general, Mr. Garcia responded “(g)enerally, I would defer to the IG’s office for direction on inquiries relating to any matter actively being investigated by that office.” He did not specify whether he was not to answer, nor did they describe the nature of the communications with the IG’s office.

Aware of no law, custom or precedent that would allow an IG to direct an Executive Branch official to decline to answer Congressional information requests, I had my staff contact the Department of DHS Office of Inspector General to learn more about the IG’s position on this issue. On the afternoon of June 13, Lisa Redman, the assistant Inspector General responsible for the investigation into the Texas incident, denied to my staff that anyone from the IG’s office had directed Mr. Garcia not to comment on the issue. She also informed my staff that the IG’s office had no policy that would have precluded him from answering questions about his role in the incident, or from giving answers based on information provided by personnel at BICE. Concerned by this discrepancy, on the evening of June 13, I sent Mr. Garcia another set of post-hearing questions, seeking clarification regarding
the apparently contradictory information received from the IG’s office. My questions also informed Mr. Garcia that both the Congressional Research Service and the Senate Legal Counsel had confirmed that an ongoing IG’s investigation did not provide a legal basis for someone to refuse to provide information to Congress.

As we later learned from Ms. Redman in a letter responding to my inquiries, on the morning of June 16, while Mr. Garcia and his staff were preparing answers to my questions, Ms. Redman received a telephone call from Mark Wallace, who was then Mr. Garcia’s principal legal adviser at BICE. According to Ms. Redman, Mr. Wallace “was very agitated and stated that the OIG had provided answers [to the Committee] inconsistent to those he provided on Mr. Garcia’s behalf.” Ms. Redman informed Mr. Wallace that no one from the IG’s office had “directed” Mr. Garcia to respond in his written answers to the questions raised by the Committee. Mr. Wallace submitted them. She also pointed out that the IG’s office cannot direct Mr. Garcia to do anything. According to Ms. Redman, Mr. Wallace “became quite angry and demanded that we make our responses consistent with his,” and he “said it was the OIG’s fault that Mr. Garcia was now in this situation because we were not consistent in our responses.” Ms. Redman refused to change her story.

According to correspondence I received from Mr. Reback, Mr. Wallace also contacted Reback on June 16, in an e-mail “in which [Wallace] stated that the OIG had provided inconsistent guidance to Mr. Garcia on responding to questions regarding the Texas matter.” Mr. Reback said that he responded to Mr. Wallace’s e-mail, in which he said he explained that “I had been asked for guidance on what Mr. Garcia could say if asked a question on the Texas matter at his confirmation hearing, and that I had provided guidance reflected in my June 4th e-mail to Ms. Clark.” Mr. Reback also told Mr. Wallace that he was “unaware that Mr. Garcia ever had received any written questions on the matter and had not seen or cleared on [sic] any of his written responses.” Later in the evening of June 16, Mr. Reback was contacted by Ms. Clark and another adviser at BICE, Tim Haugh, who provided him a copy of draft responses to the questions I sent Mr. Garcia on June 13th. Mr. Reback did not review or comment on all of the draft responses, but did request that “with respect to questions that implicated OIG statements, Mr. Garcia refer to my June 4th e-mail in his responses.”

At 11:00 p.m. on June 16, less than 12 hours after the committee met to consider his nomination, Mr. Garcia provided additional responses in which he continued to maintain that he had in fact been directed not to answer. For the first time, he referred the committee to the e-mail message Mr. Reback sent to Lucy Clark on June 4, 2003, but he made no mention of Ms. Redman’s different interpretation of the guidance from the IG’s office with respect to the Texas matter. Nevertheless, Mr. Garcia tried to have it both ways by also including an e-mail from Ms. Redman’s different interpretation of the guidance reflected in my June 4th e-mail to Ms. Clark that I would not object to the committee reporting Mr. Garcia’s nomination, but that Mr. Garcia’s nomination would not go to the Senate floor until my questions and concerns had been satisfactorily resolved.

I subsequently sent letters seeking additional information from Mr. Reback, Ms. Redman, and Mr. Garcia. I have already described the information I received from Mr. Reback and Ms. Redman. Mr. Garcia, for his part, maintained that all of his answers had been accurate, and that he had reasonably interpreted Mr. Reback’s e-mail as equivalent to being directed by the IG’s office. He further noted that at all times he was “guided by a sincere desire not to in any way interfere with an ongoing criminal investigation.” “At no time did I intend to evade answers or to in any way challenge the IG’s office to inquire into such matters. I responded based on what I reasonably believed was the guidance from the OIG and counsel.”

Although I am troubled by how Mr. Garcia and his advisers at the Department dealt with this issue, I have nevertheless decided not to oppose this otherwise qualified nominee. Still, I felt that the issues raised during his nomination process were important enough that they deserved to be fully aired.

One of the principal functions of the Committee on Governmental Affairs, like all Senate committees, is to ensure that qualified and responsible people are ultimately appointed to the highest positions in our government, and to conduct oversight over the departments and agencies within its jurisdiction. Through both the confirmation processes, we ensure ourselves and the American people that our government is functioning as it should be. As part of these processes, we regularly engage in dialogues with nominees, including through written questions. The integrity of our process requires that nominees fully and forthrightly answer the questions asked.

It appears to me that Mr. Garcia and his legal advisers at DHS provided answers to the Committee that were misleading factually and misstated the legal reasons a nominee could refuse to answer questions. For example, Mr. Garcia never “was directed” to not answer questions with any official from the IG’s office until June 4, 2003, after he had already, on two occasions, declined to answer questions about the Texas matter. Nevertheless, his answers to my post-hearing questions stated that he had declined to answer the questions because “the IG’s office directed that it would not be appropriate to comment on this issue and that all inquiries be directed to that office.” Whatever Mr. Garcia’s intention, that answer was not a factually accurate way of explaining answers given before he or his advisers spoke with the IG’s office about the issue.

Furthermore, it is now clear that Mr. Garcia’s answers were not “directed” not to answer the questions by the Office of Inspector General—an assertion he repeatedly made in his written responses to my questions. Regardless of whether Mr. Reback’s June 4 e-mail could have been interpreted as something stronger than intended, Mr. Garcia’s legal adviser, Mr. Wallace, knew prior to Mr. Garcia’s submission of his final set of answers that the IG’s office was not directing him not to answer questions and had never intended to do so. Nevertheless, Mr. Garcia submitted written answers on June 16 in which he continued to assert that the IG’s office had directed him not to answer the questions, referring to Mr. Reback’s e-mail. Nothing in the answers gave any indication that the IG’s office had explicitly rejected this interpretation of Mr. Reback’s e-mail.

Mr. Garcia’s rationale for not answering the questions raised important institutional issues. As a general matter, agency officials are not required to answer questions from Congress, so long as they do not provide information to Congress for official use or use Congress to avoid having to answer questions. For example, officials at the IG’s office understood that they did not have the authority to “direct” Department officials not to answer questions, but neither Mr. Garcia nor his legal advisers consulted with IG officials before making the statement that the IG’s office had directed him not to answer questions, and only after the IG submitted its written answers did Mr. Garcia refer to the Office of Inspector General. It appears to me that Mr. Garcia and his legal advisers at DHS provided answers to the Committee that were misleading factually and misstated the legal reasons a nominee could refuse to answer questions. It is not for Congress to dictate to the IG’s office what it may or may not do, but Congress is entitled to a full and forthright response to each question that is raised.
learn that Mr. Garcia’s legal adviser, Mark Wallace, apparently berated the Assistant Inspector General and attempted to get her to change her version of events to make it “consistent” with the answers he had previously prepared. If true, this is highly improper and gives me serious concerns about these events as well as with other examples of DHS nominees providing less than adequate answers to questions posed during the nomination process. In light of Mr. Garcia’s statement in that meeting that he did not intend to mislead the Committee and now understood the need to better cooperate with Congress, I am prepared to move forward with his nomination. I could not do so, however, without leaving a complete record of my concern over these events.

Mr. President, I thank my colleague, Chairman COLLINS, for working with me towards a satisfactory resolution of this issue. I am glad that we have had the opportunity to share with Mr. Garcia and with other DHS officials our concerns about how this nomination was handled. I hope that in the future the Department of Homeland Security will endeavor to work constructively with all senators to avoid misunderstandings of the type we experienced in this case. I believe seriously that investigations to provide Congress with the accurate, timely and complete information it needs.

In the interest of fairness to all parties, I ask unanimous consent that the text of letters from Mr. Reback, Ms. Redman, and Mr. Garcia, be printed in the RECORD following my remarks. Space limitations prevent me from including the full text of the pre-hearing and post-hearing questions asked of Mr. Garcia, and his answers, but those may be found in the Committee’s hearing record.

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

DEPARTMENT OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL.


Hon. Joseph I. Lieberman, Senate Governmental Affairs Committee, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LIEBERMAN: Thank you for your letter of June 16th, 2003, in which you asked me to clarify a matter before the Senate Governmental Affairs Committee, specifically the Committee’s consideration of the nomination of Michael Garcia to serve as Assistant Secretary in the Department of Homeland Security. The following responses to your questions are below:

(1) Did you have any communications with Mr. Garcia about how to respond to questions regarding the Texas matter? If so, please provide a complete record of those communications, who initiated the communication and who else was present, and please describe the content of the conversation or communication.

Response: No.

(2) Did you have communications with any DHS official or employees seeking information on Mr. Garcia’s behalf on how to respond to Congressional information requests related to the Texas matter? If so, please describe, to the best of your knowledge, the manner in which this communication occurred, and describe the content of the communication.

Response: Yes. I had telephone conversations with Lucy Clark, DHS Chief Legal Counselor, on the afternoon of June 2, on June 3, on June 4, and possibly June 5, 2003. These conversations were initiated by Ms. Clark and each conversation was very brief—I would estimate the total time for all my telephone conversations with Ms. Clark on these days was approximately five to ten minutes.

Ms. Clark told me that Mr. Garcia would be appearing for his confirmation hearing and asked me how he should respond if questioned about the Texas matter. I replied that Mr. Garcia should respond that the matter was under investigation by the OIG and questions should be referred to the OIG. I told Ms. Clark that since the OIG had an open investigation on the matter it was not appropriate to talk about the case. Ms. Clark subsequently asked me to put my comments in writing and I sent her the e-mail on June 4th that has been provided to you by Mr. Redman.

Assistant Inspector General for Investigations, reviewed and concurred with my e-mail before I sent it. Mr. Richard Skinner, Assistant Inspector General for Audit and the OIG’s Deputy Inspector General concurred with my e-mail after I had sent it.

On June 16th, I received an e-mail from Mark Wallace, Mr. Garcia’s Legal Advisor. In this e-mail, Mr. Garcia, in which he stated that the OIG had provided inconsistent guidance to Mr. Garcia on questions regarding the Texas matter. Mr. Wallace attached a copy of eight questions from Senator Lieberman to Mr. Garcia. I responded to Mr. Wallace via e-mail in which I stated that I had been asked for guidance on what Mr. Garcia could say if asked a question about the Texas matter at his confirmation hearing, and that I had provided guidance reflected in my e-mail of June 16th. Ms. Clark subsequently told me that I was unaware that Mr. Garcia ever had received any written questions on the Texas matter, and that he had never been provided with any of his written responses. I also stated that I heard nothing more about Mr. Garcia’s response to questions on the Texas matter until the afternoon of June 13th, when the Assistant Inspector General for Investigations, Ms. Redman, had received oral questions from some of the Committee’s minority staff regarding Mr. Garcia’s responses. Finally, I stated that the OIG investigation was closed, there was no criminal enforcement action and that Mr. Garcia could answer questions about the Texas matter. I heard nothing further from Mr. Wallace.

Late that evening (June 16th), I had conversations with Ms. Clark and with Mr. Tim Haugh, Director of Congressional Relations, Bureau of Immigration and Customs Enforcement, regarding the Texas matter. Ms. Clark had received from the Senate Committee on Governmental Affairs and which Mr. Garcia intended to respond to that day. My conversations with Ms. Clark and Ms. Haugh, who provided me a copy of draft responses to those questions, I did not review or comment on all of the responses. I did however, review the implicit OIG statements, Mr. Garcia refer to my June 4th e-mail in his responses.

(3) Please indicate specifically whether any communications you had with persons outside the OIG about Mr. Garcia’s responses occurred before June 4, 2003.

Response: Please see answer above.

(4) Please indicate whether you are aware of any other person employed by the OIG discussing this matter with DHS personnel acting on Mr. Garcia’s behalf. If you are aware of any such discussions, please indicate who had the discussion, who initiated it, when it occurred (and specifically whether it was before June 4, 2003) and, to the extent you know, the contents of the discussion.

Response: I am unaware of any other person employed by the OIG discussing the discussions other than my conversations on June 2nd and possibly June 3rd as discussed above.

(5) Mr. Garcia attached your e-mail to Lucy Clark to substantiate his assertion that the OIG’s office “directed” him not to respond to the questions sent to him.

(a) Please provide in as much detail as you can recall the contents of any communications you had with Ms. Clark that led you to drafting the e-mail provided to the Committee. Who initiated the conversation? Was specifically directed by the OIG to respond to the questions sent to him? What did she ask you to do?

Response: Please see my response to questions above. As stated above that Mr. Garcia had received any written questions nor that he had appeared for a committee staff interview on June 2, 2003. Was anyone other than Ms. Clark involved in these communications? If so, state who was involved (including the person’s title) and the nature and content of their involvement.

Response: Please see my response to questions above.

(b) Did you tell Ms. Clark that you were “directing” Mr. Garcia to refer all inquiries regarding the matter to your office?

Response: I did not use the terms “direct” or “directing.” However, in my conversations with Ms. Clark, I believe it was clear that the OIG did not ant DHS personnel discussing a matter that was under criminal investigation by the OIG without first coordinating with the OIG.

(c) Did you believe your e-mail was “directing” Mr. Garcia to refer all inquiries regarding the matter to your office?

Response: Please see my response above.

(e) The question attached to your e-mail does not use language encompassing all questions related to the Texas matter, but rather asks only what action Mr. Garcia is currently taking on it. The bulk of my questions, in contrast, asked about past events, not Mr. Garcia’s current actions. Did you tell Ms. Clark that Mr. Garcia should refer all Congressional questions, including seeking Mr. Garcia’s knowledge about underlying events to the OIG’s office?

Response: My conversations with Ms. Clark did not involve that level of specificity. I was unaware of your prior questions to Mr. Garcia at that time. Did I had my conversations on June 2nd-June 4th.

(6) Did you believe the attachment to your e-mail suggested that Mr. Garcia should not answer the questions reprinted at the bottom of page 1 of this letter?

Response: At the time I sent the e-mail, I was not aware that specific questions were pending or had been posed. My advice was in the context of a potential inquiry along the lines stated in my June 4th e-mail. Did Ms. Clark (or anyone employed by the OIG involved in these communications with you) ask you to provide a different answer than the one you gave to her? If so, that was her decision and not an order. If she agreed to it? Please describe in full the discussion on this matter.
Response: At no time during our conversations on June 2nd–4th did Ms. Clark or anyone else ask me to provide a different answer than the one I provided.

