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Senate

The Senate met at 10 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:

O God, our protector, mountains melt in Your presence and islands shout for joy. We praise You because Your ways are just and true. You know our hearts and minds like an open book. Thank You for the security we have in You. When all around us seems destined for disaster, You alone remain our rock and refuge.

Lead our national and international leaders on the right road and give them strength for the journey. Keep them safe as You provide them with the patience to wait for Your harvest. Save them from the plots of evil and from the enemies of freedom. Give them the courage to speak for justice.

Give us the grace to love and pray even for those who hurt and wrong us. We pray this in Your holy 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.

SCHEDULE

Mr. FRIST. Mr. President, good morning to everyone on this pleasant Saturday morning.

Today the Senate convenes for a rare weekend session. I believe it reflects our commitment to completing the very important business that has a direct impact on Americans. That is why we are here. We have important business before us and we will complete that business.

This morning, we will have the concluding remarks and amendments to the Senate intelligence and homeland security reform resolution under last night's order. At 11:15, we will begin the series of rollcall votes, which will conclude our action on this resolution. There will be anywhere from three to five votes, depending on the number of amendments that have been worked out. The final vote in the sequence will be on a sense-of-the-Senate resolution on agricultural disasters.

Today, we will also consider any available conference reports that arrive from the House, and that includes appropriation measures, as well as the Department of Defense authorization.

We also have an agreement that the cloture vote on the FSC JOBS conference report will occur at 1 p.m. on Sunday. I hope that cloture is invoked and, once invoked, on the JOBS legislation, we can move expeditiously toward passage of that conference report.

With that said, although we have made great progress toward finishing the remaining items on our agenda, there is still work to do. Individual members will ultimately determine how long the Senate will remain to complete our business. As I have stated repeatedly, we will stay in session until our work is done. I ask those individual Members to give consideration to the business we have before us and to our commitment on completing this business, and that they give every consideration to scheduling in that regard.

We are here through the weekend to work toward our goal, and I will continue to work with Senators to see if we can expedite our schedule for finishing.

RECOGNITION OF THE DEMOCRATIC LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

COMPLETING THE SENATE'S WORK

Mr. DASCHLE. Mr. President, I also concur with the majority leader. I think today is going to be a very important day, because we will now have completed the first phase of the Senate's work in response to the 9/11 Commission recommendations. I have said this now on several occasions, but I think it bears repeating—it would not have happened were it not for the great effort made by the Senator from Kentucky and the Senator from Nevada, our two assistant leaders. I congratulate them and I appreciate their excellent work.

The majority leader also noted an interest and absolute necessity of finishing work on the foreign sales credit bill. I will be supporting cloture as well. I know there are all kinds of conflicting views about how many votes, what kind of votes, and what time the vote should be on Sunday. I know it is an inconvenience to a lot of Senators and we will try to accommodate those concerns as best we can. I think a Sunday vote—at least one—is unavoidable. I apologize to those who are inconvenienced. I don't think we have any choice given our circumstances. I also hope we can finish homeland security. As the majority leader has said on several occasions, it is important that we finish the homeland security bill. We cannot leave, as he has noted several times, without finishing that. It sends a terrible message to the country if we are not in a position to complete our work. I know the conferees are almost finished. So I hope we can complete our work over the course of the next several days.

We will work with the majority in making sure these unfinished items are completed, even though we cannot say

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

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at this point how much more time it is going to take to do so. I appreciate the majority leader's determination to finish our work before we leave. We will work with him to do that.

RESERVATION OF LEADER TIME

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

INTELLIGENCE COMMITTEE REORGANIZATION

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. Res. 445, which the clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 445) to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence.

Pending:

McConnell/Reid/Frist/Daschle Amendment No. 3981, in the nature of a substitute.

Bingaman (for Domenici) Amendment No. 4040 (to Amendment No. 3981), to transfer jurisdiction over organization and management of United States nuclear export policy to the Committee on Energy and Natural Resources.

The PRESIDENT pro tempore. Under the previous order, the time until 11:15 a.m. shall be equally divided between the managers, with 30 minutes under the control of the Senator from Iowa, Mr. HARKIN. Who yields time?

The majority leader is recognized.

AMENDMENT NO. 4035, AS MODIFIED

Mr. FRIST. Mr. President, I ask for the consideration of the modified version of my amendment No. 4035, which is at the desk.

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Tennessee [Mr. FRIST] proposes an amendment numbered 4035, as modified.

The amendment is as follows:

At the end of section 201, insert the following:

(i) PUBLIC DISCLOSURE.—Section 8 of S. Res. 400 is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking ''shall notify the President of such vote'' and inserting ''shall—

''(A) first, notify the Majority Leader and Minority Leader of the Senate of such vote; and

''(B) second, consult with the Majority Leader and Minority Leader before notifying the President of such vote.'';

(B) in paragraph (2), by striking ''transmitted to the President'' and inserting ''transmitted to the Majority Leader and the Minority Leader and the President''; and

(C) by amending paragraph (3) to read as follows:

''(3) If the President, personally, in writing, notifies the Majority Leader and Minority Leader of the Senate and the select Committee of his objections to the disclosure of such information as provided in paragraph (2), the Majority Leader and Minority Leader jointly or the select Committee, by majority vote, may refer the question of the disclosure of such information to the Senate for consideration.

Mr. FRIST. Mr. President, this amendment has been cleared on both sides. I urge its adoption.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 4035), as modified, was agreed to.

The PRESIDENT pro tempore. Who seeks recognition?

The Senator from Nevada.

Mr. REID. Mr. President, we have a number of amendments that are still outstanding. We disposed of the Frist amendment this morning, and we still have COLLINS, NICKLES, HUTCHISON, BINGAMAN, and ROCKEFELLER that are in order. I don't know if they are going to offer all of those amendments, but we have 1 hour and 5 minutes until we start voting. Everyone should understand, as I understand the order entered, a half hour over the next 65 minutes is for Senator HARKIN. So we have 35 minutes to debate these amendments. If they are not debated, we will start voting on them.

I think it would be unfortunate if people had to act on amendments without hearing something from someone. I hope they will either withdraw the amendments or present them. It puts Senator MCCONNELL and me in an awkward position when the amendments are in order and nobody is here to offer them. It is not fair to the Senate that there is not someone who lets us know whether they are going to be withdrawn or be offered, because some of the subject matter of the amendments is not very clear, as least to this Senator.

I have been told the Rockefeller amendment is not going to be offered.

The PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, floor staff also informs me that the Collins amendment will not be offered.

As Senator REID indicated, we hope to hear from others who are on the list as to what their intentions might be. If they want to offer their amendment, now would be a good time to come and explain it.

The PRESIDENT pro tempore. Does the Senator need to withdraw that amendment?

Mr. REID. The Collins amendment is withdrawn?

The PRESIDENT pro tempore. It is the Chair's understanding that it will not be offered. I do not know if it is pending.

Mr. MCCONNELL. It is not pending.

Mr. REID. It is not pending, so I ask that it be deleted from our list because it is on the list of amendments that was entered into last night. So we still have the Nickles, Hutchison, and Bingaman amendments.

The PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. I have been informed that Senator NICKLES does intend to offer his amendment.

AMENDMENT NO. 4027 TO AMENDMENT NO. 3981, AND AMENDMENT NO. 4041 TO AMENDMENT NO. 4027, EN BLOC

Mr. MCCONNELL. Mr. President, I call up amendment No. 4027 by Senator NICKLES and also a second-degree amendment by Senator NICKLES, No. 4041. As I indicated, Senator NICKLES will be here to debate that amendment later.

The PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. MCCONNELL], for Mr. NICKLES, for himself, and Mr. CONRAD proposes an amendment numbered 4027.

The Senator from Kentucky [Mr. MCCONNELL], for Mr. NICKLES, for himself, and Mr. CONRAD proposes an amendment numbered 4041 to amendment No. 4027.

The amendments are as follows:

AMENDMENT NO. 4027

(Purpose: To vest sole jurisdiction over the Federal budget process in the Committee on the Budget)

At the end of Section 101, insert the following:

''(e) JURISDICTION OF BUDGET COMMITTEE.—Notwithstanding paragraph (b)(3) of this section, the Committee on the Budget shall have exclusive jurisdiction over measures affecting the congressional budget process, including:

(1) the functions, duties, and powers of the Budget Committee;

(2) the functions, duties, and powers of the Congressional Budget Office;

(3) the process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits of surpluses, and public debt—including subdivisions thereof—and including the establishment of mandatory ceilings on spending and appropriations, a floor on revenues, timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriation bills, and enforcement mechanisms for budgetary limits and timetables;

(4) the limiting of backdoor spending devices;

(5) the timetables for Presidential submission of appropriations and authorization requests;

(6) the definitions of what constitutes impoundment—such as ''rescissions'' and ''deferrals'';

(7) the process and determination by which impoundments must be reported to and considered by Congress;

(8) the mechanisms to insure Executive compliance with the provisions of the Impoundment Control Act, title X—such as GAO review and lawsuits; and

(9) the provisions which affect the content or determination of amounts included in or excluded from the congressional budget or the calculation of such amounts, including the definition of terms provided by the Budget Act.''

AMENDMENT NO. 4041 TO AMENDMENT NO. 4027

(Purpose: To vest sole jurisdiction over the Federal budget process in the Committee on the Budget, and to give the Committee on the Budget joint jurisdiction with the Governmental Affairs Committee over the process of reviewing, holding hearings, and voting on persons, nominated by the President to fill the positions of Director and Deputy Director for Budget within the Office of Management and Budget)

Strike all after the first word, and insert the following:

JURISDICTION OF BUDGET COMMITTEE.—Notwithstanding paragraph (b)(3) of this section, and except as otherwise provided in the Congressional Budget Act of 1974, the Committee on the Budget shall have exclusive jurisdiction over measures affecting the congressional budget process, which are:

(1) the functions, duties, and powers of the Budget Committee;

(2) the functions, duties, and powers of the Congressional Budget Office;

(3) the process by which Congress annually establishes the appropriate levels of budget authority, outlays, revenues, deficits or surpluses, and public debt—including subdivisions thereof—and including the establishment of mandatory ceilings on spending and appropriations, a floor on revenues, timetables for congressional action on concurrent resolutions, on the reporting of authorization bills, and on the enactment of appropriation bills, and enforcement mechanisms for budgetary limits and timetables;

(4) the limiting of backdoor spending devices;

(5) the timetables for Presidential submission of appropriations and authorization requests;

(6) the definitions of what constitutes impoundment—such as ''rescissions'' and ''deferrals'';

(7) the process and determination by which impoundments must be reported to and considered by Congress;

(8) the mechanisms to insure Executive compliance with the provisions of the Impoundment Control Act, title X—such as GAO review and lawsuits; and

(9) the provisions which affect the content or determination of amounts included in or excluded from the congressional budget or the calculation of such amounts, including the definition of terms provided by the Budget Act.

(f) OMB Nominees.—The Committee on the Budget and the Governmental Affairs Committee shall have joint jurisdiction over the nominations of persons nominated by the President to fill the positions of Director and Deputy Director for Budget within the Office of Management and Budget, and if one committee votes to order reported such a nomination, the other must report within 30 calendar days session, or be automatically discharged.

The PRESIDENT pro tempore. Who yields time?

Mr. McCONNELL. I suggest the absence of a quorum.

The PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. McCONNELL. Mr. President, I say to the Senator from Iowa, we have a few amendments that may be offered. I am concerned that the offerors will have no time at all to explain their amendments prior to the votes at 11:15. I am wondering if the Senator from Iowa would object if we have Senators who want to offer amendments on our list, which they are entitled to do, prior to the vote at 11:15, how we could accommodate them and give them an opportunity to explain what the amendment was about.

Mr. HARKIN. I do not mind. I thought I had half an hour under the rule. I do not care when I take my half hour. I can take it now or I will take it whenever. It does not make any difference to me.

Mr. McCONNELL. Mr. President, his half hour is unrelated to the underlying bill.

The PRESIDENT pro tempore. That is correct, and the time of the quorum has not been charged against the Senator from Iowa. He has 30 minutes.

Mr. HARKIN. I do not have to take it now if the Senator wants to do something else.

The PRESIDENT pro tempore. The Senator is recognized for his 30 minutes.

Mr. HARKIN. Mr. President, I understand I have a half hour of time yielded to me. I may have to yield it to another Senator, but I will take some time right now.

NATURAL DISASTER RELIEF

Mr. President, the resolution I have offered is very straightforward. It simply reiterates the policy that this Senate and this Congress has endorsed repeatedly over the decades. It basically is that agricultural disaster assistance should be designated as emergency spending and not taken out of other farm programs. This is the way we have done this going back 50 years or more. In fact, I have looked and I have only found one instance in the last 50 years where we have offset, as they say, disaster assistance with some other money from the same program.

That was 2 years ago and that was corrected right away. We are now about to do the same thing.

Mr. President, one of the few uncertainties about agriculture is the uncertainty of the weather. And that is true whether it is farming or ranching, growing orchard crops or growing any other type of agricultural production. Even when a farmer has used his best practices, taken prudent steps to produce a crop, severe weather events can destroy years of work and threaten their livelihood.

Let me just quote from the USDA Web site:

> Natural disaster is a constant threat to America's farmers and ranchers. From drought to flood, freeze, tornadoes, or other calamity, natural events can severely hurt even the best run agricultural operation.

We have responded to these disasters through emergency legislation in the past because we believed it was essential to respond to natural disasters to lessen the financial hardship involved. We do have programs in place such as crop insurance, loans, and so forth. However, major disasters can easily overwhelm these programs, and that is why Congress has consistently responded to natural disasters by providing emergency assistance. This emergency assistance usually covers crop losses, forages—that is hay and things like that—pasture losses for livestock producers, funding for tree assistance programs, and again there is some misconception that this disaster money makes the producer whole, puts the producer where he would be if the disaster never happened. That is just not true.

Let me give you an example. It is only available, first of all, if you have over 35 percent loss of your expected production. So if you have a loss under 35 percent, you don't get anything anyway. But let's take an example of a Kansas farmer who, in a normal year, produces 100 bushels of grain sorghum per acre. Now he only harvests 80 bushels. Well, if the grain sorghum is worth $2.30 a bushel, that farmer will have an income shortfall of $46 an acre, but he will not be eligible for any disaster assistance because he only had a 20-percent loss, so he gets nothing. If the yield is only 50 percent, that means he has a 50-percent loss. His income shortfall is $115 an acre. Now the farmer is eligible for disaster assistance for 15 bushels of that loss—at a low payment rate. So, again, it is only a small fraction of what he gets. He loses $115, and receives only about $20. So some people think disaster assistance puts you back where you were if you were whole. No, it does not. It basically just kind of keeps you going, and that is about it.

Now, you will hear a lot of reference to drought relief or a drought bill or drought emergency assistance. Well, that is a misconception. It has been a misconception all along. While that may be the most common problem, disaster legislation covers the whole range of weather-related losses. The bill language covers losses ''due to damaging weather or related conditions.''

In addition to drought, the regulations that carry out disaster assistance include hurricanes, hail, floods, fires, freezes, tornadoes, mud slides, pest infestation, and other calamities—in short, just about anything Mother Nature can throw agriculture's way. It doesn't matter what weather event causes the loss. It doesn't matter if it is part of a hurricane that has a name or just a plain old ordinary storm that strikes the Midwest. It doesn't matter whether the crop loss happens in a catastrophic afternoon storm or whether it is the result of a drought that lasts 9 or 10 or 12 months. We have always included those in disaster assistance and treated them alike. That is what we passed in the Senate a few weeks ago. We passed an amendment unanimously on a voice vote to cover all types of weather-related disaster losses across the country and treated them the same.

That is basically what my resolution says. The White House and the House of Representatives decided to take a different approach. President Bush sent Congress the disaster assistance proposal that included agricultural disaster payments only for losses caused by hurricanes and left out assistance for a whole range of other disaster losses across the country. Furthermore, this hurricane disaster assistance would be designated emergency spending, meaning that it would not be

taken away from other programs. The President was adamant that if Congress is going to respond to any other disasters across the country, then the cost has to be offset from the farm bill, and that is what the House measure did. It is interesting, the States included in the House hurricane package are Florida, Alabama, Mississippi, Louisiana, South Carolina, North Carolina, Georgia, Virginia, and Pennsylvania. So if you are a farmer in those States and you have a hurricane-related loss, your losses are covered without offsets. You get the emergency spending measure assistance. Here is the interesting wrinkle, Mr. President, in the President's package. If you are a farmer in one of those hurricane States that I just mentioned, but your loss was not from the hurricane—let's say you had a hailstorm. Let's say you had high wind damage from a severe storm in May. Let's say you had a pest infestation or something like that. Guess what. You get no assistance. In the House, in what the President proposed, if you suffer loss from a hurricane, your payments are under emergency spending. But if you are in a hurricane State and you have another disaster caused by a hailstorm, well, then the cost of your assistance comes out of the farm bill.

What kind of nonsense is that?

A sugarcane farmer, God bless him, in Florida lost his crop because of the hurricane. That farmer gets compensated out of the emergency package. Let's say you are a corn farmer in Ohio and your crop was knocked down by a tornado. Guess what. You are not in. Whatever assistance you get has to come out of the farm bill. So why is it, why is it that if you got hit by a hurricane, you are treated one way; if you get hit by a tornado or a hailstorm or a fire or a drought, you are treated another way. It absolutely makes no sense. So, again, we draw these artificial lines. The President has drawn them. Why discriminate against certain farmers? If you are a farmer and you lose your crop, as I said, to a tornado or high winds in Ohio or Wisconsin or Iowa or Minnesota or Missouri, well, guess what. They are going to take it out of one pocket and put it into your other pocket. But if you are a farmer down in Florida, they don't take it out of your pocket. The whole country, all of us, help pay for those disasters as we have done for the last 50 years.

Now the President wants to take the money out of the Conservation Security Program. That program covers the entire United States of America. Why would you want to take money out of a State such as Pennsylvania that uses conservation money or Ohio or Wisconsin or Minnesota or Iowa or Missouri, taking money out of those States to send to Texas or Oklahoma or Wyoming or Colorado to help the farmers who had a drought? That doesn't make sense. It seems if you are going to have a disaster assistance package, the whole country ought to pay for it, all of it. When you have an earthquake in Alaska, do we take the money out of one State, just one State, and pay for that—or two States—or do we just take it out of a State that maybe—we take it out of California because they have an earthquake and we send it to Alaska? No.

The entire United States of America, all of our people contribute to make sure that anyone who is hurt by an earthquake in Alaska or California or a flood in Iowa gets compensated and gets help. We had a flood in Iowa in 1993 that devastated our State. We didn't take money out of South Dakota or we didn't take out of Missouri or another State, out of what they get. The whole country came to our assistance.

As I said, I feel sorry for the people who have been hit by hurricanes, and we should help them, but we ought to do it on a national basis and not try to take it out of one pocket, one part to help another. That is not right. It is not right to discriminate against farmers.

One last thing I will say before I yield the floor. We don't take away a community's Federal funds for highways or housing or hospitals to fund civil disaster assistance. In other words, if we have a civil disaster, why should we take the money out of the highway money? If we are going to help Florida out, why don't we take it out of Florida's highway money? Take it out of their housing money? Take it out of their hospital money to pay for their civil disaster? We don't do that. So why should we do it in agriculture, on farmers? Why should we take it out of the farmers' pockets to pay for a disaster? Why don't we take the money out of the highway money going to Florida to pay for the hurricane? Take it out of their hospital money? Take it out of their housing money? We don't do that. We don't do it because it is not the right thing to do. We should not take it from the farm bill either.

I realize those of us who represent farmers and farm States, we get hit often because they say farmers get this and that. I want to point out, as I have pointed out time and time again, since we passed the farm bill in 2002 and the President signed it in May of 2002, we have saved the taxpayers of this country over $15 billion in less commodity program spending. I think that is a pretty healthy contribution by our farmers and our ranchers to help reduce the deficit of this country. Now they want to take more money out of agriculture to pay for a disaster. It is wrong. That is why I have offered this resolution which basically says:

> It is the sense of the Senate that the 108th Congress should provide the necessary funds to make disaster assistance available for all customarily eligible agricultural producers as emergency spending and not funded by cuts to the farmer.

It is very simple and straightforward.

Madam President, how much time do I have remaining?

The PRESIDING OFFICER (Ms. SNOWE). THE SENATOR HAS 16 MINUTES REMAINING.

Mr. HARKIN. Madam President, I don't know if anyone wants any time. I will be glad to yield to my friend from North Dakota.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. CONRAD. Madam President, I rise today to support the ranking member on the Senate Agriculture Committee in what he is saying. I am in my 18th year in the Senate. Only once before in that entire time have we taken money from other farmers to provide the funds to cover a natural disaster for others. That is just wrong. That is not the way we have operated. We have always dealt with natural disasters through emergency funding because none of us can know who is going to get hit by a natural disaster. None of us can know who is going to have a hurricane or a drought or a freeze.

In my State we have had three of the four. We didn't have hurricanes. We don't get hurricanes in North Dakota. But we have had drought in the southwestern part of the State. I have just taken a drought tour, and it looks like a moonscape. Nothing is growing. It is disastrous. The corn crop is about a foot high. There are no ears in the corn crop.

I go to the northern part of my State, and it is flooded. It is unbelievable. We have a lake in north central North Dakota called Devils Lake. That lake has risen 25 feet in the last 7 years. That lake is now 2½ times the size of the District of Columbia, and it has risen 25 vertical feet, taking up hundreds of thousands of acres.

We, as a Federal Government, have already had to buy out the entire town of Church's Ferry. We have had other towns that are on the brink of being swallowed up. We have spent tens of millions of dollars protecting the town of Devils Lake. We have moved over 600 structures.

All across the northern tier of North Dakota, something very unusual is happening. We have had extraordinarily wet conditions over a prolonged period. The result is 2 million acres they could not even plant this year—2 million acres. That is bigger than the size of the State of Delaware—land that couldn't be planted.

The land that could be planted is now so wet they can't drive the equipment in to harvest the crop. So you drive by the road and it looks like a fabulous crop, like there is a tremendous barley crop out there. It looks like 90- to 100-bushel barley. But you can't get into the land to take it off because the ground is soaked.

I was just at a farmer's home and he pointed up to the top of the rafters in his barn. He said: Senator, that is where the water is going to be 6 months from now, according to the State water commission, because the whole area is flooding.

In the midst of that we had a freeze in early August. Drought, flood, freeze—I have lived in North Dakota all my life, and I have never seen such

a collection of natural disasters. So while I have great sympathy for the people of Florida and Southeastern United States who have suffered hurricanes, and I am prepared with my vote to help them, we would expect the same in return. They are not the only ones who have been hurt. I have tens of thousands of farm families who are wondering now, Is Washington going to help or is Washington going to turn its back?

We have not been on the news. The networks haven't been out there covering this drought. They have not covered this flooding because this is a slow-motion disaster. This is not the kind of thing that makes good television, as the water rises in North Dakota. That doesn't make good television. It is a slow-motion disaster, but it is a disaster nonetheless. People's lives are being devastated.

Always before we have had emergency funding—with one exception in the 18 years I have been here. Always before, when an area suffered natural disasters, we have voted emergency funding to give them some help.

Let me make clear to my colleagues—I have heard some say: If you would have had preventive planning, you wouldn't have any losses because you didn't have to plant the crop. That is not the way it works. You still have your land payment, you still have all your management expenses, and in most cases people put on fertilizer in anticipation of being able to plant. This idea that they don't have expenses is just wrong.

Then I have heard they will get more help than what they have lost. That is just wrong. People have said: They have crop insurance. Crop insurance will make them whole. No.

Crop insurance will not come anywhere close to making them whole; nowhere close. First of all, you have to have a 35-percent loss before you get anything. Then you only get a percentage of your loss over 35 percent. That is not going to make people anywhere close to whole—nowhere close. Even if you take disaster assistance and crop insurance, you are nowhere close to whole. You still have significant losses. That is the fact of the matter.

The disaster assistance we pass in the Senate is desperately needed, and it should not be taken away from other farmers in order to pay for it. We shouldn't take from what they need in order to try to provide assistance for those who have suffered natural disasters. That is not right. It is not fair. It has not been done before, with one exception in the 18 years I have been in the Senate. I had my staff go back and research the whole history. We have never done things that way with one exception.

We should not go down this path of turning our back on people who have suffered natural disasters, whether it is a hurricane, whether it is a flood, whether it is a drought, whether it is a freeze, or some horrific outbreak of disease. We need to stand ready to reach out with a helping hand.

I thank the ranking member from the State of Iowa, Senator HARKIN, for standing up, fighting back and being very clear about what is at stake here; and to our leader, Senator DASCHLE. The truth is without Senator DASCHLE as our leader, we wouldn't have a prayer of getting the assistance our area desperately needs. That is a fact.

Mr. DASCHLE. Madam President, I thank the distinguished Senator from North Dakota for his very kind words. There are a number of people who deserve great credit, beginning, of course, with our distinguished ranking member on the Senate Agriculture Committee. He has been the most forceful, the most passionate, the most articulate voice for agriculture and I am proud to call him my leader.

He and I were in the room when we wrote this a couple of years ago. I remember so vividly. It was in the room across the hall. This legislation wouldn't even exist were it not for what Senator HARKIN did in the room across the hall as we negotiated these issues and got the commitment from this administration and from our Republican friends that this conservation program would be fully funded. We got a commitment. Almost before the ink was dry, that commitment withered away. It disappeared.

I can understand the frustration of the distinguished Senator, the anger and the disappointment that after being given the commitment over and over again it was virtually the last thing we decided. Only because he held out as aggressively as he did, we finally said yes. OK. If this means getting the farm bill, we will agree to this and we will commit to funding. I was there in the room. I heard it myself, and here we are.

This isn't the first time. This is now the second time he has had to come to the floor.

I know a lot of Senators are inconvenienced, but I must say nobody is more inconvenienced by the doubletalk and the lack of commitment and the willingness to keep their word than our ranchers and farmers who are so desperate for the help Senator CONRAD and Senator HARKIN have so eloquently described.

Senator JOHNSON and I have the same situation in South Dakota. I talked to a rancher in the southwest near Edgemont. He broke down in tears, telling me that he is now going to be forced to sell his herd—a herd he has had all of his life. He said, I have never seen anything like this. His lips curled and he choked up. I felt so sorry for him. He said, But I am not alone. I am at the end of my career.

I worry about those young farmers and ranchers who are just getting started. What are they going to do?

This assistance is critical. But the double standard is so outrageous that I can understand why Member after Member representing farmer and rancher after farmer and rancher is coming to the floor to express their outrage and indignation.

You talk about heroes. I thank my colleague from South Dakota for making the effort he did so gallantly. Senator JOHNSON offered an amendment to say let's treat this disaster assistance the way we are treating all other disaster assistance. I understand it is about $11 billion. Let us treat it exactly the same. He made a passionate defense of that argument and lost on a 6-to-5 vote, as I understand it. It was a party-line vote.

Mr. JOHNSON. Madam President, may I direct a question to my colleague?

Mr. DASCHLE. I would be happy to yield for a question from the Senator from South Dakota.

Mr. JOHNSON. I want to report to the body that I have just come from the Military Construction Subcommittee conference markup. Oddly enough, military construction—the way things work around here—is now the vehicle for bringing up disaster relief to Florida and on the Northern Plains. We were able to obtain nearly a $3 billion drought relief package on that bill, thanks to Senator DASCHLE in large part, and Senator HARKIN, of course, with his leadership. But I don't believe it would be on the floor at all were it not for Senator DASCHLE's leadership.

That drought relief passed with a unanimous bipartisan vote in the Senate earlier this year. Yet when it came back to the Military Construction Subcommittee as part of this disaster aid we are adding, it had this very convoluted offset that is stretched out for over 10 years.

I have to ask the leader, Senator DASCHLE, who has been through this and has championed agriculture for so many years as an extraordinary representative and as a leader on rural and agricultural issues, if there is any logic the leader can discern why disaster relief for hurricane victims is emergency funding, and disaster relief as it turns out now for farmers and ranchers suffering from drought is cannibalized out of the agriculture budget for the rest of the decade. What logic is there to that? What fairness is there to that kind of approach to this disaster relief bill that is now likely to pass? We are grateful for disaster relief, but this uneven treatment between farmers and hurricane victims strikes me as sadly peculiar and an unfortunate precedent that rural people will suffer from for years to come.

I would be interested in any response, given the great experience and leadership Senator DASCHLE has afforded rural America for all of these years, whether he sees any logic to this kind of separate treatment of farmers versus others in America today.

Mr. DASCHLE. I thank my dear friend from South Dakota for his question and for his kind words.

I simply say there is no logical conclusion one can draw from this except

that there are those in the administration and apparently here in Congress who believe farmers and ranchers ought to be subject to a double standard; that they aren't as poor as other victims and the other people who have experienced disasters of other kinds.

For some reason, this administration has minimized the losses in agriculture almost from the beginning. As the Senator so well knows, because he was right in the middle of the fight 2 years ago, we tried to persuade the administration to help farmers and ranchers with $6 billion disaster assistance. That was actually passed here on the Senate floor. They sat on it. They stalled it. They did everything they could to prevent it. Ultimately, all we got before the end of the year was about $1 billion—$5 billion less. It is no surprise. This isn't something new for this administration or some of our colleagues in the Congress.

This is yet another illustration and pattern of demonstration of how minimally they are prepared to support agriculture and our farmers and ranchers. It is a double standard. It is a shell game. They are telling farmers and ranchers we are going to take money out of your right-hand pocket and put it in your left-hand pocket, and we want you to feel good about it. There is no net additional revenue to be provided to agriculture as a result of this disaster relief. We are simply taking it out of their right pocket and putting it in their left pocket.

I can't imagine—and Senator CONRAD and others have noted how a rancher or a farmer could be anything but offended—that somebody would insist farmers and ranchers pay for their own grass and drought assistance, disaster assistance and flood assistance, when at the very same time, simultaneously, we are providing meaningful new assistance to the victims of hurricanes, which we all support.

The double standard, the shell game, the extraordinary intransigence on the part of those who are opposing the Johnson amendment and opposing our efforts to make farmers and ranchers whole is inexplicable. There is no logic. I appreciate very much his words.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. How much time do I have remaining?

The PRESIDING OFFICER. There is 8 minutes.

Mr. HARKIN. We all need leaders to organize us, to inspire us, to get us moving in the right direction. Our distinguished leader, Senator DASCHLE from South Dakota, was kind enough to say good things about me with regard to the Agriculture bill, but we would never have gotten it together had it not been for his leadership. We, on this side of the aisle, all rely on his inspiration and his leadership, pulling us together. Nowhere is that more evident than our fight for farmers and ranchers and people who live in small towns and communities all over America.

I thank my good friend and my leader from South Dakota for what he has done for the people who live in the little towns such as my home town, Cummings, IA, with 150 people, for the farmers and ranchers of Iowa, South Dakota, and all over this country. Senator DASCHLE has been their voice and their leader, as he has been our leader. I daresay we wouldn't have half of the things we have for agriculture today had it not been for Senator DASCHLE, in making sure we had a good farm bill 2 years ago.

As Members can tell today, his passion is still there. I thank the good farmers and ranchers and rural people of South Dakota for having him here and having him as our leader.

Madam President, I ask that an editorial from the Des Moines Register of October 9 be printed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. HARKIN. I will read one sentence from the editorial:

> "The reality of the situation is that there will be no disaster money before we go home unless we provide budget offsets," said the chairman of the House Agriculture Committee, Rep. BOB GOODLATTE, R-Va.

Easy for him to say; farmers in his State are covered by the hurricane disaster assistance package. He doesn't have to worry about whether it is emergency money.

What kind of selfishness is that around here? If you are from a State where you get the hurricane disaster assistance, to heck with everybody else?

The Des Moines Register editorial said:

> Cutting farm programs to pay for the assistance would amount to taking money from growers in the Midwest and giving it to producers in drought-stricken areas of Montana, the Dakotas and other Plains states.

I want to help those farmers. They should be helped. But as Senator DASCHLE said, they should not take it out of one pocket and put it in another.

I also ask that a letter from a number of different farm groups opposing the using of farm bill conservation money for disaster assistance be printed in the RECORD following my remarks. This is in opposition to the President's position.

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

(See exhibit 2.)

Mr. HARKIN. I ask that a letter from a number of conservation groups be printed in the RECORD at the conclusion of my remarks, asking that money not be taken out of the conservation title.

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

(See exhibit 3.)

Mr. HARKIN. I ask unanimous consent that at the conclusion of my remarks a letter to a number of Representatives on the House side from a number of conservation groups also be printed at the conclusion of my remarks.

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

(See exhibit 4.)

Mr. HARKIN. Lastly, I have heard the argument that drought is long term; there is some kind of climate change, but for the western part of the United States, which has had droughts for the last 4 or 5 years, we cannot continue to give disaster money if it is going to be a drought one year after another.

Guess what. Florida sits in hurricane alley. They have had hurricanes going back for 100 years. Guess what. Hurricanes are going to hit Florida next year and the year after and the year after. Should we say we cannot give disaster money to Florida because this is a long-term type thing? That is what I heard about drought assistance because we have had it for 5 years. Because we have been hit by 5 years of drought, that is long term and therefore we cannot help you?

Maybe we ought to take a look at hurricane alley. Maybe they shouldn't get help because they will get hit by another hurricane next year or the year after. We don't get hit by hurricanes in Iowa. They do not bother us. But we get hit by things such as tornados and hail damage and drought and, yes, floods.

Lastly, this bill, in helping the drought-stricken farmers—and my friend from North Dakota knows this very well—it only covers 1 year. We have had a drought for 4, 5, or 6 years. Farmers who suffered crop losses in both 2003 and 2004 will get to pick 1 year, either 2003 or 2004, you pick one, that is all the disaster assistance you get. It does not cover 7 years; it covers 1 year.

I wanted to clear this up. I hear rumors and misconceptions around here. I wanted to make the record clear that, yes, we have had some problems—such as tornados. Oklahoma gets hit by tornados, and Kansas and Nebraska and Iowa. We have had a lot. We will next summer because we are in tornado alley. Does that mean if a tornado strikes we should not get any disaster money because we get hit by tornados every year? No. Neither should the farmers in the Dakotas or Montana or places that have a drought right now, nor should they be penalized because they have been hit by some dry weather for a few years.

EXHIBIT 1

[From the Des Moines Register, Oct. 9, 2004]

MIDWEST FARMERS MAY LOSE OUT WITH DISASTER AID

WASHINGTON, DC.—Farmers hit by a succession of crop losses hoped an election year would bring some extra cash from the government.

However, House Republicans are pushing for cuts in farm programs to pay for a $3 billion package of farm-disaster assistance, and agriculture groups may drop their support for the aid.

Cutting farm programs to pay for the assistance would amount to taking money from growers in the Midwest and giving it to producers in drought-stricken areas of Montana, the Dakotas and other Plains states. The prime target for the cuts is the popular Conservation Security Program written by Sen. TOM HARKIN.

''If disaster assistance comes out of the farm bill, then we oppose disaster assistance,'' said Mary Kay Thatcher, a lobbyist for the American Farm Bureau Federation.

Democrats accused Republicans of hypocrisy. The White House is pushing Congress to pass special emergency assistance for Florida hurricane victims, including farmers there, without demanding spending cuts. Florida is a key state in the presidential race. ''It is not right to treat farmers in one part of this country different than farmers in another,'' Harkin said.

The House passed legislation earlier in the week that would pay for the drought assistance by capping the cost of the Conservation Security Program.

''The reality of the situation is that there will be no disaster money before we go home unless we provide budget offsets,'' said the chairman of the House Agriculture Committee, Rep. Bob Goodlatte, R-Va. Friday, lawmakers were looking into trimming things other than the Conservation Security Program because of technical problems with targeting the conservation payments, congressional aides said. Harkin, a Democrat, pledged to slow some must-pass bills unless Republicans backed off making the cuts. Friday afternoon, he blocked the Senate from considering amendments to an intelligence-reform bill.