(6) Did you ever direct Mr. Garcia or anyone inquiring on his behalf not to answer questions from Congress on the Texas matter? (OIG responded, perhaps June 3rd; perhaps June 4th or June 5th; perhaps June 6th, before offering comment in response to Congressional questions regarding BICE’s involvement in the Texas matter. If so, please identify the individual involved, when they issued the direction, to whom they provided instruction of any communications related to such direction.

Response: No. Please see my responses to questions above.

(7) Are you aware of any other OIG personnel directing Mr. Garcia or anyone inquiring on his behalf not to answer questions from Congress on the Texas matter? (OIG responded, perhaps June 3rd; perhaps June 4th or June 5th; perhaps June 6th, before offering comment in response to Congressional questions regarding BICE’s involvement in the Texas matter. If so, please identify the individual involved, when they issued the direction, to whom they provided instruction of any communications related to such direction.

Response: No. Please see my responses to questions above.

(8) Do you believe you or anyone in the IG’s office had the authority to “direct” Mr. Garcia not to answer these questions? If so, please state the basis of that authority.

Response: No.

(9) Did you ever tell Mr. Garcia or anyone inquiring on his behalf that it would be inappropriate to offer comment in response to Congressional questions regarding BICE’s involvement in the Texas matter? If so, please identify the individual from whom you received that statement, when you made it and the basis for your making that statement.

Response: Do you remember if I used those exact words. However, it would have been reasonable for Ms. Clark to infer that I believed it would be prudent for Mr. Garcia to check with the IG’s office before offering comment about the OIG’s investigation of BICE’s involvement in the Texas matter.

At the time, the OIG had an open criminal investigation involving Mr. Garcia. The OIG was seeking to avoid jeopardizing the success of a potential future prosecution of Mr. Garcia by gathering all relevant information, affecting the impartiality and perceived impartiality of our work, and other such concerns. We also try to discourage speculation about the outcome of a pending investigation.

(10) Had you seen Mr. Garcia’s answers to the questions sent to him by the Committee prior to offering comment in response to Congressional questions in June 2003?

Response: I saw a draft of Mr. Garcia’s June 16th answers on the evening of June 16th; I did not see the final document until after it had been sent to the Committee. I believe the responses received by the Committee are accurate in their representation of OIG statements, namely, I sent the June 4, 2003, draft. I did not offer any comment on the responses in any other respect. I did not see the written responses to any of the other sets of questions until provided to the Committee by Mr. Garcia’s minority staff in the course of responding to these questions.

Examining the responses after the fact, I believe that the scope of the OIG guidance may have been misunderstood. The OIG had not intended, and did not direct that no Congressional requests be answered. Instead, we asked that the OIG refer any questions to the OIG because the OIG had an open criminal investigation. We did not intend that to be the end of the dialogue with the Congress.

(11) Any additional information you believe might be helpful to clarify the Committee’s record on this matter.

Response: Legal authority supports the general position that an OIG can withold certain confidential information from Congress during the course of an open criminal investigation. Legal Counsel 77 (1989). In my experience, I have found Congressional staff members sensitive to these issues and willing to accommodate OIG concerns.

Sincerely,

RICHARD N. REBACK, Counsel to the Acting Inspector General.

DEPARTMENT OF HOMELAND SECURITY, OFFICE OF INSPECTOR GENERAL,

HON. JOSEPH I. LIEBERMAN, Ranking Minority Member, Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR LIEBERMAN: Thank you for your letter to me dated June 23, 2003, in which you asked me to clarify a matter before the Senate Governmental Affairs Committee, specifically the Committee’s consideration of the nomination of Michael Garcia to serve as Assistant Secretary in the Department of Homeland Security. The following responses to your questions are provided below:

(1) Did you have any communications with Mr. Garcia regarding the questions regarding the Texas matter? If so, please state when each communication occurred, who initiated it and who else was present, and please describe the content of the communication.

Response: No.

(2) Did you have communications with any DHS official, employee seeking information on Mr. Garcia’s behalf on how to respond to Congressional questions regarding BICE’s involvement in the Texas matter? If so, please identify the person with whom you had each communication (including his or her title), state who initiated the communication, indicate when the communication occurred, and describe the content of the communication.

Response: No, not on June 16th and that conversation was with Mark Wallace after he had sent responses to the Committee on Mr. Garcia’s behalf.

(3) Please indicate specifically whether any communications you had with persons outside the OIG about Mr. Garcia’s responses occurred before June 4, 2003.

Response: No communications outside the OIG prior to June 4, 2003, regarding Mr. Garcia’s responses.

(4) Please indicate whether you are aware of any other person employed by the OIG discussing this matter with Mr. Garcia or with DHS personnel acting on Mr. Garcia’s behalf. If you are aware of any such discussions, please identify the person with whom you had the discussion, who initiated it, when it occurred (and specifically whether it was before June 4, 2003) and, to the extent you know, the contents of the discussion.

Response: I am aware that OIG Counsel Richard Reback was contacted by DHS General Counsel’s office sometime on June 4th or perhaps June 3rd; during which contact Ms. Clark suggested advice from Counsel Reback as to whether Mr. Garcia should say if asked about the OIG Texas investigation. Mr. Reback advised me that Ms. Clark initiated contact with him and he provided an email to her in response to suggested language Mr. Garcia might use. These did not already exist, and were previously not available to your staff. Mr. Reback showed me his proposed email before he sent it and I concurred with its contents.

(5) Did you ever direct Mr. Garcia or anyone inquiring on his behalf not to answer questions from Congress on the Texas matter? If so, please describe when that happened, to whom you gave that direction, and the details of your communication.

Response: No direction was provided by me to Mr. Garcia or anyone acting on his behalf on any matter.

(6) Are you aware of any OIG personnel directing Mr. Garcia or anyone inquiring on his behalf not to answer questions from Congress on the Texas matter? If so, please describe when that happened, to whom you gave that direction, and the details of your communication.

Response: I am not aware of any OIG contact with Mr. Garcia or anyone on his behalf directing him as to what to say or not to say.

(7) Do you believe you or anyone in the IG’s office had the authority to “direct” Mr. Garcia not to answer these questions? If so, please state the basis of that authority.

Response: No, I do not believe the OIG has the authority to “direct” Mr. Garcia or anyone else in DHS to answer or not answer questions from Congress.

(8) Did you ever tell Mr. Garcia or anyone inquiring on his behalf that it would be “inappropriate” to answer to Congressional questions regarding BICE’s involvement in the Texas matter? If so, please identify the person to whom you made this statement, when you made it and the basis for your making that statement.

Response: No, I never made that statement to Mr. Garcia or anyone.

(9) Had you seen or discussed Mr. Garcia’s answers to the questions sent to him by the Committee prior to sending this letter? If so, in what context did you see them? Who showed them to you and when? Were you shown any of Mr. Garcia’s written responses before he sent them to the Committee? Regarding which questions did you believe the answers to be accurate in their representation of the IG office’s statements and views? If not, did you communicate that belief to anyone in DHS? If so, to whom? When?

Response: The first time I saw any questions for Mr. Garcia was on the morning of June 16th. Those questions were e-mailed to me by Mark Wallace, who identified himself as OIC’s office. He said he had sought assistance in preparing responses to those questions on Mr. Garcia’s behalf and asked for “urgent” help at 8:41 am. I did not see the responses he had prepared on questions until the morning of June 17th. A faxed copy of his responses was under my door when I arrived at work. I e-mailed Mr. Reback at 8:32 am on June 17th and advised him that the responses prepared by Mr. Wallace to Questions 2 and 3 were not accurate as they purported to represent a conversation with Mr. Garcia on the morning of June 16th. I was subsequently told by Mr. Reback that those responses did not get sent to the committee; instead a new (second) set of responses was drafted by the night before and those responses were the ones sent to you by Lucy Clark. The set of responses you received was accurate.

(10) You testified to my staff that on Friday, June 13, you had a conversation with the individual who drafted Mr. Garcia’s response to the questions regarding the Texas matter and that you told him that the IG’s office had not “directed” Mr. Garcia not to respond to the questions. To the extent that you have not already done so in response to the questions above, please answer the following questions with respect to that conversation:

(a) With whom did you have this conversation (please identify the individual’s name and title)?

Response: No, I never made that statement to Mr. Garcia or anyone else in DHS to answer or not answer questions from Congress.
DEAR SENATOR LIEBERMAN:

This letter is in response to your letter of July 8, 2003, re-questing further clarification regarding information previously provided in response to questions for the record involving the Air and Marine Interdiction Coordination Center ("AMICC") and in doing this to detail the circumstances and choices that the OIG has made to your inquiries regarding the Air and Marine Interdiction Coordination Center ("AMICC") and in doing this to detail the circumstances and choices that the OIG has made to your inquiries regarding the Air and Marine Interdiction Coordination Center ("AMICC").

On May 30, 2003, when you first re-sponded to the Committee, the BICE had referred the underlying issues to the Office of the Inspector General, "it would be inappropriate to offer comment on the questions above," did you believe you had been "directed" by the IG's office not to answer the questions? If so, what was the basis for your belief? Who told you about such direction and when?

Response: I think it would be helpful in clarifying the record to set forth the reasons made to you regarding the Air and Marine Interdiction Coordination Center ("AMICC") and in doing this to detail the circumstances and choices that the OIG has made to your inquiries regarding the Air and Marine Interdiction Coordination Center ("AMICC").

On May 30, 2003, I responded to the first set of questions regarding events at AMICC by stating that the matter involved the IG, the IG's Office, and the OIG. "[Therefore] it would be inappropriate to offer comment on the questions above." At this time I based my response on the ongoing potential criminal investigation and on my experience as a Federal prosecutor. In sum, I was motivated by the belief that it would be inappropriate to offer my comments on this ongoing IG matter. I was also aware that before the House Select Homeland Security Committee on May 30, 2003, Secretary Ridge stated, "we thought it was very appropriate, based on the multiple inquiries that we received from members of Congress, including yours, that align yours, that align with Congress has given us. And that's an inspector general within our department." He went on to say, "...it's not appropriate to be passing that information out right now" when referring to a request to release the audiotapes. My responses were reviewed by the Department of Homeland Security prior to being sent to the Committee.

Enclosure.

(1) On May 30, 2003, when you first re-sponded to the Committee, the BICE had referred the underlying issues to the Office of the Inspector General, "it would be inappropriate to offer comment on the questions above," did you believe you had been "directed" by the IG's office not to answer the questions? If so, what was the basis for your belief? Who told you about such direction and when?

Response: I think it would be helpful in clarifying the record to set forth the reasons made to you regarding the Air and Marine Interdiction Coordination Center ("AMICC") and in doing this to detail the circumstances and choices that the OIG has made to your inquiries regarding the Air and Marine Interdiction Coordination Center ("AMICC").

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On June 2, 2003, I was interviewed by staff members for the Committee. At that time, Minority Counsel asked me about my May 30 response and the basis for rejecting the OIG's request to be released to the Committee for review. I explained that I based this response on my experience as a prosecutor and my concern about communicating on an ongoing, potentially criminal investigation. Minority Counsel disagreed with this analogy—my experience as a Federal prosecutor—and stated that the law regarding inquiries by Congress made such comment possible. I replied that I was not aware of that legal authority. As a result of the statements by Minority Counsel regarding the continuing interest in this area of inquiry by the Committee as manifested by his questions, I asked my Principal Legal Advisor to get clarification. I understood that he worked for Assistant Inspector General (OIG) on the Texas State legislators issue. The attachment read: "My office referred this matter to the Department's Office of Inspector General (OIG) on the Texas State legislators issue. The OIG has asked that questions relating to this matter be directed to them." I received a copy of this e-mail prior to my confirmation hearing, and my understanding was that the OIG counsel who provided this e-mail knew that this guidance was being sought in the context of my confirmation hearing and on my concern about commenting on an ongoing, potentially criminal investigation. Minority Counsel disagreed with this analogy—my experience as a Federal prosecutor—and stated that the law regarding inquiries by Congress made such comment possible. I replied that I was not aware of that legal authority.

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AMICC matter was not raised at the June 5, 2003 hearing.

On June 13, I submitted responses to your post-hearing questions. At that time, in response to the question regarding why I believed it inappropriate to comment, I responded, "I received direction from the Inspector General's Office to refer all inquiries regarding this matter to that office." In response to the next question, "Did the Office of the Inspector General ask you not to comment?" I responded, "As noted above, the IG's office directed that it would not be appropriate to comment on this issue and that all inquiries be directed to that office."

I based these answers on the e-mail from the IG counsel referenced above which stated that the OIG "has asked that any question relating to this matter be directed to them as well as the guidance from Lucy Clark, who I knew to be in contact with the IG's office, that it would be inappropriate to make any comment for 'Mr. Garcia' in the confirmation process other than to refer such questions to the OIG. These answers were again cleared at the Department level.

Later that evening of June 13, 2003, I received additional questions on this issue.

Those questions referenced a conversation between Mark Wallace and the OIG and instructed that referring questions to the OIG regarding an OIG criminal investigation was not consistent with the policy of the OIG and that the Agency should clarify the OIG's position as outlined in your June 13 letter. As I understood it, the point of the conversations was to clarify the position and issue of referring to the OIG questions relating to this matter.

I provided these answers to the OIG based upon the advice of legal counsel, the OIG, and on advice from Lucy Clark, Chief Legal Counsel to DHS, to Senator Joseph Lieberman, dated June 16, 2003.

Lisa Redman says she told Mark Wallace on the morning of June 16 that he had misrepresented the position of the Office of the Inspector General in preparing your earlier answers. She related her request to change her responses to make them consistent with your answers. The answers you submitted later that night did not reflect this conversation, but instead held by the OIG. The questions I sent you on June 13 specifically noted that the OIG's office had denied having the communications you earlier described.

(a) Were you ever aware of the conversation between Mark Wallace and Lisa Redman? If so, when did you learn of the conversation, from whom, and what were you told about the conversation?

Response: I was aware that Lucy Clark was in contact with Richard Reback prior to my June 5 confirmation hearing. Prior to my June 5 confirmation, I received a copy of this e-mail, I believe through my Principal Legal Advisor. After reviewing the e-mail, I interpreted this e-mail and the guidance that it would be inappropriate to answer any questions other than to refer the questioner to the OIG as directed. I also noted that Ms. Redmon interpreted that guidance to mean I was free to answer questions based upon my personal knowledge or what others had said to me.

(b) Did you ever see the text of the e-mail that Mr. Reback sent on June 4? If so, when did you first see it, who showed it to you, and how did you interpret the guidance it contained?

Response: I was aware that Mr. Reback was in contact with Richard Reback prior to my June 5 confirmation hearing. Prior to my June 5 confirmation, I received a copy of this e-mail, I believe through my Principal Legal Advisor. After reviewing the e-mail, I interpreted this e-mail and the guidance that it would be inappropriate to answer any questions other than to refer the questioner to the OIG as directed. I also noted that Ms. Redmon interpreted that guidance to mean I was free to answer questions based upon my personal knowledge or what others had said to me.

(c) Why did you answer June 16 refer to the e-mail Mr. Reback received from Richard Reback, but fail to mention the conversation? Mark Wallace had with Lisa Redman?

Response: The e-mail from Reback appeared to state the general position ("The Office of Inspector General (OIG) has asked that any questions relating to this matter be directed to them.") and the first time an issue with respect to the clear guidance for "Mr. Garcia" in the confirmation process other than to refer such questions to the OIG. These answers were again cleared at the Department level.

(d) What role did Mark Wallace play in drafting each set of your written answers? Who else contributed to the drafting of the responses? Was any effort made to have any questions relating to this matter be directed to the OIG interpreted that guidance in any other way nor, given the plain language of that text, did I have any reason to do so. The June 16 questions were directed to the basis of clear guidance from the Office of the Inspector General (OIG) that I could use the following questions as directed in response to these issues. The OIG asked that any questions relating to this matter be directed to the Department's Office of Inspector General (OIG) on the evening of May 15, 2003. The OIG has asked that any questions relating to this matter be directed to them. I believe that I took the appropriate step by having counsel seek guidance from the AMICC...
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regarding the appropriate answer to questions related to an investigation the OIG was conducting. Given that the OIG guidance at the time asked for question to be “directed to” an OIG one frequently suggested different guidance, I believe that directing questions to the OIG was appropriate at the time. I also believe that better communication between OIG and IG, especially when presented with an inquiry from Congress, is critical and I am committed to facilitating such communication in the future.

Response: I would be guided by the OIG’s interpretation regarding its authority and will ensure better coordination with that office.

(10) As you may know, Congress has frequently conducted inquiries into agency matters in which there were also IG investigations. Nevertheless, I believe that the pendency of an IG investigation precludes you or other agency officials from responding to Congressional information requests. If so, what is the legal basis for that claim?

Response: I would be guided by the OIG with respect to commenting on such matters. Avoiding better internal coordination on this issue would avoid any conflict in providing responsive answers to Congress.

(11) Please provide any additional information you believe might be helpful to clarify the Committee’s record on this matter.

Response: I would add that at all times in responding to your questions I was guided by a sincere desire to be as open as possible in any way I could be with an ongoing criminal investigation, one of high sensitivity and one which I had referred to the IG. At no time did I intend to evade answers or to in any way challenge the authority of Congress to inquire into such matters. I responded based upon what I reasonably believed was the guidance from the OIG and counsel. I would be happy to discuss this matter with you further if you feel that such a meeting would be helpful.

Mr. Frist. Mr. President, as the 108th Congress comes to a close, I would like to take a few moments to reflect on the tremendous progress this Senate has made in moving America forward. Leading the Senate is an honor and a pleasure, made all the more so by working with such talented people. I thank my fellow Senators for their dedication. It has been an exceptional session of our Senate.

Under the President’s leadership, we passed $350 billion in tax relief, the third largest tax cut in history. We cut taxes, across the board, for 136 million hard-working, tax-paying Americans. For America’s families, we increased the child tax credit from $600 per child to $1000 per child, and made sure that money was sent out right away. As a result, this summer, 25 million families received a benefit from the one family’s momentous and gratifying decision to buy a home.

Economic growth in the third quarter will see their taxes reduced by $1,133 this year.

Of the $350 billion in tax cuts and fiscal relief, nearly $200 billion, fully 60 percent, is provided this year and next.

Some critics of the tax cut say $1,300 is not a lot of money, that it would not make much difference if the bureaucrats took it away again. Tell that to the families who buy homes, who send their children, keep up with household expenses, and have a something left over for a family vacation. I am fairly certain the United States Treasury did not get a flurry of child tax credit checks in the mail from families who said they didn’t.

Small business owners, too, got a major boost from the tax package. Twenty-three million small business owners who pay taxes at the individual rate have received a benefit. And we quadrupled the expense deduction for small business investment.

Small business owners are the heart of the American marketplace. Workers and consumers depend on the small business sector to generate jobs, products, and services. These innovators create 60 to 80 percent of new jobs nationwide, and they generate more than 60 percent of both our exports and our imports. And all of this economic activity is ultimately leading to more jobs. Indeed, the labor market appears to be stabilizing and the economy is finally creating much needed jobs.

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Simultaneously, export grew 9.3 percent in the third quarter, another marker of our renewed economy. We will continue to fulfill our mission to maximize freedom and expand opportunity.

What leads me to national security. Our mission to expand freedom and opportunity applies not just to our economy, but to our national security, as well. Freedom cannot find its fullest expression under the threat of terror. But, likewise, terror cannot spread without freedom.

That is why, this year, America took the extraordinary action of toppling Saddam Hussein and his terrorist-sponsoring regime. In 3 short weeks, the men and women of the United States military, with the support of 49 nations, swept to Baghdad, ending three decades of ruthless Ba’ath Party rule and support for terror.

In the months since, our soldiers have worked tirelessly, under dangerous conditions, to help the Iraqi people build a democracy.

Our soldiers have rebuilt schools, hospitals, electrical grids, pipelines, and roads. They are training Iraqi police forces to patrol the streets and hunt down terrorists. Everyday, our troops are helping the people of Iraq and Afghanistan move toward becoming free and open societies.

To support their efforts, we passed the President’s $97 billion war supplemental. We did it because we recognize that investing in the future of Iraq and Afghanistan is an investment in our security. September 11 taught us a cruel lesson. We learned that we cannot wait while storms gather. As the President has said, “the Middle East region will either become a place of progress and opportunity or it will remain a source of violence and terror.”

This Senate took bold action to support the war on terror because we are determined that progress and peace take root.
The Middle East is not the only region where we are working to bring stability. This session, we passed the Burmese Freedom Act and the Clean Diamond Act.

And we also took the historic action of dedicating $15 billion to drive back the HIV/AIDS virus. As a Senator, as a doctor, and as a medical missionary, I am especially grateful that we have demonstrated the compassion of our public policy of this issue. Millions of lives around the world have been cut short by the scourge of one tiny virus. Countries have seen entire swaths of their populations wiped out and children orphaned, because of the HIV virus that causes AIDS.

By passing the Global HIV/AIDS bill, we help to prevent 7 million new infections; provide antiretroviral drugs for 2 million HIV-infected people; care for 10 million HIV-infected individuals and AIDS orphans; and bring hope to millions of people around the world who are living in the shadow of this devastating disease.

Our work in passing this critical legislation demonstrates that we are a country that places a high value on life. History will judge how we chose to respond. We can proudly say that we made the right choice and took the necessary actions to put an end to one of the worst plagues in recorded history.

We also made the right choice to end partial birth abortion. Partial birth abortion is a fringe procedure. It is not taught in medical schools. And now, it never will be. In an overwhelming majority, we voted to end an immoral procedure, and said “yes” to life.

Indeed, this Senate can be proud of our efforts to protect the most vulnerable among us. In January, we passed legislation to establish a national AMBER Alert. Law enforcement will now have another tool to work with to find missing children. In June, we passed legislation to protect victims of child abuse. We also voted to extend welfare reform to help lift families out of poverty.

But perhaps the most historic and far reaching legislative accomplishment of the 108th Senate happened this morning, when an overwhelming, bipartisan majority voted to enact prescription drug coverage for our nation’s 40 million seniors and individuals with disabilities.

For the first time in its 40-year history, Medicare will offer true, comprehensive health care coverage. This worthy program will finally be able to keep pace with modern medicine.

I am deeply thankful for the cooperation, hard work and dedication of my colleagues to overcome years of partisan gridlock and finally offer America’s seniors the security they need and the choices they deserve.

Medicare reform, the Jobs and Growth tax cuts, the Iraq war supplemental, the global HIV bill—we set our sights high and we more than exceeded expectations.

We are moving America forward, and we will continue to do so in the coming months. There is much yet to be done. Critically, we must pass the energy bill. We have been debating national energy for three years. During the last Congress, we spent a total of 7 weeks debating energy on the Senate floor. In this Congress, we spent more time debating energy than any other bill. And yet, despite all this, a few in the Senate continue to obstruct progress. And while they insist on more debate, natural gas prices continue to rise.

U.S. chemical companies are closing plants, laying off workers, and looking to expand production abroad. The U.S. is expected to import approximately $9 billion more in chemicals than it exports this year. American consumers are getting hit with higher electric bills, and small businesses are struggling to contain costs. All because of rising energy prices. We must pass the energy plan.

Not only will it lower prices, it will save jobs and create thousands more. It is estimated that this energy package will create at least half of a million jobs. The Alaskan pipeline alone will create at least 400,000. The hundreds of millions of dollars that will be invested in research and development of new technologies will not only benefit the environment, but will create new jobs in engineering, math, chemistry, physics, and science.

We cannot allow the obstruction of a few in the Senate continue to harm the interests of millions of Americans. And I use the word “obstruction,” because we have seen it used in a derogatory degree in this Congress, nowhere more so than in the consideration of the President’s judicial nominees.

Only 2 weeks ago, we had an historic, around the clock, 40 hour debate. And after 40 full hours of debate, the minority continued to block an up or down vote. This is partisan obstruction pure and simple. A minority of Senators is denying all 100 our Constitutional duty to advise and consent.

When we return in January, we will continue to press this issue. Nothing less than the United States Constitution is at stake.

We will also continue to press for policies that expand and strengthen our economy. This session, we passed smart, pro-growth fiscal policy. We are already beginning to see the results. But there is still more.

Frivolous lawsuits are clogging the State courts, wasting taxpayer dollars, and inhibiting the innovation and entrepreneurship so critical to creating jobs. When it comes to medical malpractice, frivolous lawsuits are destroying access to quality health care and, literally, imperiling lives.

America is country that values fairness, and we will return fairness to the litigation process.

We will also work to return fairness to the tax system. We will continue to press for reforms that simplify the tax code and allow taxpayers the opportunity to hire a consultant to file a tax return.

We will also begin the exciting work of constructing the long awaited National Museum for African American History and Culture. America will finally have a museum worthy of Americans’ and Diaspora’s need and have given so profoundly.

There is much more to do in the year ahead, and I will speak to that when we resume in January.

Each day I walk into this great institution, I am humbled and inspired, humbled by the great men and women who have come before, and inspired by their example.

In his 1862 address to Congress, President Lincoln told the assembled legislators that America is the world’s last, best hope. Those words have never been more true than they are today. I am confident that we will face the challenges ahead with honor and courage, for the simple reason that we are Americans.
The PRESIDING OFFICER. Under the previous order, the Senate will resume legislative session.

ORDERS FOR TUESDAY, DECEMBER 9, 2003

Mr. McCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Tuesday, December 9. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

PROGRAM

Mr. McCONNELL. The Senate will reconvene on Tuesday, December 9, and it is our hope that we will be able to consider the omnibus appropriations conference report that day. The conference report has been filed and this will give ample time for Members to review that measure. We will also consider any legislative or executive items that can be cleared by unanimous consent. I hope among those will be some of these 95 innocent nominees who were caught up in the obstructionism in the Senate. Hopefully, during the Thanksgiving recess, we will come back with a different attitude and clear the nominees. One issue we need to address is the pension rate bill, and we will continue to work toward finishing that bill when we return.

I will announce, no rollcall votes will occur that day. So obviously on that day what we will be able to do will be done by consent.

We wish everyone a pleasant Thanksgiving holiday and hope when we come back on December 9 we will be able to do some of the Nation’s unfinished business.

ADJOURNMENT UNTIL TUESDAY, DECEMBER 9, 2003, AT 10 A.M.

Mr. McCONNELL. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the provisions of H. Con. Res. 339.

There being no objection, the Senate, at 6:15 p.m., adjourned until Tuesday, December 9, 2003, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate November 25, 2003:

DEPARTMENT OF TRANSPORTATION

LINDA MORRISON COMBS, OF NORTH CAROLINA, TO BE AN ASSISTANT SECRETARY OF TRANSPORTATION, VICE DONNA R. MCLEAN, RESIGNED.

S 16079

CONGRESSIONAL RECORD — SENATE

December 9, 2003, at 10 a.m.
at 6:15 p.m., adjourned until Tuesday,

There is no further business to come before the Senate, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10 a.m., Tuesday, December 9. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

PROGRAM

Mr. McCONNELL. The Senate will reconvene on Tuesday, December 9, and it is our hope that we will be able to consider the omnibus appropriations conference report that day. The conference report has been filed and this will give ample time for Members to review that measure. We will also consider any legislative or executive items that can be cleared by unanimous consent. I hope among those will be some of these 95 innocent nominees who were caught up in the obstructionism in the Senate. Hopefully, during the Thanksgiving recess, we will come back with a different attitude and clear the nominees. One issue we need to address is the pension rate bill, and we will continue to work toward finishing that bill when we return.

I will announce, no rollcall votes will occur that day. So obviously on that day what we will be able to do will be done by consent.

We wish everyone a pleasant Thanksgiving holiday and hope when we come back on December 9 we will be able to do some of the Nation’s unfinished business.

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NOMINATIONS

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DEPARTMENT OF TRANSPORTATION

LINDA MORRISON COMBS, OF NORTH CAROLINA, TO BE AN ASSISTANT SECRETARY OF TRANSPORTATION, VICE DONNA R. MCLEAN, RESIGNED.
The following nominees were received by the Senate and appeared in the Congressional Record on October 23, 2003:

ARMY NOMINATIONS BEGINNING MICHAEL A. BULEY
ARMY NOMINATIONS BEGINNING GASTON P. BATHALON
ARMY NOMINATIONS BEGINNING VERNAL G. ANDERSON
ARMY NOMINATIONS BEGINNING JOHN D. MCGOWAN II

AIR FORCE NOMINATION OF MARY J. QUINN.
AIR FORCE NOMINATION OF ROBERT G. CATES III.
AIR FORCE NOMINATIONS BEGINNING SAMUEL C.
AIR FORCE NOMINATION OF JEFFREY N. LEKNES.
AIR FORCE NOMINATIONS BEGINNING THOMAS E. JAHN

IN THE ARMY

THE FOLLOWING ARMY GENERAL OFFICER NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON OCTOBER 30, 2003:

Maj. Gen. William W. Bollwerk
Col. V. Mark Alves

IN THE NAVY

THE FOLLOWING NAVY GENERAL OFFICER NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 17, 2003:

Adm. (L) William J. Moran
Adm. (L) James G. Stavridis
Adm. (L) John W. Winfield

IN THE MARINE CORPS

THE FOLLOWING MARINE CORPS NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 17, 2003:

Brig. Gen. Mark A. A. Culp
Brig. Gen. Robert D. Kreps
Brig. Gen. Samuel B. Watson
Brig. Gen. John C. Young

CONCLUSIONS

The Senate confirmed the following nominees:}

- Michael J. Garcia, New York, to be an assistant secretary of homeland security
- James M. Loy, Virginia, to be deputy secretary of homeland security.
This conference report asks seniors to pay a particularly large portion of their drug costs. Seniors need help paying for their prescription drugs. This conference report does not adequately address the needs of seniors and the disabled.