The Senate passed a version of the drought aid paid for by adding to the federal budget deficit. Farmers could get payments for losses in either 2003 or 2004.

Iowa farmers would likely receive about $200 million to $250 million in disaster payments, primarily to cover damage to soybean fields, according to Harkin's staff. The Iowa Farm Bureau has estimated damage from the 2003 drought at $750 million.

The Conservation Security Program is designed to reward farmers for practices that prevent soil erosion and other environmental problems.

Some 2,188 farms, including 290 in Iowa, were signed up for the program this year. Enrollment was limited to 18 watersheds, or river drainage areas. The National Corn Growers Association never endorsed the disaster aid package, partly out of concern that it mean reductions in other farm spending, said Jon Doggett, a lobbyist for the group.

EXHIBIT 2

October 7, 2004.

Hon. TED STEVENS,
Chairman, Committee on Appropriations, U.S. Senate, Washington, DC

Hon. THAD COCHRAN,
Chairman, Subcommittee on Appropriations, U.S. Senate, Washington, DC

Hon. ROBERT BYRD,
Ranking Member, Committee on Appropriations and Subcommittee on Homeland Security, U.S. Senate, Washington, DC

DEAR MR. CHAIRMAN AND RANKING MEMBER: The House and Senate have approved virtually identical legislation to provide vitally important financial assistance to assist farmers and ranchers who have suffered devastating crop losses due to hurricanes and drought. Importantly, the provisions approved by the House and Senate allow producers to choose to receive assistance for either 2003 or 2004 crop losses. And, since the legislation is similar to previous disaster programs, USDA should be able to deliver the assistance in a timely and cost efficient manner.

We understand that the free-standing legislation passed by the House on October 6 may serve as the House position in the conference on FY05 funding for Homeland Security. We are concerned that the House provision providing assistance for agricultural losses includes a funding offset, which reduces funding for a conservation program authorized in the 2002 farm bill. The Senate passed provision, which is included in the Homeland Security bill does not include an off-set. As you know, farm and commodity organizations have consistently opposed opening the farm bill, which is carefully balanced and has provided important, predictable financial stability for farmers, ranchers and rural Americans. While the House passed provision includes an off-set for a portion of the agriculture assistance, the other assistance was approved with an emergency designation and the House overwhelmingly rejected an amendment that would have offset the entire bill.

The purpose of this letter is to respectfully urge the conferees to retain the disaster assistance provisions as part of the Homeland Security funding but to eliminate the requirement that a portion of the funds for agricultural disaster assistance be off-set by a reduction in conservation programs or any other programs authorized by the 2002 farm bill. We believe the delivery of much needed assistance to farmers and ranchers suffering losses due to drought, hurricanes and other adverse weather is critically important to those who have suffered devastating losses, but we also believe preservation of the provisions of the 2002 farm law is important to all farmers and ranchers. We would also note that expenditures under the 2002 farm bill have been substantially less than that projected at the time of passage. Unfortunately budget rules do not allow use of those funds for other purposes, but we believe this should be a favorable factor in the consideration of our request.

As always, thank you for your consideration of our views and your leadership on matters critical to the U.S. agricultural community.

Sincerely,
Alabama Farmers Federation
American Corn Growers Association
American Farm Bureau Federation
American Soybean Association
Ducks Unlimited
Georgia Peanut Commission
Independent Community Bankers of America
National Association of Farmer Elected Committees
National Association of State Departments of Agriculture
National Association of Wheat Growers
National Barley Growers Association
National Cotton Council
National Council of Farmer Cooperatives
National Farmers Organization
National Farmers Union
National Grain Sorghum Producers
National Milk Producers Federation
Southern Peanut Farmers Federation
National Sunflower Association
Soybean Producers of America
US Canola Association
USA Dry Pea & Lentil Council
USA Rice Federation
USA Rice Producers Association
Women Involved in Farm Economics.

EXHIBIT 3

AMERICAN FLY FISHING TRADE ASSOCIATION, AMERICAN LAND CONSERVANCY, ARCHERY TRADE ASSOCIATION, BOWHUNTING PRESERVATION ALLIANCE, CONGRESSIONAL SPORTSMEN'S FOUNDATION, DUCKS UNLIMITED, INTERNATIONAL HUNTER EDUCATION ASSOCIATION, INTERNATIONAL ASSOCIATION OF FISH AND WILDLIFE AGENCIES, IZAAK WALTON LEAGUE OF AMERICA, ORION-THE HUNTERS INSTITUTE, PHEASANTS FOREVER, SAND COUNTY FOUNDATION, TEXAS WILDLIFE ASSOCIATION, THEODORE ROOSEVELT CONSERVATION PARTNERSHIP, THE WILDLIFE SOCIETY, WILDLIFE FOREVER, WILDLIFE MANAGEMENT INSTITUTE,

October 7, 2004.

Hon. BILL FRIST,
Hon. TOM DASCHLE,
Hon. TED STEVENS,
Hon. ROBERT C. BYRD,
U.S. Senate,
Washington, DC.

Hon. DENNIS HASTERT,
Hon. TOM DELAY,
Hon. NANCY PELOSI,
Hon. BILL YOUNG,
Hon. DAVID OBEY,
U.S. House of Representatives,
Washington, DC.

DEAR SENATE AND HOUSE LEADERSHIP. The above listed conservation and sportsmen's organizations, which represent a diverse spectrum of interests with a combined membership of millions, stand together urging you to reject any attempt to offset the costs of the disaster package's assistance to U.S. farmers and ranchers with cuts to the 2002 Farm Bill's conservation assistance programs. We fully support a disaster assistance package that is appropriately designated by Congress as emergency spending.

Conservation funding was critical to securing passage of the 2002 Farm Bill. These conservation programs have become win-win solutions for landowners and wildlife, while at the same time guard against economic impacts from droughts and floods. Each of the programs is oversubscribed, with farmer demand continuing to outpace available funding.

We strongly oppose the use of conservation program spending as an offset for disaster assistance. If you have questions about this issue, please contact Barton James (Ducks Unlimited) at (202) 347–1530.

Thank you very much for your time and consideration of this matter.

EXHIBIT 4

OCTOBER 5, 2004.

Hon. C.W. BILL YOUNG,
Chairman, House Committee on Appropriations, H–218 Capitol Building, Washington, DC

Hon. TED STEVENS,
Chairman, Senate Committee on Appropriations, S–128 Capitol Building, Washington, DC

Hon. THAD COCHRAN,
Chairman, Subcommittee on Homeland Security, Senate Committee on Appropriations, Dirksen Senate Office Building Rm–135, Washington, DC

Hon. MARTIN OLAV SABO,
Ranking Member, Subcommittee on Homeland Security, House Committee on Appropriations, Rayburn HOB B–307, Washington, DC

Hon. DAVID OBEY,
Ranking Member, House Committee on Appropriations, 1016 Longworth HOB, Washington, DC

Hon. ROBERT C. BYRD,

Ranking Member, Senate Committee on Appropriations, S–112 Capitol Building, Washington, DC

Hon. HAROLD ROGERS,

Chairman, Subcommittee on Homeland Security, House Committee on Appropriations, Rayburn HOB B–307, Washington, DC

DEAR APPROPRIATIONS CONFEREE: As you conference the fiscal year 2005 Homeland Security appropriations bill and consider the Senate-passed agricultural disaster package, we urge you to reject any attempt to offset the costs of the disaster package with cuts to the 2002 Farm Bill's conservation assistance programs.

Conservation funding was critical to securing passage of the 2002 Farm Bill. Conservation programs in the 2002 Farm Bill provide farmers and ranchers with important financial assistance while addressing the nation's urgent natural resource and environmental needs. These programs guard against heightened natural resource and economic impacts from droughts and floods, and thus the long-term costs of weather related disasters, by improving soil and water quality and conservation. Each of the programs is oversubscribed, with farmer demand continuing to outpace available funding.

We strongly oppose the use of conservation program spending as an offset for the disaster package. In our view, it is unfair to single out agricultural disasters for offsets and unwise to single out conservation as the potential offset.

Thank you for considering our views.

Sincerely,

American Farmland Trust
American Rivers
Chesapeake Bay Foundation
Defenders of Wildlife
Environmental Defense
National Association of Conservation Districts
National Catholic Rural Life Conference
National Wildlife Federation
Natural Resources Defense Council
Sierra Club
Soil and Water Conservation Society
Sustainable Agriculture Coalition
Union of Concerned Scientists.

Mr. HARKIN. How much time is remaining?

The PRESIDING OFFICER. There is 1 minute 40 seconds.

Mr. HARKIN. Whatever time I have remaining I would be glad to yield.

Mr. DORGAN. Let me, in the few moments remaining, thank the Senator from Iowa. Yesterday, someone asked him what he was doing, and he said: I am supporting my farmers.

The fact is, farmers in his State, our State and others, have been hit by weather-related disasters. You ought not treat farmers in different parts of the country in different ways. If you are going to provide disaster assistance to people in one part of the country, those farmers who have been hit with weather-related disasters in other parts of the country deserve to be helped as well.

This is a case of the Government saying to farmers during a tough period, you are not alone; we are here to help you. This is not a case of farmers begging to be helped. It is a case, for example, in our part of the country, where torrential rains wiped out the opportunity for farmers to even plant a crop on 1.7 million acres. Think of that. There were 1.7 million acres that could not be planted. These are farmers that will lose their farms if we do not offer some help.

The Senator from Iowa has been doing something very simple and powerful in the Senate. He is standing up for family farmers.

My colleague from North Dakota, Senator CONRAD, myself, and others are insistent we provide disaster relief and do so in the right way.

What is being done in the conferences, back and forth, the ping-ponging of inadequate proposals, proposals that are unusual, is not fair.

I commend the Senator from Iowa for being unwilling to sit by idly, silently, and allowing this to happen. I stand with him, as does my colleague, Senator CONRAD, and many others.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. On behalf of Senator BINGAMAN, I ask permission to withdraw from the list the Bingaman-Domenici amendment as listed.

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

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I yield 5 minutes to the distinguished Senator from Ohio.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

AMENDMENT NO. 4027

Mr. VOINOVICH. Madam President, later on today we will be discussing an amendment submitted by Senator NICKLES. The amendment's alleged purpose is to clarify the shared jurisdiction of the congressional budget process between Governmental Affairs and the budget situation that grew out of the Budget Committee and the modern budget process of 1974.

Senate committees rarely share jurisdiction, and joint referral of legislation is accomplished by unanimous consent. Today, anything that deals with the budget either coming out of the Governmental Affairs Committee or coming out of Budget has to be referred to the Governmental Affairs Committee and within 30 days some action has to be taken so there is a joint referral.

This amendment would eliminate that and say that all of the budgetary process is within the jurisdiction only of the Budget Committee and would also require that instead of the nominations for the Director of the Office of Management and Budget and the deputy director being the sole jurisdiction of the Governmental Affairs Committee, that would be a joint jurisdiction. In other words, the Presidential appointee to Director of Budget and Management, Deputy Director, and other people, would have to come to the Governmental Affairs Committee and also go to the Budget Committee for their approval.

I think one of the things we are trying to do here is to streamline that whole process, that we have too many people who are being, frankly, nominated, and too much advice and consent.

One of the things in an amendment to the Homeland Security Act that we were able to get done was the provision that says we are going to ask the administration to come back with recommendations on how they can reduce the number of people who are sent to the Senate for advice and consent to streamline the process.

This amendment would make this Presidential appointment process in regard to the Director of Budget and Management and the Deputy Director much more complicated than it is today. I would also argue—with due respect to the expertise that is on the Budget Committee—that this process has not been looked at since 1974.

As a member of the Governmental Affairs Committee and the oversight of Government management in the Federal workforce, I have been concerned that we have not looked at that process since 1974—that we have discussed the feasibility of going to a 2-year budget. There are many things, in my opinion, that this body should be doing, and if it were solely within the jurisdiction of the Budget Committee, it might not get done. The Governmental Affairs Committee looks at the big picture.

I would also argue that too often in the Office of Budget and Management, there is no ''M'' in OMB. I am pleased to say that this administration has undertaken some very aggressive management responsibilities. I, quite frankly, think they would not have undertaken those management responsibilities had it not been for the fact that they had to be confirmed by the Governmental Affairs Committee of the U.S. Senate.

I know the relationships that I have built personally with the Director of the Office of Budget and Management; Sean O'Keefe, who was the Deputy Director, and now Director Josh Bolten, have really accrued to the benefit of our country in terms of improving the management of Government.

So what I am trying to say is the budget process is important not only to the Budget Committee but the budget process is important to the entire country and to the operation of Government because it has such a large impact on the whole operation of Government.

I respect the chairman of the Budget Committee, but as one who has been concerned about modernizing our procedures, I believe this would not promote what is in the best interest of the Senate or, for that matter, our country.

I ask unanimous consent to have printed in the RECORD the human capital changes that have occurred since 1999 that have come out of the Governmental Affairs Committee.

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

U.S. SENATOR GEORGE V. VOINOVICH, OHIO—AN AGENDA TO REFORM THE FEDERAL WORKFORCE: ACCOMPLISHMENTS

Senator Voinovich has made identifying and developing solutions to the federal government's strategic human capital challenges his highest priority for his Subcommittee on Oversight of Government Management. He has held 15 hearings on the subject, spoken at numerous public conferences, and was a key participant in the Harvard University John F. Kennedy School of Government Executive Sessions on the Future of the Public Service in 2001–2002. He has brought together the best minds in academia, government and the private sector to address these issues and developed a forward-looking legislative agenda. Taken together, the legislation he has sponsored and cosponsored represents the most significant governmentwide changes to the federal civil service system since passage of the Civil Service Reform Act of 1978.

Legislation sponsored by Senator Voinovich enacted into law:

Department of Defense Civilian Workforce Reshaping Authority as part of the FY 2001 Defense Authorization, became law on October 30, 2000.

Several major provisions of S. 2651, the Federal Workforce Improvement Act of 2002, were included in the Homeland Security Act of 2002, Public Law 107–296, November 25, 2002. Its most important provisions: agency chief human capital officers (at the 24 largest federal agencies); an interagency chief human capital officers council (codifying the Human Resources Management Council); an OPM-designed set of systems, including metrics, for assessing agency human capital management; inclusion of agency human capital strategic planning in annual performance plans and program performance reports required by GPRA; reform of the competitive service hiring process (use of a category ranking system instead of the Rule of Three); permanent extension, revision, and expansion of voluntary separation incentive pay and voluntary early retirement (''buyouts'' and ''early-outs'');

S. 926, the Federal Employee Student Loan Assistance Act, Public Law 108–123, November 11, 2003. The law raises to $10,000 and $60,000, respectively, the annual and aggregate limits of student loan repayment federal agencies may offer employees as incentives.

S. 1683, the Federal Law Enforcement Pay and Benefits Parity Act of 2003, Public Law 108–196, December 19, 2003. The law required OPM to conduct a study of federal law enforcement compensation and classification to inform reform efforts. It was submitted to Congress on July 16, 2004.

S. 610, NASA Workforce Flexibility Act of 2004, Public Law 108–201, February 24, 2004. The law provides new personnel flexibilities to the National Aeronautics and Space Administration to recruit and retain a technology savvy workforce for NASA's high-tech mission.

H.R. 2751, GAO Human Capital Reform Act of 2004, Public Law 108–271, July 7, 2004. H.R. 2751 was the House companion to Senator Voinovich's bill S. 1522, which passed the Senate on November 24, 2003. It provides several new personnel flexibilities to the now U.S. Government Accountability Office.

Legislation cosponsored by Senator Voinovich enacted into law:

The Homeland Security Act of 2002, Public Law 107–296, November 25, 2002, allowed the new department to design a new personnel system for its 170,000 employees to meet its mission needs.

The National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136, November 24, 2003, includes the National Security Personnel System (NSPS). Senator Voinovich had a role in drafting the Senate version of NSPS, S. 1166. NSPS will provide significant personnel flexibilities to the Department of Defense similar to those at the Department of Homeland Security. In addition, this Act contains a provision that alleviates pay compression in the Senior Executive Service. Senator Voinovich had introduced a separate bill, S. 768, to accomplish this.

Legislation sponsored by Senator Voinovich currently under Congressional consideration:

S. 129, Federal Workforce Flexibility Act of 2003, was passed by the Senate on April 8, 2004, and it contains additional government-wide human capital reforms. The House Committee on Government Reform considered and reported S. 129 to the full House on June 24, 2004. Senator Voinovich understands that the bill should pass the House the week of October 4th and return to the Senate for final passage.

Mr. VOINOVICH. I would like to emphasize for my colleagues how important it is that this jurisdiction in terms of the Director of Budget and Management and the Deputy Director remains in the Governmental Affairs Committee.

I would like to make one other point; that point is, the jurisdiction of our committee has been stripped out for the last couple of days. So I just urge my colleagues—I am going to ask for a vote. I think it is important to the management of our country.

I appreciate the opportunity to speak and yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator's time has expired.

The Senator from Nevada is recognized.

Mr. REID. Mr. President, for my friend to say the jurisdiction of the committee has been stripped out in the last few days, he should come in contact with reality. It simply is not true. How many times people come and say that does not make it true. The governmental affairs/homeland security committee is going to be one of most powerful committees in the Congress. Last year, as I understand, they had about 900 bills referred to them. This next year, it will probably be 3,000 bills referred to them. They have jurisdiction over wide-ranging matters. A few little things have been taken from Governmental Affairs, but they have been given a truckload of stuff.

I yield 5 minutes to the Senator from North Dakota.

Mr. CONRAD. Mr. President, first of all, I thank the Senator in Nevada for his comments. He is exactly right. For anybody to suggest Governmental Affairs has had their jurisdiction reduced here, I mean, come on. Governmental Affairs has had their jurisdiction dramatically increased.

Mr. NICKLES. Mr. President, the amendment I am offering today with my ranking member, Senator CONRAD, would consolidate jurisdiction for the congressional budget process within the Senate Committee on the Budget and establish shared jurisdiction with the new Committee on Homeland Security and Governmental Affairs over the nomination and confirmation of the Director of the Office of Management and Budget. The amendment would preserve the Government Affairs Committee's jurisdiction over management and accounting measures.

Under current Senate rules, jurisdiction over budget process matters is shared with the Committee on Governmental Affairs, a situation that grew out of the creation of the Budget Committee and the modern budget process in 1974.

This shared jurisdiction is unique in the Senate, where committees rarely share jurisdiction, and where joint referral of legislation is only accomplished by unanimous consent.

Since 1977, the Budget and Governmental Affairs Committees have received joint referral for legislation affecting the budget process pursuant to a unanimous-consent agreement. Under that UC, if one committee acts on a bill the other committee must act within 30 days or be automatically discharged. Our amendment would supercede this consent agreement.

We all know the Federal budget process is very complicated. The expertise on this subject clearly resides in the Budget Committee, and Senator CONRAD and I believe that is where these issues should be addressed.

Over the years, the Governmental Affairs Committee has done little work on the budget process. Although the current jurisdictional situation has not necessarily created significant problems, we believe it is simply unnecessary to have two committees involved in these issues.

The Governmental Affairs Committee has a very broad and expansive jurisdiction which the resolution being considered would expand even further to matters of homeland security.

Senator CONRAD and I believe consolidating jurisdiction over budget process issues within the Budget Committee would eliminate confusion and guarantee that this work is performed by those with the expertise.

I encourage my colleagues to support our amendment.

Mr. CONRAD. Mr. President, I rise today to speak on behalf of the amendment from the chairman of the Budget Committee, Senator NICKLES.

Mr. President, the Senator from Ohio just got it wrong, what the amendment of the Senator who is the chairman of the Budget Committee does. We do not take the jurisdiction of Governmental Affairs on management issues at all, not at all. That is not what the amendment does.

What the amendment does do is end the duplication of the jurisdiction of the committees on budget process issues. I would submit to my colleagues, it does not make any sense any longer, after 30 years, for Governmental Affairs and Budget to have joint jurisdiction on budget process issues.

The reason they have that joint jurisdiction is because Governmental Affairs wrote the Budget Act. There was no Budget Committee, so at that time they had expertise that the Budget Committee simply did not have, so they were included on jurisdiction on budget process issues.

Well, 30 years have passed. The expertise on these issues is on the Budget Committee. It makes no sense in any management sense to have joint jurisdiction on budget process issues—not on the management issues. The management issues are retained by Governmental Affairs, as they should be. But budget process issues, as the chairman of the Budget Committee has suggested in his amendment, ought to be the jurisdiction of the Budget Committee.

Second, it makes no earthly sense for the nominee to be the Budget Director only to go before the Governmental Affairs Committee. That is what happens now. I think my colleagues would be stunned—I must say, I was very surprised, serving on the Budget Committee—that the Director of the Budget does not come before the Budget Committee. What sense does that make?

The amendment of the chairman of the Senate Budget Committee, Senator NICKLES of Oklahoma, does not expand the jurisdiction of the Senate Budget Committee. It simply eliminates the overlap in jurisdiction between the two committees on the narrow issue of budget process issues.

The expertise on budget process issues, on pay-go, on discretionary caps, on oversight of budget agreements, does not reside with the Committee on Governmental Affairs; it resides in the Budget Committee. We ought to clean up this overlap that has existed for 30 years that started for a good reason—because the Committee on Governmental Affairs wrote the Budget Act because there was no Budget Committee. But now there is a Budget Committee. It has been in existence 30 years. It ought to have jurisdiction over budget process issues. That just makes common sense.

Who could possibly defend the notion that a Budget Director should not come before the Budget Committee for confirmation? It makes no earthly sense.

The amendment of the Senator from Oklahoma is entirely reasonable. It is rational. It improves the operations of both committees. It does not take jurisdiction to the Budget Committee; it simply reduces the common jurisdiction that currently exists between Governmental Affairs and the Budget Committee on the narrow issue of budget process.

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

Mr. CONRAD. I would be happy to yield after this statement.

And it gives to the Budget Committee the right to hear from the Office of Management and Budget, the man who is named or the woman who is named Budget Director in the confirmation process. That just makes common sense.

I would be happy to yield.

Mr. VOINOVICH. The question I would like to ask is, Has the procedure that we now have in terms of the appointment—and this has been for 30 years—diminished the effectiveness of the Budget Committee, because of the fact that they have not participated in the nomination of the Budget Director?

Mr. CONRAD. I believe the answer simply has to be yes. It makes no earthly sense for the person who is named to be the budget director of the United States not to come before the Budget Committee. What sense could that possibly make?

The PRESIDING OFFICER. The time of the Senator from North Dakota has expired.

The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I apologize to the Senator from Ohio. We are running out of time, and the distinguished senior Senator from Texas has an amendment she needs to be able to describe.

AMENDMENT NO. 4015 TO AMENDMENT NO. 3981

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I call up amendment No. 4015.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON] proposes an amendment numbered 4015.

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

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

(Purpose: To implement responsible subcommittee reorganization in the Committee on Appropriations)

In section 402, strike the second sentence and insert the following: ''The Committee on Appropriations shall reorganize into 13 subcommittees not later than 2 weeks after the convening of the 109th Congress.''.

AMENDMENT NO. 4042 TO AMENDMENT NO. 4015

Mrs. HUTCHISON. Mr. President, I call up a second-degree amendment No. 4042.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON] proposes an amendment numbered 4042 to amendment No. 4015.

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

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

The amendment is as follows:

(Purpose: To implement responsible subcommittee reorganization in the Committee on Appropriations)

Strike ''not later than 2 weeks'' and insert ''as soon as possible''

Mrs. HUTCHISON. Mr. President, I ask unanimous consent for adoption of the second-degree amendment.

Mr. REID. I object.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the second-degree amendment be agreed to.

The PRESIDING OFFICER. Without objection, the amendment is agreed to.

The amendment (No. 4042) was agreed to.

Mrs. HUTCHISON. Mr. President, my amendment simply keeps what the Senate has said it wants, and that is an intelligence subcommittee on Appropriations, and it keeps the 13 subcommittees of Appropriations. It says the Appropriations Committee will organize into 13 subcommittees with the intelligence subcommittee as soon as possible after the convening of the 109th Congress.

All my amendment does is keep the Appropriations subcommittees at the same number, making sure there is one intelligence subcommittee, but it does not require the merging of Defense and Military Construction.

It may be that when the Appropriations Committee looks at all of the options for the making of 13 subcommittees, that that will happen, but I think the Appropriations Committee should be the one that makes the recommendations to the Senate. We do not have to rush to make this decision for the Appropriations Committee.

According to the CRS, eliminating a subcommittee through a measure on the Senate floor is unprecedented. In more than 200 years, the CRS says, the Senate has never eliminated a subcommittee through floor action without the committee bringing it to the floor. The Senate has created subcommittees, as with the Governmental Affairs Subcommittee on Investigations in 1952, but not eliminated subcommittees. Merging subcommittees to create room for the new one may be the right thing to do, but the floor is the wrong place to do it.

What is proposed today will set a precedent that could impact every committee by pulling the ability of the committee to organize itself and having that agreed to by the Senate. This is a precedent that should concern every committee. It should concern the majority and the minority. There is no reason to make this decision now.

Also, these changes must be made in conjunction with the House. The House Appropriations subcommittees and the Senate Appropriations subcommittees should match so that when we conference, we will have a finite subcommittee that deals with the same issues; otherwise, there could be many problems with the appropriations process that would complicate an already complicated process.

The House has not made any decisions about reorganizing itself on the Appropriations Committee. The wise thing for the Senate to do would be to create the new intelligence subcommittee of the Appropriations Committee, determine that there will be 13 subcommittees but require the Appropriations Committee to do the reorganization, after which the Senate would

be asked to agree. That is all my amendment does.

Mr. President, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

The yeas and nays were ordered.

Mr. REID. Mr. President, I ask unanimous consent to speak for 2 minutes in opposition to the amendment offered by the Senator from Texas.

The PRESIDING OFFICER. The Senator has 6 minutes remaining.

Mr. REID. Mr. President, I serve on the Appropriations Committee with the distinguished Senator from Texas. She certainly is one of the finest Senators here. But on this issue I disagree with her. In the underlying legislation before the Senate, there has been a consolidation of Defense appropriations and Military Construction. This certainly makes sense. The subject matter is related to the same players, same departments, military, same basis. It does not make sense to make the artificial divide for Construction. I have served as chairman of the Military Construction Subcommittee, and I enjoyed it, but I always wondered why it was a separate subcommittee.

It does, however, make sense to pull intelligence from defense and make it a separate subcommittee. That is what we have done. We have talked to experts, and we think this is the best way to do it. We should keep this plan intact. It is the right thing to do.

The legislation we now have before the Senate is a good package. I don't think it should be splintered with trying to have the Committee on Appropriations rearrange what we have done.

The PRESIDING OFFICER. The Senator from Kentucky.

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

The PRESIDING OFFICER. There is 2½ minutes remaining.

Mr. MCCONNELL. I yield the remaining time that I have to the Senator from Ohio.

AMENDMENT NO. 4027

Mr. VOINOVICH. Mr. President, I would just like to emphasize again that the current situation is one that is working. Unless one can show that it is not working in terms of the authority or the jurisdiction of the Governmental Affairs Committee, I would argue, why change it.

Secondly, this amendment would then subject the appointees of the Director of the Office of Management and Budget, the Deputy Director, and other people to jurisdictions in two committees, which would make the appointment process longer than it is today in an area that is particularly important to the President. What he wants to do immediately is to get his director of budget on board.

Secondly, I think we need to point out that the budget process is not just the jurisdiction of the Budget Committee. Under this amendment, if I want to put a bill in, for example, to reform the budget process to 2-year budgets, to require that the budget include a presentation on the accrued liabilities of the United States and, for that matter, go back and look at the Budget Act of 1974, which should be updated, that bill would have to go to the Budget Committee. If the members of that committee were unhappy with that, if they like the process of 1-year budgets because of the fact that they like to take a bite out of the apple each year, that bill would be dead.

Under the current situation, if someone has an idea of improving the budget process that impacts not only the budget but the entire operation of Government, they can bring it to the Governmental Affairs Committee. We could handle that legislation, and then that legislation would have to be referred to the Budget Committee for their consideration. The fact is, this is too large a responsibility just to put it within the jurisdiction of the Budget Committee. I argue that it makes a lot of sense to leave the situation as it is unless somebody can tell me that it is not working.

I will say one other thing: Our Government's biggest problem today is management. Having jurisdiction of the Office of Management and Budget in Governmental Affairs has given this Senator a lot of leverage to get this administration to do some things that are important for the country.

I thank the Chair.

Mr. REID. Mr. President, I would like the record to reflect that when I spoke regarding Senator VOINOVICH earlier, I said there were approximately 900 bills referred to the Governmental Operations Committee. I misspoke. It is 300. I want the record to reflect the proper number.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the first vote occur on the Nickles amendment, to be followed by a vote on the Hutchison amendment.

VOTE ON AMENDMENT NO. 4041

Mr. REID. Mr. President, I believe we need the yeas and nays on the Nickles amendment.

I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. All time has expired.

The question is on agreeing to the Nickles second-degree amendment No. 4041.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Texas (Mr. CORNYN), the Senator from Idaho (Mr. CRAIG), the Senator from South Carolina (Mr. GRAHAM), the Senator from Pennsylvania (Mr. SPECTER), and the Senator from New Hampshire (Mr. SUNUNU) are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. CORNYN) would vote ''yea.''.

Mr. REID. I announce that the Senator from Indiana (Mr. BAYH), the Senator from California (Mrs. BOXER), the Senator from Louisiana (Mr. BREAUX), the Senator from North Carolina (Mr. EDWARDS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KERRY), the Senator from Georgia (Mr. MILLER), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

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

The result was announced—yeas 50, nays 35, as follows:

[Rollcall Vote No. 206 Leg.]

YEAS—50

Allard	Domenici	Lincoln
Baucus	Dorgan	Mikulski
Biden	Ensign	Murray
Bingaman	Enzi	Nelson (FL)
Bond	Feingold	Nelson (NE)
Bunning	Feinstein	Nickles
Burns	Graham (FL)	Reed
Cantwell	Grassley	Reid
Chafee	Gregg	Santorum
Clinton	Harkin	Schumer
Conrad	Inouye	Sessions
Corzine	Johnson	Shelby
Crapo	Kennedy	Smith
Daschle	Kohl	Stabenow
Dayton	Kyl	Thomas
Dodd	Landrieu	Wyden
Dole	Leahy	

NAYS—35

Akaka	Fitzgerald	McCain
Alexander	Frist	McConnell
Allen	Hagel	Murkowski
Bennett	Hatch	Pryor
Brownback	Hutchison	Roberts
Byrd	Inhofe	Rockefeller
Carper	Jeffords	Snowe
Cochran	Lautenberg	Stevens
Coleman	Levin	Talent
Collins	Lieberman	Voinovich
DeWine	Lott	Warner
Durbin	Lugar	

NOT VOTING—15

Bayh	Cornyn	Kerry
Boxer	Craig	Miller
Breaux	Edwards	Sarbanes
Campbell	Graham (SC)	Specter
Chambliss	Hollings	Sununu

The amendment (No. 4041) was agreed to.

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

The motion to lay on the table was agreed to.

Mr. MCCONNELL. Mr. President, Senator HATCH and Senator LEAHY have a crime bill that has been agreed to on both sides. I ask unanimous consent that they be allowed to bring up that bill, with debate time limited to 1 minute on each side.

Ms. LANDRIEU. May we have order in the Senate?

The PRESIDING OFFICER. Is there objection?

Mr. NICKLES. I will not object.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Also, just prior to that, I ask consent that Senator NICKLES have 1 minute to speak on the amendment just voted on.

Mr. REID. I am sorry, I couldn't hear that.

Mr. MCCONNELL. One minute to speak on the amendment just voted on by Senator NICKLES, followed by 2 minutes equally divided by Senator HATCH and Senator LEAHY.

Mr. REID. I ask the Senator to modify his request to allow 1 minute on each side prior to voting on the Hutchison amendment.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Oklahoma.

Mr. NICKLES. Mr. President, I thank our colleagues for the vote on the last amendment. I especially thank my colleague and friend, Senator CONRAD, for his eloquent debate on it, as well as for his support and cosponsorship of the amendment.

I think it is a good amendment. I think it helps the budget process. Also, I compliment my friend. It has been a pleasure to work with him on the Budget Committee. This was a good, positive budget change. I thank him for his leadership on this amendment.

Mr. HATCH. Mr. President, I ask unanimous consent that my reading of this procedural matter will not be counted against my 1 minute on the amendment.

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

INNOCENCE PROTECTION ACT OF 2004

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate immediately proceed to the consideration of H.R. 5107, the DNA bill, which is at the desk; further, that the bill be read a third time and passed and the motion to reconsider be laid upon the table; provided further, that when the Senate receives from the House a correcting enrollment resolution relating to H.R. 5107, the Senate proceed to its consideration and the resolution be agreed to and the motion to reconsider be laid upon the table. Finally, I ask unanimous consent that if the House does not adopt the correcting enrollment resolution by the end of this Congress, then the Senate action on H.R. 5107 be vitiated.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The bill (H.R. 5107) was read the third time and passed.

Mr. HATCH. Mr. President, this is the very important DNA bill which will help resolve the difficulties with over 400,000 rape kits in this country, some of which are 20 years old or older.

Mr. President, I would just like to compliment Debbie Smith and Kirk Bloodsworth, who are two of the initiating people who have helped bring this about, but also all the people who worked so hard: Senator LEAHY, Senator BIDEN, Senator SPECTER, Senator FEINSTEIN, Senator DEWINE and, of course on the House side, Chairman SENSENBRENNER and Representative BILL DELAHUNT for their dogged determination, and to Senators KYL, SESSIONS, and CORNYN who did a really great job on this bill; also staff on both sides, in both Houses.

With that, I yield the floor.

Mr. KYL. Mr. President, as the primary drafter of Title I of H.R. 5107, I would like to make a few comments. After extensive consultation with my colleagues, broad bipartisan consensus was reached and the language in Title I was agreed to.

I would like to make it clear that it is not the intent of this bill to limit any laws in favor of crime victims that may currently exist, whether these laws are statutory, regulatory, or found in case law. I would like to turn to the bill itself and address the first section, (a)(1), the right of the crime victim to be reasonably protected. Of course the government cannot protect the crime victim in all circumstances. However, where reasonable, the crime victim should be provided accommodations such as a secure waiting area, away from the defendant before and after and during breaks in the proceedings. The right to protection also extends to require reasonable conditions of pre-trial and post-conviction relief that include protections for the victim's safety.

I would like to address the notice provisions of (a)(2). The notice provisions are important because if a victim fails to receive notice of a public proceeding in the criminal case at which the victim's right could otherwise have been exercised, that right has effectively been denied. Public court proceedings include both trial level and appellate level court proceedings. It does not make sense to enact victims' rights that are rendered useless because the victim never knew of the proceeding at which the right had to be asserted. Simply put, a failure to provide notice of proceedings at which a right can be asserted is equivalent to a violation of the right itself.

Equally important to this right to notice of public proceedings is the right to notice of the escape or release of the accused. This provision helps to protect crime victims by notifying them that the accused is out on the streets.

For these rights to notice to be effective, notice must be sufficiently given in advance of a proceeding to give the crime victim the opportunity to arrange his or her affairs in order to be able to attend that proceeding and any scheduling of proceedings should take into account the victim's schedule to facilitate effective notice.

Restrictions on public proceedings are in 28 CFR Sec. 50.9 and it is not the intent here today to alter the meaning of that provision.

Too often crime victims have been unable to exercise their rights because they were not informed of the proceedings. Pleas and sentencings have all too frequently occurred without the victim ever knowing that they were taking place. Victims are the persons who are directly harmed by the crime and they have a stake in the criminal process because of that harm. Their lives are significantly altered by the crime and they have to live with the consequences for the rest of their lives. To deny them the opportunity to know of and be present at proceedings is counter to the fundamental principles of this country. It is simply wrong. Moreover, victim safety requires that notice of the release or escape of an accused from custody be made in a timely manner to allow the victim to make informed choices about his or her own safety. This provision ensures that takes place.