Mr. Speaker, I proudly pause to recognize Christopher Stroup, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 247, and in earning the most prestigious award of Eagle Scout. Christopher has been very active with the troop, participating in many scout activities. Over the twelve years Christopher has been involved with scouting, he has earned 33 merit badges and has held numerous leadership positions, serving as patrol leader and den chief. Christopher is also a member in the Order of the Arrow and the Tribe of Mic-O-Say.

For an Eagle Scout project, Christopher planned the design, obtained the needed materials, and constructed storage cabinets for the science department of Oak Park High School in the North Kansas City School District.

Mr. Speaker, I proudly ask you to join me in commending Christopher Stroup for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

CONFERENCE REPORT ON H.R. 1, MEDICARE PRESCRIPTION DRUG, IMPROVEMENT, AND MODERNIZATION ACT OF 2003

SPEECH OF HON. DENNIS MOORE OF KANSAS IN THE HOUSE OF REPRESENTATIVES

Mr. Speaker, I rise today to oppose this legislation. This is a very difficult vote for me, as I have worked for years to add a prescription drug benefit to Medicare. I have had little more than 24 hours to examine this 676-page conference report, but what I know about H.R. 1 is this: seniors will pay dearly for a weak benefit that undermines their traditional Medicare benefits.

The benefit provided to seniors under H.R. 1 is very weak and does not even take effect until 2006. What insurance plan on earth, except one designed by Congress, would create a "donut hole" that is designed specifically to stop coverage for seniors when they need it? I believe that American seniors will rebel when they find out what Congress is offering them, especially if they compare it to the benefit that Members of Congress themselves receive.

This conference report asks seniors to pay a monthly premium of $35, which is in addition to their existing Medicare premium ($66.60 per month in 2004). Additionally, seniors will pay the first $250 of their drug costs each year, after which Medicare would then start paying 75% of drug costs. But as seniors’ drug costs increase, the benefit disappears. When total annual drug costs reach $4,000, government support would stop. Seniors would be responsible for the next $2,850 in drug costs. Only when their drug bill for the year reached $5,100 would Medicare begin paying 95% of all further costs.

This conference report puts the profits of pharmaceutical and insurance companies ahead of the needs of our seniors and the disabled. The H.R. 1 conference report contains drastic cuts to our nation’s cancer care system.

This legislation will deprive America’s cancer care system of $1 billion a year. A cut like this will be devastating to cancer care. If this happens, many cancer centers will close, others will have to admit fewer patients, and still others will lay off oncology nurses and other critical support staff. Legislation that would increase access to prescription drug coverage will do the opposite for cancer patients, reducing their ability to get needed cancer care.

Mr. Speaker, today I am forced to vote against this flawed bill, despite the fact that this legislation includes important payment increases for Medicare providers. I regret that these needed payments were included in this legislation in order to build support for this inadequate benefit. I have long supported adequate funding for Medicare providers in Kansas, and I have supported legislation in this Congress and previous Congresses that would eradicate the cuts approved in the 1997 Balanced Budget Act. Additionally, I signed as a cosponsor of H.R. 3549, introduced by Rep. Baron Hill, legislation that would provide payment increases for doctors, hospitals, home health providers, and others who need and deserve adequate Medicare payments.

INTRODUCTION OF H. CON. RES. 330

HON. TOM LANTOS OF CALIFORNIA IN THE HOUSE OF REPRESENTATIVES

Tuesday, November 25, 2003

Mr. LANTOS. Mr. Speaker, yesterday my good friend from Connecticut, Rep. Chris Cox, and I introduced H. Con. Res. 330, The International Human Rights Equality Act. I would like to especially thank my good friend from Massachusetts, Rep. Barney Frank, and my good friend from Ohio, Rep. Dennis Kucinich, for their support at our press conference yesterday on the occasion of the introduction.
Our landmark legislation shines a bright light on one of the most underreported and unrecognized areas of egregious human rights violations, the international persecution of individuals based on their real or perceived sexual or gender identity.

Supported by 44 of our colleagues, we believe very strongly that we must send a clear message that gay, lesbian, bisexual and transgendered people must be treated with the same dignity and respect as every human being, and not with hatred and violence that they face in all too many places in the world. Opponents against the LGBT community include arbitrary arrests, rape, torture, imprisonment, extortion, and even extra-judicial executions.

The scope of these human rights violations is staggering, and for the victims, there are few avenues for relief. Some countries create an atmosphere of impunity for rapists and murderers of gays and lesbians by failing to prosecute or even to investigate violence targeted at these individuals because of their sexual orientation. Not only do some countries refuse to sanction these abuses, but often, agents of the State perpetrate them. And believe it or not, at the outset of the 21st Century there are still countries that advocate the death penalty for people who are gay, lesbian, bisexual or transgendered.

We simply cannot ignore the number and frequency of such grievous crimes any longer. As our legislation makes clear, the international community has long established a legal framework for the protection of international human rights, based on the individual human being. The world community voluntarily agreed upon these legal instruments, and we have to demand vigorously that the parties to those treaties fulfill their obligations. We must demand that all countries obey international norms, particularly those countries that have become a party to international human rights treaties. None of these instruments, which are the foundation for a peaceful and civilized world community, exempt anybody from the protection of their human rights because of gender, race, origin or age, and most certainly there are no exceptions from full protection on the basis of sexual orientation or gender identity.

Our legislation urges the Administration to develop a new strategy in our foreign policy to directly combat these outrageous violations, and tear away the veil of silence or ignorance on those tragic developments all over the world, which have a devastating impact on the lives of each individual affected.

Our Resolution details just a few examples of violence against gay, lesbian, bisexual and transgendered individuals in countries as wide ranging as Mexico, Egypt, Saudi Arabia, Uganda, Uzbekistan, Nepal, among others.

My colleagues and I are committed to protecting human rights wherever they come under attack. I will work hard to create a broad bipartisan coalition to support this legislation in this Congress and beyond.

Our legislation has the wide support of the human rights community, and I would particularly like to thank Amnesty International, the Human Rights Campaign, Human Rights Watch and the International Gay and Lesbian Human Rights Commission, as well as National Latino/a Lesbian, Gay, Bisexual & Transgender Organization (LEGOr), for their input and support.

### TRIBUTE TO MAYOR JAMES RAINWATER

**HON. JACK KINGSTON**

**OF GEORGIA**

**IN THE HOUSE OF REPRESENTATIVES**

**Tuesday, November 25, 2003**

Mr. KINGSTON. Mr. Speaker, it is with a solemn heart that I take this opportunity to pay tribute to the life of James Rainwater, mayor of Valdosta, GA, who passed away recently at the age of 62. James is survived by his two daughters, granddaughters, Jamie Rainwater, Michael and Robin Woodruff, Blake and Jarred Woodruff. Jimmy Rainwater began his political career as a councilman in 1986 before he took the Mayor’s seat two years later. With nearly 16 years in office, Jimmy Rainwater served as Valdosta’s Mayor longer than anyone in the city’s past. When he entered the office of Mayor, he addressed and solved many problems that were plaguing the city, from poor quality drinking water to slow growth of industry to the low morale of the city employees and departments. From 1988 to 2003, Mayor Rainwater saw Valdosta grow to become home of Valdosta State University and achieve metropolitan status. He helped save Moody Air Force Base from closing and saw the accreditation of the police and fire departments.

Jimmy Rainwater wasn’t just a mayor in the traditional sense of an official who presides over City Council and attends to the business of the city. He was devoted to these tasks. He rarely missed a council meeting. He often worked the phones and personally visited people to get things done. But there was more to his tenure as mayor than just attending to the business of the city.

Jimmy Rainwater seemed to attend almost everything. Wearing a pair of his many cowboy boots, he was a familiar figure at business grand openings and ground breakings, in the newspaper and on local television, in neighborhoods and community events, at banquets, dinners and suppers, charity balls and and organizational fundraisers. He presented awards and proclamations, attended funerals and retirements, church services and military changes of command.

Mr. Speaker, Jimmy Rainwater was a fine American leader who will be sorely missed. It is my honor to rise and pay tribute to Jimmy Rainwater.

### CONTRIBUTIONS OF JACK AND ELEANOR BUELL

**HON. C. L. “BUTCH” OTTER**

**OF IDAHO**

**IN THE HOUSE OF REPRESENTATIVES**

**Tuesday, November 25, 2003**

Mr. OTTER. Mr. Speaker, I rise today to honor the contributions of Jack and Eleanor Buell of St. Maryes, Idaho, to the 2003 Capitol Holiday Tree. For the first time in history, Idaho has the distinct honor of supplying the nation’s Christmas tree. The magnificent Englemann spruce was harvested from the Boise National Forest, visited 53 Idaho communities, and now is on its way to the Capitol. This historic journey was made possible by the tremendous generosity of Jack and Eleanor Buell. Owners of Buell Trucking, they donated the truck, custom-made trailer and driver for the Capitol Holiday Tree and the 70 companion trees that will be displayed throughout Washington, DC. This has been a wonderful gesture of volunteerism by Jack and Eleanor, and it is indicative of the way they look out for a long-time Congressman in Benewah County, where he and Eleanor have given to their community and the State of Idaho time and again. The citizens of St. Maries, Benewah County, and the State of Idaho have for years owed a debt of gratitude to Jack and Eleanor Buell. Mr. Speaker, for their efforts to make the Capitol Holiday Tree possible, the nation owes them our thanks as well.

### INCREASING THE WAIVER REQUIREMENT FOR CERTAIN LOCAL MATCHING REQUIREMENTS TO AMERICAN SAMOA, GUAM, THE VIRGIN ISLANDS, OR THE COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**SPEECH OF**

**HON. MADELEINE Z. BORDALLO**

**OF GUAM**

**IN THE HOUSE OF REPRESENTATIVES**

**Tuesday, November 18, 2003**

Ms. BORDALLO. Mr. Speaker, I rise today to express my support for this legislation. As has been stated, this legislation would provide needed relief to Guam, American Samoa, the U.S. Virgin Islands, and the Commonwealth of the Northern Marianas Islands by increasing the matching waiver requirement for federal grants. The House’s passage of this bill today would be timely given the fact that our territorial governments continue to face declining revenues.

The difficult economic conditions in the territories make it particularly challenging for us to access federal grants, given the matching requirements and the current inflexibility in waiving these requirements.

I am pleased this legislation not only increases the waiver requirement from the current threshold of two hundred thousand dollars to five hundred thousand dollars, but it also clarifies that this waiver requirement applies across the board—to all federal agencies and departments—and not just for grants administered by the Department of the Interior.

While this legislation seeks to correct this inconsistency in the application of law, I remain concerned about another inconsistency. I am aware of conflicting and varying application of the waiver requirement among federal agencies and departments with respect to the grant recipient. The non-profit organizations in the territories fulfill a significant role in our communities. Nonprofits help meet the needs of the homeless, the disadvantaged, and those who face economic times. Their work is often supported by federal grants. Without such federal assistance, the non-profit organizations in the territories would struggle to meet their missions and most would not be able to maintain the current level of assistance to our communities.

On Guam alone, we have a sizable non-profit community. Organizations like Guma Mami, Erica’s House, Catholic Social Services, and Sanctuary all work for example to help the
needy, shelter and clothe the homeless, and provide services to at-risk youth. Others like the Manenngon Foundation and Pa’a Taota Tano work to preserve our Chamorro culture. Given their limited resources and the matching fund requirements, their access to federal funding is critical to their success.

Therefore, I remain hopeful that federal agencies will apply the waiver not just to grants awarded to the territorial governments, but also to non-profit organizations and other eligible nongovernmental entities in the territories.

Furthermore, while I recognize that current law, for good reason, allows any federal agency or department to consolidate grants to the territories, I would hope that this authority would not be used to reduce the number of grants that would otherwise be subject to the matching waiver requirement. Federal agencies should not consolidate grants to escape the full application of the matching waiver requirement, or to reduce the waiver’s impact on what would otherwise be separate grant awards. This is the intent of the authors of this bill. This has specific application to Guam, where disaster public assistance grants to separate Government of Guam agencies should each receive the waiver of the local matching fund requirement for the individual disaster assistance, rather than one waiver for the whole Government of Guam for all public assistance grants.

This legislation will also require the Secretary of the Interior to study and report on its implementation. I trust that, if enacted, the Secretary will pay particular attention to these concerns and that the report will address the application of the waiver with respect to non-profit organizations and the consolidation authority.

This legislation is important for the economic development of the territories because it will make access to federal grants easier for cash-strapped governments.

I want to recognize the hard work and valuable contributions that my predecessor, Robert Underwood, made on this issue. Mr. Underwood worked alongside our colleague from American Samoa, Mr. Faleomavaega, in crafting this legislation in the 107th Congress. Although the bill was reported out of the Committee on Resources last year, it unfortunately did not make it to the floor.

I am grateful we have reached that point in the process today and I look forward to timely consideration in the other body. I want to commend my colleague from American Samoa, Hon. PONTE M. OMOB and Ranking Member RICK RHALL for their leadership in the Resources Committee.

On behalf of Amnesty International I would like to commend Congressmen Tom Lantos and Christopher Shays for their strong leadership on this issue as well as the more than forty bipartisan members of Congress who have agreed to be original co-sponsors of this historic resolution. Amnesty International and other human rights organizations have documented the widespread abuse of the fundamental human rights of lesbian, gay, bisexual and transgender people throughout the world. These abuses include the imprisonment, torture and in some cases killing of lesbian, gay, bisexual and transgender people by their own government. Some 70 countries still criminalize homosexuality. Sentences for conviction under these statutes vary, but often include lengthy jail sentences and in some cases include torture or the death penalty as a legally sanctioned punishment.

As we sit here this morning, there are many who sit in jail cells and face the prospect of torture simply because of their sexual orientation or gender identity. In Egypt, for example, over the past two years, Amnesty International and other human rights groups have documented more than 100 men simply on the basis of their alleged sexual orientation. Ironically, Egypt is one of the few countries in the Middle East that does not explicitly criminalize homosexuality but has charged the men under a vaguely worded law prohibiting “habitual debauchery.” Many of these men report having been brutally tortured and even killed with wit. It is a number of which is only the tip of the iceberg and there are probably many cases that we have not yet documented. Of those arrested, some have not received nor are they able to avenge or continue. At this moment, Amnesty considers at least 15 men in Egyptian prisons to be “prisoners of conscience” in jail solely on the basis of their alleged sexual orientation. Egypt is not alone and similar arrests have also been made in many other countries in recent years including Malaysia, Uganda, Uzbekistan, and Saudi Arabia, just to name a few. Even when not criminalized, discrimination and violence against lesbian, gay, bisexual, and transgender people by both government authorities and civilians remains widespread throughout much of the world.