I would like to turn to (a)(3), which provides that the crime victim has the right not to be excluded from any public proceedings. This language was drafted in a way to ensure that the government would not be responsible for paying for the victim's travel and lodging to a place where they could attend the proceedings.

In all other respects, this section is intended to grant victims the right to attend and be present throughout all public proceedings.

This right is limited in two respects. First, the right is limited to public proceedings, thus grand jury proceedings are excluded from the right. Second, the government or the defendant can request, and the court can order, judicial proceedings to be closed under existing laws. This provision is not intended to alter those laws or their procedures in any way. There may be organized crime cases or cases involving national security that require procedures that necessarily deny a crime victim the right not to be excluded that would otherwise be provided under this section. This is as it should be. National security matters and organized crime cases are especially challenging and there are times when there is a vital need for closed proceedings. In such cases, the proceedings are not intended to be interpreted as ''public proceedings'' under this bill. In this regard, it is not our intent to alter 28 CFR Sec. 50.9 in any respect.

Despite these limitations, this bill allows crime victims, in the vast majority of cases, to attend the hearings and trial of the case involving their victimization. This is so important because crime victims share an interest with the government in seeing that justice is done in a criminal case and this interest supports the idea that victims should not be excluded from public criminal proceedings, whether these are pre-trial, trial, or post-trial proceedings.

When ''the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding,'' a victim may be excluded. The standards of ''clear and convincing evidence'' and ''materially altered'' are extremely high and intended to make exclusion of the victim quite rare, especially since (b) says that ''before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the

criminal proceeding.'' It should be stressed that (b) requires that ''the reasons for any decision denying relief under this chapter shall be clearly stated on the record.'' A judge should explain in detail the precise reasons why relief is being denied.

This right of crime victims not to be excluded from the proceedings provides a foundation for (a)(4), which provides victims the right to reasonably be heard at any public proceeding involving release, plea, or sentencing. This provision is intended to allow crime victims to directly address the court in person. It is not necessary for the victim to obtain the permission of either party to do so. This right is a right independent of the government or the defendant that allows the victim to address the court. To the extent the victim has the right to independently address the court, the victim acts as an independent participant in the proceedings. When a victim invokes this right during plea and sentencing proceedings, it is intended that the he or she be allowed to provide all three types of victim impact: the character of the victim, the impact of the crime on the victim, the victims' family and the community, and sentencing recommendations. Of course, the victim may use a lawyer, at the victim's own expense, to assist in the exercise of this right. This bill does not provide victims with a right to counsel but recognizes that a victim may enlist a counsel on their own.

It is not the intent of the term ''reasonably'' in the phrase ''to be reasonably heard'' to provide any excuse for denying a victim the right to appear in person and directly address the court. Indeed, the very purpose of this section is to allow the victim to appear personally and directly address the court. This section would fail in its intent if courts determined that written, rather than oral communication, could generally satisfy this right. On the other hand, the term ''reasonably'' is meant to allow for alternative methods of communicating a victim's views to the court when the victim is unable to attend the proceedings. Such circumstances might arise, for example, if the victim is incarcerated on unrelated matters at the time of the proceedings or if a victim cannot afford to travel to a courthouse. In such cases, communication by the victim to the court is permitted by other reasonable means. In short, the victim of crime, or their counsel, should be able to provide any information, as well as their opinion, directly to the court concerning the release, plea, or sentencing of the accused. This bill intends for this right to be heard to be an independent right of the victim.

It is important that the ''reasonably be heard'' language not be an excuse for minimizing the victim's opportunity to be heard. Only if it is not practical for the victim to speak in person or if the victim wishes to be heard by the court in a different fashion should this provision mean anything other than an in-person right to be heard.

Of course, in providing victim information or opinion it is important that the victim be able to confer with the prosecutor concerning a variety of matters and proceedings. Under (a)(5), the victim has a reasonable right to confer with the attorney for the government in the case. This right is intended to be expansive. For example, the victim has the right to confer with the government concerning any critical stage or disposition of the case. The right, however, it is not limited to these examples. This right to confer does not give the crime victim any right to direct the prosecution. Prosecutors should consider it part of their profession to be available to consult with crime victims about concerns the victims may have which are pertinent to the case, case proceedings or dispositions. Under this provision, victims are able to confer with the government's attorney about proceedings after charging. I would note that the right to confer does impair the prosecutiorial discretion of the Attorney General or any officer under his direction, as provided (d)(6).

I would like to turn now to restitution in (a)(6). This section provides the right to full and timely restitution as provided in law. We specifically intend to endorse the expansive definition of restitution given by Judge Cassell in U.S. v. Bedonie and U.S. v. Serawop in May 2004. This right, together with the other rights in the act to be heard and confer with the government's attorney in this act, means that existing restitution laws will be more effective.

I would like to move on to (a)(7), which provides crime victims with a right to proceedings free from unreasonable delay. This provision does not curtail the government's need for reasonable time to organize and prosecute its case. Nor is the provision intended to infringe on the defendant's due process right to prepare a defense. Too often, however, delays in criminal proceedings occur for the mere convenience of the parties and those delays reach beyond the time needed for defendant's due process or the government's need to prepare. The result of such delays is that victims cannot begin to put the criminal justice system behind them and they continue to be victimized. It is not right to hold crime victims under the stress and pressure of future court proceedings merely because it is convenient for the parties or the court.

This provision should be interpreted so that any decision to schedule, reschedule, or continue criminal cases should include victim input through the victim's assertion of the right to be free from unreasonable delay.

I would add that the delays in criminal proceedings are among the most chronic problems faced by victims. Whatever peace of mind a victim might achieve after a crime is too often inexcusably postponed by unreasonable delays in the criminal case. A central reason for these rights is to force a change in a criminal justice culture which has failed to focus on the legitimate interests of crime victims, a new focus on limiting unreasonable delays in the criminal process to accommodate the victim is a positive start.

I would like to turn to (a)(8). The broad rights articulated in this section are meant to be rights themselves and are not intended to just be aspirational. One of these rights is the right to be treated with fairness. Of course, fairness includes the notion of due process. Too often victims of crime experience a secondary victimization at the hands of the criminal justice system. This provision is intended to direct government agencies and employees, whether they are in executive or judicial branches, to treat victims of crime with the respect they deserve and to afford them due process.

It is not the intent of this bill that its significance be whittled down or marginalized by the courts or the executive branch. This legislation is meant to correct, not continue, the legacy of the poor treatment of crime victims in the criminal process. This legislation is meant to ensure that cases like the McVeigh case, where victims of the Oklahoma City bombing were effectively denied the right to attend the trial and to avoid federal appeals courts from determining, as the Tenth Circuit Court of Appeals did, that victims had no standing to seek review of their right to attend the trial under the former victims' law that this bill replaces.

I would also like to comment on (b), which directs courts to ensure that the rights in this law be afforded and to record, on the record, any reason for denying relief of an assertion of a crime victim. This provision is critical because it is in the courts of this country that these rights will be asserted and it is the courts that will be responsible for enforcing them. Further, requiring a court to provide the reasons for denial of relief is necessary for effective appeal of such denial.

Turning briefly to (c), there are several important things to point out. First, this provision requires that the government inform the victim that the victim can seek the advice of the attorney, such as from the legal clinics for crime victims contemplated under this law, such as the law clinics at Arizona State University and those supported by the National Crime Victim Law Institute at the Law School at Lewis and Clark College in Portland, Oregon. This is an important protection for crime victims because it ensures the independent and individual nature of their rights. Second, the notice section immediately following limits the right to notice of release where such notice may endanger the safety of the person being released. There are cases, particularly in domestic violence cases, where there is danger posed by an intimate partner if the intimate partner is

released. Such circumstances are not the norm, even in domestic violence cases as a category of cases. This exception should not be relied upon as an excuse to avoid notifying most victims.

I would now like to address the enforcement provisions of the bill in (d). This provision allows a crime victim to enter the criminal trial court during proceedings involving the crime against the victim, to stand with other counsel in the well of the court, and assert the rights provided by this bill. This provision ensures that crime victims have standing to be heard in trial courts so that they are heard at the very moment when their rights are at stake and this, in turn, forces the criminal justice system to be responsive to a victim's rights in a timely way. Importantly, however, the bill does not allow the defendant in the case to assert any of the victim's rights to obtain relief. This prohibition prevents the individual accused of the crime from distorting a right intended for the benefit of the individual victim into a weapon against justice.

The provision allows the crime victim's representative and the attorney for the government to go into a criminal trial court and assert the crime victim's rights. The inclusions of representatives and the government's attorney in the provision are important for a number of reasons. First, allowing a representative to assert a crime victim's rights ensures that where a crime victim is unable to assert the rights on his or her own for any reason, including incapacity, incompetence, minority, or death, those rights are not lost. The representative for the crime victim can assert the rights. Second, a crime victim may choose to enlist a private attorney to represent him or her in the criminal case—this provision allows that attorney to enter an appearance on behalf of the victim in the criminal trial court and assert the victim's rights. The provision also recognizes that, at times, the government's attorney may be best situated to assert a crime victim's rights either because the crime victim is not available at a particular point in the trial or because, at times, the crime victim's interests coincide with those of the government and it makes sense for a single person to express those joined interests. Importantly, however, the provision does not mean that the government's attorney has the authority to compromise or co-opt a victim's right. Nor does the provision mean that by not asserting a victim's right the government's attorney has waived that right. The rights provided in this bill are personal to the individual crime victim and it is that crime victim that has the final word regarding which of the specific rights to assert and when. Waiver of any of the individual rights provided can only happen by the victim's affirmative waiver of that specific right.

In sum, without the ability to enforce the rights in the criminal trial and appellate courts of this country any rights afforded are, at best, rhetoric. We are far past the point where lip service to victims' rights is acceptable. The enforcement provisions of this bill ensure that never again are victim's rights provided in word but not in reality.

I want to turn to (d)(2) because it is an unfortunate reality that in today's world there are crimes that result in multiple victims. The reality of those situations is that a court may find that the sheer number of victims is so large that it is impracticable to accord each victim the rights in this bill. The bill allows that when the court makes that finding on the record the court must then fashion a procedure that still gives effect to the bill and yet takes into account the impracticability. For instance, in the Oklahoma City bombing case the number of victims was tremendous and attendance at any one proceeding by all of them was impracticable so the court fashioned a procedure that allowed victims to attend the proceedings by close circuit television. This is merely one example. Another may be to allow victims with a right to speak to be heard in writing or through other methods. Importantly, courts must seek to identify methods that fit the case before that to ensure that despite the high number of crime victims, the rights in this bill are given effect. It is a tragic reality that cases may involve multiple victims and yet that fact is not grounds for eviscerating the rights in this bill. Rather, that fact is grounds for the court to find an alternative procedure to give effect to this bill.

I now want to turn to another critical aspect of enforcement of victims' rights, (d)(3). This subsection provides that a crime victim who is denied any of his or her rights as a crime victim has standing to seek appellate review of that denial. Specifically, the provision allows a crime victim to apply for a writ of mandamus to the appropriate appellate court. The provision provides that court shall take the writ and shall order the relief necessary to protect the crime victim's right. This provision is critical for a couple of reasons. First, it gives the victim standing to appear before the appellate courts of this country and ask for review of a possible error below. Second, while mandamus is generally discretionary, this provision means that courts must review these cases. Appellate review of denials of victims' rights is just as important as the initial assertion of a victim's right. This provision ensures review and encourages courts to broadly defend the victims' rights.

Without the right to seek appellate review and a guarantee that the appellate court will hear the appeal and order relief, a victim is left to the mercy of the very trial court that may have erred. This country's appellate courts are designed to remedy errors of lower courts and this provision requires them to do so for victim's rights. For a victim's right to truly be honored, a victim must be able to assert the rights in trial courts, to then be able to have denials of those rights reviewed at the appellate level, and to have the appellate court take the appeal and order relief. By providing for all of this, this bill ensures that victims' rights will have meaning. It is the clear intent and expectation of Congress that the district and appellate courts will establish procedures that will allow for a prompt adjudication of any issues regarding the assertion of a victim's right, while giving meaning to the rights we establish.

I would like to turn our attention to (d)(4) because that also provides an enforcement mechanism. This section provides that in any appeal, regardless of the party initiating the appeal, the government can assert as error the district court's denial of a crime victim's right. This subsection is important for a couple of reasons. First, it allows the government to assert a victim's right on appeal even when it is the defendant who seeks appeal of his or her conviction. This ensures that victims' rights are protected throughout the criminal justice process and that they do not fall by the wayside during what can often be an extended appeal that the victim is not a party to.

I would like to turn to the next provision, (d)(5). This provision is not intended to prevent courts from vacating decisions in non-trial proceedings, such as proceedings involving release, delay, pleas, or sentencings, in which victims' rights were not protected, and ordering those proceedings to be redone.

It is important for victims' rights to be asserted and protected throughout the criminal justice process, and for courts to have the authority to redo proceedings such as release, delay, pleas, and sentencings, where victims' rights are abridged.

I want to turn to the definitions in the bill, contained in (e). There are a couple of key points to be made about the definitions. A ''crime victim'' is defined as a person directly and proximately harmed as a result of a federal offense or an offense in the District of Columbia. This is an intentionally broad definition because all victims of crime deserve to have their rights protected, whether or not they are the victim of the count charged. Additionally, crime victims may, for any number of reasons, want to employ an attorney to represent them in court. This definition of crime victim allows crime victims to do that. It also assures that when, for any reason, crime victims unable to assert rights on their own—those rights will still be protected.

Now I would like to turn to the portion of the bill concerning administrative compliance with victims' rights. The provisions of (f) are relatively self-explanatory, but it important to point out that these procedures are completely separate from and in no way limit the victim's rights in the previous section.

I also would like to make it clear that it is the intention of the Congress

that the money authorized in 1404D for the Director of the Office for Victims of Crimes ''for the support of organizations that provide legal counsel and support services for victims in criminal cases for the enforcement of crime victims' rights in Federal jurisdictions, and in States and tribal governments . . .'' is intended to support the work of the National Crime Victim Law Institute at the Law School at Lewis and Clark College in Portland, Oregon, and to replicate across the nation the clinics that it is supporting, fashioned after the Crime Victims Legal Assistance Project housed at Arizona State University College of Law and run by Arizona Voice for Crime Victims. The Director of OVC should take care to make sure that these funds go into the support of these programs so that crime victims can receive free legal counsel to enforce their rights in our federal courts. Only in this way will be able to fully and fairly test whether statutes are enough to protect victims' rights. There is no substitute for testing these rights in our courts to see if they have the power to change a culture that for too long has ignored the victim.

Let me comment briefly on the provision on reports. Under (a), the Administrative Office of the U.S. Courts to report annually the number of times a right asserted in a criminal case is denied the relief requested, and the reasons therefore, as well as the number of times a mandamus action was brought and the result of that mandamus.

Such reporting is the only way we in the Congress and other interested parties can observe whether reforms we mandate are being carried out. No one doubts the difficulty of obtaining case-by-case information of this nature. Yes, this information is critical to understanding whether federal statutes really can effectively protect victim's rights or whether a constitutional amendment is necessary. We are certain that affected executive and judicial agencies can work together to implement effective administrative tools to record and amass this data. We would certainly encourage the National Institute of Justice to support any needed research to get this system in place.

One final point. Throughout this Act reference is made to the ''accused.'' The intent is for this word to be used in the broadest sense to include both those charged and convicted so that the rights we establish apply throughout the criminal justice system.

TITLE IV

Mr. HATCH. Before we agree to send this bill to the House, there are a number of concerns raised with respect to the capital-counsel section of Title IV that I would like to address with my colleagues. I know that this title has been of particular concern to my friend from Texas, Senator CORNYN.

Mr. CORNYN. I thank the Senator. I do have a number of concerns about the Innocence Protection Act. Namely, I am concerned that under this bill, states effectively are required to adhere to a Federal regulatory system, answering to the Department of Justice, for defense and prosecution representation in State capital cases. However, I have been encouraged by recent modifications to the bill that lead me to believe a greater balance has been struck between ensuring strong capital representation systems and supporting the prosecution and sentencing of violent criminals. Senator HATCH, is it your belief that such a balance has been struck?

Mr. HATCH. That is my belief. And let me first say that I appreciate the concerns of the Senator from Texas as well as those of Senators KYL and SESSIONS, each of whom have worked very hard on this important issue. You bring to the debate a wealth of experience in this area, having served as Attorney General of your home State of Texas and as a Judge, and you have worked tirelessly on this, and I thank you for it.

The recent modifications to the bill are a great improvement. The bill is the result of the hard work and dedication of many on both sides of the aisle. Most importantly, we have significantly reworked this bill so as to address the legitimate concerns you, Senators KYL and SESSIONS as well as others have raised.

Specifically, we made some changes to the capital representation section of the Innocence Protection Act. We worked with the House to add language similar to language in the amendment that you offered in the Judiciary Committee language that would require that a large majority of the funding in this area to go to the trial level, rather than to the appellate or habeas litigation. This shift in funding allocation is a further safeguard against your concerns that funds might go to particular advocacy groups because they typically become involved in these cases at the appellate level.

Mr. CORNYN. On this issue—the issue of capital representation, I note that there is a provision in place negotiated by Majority Leader DELAY and other members of the Texas delegation in the House designed to protect the capital representation system that is in place in Texas? Do I understand that correctly?

Mr. HATCH. Yes. Section 421(d)(1)(C) was added specifically to ensure that Texas, or any other State with a similarly structured system, would qualify as an ''effective system'' under the statute. This provision has been referred to as the ''Texas carve-out'' throughout debate over this bill. It is appropriate in light of the changes Texas enacted in order to improve its capital-representation system just 3 years ago.

Mr. CORNYN. I thank the Senator. I share the perspective that Texas' system is preserved as a so-called ''effective system'' under the statute. And that is critically important. As you point out, in 2001, the Texas Legislature passed the Texas Fair Defense Act to overhaul Texas' indigent criminal defense system. The legislation passed ensures prompt appointment of an attorney for indigent criminal defendants, provides guidelines on method of appointment for counsel, establishes minimum standards for appointed attorneys in capital cases, and provides both State resources and oversight of county's indigent defense systems through a State Task Force on Indigent Defense. It is this system or any future version of it that specifically is intended to be protected by this language, is it not?

Mr. HATCH. That is absolutely my understanding.

Mr. CORNYN. So under the DeLay proviso, Texas will not have to change a thing in order to receive grants under this bill—it is automatically pre-qualified?

Mr. HATCH. Absolutely. In fact, it is my understanding that at least half a dozen other states also will automatically pre-qualify for funding under this proviso.

Mr. CORNYN. I thank the Senator. This so-called ''Texas carve-out'' is critical to my support for this bill. Without the carve-out, Texas and other States like it would not qualify for Federal grant funds, even though they already have an ''effective system'' for capital representation. And, without the carve-out, Texas and other States like it would have no incentive to apply for Federal grant funds because the Federal grant funds to be received would not exceed the State funds that would have to be spent to become eligible. On the other hand, because of the ''carve-out,'' Texas and other States like it can keep appointment power with locally-elected judges, maintain their own innovations designed to improve—not make impossible—the effective representation of capital defendants, and avoid the need for the creation of a new, needlessly expensive, centralized bureaucracy often times controlled by those who oppose the death penalty such as was the case with the former capital defense Resource Centers that were disbanded by Congress in the 1990's.

Mr. HATCH. I would say that the ''carve-out'' is a compromise that is consistent with past Federal assistance to the States' criminal justice systems, and it sets appropriate limits on the level of Federal involvement in the administration of the death penalty at the state level.

Mr. CORNYN. Thank you for your work on this, Mr. HATCH, and for helping to ensure that my home State of Texas qualifies as having an ''effective system for providing competent legal representation'' under the legislation.

I have two other questions for you. In the new postconviction testing remedy created by this legislation for Federal prisoners—at what apparently will be section 3600(g) the bill allows the court

to order a new trial if a DNA test result, in light of all of the other evidence, establishes, and I quote, ''by compelling evidence that a new trial would result in an acquittal.'' As you recall, the standard for granting new trials in what can sometimes be old cases was much debated during the Judiciary Committee's consideration of this bill. The Committee almost voted in favor of changing this standard of proof from ''would result in acquittal'' to ''did not commit the crime,'' and some discussed a middle option of raising the standard from preponderance of the evidence to ''clear and convincing evidence.'' Ultimately, we chose to defer addressing this issue until negotiations on a final package with the House of Representatives. And in the end, we chose neither of the standards discussed, but instead opted for elevating the standard of proof to ''compelling evidence.''

We discussed at the time why ''compelling'' would be the best term of art for setting a standard for reopening litigation of an issue. In particular, we looked to two cases that tell us what ''compelling'' means in this context—cases that give us confidence that we have set a high bar that will not allow the probably guilty to receive a new trial—and go free if a new trial proves impossible—and also will not allow defendants to seek new trials on the basis of evidence that they could have presented all along. As the Chairman of the Committee that reported this bill and the Senate companion bill's lead sponsor, I think that you can speak with some authority on this matter, and clarify for the record the thinking that went into the House and Senate's selection of the word ''compelling.'' Would you do so?

Mr. HATCH. I would be pleased to do so. In choosing the term ''compelling,'' we relied on previous interpretation of that term in cases such as United States v. Walser, a 1993 case out of the Eleventh Circuit. That court analyzed a previous jury's decision—and whether it disadvantaged the defendant—under a standard of ''compelling prejudice.'' The court there made clear that it could not find ''compelling prejudice'' if ''under all the circumstances of [the] particular case it is within the capacity of jurors'' to reach the proper result—in the case of this bill, to find that the defendant committed the crime. If, in light of the DNA test, it would not be within the capacity of jurors to conclude that the defendant is guilty, a new trial must be granted under 3600(g). But if they could possibly find guilty, no new trial is allowed. As the Eleventh Circuit explained, under the ''compelling'' standard, if a decision is ''within the jury's capacity''—if it is reasonably possible—then ''though the task be difficult [for the hypothetical jury], there is no compelling prejudice''—or in our case, no compelling evidence requiring a new trial.

As the Walser case also explains, you look to the trial transcript to decide what constitutes ''compelling'' evidence. Obviously, it is the defendant's burden to produce this evidence by other means if there is no trial transcript. If the defendant pleaded guilty, and received the inevitable benefits that come with a plea agreement, he cannot later turn the lack of a record against the State. It remains the defendant's burden of both persuasion and production to show that it would not have been possible for the jury to have concluded that he is guilty. This is again implicit in the adoption of the term of art ''compelling''—as Walser elaborates, under the ''compelling'' standard, ''absent evidence to the contrary, we presume that the jury'' could properly reach the result that it did.

The other case to which I believe that you referred is the Seventh Circuit's 1979 decision in NLRB v. Austin Development Center, which makes clear that previously available evidence is not ''compelling'' evidence. The relevant passage from that case for our purposes was that only ''[t]he discovery of new evidence is a compelling circumstance justifying relitigation. The proffer of evidence not presented earlier, however, will not justify relitigation where it is not shown that the evidence was unavailable at the time of the prior proceeding.'' In other words, for our purposes, if the DNA evidence that a prisoner relies on is something that would have been available to him earlier, it does not qualify as ''compelling'' evidence justifying a new trial. If he failed to seek a test when he could have, he cannot later use that test result to argue for a new trial, once witnesses have died or become unavailable or had their memories fade, and other evidence has deteriorated and disappeared. To allow a new trial under these circumstances would be fundamentally unfair to society and its interest in the finality of criminal judgments. As some of my colleagues have noted, Federal Rule of Criminal Procedure specifically limits its liberal new-trial rule to new evidence discovered within 3 years. Implicit in that limit is the judgment that the same evidence cannot carry the same weight in a new trial motion if it is brought at a later time. By adopting the ''compelling'' standard in this bill, we make that same judgement, and we protect these same societal interests.

I hope that this conforms to your previous understanding of this provision and clarifies matters for the record, Senator. We have chosen a tough standard here—in fact, I believe tougher than all those that we have discussed previously. This is not a standard that will grant new trials to people who probably did it—and then allow them to walk free when prosecutors are unable to try them after the passage of time. I hope that you can have confidence in that, Senator.

Mr. CORNYN. It does conform to my previous understanding and I do have confidence in it, Senator. Thank you. I regret taking up the Senate's time on this busy day, but I do have one other question, and this pertains to the bill's changes to CODIS and NDIS, the DNA index systems. It is my understanding that this bill places no limits on what States can upload into CODIS—that is, into their own databases.

Mr. HATCH. That is correct.

Mr. CORNYN. I also would like to clarify which profiles states are required to have expunged from NDIS—the national-exchange database—as a condition of access. The bill allows States to upload anything that is collected ''under applicable legal authorities''—that is, that States or local governments collect under their own laws or policies. An exception is made, however, for two categories—unindicted arrestees and elimination-only samples. Then later, the bill provides that States must seek expungement of samples if, and I quote, ''the person has not been convicted of an offense of the basis of which that analysis was or could have been included in the index, and all charges for which the analysis was or could have been included in the index have been dismissed or resulted in acquittal.''

It is my understanding that, just as what will now be U.S. Code subsection (d)(2)(A)(i) requires that a person's analysis be expunged if it was originally uploaded on the basis of a criminal conviction and that conviction is overturned, this new subsection (ii) will require the analysis of the acquitted arrestee (or one for whom charges have been dismissed) to be expunged—but only if the analysis originally was or could have been included because he was an arrestee.

Mr. HATCH. That is correct. The new limitation that you noted—the new subsection 14132(d)(2)(A)(ii) corresponds to the limited ''unindicted arrestee'' category in the new (a)(1)(C). It does not apply to DNA analyses uploaded under other ''applicable legal authorities.'' Our intent was to provide States with maximum flexibility in exchanging DNA profile information through NDIS. The only exception that we made in this bill was for arrestees, who had DNA samples taken from them involuntarily, and who, because of those circumstances, we give the right to have those samples withdrawn from NDIS.

Mr. CORNYN. As you know, I am a strong believer in the power of DNA to solve crimes. I want to see the United States develop as broad and as powerful a DNA database as possible. The States have a strong interest in solving past crimes. I also believe that there is no reason to exclude DNA from CODIS simply because charges against an arrestee are dismissed or he is acquitted—fingerprints are kept in such cases, and there is no reason to treat DNA differently than fingerprints. The bill bars States from keeping an arrestee's DNA sample if charges are dropped or he is acquitted. There is no reason to do so. Experience shows that felony arrestees—even those who are

not ultimately convicted—are a good population from which to predict other crimes. Excluding unindicted arrestees will simply prevent States from solving more crimes. I understand that legislative compromise has forced us to exclude arrestees—even those indicted—if charges against them are dropped. I am glad to see that your understanding of the States's otherwise broad authority conforms to my own understanding—that outside of the arrestee-sample context, States may still upload and exchange any DNA collected under State and local laws, policies, and practices on the NDIS database.

In expressing this view, I would like to emphasize that keeping DNA samples in CODIS and NDIS does not affect privacy—the analysis used has no medical predictive value. The analysis of DNA that is kept in CODIS is what is called ''junk DNA''—it is impossible to determine anything medically sensitive from this DNA. For example, this DNA will not allow a tester to determine if the donor is susceptible to particular diseases. As the Justice Department noted in its official Views Letter on the predecessor to this bill, and I quote at length:

> [T]here [are no] legitimate privacy concerns that require the retention or expansion of these [H.R. 3214] expungement provisions. The DNA identification system is already subject to strict privacy rules, which generally limit the use of DNA samples and DNA profiles in the system to law enforcement identification purposes. See 42 U.S.C. 14132(b)–(c). Moreover, the DNA profiles that are maintained in the national index relate to 13 DNA sites that do not control any traits or characteristics of individuals. Hence, the databased information cannot be used to discern, for example, anything about an individual's genetic illnesses, disorders, or dispositions. Rather, by design, the information the system retains in the databased DNA profiles is the equivalent of a ''genetic fingerprint'' that uniquely identifies an individual, but does not disclose other facts about him.

To those still concerned about some kind of civil liberties violation inherent in maintaining a DNA database, I would ask, what about Medicare and Medicaid?—they keep lots of medically sensitive information. Why should we trust those agencies, but not the FBI? Misuse of the information in CODIS and NDIS—if even possible—is prohibited by law. The Medicare and Medicaid system keep vast stores of medically sensitive information about people. If we are so afraid of CODIS and NDIS, what about Medicare?

And again—fingerprints are kept for all arrestees—should we now expunge those too? The FBI maintains a database of fingerprints of arrestees—without regard to whether the arrestee is later acquitted or convicted. As Justice notes in its Views Letter on this bill, ''With respect to the proposed exclusion of DNA profiles of unindicted arrestees, it should be noted by way of comparison that there is no Federal policy that bars States from including fingerprints of arrestees in State and Federal law enforcement databases prior to indictment.'' Since database DNA is no more sensitive than fingerprints, and we would expunge DNA under S. 1700, should we also start throwing out fingerprints?

I would also note that keeping as broad a database as possible will stop many violent predators much earlier. As the Justice Department also noted in its Views Letter, ''There is no reason to have a . . . Federal policy mandating expungement for DNA information. If the person whose DNA it is does not commit other crimes, then the information simply remains in a secure database and there is no adverse effect on his life. But if he commits a murder, rape, or other serious crime, and DNA matching can identify him as the perpetrator, then it is good that the information was retained.''

Finally, on this point, I would like to highlight the British example: The British tried expunging arrestees' DNA and found that they ended up with embarrassing ''improper'' matches from perpetrators who weren't supposed to get caught. Now they take DNA from all suspects (not just arrestees) and have a 2,000,000 profile database. As a result, the British now get DNA matches from crimes scenes in 40 percent of all cases, and had 58,176 ''cold hits'' from crime scenes in 2001–02.

According to a recent National Institutes of Justice-commissioned study titled ''The Application of DNA Technology in England and Wales,'' the U.K. tried expunging DNA profiles for arrestees who are not ultimately convicted and quickly realized that this was a mistake. According to the report:

> While [a 1994 law] called for the expungement of profiles of individuals who were not ultimately convicted, periodic problems with the database administration ultimately led to a number of cases in which suspects were identified by samples which were retained in the system but should have been removed. This lead to a number of court cases and a decision from the House of Lords addressing the legality of such convictions.
>
> To address these public policy and legal issues, the House of Lords passed [a 2001 law] which . . . provides for the indefinite retention of DNA profiles on the [British database] even if suspects are not convicted.'' . . . [The new law] allows for the collection and retention of biological samples and DNA profiles for anyone who becomes a suspect during the course of a police investigation.

As a result of these changes, the British now have 2,000,000 DNA profiles in their national database, they now get matches from 40 percent of all crime scenes with DNA, and they had 58,176 ''cold hits'' from crime scenes in 2001. Why wouldn't we want the same for our country?

Another NIJ-commission study, produced by Washington State University and titled the ''National Forensic DNA Study Report,'' notes that ''the DNA database must have a strong pool of offenders for comparison. . . . the DNA database is a two-index system—a crime scene sample index, and an offender index. The effectiveness of either index is necessarily restricted by any limitation on the other index.'' From the British experience, we know that a broad database is highly effective. It is time to replicate that experience here, before more preventable crimes are committed. I am glad that we have moved far in that direction—toward the British model—though we still have maintained the unfortunate anachronism of requiring arrestees' analyses to be expunged if charges against them are dropped.

Mr. HATCH. I agree with the Senator. I, too, am pleased that, with the exception of samples collected from arrestees who have charges dismissed or are acquitted, States and local governments can now upload and compare analyses collected under applicable legal authorities on the national database without running afoul of arbitrary expungement requirements.

Mr. SESSIONS. If the Chairman would permit, I also would like to pose a few questions, in order to clarify for the record some new language added to the bill. As the lead sponsor of the Senate legislation that became this bill, and Chairman of the committee that reported that bill, I believe that you have unique authority to clarify these matters.

The modification to the bill that was approved on the Senate floor today changes who can serve on the capital-counsel entity that selects and manages counsel for State capital cases in States that do not have a public defender program. The committee-passed version of the bill read that, to receive its portion of the funds for State capital counsel, a State that does not have a public defender system must place control of the appointment of defense counsel in ''an entity established by statute or by the highest State court with jurisdiction in criminal cases, which is composed of individuals with demonstrated knowledge and expertise in capital representation.'' The new version of the bill reads that the entity must be ''composed of individuals with demonstrated knowledge and expertise in capital cases, except for individuals currently employed as prosecutors.''

Previously, the bill required that only defense—lawyers and maybe retired prosecutors, or anyone else who ''represented'' parties in capital cases—be appointed to manage the entity. With today's amendment, sitting trial and appellate judges can be appointed to manage the capital-counsel entity—as well as anyone else with experience with capital cases, including law professors or victims' advocates—but not current prosecutors. Is that your understanding of the new bill?

Mr. HATCH. Yes. Anyone with knowledge of capital cases—not just someone who has litigated capital cases—can now serve on the entity. Most importantly, this includes members of the bench. It could also include law professors with knowledge of capital cases, or, as you mentioned, even advocates for crime victims—if they

have a demonstrated familiarity with the death penalty. The interests of victims too often are left out in our justice system—I am pleased to see that we have now changed this bill to ensure that someone who has experience in guiding crime victims through a capital trial would be eligible to sit at the table of this important new capital-counsel entity. I think that such an entity certainly could benefit from diverse perspectives on the criminal-justice system.

Mr. SESSIONS. But there is no requirement of such apportionment, is there? If a State chooses to design its capital counsel entity so that, for example, it is composed exclusively of trusted members of the bench, the State could do so, could it not?

Mr. HATCH. Absolutely. This a matter that is properly left up to the States, and we have so left it.

Mr. SESSIONS. I also do not understand this bill to preclude the State from allowing the entity to delegate its authority—for example, the State could have one statewide entity that then delegates its functions to particular judges in particular counties or districts. Is my understanding correct?

Mr. HATCH. That understanding is correct. As long as the person to whom authority is delegated would herself be eligible to serve on the entity, there is no reason to centralize all functions in one office. Nor is there any limit or requirement as to how many people can serve on the capital counsel entity. I know that in some of our discussions earlier this week, Senator KYL posed the example of a State that creates a panel of three judges—trial judges, appellate judges, or some combination thereof—and has that panel carry out the functions of the entity. With the modification to the bill made today, this would be permissible. The State could use 5 judges, or 12, or even 1, though I can't imagine that the latter would be practical, except in the case where authority is delegated in local areas.

Mr. SESSIONS. I thank the Senator. I am pleased that your understanding of these aspects of the bill matches mine. One final point: I do not understand the bill to limit whom the State may vest with the authority to appoint the members of the capital-counsel entity. The entity's members could be appointed by the governor, the attorney general, the Supreme Court, or any other official designated by State law or supreme-court rule. Is that correct?

Mr. HATCH. Yes. There is no such restriction.

Mr. SESSIONS. I thank the Chairman.

Mr. LEAHY. Mr. President, I want to thank my friend from Utah. He and I have worked very hard, and, as he mentioned, we worked closely with Chairman SENSENBRENNER, Mr. DELAHUNT, and Mr. LAHOOD in the other body. Yesterday was an extremely busy day as we met over and over again, well into last evening and again early this morning, to make it possible.

I think this is also a day to rejoice on the part of courageous people like Debbie Smith and Kirk Bloodsworth. Debbie waited years to see this day, but she remained steadfast in her commitment to help other people. Kirk Bloodsworth faced an ordeal that nobody should have to face. That is why parts of this bill are named for each of them. I hope this achievement brings some kind of closure for them.