Too often states fail to hold the perpetrators of such violence accountable, creating a climate of impunity. Since the adoption of international human rights standards that require states to protect the human rights of all of their citizens. In recent years, Amnesty International has identified patterns of violence including murder and physical assault, particularly targeted against transgender people and gay men in a number of countries, including, for example, Honduras, Guatemala, and Ecuador. In many of these cases the police were complicit or did nothing to investigate and sometimes even rape those responsible accountable. Lesbians often face a double layer of discrimination and abuse resulting from both their gender and their sexual orientation. These violations are often particularly difficult to document because they most often occur in the community and the family, but include trafficking and sometimes even rape. Employed as a method to cure lesbians of their deviant sexuality. The United States has not been a leader either at home or abroad in advancing lesbian, gay, bisexual and transgender human rights. While this resolution recognizes the need to continue to make progress in this country toward the full recognition of the basic human rights of lesbian, gay, bisexual and transgender people, it also spells out the U.S. government’s obligation to combat human rights violations against lesbian, gay, bisexual and transgender people around the world. Despite the U.S. government’s overall lack of leadership on these issues, some progress is being made.

The last few months the Department has begun to document some of these abuses in its annual reports. We hope that this resolution will encourage the State Department to continue to document abuses in its documentation of lesbian, gay, bisexual, and transgender rights abuses around the world. We also believe much more can and must be done by the U.S. government if it is to play a leadership role in protecting global lesbian, gay, bisexual and transgender human rights. Through this resolution we are calling for the U.S. government to develop a comprehensive strategy for combating these abuses. This strategy must include the U.S. government taking a positive and proactive position in favor of lesbian, gay, bisexual and transgender human rights when these issues are discussed and debated in international forums. It is only through adoption of the recommendations of this resolution, including development of such a comprehensive strategy, that the U.S. government can begin to fulfill its obligations under international human rights standards to advance the human rights of all people.
in international law. Finally, the resolution calls on the Department of State to improve its own documentation of human rights abuses on the basis of sexual orientation and gender identity. I hope these violations will be examined in this context. We need a comprehensive energy policy that increases our national security by decreasing our dependence on foreign oil and improving public health and the condition of our environment by promoting clean, renewable energy sources and energy efficiency technologies.

I voted for the conference report for H.R. 6 because it: excluded drilling for oil and gas in Alaska’s Arctic National Wildlife Refuge; mandated a 25% reduction in the use of renewable fuels in gasoline, primarily ethanol, to 5 billion gallons a year by 2012; allowed the Federal Energy Regulatory Commission, FERC, to establish a nationwide electricity reliability standard for power companies to help balance supply and demand on the grid; and included H.R. 1331, legislation I have introduced the past three Congresses to reduce our country’s dependence on foreign oil and reduce natural gas bills by extending a tax credit for production of unconventional fuels. This is of special interest to Kansas. Eastern Kansas has one of the nation’s biggest reserves of coal bed methane, possibly two-thirds the size of the Hugoton gas field in southwest Kansas, the nation’s largest. The ethanol provisions in the conference report are estimated to create an estimated $51 billion in new economic activity by 2012, adding as much as 30 cents per bushel to the value of corn. This increase in the value of corn, soybeans and other feedstock will reduce the need for farm payments by an estimated $5.9 billion by 2012. The ethanol provision functions as a rural economic package by creating the need for $5.3 billion in new investment for renewable fuel production facilities in rural America, including Garnett, Kansas. The Renewable Fuel Standard is estimated to create 214,000 new U.S. jobs, mostly in rural America.

Though I wished it did even more, the conference report does encourage the increased use of renewable energy sources such as wind and biomass through tax incentives. The conference report encourages a diversified portfolio for America’s energy resource needs including traditional oil and gas, nuclear, and renewable energy like ethanol, biodiesel, wind, hydropower, and biomass. Over the long-term, renewable energy especially will be a huge asset to American agriculture and rural development. Our founding fathers made compromise one of the most important tools to the legislative process. Compromise is sometimes frustrating. And though I voted for the conference report for H.R. 6, there are several provisions I do not support. One of the most disturbing is a provision that lets the companies that created and produced the gasoline additive MTBE off the hook for contaminating groundwater. Now, state and local taxpayers will pay cleanup costs for many contaminated sites. The bill nullifies lawsuits against states and others filed on or after September 5, 2003, seeking compensation for contamination of groundwater by MTBE. In the same vein under this bill, taxpayers, rather than polluters, will pay up to $2 billion to clean up leaking underground storage tanks containing gasoline and other toxic chemicals even at sites where viable responsible parties are identifiable.

This bill also authorizes a $1.1 billion nuclear reactor in Idaho, with a potential exemption from federal project management rules, to demonstrate hydrogen production technologies that are not projected to be cost justified. It also repeals the Public Utility Holding Company Act, the primary statute that protects consumers from market manipulation and economic concentration in the electricity sector.

Our nation needs to have comprehensive energy legislation enacted into law. Doing so is essential to economic recovery, job creation and environmental protection, as we rebuild our economy while continuing to improve air quality. We have paid for the lack of a balanced energy policy with blackouts and job losses that occurred when natural gas prices doubled. The conference report for H.R. 6 is a good start in easing that pressure by ensuring that fuel diversity remains at the core of U.S. energy policy. As Congress will need to have a meaningful dialogue to find ways to combat global warming, increase vehicle fuel efficiency and reduce U.S. oil consumption. Although I voted for this legislation, I will continue to fight to ensure environmental protections are not an afterthought in addressing our energy needs.

**PROFILE IN LEADERSHIP**

**HON. JACK KINGSTON**

**OF GEORGIA**

**IN THE HOUSE OF REPRESENTATIVES**

Tuesday, November 25, 2003

Mr. KINGSTON. Mr. Speaker, it is an honor to stand here today and pay tribute to one of Georgia’s truly outstanding citizens. I would like to recognize William Megathlin’s contribution to society by presenting this article to the rest of Congress.

[From “Compass”, Summer 2003]

**PROFILE IN LEADERSHIP—WILLIAM L. MEGATHLIN**

Bill Megathlin briefly stretches his lanky frame behind his office desk, pulling his trademark suspenders taut for a moment, then leans forward, making his visitor feel at home. The assistant to the president for strategic initiatives is uncomfortable talking about his leadership skills but not averse to giving a bit of background information.

A native of Miami, Megathlin earned his bachelor’s degree in psychology from Presbyterian College in Clinton, South Carolina. He went on for a master’s degree and a doctorate in counseling at the University of Georgia.

His doctoral dissertation focused on training correctional officers at the Atlanta Federal Penitentiary in basic communication skills to better influence inmate behavior. The study, funded by a grant from the Federal Bureau of Prisons, demonstrated such a positive effect on officers and inmates alike that the training method was adopted by other federal and state institutions.

Megathlin launched his academic career at Mississippi State University as an assistant professor of counselor education. During his tenure at MSU, he also worked as a consultant with state and federal criminal justice agencies.

Though he enjoyed preparing college students to become effective counselors, his heart was in corrections and law enforcement. So when he was offered a position in the highly regarded Department of Criminal Justice at Sam Houston State University, he and his wife Carol were off to Huntsville, Texas.

In 1971, Megathlin’s brother John, suffered a serious head injury in an automobile accident outside Metter. So severe were his injuries that he was rushed to a hospital in Savannah. Bill and Carol drove through the night to Savannah after hearing of the
accident. They spent a few days visiting J ohn in the hospital. John eventually made a complete recovery and the Megathlins spent some time exploring Savannah. They were intrigued.

While in the city, Megathlin visited Armstrong State College. He discovered that a new criminal justice program was in the process of being established under the leadership of Jim Witt. A few letters, phone calls, and an interview later, Megathlin was hired as one of two new professors in the fledgling program. Several years later, when Witt took a sabbatical, Megathlin was tapped to serve as interim chairman of the department.

In those days,” Megathlin recalls, “there were large numbers of students pursuing criminal justice degrees, and local and state agencies were hungering for involvement with the university and for the opportunity to work with students and faculty. They were anxious to reach out to academics to help them address some of their challenges. That was very attractive.

“It was a great time for me professionally, career-wise, I got more involved with administrative responsibilities.”

When former president Robert A. Burnett arrived, he combined the departments of criminal justice and political science into the Department of Government under Megathlin.

“Robert Burnett was good for the university and for me,” Megathlin said. “He was one of those individuals in the business of administration who makes it a team effort. Over the years, I’ve been fortunate to work with people who make me look good.”

When former vice-president Frank A. Butler created a division of academic and enrollment services, he named Megathlin as dean to spearhead the effort.

Contacted at his Atlanta office, Butler, now vice chancellor of the University System of Georgia’s Office of Academics, Faculty, and Student Affairs, said, “We were able to create a good climate for student enrollment thanks to Bill. He was a major part of the idea creating cadre.”

Butler gives Megathlin much of the credit for increasing the college’s enrollment past the 3,000 mark in the late ’80s. “He doesn’t make things take forever,” Butler said. “He cuts to the chase and gets results.”

Over time, new functions were added to the academic and enrollment division that didn’t always form a neat fit, but Megathlin found ways to make them work. In the process, he was in position to influence many aspects of the growing university.

With the arrival of President Thomas Z. Jones, Megathlin again found himself in the middle of reorganization. To help move his vision for the university forward, Jones asked Megathlin to become his assistant for strategic initiatives.

In his new role, Megathlin can often be found in Atlanta, making AASU’s case to legislators and representatives as well as University Hall, the Science Center, the future academic building, and the planned renovation of the Lane Library.

Forrest Lott, principle in Lott + Barber Architects, has worked with Megathlin on the construction of University Hall and the Science Center, as well as on the refurbishing of Solms and Hawes halls. “One of the things about Bill,” Lott said, “is that he recognizes the skills and abilities of each of the team members and relies on them to do their jobs.”

“Mr. Otter, Mr. Speaker, I rise today to bring to the attention of the House an individual who is truly a servant of the people, a man who I am honored to call my friend and a person I had the benefit of working with while he served in the Idaho State Senate and as a gubernatorial appointee. Almost nine years ago, Roger Madsen was named director of the Idaho Department of Labor. In that capacity, we worked closely with Idaho’s Workforce Development Cabinet and later created Idaho’s Workforce Development Council. With Roger’s dedication and vision, Idaho has been recognized as a leader in workforce development at the national level. This year, the National Association of State Workforce Agencies presented Director Madsen with its 2003 President’s Award. The award may be given to an organization or individual to recognize extraordinary service to America’s workforce development system. Roger’s commitment to the workforce system, his leadership, and work is truly fortunate to have someone of his caliber dedicate his life to public service. His integrity, innovation and devotion to his work and the people of Idaho set a high standard for excellence. He has become an invaluable asset to our state, and an example of selflessness that all of us would do well to emulate. I want to take this opportunity to personally thank Roger for all he has done for Idaho and its citizens.”

HON. MADELEINE Z. BORDALLO
OF GUAM
IN THE HOUSE OF REPRESENTATIVES
Tuesday, November 25, 2003
Ms. BORDALLO. Mr. Speaker, I rise today to congratulate the Calvo family of Guam as they celebrate the 65th anniversary of Calvo’s Insurance. The name Calvo has long been synonymous with integrity, austerity, leadership, service to community, and entrepreneurial spirit. As a locally-owned small business, Calvo Enterprises has grown by never losing touch with its consumer base in Guam and constantly updating its business model to accommodate the ever-changing nature of commerce and society.

In 1938, Calvo’s Insurance founder Eduardo “Jake” Calvo began selling fire and typhoon policies out of his home in Hagatna. A banker by trade, Jake Calvo built upon his rapport with the local community in securing the trust of insurance policy holders throughout Guam.

By forging personal relationships with clients and exemplifying the importance of delivering meaningful products to the people of Guam, Calvo’s Insurance has grown to become one of the most important and recognized companies in Guam.

The legacy of Jake Calvo has endured nearly four decades since his passing. In succeeding him, Jake Calvo’s three sons, Paul M. Calvo, Edward M. Calvo and Thomas J. M. Calvo, carefully maintained the business standards of their father. Today, Calvo’s Insurance is Guam’s oldest and largest insurance agency.

I would be remiss not to mention that Paul M. Calvo also served as Governor of Guam from 1979–1983 and helped develop a successful formula for economic growth in Guam. He subsequently incorporated this experience in helping to develop an astute and forward-thinking business model for the family business.

Now known as Calvo Enterprises, the Calvo family has diversified its positions in Guam’s business sector, operating successful small businesses in local media, distributorships, restaurants, real estate, and retail.

I also want to take this time to congratulate the current General Manager of Calvo’s Insurance, Paul Calvo, on this momentous anniversary. Exemplifying the spirit of his late grandfather, Paul began as an underwriter for the family business and worked his way up through administrative and management positions before being placed in charge of the day-to-day activities of Calvo’s Insurance. His leadership in the wake of Supertyphoons Chata’an and Pongsona in 2002 was crucial to the business sector in Guam, with its efforts to help Guam’s business community, and I wish you continued success.

HON. TOM LANTOS
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, November 25, 2003
Mr. LANTOS. Mr. Speaker, H. Con. Res. 330, the International Human Rights Equality Act, addresses one of the most underreported areas of human rights violations, the persecution of an individual solely on the basis of sexual orientation or gender identity.

At our recent press conference, Martin Orenelas-Quintero, Executive Director, of the National Latina/o Lesbian, Gay, Bisexual
Transgender Organization, eloquently highlighted the global prevalence of these violations. I ask that his statement be included at this point in the CONGRESSIONAL RECORD.

STATEMENT BY MARTI ORNELAS-QUINTERO, EXECUTIVE DIRECTOR, THE NATIONAL LATINO/LEBANES, GAY, BISEXUAL & TRANSGENDER ORGANIZATION (LLEGO)

Good morning. I want to thank Congressman Lantos and resolution co-sponsor Congresswoman Pelosi for their work, and also all the human rights organizations here today that stand together in support of this important resolution. My name is Marti Ornelas-Quintero, Executive Director of LLEGO to the National Latino/a Lesbian, Gay, Bisexual and Transgender organization. I would like to read an excerpt from a letter sent by LLEGO to the honorable Richard M. Nettles, president of Honduras in September of this year.

In the city of San Pedro Sula, the lesbian, gay, bisexual, transgender and transsexual community is confronting persecution, harassment, mistreatment and humiliation because of this attempt to abandon the human rights and protection for transgender community members. Specifically, we wanted to bring attention to the case of La China.

La China, born as Elkyn Suarez—along with the LGBTT community members, demands that the police of San Pedro Sula begin to conduct more exhaustive investigations of members of the LGBTT community so that these murders do not go unpunished, as they have in the past.

Ms. Suarez was a witness to the murder of David Yanez and has served as a witness for the state during the prosecution case. Under international scrutiny, Elkyn has maintained her composure and courage to confront the police force that, instead of protecting the citizens of San Pedro Sula, have violated their promise to protect the law and have become criminals themselves. We are aware that the Honduran government has measures at its disposal to protect witnesses in criminal cases. We in the international community want to make sure that these measures are available for all inhabitants of Honduras with regard to their sexual orientation or gender identity.