Mr. President, on February 1, 2000, I came to the floor to call attention to the growing national crisis in the administration of capital punishment. I noted that since the reinstatement of capital punishment in the 1970s, 85 people had been found innocent and released from death row. And I urged Senators on both sides of the aisle, both those who supported the death penalty and those who opposed it, to join in seeking ways to minimize the risk that innocent persons will be put to death. A few days later, I introduced the Innocence Protection Act of 2000.

That was more than 4 years ago. During that time, many more innocent people have been freed from death row—the total is now 117, according to the Death Penalty Information Center. During that time, the Republican Governor of Illinois commuted all the death sentences in his State to life in prison, having lost confidence in a system that exonerated more death row inmates than it executed. During that time, we learned about problems at the Houston crime lab so serious that the city's top police official called for a moratorium on executions of the inmates who were convicted based on evidence that the lab handled or analyzed. And during that time, the bipartisan, bicameral coalition supporting the Innocence Protection Act has continued to grow.

Earlier this week, the House of Representatives passed the Justice For All Act of 2004, a wide-ranging criminal justice package that includes the Innocence Protection Act. The House bill also includes the Debbie Smith Act and the DNA Sexual Assault Justice Act, which together authorize more than $1 billion over the next 5 years to eliminate the DNA backlog crisis in the Nation's crime labs and fund other DNA-related programs. Finally, the House bill includes crime victims' rights provisions that I sponsored with Senators FEINSTEIN and KYL, and which already passed the Senate earlier this year.

Today, at long last, the Senate is poised to pass the Justice For All Act and to send this important legislation to the President. I hope he will sign it, despite his Justice Department's continued efforts to kill this bill. The reforms it enacts will create a fairer system of justice, where the problems that have sent innocent people to death row are less likely to occur, where the American people can be more certain that violent criminals are caught and convicted instead of the innocent people who have been wrongly put behind bars for their crimes, and where victims and their families can be more certain of the accuracy, and finality, of the results.

This bill has been many years in the making, and there are many people to acknowledge and thank. Let me begin by thanking Kirk Bloodsworth, Debbie Smith, the Justice Project, and through them all the crime victims and the victims of a flawed criminal justice system who have made these changes possible. Without their commitment and dedication, these straightforward reforms simply would not have happened. Kirk and Debbie sat patiently, hour after hour, through our committee's work on this bill, and their presence was strong and eloquent testimony of the need for this legislation.

Part of this legislation is appropriately named for Kirk Bloodsworth. Kirk was a young man, just out of the Marines, when he was arrested, convicted, and sentenced to death for a heinous crime that he did not commit. DNA evidence ultimately freed him and identified the real killer. He became the first person in the United States to be freed from a death row crime through use of DNA evidence. The years he spent in prison were hard years, and he was treated horribly even after he was released. He could have become embittered by all he has endured. But instead, he has chosen to turn his experience into something constructive, to help others, and one way he has chosen to help is by being part of the effort to enact this bill. Kirk and his wife, Brenda, are remarkable people, and I thank them both. I am proud to have come to know them through our work together on this constructive cause.

I want to commend the chairman of the House Judiciary Committee, Congressman JAMES SENSENBRENNER, who spearheaded this effort in the House. Chairman SENSENBRENNER deserves high praise for steering this bill through some very rough patches to final passage. We would not be where we are today without his leadership, tenacity, and steadfast commitment to getting this done.

I also want to thank my longtime colleagues in this endeavor, Representative BILL DELAHUNT of Massachusetts and Representative RAY LAHOOD of Illinois. They have worked tirelessly over many years to pass the Innocence Protection Act, and they deserve much of the credit for building the strong support for the bill in the House.

I also want to acknowledge Senator HATCH, the chairman of our Committee, with whom I have debated these issues for years and with whom I have cosponsored many measures over the last 10 years. Had he continued to oppose these efforts we could never have been successful. Over the last couple of weeks he has focused on this bill, and the Judiciary Committee reported the Advancing Justice Through DNA Technology Act under his leadership just a few weeks ago. I am grateful for his help in overcoming objections to

the bill from his side of the aisle. I know how hard he has worked to do that.

Thanks, too, to the many Members on both sides of the aisle, in the Senate and in the House, who have supported this legislation over this long struggle for reform. Working together, we have finally begun to address the many problems facing our capital punishment system. Here in the Senate, Senator BIDEN has championed additional funding for rape kit testing. Senators KENNEDY, KOHL, FEINGOLD, and DURBIN have been longtime and steadfast proponents of sensible reform. Senators FEINSTEIN and SPECTER were strong supporters of the Innocence Protection Act in the 107th Congress, and have been constructive partners in the effort in this Congress. Senator GORDON SMITH and Senator COLLINS were early cosponsors of the Innocence Protection Act as well. Senator DEWINE was a lead sponsor of the Senate DNA bill, and has made many important contributions. I have spoken to the majority leader a number of times over the last year having learned of his interest in these matters and thank him for allowing the Senate to turn to this important matter even as we approach adjournment of this session.

Many people have been generous with their time and expertise and experience over the years. Steve Bright, Bryan Stevenson, George Kendall, Jim Liebman, Larry Yackle, Scott Wallace, and Kyl O'Dowd have offered useful and important suggestions on how to improve State indigent defense systems. Peter Neufeld and Barry Scheck have been invaluable resources on the intricacies of post-conviction DNA testing. Ron Weich has offered superb legal counsel to both Republican and Democratic Senators and their staffs as we have worked on this bill. Pat Griffin's masterful advice has also been invaluable.

I have already mentioned the Justice Project, a nonprofit organization dedicated to criminal justice reform, which has been a staunch supporter of this bill from the beginning. I particularly want to recognize the contributions of my good friend Bobby Muller, as well as John Terzano, Cheryl Feeley, Laura Burstein, Cynthia Thomet, and Peter Loge.

Finally, I want to thank several staff members of the Senate and House Judiciary Committees who worked tirelessly, some for years, to accomplish this goal. I commend the Chief Counsel to Chairman SENSENBRENNER, Phil Kiko. He was instrumental in keeping the process moving over the past year. His hard work, fairness and judgment helped fulfill his chairman's dogged determination to get this done and make these needed changes. Also on the chairman's staff, I acknowledge the efforts of Jay Apperson and Katy Crooks. I want to express my deep gratitude to Mark Agrast, former counsel for Representative DELAHUNT, and his successor, Christine Leonard.

In the Senate, I want to acknowledge several Judiciary Committee staff members who made immeasurable contributions during this long and challenging effort. On Chairman HATCH's staff, I want to thank Bruce Artim, Brett Tolman, and Michael Volkov, a former detailee, for investing so much of their time and expertise in helping us to arrive at this moment. My staff and I appreciate the contributions of Neil MacBride, Jonathan Meyer, and Louisa Terrell on Senator BIDEN's staff, David Hantman on Senator FEINSTEIN's staff, and Robert Steinbuch with Senator DEWINE.

On my own staff, I want to express my appreciation to an entire team of talented and dedicated attorneys and staff who have devoted themselves so long to this effort and to this commitment to justice. Julie Katzman, a senior counsel on my staff, has devoted innumerable hours over the past 4½ years to accomplishing this goal, and I want to extend my deeply felt gratitude to her. Tara Magner began as a law clerk, and later as my counsel has dedicated herself to this effort with superb results. Beryl Howell, my former general counsel, guided this effort for years, and Bruce Cohen, my Chief Counsel, guided all of their efforts. Tim Rieser, Luke Albee, David Carle, and more all supported and contributed to this extraordinary effort.

I also want personally to thank the Senate Legislative Counsel, in particular Bill Jensen and Matt McGhie, who labor in obscurity to produce the legislative text that is being constantly revised to reflect the understanding reached during this arduous process.

This bill is a rare example of bipartisan cooperation for a good cause. It reflects many years of work and intense negotiation. No one who has worked on this bill is entirely satisfied with everything in it, but that is what the legislative process is all about finding the substantive, meaningful, middle ground that a broad majority can support.

The Justice For All Act is the most significant step we have taken in many years to improve the quality of justice in this country. DNA is the miracle forensic tool of our lifetimes. It has the power to convict the guilty and to exonerate the innocent. And as DNA has become more and more available, it also has opened a window on the flaws of the death penalty process. This is a bill to put this powerful tool into greater use in our police departments and our courtrooms. It also takes a modest step toward addressing one of the most frequent causes of wrongful convictions in capital cases, the lack of adequate legal counsel. These reforms, to put it simply, will mean better, faster, fairer criminal justice.

I thank each one of my colleagues in both bodies who worked hard to resolve conflicts and congratulate them on this legislative achievement.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I compliment the chairman and ranking member of the committee.

This bill was held up for a long while. Provisions were added to the bill, which I totally support, that will allow people who were wrongly accused of having committed crimes to be able to have DNA testing to prove their innocence.

I don't want anyone to misunderstand why this is so important. All of you should know so you can tell your constituents. In fact, we set up a provision in the crime bill whereby when there is a rape or a sexual assault, we have put a lot of money—you have put a lot of money over the years into providing for training of police, training forensic nurses and doctors to be able to take DNA samples.

There are over 800,000 so-called rape case kits sitting on shelves of the cities where you live and the States you represent. They have never been tested because of the cost of testing them. The bottom line is that an estimated 48 percent of outstanding rapes could be solved by just comparing the database that will come from testing these kits and the existing database in our State prison systems where DNA is already on the record. This will liberate thousands of women from the fear and concern that the man who raped them is out there and will be back again.

We have done a good thing today. You should let your people back home know. It is a big deal.

I yield the floor.

INTELLIGENCE COMMITTEE REORGANIZATION—Continued

The PRESIDING OFFICER (Mr. TALENT). The question is on agreeing to the amendment No. 4027, as amended.

The amendment (No. 4027), as amended, was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 4015

The PRESIDING OFFICER. There is 2 minutes equally divided prior to the vote on the Hutchison amendment.

Mrs. HUTCHISON. Mr. President, my amendment keeps the intent of the Senate. It creates an intelligence subcommittee on Appropriations. It keeps 13 subcommittees on Appropriations, but it allows the Appropriations Committee to do the reorganization within those parameters.

According to the Congressional Research Service, there has never been a subcommittee eliminated by the Senate without coming from a committee itself.

This would set a precedent that could affect committees for years to come. It is not right, and there is no reason to have to do it on the Senate floor today. We must consult with the House so that our Appropriations Committees match. Appropriations are complicated

enough. Having Appropriations Committees that are different in the House from the Senate is not a wise decision, and we don't have to do it today.

I urge my colleagues to adopt my amendment which keeps the intelligence subcommittee, it keeps 13 subcommittees in Appropriations, and allows the Appropriations Committee to do its job in reorganizing around those parameters.

Mr. REID. Mr. President, the 9/11 Commission is watching what we are doing. We have created an intelligence subcommittee on Appropriations. That was very difficult to do. But we did it. The consolidation of Defense appropriations and Military Construction makes sense. The subject matters are related, with the same players and same departments. It is military. It doesn't make sense to create an artificial divide different than this one.

The Appropriations Committee as it stands has all kinds of authority to organize within itself.

In short, we have done the work of the Senate. It is the right thing to do. It sets forth something that Governor Kean says makes sense.

I hope we will defeat this amendment and keep intact what we already have.

The PRESIDING OFFICER. All time has expired. The question is on agreeing to the pending amendment. The yeas and nays have been ordered, and the clerk will call the roll.

Mr. REID. Mr. President, does the Senator from Texas wish to have a rollcall vote?

The PRESIDING OFFICER. The yeas and nays have been ordered.

Mrs. HUTCHISON. I am happy to vitiate the yeas and nays.

Mr. REID. I ask unanimous consent that the yeas and nays be vitiated.

Mr. BUNNING. Mr. President, a rollcall vote has been ordered. I don't think that is permitted.

The PRESIDING OFFICER. Since there was no response, the vote has not begun.

Mr. REID. Mr. President, I ask unanimous consent that the yeas and nays be vitiated and there be a voice vote.

The PRESIDING OFFICER. Is there objection?

The question is on agreeing to the pending amendment.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

At the moment, there is a not a sufficient second.

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

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

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the amendment, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Texas (Mr. CORNYN), the Senate from Idaho (Mr. CRAIG), The Senator from South Carolina (Mr. GRAHAM), the Senator from Pennsylvania (Mr. SPECTER), and the Senator from New Hampshire (Mr. SUNUNU), are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. CORNYN), would vote ''yea.''.

Mr. REID. I announce that the Senator from Indiana (Mr. BAYH), the Senator from California (Mrs. BOXER), the Senator from Louisiana (Mr. BREAUX) the Senator from North Carolina (Mr. EDWARDS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KERRY), the Senator from Georgia (Mr. MILLER), and the Senator from Maryland (Mr. SARBANES), are necessarily absent.

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

The result was announced—yeas 44, nays 41, as follows:

[Rollcall Vote No. 207 Leg.]

YEAS—44

Alexander	Domenici	McConnell
Allard	Ensign	Murkowski
Allen	Enzi	Nickles
Bennett	Fitzgerald	Roberts
Bond	Frist	Santorum
Brownback	Grassley	Sessions
Bunning	Gregg	Shelby
Burns	Hagel	Smith
Chafee	Hatch	Snowe
Cochran	Hutchison	Stevens
Coleman	Inhofe	Talent
Collins	Kyl	Thomas
Crapo	Lott	Voinovich
DeWine	Lugar	Warner
Dole	McCain	

NAYS—41

Akaka	Durbin	Lieberman
Baucus	Feingold	Lincoln
Biden	Feinstein	Mikulski
Bingaman	Graham (FL)	Murray
Byrd	Harkin	Nelson (FL)
Cantwell	Inouye	Nelson (NE)
Carper	Jeffords	Pryor
Clinton	Johnson	Reed
Conrad	Kennedy	Reid
Corzine	Kohl	Rockefeller
Daschle	Landrieu	Schumer
Dayton	Lautenberg	Stabenow
Dodd	Leahy	Wyden
Dorgan	Levin	

NOT VOTING—15

Bayh	Cornyn	Kerry
Boxer	Craig	Miller
Breaux	Edwards	Sarbanes
Campbell	Graham (SC)	Specter
Chambliss	Hollings	Sununu

The amendment (No. 4015), as amended, was agreed to.

Mr. REID. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Nevada

Mr. REID. Mr. President, I am wondering if Senators would give consideration to maybe not having the vote on cloture.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, we still have the technicals that are under consideration. We are essentially out of work for the moment until we get to the technicals.

Mr. GREGG. Mr. President, I have a housekeeping matter.

The Senator from New Hampshire.

TAXPAYER-TEACHER PROTECTION ACT OF 2004

Mr. GREGG. Mr. President, I ask unanimous consent that the Senate now proceed to consideration of H.R. 5186, which is at the desk.

The PRESIDING OFFICER. The clerk will report the title of the bill.

The legislative clerk read as follows:

An act (H.R. 5186) to reduce certain special allowance payments and provide additional teacher loan forgiveness on Federal student loans.

There being no objection, the Senate proceeded to consider the bill.

Mr. KENNEDY. Mr. President, this bill deserves to pass, but it's only a down-payment on the real reform needed to close a flagrant loophole in the student loan program. The bill takes $285 million in excessive subsidies to banks and gives it to college students and new teachers in the form of increased forgiveness for student loans.

It is only a downpayment, however, because it does not close all of the notorious 9.5 percent student loan loophole, and because even this reform will expire after one year. The bill is silent on the full interest rate gouging that has taken place over the last 18 months—funds that the Secretary of Education should have reclaimed on his own, and still should after this bill passes.

Obviously, our Republican colleagues hope that this modest action will cool the public outcry that has erupted in the past month as the full extent of this shameful loophole has come to light.

For almost 25 years, the taxpayer has been guaranteeing banks a 9.5 percent rate of return on a specific type of student loans. In 1993, Congress acted to end the guarantee, but a loophole emerged that even the Government Accountability Office says the Bush administration has refused to shut down.

Today's bill still leaves 40 percent of the loophole wide open. In other words, our Republican colleagues can no longer stand the heat from the loophole, and so they're now sacrificing 60 percent of it, in the hope that their special interest friends in the student loan industry can still retain the other 40 percent.

Sadly, under this Republican bill, the abuse will continue. New loans will be

made to new students that taxpayers will subsidize at a 9.5 percent interest rate. It's madness. We should be allowing older borrowers to refinance their student loans at today's market rates, instead of subsidizing big banks at the high interest rates of the 1980s. We should be helping students who are eligible for Pell Grants, instead of subsidizing big banks needlessly.

Republicans claim that some of this subsidy will go to student benefits. I say, it all should go to student benefits in whatever loan program a student participates. No one should be fooled. Half of the student loan loophole that this bill leaves wide open goes to for-profit corporations like Nelnet and Sallie Mae.

The 9.5 percent guarantee is still highway robbery for special interests. Our Republican colleagues reply that at least they're narrowing the highway from five lanes to two lanes. Banks like Nelnet and Sallie Mae can still drive right through, collecting outrageous profits at the expense of students and taxpayers.

I had hoped to offer an amendment to this bill that would close the 9.5 percent loan loophole completely and permanently. But the Republican Majority objects to that effort here and now. We will be back though on the first available vehicle to shut down this wasteful corporate subsidy once and for all.

It's long past time for President Bush and Republicans find the courage to stand up to their special interest friends, and do what's right for the Nation's students and taxpayers.

In most cases, lenders today receive a 3.6 percent rate of return on new student loans. But for the last 11 years, the Government—taxpayers—have been guaranteeing lenders a 9.5 percent rate of return on a certain group of otherwise non-descript student loans. A 9.5 percent rate of interest might have made sense years ago, but it doesn't today.

In 1993, Congress passed legislation intended to phase-out of existence the 9.5 percent bank guarantee. But two key loopholes have kept that subsidy alive and well. The legislation before the Senate closes one.

The first loophole—the one that isn't closed by this legislation—allows for what is called 9.5 percent loan ''recycling.'' A lender makes a loan to a student—''Student A.'' Over the course of the next 10 to 25 years, the lender is repaid by Student A and the lender gets a subsidy payment guaranteeing a 9.5 percent rate of return.

Under the 1993 law, after one loan, there should be an end to that 9.5 percent guarantee. But lenders have been recycling Student A payments and the attached Government subsidy into a new loans issued to new students—''Student B''—and claiming a 9.5 percent guarantee on those loans as well. So, 9.5 loans haven't been phased out at all. They've being maintained. And the Department of Education has done nothing about it.

Worse, 18 months ago, lenders started growing the number of 9.5 percent loans through a process called ''transferring.'' A lender shifts a loan out of its tax-exempt bond estate into its taxable bond estate. When the loan shifts, the 9.5 percent guarantee shifts with it and the tax-exempt bond estate then has money available to it to issue new 9.5 percent loans.

As a result of ''transferring,'' 9.5 percent loan bank subsidy payments have more than doubled in the last 18 months. The Bush administration has refused to stop the process, despite Democrats' and GAO's urging.

A year ago, Senate Democrats proposed legislation to shut both loopholes down once and for all. The Senate Republicans did not act on that proposal, did not introduce their own legislation, and did not hold a single hearing. They asked no oversight questions of the Bush administration. In short, they did nothing.

Democrats requested a GAO investigation. We alerted non-partisan higher education policy experts. We requested an SEC investigation. Two months ago, we blew the whistle in the media on the new, explosive growth in the 9.5 loan subsidy. Finally, our Republican friends responded to the criticism with the legislation before us today.

But again, this bill doesn't get the job done. It leaves the ''recycling'' loophole open, and it lasts only one year. Now, this remains a live issue in the Appropriations Committee. I would hope we would follow the House's 413–13 vote lead in shutting down this loophole in its entirety. It's a change past due.

Mr. DODD. Mr. President, I would like to commend Senator GREGG for taking what I hope is one of many steps in closing what most, if not all of us agree, is an egregious loophole in current law relating to student loans.

In the 1980's, the Higher Education Act sought to attract more lenders to the student loan program by offering nonprofits a 9.5 percent rate on return on student loans in exchange for their participation in the program. At a time of high interest rates, it provided an assurance to nonprofits that they could make student loans and stay afloat economically. The 9.5 percent subsidy was an incentive to bring the nonprofit sector into the lending business, to offer students more options in choosing a lender. The subsidy made sense at the time.

In 1993, a time when interest rates were coming down, 9.5 percent amounted to a windfall for lenders. Congress rescinded the policy but grandfathered loans already made, assuming that the volume of these loans would decline as borrowers paid them off. That assumption turned out to be wrong.

Exploiting a loophole in current law, some lenders, including for-profits that have acquired nonprofits, have been rolling new loans into old accounts, sometimes for as little as a day, to qualify for the subsidy. That means that in today's market, some guaranteed a 9.5 percent profit on 3.4 percent student loans. The Federal Government is making up the 6.1 percent difference.

How egregious is this practice? From January 2004 to June 2004, one bank alone amassed over $3.2 billion in 9.5 percent loans by exploiting this loophole. The General Accounting Office GAO, has found that the overall volume of loans receiving a 9.5 percent return has increased to more than $17 billion this year from $11 billion in 1995. This is money that should be going to the student loan program and the Pell grant program, not bank profits.

In response to this discovery, the Department of Education has been asked to issue new rules clarifying that the practice in question is, in fact, not within the intent of current law. They have refused to do so. They claim that their hands are tied, that only Congress can close the current loophole. The GAO disagrees.

In a report issued September 21, the GAO states that the Department could use less formal guidance to clarify or alter its position on the practice, or publish an interim rule that would close the loophole until a formal rulemaking process is complete. The GAO also suggests that the Department publish an emergency rule. This type of rule allows Federal agencies to skip the formal process if they believe it would be ''impracticable, unnecessary or contrary to public interest.'' The Department does not believe the current situation rises to that level. Clearly, it is against the public interest, and against the interest of the U.S. Treasury, to allow this practice to continue.

According to some, the payments in question could cost the U.S. Treasury nearly $1 billion by the end of this calendar year and at least $5 billion over the next 10 years. This is money that could be used to send kids to college.

Mr. President, in response to this crisis, Senator GREGG has proposed a bill to close the 9.5 percent loophole. There is just one problem with his bill. It does not close the loophole completely and it does not close the loophole permanently. The loophole should be completely and permanently closed.

I applaud Senator GREGG for taking this first step. Between enactment of the change and the time that it expires next year, his bill will achieve a $285 million savings for the student loan program. If we were to shut down the loophole completely, we would achieve a $400 million savings within the same time frame. That would amount to an additional $115 million for student financial aid.

In response to Senator GREGG'S bill, Senator KENNEDY offered an amendment to close the loophole completely and permanently. This is something that my Democratic colleagues and I have been fighting to do since last October. Unfortunately, the amendment was not accepted.

Mr. President, the Pell grant maximum has remained flat for 3 years. Tuition is up. And all the while, the Federal government is giving away a $1 billion annual subsidy through 9.5 percent loans. The Federal Government is paying hundreds of million of dollars in unnecessary subsidies to student loan companies. The bill before us allows this practice to continue, even if it is to a lesser extent. I hope we will have an opportunity in the near future to take definitive action to correct this egregious short-coming in the law.

Mr. REED. Mr. President, I support the limited effort before us today to close a loophole in Federal student loan policy that has cost taxpayers billions of dollars over the past decade.

In the 1980s, when there were fears that student loans would become scarce due to high interest rates, Congress provided lenders participating in the Federal Family Education Loan, FFEL, program a guaranteed minimum 9.5-percent return on student loans generated from tax-exempt bond funds. Congress did so to ensure that there would be lenders willing to make affordable loans for students.

In 1993, Congress sought to end the 9.5-percent guaranteed return on what had become a small subset of student loans due to a much lower national interest rate environment, the growth in availability of other private bank and government-subsidized student loans, and the creation of Federal direct loans.

In doing so, a grandfather clause was enacted for outstanding 9.5-percent return, tax-exempt bond generated student loan funds. Rather than end the 9.5-percent loans, this grandfather clause has worked as a loophole. Owners of 9.5-percent guaranteed loans continually recycle proceeds from tax-exempt bonds originally issued before 1993—creating in effect a revolving loan fund—and the Federal Government continues to guarantee a 9.5-percent rate of return on what is today approximately 1 out of every 20 student loans. Lenders of the remaining 19 out of 20 student loans receive a much lower guaranteed interest rate—less than 4 percent.

This overpayment has grown dramatically over the past few years, as this administration and Department of Education have failed to intervene and stop it. According to the Government Accountability Office, GAO, the overpayment cost taxpayers well over $600 million by the end of June 2004, up from $209 million in Fiscal Year 2001.

To finally close this loophole once and for all, I joined Senator Kennedy in introducing S. 1793, the College Quality, Affordability, and Diversity Improvement Act last October, which among many provisions to expand access to higher education, would eliminate the 9.5-percent giveaway. More recently, I cosponsored legislation introduced last week by Senator Murray—S. 2861, the Student Loan Abuse Prevention Act—which would also permanently fix the abuse of the 9.5-percent rate and redirect the estimated savings of $5 billion over 10 years to increase the maximum Pell grant for low-income students.

Regrettably, the bill before us today does not contain such a comprehensive and permanent fix. This more limited effort provides only a temporary 1-year solution and it continues to allow ''recycling'' of loans, as opposed to the bonds, by which the lender uses the income from current 9.5-percent guarantee. And, instead of using the more modest savings from this bill to boost grants for low-income students struggling to afford college, the savings will be used for a different but important cause—providing help to certain teachers through loan forgiveness.

Considering how long it has taken the majority to act on this situation, I am pleased we are taking this first, although, limited step. I will be working with my colleagues to fully close this costly loophole in the upcoming Higher Education Act reauthorization process and capture these savings for students. I thank Senators Kennedy and Murray and their staffs for their leadership and work on this matter.

Mrs. MURRAY. Mr. President, I rise today to discuss my ongoing work to protect taxpayers and help students by finally ending a special interest subsidy.

As my colleagues know, I have been working to close a loophole that allows some banks to issue new students loans at outrageously inflated rates. These subsides were supposed to have ended more than ten years ago, but they continue today, and taxpayers are footing the bill.

Just last year, this wasteful subsidy cost taxpayers $1 billion. Imagine how many students we could have helped if that money went to Pell Grants instead of the special interests. I believe we should close this loophole—immediately and permanently—and use the savings to help more students afford a college education.

It is outrageous that taxpayers are paying 30 times what they should for these student loans. Interest rates haven't been at 9.5 percent in years, but new loans—at that inflated rate—are being written every day because of this loophole.

On September 15, in the Appropriations Committee, I offered an amendment to close the loophole. My amendment would have used those savings—about $370 million—to increase grants to college students. My amendment had the support of every Democrat on the Appropriations Committee, but unfortunately the chairman and every Republican opposed it. They said they wanted to deal with it later.

So Senator KENNEDY and I came here to the Senate floor and called on the Department of Education to take action, since our colleagues were not ready to act. Unfortunately, the Department of Education refused. As the Government Accountability Office noted, the Department could have closed this loophole with the stoke of a pen. Last week—seeing that neither the Republican Congress nor the administration—were willing to act, I introduced my own bill to permanently and fully close this loophole and help our students.

My bill is called the Student Loan Abuse Prevention Act S. 2861, and I thank Senators KENNEDY, MIKULSKI, DURBIN, REED, DODD, and CLINTON for cosponsoring it.

My bill would use all of the savings to increase Pell Grants for students. The day after I introduced my bill, Senator GREGG offered his own bill, which we are considering today. I am pleased that the Republican leaders have finally offered a proposal. I am disappointed, however, that their plan does not fully close the loophole, expires after 1 year, and will not help today's student afford college.

Let me say a word about each of those shortcomings. First, the GREGG bill does not fully close the loophole. This subsidy would still live on. My bill says that lenders cannot create new loans at 9.5 percent. No new subsidies—period. And that is important because in the past 2 years lenders have used tricks to extend these outrageous subsidiaries, and we need to put an end to it. But the Republican bill is not a real fix. It does not stop these gimmicks entirely. In many cases, lenders could keep writing new loans at 9.5 percent for decades. Under the Republican bill, the outrageous subsidy will live on. So the first problem with the Republican bill is that it does not fully close the loophole and will still overcharge taxpayers for this lender subsidy.

The second problem with the GREGG bill is that it expires after 1 year. My bill will stop the subsidy forever. The Republican bill would expire in a year. I want my colleagues to know that when we work on the Higher Education Act, I will again work for a permanent fix that protects taxpayers—not just for 1 year—but forever.

The third problem with the GREGG bill is that it does nothing to help students who are trying to pay for college today. While there are a lot of good uses for this money, I would also like to see those dollars go straight into the pockets of our students so they can pay for college.

So the GREGG bill before us has three big problems—it doesn't fully close the loophole, it expires after a year, and it doesn't help today's college student. But—after all the work it has taken to get the Republicans to finally address this—the GREGG bill is a step forward and one we should take while we can.

I believe that our students and taxpayers deserve better. They deserve a real fix that is permanent and that helps today's students. But, given the reluctance we have seen so far, given the votes against my amendment last month, and the Bush administration's refusal to act, we should pass this first step and stay on the job until it is done and done right.

And I remind my colleagues that we will revisit the Higher Education Act next year, and I will fight to close this loophole fully and permanently. From coast to coast, the price of college education is soaring and parents and students are struggling. I will continue to fight for policies that put students above special interests and that protect taxpayers from these wasteful subsidies.

Mr. GREGG. 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 any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 5186) was read the third time and passed.

EXTENDING THE HIGHER EDUCATION ACT OF 1965

Mr. GREGG. Mr. President, I ask unanimous consent that the Senate now proceed to the immediate consideration of H.R. 5185, which is at the desk.

The PRESIDING OFFICER. The clerk will report the title of the bill.

The legislative clerk read as follows:

A bill (H.R. 5185) to temporarily extend programs under the Higher Education Act of 1965.

There being no objection, the Senate proceeded to consider the bill.

Mr. GREGG. Mr. President, I ask unanimous consent that the bill be read a third time, passed, the motion to reconsider be laid upon the table, and any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 5185) was read the third time and passed.

MAMMOGRAPHY QUALITY STANDARDS REAUTHORIZATION ACT OF 2004

Mr. GREGG. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 4555, which was received from the House and is at the desk.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 4555) to amend the Public Health Service Act to revise and extend provisions relating to mammography quality standards.

There being no objection, the Senate proceeded to consider the bill.

Ms. MIKULSKI. Mr. President, I am pleased that today the Senate will pass the Mammography Quality Standards Reauthorization Act of 2004, H.R. 4555. It is fitting that Congress is reauthorizing the Mammography Quality Standards Act, MQSA, during Breast Cancer Awareness Month. This important bill is about saving lives. That is what the MQSA does. Accurate mammograms detect breast cancer early, so women can get treatment and be survivors.

Mammography is not perfect, but it is the best screening tool we have now. I authored MQSA 12 years ago to improve the quality of mammograms so that they are safe and accurate. Before MQSA became law, there was an uneven and conflicting patchwork of standards for mammography in this country. There were no national quality standards for personnel or equipment. Image quality of mammograms and patient exposure to radiation levels varied widely. The quality of mammography equipment was poor. Physicians and technologists were poorly trained. Inspections were lacking.

MQSA set Federal safety and quality assurance standards for mammography facilities for: personnel, including doctors who interpret mammograms; equipment; and operating procedures. By creating national standards, Congress helped make mammograms a more reliable tool for detecting breast cancer. In 1998, Congress improved MQSA by giving information on test results directly to the women being tested, so no woman falls through the cracks because she never learns about a suspicious finding on her mammogram.

Now Congress is renewing MQSA through 2007 and laying the foundation to improve it even more in the future. Next year, the Institute of Medicine, IOM, and the General Accountability Office, GAO, will release studies examining a number of issues relating to MQSA and mammography. These issues include ways to improve physicians' interpretations of mammograms, ways to ensure that sufficient numbers of adequately trained personnel are recruited and retained at all levels, and access to mammography. I look forward to receiving these IOM and GAO recommendations and considering them in the next MQSA reauthorization.

This legislation that the Senate passed today was passed by the House of Representatives earlier this week and now heads to the President for his signature. I acknowledge and thank Congressman Dingell for his longstanding leadership and work on MQSA, and appreciate the work of the House Energy and Commerce Committee on this issue. I thank Senators Gregg and Kennedy for working with me to make sure that the Senate made MQSA a priority in this Congress and that we reauthorized it this year. I also want to acknowledge Senator Ensign for his important work on MQSA. Senator Ensign joined me in introducing our MQSA reauthorization bill, S. 1879, that passed the Senate earlier this year.

I thank the Susan G. Komen Breast Cancer Foundation, American Cancer Society, National Alliance of Breast Cancer Organizations, American College of Radiology Association, Y-ME National Breast Cancer Organization, and the National Breast Cancer Coalition for their input and advice during this reauthorization of MQSA.

This year about 216,000 cases of breast cancer are expected to be diagnosed and over 40,000 women are expected to die of breast cancer in this country. MQSA saves lives. That is why it is so important that Congress is renewing and working to strengthen MQSA.

Mr. GREGG. Mr. President, I ask unanimous consent that the bill be read a third time, passed, the motion to reconsider be laid on the table, and any statements relating to the bill be printed in the RECORD without intervening action or debate.

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

The bill (H.R. 4555) was read the third time and passed.

Mr. GREGG. Mr. President, just to clarify, the bills we just passed are fairly significant pieces of legislation, the most significant of which is a bill which Senator KENNEDY and I and many people in this body have been working on.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I thank the Senator from New Hampshire. He is right, we have just passed very important legislation, one of which is to reauthorize our mammogram quality standards. We have worked very hard on a bipartisan basis. I would like to thank him for his collegiality and cooperation. I see him smiling. Did I interrupt?

Mr. GREGG. I am happy to yield the floor to the Senator from Maryland.

Ms. MIKULSKI. It was a little chaotic. I wanted to be quickly complimentary.

Mr. GREGG. I appreciate that.

Ms. MIKULSKI. Literally, we are going to ensure the safety and security of our mammograms. I just finished the Race for the Cure in Baltimore. I did more of a ''walk for the cure'' this morning. But when you look at the survivors and you know what early detection from mammograms has meant, we really have done a good job.

I thank the Senator.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, let me thank the Senator from Maryland for her generous comments and her hard work, especially on the mammogram bill which we just passed. I was trying to highlight one of these pieces of legislation which essentially saves the taxpayers from paying out a $100 million windfall to people who give loans to students. Those individuals were getting paid mostly by banks at 9.5 percent. This will roll that back to a reasonable interest rate of 4 percent. We will take those additional monies that have been saved and use them to waive the repayment requirements for teachers on their student loans for teachers who go into underserved areas and teach special needs kids. This is a

very important event and something that needed to be done, or we would have ended up with a windfall to these lenders and these individuals who go out and teach in these tough schools on difficult subject matters would have ended up with large student loans.

This is a very positive step. I thank the Senator from Massachusetts for his efforts in this area as the ranking member of the committee, and I thank the entire committee for its cooperation and appreciate the attention of the Senate.

I yield the floor.

INTELLIGENCE COMMITTEE REORGANIZATION—Continued

AMENDMENTS NOS. 3989, 3994, AND 4037, AS MODIFIED, AND AMENDMENT NO. 4045 TO AMENDMENT NO. 3981, EN BLOC

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I understand that the technical amendments are now approved on both sides. I send to the desk conforming modifications to three amendments that were previously agreed to, and a technical and conforming amendment, and ask unanimous consent that they be considered en bloc and agreed to en bloc.

The PRESIDING OFFICER. Is there objection to the modifications?

Without objection, it is so ordered.

The amendments were agreed to, as follows:

AMENDMENT NO. 3989, AS MODIFIED

Strike section 101(b)(1) of the resolution and insert the following:

(1) Department of Homeland Security, except matters relating to—

(A) the Coast Guard, the Transportation Security Administration, or the Federal Law Enforcement Training Center; and

(B) the following functions performed by any employee of the Department of Homeland Security—

(i) any customs revenue function including any function provided for in section 415 of the Homeland Security Act of 2002 (Public Law 107–296);

(ii) any commercial function or commercial operation of the Bureau of Customs and Border Protection or Bureau of Immigration and Customs Enforcement, including matters relating to trade facilitation and trade regulation; or

(iii) any other function related to clause (i) or (ii) that was exercised by the United States Customs Service on the day before the effective date of the Homeland Security Act of 2002 (Public Law 107–296).

AMENDMENT NO. 3994, AS MODIFIED

In section 101(b)(1), strike ''(B)'' and redesignate ''(C)''

Following section 101(b)(1)(A) insert the following:

(B)(i) the U.S. Citizenship and Immigration Services or (ii) the immigration functions of the U.S. Customs or Border Protection or the U.S. Immigration and Customs Enforcement, or the Directorate of Border and Transportation Security; and''.

AMENDMENT NO. 4037, AS MODIFIED

In section 101(b)(1)(A), after ''center'' insert '', or the Secret Service''.

AMENDMENT NO. 4045 TO AMENDMENT NO. 3981

Page 2, line 10, strike ''primarily''

Page 5, line 20 & 21, strike ''Ranking Member'' and insert ''Vice Chairman''

Page 4, lines 9 through 13, strike.

At the end of section 101(b)(1) insert the following: ''The jurisdiction of the Committee on Homeland Security and Governmental Affairs in this paragraph shall supersede the jurisdiction of any other committee of the Senate provided in the rules of the Senate.''

Mr. MCCONNELL. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. MCCONNELL. We are down to the underlying McConnell-Reid amendment. I am unaware of any request for a rollcall vote.

Mr. REID. Mr. President, I am wondering—I made this statement earlier—if we could vitiate the necessity of having a cloture vote on this matter.

The PRESIDING OFFICER. Is there objection to vitiating the cloture vote?

Mr. MCCAIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. MCCAIN. Mr. President, I withdraw my objection.

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

AMENDMENT NO. 3981, AS MODIFIED, AS AMENDED

Mr. REID. Mr. President, I understand there is no request that we vote on this.

The PRESIDING OFFICER. The Senator from Nevada restates his unanimous consent. The question is on agreeing to amendment No. 3981, as modified and as amended, the McConnell-Reid substitute.

The amendment (No. 3981) was agreed to.

SECTION 101(B) AND 101(C)

Mr. REID. Mr. President, Section 101(b) contains the jurisdiction for the new Homeland Security and Governmental Affairs Committee. Section 101(b)(1) refers to the new jurisdiction of the new committee. The rest of Section 101(b) and all of Section 101(c) describes the existing jurisdiction of the Governmental Affairs Committee and is not intended to make any changes to existing practice nor precedence regarding referrals on those issues with regard to other committees.

Mr. MCCONNELL. I agree Section 101(b)(2) through Section 101(b)(13) and Section 101(c) makes no changes to the status quo regarding jurisdiction over those items.

AMENDMENT NO. 3981

Mr. LEAHY. Mr. President, I appreciate the managers of the resolution adopting this amendment. It achieves the goals of an amendment filed by my distinguished colleague, the junior Senator from Texas, that I cosponsored. The language in the managers' amendment will make explicit that the shared jurisdiction over ''government information'' that is provided by rule 25 to the Judiciary Committee is not adversely affected by this resolution. I thank the Senator from Texas for his leadership on this matter and the managers for working with us to clarify the resolution.

Mr. MCCONNELL. Mr. President, I said at the beginning of this debate that after reforming the executive branch's intelligence and homeland security agencies, we needed to put our own house in order. We can now say that after years of demanding that other institutions reorganize and improve their performance, we have demanded the same of ourselves. And we succeeded.

This is no small achievement for the Senate, the cooling saucer of American politics. We are very averse to change here.

We respect history in this institution. But today we avoided making the mistake of falling victim to it. Learning from our mistakes prior to 9/11, we have changed the way we do business. This is a great accomplishment.

We recognized the need to reform the way we conduct oversight over the most important issues of our day: intelligence and homeland security.

I want to thank my good friend, Senator REID. I have greatly enjoyed working with him, and have marveled at his prodigious talents in resolving particularly contentious conflicts.

We have accomplished this difficult task thanks in large part to his honest brokering and commitment to respecting the concerns of each and every Senator. He is fair-minded, and he is effective. I look forward to working with him more often.

Let me also take a minute to thank his capable staff. Rich Verma, Gregg Jaczko, and Gary Myrick, who worked on a truly bipartisan basis with my staff. Their expertise on these issues, and their patience with Harry and me, are truly commendable. They deserve a great deal of credit for managing the Working Group and cobbling together for us the many suggestions made by our Members.

I would also like to thank my staff: Kyle Simmons and Robert Karem. Both of these outstanding gentlemen were with me from the beginning of this process and we would not be at this point without them. I would also like to thank Mike Solo. He jumped right in to masterfully produce this product and also helped steer it to passage on the floor. Finally, my thanks to John Abegg and Brian Lewis for their counsel and able assistance.

I want to thank the members of the Congressional Oversight Working Group themselves for their many good ideas, and for their patience and willingness to work on a bipartisan basis to do something that is very difficult, but also very worthwhile.

Not every Senator will be happy with the result of the Senate working its will on this resolution.

Some Members will complain this reform goes *too far*. Others will complain it *does not go far enough*.

I believe we have struck an appropriate balance of reform that improves our ability to conduct oversight of intelligence and homeland security during a very serious time for our country.

On intelligence oversight, I am pleased the Senate not only accepted our suggested reforms of the Select Committee on Intelligence, but also improved upon them by agreeing to modify the sequential referral of defense-related intelligence legislation to the Armed Services Committee so the process is more cooperative.

The working group wanted to improve the structure of the Committee to allow Members more time to become experts and give them many tools to do their jobs. And we have done that.

Let me briefly summarize just a couple of our reforms:

Improved and enhanced the Intelligence Committee;

Included 9 recommendations of the 9/11 Commission;

Members now have a stronger Committee;

Without term limits, Members can better develop the expertise needed to conduct effective oversight;

Clarified jurisdictional lines and improves the coordination of military intelligence matters between the Armed Services and Intelligence Committees.

Appropriations jurisdiction over oversight is currently dispersed throughout multiple subcommittees. We have created an Intelligence Subcommittee of Appropriations to consolidate the roughly 80 percent of the intelligence budget that will come under the jurisdiction of the national intelligence director.

This subcommittee will help the Appropriations Committee to live up to its responsibility to exercise oversight over the national intelligence budget.

This legislation consolidates widely dispersed appropriations for non-military intelligence under a single Subcommittee.

Allows the National Intelligence Director to work with only one Subcommittee to approve his budget.

Improves intelligence oversight by creating two sets of eyes on the budget and activities of the assets under the National Intelligence Director.

Jurisdiction over the Department of Homeland Security was too dispersed. Roughly 25 Congressional Committees or Subcommittees claimed jurisdiction over Homeland Security yesterday. We have cut that number down significantly.

The Senate worked its will on this Resolution, and in the end it significantly consolidated jurisdiction over Homeland Security.

Some will think the Senate went too far. Others will think the Senate hasn't gone far enough.

We introduced a Resolution that dramatically consolidated jurisdiction in the new Committee. In an open process, the Senate worked its will and decided that the overlapping functions of certain agencies required exceptions.

While there have been some changes to our proposal, we have not let the perfect be the enemy of the good. We have taken great strides towards a level of consolidation many of us would have thought impossible only weeks ago.

This reform puts the Homeland Security Committee in charge of those who prepare to defend against terrorist attacks and those who respond to terrorist attacks. This is the most important work the Department does.

Protecting the Homeland is the core function of the Department, and the Homeland Security Committee will acquire jurisdiction over the core entities of the Department that do just that.

Among other programs, the Homeland Security Committee will acquire jurisdiction over the following Directorates:

Office of the Secretary—Responsible for integration of terrorist threat warning, preparedness, and response. This alone is a huge responsibility.

Undersecretary for Information Analysis and Infrastructure Protection.

Undersecretary for Science and Technology—Chemical, Biological, and Nuclear defense research; and Homeland Security technology development.

Undersecretary for Emergency Preparedness and Response—FEMA; National Domestic Preparedness Office; Integrated Hazard Information System; and Domestic Emergency Support Teams.

Undersecretary for Management.

We have consolidated all of this on top of the existing jurisdiction of the Government Reform Committee, including the Permanent Subcommittee on Investigations.

Mr. President, I believe the Senate has accomplished a great deal today. We have strengthened our Intelligence oversight, created a Homeland Security Committee under the new Homeland Security and Government Affairs Committee, and stood up a new Intelligence Appropriations Subcommittee.

I hope our Colleagues will pay attention to the reform we have enacted as they consider their Committee assignments for the 109th Congress. The American people will be better served by these reforms. And the Senate as a whole will benefit from their improved expertise and authorities over these critical policy matters.

We have no more important charge than keeping the American people safe, and today we have improved our ability to do just that.

Mr. GRASSLEY. Mr. President, today the Senate adopted S. Res. 445, the Senate Intelligence and Homeland Security Oversight Reform resolution. This resolution will combine the oversight of most Department of Homeland Security functions and will provide jurisdiction over those functions to the Committee on Governmental Affairs, which will be renamed the Committee on Homeland Security and Governmental Affairs.

I will vote in favor of S. Res. 445. This resolution will help advance the U.S. war on terror by consolidating and streamlining Senate oversight over the Department of Homeland Security. I'm confident that the Committee on Homeland Security and Governmental Affairs will serve an important role in promoting the safety and security of the people of the United States.

As originally introduced, the resolution provided that the Committee on Homeland Security and governmental Affairs would not have jurisdiction over customs revenue functions. Instead, the drafters recognized that, going forward, it's important to keep the jurisdiction over customs revenue functions within the Finance Committee, the committee that has exercised jurisdiction over these issues for the past 188 years. Moreover, with the United States collecting over $23 billion annually in duties and trade related fees, the drafters realized that it's important that the U.S. customs agencies be able to perform their revenue functions efficiently. Retention of Finance Committee jurisdiction over these functions will greatly facilitate this objective.

Senator BAUCUS and I introduced an amendment during debate on S. Res. 445 that clarified the language concerning customs revenue functions contained in the managers' resolution. Specifically, our amendment stated that the Committee on Homeland Security and Governmental Affairs will not have jurisdiction over the following functions performed by any employee of the Department of Homeland Security: any customs revenue function including any function provided for in section 415 of the Homeland Security Act of 2002; any commercial function or commercial operation of the Bureau of Customs and Border Protection or the Bureau of Immigration and Customs Enforcement, including matters related to trade facilitation and trade regulation; or any other function related to those that I just mentioned that was exercised by the U.S. Customs Service on the day before the effective date of the Homeland Security Act of 2002. In a colloquy between Senator BAUCUS and me on October 7, we more fully spelled out what is covered by our amendment and the reasons why our amendment was necessary.

The Grassley-Baucus amendment was needed to elucidate non-security functions of the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement that necessarily should remain within the jurisdiction of the Finance Committee. Our amendment passed by voice vote on October 7.

A transfer of customs revenue and commercial functions to the Committee on Homeland Security and Governmental Affairs would detract from that committee's main focus. Moreover, the removal of customs revenue and commercial functions from the jurisdiction of the Finance Committee

would be disruptive to our efforts to advance a comprehensive international trade agenda for the United States. In adopting our amendment, the Senate wisely avoided both of these outcomes. agenda for the United States. In adopting our amendment, the Senate wisely avoided both of these outcomes.

With passage of our amendment, the Committee on Homeland Security and Governmental Affairs will be better able to focus on its core objective, the protection of the United States from terrorist attacks. The staff of the new committee should be expected to be experts in the field of national security. They will work day-in and day-out to keep terrorists away from our shores and to protect Americans from attack. With their focus on national security concerns, it would be unrealistic to expect them to learn the technical details of our country's customs laws relating to revenue and commercial functions. The addition of customs revenue and commercial functions to their committee's agenda would only distract them from their central focus, national security. If that were to occur, Senate oversight of both the national security and international trade agendas of the United States would suffer.

Our amendment also recognizes that removal of customs revenue and commercial functions from the jurisdiction of the Finance Committee would be disruptive to U.S. businesses, and thus harmful to U.S. economic interests. The Finance Committee has a long history—of some 188 years—of exercising jurisdiction over tariffs and trade. This long history, and the technical expertise it has helped engender within the committee, provides the Finance Committee with an exceptional ability to provide sound oversight in the Congress over our government's customs revenue and commercial functions. Not surprisingly, the U.S. business community has developed strong confidence in the workings of this committee. Moreover, these same businessmen and women have doubts as to whether the committee on Homeland Security and Governmental Affairs—with its focus on national security—would pay sufficient attention to trade compliance and revenue functions.

The U.S. business community acted, and quickly, this week upon hearing rumors of possible legislation to strip jurisdiction over customs revenue and commercial functions from the Finance Committee. Let me read to you excerpts from letters sent to me this week on this issue.

The National Retail Federation wrote that ''NRF's members are deeply concerned that moving jurisdiction for duty collection process issues from the Finance Committee would serve to reduce U.S. interest in preserving trade revenues, and require members of those committees to spend a great deal of time on revenue issues that are not central to the Government Affairs Committee's main jurisdictional interests. Of equal importance, the Senators who have served on Finance have developed expertise in these complex revenue issues that many members of the Homeland Security and Government Affairs Committee do not possess and would have to develop.''

In another letter, the National Customs Brokers & Forwarders Association of America stated that ''protecting our borders is vital. As we take measures to enhance security at our borders, however, we must also carefully weigh the consequences to the flow of international trade. . . . The Senate Finance Committee possesses the knowledge and expertise necessary to provide effective oversight over Customs' business facilitation issues. For over 200 years, the Finance Committee has been involved in the details of customs processing and their role is significant in assuring that the Senate gives due consideration to the practical consequences of security measures.''

The Business Coalition for Customs Modernization, which is composed of 24 major companies operating in the United States, voiced similar concerns. It wrote that ''granting jurisdiction over the business facilitation functions of the Customs Service to the Committee on Homeland Security and Government Affairs—a committee concerned primarily with security—will lead inevitably to commercial considerations being discounted heavily in the name of security, without thought about the effects on America's consumers. That will hurt the U.S. economy and undermine our strength and standard of living in the long run.''

As pointed out in these letters, as we move forward in enhancing our border security efforts, it is important to keep in mind that a large part of homeland security is economic security. And international trade is a critical component of our economic security. Exports alone accounted for 25 percent of U.S. economic growth from 1990–2000. Exports alone support an estimated 12 million jobs. Trade also promotes more competitive businesses—as well as more choices of goods and inputs at lower prices for U.S. consumers. If we impede trade, we impede our own economic growth and our own future well-being.

A concrete example can be found by looking at one sector of the economy immediately following the events of September 11. Just 36 hours after the attacks, Daimler-Chrysler announced that it would close one of its assembly plants because it could not get the parts it needed to continue operations from Canada. Similar circumstances caused Ford to lay idle five of its assembly plants—each producing an average of one million dollars worth of cars per hour—for a week.

Events like this make it clear that the United States must be at the forefront in developing the border technologies and enforcement, methodologies which will enable our economy to prosper and grow in the post September 11 world. We cannot afford to do any less. The Finance Committee has the experience and expertise to appropriately meet this challenge. And I'm pleased that the resolution we passed today acknowledges the unique role of the Committee.

Finally, it only makes practical sense for the Finance Committee to retain jurisdiction over customs revenue and commercial functions. Rule XXV of the Standing Rules of the Senate provides that the Finance Committee is the committee to which shall be referred all proposed legislation, messages, petitions, memorials, and all other matters relating to reciprocal trade agreements and tariffs. It also provides that the Finance Committee has jurisdiction over customs. The reason that the Finance Committee has jurisdiction over reciprocal trade agreements, tariffs, and customs is precisely because all of these trade issues are all interrelated. Trade agreements set tariff levels, and customs personnel administer the U.S. laws relating to these tariffs. Therefore, as long as the Finance Committee has jurisdiction over reciprocal trade agreements and tariffs, this committee almost by necessity must have jurisdiction over customs revenue and commercial functions.

For these reasons, I'm very pleased that the Senate voted this week for the Finance Committee to retain jurisdiction over customs revenue and commercial functions. In doing so, the Senate permitted the Committee on Homeland Security and Governmental Affairs to focus on its core objective of national security, and prevented a disruption to U.S. businesses that could result if such jurisdiction were removed from the Finance Committee. In addition, given the Finance Committee's jurisdiction over reciprocal trade agreements and tariffs, it only makes sense for this committee also to maintain its jurisdiction over customs revenue and commercial functions of the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement, even though these agencies are now housed in the Department of Homeland Security.

Mr. REID. Mr. President, I ask the Chair, what is remaining on this legislation?

The PRESIDING OFFICER. The pending question is a cloture motion on the resolution, as amended.

Mr. REID. I ask unanimous consent that that be vitiated.

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

Mr. REID. Mr. President, it is now my understanding the resolution is left?

The PRESIDING OFFICER. The question is on agreeing to the resolution, S. Res. 445, as amended.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Texas (Mr. CORNYN), the Senator from Idaho (Mr. CRAIG), the Senator from South Carolina (Mr. GRAHAM), the Senator from Pennsylvania (Mr. SPECTER), and the Senator from New Hampshire (Mr. SUNUNU), are necessarily absent.

I further announce that, if present and voting, the Senator from Texas (Mr. CORNYN), would vote ''yea''.

Mr. REID. I announce that the Senator from Indiana (Mr. BAYH), the Senator from California (Mrs. BOXER), the Senator from Louisiana (Mr. BREAUX), the Senator from North Carolina (Mr. EDWARDS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KERRY), the Senator from Georgia (Mr. MILLER), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

I further announce that, if present and voting, the Senator from California (Mrs. BOXER) would vote ''yea''.

The result was announced—yeas 79, nays 6, as follows:

[Rollcall Vote No. 208 Leg.]

YEAS—79

Akaka	Dorgan	Lugar
Alexander	Durbin	McConnell
Allard	Ensign	Mikulski
Allen	Feingold	Murkowski
Baucus	Feinstein	Murray
Bennett	Fitzgerald	Nelson (FL)
Biden	Frist	Nelson (NE)
Bingaman	Graham (FL)	Nickles
Bond	Grassley	Pryor
Brownback	Gregg	Reed
Bunning	Hagel	Reid
Burns	Harkin	Roberts
Byrd	Hatch	Rockefeller
Cantwell	Hutchison	Santorum
Carper	Inhofe	Schumer
Chafee	Inouye	Sessions
Clinton	Jeffords	Shelby
Cochran	Johnson	Smith
Conrad	Kennedy	Snowe
Corzine	Kohl	Stabenow
Crapo	Kyl	Stevens
Daschle	Landrieu	Talent
Dayton	Lautenberg	Thomas
DeWine	Leahy	Warner
Dodd	Levin	Wyden
Dole	Lincoln	
Domenici	Lott	

NAYS—6

Coleman	Enzi	McCain
Collins	Lieberman	Voinovich

NOT VOTING—15

Bayh	Cornyn	Kerry
Boxer	Craig	Miller
Breaux	Edwards	Sarbanes
Campbell	Graham (SC)	Specter
Chambliss	Hollings	Sununu

The resolution (S. Res. 445), as amended, was agreed to, as follows:

(The resolution will be printed in a future edition of the RECORD.)

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

• Mrs. BOXER. Mr. President, because of previous long-standing commitments in the State of California and an unexpected family illness, I was not able to be present to vote on the Senate Intelligence Reform Resolution. Had I been present, I would have voted ''yes.''

Earlier this week, the Senate overwhelmingly passed legislation to implement recommendations of the 9/11 Commission in terms of reforming the intelligence structure of the executive branch and strengthening our efforts at homeland security. That was an important bill, and I hope we can quickly resolve differences with the House so that it can be sent to the President for his signature.

Equally important, however, is to implement intelligence reforms here in the Senate, as was also recommended by the 9/11 Commission.

This resolution strengthens the Senate Intelligence Committee, and it creates a new Intelligence Appropriations Subcommittee. In addition, the Government Affairs Committee will become the Homeland Security and Governmental Affairs Committee, and the Committee will have greater jurisdiction over the Department of Homeland Security.

All three of these steps will streamline operations in the Senate and make it easier for the Senate to conduct meaningful oversight of intelligence and homeland security.•

The PRESIDING OFFICER (Mr. HAGEL). The distinguished minority leader.

Mr. DASCHLE. Mr. President, I ask the Senator from West Virginia have 5 minutes prior to the next vote.

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

The Senator from West Virginia.

THE SABBATH

Mr. BYRD. Mr. President, I am not going to show any disrespect for the distinguished leader, majority leader, who is talking right now, so I will wait until he is finished.

I was saying, I thank the distinguished majority leader for listening to what I am saying. I will be brief. I am not sure I will use 5 minutes.

Mr. President, in my office hangs the Ten Commandments. We have heard a lot about the Ten Commandments in recent years. I believe in the Ten Commandments. I believe we ought to respect those commandments, one of which says:

> Remember the Sabbath Day, to keep it holy.

I am not saying I am a good man. My Bible says that no man is good. No man is good. But I think we ought to show some respect to those Christians in the body, and in our country, and many people who are not Christians, our Jewish friends, who believe in the Ten Commandments. As a matter of fact, the Ten Commandments originate, as we know, at the time when Moses went up on Mount Sinai and was given the tablets by God himself, by the Almighty himself. So we believe that.

I am a Christian. I may not be the best one around. I don't claim to be. But I do claim to be a Christian. I believe that way, and I believe that we ought to observe the Ten Commandments. I think that this body, as the greatest legislative body in the world, together with the other body, in particular should set an example of respecting the various religions that make up our Nation. That is why I take the floor today.

I think we are setting a bad example. I don't think we are showing proper respect to Christians in our country, and all over the world, for that matter, by publicly failing to observe that Commandment, that we keep the Sabbath Day holy and remember it.

I want to say I am protesting the fact that we are going to have a vote on tomorrow. I told my leadership I had hoped we wouldn't have votes on tomorrow. I also offered to say, Well, it is fine to have votes after sundown. The old Sabbath ran until sundown. Let's have any votes after sundown. If we have to have votes, let's have them after sundown. I asked my leaders to consider that. They did, and for various reasons they decided not to—that we had to have the vote.

I have to say as majority leader, when I was majority leader, I could have easily put this vote over to Monday simply by adjourning and not coming in tomorrow—which I would do, in this case. If this were an emergency, if something suddenly came up and it was a dire emergency, of course. You know the Bible says the ox may be in the ditch and we have to get it out of the ditch. But the ox is not in the ditch here. We have wasted a lot of time this year, and recently. We waste a lot of time. We are not in session when we could be in session. Then all of a sudden, here we are going to have this vote on Sunday. There are practicing Christians who like to go to church and want to observe this commandment.

So I say of course I will be in to vote. I have cast more rollcall votes than any other Senator in the history of the country. I guess I will not miss this one. But I am protesting. It could have been otherwise. It didn't have to be. It didn't have to happen tomorrow. We could have had it earlier. We jam these. We have a way around here in the Senate lately of jamming. The leadership on the other side—I have to say the Republicans are in control of the body—they have a way of jamming us. Maybe we are all at fault a little bit. But there is no reason why we should have to come in on a Sunday, on the Sabbath, and have rollcall votes. I protest it today. I hope it won't be done again after this year. I hope I will still be living and still be serving in the body.

I hope leadership will take this into consideration in the future and get our work done before the Sabbath comes and avoid having meetings on the Sabbath Day. It just isn't necessary. It is not a dire emergency. If it were, as I said, and the ox were in the ditch, I would say let us get it out and let us go in and vote. If it is important to the safety of the Nation, to the safety of

the American people, or whatever, dire, we have to do it, of course. I think the Almighty would waive the Commandment as far as that is concerned. I understand we have duties, but I don't think it has to be done now.

I want to complain about the way we have done the business of the Senate—lagged along and dragged along and come in and have voting sessions on late Tuesday or Wednesday or Thursday, and we go out on Friday. We don't come in until Monday late. There are all kinds of reasons which I will bring up at another time perhaps and talk again about it.

I am not thinking at this point that we are going to be able to waive this unless the majority leader will be of a mind to put this vote over until Monday.

May I have 1 more minute, please.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. BYRD. Mr. President, I don't see why we can't have the vote today, or if not today, move it over until Monday. That could be done. The majority leader can easily do this, no question about it. I could do it when I was majority leader. I respect the majority leader, and I respect his doing whatever he has to do, but I am saying that a stitch in time would save nine.

As one Senator, I say that we should uphold the Commandments. I have always felt that side of the aisle and this side of the aisle are highly observant of the 10 Commandments and make a big to-do about religion in this country. Why don't we have a little religion here today and put this vote over from tomorrow and not come in on Sunday? Can't we do that?

I thank the Senators for allowing me to say these few words. I thank them. I will take my seat.

PROVIDING AGRICULTURAL DISASTER ASSISTANCE

The PRESIDING OFFICER. Under the previous order, the clerk will report Senate Resolution 454 by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 454) expressing the sense of the Senate that the 108th Congress should provide the necessary funds to make disaster assistance available for all customarily eligible agricultural producers as emergency spending and not funded by cuts in the farm bill.

Mr. DAYTON. Mr. President, I rise in support of the resolution by the Senator from Iowa, the ranking member on the Senate Agriculture Committee, and I wish to support his outrage to the rip-off of money from the Conservation Security Program to pay for Agriculture disaster aid.

The Conservation Security Program exists because of the heroic efforts of the Senator from Iowa, Senator HARKIN.

It was reported out of the Senate Agriculture Committee, on which I am proud to serve,

It passes the Senate, the House, and it was signed into law by the President in 2002.

The program is underway, and it is benefiting farmers in my State of Minnesota and elsewhere.

The bill the Senate passed back then also included disaster aid—but the House bill do not.

In Conference Committees, the House opposed disaster aid, the White House opposed disaster aid, so the final legislation contained no disaster aid.

It was a terrible hole in an otherwise excellent Bill, for its counter-cyclical program. As crop prices go up—price supports go down—farmers make more money from higher market prices and taxpayers save money.

Everyone wins except farmers who suffer disasters and lose most or all of their crops. They get no benefit from higher market prices because they have little or no product to sell.

Because of a cruel twist of fate, they watch their hard work amount to nothing—nothing except destitution and bankruptcy.

If there were ever a time when government should lend a helping hand, it's in the face of a natural disaster.

Disaster aid is all of us insuring every one of us.

Hurricane, tornado, flood drought, frost, heat wave, epidemic, who among us is not potentially vulnerable to a disaster?

And if we lose our home, business, or farm, and are left destitute by that disaster, and if we have paid our taxes for years to benefit others, shouldn't our fellow citizens extend a hand to help us back on our feet?

Not a hand out but a hand up, a hand back up to productivity, profitability and dignity.

The House of Representatives would not extend that helping hand to America's farmers. The White House would not extend that helping hand to America's farmers. So much for compassionate conservatism.

I guess that means you are very conservative with your compassion. It doesn't go very far. It goes mainly to those who don't need it. And there is little left for those who do.

This time a number of us in the Senate insisted upon disaster aid for our farmers who have suffered losses during the last 2 years.

A couple of weeks ago, the House sent over a $2 billion hurricane disaster aid bill. We were asked to pass it without debate. The President was traveling to Florida the next day. Just like that, $2 billion, with no questions asked, no offset.

I supported that aid. But I made it clear, as did my colleagues, that I would not support further disaster aid that did not include Minnesota's farmers.

Now we have that disaster aid. In part; it covers only 1 of the past 2 years.

So those farmers hit the hardest—those who had the exceptional misfortune to suffer natural disasters in both years—they will receive no help for 1 of those 2 years.

That is compassionate conservatism—those hurt the worst get only half the help. Unfortunately, that was the best we could do. But we certainly did not expect that disaster aid would be taken away from conservation security, robbing one farmer to help another.

Helping hurricane victims didn't come out of another program. Hurricane victims won't have to choose between one of two hurricanes.

This isn't right. It isn't just. And it's certainly not compassionate.

This offset is not only unfair, it is unnecessary. The 2002 farm bill has spent $16 billion less than originally designed, due to higher market prices.

The counter-cyclical program designed by Senator HARKIN has worked—$16 billion budgeted has not been expended. It will not be expended. But—we are told—OMB will not count those savings.

And once again, the Legislative Branch, which constitutionally has the right to appropriate—is toadying up to the Executive Branch.

As Senator BYRD has reminded us so eloquently, we serve with the Executive Branch; we don't serve under the Executive Branch.

I think the House and the White House are all too eager to gut another farm program and this is their excuse.

Well, we have an election upcoming and no that day America's Farmers should reject that excuse.

Mr. JOHNSON. Mr. President, disaster assistance has nearly always been designated as emergency spending, just like the President's supplemental request now, which he wants to designate as emergency spending. The Senate spoke clearly by approving our agricultural disaster aid amendment that treats agricultural disaster just like any other disaster, as emergency spending and not off-set by other programs.

The President's supplemental request calls for agricultural emergency disaster aid for farmers and ranchers, but only for those whose crops or livestock have been damaged by a hurricane or tropical storm. And as I said, he did not require that the assistance be offset. If we are going to treat all farmers and ranchers the same, the disaster aid for them should make no difference if it is because of a drought in Texas, Colorado or South Dakota, or a flood in Ohio or Pennsylvania or West Virginia.

There is a huge disparity in matching up the disaster assistance spending, which will occur in fiscal year 2005, against the offset, which is spread across fiscal years 2006 through 2014. Because of this mismatch there would be a budget point of order against this conference report if it includes the offset from the farm bill as an offset for the farm bill. This is another reason why the disaster assistance should be designated emergency spending as it

has been for many, many years—with only one exception, which was reversed not long afterward.

This budget problem is so significant that I would think, or at least hope, that the conferees and the leadership would be embarrassed to bring such an obvious budget gimmick to the floor. Let me explain further. The agricultural disaster package dollars will practically all be expended in fiscal 2005.

However, the offset that the House adopted does not kick in until fiscal 2006 according to CBO scoring. The offset would save $56 million in fiscal 2006, then the per-year savings would increase over the years, but the full offset would not be achieved until the end of fiscal 2014. Of course, I am not arguing for taking more out of the farm bill earlier. I am just saying that this entire idea of offsetting a disaster program that pays out in one year out of mandatory spending over the next 10 years is a charade. It will cannibalize money from the farm bill and dramatically damage the conservation title of the farm bill. It will reduce the farm bill baseline and damage our ability to write the next farm bill in a few years. And it is a precedent that ties the hands of the appropriations committee to respond to future disasters.

The point of the whole exercise? To come up with a budget gimmick that is not really even an offset and which raises a budget point of order. Again, the larger point here is that it makes no sense to require offsets for emergency disaster assistance legislation. A disaster is a disaster no matter where it is—and an emergency is an emergency, no matter where it is. We should simply recognize the wisdom and the necessity of funding agricultural disaster measures through the emergency spending designation—which is the overwhelming precedent over many years. Again, with only one exception we can find ever—in the past many decades in which we have responded to disaster losses.

American farmers and ranchers help keep food affordable in this country and also help to feed the world. They produce the food and fiber that is so vital to our economy while protecting our soil, helping to keep our waters clean, and reducing air pollution across the country. And, they are the basis for the strongest part of our Nation's economic engine—in fact, food and fiber comprise roughly 16 percent of our gross domestic product.

Farmers and ranchers did not ask for floods or frost or drought. Congress needs to respond to these natural disasters by providing assistance to those affected including the nation's farmers and ranchers to help restore financial stability in times of such losses, and since we have traditionally provided such assistance on an emergency basis without cutting programs to the class of those suffering—we should continue to do so as the Senate has already supported.

Mr. President, I am deeply concerned today at the manner in which the Congress, and more specifically conferees to the fiscal year 2005 Homeland Security Appropriations bill, have chosen to address disaster funding. Our agriculture producers in South Dakota and across America have waited a long time for substantive relief—relief that will enable our family farmers and agricultural communities to survive through hard times—and the majority leadership has chosen to provide emergency relief for hurricane victims while requiring farmers and ranchers on the Northern Plains to cannibalize an already underfunded conservation program in order to secure moderate drought assistance.

With respect to the Conservation Security Program, the CSP budget was funded at only 41 million dollars for Fiscal Year 2004. The severe funding limitations on the program allowed the Natural Resources Conservation Service to write only around 2,000 contracts, and limited watersheds were chosen, not one of which was in my home State of South Dakota. South Dakota has already been shortchanged because of decreased conservation dollars, and I would urge my colleagues to ensure CSP can operate as intended under the farm bill.

The disaster package that was attached to the Homeland Security funding bill had bipartisan support and was approved in the Senate by a voice vote. Given the enormous savings we have experienced with farm bill price support programs, totaling nearly $16 billion, we shouldn't be robbing Peter to pay Paul to provide any type of substantive relief. Farmers shouldn't have to pay any more, and they shouldn't have to choose between crucial environmental programs and substantive disaster relief.

Mr. REID. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the resolution, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Colorado (Mr. CAMPBELL), the Senator from Georgia (Mr. CHAMBLISS), the Senator from Texas (Mr. CORNYN), the Senator from Idaho (Mr. CRAIG), the Senator from South Carolina (Mr. GRAHAM), the Senator from Pennsylvania (Mr. SPECTER), and the Senator from New Hampshire (Mr. SUNUNU) are necessarily absent.

Mr. REID. I announce that the Senator from Indiana (Mr. BAYH), the Senator from California (Mrs. BOXER), the Senator from Louisiana (Mr. BREAUX), the Senator from North Carolina (Mr. EDWARDS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KERRY), the Senator from Georgia (Mr. MILLER), and the Senator from Maryland (Mr. SARBANES) are necessarily absent.

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

The result was announced—yeas 71, nays 14, as follows:

[Rollcall Vote No. 209 Leg.]

YEAS—71

Akaka	Dayton	Lieberman
Alexander	Dodd	Lincoln
Allard	Dole	Lugar
Allen	Domenici	McConnell
Baucus	Dorgan	Mikulski
Bennett	Durbin	Murray
Biden	Enzi	Nelson (FL)
Bingaman	Feingold	Nelson (NE)
Bond	Feinstein	Pryor
Brownback	Frist	Reed
Bunning	Graham (FL)	Reid
Burns	Grassley	Roberts
Byrd	Hagel	Rockefeller
Cantwell	Harkin	Schumer
Carper	Hatch	Shelby
Chafee	Inouye	Smith
Clinton	Jeffords	Snowe
Cochran	Johnson	Stabenow
Coleman	Kennedy	Stevens
Collins	Kohl	Talent
Conrad	Landrieu	Thomas
Corzine	Lautenberg	Warner
Crapo	Leahy	Wyden
Daschle	Levin	

NAYS—14

DeWine	Inhofe	Nickles
Ensign	Kyl	Santorum
Fitzgerald	Lott	Sessions
Gregg	McCain	Voinovich
Hutchison	Murkowski	

NOT VOTING—15

Bayh	Cornyn	Kerry
Boxer	Craig	Miller
Breaux	Edwards	Sarbanes
Campbell	Graham (SC)	Specter
Chambliss	Hollings	Sununu

The resolution was agreed to, as follows:

S. RES. 454

Whereas, agriculture has been the cornerstone of every civilization throughout history and remains the driving force behind the nation's economy;

Whereas, American farmers and ranchers help keep food affordable in this country and also help to feed the world;

Whereas, America's farmers and ranchers produce the food and fiber that is so vital to our economy while protecting our soil, helping to keep our waters clean, and reducing air pollution across the country;

Whereas, all sectors of our country rely in some way on a successful, strong and vibrant agriculture industry;

Whereas, it is the nature of agriculture that farmers and ranchers will suffer production losses because of the vagaries of weather;

Whereas, Congress has responded to natural disasters by providing assistance to those affected including the nation's farmers and ranchers to help restore financial stability in times of such losses; and

Whereas, Congress has traditionally provided such assistance on an emergency basis without cutting programs to the class of those suffering.