We make a call to the community to support action in this case, and the need for the Honduran government to protect all of its citizens. We are aware that in the case of La China Suarez, the police offered its protection for a limited time and have withdrawn it. Given the threatening conditions the LGBTT community of San Pedro Sula lives in every day, we want to emphasize the necessity for this protection to continue until all the individuals related to this case are found and judged. Our greatest concern at the moment is the life of Ms. Suarez, and we would appreciate support and assistance in facilitating her protection. (Letter to Honorable Licenciado Ricardo Madriz, minister of the Interior,LLEGO to the Republic of Honduras, dated September 15, 2003.)

Ms. Suarez, a Honduran transgender woman, witnessed the murder of another transgender woman by two police officers. After testifying against the men, Ms. Suarez was reluctantly given witness protection. Unfortunately, Ms. Suarez, who was unemployed at the time, had to find money not only for her own food and shelter needs, but had to feed and provide lodging for her "protectors." The two police officers, although accused and charged, "miraculously" slipped out of police custody. Also, "miraculously," witnesses refused to testify for Ms. Suarez were curtailed. Finding her life in danger, she fled—with the help of Amnesty Inter-

national and LLEGO—to Guatemala. There, the paramilitary tried to kill her. Again, with assistance from Amnesty and LLEGO, she fled to the Netherlands, where she today resides. This is just one example of the dangers LGBTT people face everyday all over the world. We cannot sit idly while our brothers and sisters are being harassed, mistreated, and humiliated for simply being who they are. This is why we applaud and wholeheartedly endorse the resolution introduced today by Congressman Tom Lantos and Congressman Christopher Shays.

RECOGNIZING CARL HOWARD FOR ACHIEVING THE RANK OF EAGLE SCOUT

HON. SAM GRAVES
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Tuesday, November 25, 2003

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Carl Howard, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in the Boy Scouts of America, Troop 247, and in earning the most prestigious award of Eagle Scout.

Carl has been very active with his troop, participating in many scout activities. Over the ten years Carl has been involved with scouting, he has earned 40 merit badges, as well as the World Conservation Award, the Arrow of Light, and God and Country. He has held numerous leadership positions, serving as assistant patrol leader and den chief. Carl is also a Tom-Tom Beater in the Tribe of Mic-O-Say. For his Eagle Scout project, Carl obtained the needed supplies and coordinated a group of scouts in painting the baseball dugouts at Waterwell Park in Kansas City, Missouri. The project was completed to repair damage from a flood.

Mr. Speaker, I proudly ask you to join me in commending Carl Howard for his accomplishments with the Boy Scouts of America and for his efforts put forth in achieving the highest distinction of Eagle Scout.

FILING OF FY 2004 OMNIBUS APPROPRIATIONS ACT

HON. FRANK R. WOLF
OF VIRGINIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, November 25, 2003

Mr. WOLF. Mr. Speaker, I wish the record to reflect that I am in agreement with the Justice Department and Attorney General John Ashcroft for supporting language in the FY 2004 omnibus appropriations bill reducing the amount of time background record checks for gun sales are maintained. As the son of a police officer, I believe this change could be detrimental to public safety and ultimately result in people dying.

When the FY 2004 Commerce-Justice-State (CJS) appropriations bill was debated in full committee this summer, several amendments dealing with firearms and firearms purchases were offered and adopted. One of the amendments in the package called for the immediate destruction of gun sale background check records. I did not support this package of amendments since neither the Justice Department nor Attorney General Ashcroft, the nation’s chief law enforcement officer, would—or could—tell me if these provisions would impair the ability of law enforcement to stop criminals, or worse, terrorists. As chairman of the CJS subcommittee, I repeatedly asked for a formal position from the Justice Department about how the proposed amendments would affect law enforcement efforts but never got an answer.

As House and Senate negotiators met to decide the final version of the FY 2004 CJS bill—now folded into the omnibus spending bill—the provision calling for the "immediate" destruction of the background records was dropped. Now, at the eleventh hour of wrapping up the FY 2004 appropriations process, the Justice Department is actively supporting a "compromise" that would reduce the time background records are held from the current law standard of up to 90 days to 24 hours. This extreme change comes despite the fact that there is still no explanation or detail about what impact such a change would have on protecting mothers and fathers, daughters and sons, from criminals and terrorists.

It is irresponsible to tack such a provision into a year-end spending bill without knowing and understanding the full impacts. According to the FBI, in 2002 more than 3,500 guns were bought and then withheld because information came in after the sale was allowed to proceed which would have prohibited the sale. I repeat: 3,500 guns on the street which shouldn’t have been there. It is chilling to think what would happen if a 24-hour system were in place.

Moreover, any proposal for such a drastic change should be fully aired before the Congress and interested parties. It should be noted that the International Association of Chiefs of Police continues to stand by its September 2001 letter to the FBI stating that the 90-day records retention period should not be shortened.

Under current law, licensed dealers generally are not to transfer firearms to an individual until the search determines that the transferee will not violate federal, state or local law. Persons prohibited by federal law from receiving a firearm include convicted felons, fugitives, unlawful drug users, and aliens illegally or unlawfully in the United States. If the background check is not completed within three business days, the dealer is not prohibited from transferring the firearm. Current law regarding retention of gun purchase checks says that information on sales that have been allowed to proceed can be kept for up to 90 days in the FBI’s National Instant Criminal Background Check System (NICS) audit log, although the records are not collected.

The audit log contains information related to each background check requested by a licensed firearms dealer, including the NICS response (e.g., proceed or denied) and the history of all activity related to the transaction. According to the NICS regulations, information on allowed firearms sales is used only for purposes related to ensuring the proper operation of the system or conducting audits of the use of the system.

I submit for the RECORD a Washington Post article from November 18 with the headline, "FBI Curbed in Tracking Gun Buyers," which reports on a "new FBI background-check system that notifies counterterrorism agents when
suspects on its terrorist watch list attempt to buy guns, but regulations prohibit those officials from obtaining details if the transaction occurs.” The article states that 13 alleged terrorists have been allowed to buy guns.

A follow-up Post article from November 22 reports that the Justice Department has ordered the FBI to increase scrutiny of suspected terrorists who attempt to buy guns, but gives the FBI only three days to run additional checks on prospective gun buyers listed on the Violent Gang and Terrorist Organizations File.

We are fighting a war on terrorism—and as chairman of the CJS subcommittee I have offered unwavering support to the Justice Department and the nation’s federal law enforcement agencies in their efforts to prevent guns from falling into the wrong hands. Yet terrorist manuals recovered by law enforcement contain guidance on how easy it is to buy guns in the United States. Even the Justice Department’s website contains the al Qaeda training manual which includes the following: “The confrontation that we are calling for with the apostate regimes does not know Socratic debates . . ., Platonic ideals . . ., nor Aristotelian diplomacy. But it knows the dialogue of bullets, the ideals of assassination, bombing, and destruction, and the diplomacy of the cannon and machine-guns.”

It continues with “Second Issue: The importance of establishing a tactical plan for the assassination operation that consists of the operational factors themselves (members, weapons, hiding places . . .) and factors of the operation (time, place). In this example, we shall explain in detail the part related to the security plan. The part related to operational tactics will be explained in the lesson on special operational tactics.”

That’s how the terrorists train and that scenario is one about which I have long been concerned. In September 1998 I saw the need to address the growing threat of terrorism in the world and authored legislation which created the National Commission on Terrorism chaired by Ambassador Paul Bremer. That was less than a month after two U.S. embassies in East Africa were bombed by terrorists linked to Osama bin Laden. I had raised with my colleagues then the concern that Sudan was harboring bin Laden. Quite frankly I have been frustrated in my attempts to get Congress and administrations past and present to be proactive in combating the terrorist threat.

Now comes this firearms regulation change which I believe could play into terrorists’ hands. Obtaining weapons is a critical part of their plan. It is abundantly clear that we need to change some of our laws, but not in ways that make it easier for terrorists to buy weapons in the United States.

We all remember the terror of 9/11. Our nation and the world changed forever on that day when 3,000 died, including 30 from my congressional district. We all remember the terror that gripped the Washington area a year later when snipers killed 14 and wounded six others, including a young child. Shouldn’t we be doing everything we can to assist law enforcement officers in rooting out terrorists, rather than tying their hands?
TRIBUTE TO GEORGIA LORETTA JONES ELAM

HON. JAMES E. CLYBURN
OF SOUTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, November 25, 2003

Mr. CLYBURN. Mr. Speaker, I rise today to pay tribute to Georgia Loretta Jones Elam, a resident of the Sixth Congressional District, and a longtime friend of mine and my family. Born and raised in Hartsville, South Carolina, Mrs. Elam finished her elementary education in record time and entered my alma mater, South Carolina State College, now University, at the tender age of 14. After her dreams of becoming a Chemist were thwarted because of gender stereotypes of the 1920’s, she entered the field of Home Economics. Upon graduating with her Bachelors degree, Mrs. Elam taught at South Carolina State College where most of her students were older than she. She went on to Columbia University in 1949 where she earned her Master of Science degree in record time and entered my alma mater, South Carolina, where Mrs. Elam herself now resides.

Mr. Speaker, I ask that you and my colleagues join me in honoring Georgia Loretta Jones Elam for her selfless dedication to citizens, particularly young people, across the State of South Carolina. She is a pillar of the community, and I wish her good luck and Godspeed.

PERSONAL EXPLANATION

HON. LORETTA SANCHEZ
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, November 25, 2003

Ms. SANCHEZ. Mr. Speaker, on November 22, 2003, I was unavoidably detained and unable to cast my vote.

I request that the CONGRESSIONAL RECORD reflect that had I been present and voting, I would have voted as follows:

(1) Rollcall No. 670: “no” (on Table Motion to Reconsider H.R. 1).

VEGETABLES BENEFITS ACT OF 2003

SPEECH OF
HON. LANE EVANS
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Thursday, November 20, 2003

Mr. EVANS. Mr. Speaker, I rise in strong support of H.R. 2297, as amended. This bill is a compromise agreement that was carefully negotiated between the House and Senate, and contains a number of important measures to assist this Nation’s veterans and their families. I want to take a moment to recognize and thank Chairman CHRISTIS SMITH, Benefits Subcommittee Chairman HENRY BROWN and Beneficials Ranking Democratic Member MICHAEL MCHAUD for working with me to successfully craft this bipartisan, bicameral benefits package. I appreciate your leadership, professionalism and all of your hard work in guiding this legislation through the process and into law.

I also would like to thank the staff members of the House Committee on Veterans Affairs for their work in preparing this legislative package and for their work throughout the year—Patrick Ryan, Daryll Kehrer, Paige McManus, Devon Seibert and Kingston Smith of the majority staff and Jim Holley, Mary Ellen McCarthy, Geoffrey Collier and Leah Booth of my Democratic staff. Likewise, I would like to thank Chairman ARLENE SPECKER and Ranking Member BOB GRAHAM of the Senate Veterans Affairs Committee, as well as the Senate staff who worked diligently on this conference agreement—Ted Pusey, Jon Towers and Chris McNamee.

Mr. Speaker, last week on November 11th we celebrated and honored the sacrifices and heroic deeds of our Nation’s veterans with speeches and parades. Indeed, it is appropriate, necessary even, that we recognize and honor the many sacrifices of the brave men and women in uniform who have so gallantly served our nation. Mr. Speaker, speeches and parades are nice but not enough. Today, however, we match our complimentary words with actual deeds. We celebrate and honor those who have served the country and protected our freedoms by passing this legislative package, which truly honors their service and enhances them and their families with important benefits that they most certainly have earned.

Mr. Speaker, I am very proud that this legislative package contains a number of measures that I introduced or of which I am an original cosponsor. Additionally, I commend all the Members of the House Veterans Affairs Committee on both sides of the aisle who have worked diligently this session to bring important measures forward. This compromise agreement contains many bills introduced by Committee members. Indeed, crafting and passing this benefits package has truly been a bipartisan effort.

I am pleased to have the privilege to provide the Department of Veterans Affairs (VA) benefits to children with spina bifida whose veteran parent was exposed to Agent Orange in Korea is drawn from my bill H.R. 533. During a hearing the Committee received moving testimony from Michael Ruzaleski, a young man severely disabled by spina bifida. Michael’s father John served in the region of Korea’s Demilitarized Zone (DMZ) during the time that the Department of Defense acknowledges Agent Orange was used there. Congress has authorized benefits for children of veterans affected by such exposure in Vietnam. The children of veterans who served in the Korean DMZ are no less deserving. When military service results in harm to the children of our Nation’s veterans, our country should assume the responsibility to compensate them for their disabilities.

A provision to remove unnecessary and arbitrary time barriers for certain former prisoners of war to qualify for service-connection of their disabilities on a presumptive basis is drawn from H.R. 1938, which I introduced. I believe that we should relieve pre-suppositional conditions for former prisoners of war and will continue to support legislation to accomplish that end. Nonetheless, we need to take action now to assure those prisoners of war who were interred in Iraq for less than 30 days, as well as those from earlier conflicts, that no durational requirement will be imposed for certain psychiatric and physical disabilities which may follow a brief period of internment.

The package includes a provision to permanently authorize the VIP program for members of the National Guard and Reserve. It also lowers their home loan fees. This provision is drawn from H.R. 1257, which I introduced with the Ranking Member of the Subcommittee on Benefits, Mr. Michaud. Now that we have an exemption for members of the National Guard forces are an integral component of our national defense policy. Making this program permanent for members of the National Guard and Reserve is the right thing to do, it’s also the right thing to do financially—as Reservists have no exemptionary record of repayment on VA home loans.

I am also pleased that this package contains provisions that provide long overdue
benefits for our Gold Star Wives. Specifically, it provides that remarriage of the surviving spouse of a veteran after attaining age 57 would not result in termination of dependency and indemnity compensation (DIC), home loan, or education benefits eligibility.

This legislative package would also repeal current law restricting a surviving spouse or dependent children to receiving no more than two years of accrued benefits if the veteran dies while a claim for VA periodic monetary benefits is being processed. I have worked to end this unfair restriction for a number of years. This provision is drawn from a bill I introduced a few years ago. I am pleased to finally have succeeded in repealing this two-year cut off.

The provisions reinstating VA’s vendee loan program that previously passed the House are included in H.R. 2297. I would note that the language has been changed slightly. The change is intended to assure that VA will be required to operate a vendee loan program through September 30, 2013. I believe that these changes are necessary after reviewing an opinion by the General Counsel concerning VA’s authority to terminate the program.

H.R. 2297, as amended also contains a number of important measures that aim to expand self-employment training opportunities and provide career and employment counseling to servicemembers transitioning from the military to civilian life. The bill also provides a substantial increase in monthly payments under the survivors’ and dependents’ educational assistance program. This action is consistent with my goals to improve the necessary levels. As we all know, we have much to do in the area of veterans’ education programs to keep up with the ever-increasing costs of higher education.