Resolved, That it is the Sense of the Senate that the 108th Congress should provide the necessary funds to make disaster assistance available for all customarily eligible agricultural producers as emergency spending and not funded by cuts to the farm bill.

Mr. REID. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

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

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

AMERICAN JOBS CREATION ACT OF 2004—CONFERENCE REPORT—Resumed

Mr. REID. Mr. President, is the FSC bill now before the Senate?

The PRESIDING OFFICER. Yes.

INTELLIGENCE REORGANIZATION

Mr. REID. Mr. President, the chairman of the committee is here and wishes to speak on that measure. We have a number of people on this side who have been waiting today to speak. They will not be able to speak until he finishes his statement, unless he decides not to give it immediately.

I am going to give a very brief statement on the measure we just completed, that Senator MCCONNELL and I worked on, a very short statement. Then with the permission of the manager of the bill, the chairman of the committee, I will go into a rollcall, so to speak, following your statement, who will speak on this side and who will speak on your side.

Mr. President, as I said earlier this week on more than one occasion, change is very difficult. Sometimes change is what we have to do. The events of 9/11 were very bad, and as a result of that, reluctantly, energetically, and enthusiastically, the 9/11 Commission was formed and they met for a year. They did wonderful work. But for the 9/11 Commission, we could not have done the reorganization of this body that we completed. As they found, our intelligence oversight was weak. Our homeland security oversight was fractionalized. We can and must do better for this institution and the country. The legislation just passed does that.

We have recommended four additional ways to strengthen the Select Committee on Intelligence, which is no longer a select committee; it is an ''A'' committee. We have also recommended the creation of an Appropriations subcommittee on intelligence. I thought we should have that as the last issue—the appropriations aspect of it. My friend, the Senator from Texas, offered an amendment that says there will be an intelligence subcommittee of Appropriations. But it is up to the Appropriations Committee as to whether they merge Military Construction and Defense or come up with something else. But there will be a freestanding intelligence subcommittee on appropriations which, as Governor Kean says, is in keeping with the spirit of the Commission's recommendations.

We have also consolidated homeland security oversight in the Governmental Affairs Committee. We have taken 10 committees' jurisdiction. From some, we took away five or six items. Significant things were taken from these committees. For example, from Environment and Public Works, my committee, we took FEMA, which is a very important part of what goes on in our country. That is the way it was through the 10 committees from which we took jurisdiction. We have consolidated homeland security oversight in the Governmental Affairs Committee.

We know there are some who think we did too much. We have had committee chairmen and ranking members really complain about what we did. They said: Why are you doing this? You are taking these things we have worked on for 105 years. What right do you have to do that and create this monstrous committee? But we felt it was the right thing to do—to bring together, the best we could, these homeland security functions. We did that.

There were others who thought we didn't go far enough. I say to them, they should have listened to the complaints and the admonitions we received from chairmen and ranking members and members of these committees. There can be no doubt that the new homeland security and governmental affairs committee will be one of the most powerful committees in the history of the Senate.

The committee will exercise its vast jurisdiction effectively under the leadership of Senators COLLINS and LIEBERMAN. They are disappointed; they wanted everything. But they got most everything. I am sure they will do a good job there. Remember, the Governmental Affairs Committee, before we started, was a pretty powerful committee. Now it is a committee that is a very powerful committee.

We would not have gotten here without the support of Senators FRIST and DASCHLE. I said at a press conference that Senator MCCONNELL and I just had, the next time Senator DASCHLE calls me and says, I have a little job for you, I am going to get a few more details about what that little job is before accepting it. I think Senator MCCONNELL feels the same way. This has been very hard. I have a few Members on my side, chairmen, who are upset at me. But we did the right thing. We did the right thing.

Anyway, I appreciate the support of the two leaders who formed a working group for this resolution. I express my appreciation to the members of my working group, my task force. They were so supportive and did such a good job in helping us get to where we are. I appreciate the feedback we got from members of our working group, and all Senators were committed to reforming the Senate.

Mr. President, I want to personally thank Senator MITCH MCCONNELL. It has been difficult for him and for me. But I said last night on the floor and I will say it again this afternoon—it is true that I certainly cannot understand totally the Presiding Officer's feelings because he has been in actual mortal combat, and the relationships formed there, I guess, are as close as any relationships could be. I didn't fight in the jungles in Vietnam as did the Presiding Officer. Senator MCCONNELL and I fought in the ''jungles'' of the Senate and, as a result of working as we did in the last almost month on this, we formed a very close friendship—something we didn't have before. I will always remember this time we spent, and I express publicly my admiration for the Senator from Kentucky for sticking with the program. It wasn't easy to do.

I have the greatest respect for his staff, Robert Karem, Kyle Simmons, Mike Solon, Brian Lewis, and John Abegg. They worked very hard. Two people on my staff worked very hard. Rich Verma worked so hard. He is a lawyer and we used his negotiation skills on many occasions. And then Gregg Jaczko, who has a Ph.D. in physics. We needed his scientific background. He understands the legislative process, and he has done an outstanding job. I hope everybody in the Senate feels good about the work he has done because he has been selected by Senator DASCHLE to be a member of the Federal Nuclear Regulatory Commission, the NRC. His nomination is pending in the Senate now. He did an outstanding job working with Robert, Kyle, Mike, Brian, and John.

I have thanked the members of the 9/11 Commission. I thank the families who were impacted by the attacks on our country. We would not be in the position we are today without their efforts. We have made our country safer as a result of what happened in the legislation that was marshaled and passed by Senators LIEBERMAN and COLLINS, and the work done by Senator MCCONNELL and myself is going to make our country safer. Serious times call for serious action. That is what we have done here. I appreciate very much my colleagues' support.

Following the statement of the Senator from Iowa, on our side of the aisle, I ask unanimous consent that Senator HARKIN be recognized for 5 minutes, Senator DORGAN for 20 minutes, Senator DAYTON for 10 minutes, Senator JACK REED for 30 minutes, and Senator LANDRIEU to follow for a time of 90 minutes.

Mr. President, Senator DEWINE is the Republican who is the only one who has come forward, other than Senator GRASSLEY. Because of the gentleman he is, he said he would be willing to wait until Senator REED finishes his statement. I appreciate that very much. Senator DEWINE wants to be recognized for up to 1 hour. Again, I ask unanimous consent that that be the case.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. GRASSLEY. Mr. President, reserving the right to object, is it the Senator's anticipation that we go back and forth?

Mr. REID. Yes. If there are people who come with relatively short statements who are on the majority side, we would fit those in between the statements. We want to make sure Senator DEWINE, who is being such a nice person, doesn't get jammed in the process. He, in fact, has agreed to let these others go before him. If a Republican comes over, we can do that.

Mr. KENNEDY. Mr. President, may I have an hour after Senator DEWINE?

Mr. REID. I ask unanimous consent that Senator KENNEDY be given up to 1 hour following Senator DEWINE.

The PRESIDING OFFICER (Ms. MURKOWSKI). Is there objection? Without objection, it is so ordered.

The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I am glad that we are finally getting up the FSC/ETI bill, the JOBS bill as it is sometimes referred to, because this bill will create jobs in manufacturing.

As everyone knows, the World Trade Organization has ruled that our Foreign Sales Corporation extraterritorial income legislation that has been on the books for quite a few years is an illegal export subsidy and has authorized up to $4 billion a year in sanctions against U.S. exports. These sanctions actually began way back in the month of March this year. They now are at 12 percent and they are going to increase 1 percent each month that we do not repeal the existing law. By November, they will be at 13 percent, and Senator FRIST rightly has called these ''Euro taxes'' on our exporters.

It has been a long road to what I hope will be final passage of this legislation. Both bodies passed bills to deal with the Euro taxes. Both bodies struggled to get this to conference. Nothing has been easy, but we are at last in the final stages.

Now that we are at the doorway of final passage, we cannot fritter away the opportunity to eliminate this tax put on our exports to Europe by the European Union.

American workers, especially those in the manufacturing sector, put in the work necessary to make the U.S. the most productive economy in the world. We Senators have to employ the same work ethic. We have to match our constituents' work productivity. We cannot delay on this matter any longer. We cannot leave the job site without finishing our work.

I will inform my colleagues of what happened during the conference this week. It was one of the most open and unusual conferences between the Senate Finance Committee and the Ways and Means Committee of the House that we have ever had. There were 18 House conferees and 23 Senate conferees. The conference chairman, Chairman THOMAS of the Ways and Means Committee, started the ball rolling with a discussion draft. The discussion draft reflected the core elements of both bills.

The main piece complied with our WTO obligation by repealing the Foreign Sales Corporation extraterritorial income regime. In its place, we provide a deduction for all manufacturers, big and small. That was a significant movement toward the Senate position.

In one move, Chairman THOMAS addressed the top Senate priority; that is, that all manufacturers receive the benefit of the deduction.

The next piece of the discussion draft included a package of international tax reforms that will make America's manufacturers yet more competitive. This package reflects the priorities of both the Senate and the House bill.

Finally, the discussion draft included identical and near identical provisions from both bills. Revenue neutrality was another important principle of the Senate bill, and I appreciate Chairman THOMAS's cooperation on this Senate priority. Indeed, it was the bipartisan Finance Committee staff that refined the offsets that made this bill viable in the first place.

After presentation of the discussion draft, each Member had an opportunity to put forth their priorities by filing amendments for the public conference. Finance Committee conferees recognized the similarity to the customs of the Senate Finance Committee markup, the way we have done it traditionally in the Senate Finance Committee. This process was very unusual for a conference. Normally, conferees go through a series of meetings and exchange of offers or some other elongated process.

I have been a member of the Finance Committee for nearly 20 years, and I can tell my colleagues that in nearly all cases, conferees debate the issues in private. Nearly all of the toughest decisions come down to private negotiations between the two chairmen. Those decisions are reached after conferee input.

In this conference, however, all discussions were aired publicly. Sometimes conferences take months. Sometimes they end without accomplishing anything before the adjournment of a Congress. We had neither option before us. We were in an unusual and sensitive situation because we are coming up now to adjournment of this Congress. Unusual situations require then unusual procedures. We had only a few days remaining to enact this measure. That is not much time, but we are here now before the Senate, and this bill has passed the House of Representatives already.

The bottom line is that we have to move this measure to the President of the United States. I am fully committed to getting this bill done before we leave for the elections.

I appreciate the House's willingness to open up this process and let transparency occur through the amendment process. I would also like to thank my Finance Committee conferees, particularly my friend and ranking member, Senator BAUCUS. We would not be here—in fact, we would not have even gotten this bill through the Senate without the bipartisan spirit of the Finance Committee members and Senator BAUCUS's efforts in that. That spirit remained in place as we took the final steps in the conference committee between the House and Senate.

Both the House and Senate agreed on the basic structure of the bill and on the policy. In addition to the major movement to the Senate on the structure of the manufacturing deduction and revenue neutrality, many Senate priorities have been addressed. An expanded renewable electricity reduction credit is included. This was a high priority for Senate conferees BINGAMAN, SMITH, DASCHLE, HATCH, BAUCUS, SNOWE, BREAUX, LINCOLN, CONRAD, BUNNING, and GREGG.

Chairman THOMAS recognized this as an important bipartisan mark and included section 450 in his mark even though it cost over $2 billion to accommodate the Senate on this issue, within the spirit of revenue neutrality.

We have a very good small business package as well included in the conference report. The bill before us extends small business expensing for another 2 years. The bill contains significant S corporation reforms. Even though the subchapter S corporation provisions were House provisions, they have historically been Senate priorities. We have probably the most comprehensive agricultural and rural community tax incentive package ever.

I thank Chairman THOMAS for including these Senate priorities in his mark. For everyone, there is a substantial overhaul of the fuel excise tax system, with a VEETC proposal, fuel fraud, and also biodiesel provisions.

These provisions will mean more highway money for more States. According to Federal statistics for the current fiscal year, 37 of 50 States will receive more highway money because of the VEETC proposals in this bill. There will still be more highway money for all States from provisions in this bill by shutting down fraud when people do not pay the fuel tax that is required under existing law. VEETC and fuel fraud provisions are estimated to put over $24 billion into the highway trust fund.

Now, I point out that this bill does not contain many special interest members' provisions. If my colleagues will recall, the JOBS bill passed the Senate 92 to 5. In part, the bill received such widespread support because many Member items were accommodated when this bill first went through the Senate. Literally dozens of narrow tax benefits were adopted in committee and also added on the floor. Those provisions also unnecessarily caused the bill to be defined as a special interest bill. Senator BAUCUS and I put out a staff analysis that showed only a small portion of the bill's revenue was absorbed by these individual Members' items. But that did not stop the criticism of those items, either by Members of the Congress or by the press writing about this bill, emphasizing things

that were only a small part of the legislation.

The House bill also, however, contained Member items. They were fewer in number, but very significantly defined. Most of those items enjoyed some Senate support.

In addition to the press criticism, the President also made clear to me he would not support a bill that is heavily laden with so many of these narrow items.

Neither side got everything they wanted. For example, the House made a huge concession by giving up its rate cut for only C corporations. They had invested $15 billion for this in small C corporations, and another $64 billion for large C manufacturing corporations. They relented on this point in order to accommodate the Senate concerns about extending the manufacturing rate cut to all manufacturers, regardless of whether they were C corporations, S corporations, partnerships, or individuals.

We have heard harsh complaints about the conference bill from Senator LANDRIEU because the bill does not contain her reservist amendments. I would like to set the record straight on that point. The Senate voted in support of her amendment in conference. We approved it and presented it to the House for inclusion in the conference bill. The House rejected that amendment. The conference was open to the public. Everyone witnessed the vote. There were no back-room deals on the reservist amendment.

Finally, as a premise, let me note we knew the House would not accept as much in revenue offsets.

Mr. GRASSLEY. Indeed, the bill before us is smaller in size by more than $30 billion than the Senate-passed JOBS bill.

There has been some grumbling about how much the bill grew beyond the simple repeal of foreign sales corporations' extraterritorial income provisions. One of the reasons it grew is because the Finance Committee found sufficient offsets, most of which are loophole closers—loophole closers Senator KERRY spoke about in the debate, that he wanted to close. We did this to allow Members to have enough revenue to offset particular Senators' interests in this bill.

This is also true of Senator LANDRIEU's reservist amendment. Not only did we support it but we found a way to pay for it. We modified the foreign housing exclusion for high-income U.S. employees working overseas. Unfortunately, the House rejected that offset, and in turn the specific amendment.

I think the Senate is being distracted by too much emphasis upon particular specific Member priorities. I believe the core benefits of the bill should not be sacrificed to narrow items. The core benefits go to manufacturers. It is all about creating jobs in particular, particularly about creating jobs in manufacturing in America, where there has been some concern expressed in the Senate about outsourcing. So that is what this bill is all about. That is not to say we did not attempt to include a number of Members' issues from both sides of the aisle, and from both bodies of Congress. There was a balance that needed to be struck in order to get a compromise out of the conference committee. I committed to Chairman THOMAS that I would defend the mark as a whole. Chairman THOMAS made a similar commitment. That commitment enabled us to accommodate Member items that had broad support.

Let's finish the job this week before we leave. There is no excuse for allowing partisanship to hold up this bill. I will remind everyone, one more time, this bill passed the Senate Finance Committee on a bipartisan vote, 19 to 2. Only two Senators, both on my side of the aisle, not on the Democrats' side, voted against this bill. Both of those Senators, however, put their own special concerns aside for the greater good, and are supporting this conference report. This is a bipartisan bill that reflects everyone's concerns, both Republican and Democrat.

I will describe once again the history of this bill. The JOBS bill was a bipartisan bill from the ground up. The framework was laid by Senator BAUCUS when he was chairman of the Senate Finance Committee in the year 2002. In July 2002 we had a hearing to address the FSC/ETI controversy within the World Trade Organization. We have heard from a cross-section of industries that would be damaged by the repeal of the extraterritorial income laws we had on the books for the last few years. We also heard from U.S. companies that were clamoring for international tax reform, because our tax rules were hurting their competitiveness in foreign markets. Their foreign competitors were running circles around them because of our international tax rules.

During this hearing, Senator BOB GRAHAM of Florida and Senator HATCH expressed concerns about how our international tax laws were impairing the competitiveness of U.S. companies. After some discussion back there in the fall of 2002, we formed a blue ribbon commission to study this problem. We all decided that decisive action was more important than a commission. During that hearing, Chairman BAUCUS formed an international tax working group that was joined by Senator GRAHAM, Senator HATCH, and this Senator, and was open to any other Finance Committee Senator interested in participating.

The bipartisan Finance Committee working group developed a framework that formed the basis of the bill that is before us this very day. We directed our staff to engage in an exhaustive analysis of the many international reform proposals that have been offered. We sought to glean the very best ideas from as many sources as possible. Senator BAUCUS and I also formed a bipartisan bicameral working group, with the chairman and ranking member of the Ways and Means Committee, in an effort to find some common ground on dealing with the repeal of FSC/ETI. That effort did not go so well. But it did inspire Senator BAUCUS and this Senator to continue our Senate bipartisan development of a FSC/ETI repeal and international tax reform package.

We continued our efforts in cooperation with Senator HATCH and Senator GRAHAM and a few other members of the Finance Committee who wanted to do what was fair and right in complying with the World Trade Organization ruling. We continued our bipartisan efforts when I became chairman—again, in the year 2003. In July 2003 we held two hearings on the FSC/ETI and the international reform issues. One hearing focused on the effect of our tax policies on business competition within the United States and the other on international business competition. These two hearings led to the bipartisan Senate bill that passed earlier, 92 to 5.

Let me review what is in the bill before us, because most of it comes from our bipartisan Senate bill. The core part of the bill repeals the current FSC/ETI provisions that are in our current tax law and were ruled out of order by the World Trade Organization because they are contrary even to the laws of our own Congress.

FSC/ETI reduces the income tax on goods manufactured in the U.S. and exported overseas by as much as 3 to 8 rate points. That is, if a corporation's tax rate is 35 percent, the tax rate on export income is somewhere between 27 and 32 percent instead of that maximum of 35 percent.

It lowered the U.S. corporate rate on goods made in the United States and sold overseas to make us competitive because of the fact that the European Union and those countries do not export their value-added tax. The World Trade Organization has determined that the FSC/ETI is an impermissible export subsidy and has authorized the European Union to impose up to $4 billion a year of sanctions against U.S. exports until we get rid of FSC/ETI, which this bill does.

Those sanctions begin March 1. They are up as high as 12 percent right now. They can go up as high as 17 percent. They can even go higher than that if the European Union institutes longer phase-ins.

Our companies carry this burden because Congress has failed to act for 2 or 3 years. That is why we must pass this bill before we leave Washington for our campaigning.

This should be a very serious concern of all Members because the sanctions are hitting commodity products such as agricultural goods, timber and paper, as well as other manufactured products. Presently, about 89 percent of the FSC–ETI export benefits go to the manufacturing sector.

Repeal of FSC–ETI raises around $55 billion over 10 years. If that money is

not sent back into the manufacturing sector, which this bill does, there will be a $50 billion tax increase on manufacturing. It is mathematically impossible for it doing anything else.

That is why the bill before us takes all $55 billion of the FSC–ETI repeal money and sends it back to the manufacturing sector in the form of a 3-point tax rate cut on manufacturing income; in other words, that corporate tax of 35 percent being reduced down to 32 percent.

This tax rate is for manufacturing in the United States. No company that manufacturers offshore will benefit from it. We start phasing in those cuts next year. The cuts apply to sole proprietors, partnerships, farmers, individuals, family businesses, multinational corporations, and foreign companies that set up manufacturing plants in the United States.

In total, this bill provides over $76 billion of tax relief to our U.S.-based manufacturing sector to promote factory hiring in the United States—$76 billion not lost to the Federal Treasury because it is offset.

This bill also contains another $7 billion for small businesses, local communities, inland shipping, and other local business concerns.

There has been chatter in the press about the short-line railroad provision benefiting big railroad companies. That is not true. Short lines are the small spurs that run off of the main railway systems and generally connect to local community businesses such as our grain elevators and our small factories. They connect them to the main rail arteries. They are often owned by small rail companies or local community businesses. This short-rail provision is vital to farming and rural communities across America, as well as secondary cities that do not have the benefit of massive public rail systems.

This bill also contains an agricultural and small business package which devotes $5 billion to our home communities.

As I said before, this is probably the most comprehensive agricultural and rural community tax incentive package ever passed by the Congress.

We also include international tax reforms, mostly in foreign tax credit areas, and most of which benefit the manufacturing sector.

The international tax reforms largely fix problems our domestic companies face with the complexities of the foreign tax credit. These reforms are necessary if we are to level the playing field for U.S. companies that compete with our trading partners, particularly those companies that are in countries that have value-added tax and they don't export that tax like we export our income tax as part of our cost of production.

You will hear arguments that the international reforms provide an incentive to move jobs offshore. Read the bill and you will find that is not true. We have carefully selected international reforms that do not provide offshore incentives.

Our bill also includes a House version of the Homeland Reinvestment Act which will temporarily reduce tax on foreign earnings that are brought into the United States for investment here at home instead of overseas. The Senate version of this provision is the work of Senators ENSIGN, BOXER, and SMITH, a bipartisan measure.

We included a provision that allows naval shipbuilders to use a method of accounting which results in more favorable income tax treatment.

There are enhanced depreciation provisions to help the ailing airline industry.

The bill also expands the new markets tax credit to high outmigration counties. These credits help economic development in rural counties that have lost over 10 percent of their population.

We have also included the Civil Rights Tax Fairness Act. We have a special dividend allocation rule which benefits farm cooperatives.

We have other farm provisions that give cattlemen tax-free treatment if they replace livestock because of drought, flood, or other weather-related conditions—things all beyond the control of the farmer.

We included a provision that allows payments under the National Health Service Corps loan repayment program to be exempt from tax. This is an important measure to enhance the delivery of medical services to rural areas that do not have the proper number of health practitioners.

The bill before us contains several energy provisions that were voted out of the Finance Committee that had been previously approved by the full Senate in the JOBS bill.

I have already spoken about VEETC, which is short for volumetric ethanol excise tax credit. This provision would add up to $14.2 billion of revenue to the highway trust fund over the 6-year life of the upcoming transportation bill now pending before Congress. This provision alone could create as many as 674,000 new jobs in America.

The energy tax package also includes a new incentive for the production of renewable biodiesel—biodiesel made from soybeans—and hence, mixed at a 20-percent mixture with petroleum diesel, clean burning, no sulfur in that 20 percent, as an example of being environmentally friendly.

Anyway, the biodiesel provision means jobs in our heartland. Renewable fuels have directly generated over 150,000 new jobs. In fact, in 2004 alone, this industry will add 22,000 new jobs.

The bill also includes a provision to accelerate the production of natural gas from Alaska and the construction of a natural gas pipeline from Alaska to the lower 48 States. According to our own Department of Labor's Bureau of Economic Analysis, construction of the Alaska natural gas pipeline would create nearly 400,000 jobs in construction, trucking, manufacturing, and other service sectors.

The bill provides all of this tax relief, nearly $140 billion worth, and yet is revenue neutral, meaning we reduce taxes over here, close corporate loopholes over here, raise a certain amount of money to make up for what is less taxation over here. It is revenue neutral—no additional money added, no additional dollars added to the national debt; not one dime to the Federal deficit.

The tax relief in this bill is paid for by extending Customs user fees, shutting down abusive corporate tax shelters, and attacking the abusive tax strategy used by Enron, which we unearthed during my Finance Committee Enron investigation.

Last October, the Finance Committee held hearings on the status of these abusive corporate tax shelter activities. During that hearing, we received anonymous testimony from a leasing industry executive describing how U.S. corporations are able to take tax deductions for the pair of sewer lines in the New York subway station.

Let me explain ''anonymous.'' This meant the person was testifying before the committee. We knew who he was, but he was not identified to the public. But he knew what he was talking about. We have a situation where major corporations, through these abusive tax shelters, are claiming tax deductions on taxpayer-funded infrastructure, mostly by municipalities located both in the United States and overseas. Imagine our surprise on the Senate Finance Committee to learn that the U.S. taxpayer is subsidizing the cost of electric transmission lines in the Australian outback. No one believes that, but it showed up in our investigation.

I could go on with a lot of other examples, but the bill before the Senate ends this corporate tax shelter abuse.

It was shortly after the September 11, 2001, terrorist attacks that we saw the beginning of the exodus of U.S. companies moving their corporate headquarters to tax havens overseas, just setting up a shell corporation, basically just a mailbox, for the sole purpose of evading U.S. corporate taxes. It was the events of September 11, 2001, and the ensuing stock market plunge that provided companies with cost-efficient ways to get out of the United States. That is one thing, but to get out of the United States just to cheat on their taxes and leaving everything else in the United States—that is the problem.

Members may recall the video I played for some members in which a big four accounting firm partner said that U.S. companies were resistant to this scheme out of some post-September 11 sense of patriotism and national duty. This big four accounting firm partner said patriotism would have to take a back seat when they see their improved earnings per share. Isn't that a nice thing to be talking

about within 2 or 3 months after losing 3,000 Americans in the terrorist attacks on New York City and the Pentagon?

In this bill before the Senate, patriotism is not taking a back seat. This bill includes measures to shut down this type of corporate expatriations that are there for the sole purpose of dashing from the country and stashing the cash, as opposed to those patriotic corporations that are staying in America and paying and playing here.

I am not pleased with the effective date that came out of the conference, but this bill does shut down for the future more of these corporate tax shelter abuses that we call inversions. They are done. In fact, this bill represents the most comprehensive attack on tax shelters since 1986.

There is a great deal of good in this bill. We can rescue the manufacturing sector. We can give companies less reason to outsource because the cost of capital—as one of the arguments for outsourcing—will be less if this bill passes.

We also end European Union sanctions. By passing this bill we can respond to the recent rise in gas prices through our encouragement of more renewable fuels, and we can shut down every known corporate tax shelter abuse.

It is time to pass what is a very important bill to aid our manufacturing sector, remove tariffs off our farmers' backs, create jobs for our workers, and to place the Senate back on its footing, to do its job, and move legislation that benefits the American working men and women.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. HARKIN. I understand there was an order, and I am allowed to speak for 5 minutes.

DISASTER ASSISTANCE

I take this time first to thank all the Senators who voted for S. 454, expressing the sense of the Senate that disaster assistance ought to be emergency spending and not taken as an offset out of any other program, especially the farm bill.

The vote was overwhelming, 71 to 14. Once again, as we have in the past, the Senate has spoken very loudly and clearly that when a disaster strikes, wherever it is, this is an emergency. It ought to be taken out of the whole pot of Government money rather than invading a program and taking money out it as an offset.

Again, I have the deepest sympathy for all the people who got hit by the hurricane in Florida and other States. They ought to be compensated. That is a true emergency. It is a disaster. But we have had disasters in other parts of the country. We have had floods, tornados, droughts, all kind of things. Just because it is not a big hurricane does not mean it is not just as devastating. It is. It makes no sense why we should have to then offset, take money out of existing farm programs, to pay for agricultural disaster assistance. But that is the position of President Bush and of the House leadership. We do not require offsets to respond to the hurricane disaster, and we should not do it for any other disaster.

Seventy-one Senators again spoke and said emergencies are emergencies. Disasters require emergency spending.

I have to point out that last night in the debate in St. Louis the President said he had fought for strong conservation provisions in the farm bill. I was there when the President signed the farm bill in May 2002, and he touted the conservation title and how much he supported it and that one of the main reasons he was signing it was because of the strong conservation title.

Yet today, his people, the President's own people from the White House and OMB, are up here telling the members of the House and Senators that in order to respond to the droughts, flooding, tornados and other disasters we have had around the country, that the disaster payments have to be taken out of the farm bill and that the place to take them is from conservation.

Yes, you heard me correctly. The President of the United States, who so loudly last night said he fought for a strong conservation title in the farm bill, today, his people are up here and saying to take money out of conservation to pay for agricultural disaster assistance.

I am sorry, can someone please join the dots for me? What is happening? The President is saying one thing, but his people are up here doing exactly the opposite. Does the President not know what his people are doing up here or have they not informed him or what is going on?

The farmers and ranchers of this country, as well as Americans who support conservation, ought to know that there is a provision soon coming before the Senate that will take money out of conservation to pay for disasters. It is wrong. Seventy-one Senators just spoke and said it is wrong. Yet the White House is insisting that disaster money has to be taken out of conservation.

The White House and the House insist on provisions that basically take money away with hand and give it back with the other and say to farmers and ranchers: You are better off. It is a cruel hoax for agricultural producers. Farmers who receive disaster payments should not suffer the loss of other farm bill benefits. Nor should our Nation's farmers as a whole, the majority of whom will not receive any disaster payments, be forced to bear the cost of disaster assistance by having farm bill benefits taken away to be transferred to a disaster program for only some farmers.

Why should the farmers in Pennsylvania have their conservation funding taken away from them to transfer to farmers in Nebraska or Wyoming or Colorado or Oklahoma or Texas or wherever the disaster may be. The White House did not say to do that for Florida's hurricane losses. They did not say to take money away from Alaska or Ohio or places like that to go to Florida. No, and they should not have. We should all pitch in as we have before, the whole country, to respond to the hurricane recovery. We pitch in because it is a disaster and emergency and so we fund it as an emergency, not by taking funding away from other vital programs. Yet for agricultural disaster assistance responding to droughts, or floods or other disasters, the White House and the House leadership are telling farmers and ranchers they will have to bear the cost of it by losing conservation funding from the farm bill.

I am sorry, it is not right and not fair. And 71 Senators said it is not.

Again, I ask the President: Please, Mr. President, you touted the conservation program.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HARKIN. I ask unanimous consent for just 30 more seconds.

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

Mr. HARKIN. Mr. President, you touted the conservation program. Last night you said you fought for a strong conservation title in the farm bill. And now you are taking money out of conservation to pay for disasters. Please, Mr. President, I am telling you, get ahold of your people who are at OMB—your people. They work for you. Get them on the phone right now and tell them, this agricultural disaster money ought to come out of emergency assistance, just like you proposed for the hurricanes, and not out of farmers' own pockets.

I thank the Presiding Officer and yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Madam President, I understand there is a unanimous consent agreement. I ask unanimous consent it be modified so I may be recognized now according to the time allocated under the unanimous consent agreement.

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

HONORING OUR ARMED FORCES

Mr. REED. Madam President, as a preliminary point, let me say I had the privilege yesterday to go up to Walter Reed Army Hospital to visit soldiers who have been injured in action defending this country and also to visit the rehabilitation facilities there. And any time you go to Walter Reed, you are inspired by the courage, the selfless service, and the sacrifice of these outstanding young men and women. But I

want to relay something I think is particularly appropriate but is not often said.

As I was leaving the room of an injured soldier from the 509th Parachute Infantry Regiment, his parents—his mother and father—were there, and his father stopped me and said: Senator, I want to make sure you know something. The people in this hospital are extraordinary. They have treated my son with extraordinary care. He is my child, but all the people I have known here in this hospital treat my son as if he was their child.

That is an extraordinary compliment to the men and women of Walter Reed, the Army Medical Corps, the doctors, the nurses, the technicians, the occupational therapists, the janitors, the clerks. And it is not just Walter Reed, it is Bethesda, it is the Air Force Health System.

I do not think we spend enough time thanking those valiant soldiers, sailors, and air men and women for what they do. And certainly those soldiers who have suffered and are being treated, rehabilitated, we owe them more than we can ever repay. We have to match their courage with wise and thoughtful policy.

OPERATIONAL DEPLOYMENT OF THE GROUND-BASED MISSILE SYSTEM

Madam President, I am going to spend a few moments talking about a policy which I do not consider to be the wisest and the most thoughtful, and that is the President's likely declaration, within a few days, of the operational deployment of the ground-based missile system. We have constructed a test bed in Alaska. We are trying to assemble a system that will work to protect this country. I think operational testing is in order. In fact, I would hope that the administration would actually follow the law more rigorously and provide for a scheme of operational testing. But that is not the case.

To declare this immature, technologically challenged system as deployed and operational today is a political judgment, not a military judgment. I think we should refrain from blatant political judgments when the security of the United States is in the balance.

Simply stated, this system is so immature and technologically challenged that they canceled the last test. And it defies me to understand how, after cancelling the test, you can turn around and say: It will work. It is operational. It defies common sense. It defies logic. It is something I think, again, that simply is a political statement.

Now, intercept tests are the critical means by which a missile system, any military system that is technologically sophisticated, must be validated, must be tested. It is the only way we can truly assess whether a system will work, whether it meets a minimum criteria for deployment, to put it in the hands of American fighting forces.

The last intercept flight test of the system was conducted almost 2 years ago in December 2002. It was a failure.

Six days after the test failed, the President announced that the U.S. would deploy the missile defense system by the end of 2004. It is almost like watching a piece of military equipment crash and burn and then suddenly say it is operational. Again, it defies logic. It defies common sense.

Since the time of the last test failure in 2002, there have been seven other planned tests. They have all been canceled. Again, we are not able to test this system. How in good faith can we say it is operationally workable? The tests have been postponed, deferred. None of these tests have taken place.

None of the major components of the system, neither the new operational interceptor, nor the operational radar, nor the operational battle management system have ever been tested at all against a real test target. Yet the President will say, I assume in a few days, this system is capable of protecting the United States.

In addition to all these test delays and cancellations, the administration has essentially eliminated any effective oversight over the missile defense test program, avoiding standards and laws that have been on the books for at least 20 years.

Years of hard experience have shown that it is much more expensive to fix a problem with a military system after you have built and deployed it than it is to fix it before it is deployed. Because of this, more than 20 years ago, Congress passed laws which required all major defense systems to undergo a full set of realistic operational tests prior to spending large amounts of money on full production and deployment of the system. These tests were to be judged by an independent test authority called the Director of Operational Test and Evaluation. This law is still in effect today.

Thanks to this law, we have been able to avoid some of the mistakes we made in the 1970s and the 1980s, where we declared systems deployed and operational without adequate testing. These are high-profile systems, like the B–1 bomber, the Sergeant York gun, and the Bradley Fighting Vehicle. We were able to make certain corrections to the B–1 and the Bradley. They were eventually fixed at a cost of billions of dollars. The Sergeant York gun was unable to be fixed. That was canceled. But we wasted billions of dollars by deploying these systems prematurely.

If the missile system is truly as important as the administration thinks, then we should take the time to test this system to make sure it works instead of trying to convince people, by press release, that it does work.

The missile system has been exempted by the administration from the oversight of the independent Director of Operational Testing, and they have plunged ahead with full-rate production of the program with no independent testing at all. Incredibly, the administration has no plans to ever conduct realistic independent operational tests on this missile defense system. This avoids 20 years of law, practice, and indeed common sense. The politics of deploying a missile defense at any cost prior to the election has trumped any desire to make sure the system actually works and, if history is any guide, will likely result in the waste of a large amount of money to fix the system after it has been deployed.

If we can—and I think we should, indeed, with deliberate speed—deploy a system that is operationally effective, we should do that. But to take a system where the major components haven't even been tested and say it works is being intellectually dishonest and deceptive to the American people.

On August 18, Secretary Rumsfeld described the missile defense deployment as the ''triumph of hope and vision over pessimism and skepticism.'' Actually it is a triumph of best wishes over reality. And hope is not a plan. We found that out in Iraq. Only a system that is rigorously tested, where improvements are made test by test by test, will get us to where we want to go and must be, a system that we are confident will work if it is called upon to defend the country.

Now this lack of testing is not a result of any lack of funds. The administration has lavished funding on this system. The budget request for fiscal year 2005 is $10.2 billion. It is the largest single-year budget request for any weapons program in the history of the United States. For perspective, the fiscal year 2005 budget request for missile defense is more than the Army's total research and development budget for this year. And we know we have an Army engaged in combat, in trying circumstances, that needs to develop new approaches, new sensors for the troops, new observation devices, new ways to deal with insurgencies in built-up areas, new ways to deter and defend against improvised explosive devices. Their budget is a fraction of the budget that is being lavished upon this system. It is twice the budget for the Bureau of Customs and Border Protection in the Department of Homeland Security, and it is nearly twice the Department's allocation for the Coast Guard—two times Coast Guard, two times Customs and Border Protection.

The ultimate costs of this system are unknown because the administration steadfastly refuses to provide to Congress any information on how much missile defense they want to buy and how much it will cost. Recent estimates by the Congressional Budget Office indicate the Bush administration's Missile Defense Program could exceed $100 billion. Nowhere is that $100 billion being factored into ongoing defense budgets as we move forward over the next 5 to 10 years, and it will have to come from somewhere. Again, we

need a system, but we have to be honest about how much it will work and how we are going to pay for it. That honesty is not present today.

The other factor—and this is interesting—in contrast to the numbers that are being allocated for the Coast Guard and the Customs Service is that an intercontinental launch against the United States is probably less likely than other means of detonating a weapon of mass destruction in the United States. First of all, there are only two countries that currently have the capability: Russia and China. The Bush administration points—and I think rightfully so—with concern to North Korea. But that country has never successfully launched any missile capable of reaching the United States. Furthermore, North Korea has observed a self-imposed moratorium on long-range missile testing for 6 years since their last test failed in 1998.

But even if North Korea develops such a capacity, why would they launch a missile against the United States? Our early warning satellites will pick up the launch. It will tell us definitely and decisively where it is coming from, and we will retaliate swiftly and with devastating force that will likely destroy that regime. Why would they want to do that, particularly if they could attack us by other means, perhaps concealing a weapon of mass destruction in a container that comes to the United States since only a small percentage are opened?

Again, the budget for the Customs Service and the Border Protection Service is a fraction of what we are spending on this particular threat.

Now, that is not just my conceptual view. In December 2001, the U.S. intelligence community completed an assessment of the foreign ballistic missile threat to this country. The assessment was entitled ''Foreign Missile Development and the Ballistic Missile Threat Through 2015.'' Their conclusions:

> [T]he intelligence community judges that U.S. territory is more likely to be attacked with [weapons of mass destruction] using nonmissile means, primarily because such means: Are less expensive than developing and producing ICBMs; can be covertly developed and employed; the source of the weapon could be masked in an attempt to evade retaliation; it probably would be more reliable than ICBMs that have not completed rigorous testing and validation programs; and probably would be much more accurate than emerging ICBMs over the next 15 years.

This is what the intelligence community said in 2001 looking forward to 2015. Yet since that time, the Bush administration has spent billions of dollars more on the development of this untested, unproven missile defense than it has on protection of our ports and borders where the real threats are likely to come from.

We should be very careful about making sure we take scarce dollars and apply them to the most likely threats. Some have said: Well, don't make those comparisons. We to have defend against every threat. Frankly, the simple contrast between the money we are spending on missile defense versus the Coast Guard and border patrol seems to be directly in contradiction to the intelligence community estimate of what the most likely threat would be. That is not wise policy.

There is also a huge opportunity cost for us. While we are lavishing money on this system, there are other programs—for example, the Department of Energy program called the Global Threat Reduction Initiative—which are not being adequately funded. This Department of Energy program is designed to help secure loose nuclear materials that are around the globe so that terrorists don't get their hands on them. And what is the most vital threat to the United States today? A terrorist group could obtain nuclear materials or a nuclear device, smuggle those materials into the United States, and attack us here. That is what the intelligence community assumes is the most likely threat. Yet we are not going to the source and securing and eliminating the nuclear material that is too abundant in the world.

There is another program that the administration is proposing, which is the airborne laser program, another part of this elaborate construct of missile defenses. The airborne lasers are designed to shoot down ballistic missiles in their first stage as they blast off and start going into space. This program has been plagued by problems throughout, problems which have delayed the program by a year, reduced the laser power by more than half, and have many wondering whether this program is doomed to fail.

By the way, using the same criteria of missile defense—i.e., test failures followed by numerous cancellations—I wonder why the administration doesn't declare the airborne laser operational. It works perhaps as well as our national missile defense.

During the same time the administration has been spending far less on security for our Nation's ports, it has been spending a great deal of money on the airborne laser. The Bush administration's fiscal year 2005 budget proposes a $50 million cut to the 2004 level of U.S. port security funding, the grant funding that we use to help our ports all across this country. Yet there they are still investing extraordinary amounts, almost a half a billion dollars, in the airborne laser. So while it is a risky, possibly doomed program, the money keeps flowing while we do not have adequate resources to protect our ports.

The other aspect of this dilemma is that the administration has never been able to open up this process to a transparent approach, where scientists can look at this data. Of course, we are going to protect the security and the proprietary information here, but they have been overly secretive. And the reason is obvious: it doesn't seem to work, and they don't want that information out as they are getting ready to declare it operational.

They also never really had the opportunity or the will to have realistic tests. All of these tests have been carefully scripted. All of these tests have relied upon nonrealistic scenarios. The incoming missile has a homing beacon on it to help guide the interceptor to it. They don't use realistic decoys, which any country attacking the United States, you would have to assume, would have decoys as well as a real warhead. And there is no element of surprise. A real enemy missile attack would not be scripted, would not have a convenient homing beacon on the target, would likely have realistic decoys and would be a surprise attack.

Frankly, if we had warning of the pending attack, we would take preemptive action immediately, take out the missile on the launch pad.

During the entire time of the Bush administration, there has been essentially no progress made toward the goal of realistic missile defense tests against realistic targets.

An effective missile defense is something we should all work for. But a missile defense that is based upon a press release and not tested is not an effective missile defense. Saying it is operational doesn't make it operational. What makes it operational is rigorous testing under realistic circumstances. This administration has never done that.

I believe we should proceed forward with all deliberate speed to develop and deploy a missile system. I don't think we should allow ourselves to make a political judgment and declare it operational by press release and not validation through testing.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. DEWINE. Mr. President, I rise this afternoon to discuss the FSC bill. Some may view this as a tax bill, and it is; some have called it the American Jobs Creation Act of 2004, and I think that is fair; I am sure it will do that.

But let me say to the Members of the Senate, my colleagues, what this bill could have been, what this bill should have been, and what it was when it left here, when we sent it to the conference committee. What it should have been, what it could have been, what it was was the most important public health bill to be considered by this Congress.

Before the FDA provision to regulate tobacco was stripped out by the conference committee, it was the most important public health bill to be considered by this Congress. It was the most important children's health bill to come before this Congress. Tragically, the conference committee stripped out the FDA provision that would have, for the first time, put the marketing of the sale of tobacco under the same terms and conditions as the sale of every other product in this country. In this bill, which has so many things in it, there just wasn't room, according to

the conference committee, for this FDA provision.

This is a sad day for the Congress. This Senate voted on an amendment, 78 to 15, to include the tobacco buyout that helped tobacco farmers, which I supported and continue to support, coupled with, for the first time, having the tobacco controlled like every other product in this country and regulated by the Government. This bill we have in front of us represents a missed opportunity. It is a missed opportunity to help our children, our grandchildren, and the public health. Two thousand children a day in this country start smoking; 400,000 people a year die of tobacco-related diseases. Yet we failed in this bill; we turned our back on this historic opportunity.

I truly believe that in public life, as well as in life as individuals, we are judged not only by what we do, but also by what we fail to do. I think we ultimately are held accountable for what we don't do. So I intend to vote no on this bill. I intend to vote no on cloture because of the failure of the conferees to include this historic provision. We had the opportunity and missed the opportunity to close this loophole in the law, to deal with this anomaly in the law. Every product that comes on the market is regulated. When you walk in the supermarket today and you buy a product, every single product is regulated. The ingredients are on the package. If there is a claim that is made, that has to be substantiated. Every single product, except one, and that product is tobacco—cigarettes and smokeless tobacco; they are exempt. King tobacco is exempt in the law today. That is wrong.

This bill, as we sent it out of the Senate, in the wisdom of the Senate, would have changed that. Yet the conferees stripped out that provision. So we should vote no on cloture and on the conference report.

This was a historic opportunity that will not come again. The coupling of the tobacco buyout and the coupling of the FDA-controlled tobacco—we will not have the opportunity to do that again. This bill, in fact, contained the tobacco buyout. I support that. If this bill passes, the tobacco buyout will be done and we will no longer have the opportunity to couple these together. We will have lost that—let's be candid—political opportunity to put these two together. So we have lost that chance and that opportunity.

A yes vote on this conference report, a yes vote on cloture says it was OK to strip that out. A yes vote says it is OK to turn our backs on our kids once again on this issue. A yes vote says it is OK, the status quo is fine, and business as usual is fine.

How long are we going to tolerate this? How long are we going to say tobacco is different than every other product in this country? How long are we going to say tobacco should not be regulated? How long are we going to say when one goes in and buys products on the market, every other product is regulated, one knows what they are buying but not tobacco? Why should tobacco be different?

Some Members may say, I cannot vote against this bill; there is too much in it. It has too much for my State, too many good things.

There are a lot of good things in there. There are things for my home State of Ohio. There are some things in there that are not that good, but there are some good things in that bill, and I know that.

I have been in politics and Government for 30 years. I have been in the Senate for 10 years. I have cast a lot of votes. When people say, I cannot vote no, when people say I have to do it, I say this to them: I have been in politics for 30 years, and they do not have to do anything. There is nothing that compels anybody to vote any way on any bill. The longer one is doing this, I think the more they realize that.

So I say to my colleagues, they do not have to vote for this bill. They do not have to vote for cloture. There is nothing that compels them to. It is the wrong vote.

Sometimes one has to look at the big picture. Sometimes I think my colleagues have to stand back from what would appear to be the parochial interests and look at the big interests, but I would maintain that if they look at the interests of their State and look at the interests of the people of their State, not to mention the interests of the people of their country, they will come to the conclusion that voting no on the motion on cloture, no on this bill is the right thing to do.

Look at my home State of Ohio. Yes, there are good things in here for Ohio, but I will read to my colleagues the statistics from Ohio. I share them with my colleagues as an example of what their State is probably like as well.

Here are the statistics from the State of Ohio: 22.2 percent of high school students smoke; 12.8 percent of the male high school students use smokeless or spit tobacco. The number of kids under 18 who become new daily smokers each year is 36,800. The number of kids who are exposed—this is all just Ohio, now. The number of kids who are exposed to secondhand smoke at home, 919,000; packs of cigarettes bought or smoked by kids each year in Ohio, 36.3 million; adults in Ohio who smoke, 2,251,000. That is 26.6 percent.

How about deaths from smoking? Adults who die each year from their own smoking, that is 18,900 just in my home State of Ohio. Kids now under 18 and alive in Ohio who will ultimately, if they continue to smoke, die prematurely from smoking, 314,000. Adults, children, and babies who die each year from others' smoking, that is secondhand smoke, is estimated between 1,800 to 3,200.

If we do not care about people, what about dollars and cents? Well, annual health care costs in Ohio directly caused by smoking, $3.41 billion. That is ''billion.'' Portions covered by the State Medicaid program, that is what you and I pay if you are a resident of Ohio, $1.11 billion, and it goes on. Smoking-caused productivity losses in Ohio, that is $4.14 billion; resident State and Federal tax burden from smoking-caused Government expenditures, that is $534 per household.

Those are the figures. I look at this vote and I try to balance the fact that there are some good things that might be in here for my State versus what we could have achieved, what we could have done, and it is a pretty easy choice.

The conference committee had no business scuttling the will of the Senate and throwing out the FDA provision. It was wrong. They should not have done that.

I ask unanimous consent to use a few items in my speech. I am looking at them right now. They are some packages of cigarettes, a macaroni and cheese carton, yogurt, as well as a Sports Illustrated Magazine.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. DEWINE. I will explain a little bit to my colleagues what the bill we sent to the conference committee would have done, because I want to explain the gravity of this. I will talk a little bit about the nature of what the tobacco companies can do that nobody else can do.

I will start with macaroni and cheese. We all buy it. If one has kids, they buy it, anyway. We all know what it is. I ask my colleagues, when they go home tonight, to look at the carton of macaroni and cheese and read what is in it. I am not going to bother to read everything that is in it but it has everything. It has calories, salt; then there is a whole long list of enriched macaroni, durum wheat flour, citric acid, sodium phosphate. It goes on and on. The thing one has to do is have pretty good eyes. If one is my age, they have to hold it back a little bit to make sure they can read it well, but it is there, and it can be read. Everything one wants to know, and probably more; every health item in the world.

The same company makes Marlboros. Try to figure out what is in here. If you do not smoke, go buy one, anyway, and take a look at it, or pick it up if you do not want to support the tobacco companies. Take a look. There is nothing on here. There is a Surgeon General warning but there is not a whole lot on here. One cannot tell what is on here.

Do my colleagues know why? Tobacco is exempt. Nobody regulates them. Nobody requires them to list what is in here. The same company: One makes macaroni and cheese and one makes Marlboros. Why? Because it is not in the law. How long are we going to put up with this? It is wrong.

Now I will turn to the claims that cigarettes make. Marlboro Lights, well, that must mean something. I am sure it means something, but we do not

know what it means. Yogurt, light yogurt. When you see light yogurt, it means something. When you turn it around, it says one-third fewer calories, and it better be one-third fewer calories. Definable, measurable; it means something. If it is on cigarettes, it doesn't mean anything. It may mean something. I don't know what it means. Again, no Government regulation. Cigarette companies are exempt. A loophole this law would have closed, now they stripped it out and it will not close it now. Tell me that is right. Explain that to the American taxpayer. Explain that to American citizens. Why? No explanation. There is no logic behind that.

How about the claims of cigarettes? ''Premium Lights.'' Again we are back to the ''lights.'' ''All of the taste, less of the toxins.'' The average person who buys cigarettes probably thinks this means something. Maybe it does. Maybe it doesn't. We will never know. We will never know as long as this Congress continues to refuse to regulate the tobacco industry. We will never know. The American consumer will never know whether, when the cigarette companies put claims on here like ''all of the taste, less of the toxins,'' that is really true or whether ''less of the toxins'' means anything. Most people would think it would. Maybe that is healthier or not as dangerous, but we don't know that and we never will know it until this Congress changes the status quo.

Here is another one. This is Eclipse, ''20 Class A cigarettes,'' it says. Here is what it says on the back, and again who knows if this is true:

Scientific studies show that compared with other cigarettes, Eclipse may present less risk of cancer, bronchitis, and possibly emphysema, reduces secondhand smoke by 80 percent, leaves no lingering odor in hair or clothes.

That is important. Then, of course, they add:

All cigarettes present some health risk, including Eclipse.

That is nice of them to say. Again, how do we know the accuracy of this claim? But again the average consumer picks this up and feels a little better with this. There is nobody to test it, nobody to regulate it.

Some people say: MIKE DEWINE, adults ought to know no cigarette is safe. So buyer beware. Who cares?

I don't think that is the right attitude because I believe some adults do rely on less tar, less this, lighter, and scientific studies have shown that.

But what about kids? It is here that the cigarette companies reach the low point, absolutely the low point where nobody can defend them. I will challenge anybody to come to this floor and defend what they are doing. I have a whole bag of these. This is what they are doing. The cigarettes I am holding in front of me are not focused on a 57-year-old Camel smoker, I will guarantee. I don't see any 57-year-old Camel smokers smoking this stuff. These are aimed at kids. Let me read it to you:

Camel Mandarin Mint:

A blend of menthol and citrus flavor.

This is Liquid Coconut Flavor, Liquid Zoo:

An exotic blend of coconut flavored tobacco for a sweet, fresh taste and aroma.

Camel Beach Breezer:

Sultry, smooth and swingin'.

Oh, this one, this is the old one, I guess; this is a

Camel Kauai Kolada:

Hawaiian hints of pineapple and coconut.

There we go. It goes on and on.

This is really exotic. This is Mocha Taboo:

Inviting and surprising, Mocha Taboo will entice you with its sweet indulgence, while leaving you with a refreshment that's unmistakably menthol.

And again, Liquid Zoo flavored cigarettes:

An exotic blend of coconut flavored tobaccos for a sweet, fresh taste and aroma.

I invite my colleagues, if any Senator wants to, to come up later and actually smell these; it will not permeate the entire Chamber, but if you get close you can smell them. This is something kids would like. This is clearly targeted at kids, and this is what they are selling. Nothing stops them from selling this. This bill would at least stop them from selling this trash. It is not prohibition. But these products are designed for one reason and one reason only—to get kids hooked. It is an entry level drug. You entice them, you get them in, start them on this, and move them to something else. There is no other reason. When we vote for this conference report and condone what the conferees have done, we are saying it is OK to allow this to continue.

This is Sports Illustrated. Any kid in this country who likes sports—I have had a whole household full of them, and I still have one at home—reads Sports Illustrated. This is a new edition, ''Smashing In St. Louis.'' Everybody reads Sports Illustrated. Why should kids be subjected to full-page ads in Sports Illustrated, full-page, color, inviting ads? There it is.

We have tolerated this for too long in this country. I had a Senator, when we were discussing this off the floor, tell me that he didn't trust the FDA. I have had people tell me that. I guess my reaction to that would be, do you trust the people who are trying to hook our kids with this stuff? Do you trust them? Do you want them to continue to try to hook our kids with this stuff? I hope not.

People would say it is too late, this bill is already done. I agree, this bill is done. But we should be sending a message and we should be saying we are not going to tolerate this Senate passing this bill, this FDA reform, sending it on to the House, and then having it stripped out of this conference report. It is too serious an issue. It is too important.

I am not the only one who feels that this is a public health vote of immense importance. I have a letter from the American Lung Association dated October 7. I would like to read it in part:

DEAR SENATOR DEWINE: How can the Congress give $10 billion to tobacco growers without requiring anyone to exit the tobacco farming business and fail to do anything for public health? This in unconscionable.

Over 440,000 people die prematurely from tobacco-related illness each year and two thousand children become addicted regular smokers every day. Nearly 90 percent of lung cancer and 80 to 90 percent of emphysema and chronic bronchitis are caused by tobacco use. Despite this deadly assault on lung health, tobacco products are the most unregulated consumer products on the market today....

Please implore your colleagues to change course and include the FDA oversight of tobacco in the FSC bill.

Tobacco companies continue to aggressively market their products to our children, cynically targeting ''replacement smokers'' for those who die or quit smoking. New flavored cigarettes including R.J. Reynolds' Camel Exotic Blends Kauai Koloda with ''Hawaiian hints of pineapple and coconut'' and Kool Caribbean Chill and Mocha Taboo are aimed at young people. The tobacco companies make health claims of ''reduced carcinogens'' or ''less toxins'' without any oversight of the veracity of the statements or their impact on health.

FDA regulation of tobacco would:

Ban flavored cigarettes.

Stop illegal sales of tobacco products to children and adolescents.

Require changes in tobacco products, such as the reduction or elimination of harmful chemicals, to make them less harmful or less addictive.

Restrict advertising and promotions that appeal to children and adolescents.

That was from the American Lung Association.

This is a letter from the American Thoracic Society:

DEAR SENATOR DEWINE: Congress is about to give the Big Tobacco the one thing they want, continued access to the most attractive market for their deadly products—our children. Don't let Big Tobacco continue to peddle their products to our children.

The best way to protect our nation's children from the continuing disease and addiction caused Big Tobacco and their deadly products is by granting the Food and Drug Administration (FDA) the authority to regulate tobacco.

The bipartisan compromised reached in the Senate FSC bill would have granted the FDA the authority needed to regulate tobacco and reduce underage smoking throughout America. Unfortunately, during conference the supporters of Big Tobacco struck the one provision that would have given our children a fighting chance against the pervasive marketing power of tobacco companies.

If Congress fails to give FDA the authority to regulate tobacco, our children will pay the price. Children will pay the price through a lifetime of addiction to tobacco products. Children will pay through the diseases associated with tobacco addiction—lung disease, heart disease and cancer. Children will pay the price, literally, with their lives.

Here is another letter from the Ohio Children's Hospital Association:

DEAR SENATOR DEWINE: *I write today to express the terrible disappointment felt among Ohio's children's hospitals that Congress has lost an opportunity to protect the health of America's children. This is a shameful waste of*

a rare opportunity to take the bold action needed to reduce a staggeringly dangerous health risk that hurts kids and increases the cost of health care.

Ohio has been working hard to reduce youth smoking, and children's hospitals have long been at the frontlines of this battle to protect our children from the devastating tool that tobacco exacts. But, for every step forward we take (youth smoking in Ohio is down recently), we face a barrage of new and cunning attempts by the tobacco industry to regain its foothold with Ohio's children. The tobacco industry is spending more than ever to market its products in ways that appeal to children. As a depressing example, we now face the prospect of candy-flavored cigarettes.

Across the country, every day 2,000 more children become regular smokers, one-third of whom will die prematurely as a result.

FDA regulation of tobacco products represents the best tool for combating the tobacco industry's reckless assault on our children's health. We need the FDA to have the authority to subject tobacco products to the same rigorous standards we impose on other consumer products, including ingredient disclosure, truthful packaging and advertising, and manufacturing controls.

Here is a letter from the American Heart Association:

TO THE MEMBERS OF THE U.S. SENATE: On behalf of the American Heart Associations' 22.5 million volunteers and advocates, I write you to express our deep dismay over the Foreign Sales Corporation (FSC) conference vote that failed to grant the Food and Drug Administration (FDA) authority to regulate tobacco products. This represents a squandered opportunity to protect the public against dangerous tobacco products, a failure to protect our children from the marketing of tobacco products, and also the adoption of the wrong tobacco buyout plan. How can Congress explain such neglect for our nation's health?

Tobacco use is responsible for more than 440,000 deaths each year, with more than one in three from heart disease or stroke. Each day, 4,000 youth try their first cigarette and 2,000 become regular daily smokers. This FDA legislation offered our best chance to reverse that trend and reduce the senseless death and disease that results from tobacco use.

Finally, a letter from Campaign for Tobacco-Free Kids:

DEAR SENATOR DEWINE: We were profoundly disappointed by yesterday's decision by the House/Senate conference on the FSC legislation not to include provisions establishing FDA regulation of tobacco products. An historic opportunity to protect the Nation's children and the nation's health was lost.

Enacting FDA regulation of tobacco products is the single most important thing Congress could do to reduce cancer, heart disease, emphysema, chronic bronchitis and a host of other diseases. It is the single most important thing Congress could do to improve the health of our children and protect our children from unscrupulous marketing by an industry that produces a product that kills one out of two long-term users. Close to 90 percent of all tobacco users start as children. First and foremost, it is our children who were ignored and who are the big losers by the decision not to include FDA in the FSC/ETI legislation.

The tragedy is not only that an opportunity to prevent disease has slipped through our fingers, but also that literally hundreds of thousands, if not millions of kids, one addicted, eventually will die of these tobacco-related diseases. And these deaths will be needless. They will occur because of the actions of the House/Senate Conferees who failed to include FDA in the original Conference draft and who voted not to add it to the final bill. Tobacco use is also a leading cause of premature birth. If congress had given FDA authority over tobacco products, Congress could have dramatically reduced the number of children born prematurely with serious medical programs due to tobacco use.

Rarely does Congress have the opportunity to take an action that will improve the lives and well being of millions of Americans. This was such an opportunity. Tobacco companies market candy flavored cigarettes, promote their products in a myriad of ways that make them more appealing to children, hide the truth about the dangers of their products and fail to take even the most minimal steps to reduce the number of Americans who die from tobacco use. By the decision not to include the FDA provisions adopted overwhelmingly by the Senate in this bill, Congress is doing nothing to stop them.

Yesterday's vote by the FSA conference committee against FDA authority over tobacco is a big victory for the tobacco industry that will carry a heavy price in lives lost and kids addicted to tobacco. The Nation will also pay a price in growing cynicism about government when Congress appears willing to trade tax breaks for kid's lives. We urge all Senators and Members of Congress to oppose the FSC Conference Report until the FDA provisions are included.

In conclusion, I think if you gave the average American a list, maybe if you give them a quiz and you said here is a list of macaroni and cheese, peanut butter, granola bars, milk, cheese, cigarettes, bottled water, and asked them to check which one of these products the Government does not regulate, check which one of these products the maker of the product doesn't have to list the ingredients, which one of these products was not tested, which one of these products the maker of the product can put a claim on and not have to substantiate, which one will the average American pick?

You would think they would pick the one product that by design or if it is used as intended, admittedly we all know is dangerous to your health.

I don't think so. It defies common sense. No one in their right mind would pick that product. No one in their right mind, if we were starting all over again, would say, That is the product we are not going to regulate; we are not going to list the ingredients on that product; that is the worst product we are going to allow the manufacturer to make any claim they want—lighter, better, safer, whatever they want to say. Yet that is the status of the law today.

By approving this conference report and by saying, yes, we are going to move forward with it—that will be the vote tomorrow—we are acquiescing in that. We are saying it is OK to give up the opportunity we had, the best shot we have had in years to change the status quo and to say we are not going to tolerate this anymore; we are not going to put up with this anymore. The time is here to change that. It defies common sense.

There are historic votes in this Chamber. This is a historic vote. This is a historic time. This was a historic opportunity to make a difference and to change things.

I often think, as a public official and as an American, we do not want to be on the wrong side of history. We all have our own list of things that if we were here or if we were involved in this debate 10 years, 20 years ago, 50 years ago, 100 years ago we would not have wanted to be on a particular side. I don't want to be overly dramatic, but Members do not want to be on the wrong side of this debate. We may lose this time, but there will be a day when the American people rise up and say they have had enough, and this Congress hears it and this Congress takes votes to finally regulate this product, as we do every other product, and finally say we have had enough. We are going to make the tobacco companies list what is in the product, list the ingredients, come clean with the American people and say, This is what is in it, and hold them to the same standard we hold for a company that makes peanut butter of macaroni and cheese, a granola bar, a bottle of water or milk. They should not be above the law.

Someday that will happen. I say to my colleagues, that day will come. That day may not be this session of Congress, but it will come. People do want to be on the right side of history. We will regulate them. We will bring them into the mainstream.

This is a very dangerous product. We are not going to go to prohibition. That has not worked in this country. It did not work with alcohol, and it will not work with cigarettes. That is not what this debate is about. This debate is about common sense, about doing what is rational, about doing something that makes good common sense.

I conclude by urging my colleagues to vote no on this bill, to vote no on cloture, to send a message strongly and loudly that we have had enough, and it is time to bring tobacco into the mainstream of the law. No longer should they be outside the law. A ''no'' vote tomorrow is a vote for safety and the health of our kids. It is a vote or the safety and the health of the American people.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, the hour is late in the afternoon on a Saturday, and I know there are many different matters of interest, primarily sports taking place across this country at the universities and high schools across our Nation. Young people are out there, parents are out there, families are out there, but I hope there are some who had the good opportunity to listen to my friend and colleague from Ohio State who spoke so clearly and eloquently as to what the real challenge is for this institution, the Senate, in protecting the children of this Nation.

The Senator laid out the kind of persuasive and irrefutable case that helped gain 78 Members of the Senate who supported the DeWine-Kennedy proposal earlier this last month, but the amendment was dropped, as the Senator from Ohio pointed out, in the course of the consideration of the underlying legislation.

There are public leaders who are talking about children all over this country. They talk about children being our future. They are our future. As the Senator from Ohio points out, we have missed the golden opportunity to make an extraordinary difference in the lives of their children and families.

We hear a great deal, as we should, about family values. This legislation is as much a part of family values as we could have, to the extent that legislation is bound in family values. We know that basically family values start with parents, work through their children's relationship with each other and their parents, and their own common sense about their responsibilities as young people for themselves and for their families and for others. Family values involves caring about what happens not only to our children and our immediate families but also to children whose lives we can impact.

This legislation which was supported by the overwhelming majority of this Senate, could make such an extraordinary difference to children today, tomorrow, and to the future. As has been pointed out, we have missed that extraordinary opportunity.

For that reason and for other reasons which I will outline briefly in a few moments, I intend to vote no on the conference report and no on cloture.

This country has had a very full education about the dangers of smoking. I can remember the 1964 Surgeon General's report that talked about the dangers of smoking and youth. That was a wake-up call to parents all across this country. Then we had Surgeon General Koop, who was an extraordinary Surgeon General.

Last night the President of the United States was asked about any mistakes he might have made in public life, and we did not hear any. I freely admit one of the important mistakes I made was voting against Everett Koop to be Surgeon General because we saw through his life and through his commitment not only as the Surgeon General but afterwards, as well, that once he made that judgment that cigarettes were addictive and cancerous, he spent a great part of his life educating families all across this country. This Nation owes a great deal to his work and his commitment and his education to families.

That was a wake-up call for America. We went on through the period of the 1980s when we had Dr. Kessler, head of the FDA, who drafted the regulations which were circumvented by the tobacco industry, and put aside those regulations that were the result of hours and hours and hours and hours and weeks and weeks and weeks, and days and days and days and months and months and months of careful, scientific testimony, those for and against it.

Nonetheless, he came through with outstanding recommendations. We incorporated those recommendations as a point of reference to put them into effect because they have been tried and tested and they should have been put into effect to provide the protections for the young children of this country.

Then we had—I can remember, and I bet most families can remember—that extraordinary day when we had the presidents of all the important tobacco companies who testified in front of my friend and an extraordinary Congressman, HENRY WAXMAN, who all raised their hands and swore—swore—to the Lord on high that they, as the chief executives of the tobacco companies, did not believe cigarettes were addictive and did not believe they were dangerous to your health, in complete conflict with all the evidentiary science at that time.

Well, we heard so many of them recant that testimony later. It has all been part of a parade, a parade of distortion and misrepresentation by the tobacco companies and their representatives to not the older members of our society but to the children in our society in order to bring them in and start them smoking and get them on the path to addiction.

I have been fortunate to be the chairman of the Health Committee in the Senate. I am ranking member now. How many days, how many weeks, how many months of hearings we have had about the problems young people have with their addiction, their attachment to dangerous drugs. Cigarettes are right up there. As the science would say, they are as addictive as heroin and cocaine. That is the science. That is not just an opinion of the Senator from Massachusetts, that is the science. It is as addictive as cocaine and heroin, yet we allow that to take place.

Then we had the comprehensive legislation in 1998 to try to deal with a range of different tobacco issues. The basic core part of the DeWine-Kennedy legislation on FDA was here before the Senate essentially at that time for 6 weeks and no one contested its importance. Go back and read the record. No one really questioned that if we were going to have a comprehensive tobacco bill at that time that particular provision deserved at least support. There were no amendments on that, none. All these voices now: Oh, well, we can't have the FDA, absolutely not. We don't need more regulation—we did not have a single amendment on that, none; no amendments.

I had the good opportunity to effectively reintroduce that legislation with the majority leader, Senator FRIST, who did so much in the drafting of the original legislation, one of the important leaders in this body on health care policy. This provision is basically very mainstream, if that gives assurance to some people. It is a very mainstream proposal, but it does the job in terms of protection.

So we had this proposal that was considered in the Senate, and was accepted, that would make such an extraordinary difference. As I was mentioning, the very simple fact is, this product, which is so addictive, so dangerous to the children of this country, not only to the children themselves but also to their families, is something that we should have addressed.

But this administration and, quite frankly, the leadership on that Ways and Means Committee, our Republican leadership, said: Absolutely not. We are not going to tolerate it. We are not going to accept it. We will not let it happen. And it did not.

I pay respect to my colleagues on the other side of the aisle because the progress that we made has not been just a partisan effort. The good Senator from Ohio has been a leader. There have been many. The Senator from Oregon, Mr. SMITH; the Senator from Maine, OLYMPIA SNOWE; JOHN MCCAIN from Arizona; ORRIN HATCH from Utah; Senator CHAFEE from Rhode Island; and many others have been willing to stand on this issue. This has not been a Republican or Democratic issue. But this administration has made a different judgment than those good Republicans who supported this effort in here and also a number of them supported us in the conference.

There has to be responsibility. There should be some accountability around here somewhere. We are elected as officials. We make judgments, we make choices, and we ought be held accountable for them. That was a decision that was made by the administration not to include it. If this administration said to include it, it would be in that bill tomorrow when we vote on it on the floor of the Senate. We had the support of some of the tobacco industries, with the Philip Morris industry.

Tomorrow, when the Senate addresses the underlying legislation, we are also going to voice vote and send back to the House of Representatives the DeWine-Kennedy FDA legislation. The Senate will pass that. We will send it back to the House. We have not given up hope.

Senator DEWINE and I have not given up hope that perhaps in some lameduck Congress, perhaps when the glare of the campaign in the last 4 weeks of the campaign—I would have thought it would have been a pretty good issue because people, parents, care about this, to indicate support for it. But, in any event, perhaps after the glare of the campaign is over, in a postcampaign time, when we meet, perhaps we can get a different reaction. So we take some hope and we want to give the assurance to those who have given us strong support that we are not giving up and we are not giving in.

Mr. President, I have a few letters that I will mention, and then there are

a few final items I want to talk about. We have a detailed presentation on exactly what this legislation does. I want to make sure that is in this part of the RECORD. I ask unanimous consent that be printed in the RECORD.

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

I started smoking when I was 12 years old. My mother smoked, and my friends told me it would make me ''cool.'' Since my mother was always at the hospital with my father, helping him while he was losing his battle against cancer, there was no one around to notice that I had begun smoking. That was in 1973. I smoked until Jan. 1, 1990, when I was 28 years old, and I have been smoke-free for almost 14 years. Quitting was probably the hardest thing I have ever done, but it was definitely the smartest. My mother smoked until she got diagnosed with lung cancer in 1994, which is also the year her only grandchild was born. They removed part of her lung, and since she believed she had ''beat'' the cancer, she began smoking again. Five years and five CT scans later, they found another tumor in her lung, this time inoperable and supposedly untreatable. The doctors gave her six to ten months to live. Knowing how short her time was, 1999 turned out to be an extremely painful year for all of us. Over the next four years, my mother suffered terribly, often unable to eat and using a stomach tube, constantly taking medication and losing lucidity, often too tired and too weak to be with her little granddaughter, whom she completely adored. We watched her waste away to 80 pounds, the cancer having invaded her bones, causing her to fall, taking away her independence, which she always valued highly. She died on April 21, 2003, the day after Easter, at only 67 years old. She was my best friend, and my daughter's, too. I miss our daily phone calls, and I will miss her warm, inviting presence this holiday season, as I do every single day. My 9 year-old daughter has seen what horror cigarettes can cause; I doubt that she will ever forget that cigarettes took her ''Nonni'' away from her, but she is coming to the age where social pressures will be on her to conform to the ''crowd.'' I hope that she will be strong, and that there will be enough education in her school to help her to learn how to deal with people who try to coerce her into using this drug, among others. Thank you for allowing me to share my story.—Lorraine T., Ipswich MA, November 10, 2003.

My father never liked to dance much. Yet, as we stood hugging, watching my best friend dance with her father at her wedding, Dad promised to dance with me at my wedding.

At age 39, he had a stroke that left him paralyzed on his left side. He was able to regain most of the use of his limbs through years of hard work. Unfortunately, he wasn't able to quit his addiction to cigarettes.

One month before his 50th birthday, he died from a tobacco related heart attack. He didn't live to fulfill his promise to dance with me at my wedding.—Donna M., Melrose MA, January 12, 2004.

Today is like every other day I miss my mom so much, I look at my kids and realize ''nanny'' is not here to see how cute they have become. I am a only child and lost my mom 3 years ago to lung cancer. I can remember the moment the doctor told me she was going to die, and in the same breath she said ''I truly believe what the tobacco companies are getting away with is criminal.'' I have from that day on not been able to understand why they are allowed to sell something that has killed so many, and is going to kill so many more. It is heartbreaking to see a young teen smoking, Sometimes I say something, yes they think I'm crazy. However there life to me is so precious. No I may not know them, but I wish they would listen. If they saw their mom or dad gasping for breath, if they saw their moms pelvic bones vividly sticking out would this change their minds and make them want to quit? I hope so, I don't want any more families to feel this pain and utter loneliness that I have had to endure. My children are the ones who get me through the bad days. They warm my heart taking away the sadness. I have taught them early on how bad and deadly tobacco is, and they also know that's why ''nanny'' is no longer here, and how much she loved them! Thank you.—Linda F., Middleboro MA, September 23, 2003.