Another important measure that I am pleased the negotiated bill contains is the provision to authorize certain contracting opportunities for service-disabled veteran owned and controlled small businesses. A fair opportunity is all that veterans request. This provision should lead to improved results with respect to federal contracting with disabled veterans. However, improved results will also require increased efforts by the Administration to reach out to disabled-veteran owned and controlled small businesses. Indeed, federal agencies have a 3 percent contracting goal for service-disabled veteran small businesses, and currently not one federal agency comes close to meeting this goal. Hopefully, this provision will allow all federal agencies to improve their record in this area, as well as provide more opportunities for veteran entrepreneurs and a much-needed sparsely to the small business sector of this economy.

I am also pleased that in this package we have included provisions to permit state cemeteries to receive VA burial plot allowances for burial of all eligible veterans, including peace time veterans, allowing a surviving spouse to retain eligibility for burial in a national cemetery based on a prior marriage to a deceased veteran; and make permanent the State Cemetery Grants Program. We must do all we can to provide a dignified final resting place for our veterans and be attentive and caring to the surviving family members.

Mr. Speaker, this bill also authorizes the receipt of full compensation, dependency and indemnity compensation (DIC) and burial benefits to eligible members of the New Philippine Scouts, and other individuals who served in the organized military forces of the Commonwealth of the Philippines, including organized guerilla units, if the individual to whom the benefit is payable resides in the United States and is either a citizen or an alien lawfully admitted for permanent residence. The bill also extends the authority of the Secretary of Veterans Affairs to maintain a regional office in Manila, Philippines through December 31, 2009. I want to thank Representatives G. MILLER and JUANITA MILLER-MCDONALD for their tireless work on this important issue.

On another important matter contained in this legislative package, I would like to express my thanks and applaud the actions of my friend and colleague Representative TED STRICKLAND of Ohio. Representative STRICKLAND, along with Senator BILL NELSON of Florida, introduced legislation to clarify the prohibition on assignment of veterans’ benefits. This provision would protect veterans, their survivors, and dependents from unscrupulous business entities that attempt to prey on unsuspecting or elderly beneficiaries. Mr. STRICKLAND’s language would make clear that certain arrangements, including opening joint bank accounts that remove control and choice from the veteran over the receipt of veterans’ benefits, are illegal.

I am also pleased that the bill removes a provision that the VA has indicated could limit benefits to veterans. This language was contained in section 5103 of title 38, United States Code and was intended to provide clarity to certain information or written requests for evidence that is made by the Secretary of Veterans Affairs. Unfortunately, the language used in that section “no benefits may be paid” could be interpreted to bar consideration of evidence that a claimant submitted in connection with an appeal. That language has now been removed, so that no claimant should lose benefits as a result of its application. The bill also permits the VA to decide claims in less than one year. If the claim is denied and evidence supporting the claim is submitted within the year, the Secretary is required to consider the evidence.

Mr. Speaker, H.R. 2297, as amended, contains many provisions that will make a difference in the lives of this nation’s veterans and their families. It is a good bill, and I urge all Members to show their support for the men and women who have worn the uniform in defense of our country by voting to pass this legislation.

CONFERENCE REPORT ON H.R. 2622, FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

SPEECH OF HON. MICHAEL G. OXLEY
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Friday, November 21, 2003

Mr. OXLEY. Mr. Speaker, I am inserting for the RECORD an exchange of correspondence between Wisconsin (Mr. SENSENBRENNER), the Chairman of the Committee on the Judiciary, regarding his committee’s jurisdictional interest in the Senate amendment to H.R. 2622, the Fair and Accurate Credit Transactions Act of 2003.
You are correct that our staffs have worked closely to ensure that those issues were resolved to our mutual satisfaction and I greatly appreciate your cooperation in this effort. I will include a copy of your letter and this response in the Congressional Record during House consideration of the conference report.

Again, thank you for your cooperation. Yours truly,

MICHAEL G. OXLEY
Chairman.

TRIBUTE TO MR. J. JOHN MUTKA
HON. PETER J. VISCLOSKY
OF INDIANA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, November 25, 2003

Mr. VISCLOSKY. Mr. Speaker, it is with great pleasure that I congratulate one of the most dedicated and hardworking citizens of the First Congressional District of Indiana, Mr. John Mutka. John has spent the past 40 years of his life working as a sports writer and columnist for the Post Tribune newspaper in Northwest Indiana. He will retire on Monday, November 24, 2003. His career in journalism has allowed him the opportunity to reach out to numerous people, and therefore has made a positive impact within his community.

John is an institution in Northwest Indiana, a household name to the thousands of residents who have read his work for the past 40 years. He is also known statewide and nationally for his excellence in sports journalism. This year, John was named Sportswriter of the Year by the National Sportswriters and Sportscasters Association. Also this year, he was honored by being inducted into the Indiana Sportswriters and Sportscasters Hall of Fame, and subsequently earned a Lifetime Achievement Award at the Lake County Sportsmanship banquet.

John has given his time and efforts generously throughout his career. Along with his many accomplishments, John has also been recognized by the Indiana High School Athletic Association, the Indiana Football Coaches Association, and the Indiana Basketball Coaches Association for his dedication and hard work.

Mr. Speaker, John exemplifies the values of all great Hoosiers through his dedication, his work ethic, his loyalty and humility. His continued commitment and devotion to all of Northwest Indiana is worthy of the highest commendation. I respectfully ask that you and my other distinguished colleagues join me in congratulating him on his well-deserved retirement, and continued success in all his future endeavors.

EXPRESSING CONDOLENCES TO THE HSBC FAMILY
HON. VITO FOSSELLA
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Tuesday, November 25, 2003

Mr. FOSSELLA. Mr. Speaker, I rise today to express my deepest condolences and sympathy to the victims of the tragic terrorist attacks in Istanbul, Turkey yesterday. Following the attacks last weekend on two synagogues in Istanbul, yesterday’s attacks are further evidence of the war on terrorism our country and our allies are facing. I am pleased the House passed H. Res. 453 today expressing condolences to the families of the individuals murdered and to those injured in the terrorist attacks. We must continue to stand in solidarity with Turkey in the fight against terrorism.

In addition, on behalf of my New York Delegation and all my colleagues, I would like to express my profound regret to the more than 40 employees at HSBC who were injured. As of today, many of those employees are still in critical condition, while it has cost others their own lives.

Often referred to as the “World’s Local Bank”, HSBC employs people in over 80 countries, including 50,000 in the United States, with over 400 offices in my home state of New York and in Staten Island. While the headquarters was attacked as a symbol of global commerce, I take my hat off to the HSBC employees in Turkey for re-opening their office today and for their leadership in committing to stay in Turkey and not backing away from the tragic reality of this attack. I extend my deepest sympathies to the entire HSBC family on the tragic loss of their colleagues.

PEARL COLEMAN KIDD
HON. EDDIE BERNICE JOHNSON
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Tuesday, November 25, 2003

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I appreciate this opportunity to tell my colleagues about a proud American and a beloved Dallas resident: Pearl Coleman Kidd. Mrs. Kidd was well known to generations of Dallas Metroplex residents who grew up coming to know and respect her for her remarkable contributions to our community.

Pearl Coleman Kidd was born in 1922 in Pulaski, Tennessee. After marrying Foster Kidd, the couple moved to Dallas in 1953. Two of our nation’s core values, family and community, were also central commitments for Pearl Coleman Kidd. She loved Foster Kidd, her husband of 50 years. They rejoiced in their daughters Cheryl Kidd and Dr. Jocelyn Kidd of Dallas. Mrs. Kidd was also an active community volunteer. She was a devoted member of the New Hope Baptist Church.

It was through her endeavors in our community that Mrs. Kidd was able to volunteer in many Dallas Metroplex organizations. She received numerous awards for her contributions.

Mr. Speaker, Mrs. Kidd was an American treasure. Throughout her long life she gave tirelessly of herself for the advancement of her community and of all others in need. Mrs. Kidd passed on October 16, 2003. Though our community is diminished by her loss, I ask that my colleagues join me, her family, and friends, in celebrating the remarkable life of this woman who truly symbolized our community and America at its best.

IN MEMORY OF NARAYAN D. KESHAVAN
HON. GARY L. ACKERMAN
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Tuesday, November 25, 2003

Mr. ACKERMAN. Mr. Speaker, I rise today to pay tribute to the memory of Narayan Keshavan who passed away suddenly and unexpectedly last week.

Keshavan worked for me from January of 1998 until June of 2001. During much of that time I was the Co-chair of the Congressional Caucus on India and Indian-Americans and Keshavan helped me stay abreast of the issues facing India and Indian-Americans and stay in contact with the vibrant community here.

Keshavan had a love for two countries, his and for his adopted home, the United States and his ancestral home, India. So few people modestly and selflessly served to help U.S.-India relations through such dramatic periods of growth and change. Keshavan was an early and vocal advocate for a different kind of relationship between the oldest and largest democracies in the world. He saw the possibility—in fact the necessity—of India and the United States working closely together well before it was evident to leaders in either country. In a clear example of bringing the two cultures closer together, Kesh was one of the Indian-Americans who made the October 23, 2003 First Deepavali Event at the White House happen.

Born May 31, 1950 in Hyderabad, India, Keshavan was a graduate of Andhra University (Visakahapatnam, India) where he received a BA in Pharmacy and Osmania University (Hyderabad, India) with a BA and MA in journalism. Over his impressive career as a journalist, Kesh was respected for his vision and commitment to politics and Indo-U.S. Relations.

In addition to working for the Congressional Caucus on India and Indian-Americans, he was the Founder and Executive Director of the Indian-American Republican Council, and President of the Indian-American Forum for Political Education (NYC and LI chapter). He also was a founder of the Indo-U.S. Parliamentary Forum. He served as a mentor to countless individuals of all ages and faiths, deeply touching the lives of many here and in India, even those he knew only a short time. People loved Kesh for his honesty, intelligence, and humor.

Kesh, passed away on Thursday, November 13 after he appeared on CNN in a interview with Lou Dobbs where he defended India in the growing political issue of outsourcing. Keshavan is survived by his father and sister. I ask all my colleagues to join me in paying tribute to a journalist, public servant, and tireless community activist, Narayan Keshavan.

THE IMPACT OF LEFT-WING SPECIAL INTEREST GROUPS ON THE JUDICIAL NOMINATION PROCESS
HON. MARK E. SOUDER
OF INDIANA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, November 25, 2003

Mr. SOUDER. Mr. Speaker, over the last three days I have commented on Democratic
Congressional staff memos that show how left-wing special interest groups are trying to hijack the appointment of federal judges. Today, I am introducing four more such memos. Besides confirming the fact that these groups are demanding, and apparently receiving, the power to block President Bush’s nominees, they expose the double standard these groups apply to women and minority nominees who don’t share their extreme political views. One memo shows that these groups identified Miguel Estrada, a nominee who received the American Bar Association’s highest rating, as “especially dangerous” because, among other things, “he is Latino.” Another memo reports that liberal lobbyists and their supporters in Congress proposed “a strategy for dealing with conservative Latino Circuit Court nominees.” That memo also reveals that these lobbyists were using their contacts in the “Latino media” to undermine Mr. Estrada and others like him. Nominees Carol Kuhl and Priscilla Owen were also singled out for opposition.

It is both ironic and tragic that these groups, which so loudly proclaim their support for the “civil rights” of women and minorities, would deny a judicial appointment to any minority or woman candidate who exercises his or her civil right to hold different opinions. It is time for these groups to stop blocking nominees who don’t conform to their ideological stereotypes.

MEMORANDUM
To: [Member of Congress]
Date: December 6, 2003
Re: Meeting with Civil Rights Leaders, Tuesday, November 6, at 5 p.m. [Congressional Office Building]

Following up on a meeting in mid-October, you are scheduled to meet with leaders of several civil rights organizations to discuss their serious concerns with the judicial nomination process. The leaders will likely include: Ralph Ncas (People For the American Way), Kate Michelman (NARAL), Nan Aron (Alliance for Justice), Wade Henderson (Leadership Conference on Civil Rights), Leslie Proll (NAACP Legal Defense & Education Fund), Nancy Zirkin (American Association of University Women), Marcia Greenberger (National Women’s Law Center), and Judy Lichtman (National Partnership). The meeting will take place in [Congressional Office Building] with [2 Members of Congress] also present.

Today’s meeting is likely to touch on a number of relevant issues. The primary focus will be on identifying the most controversial and/or vulnerable judicial nominees. The groups would like to postpone action on these nominees until next year, when (presumably) the public will be more tolerant of partisan dissent. They would also like to develop a strategy for moving these nominees. Among their priorities: (1) they want to ensure that they receive adequate notice before controversial nominees are scheduled for hearings; (2) they think [Member of Congress] should use controversial nominees as bargaining chips, just as the Republicans did; and (3) they are opposed to holding hearings during recess. Although [Member of Congress] resisted these moves so far, they are reasonable requests in our estimation.

There will likely be a discussion about how to respond effectively to recent Republican charges that the pace of judicial nominations is too slow. The Republicans have continued to hold-up the appropriations bills. As of Friday, it was their intention to launch a new campaign by charging the Democrats with hindering the war effort by not approving judges who are needed to approve wire taps and search warrants. This claim is deeply flawed, because the Committee has been especially quick to move along district court judges and the White House has not nominated people to fill more than half of the current vacancies.

Under separate cover, I will provide a table that evaluates the current Court of Appeals nominees who are pending, as well as a few noteworthy district court nominees.

MEMORANDUM
To: [Member of Congress]
Date: November 7, 2001
Re: Meeting with Civil Rights Leaders Yesterday to Discuss Judges

Due to the floor activity last night, you missed a meeting with [Member of Congress] mid-October, when the groups expressed serious concern about the quick hearing for Charles Pickering and the pace of judicial nominations generally.

Yesterday’s meeting accomplished two objectives. First, the groups advocated for some procedural ground rules. These include: (1) only one hearing per month (2) no more than three judges per hearing; (3) giving Committee Democrats and the public more advance notice of scheduled nominees; (4) no recess hearings; and (5) a commitment that nominees voted down in Committee will not get a floor vote. Earlier yesterday, [Member of Congress]’s staff committed to the third item in principle.

Second, yesterday’s meeting focused on identifying the most controversial and/or vulnerable judicial nominees, and a strategy for targeting them. The groups singled out three—Jeffrey Sutton (6th Circuit); Priscilla Owen (5th Circuit); and Caroline Kuhl (9th Circuit)—as potential nominees for a contentious hearing early next year, with a eye to voting him or her down in Committee. They also identified Miguel Estrada (D.C. Circuit) as especially dangerous, because he has a minimal paper trail, he is Latino and the White House seems to be grooming him for a Supreme Court appointment.

Attached is a table that I compiled, evaluating the 19 Court of Appeals nominees and a few of the controversial district court nominees.

MEMORANDUM
To: [Member of Congress]
Date: June 3, 2002
Re: Meeting with Civil Rights Leaders to Discuss Judicial Nominations Strategy

[Member of Congress] has invited invited you, and [Member of Congress] to attend a meeting with civil rights leaders to discuss their priorities as the Judiciary Committee considers judicial nominees in the coming months. For example, they believe that the Committee’s current pace for nominations hearings (every two weeks) is too quick; and they need more time to consider the record of Judge Dennis Shedd, a controversial 4th Circuit nominee whom [Member of Congress] is backing.

This meeting is intended to follow-up your meetings in [Member of Congress]’s office last fall. The guest list will be the same: Kate Michelman (NARAL), Nan Aron (Alliance for Justice), Wade Henderson (Leadership Conference on Civil Rights), Ralph Neas (People For the American Way), Nancy Zirkin (American Association of University Women), Marcia Greenberger (National Women’s Law Center), and Judy Lichtman (National Partnership). The meeting has been tentatively scheduled for late Wednesday morning.

MEMORANDUM
To: [Member of Congress]
Subject: Judges and the Latino Community
Date: February 28, 2002

Ralph Neas called to let us know that he had lunch with Andy Stern of SEU. Andy wants to be helpful as we move forward on judges, and he has great contacts with Latino media outlets—Univision and others. Ralph told Andy that you are anxious to develop a strategy for the Supreme Court and a strategy for dealing with conservative Latino Circuit Court nominees that are hostile to constitutional and civil rights. Ralph and Andy discussed the possibility of a related meeting to discuss media strategy, and Andy believes there are several Latino media leaders who share our concerns and would like to meet with you. Ralph proposes that you meet with key Latino media leaders, Raúl, Antonia, Wade, and Ralph, and I think this is a very good idea.

Would you like to have such a meeting to discuss media strategy and the Latino community? If so, Ralph and Andy will take the lead in getting everyone to DC.

Decision:
Yes, I want to meet with them
No, I don’t want to meet.
Daily Digest

HIGHLIGHTS

Senate agreed to the Conference Report to accompany H.R. 1, Medicare Prescription Drug and Modernization Act.

Senate agreed to H. Con. Res. 339, Adjournment Resolution.

Senate

Chamber Action:

Routine Proceedings, pages S15881–S16080

Measures Introduced: Twenty nine bills and six resolutions were introduced, as follows: S. 1951–1979, S. J. Res. 26, S. Res. 275–278, and S. Con. Res. 86.

Measures Reported:


S. 1267, to amend the District of Columbia Home Rule Act to provide the District of Columbia with autonomy over its budgets, with an amendment. (S. Rept. No. 108–212)

S. 420, to provide for the acknowledgement of the Lumbee Tribe of North Carolina, with an amendment in the nature of a substitute. (S. Rept. No. 108–213)


S. 1978, to authorize funds for highway safety programs, motor carrier safety programs, hazardous materials transportation safety program, boating safety programs. (S. Rept. No. 108–215)

S. 1172, to establish grants to provide health services for improved nutrition, increased physical activity, obesity prevention, with an amendment in the nature of a substitute.

S. 1545, to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents, with an amendment in the nature of a substitute.

S. 1612, to establish a technology, equipment, and information transfer within the Department of Homeland Security, with an amendment in the nature of a substitute.

Measures Passed:

Adjournment Resolution: Senate agreed to H. Con. Res. 339, providing for the sine die adjournment of the first session of the One Hundred Eighth Congress, after agreeing to the following amendment proposed thereto:

Craig (for Frist) Amendment No. 2217, providing for the sine die adjournment of the first session of the One Hundred Eighth Congress.

One Hundred Eighth Congress 2nd Session Convening Date: Senate agreed to H. J. Res. 80, appointing the day for the convening of the second session of the One Hundred Eighth Congress, clearing the measure for the President.

Condemning Turkey Terrorist Attacks: Committee on Foreign Relations was discharged from further consideration of S. Res. 273, condemning the terrorist attacks in Istanbul, Turkey, on November 15 and 20, 2003, expressing condolences to the families of the individuals murdered in the attacks, expressing sympathies to the individuals injured in the attacks, and the resolution was then agreed to.

Federal Law Enforcement Pay and Benefits Parity Act: Senate passed S. 1683, to provide for a
report on the parity of pay and benefits among Federal law enforcement officers and to establish an exchange program between Federal law enforcement employees and State and local law enforcement employees.

**Federal Railroad Safety Improvement Act:** Senate passed S. 1402, to authorize appropriations for activities under the Federal railroad safety laws for fiscal years 2004 through 2008, after agreeing to the committee amendments.

**Awarding Congressional Gold Medals:** Senate passed H.R. 3287, to award congressional gold medals posthumously on behalf of Reverend Joseph A. DeLaine, Harry and Eliza Briggs, and Levi Pearson in recognition of their contributions to the Nation as pioneers in the effort to desegregate public schools that led directly to the landmark desegregation case of Brown et al. v. the Board of Education of Topeka et al., clearing the measure for the President.

**State Criminal Alien Assistance Program Reauthorization Act:** Committee on the Judiciary was discharged from further consideration of S. 460, to amend the Immigration and Nationality Act to authorize appropriations for fiscal years 2004 through 2010 to carry out the State Criminal Alien Assistance Program, and the bill was then passed.

**Torture Victims Relief Reauthorization Act:** Committee on Foreign Relations was discharged from further consideration of S. 854, to authorize a comprehensive program of support for victims of torture, and the bill was then passed.

**Torture Victims Relief Reauthorization Act:** Senate passed H.R. 1813, to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign centers and programs for the treatment of victims of torture, clearing the measure for the President.

**Directing Senate Commission on Art:** Committee on Rules and Administration was discharged from further consideration of S. Res. 177, to direct the Senate Commission on Art to select an appropriate scene commemorating the Great Compromise of our forefathers establishing a bicameral Congress with equal representation in the United States Senate, to be placed in the Senate wing of the Capitol, and to authorize the Committees on Rules and Administration to obtain technical advice and assistance in carrying out its duties, and the resolution was then agreed to, after agreeing to the following amendments proposed thereto:

- McConnell (for Lott) Amendment No. 2221, to permit the painting to be placed in the Senate wing at a location determined by the Committee on Rules and Administration.
- McConnell (for Lott) Amendment No. 2222, to amend the preamble.
- McConnell (for Lott) Amendment No. 2223, to amend the title.

**Printing Authority/Prayers of Rev. Lloyd John Ogilvie:** Committee on Rules and Administration was discharged from further consideration of S. Res. 157, to authorize the printing of the prayers of Reverend Lloyd John Ogilvie, and the resolution was then agreed to.

**Pharmacy Education Aid Act:** Senate passed S. 648, to amend the Public Health Service Act with respect to health professions programs regarding the practice of pharmacy, after agreeing to the committee amendment in the nature of a substitute.

**Medical Device User Fee and Modernization Act Technical Corrections Amendments:** Senate passed S. 1881, to amend the Federal Food, Drug, and Cosmetic Act to make technical corrections relating to the amendments by the Medical Device User Fee and Modernization Act of 2002, after agreeing to the committee amendment in the nature of a substitute.

**Vietnam Veterans of America Anniversary:** Committee on the Judiciary was discharged from further consideration of S. Res. 120, commemorating the 25th anniversary of Vietnam Veterans of America, and the resolution was then agreed to.

**Private Relief:** Committee on the Judiciary was discharged from further consideration of S. 99, for the relief of Jaya Gulab Tolani and Hitesh Gulab Tolani, and the bill was then passed.

**Private Relief:** Committee on the Judiciary was discharged from further consideration of S. 1130, for the relief of Esidronio Arreola-Saucedo, Maria Elena Cobian Arreola, Nayely Bibiana Arreola, and Cindy Jael Arreola, and the bill was then passed.

**Private Relief:** Committee on the Judiciary was discharged from further consideration of S. 103, for
the relief of Lindita Idrizi Heath and the bill was then passed.

**Private Relief:** Committee on the Judiciary was discharged from further consideration of S. 848, for the relief of Daniel King Cairo, and the bill was then passed.

**Private Relief:** Committee on the Judiciary was discharged from further consideration of S. 541, for the relief of Ilko Vasilev Ivanov, Anelia Marinova Peneva, Marina Ilkova Ivanova, and Julie Ilkova Ivanova, and the bill was then passed.

**Thanking Senate and House Legislative Counsel:** Senate agreed to S. Res. 277, tendering the sincere thanks of the Senate to the staffs of the Offices of the Legislative Counsel of the Senate and the House of Representatives for their dedication and service to the legislative process.

**Undetectable Firearms Ban:** Senate passed H.R. 3348, to reauthorize the ban on undetectable firearms, clearing the measure for the President.

**Bankruptcy Extension:** Committee on the Judiciary was discharged from further consideration of S. 1920, to extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted, and the bill was then passed.

**U.S. Code Improvement:** Committee on the Judiciary was discharged from further consideration of H.R. 1437, to improve the United States Code, and the bill was then passed, clearing the measure for the President.

**Organ Donation and Recovery Improvement Act:** Senate passed S. 573, to amend the Public Health Service Act to promote organ donation, after agreeing to the committee amendment in the nature of a substitute.

**Medicare Prescription Drug and Modernization Act—Conference Report:** By 54 yeas to 44 nays (Vote No. 459), Senate agreed to the conference report to accompany H.R. 1, to amend title XVIII of the Social Security Act to provide for a voluntary program for prescription drug coverage under the Medicare Program, to modernize the Medicare Program, to amend the Internal Revenue Code of 1986 to allow a deduction to individuals for amounts contributed to health savings security accounts and health savings accounts, to provide for the disposition of unused health benefits in cafeteria plans and flexible spending arrangements, clearing the measure for the President.

**CAN-SPAM Act:** Senate concurred in the amendment of the House to S. 877, to regulate interstate commerce by imposing limitations and penalties on the transmission of unsolicited commercial electronic mail via the Internet, with the following amendment:

Burns Amendment No. 2219, in the nature of a substitute.

**Hometown Heroes Survivors Benefits Act:** Senate concurred in the amendment of the House to S. 459, to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits, clearing the measure for the President.

**Signing Authority—Agreement:** A unanimous-consent agreement was reached providing that during the Senate’s adjournment, the Majority Leader be authorized to sign enrolled bills and joint resolutions.

**Nominations Confirmed:** Senate confirmed the following nominations:

- Michael J. Garcia, of New York, to be an Assistant Secretary of Homeland Security. (New Position)
- James M. Loy, of Virginia, to be Deputy Secretary of Homeland Security.
- 35 Air Force nominations in the rank of general.
- 6 Army nominations in the rank of general.
- 19 Navy nominations in the rank of admiral.
- Routine lists in the Air Force, Army, Coast Guard, Marine Corps, Navy, Public Health Service.

**Nominations Received:** Senate received the following nominations:

- Linda Morrison Combs, of North Carolina, to be an Assistant Secretary of Transportation.
- Jack Edwin McGregor, of Connecticut, to be a Member of the Advisory Board of the Saint Lawrence Seaway Development Corporation.
- Scott Kevin Walker, of Wisconsin, to be a Member of the Advisory Board of the Saint Lawrence Seaway Development Corporation.
- Mark J. Warshawsky, of Maryland, to be an Assistant Secretary of the Treasury.
- Roger W. Wallace, of Texas, to be a Member of the Board of Directors of the Inter-American Foundation for a term expiring October 6, 2008.
- Marcia G. Cooke, of Florida, to be United States District Judge for the Southern District of Florida.
Curtis V. Gomez, of Virgin Islands, to be Judge for the District Court of the Virgin Islands for a term of ten years.

Juan R. Sanchez, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

2 Army nominations in the rank of general.

Routine lists in the Army, Navy.

Record Votes: One record vote was taken today. (Total—459)

Adjournment: Senate met at 8:15 a.m. and, in accordance with the provisions of H. Con. Res. 339, adjourned at 6:15 p.m. until 10 a.m. on Tuesday, December 9, 2003. (For Senate’s Program, see the remarks of the Acting Majority Leader in today’s Record on page S16079).

Committee Meetings

(Committees not listed did not meet)

No committee meetings were held.
House of Representatives

Chamber Action

Measures Introduced: 1 public bill, H.R. 3650, was introduced.

Additional Cosponsors:

Reports Filed: Reports were filed today as follows: Conference report on H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies for the fiscal year ending September 30, 2004 (H. Rept. 108-401).

Speaker Pro Tempore: Read a letter from the Speaker wherein he appointed Representative Bartlett of Maryland to act as Speaker Pro Tempore for today.

Chaplain: The prayer was offered today by Rev. Dr. Barry C. Black, Chaplain, U.S. Senate.

Speaker Pro Tempore to sign enrolled bills and joint resolutions: Read a letter from the Speaker wherein he appointed Representative Bartlett of Maryland to sign enrolled bills and joint resolution today.

Speaker Pro Tempore to sign enrolled bills and joint resolutions: Read a letter from the Speaker wherein he appointed Representative Tom Davis or, if not available to perform this duty, the Honorable Thornberry to act as Speaker pro tempore to sign enrolled bills and joint resolutions until the day the House convenes for the second session of the 108th Congress.

Recess: The House recessed at 12:06 p.m. and reconvened at 1:15 p.m.

Recess: The House recessed at 1:24 p.m. and reconvened at 3:21 p.m.

Adjournment resolution: The House agreed to the Senate amendment to H. Con. Res. 339, providing for the sine die adjournment of the One Hundred Eighth Congress, First Session.

Committee Meetings

No committee meetings were held.

Joint Meetings

OMNIBUS APPROPRIATIONS

Conferes agreed to file a conference report on H.R. 2673, making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District, for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices, for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies, and for the Departments of Labor, Health and Human Services, and Education, and related agencies, making appropriations for the Departments of Transportation and Treasury, and independent agencies, and making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 2004.

COMMITTEE MEETINGS FOR WEDNESDAY, NOVEMBER 26, 2003

(Committee meetings are open unless otherwise indicated)

Senate

No meetings/hearings scheduled.

House

No committee meetings are scheduled.
Congressional Record

Next Meeting of the SENATE
10 a.m., Tuesday, December 9

Senate Chamber

Program for Tuesday: Senate will be in a period of morning business. Also, Senate may consider the conference report to accompany H.R. 2673, Omnibus Appropriations Act; and any other cleared legislative and executive business.

Next Meeting of the HOUSE OF REPRESENTATIVES
9:30 a.m., Monday, December 8

House Chamber

Program for Monday: To be announced.

Extensions of Remarks, as inserted in this issue

HOUSE
Ackerman, Gary L., N.Y., E2464
Bordallo, Madeleine Z., Guam, E2456, E2459
Clyburn, James E., S.C., E2462
Evans, Lane, Ill., E2462
Fossella, Vito, N.Y., E2464
Graves, Sam, Mo., E2455, E2456, E2461
Johnson, Eddie Bernice, Tex., E2464
Kingston, Jack, Ga., E2456, E2458
Lantos, Tom, Calif., E2455, E2457, E2459, E2461
Moore, Dennis, Kansas, E2455, E2458
Otter, C.L. "Butch", Idaho, E2456, E2459
Oxley, Michael G., Ohio, E2463
Sanchez, Loretta, Calif., E2462
Souder, Mark E., Ind., E2464
Visclosky, Peter J., Ind., E2464
Wolf, Frank R., Va., E2460

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