In November 2002 we learned that my mother, Gloria, had stage four lung cancer. What started as pain in her hip and was explained away as arthritis pain was actually bone cancer—yes, it had already spread from her lungs before she knew she even had it. Mom had quit smoking what seems like a very long time ago . . . yet, it came back to haunt us.

She fought a fight I never knew she had in her. An agonizing fight that I hope her story will prevent someone—or many someones—from ever having to fight. She lost all of the weight she had struggled to lose most of her adult life. She lost her hair. She lost her appetite. She lost sleep. She lost her freedom—unable to get around without pain, unable to drive, often unable to be alone. There were so many things that she lost . . . too many to mention.

But, what she did not lose was her faith. And it was her faith that carried her through those long months.

Mom fought for a year. She fought to the end. She died last October with one regret. That she would not live to see her new Granddaughter.

Her Granddaughter was born 8 months and 23 days after Mom passed away. She is now 4 weeks old (today!) and it is my hope that she will never breathe someone's secondhand smoke. That she will never have a friend who takes up smoking. And that she will never have to watch someone she loves die from such a horrible, preventable thing as lung cancer. I will share Mom's picture with all of the children I know. I will show them her smiling face. . . . even at the end when she smiled because she knew that she was going to be going home soon. And I will tell them of how much she loved children. And how she never, never wants to hear that they have taken up smoking. I will tell them that the reason she is so thin in the picture is because she was sick. I will show them the pictures when she had lost most of her hair. I will tell them how much I miss her. And I will make them promise me—and Mom—that they will never, never smoke or be around anyone who is smoking. I LOVE YOU MOM!—Sarah Z., South Easton MA, October 4, 2004.

I have now been a smoker for over 8 years. I am only 24 years old. I already have a severe smokers cough that only gets worse with the cold weather. I live in New England. I sometimes read the side of the packs with the Surgeon Generals warnings. They say that smoking can cause babies to be low birth weight. Well two years ago I had a daughter. I did not smoke all the time when I was pregnant but I guess you still could have called me a smoker. My daughter was 8 pounds she was definitely not under-weight. Now don't get me wrong I am not saying this to be proud. Every time I look at her I wonder if I did any other damage to her. I am so ashamed of myself. Yet right now I am dying for a smoke. This is such an addiction I don't think that I will ever overcome it, I want to and God knows how I have tried. I want to be around when my daughter grows-up, to see her get married and to see any future grandchildren I might have. If I keep up this way I am not going to see any of it, it is so depressing.

Well the only thing I can say is that if there were stricter regulations when I was a minor I probably never would have started smoking. I know that sounds cliche but you can't miss something you never had . . . now I have had it and I cannot go without it. I feel like a junkie even though I am not. I will be scorned by the non-smoking community. I will be the pariah for the smokers. I only wish that I could quit.

I hope someone will not smoke once reading this . . . but then again I am only one person . . . barely able to make a difference. Maybe just once before it's too late. Just to quit for my little daughters sake . . . she does need to know . . . mommy cares what she thinks.—Tori H., South Boston MA, November 12, 2003.

(Mr. WARNER assumed the Chair.)

Mr. KENNEDY. Mr. President, here is a letter from Lorraine T. from Ipswich, MA. I will include the whole letter, but I will just read parts of it:

My mother smoked until she got diagnosed with lung cancer in 1994, which is also the year her only grandchild was born. They removed part of her lung, and since she believed she had ''beat'' the cancer, she began smoking again. Five years and five CT scans later, they found another tumor in her lung, this time inoperable and supposedly untreatable. The doctors gave her six to ten months to live. Knowing how short her time was, 1999 turned out to be an extremely painful year for all of us. Over the next four years, my mother suffered terribly, often unable to eat and using a stomach tube, constantly taking medication and losing lucidity, often too tired and too weak to be with her little granddaughter, whom she completely adored. We watched her waste away to 80 pounds, the cancer having invaded her bones, causing her to fall, taking away her independence, which she always valued highly. She died April 21, 2003, the day after Easter, at only 67 years old. She was my best friend, and my daughter's, too. . . .

My 9 year-old daughter has seen what horror cigarettes can cause; I doubt that she will ever forget that cigarettes took her ''Nonni'' away from her, but she is coming to the age where social pressures will be on her to conform to the ''crowd.'' I hope she will be strong, and that there will be enough education in her school to help her to learn how to deal with people who try to coerce her into using this drug, among others. . . . Lorraine T., Ipswich MA.

Here is another letter from Donna M., from Melrose, MA, of this year:

My father never liked to dance much. Yet, as we stood hugging, watching my best friend dance with her father at a wedding, Dad promised to dance with me at my wedding.

At age 39, he had a stroke that left him paralyzed on his left side. He was unable to regain most of the use of his limbs through years of hard work. Unfortunately, he wasn't able to quit his addiction to cigarettes.

One month before his 50th birthday, my Dad died from a tobacco related heart attack. He didn't live to fulfill his promise to dance with me at my wedding.

Here is a letter from Linda F., of Middleboro, MA:

Today is like every other day. I miss my mom so much. I look at my kids and realize ''nanny'' is not here to see how cute they

have become. I am an only child and lost my mom 3 years ago to lung cancer. I can remember the moment the doctor told me she was going to die, and in the same breath she said ''I truly believe what the tobacco companies are getting away with is criminal.'' I have from that day on not been able to understand why they are allowed to sell something that has killed so many, and is going to kill so many more.

Then the letter continues.

This is from Sarah Z. from South Easton, MA, October 4, 2004:

In November 2002 we learned that my mother, Gloria, had stage four lung cancer. Mom fought for a year. She fought to the end. She died last October with one regret. That she would not live to see her new granddaughter. Her granddaughter was born 8 months and 23 days after Mom passed away. She is now 4 weeks old (today!) and it is my hope that she will never breathe someone's secondhand smoke. That she will never have a friend who takes up smoking. And that she will never have to watch someone she loves die from such a horrible, preventable thing as lung cancer.

And Tori H, South Boston:

I have now been a smoker for 8 years. I am only 24 years old. I already have a severe smoker's cough. It only gets worse with cold weather. I live in New England. I sometimes read the side of the packs with the Surgeon General's warnings. They say smoking can cause babies to be low birth weight . . . I did not smoke all the time when I was pregnant but I guess you could have called me a smoker . . . My daughter was 8 pounds; she was definitely not under-weight. Now don't get me wrong—I am not saying this to be proud. Every time I look at her I wonder if I did any other damage to her. I am so ashamed of myself. Yet right now I am dying for a smoke. This is such an addiction. I don't think I will ever overcome it. I want to and God knows how I have tried. I want to be around when my daughter grows up, to see her get married and to see any future grandchildren I might have. If I keep up this way I am not going to see any of it; it is so depressing.

The letters go on, and they make the case. If there are any who think this is a partisan issue, look at what the Bush administration's Department of Justice filed in the final proposed findings of fact of the United States in the tobacco litigation brought by the Federal Government against tobacco companies.

This is the current administration's finding, page 21: Cigarette smoking, particularly that begun by young people, continues to be the leading cause of preventable disease and premature mortality in the United States. For children and adolescents, one out of three will die of smoking-related disease. As part of a scheme to defraud, defendants have intentionally marketed cigarettes to youth under the legal smoking age and falsely denied that they have done so.

We could go on. I have their brief notes right here about what is happening. These are the statistics in terms of the young people who get started smoking. It begins early. When adults who are daily smokers began smoking: 89 percent by the age of 18; 62 percent by the age of 16; 37 percent by the age of 14; and 16 percent by the age of 12.

You can ask why. Well, just look at this chart. This is advertising in billions of dollars. These are billions of dollars of advertising and how this has gone up and has continued in 2003 and 2004. That is targeted, as these various ads demonstrate: Winston, three young people out in the surf with a surfboard. The sun is setting. Additive free. Naturally smooth. Leave the bull behind, just pick up a Winston.

This is from Elle magazine, all targeted toward young people: Camel, Turkish blends. And there you see the advertisement, all focused on the youth.

Here is Rolling Stone: Stir the senses, Salem. All to appeal to the young people.

And it has great success because, like any narcotic, you get them hooked at that age, and it is very difficult to stop.

My friend from Ohio mentioned the costs for the taxpayers as well. We are motivated because of our concern for the children and children's health and the family's health. But if that doesn't move you, just look at the annual cost in the United States: the Medicaid payments, $23 billion; $20 billion in Medicare payments; other Federal payments, $8 billion; smoking during pregnancy, $4 billion; total health cost, $75 billion. And if you add lost productivity to that, you are talking over $150 billion a year in direct costs to the American taxpayer.

This makes sense, obviously, and is the most important for the children so they aren't going to be addicted and their health is going to be protected. It is for the other members of the families as well so that those young people who are eventually going to be parents are going to be protected. But if that doesn't get you and the pocketbook issues don't get you, you can see that you are paying billions and billions of dollars.

These are the conclusions about the activities of tobacco companies even by this Justice Department.

This is why this is so important and an opportunity missed.

Let me conclude on this subject by referring to the letters of support we received from some groups:

Dear Senator KENNEDY, Congress has an historic opportunity to embrace responsible legislation that will help to reduce suffering and death caused by the tobacco. The House-Senate conferees should include the DeWine-Kennedy language. On July 15, the U.S. Senate took an unprecedented step towards granting the Food and Drug Administration effective authority. The Senate passed the DeWine amendment. The overwhelmingly bipartisan amendment linked the FDA with the tobacco buyout. Our organizations view this approach as critical to accomplishing our goal, securing FDA authority over tobacco products. Tobacco use kills more than 400,000 Americans each year. Across our Nation, more than $75 billion in health costs and, according to the Centers for Disease Control, tobacco use by pregnant women alone costs $400 million to $500 million. And every day another 2,000 children become regular smokers. A third will die prematurely as a result. Now we have an opportunity to do something about it. Yet tobacco products are virtually unregulated. For decades the tobacco companies have marketed to our children, deceived consumers about the harm their products caused, and failed to take any meaningful steps to make their products less harmful. The DeWine-Kennedy language would finally end the special protection enjoyed by the tobacco industry to protect our children and the Nation's health. This legislation meets the standards long established by the public health community for a strong FDA regulation bill that protects the public health. It would give the FDA the necessary tools and resources to effectively regulate the manufacture, marketing, labeling, distribution and sale of tobacco products.

Then it continues:

The public health community worked in good faith to achieve this much-needed bipartisan legislation that protects the public health and can be enacted in this session. We remain concerned that opponents of an effective FDA will seek to weaken the provision prior to final passage. Our organization will work. Please support.

Those include the American Academy of Family Physicians, American Academy of Nurse Practitioners, American Academy of Pediatrics, American College of Cardiology, American College of Obstetricians and Gynecologists, American College of Physicians, American College of Preventive Medicine, American Heart Association, American Lung Association, the Medical Association, American Women's Medical Association, the Public Health Association, the School Health Association, the Children's Defense Fund, and the Campaign for Tobacco Free Kids.

I thank them in particular.

The FSC conference report that we are being asked to consider ignores fundamental issues that broad bipartisan majorities of the Senate have strongly supported. On vital matters concerning the protection of children's health, preserving the overtime rights of workers, and defending American jobs from outsourcing to foreign lands, the cynical actions of a few have blocked the will of the majority.

The House conferees were more interested in protecting big tobacco companies' profits than they were in protecting children. They would rather create tax incentives for multinational corporations to move millions of American jobs overseas than save millions of our kids from a lifetime of addiction and premature death.

We were not the ones who chose to link tobacco issues to this tax bill. That was a decision made by the House Republican leadership. But it is absolutely irresponsible to address a quota buyout for tobacco farmers, as this conference report does, while ignoring the urgent need for FDA authority to prevent cigarette companies from entrapping our kids. The conferees have left us no choice but to oppose passage of this conference report.

The importance to our children of authorizing the FDA to regulate tobacco products cannot be overstated. Smoking is the number one preventable

cause of death in America. It kills well over 400,000 Americans each year, and nearly all of them started smoking as children. They are seduced by the tobacco companies before they are mature enough to recognize the enormous health risks of smoking, and become addicted while still teenagers.

We feel so strongly about this issue because FDA authority is the most important legislation Congress can pass to protect our children from the number one preventable cause of death in America—smoking. We cannot in good conscience allow the Federal agency most responsible for protecting the public health to remain powerless to deal with the enormous health risks of cigarettes.

The stakes are vast. Each day, 5,000 children try their first cigarette. Two thousand of them will become daily smokers, and nearly a thousand will die prematurely from tobacco-induced diseases. The fact is that more than 90 percent of adult smokers began smoking as teenagers.

Smoking can cause lifelong dreams to go up in smoke. Smoking can mean your hopes for an active life—of hikes with your children, and bike riding and long walks—are beyond your reach. You simply don't have the lung capacity and the stamina to do what you wish you could do. It can mean that your hope of enjoying your grandchildren and appreciating your retirement are gone, as you suffer from tobacco-induced disease and an early death. The most recent studies document the fact that smokers, on average, die 10 years earlier than nonsmokers. That is what can happen to your lifestyle when you start smoking as a teenager.

How many addicted smokers today are glad to be smoking? How many Americans with smoking-induced lung cancer or emphysema are glad to be smokers? How many addicted smokers can look their children and grandchildren in the eyes and say they are proud to smoke cigarettes. How many wish they could easily put out that last cigarette, and never look back? I think we all know the answers to these questions. That is why this issue is so important.

The Senate amendment which passed with the support of 78 Members set forth a fair and balanced approach to FDA regulation. It created a new section in FDA jurisdiction for the regulation of tobacco products, with standards that allow for consideration of the unique issues raised by tobacco use. It was sensitive to the concerns of tobacco farmers, small businesses, and nicotine-dependent smokers. But, it clearly gave FDA the authority it needs in order to prevent youth smoking and to reduce addiction to this highly lethal product.

The Senate amendment also provided financial relief for hard-pressed tobacco farmers, much more generous relief than is contained in the conference report. It incorporated bipartisan legislation introduced by thirteen tobacco-state Senators led by Senator MCCONNELL, to buy back tobacco quota from farmers. It would have provided $12 billion to financially vulnerable tobacco farmers and tobacco communities. The money to fund the buyout would come from an assessment on tobacco companies. This proposal was a legitimate buyout plan designed by tobacco-state members for the benefit of their tobacco farming constituents. Instead, the House designed proposal in the conference report forces tobacco farmers to settle for more than $2 billion less than they would have received if the Senate proposal had been accepted. For example, it will pay North Carolina farmers $800 million less than the Senate amendment. It will pay Kentucky farmers $500 million less. That is a very substantial difference. For small farmers who actually tend the land themselves, it is a 25 percent cut in what they will receive. So in reality, the farmers are losers too. Only the tobacco companies who will pay billions less are winners.

The heart of the Senate amendment was the FDA provision—which would lead to fewer children starting to smoke, and to fewer adults suffering with tobacco-induced disease and now that provision is gone. Public health groups told us it was the most important legislation we could pass to deal with the nation's number one health hazard.

We must deal firmly with tobacco company marketing practices that target children and mislead the public. The Food and Drug Administration needs broad authority to regulate the sale, distribution, and advertising of cigarettes and smokeless tobacco. The tobacco industry currently spends over eleven billion dollars a year to promote its products. The amount has actually grown dramatically since the Master Settlement Agreement was signed.

Much of that money is spent in ways designed to tempt children to start smoking, before they are mature enough to appreciate the enormity of the health risk. The industry knows that 90 percent of smokers begin as children and are addicted by the time they reach adulthood.

Documents obtained from tobacco companies prove, in the companies' own words, the magnitude of the industry's efforts to trap children into dependency on their deadly product. Recent studies by the Institute of Medicine and the Centers for Disease Control show the substantial role of industry advertising in decisions by young people to use tobacco products.

If we are serious about reducing youth smoking, FDA must have the power to prevent industry advertising designed to appeal to children wherever it will be seen by children. The Senate-passed legislation would give FDA the ability to stop tobacco advertising which glamorizes smoking from appearing where it will be seen by significant numbers of children. It grants FDA full authority to regulate tobacco advertising ''consistent with and to the full extent permitted by the First Amendment.''

FDA authority must also extend to the sale of tobacco products. Nearly every State makes it illegal to sell cigarettes to children under 18, but surveys show that those laws are rarely enforced and frequently violated. FDA must have the power to limit the sale of cigarettes to face-to-face transactions in which the age of the purchaser can be verified by identification. This means an end to self-service displays and vending machine sales, except in adult-only facilities. There must also be serious enforcement efforts with real penalties for those caught selling tobacco products to children. This is the only way to ensure that children under 18 are not able to buy cigarettes.

The FDA conducted the longest rulemaking proceeding in its history, studying which regulations would most effectively reduce the number of children who smoke. Seven hundred thousand public comments were received in the course of that rulemaking. At the conclusion of its proceeding, the Agency promulgated rules on the manner in which cigarettes are advertised and sold. Due to litigation, most of those regulations were never implemented. If we are serious about curbing youth smoking as much as possible, as soon as possible; it makes no sense to require FDA to reinvent the wheel by conducting a new multi-year rulemaking process on the same issues. The Senate legislation would give the youth access and advertising restrictions already developed by FDA the immediate force of law, as if they had been issued under the new statute.

The legislation also provides for stronger warnings on all cigarette and smokeless tobacco packages, and in all print advertisements. These warnings will be more explicit in their description of the medical problems which can result from tobacco use. The FDA is given the authority to change the text of these warning labels periodically, to keep their impact strong.

Nicotine in cigarettes is highly addictive. Medical experts say that it is as addictive as heroin or cocaine. Yet for decades, tobacco companies have vehemently denied the addictiveness of their products. No one can forget the parade of tobacco executives who testified under oath before Congress that smoking cigarettes is not addictive. Overwhelming evidence in industry documents obtained through the discovery process proves that the companies not only knew of this addictiveness for decades, but actually relied on it as the basis for their marketing strategy. As we now know, cigarette manufacturers chemically manipulated the nicotine in their products to make it even more addictive.

The tobacco industry has a long, dishonorable history of providing misleading information about the health

consequences of smoking. These companies have repeatedly sought to characterize their products as far less hazardous than they are. They made minor innovations in product design seem far more significant for the health of the user than they actually were. It is essential that FDA have clear and unambiguous authority to prevent such misrepresentations in the future. The largest disinformation campaign in the history of the corporate world must end.

Given the addictiveness of tobacco products, it is essential that the FDA have the authority to effectively regulate them for the protection of the public health. Over 40 million Americans are currently addicted to cigarettes. No responsible public health official believes that cigarettes should be banned. A ban would leave forty million people without a way to satisfy their drug dependency. FDA should be able to take the necessary steps to help addicted smokers overcome their addiction, and to make the product less toxic for smokers who are unable or unwilling to stop. To do so, FDA must have the authority to reduce or remove hazardous ingredients from cigarettes, to the extent that it becomes scientifically feasible. The inherent risk in smoking should not be unnecessarily compounded.

Recent statements by several tobacco companies make clear that they plan to develop what they characterize as ''reduced risk'' cigarettes. The Senate legislation would require manufacturers to submit such ''reduced risk'' products to the FDA for analysis before they can be marketed. No health-related claims would be permitted until they have been verified to the FDA's satisfaction. These safeguards are essential to prevent deceptive industry marketing campaigns, which could lull the public into a false sense of health safety.

Tobacco use kills more Americans every year than AIDS, alcohol, car accidents, murders, suicides and fires combined. Nearly 90 percent of lung cancer cases, nearly 1 in 3 cancer deaths, and 1 in 5 deaths from heart disease are tobacco-related. Tobacco use results in $75 billion in annual health care costs and $157 billion in total cost. Unfortunately, smoking will remain the number one preventable cause of death in America until Congress is willing to do what it takes to bring this health crisis under control. Congress must vest FDA not only with the responsibility for regulating tobacco products, but with full authority to do the job effectively.

The Senate legislation would give the FDA the legal authority it needs—to reduce youth smoking by preventing tobacco advertising which targets children—to prevent the sale of tobacco products to minors—to help smokers overcome their addiction—to make tobacco products less toxic for those who continue to use them—and to prevent the tobacco industry from misleading the public about the dangers of smoking.

If the conference report is approved in its current form, we will have lost a golden opportunity to address this critical health issue. Congress will have put the well-being of our children last, behind a long parade of special interests clamoring for their tax breaks. It is not enough to just pay lip service to what is right for our children. You have got to be willing to fight for their health and their future. You have to make it a top priority.

While we are extremely disappointed that FDA authority over tobacco products is not in the conference report, this legislation will, I am confident, become law in the not too distant future. It is clearly an idea whose time has come. It passed the Senate on a strong bipartisan vote last summer. I am very pleased that the Senate has agreed to pass a freestanding FDA bill this weekend and send it to the House as a reaffirmation of our support. It is a powerful statement of this body's commitment to protecting the health of our children, and seeing this legislation through to enactment. The battle goes on, and we will prevail.

They have been spectacular spokespersons for children and children's health and we are indebted to that organization.

The list goes on. There are 68 March of Dimes organizations. Every organization in public health is behind this proposal.

Mr. President, I thank my good friend from Ohio. I join him in letting families know we are not going to let up, give up, or give in. This was a very reasonable measure, a reasonable response. As he has pointed out, it is the most important public health legislation this Congress, or any recent Congress up to the Congress of 7 years ago, when we passed the CHIP program, with the difference this would make in terms of children and children's health. We missed this opportunity. We are not giving up and we are not giving in. We want to let those who are opposed to us know we are coming at them and we are going to keep after this until we get the job done.

Mr. KENNEDY. Mr. President, another provision was included in the bill that passed the Senate and was dropped by the conference as well. We had the dropping of the FDA provisions—which I believe in and of itself is enough to oppose this legislation—but we also know there was another provision that related to how we were going to treat American workers that was dropped.

Since this legislation initially was drafted, in order to respond to the World Trade Organization which found some tax provisions worked in such a way as to violate various international agreements, it was about a $5 billion fix that was needed. Instead, we have a $140 billion solution for a $5 billion fix. Do you hear me? The rest of those are tax goodies for special interests. So since this was allegedly a jobs bill, we thought we would add an amendment to it. The principal sponsor was my friend and colleague Senator HARKIN, who provided such extraordinary leadership on this overtime issue. We added this provision that would effectively declare the proposal of the administration that dealt with denying workers overtime who worked more than 40 hours a week, that we would effectively vitiate the administration's proposal. Since the underlying legislation dealt with workers and the impact on manufacturing and jobs, this was a related matter.

It is useful to remind ourselves how often this institution has addressed the question of the proposal by this President in terms of overtime. We have voted three times in the Senate to reject the administration's proposal to deny overtime. We rejected it on September 10, 54–45; it was a bipartisan effort. On May 4, 52–47. Also on May 4, 99–0. So we acted on that and we added to it.

You can say, well, the House of Representatives has not faced this issue. Our answer to that is the House has faced this issue. They voted October 2, 2003, 221–203, effectively to vitiate the Bush overtime proposal. They voted September 9, 223–193. So that is two times in the House and three times in the Senate. We had it in the conference and, nonetheless, this administration said no.

The administration has said no to an increase in the minimum wage for 7 million Americans who are working at minimum wage. They said no to an extension of unemployment compensation for workers who paid into the unemployment compensation fund. And they have said no to eliminating the ban on the elimination of overtime.

I watched the debate, like many other Americans, last night, and I listened to one of the questions that my friend and colleague, the next President of the United States, answered in talking about the lost number of jobs. He indicated that under this administration they had lost 1.6 million jobs. Lo and behold, today, with all the fact-checkers all over the country, they said that is not right; JOHN KERRY should have said they only lost 800,000 jobs. Do you want to know why? The other 800,000 have been added in the public sector. I thought this administration was adding jobs in the private sector. They have failed in the private sector. They are trying to sharpshoot on that issue, and it doesn't go.

Let's look at where we are now in the last month with the administration's economy. They had announcements yesterday that 96,000 jobs had been created last month. It is interesting to note that a third of those jobs are temporary. What does that mean? Temporary jobs pay 40 percent, on average, less than regular jobs. Yes. What else? Temporary jobs don't give you benefits. Very few, if any, give you health insurance, let alone pensions. We have

a third temporary jobs, and a third government jobs, and a third private jobs out of the 96,000. So it is not a good time in terms of the American economy.

I want to point this out again and come back to the issue of overtime. As I mentioned, we had passed those provisions in the House and in the Senate. Now the administration continues to want to implement them. Who are the people affected most by overtime? The people who are affected the most by overtime are interesting: Nurses are affected by overtime; nursery school teachers, the ones who are going to work with the children in nursery schools and programs in the Head Start Programs; clerical workers; computer programers, et cetera. These are the ones. Nurses, of course, are first responders.

It is almost as though this administration doesn't understand how hard American families are working in the United States of America. This is an extraordinary chart. This chart demonstrates that Americans' work hours have increased more than in any other industrialized country from 1970 to 2002. It is effectively up 20 percent. The next nearest country is Canada, up 16, and Australia is up 3.2 percent.

Americans are working harder and harder, and they are having an enormous difficulty in keeping pace. They cannot even keep economic pace, in terms of what they have to buy. One of the few benefits, of course, is the question of overtime. What happens when you eliminate overtime? Let's remind the workers who are out there who may be watching; let's remind them of something they know all too well. If you have overtime protections, your chances of working more than 40 hours a week are only 19 percent. But if you don't have overtime protections, your chances of working more than 40 hours a week are 44 percent. That is for 40 hours a week. If it is 50 hours a week, your chances of working are three times more if you don't have the overtime protections than if you do.

Make no mistake on what this is about. This is about exploiting American workers, treating them on the cheap. That is what this is about.

Well, Senator KENNEDY, how can you say that? Let me give a couple of examples why we can say it.

When the Bush rule was in the making, the Department of Labor asked for comment on the proposed regulation. In looking through the records, this is what we find out: Here is when the rule to eliminate overtime was being considered. The administration solicited the views of a number of different groups and industries. Now we have the National Association of Mutual Insurance Companies supports the section:

> . . . of the proposed regulations that provides that claims adjustors, including those working for insurance companies, satisfy the FLSAs administrative exemption. . . .

That is from the National Association of Mutual Insurance, June 25, 2003.

On April 23, 2004:

> Insurance claims adjustors generally meet the duties requirements for the administrative exemption, whether they work for an insurance company or the other type of company. . . .

There is the industry's interest. There is the administration's answer.

Here is another group that got exemption. Here is the overtime for funeral directors and embalmers:

> [T]he National Funeral Directors' Association believes that funeral directors and embalmers who have successfully completed a course of study . . . licensed by the state in which they practice are professional employees.

Then we have:

> Licensed funeral directors and embalmers . . .

It is almost the same direct language for industry after industry, right down the line. This was not an issue for simplification. This was looking out for special interests. And who is paying the piper? It is going to be the workers, working longer and harder for less.

As a result, this is what happens in this country:

In the last 3 years, we have seen 800,000 more children who are living in poverty. The total percent of those living in poverty in the United States has grown, but the number of children is 800,000 more living in poverty; 12 million children hungry or on the verge of hunger; 8 million Americans unemployed. Nearly 3 million have lost unemployment benefits since the Republicans ended the program. Seven million low-wage workers waiting 7 years for a minimum-wage increase. These are men and women of dignity. They work hard, play by the rules. They are primarily women. The income of low-income single mothers has gone down by three percent every year in the Bush economy.

There are 7 million who have been waiting for an increase in the minimum wage. Bush 1 supported an increase in the minimum wage. This did not use to be a partisan issue. It was so interesting in the course of this session, when I offered the increase in the minimum wage, when we had what they call the welfare reform proposal, the TANF proposal. What did the Republican leadership do? They pulled the bill so we could not even get a vote on it. Imagine that. They would not even let the Senate of the United States vote on it. I offered it again on the State Department reauthorization bill because the Republican leadership would not give us an opportunity to vote on the minimum wage. What did they do? They pulled that bill, too. They do not even let us get a vote in the Senate on the issue of increasing the minimum wage.

Sixty percent of those who receive the minimum wage are women. One-third of those have children. This is a civil rights issue, a children's issue, a fairness issue. Americans understand if someone is going to work 52 weeks of the year, 40 hours a week, they should not have to live in poverty. But do my colleagues think we have an opportunity to do something about it? No.

Still, we are taking away the—we have 4.3 million more Americans in poverty than when the President took office and we have 2.6 million fewer Americans who have a pension under Bush's watch.

On the issue of overtime, I will take a moment of the Senate's time to relate the concerns of one worker who will be affected by the new regulation. He says:

> My name is Randy Flemming. I live in Haysville, KS—outside Wichita—and I work as an Engineering Technician in Boeing's Metrology Lab.
>
> I'm also proud to say that I'm a military veteran. I served in the U.S. Air Force from August 1973 until February 1979.
>
> I've worked for Boeing for 23 years. During that time, I've been able to build a good, solid life for my family and I've raised a son who now has a good career and children of his own. There are two things that helped make that possible.
>
> First, the training I received in the Air Force made me qualified for a good civilian job. That was one of the main attractions when I enlisted as a young man back in Iowa. I think it's still one of the main reasons young people today decide to enlist. Military training opens up better job opportunities—and if you don't believe me, just look at the recruiting ads on TV.
>
> The second thing is overtime pay. That's how I was able to give my son the college education that has opened doors for him. Some years, when the company was busy and I had those college bills to pay, overtime pay was probably 10 percent or more of my income. My daughter is next. Danielle is only 8, but we'll be counting on my overtime to help get her a college degree, too, when that time comes. For my family overtime pay has made all the difference.
>
> That's where I'm coming from. Why did I come to Washington? I came to talk about an issue that is very important back home and to me personally as a working man, a family man and a veteran. The issue is overtime rights.
>
> The changes that this administration is trying to make in the overtime regulations would break the government's bargain with the men and women in the military and would close down opportunities that working vets and their families thought that they could count on.
>
> When I signed up back in 1973, the Air Force and I made a deal that I thought was fair. They got a good chunk of my time and I got training to help me build the rest of my life. There was no part of that deal that said I would have to give up my right to overtime pay.

This was the threat that was going to be under the initial regulations and rules by the Department of Labor that said the training in the military would count as professional training for the first time in the history, if you got the training in the military. Then they pulled those regulations back and they changed the language around. Interestingly, all they had to do was just say, for veterans it did not count. But the Department of Labor would not do that, and many of the veterans groups still feel that they are threatened by the existing rules and regulations.

And then he continues:

You've heard of the marriage penalty? Well, I think that what these new rules do is create a military penalty. If you got your training in the military, no matter what your white collar profession is, your employer can make you work as many hours as they want and not pay you a dime extra. If that's not bait and switch, I don't know what it is. . . .

I'm luckier than some other veterans because I have a union contract that will protect my rights for a while anyway. But we know the pressure will be on, because my employer is one that pushed for these new rules and they've been trying hard to get rid of our union.

And for all those who want to let these military penalty rules go through, I have a deal I'd like to propose. If you think it's okay for the government to renege on its deal, I think it should be your job to tell our military men and women in Iraq that when they come home, their service to their country will be used as a way to cut their overtime pay.

I am still very concerned about those provisions. The administration says it has addressed it. It did not address it the way the veterans want.

We should not be about cutting off overtime when we are having the economic challenges we are facing in this country today. It is the wrong economic policy. It is unfair and it was wrong for the administration to cut this out.

There is one final point I want to make on the proposal we have before us.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator from Massachusetts has 16½ minutes remaining.

Mr. KENNEDY. Mr. President, there is one other provision of this underlying conference report I want to address. A top worry of many Americans is that their jobs may be shipped overseas. We have heard for years about manufacturing jobs being sent to other countries. Today, millions of Americans with other types of jobs face that risk, too. Every day we hear new stories about jobs in health care, financial services, information technologies going overseas in this high-tech age.

Yet, the Bush administration says shipping jobs overseas is a good thing. It was in the President's own annual economic report:

When a good or service is produced more cheaply abroad, it makes more sense to import it than to make it or provide it domestically.

The President's chief economic adviser Gregory Mankiw has even said that shipping jobs to other countries is ''probably a plus for the economy in the long run.''

Treasury Secretary Snow has also defended corporations sending jobs overseas, saying they need to do what they need to do. He said anything that makes a company more competitive, including offshoring jobs, is good for corporate shareholders, it is good for their consumers, and it is good for their employees.

As recently as July, John Marburger, the President's science adviser, said that shipping jobs overseas is not necessarily a bad thing. American workers deserve better than this. They deserve better than to have their jobs exported with the President as the cheerleader in chief waving goodbye.

Shipping jobs overseas is a problem that is only going to grow. Experts project 3.4 million jobs, with total wages worth more than $150 billion, could be sent overseas in the next 11 years, including more than a half-million computer jobs and more than 600,000 business and management jobs. Lou Dobbs on CNN is keeping a running tally of companies that have sent jobs overseas. He is now at almost a thousand companies.

Many jobs that have already gone overseas have been in manufacturing. This is a loss that has taken a heavy toll on our economy. We have lost nearly 2.7 million manufacturing jobs since this Bush administration took office. It is a nationwide problem affecting almost every State in the Union. Forty-seven of the 50 States have lost manufacturing jobs under this President. For example, Ohio has lost 165,000 manufacturing jobs; Pennsylvania has lost 150,000 jobs; Massachusetts, my home State, has lost 84,000 jobs; Texas, the President's home State, has lost 170,000 manufacturing jobs.

The loss of these manufacturing jobs is especially serious because they pay good wages and benefits, and each manufacturing job creates close to three other jobs in other sectors of the economy.

As this chart indicates, for every 100 jobs in retail, they create 88 more jobs; for every 100 jobs in business services, they create 154 jobs; for every 100 jobs in manufacturing, 291.

The Bush administration wants to ignore this serious problem, too. They have suggested cooking the books to create the appearance of job growth in the manufacturing sector. They want to count flipping hamburgers and other fast food jobs as manufacturing jobs to make up for the loss of millions of manufacturing jobs under President Bush's watch.

Providing more tax breaks for multinational corporations is the wrong thing to do, and that is exactly what this bill does. For any of those Members who are interested in the particular details, they ought to just read Senator BOB GRAHAM's excellent presentation on this very point. He has addressed the Senate frequently on it, and has identified it.

I have not the time this afternoon to go into it, but I want to give assurance to the Members on this, that we are providing in this legislation tax breaks for multinational corporations. It is more than the loss of the $40 billion in tax revenue which has been added in this jobs bill that could be used for many better purposes that is troubling. What is most disturbing is the fact that many of these international provisions will actually encourage companies to shift even more American jobs to low-wage countries.

The international provisions should have been removed from the bill and the tax dollars saved should be used to increase the tax benefits for domestic manufacturing. It makes no sense to expand the value of the foreign tax credits which multinational corporations receive.

Under the legislation, these companies would pay even less in U.S. taxes on the profits they earn from their business abroad than they do today—$40 billion less. This will create further incentives for them to move jobs abroad, undermining the intent of the legislation.

From the perspective of preserving American jobs, one of the worst features of this corporate tax law is a special tax subsidy for multinationals known as deferral. If a U.S. company moves its operation abroad, it can defer paying U.S. taxes on the profits it makes overseas until the companies choose to send those profits back to America.

In essence, it allows the corporation to decide when it will pay the taxes it owes the U.S. Government. That is a luxury that companies making products and providing services here at home do not have. This is an enormous competitive advantage which the Tax Code gives to companies doing the wrong thing, eliminating American jobs, over companies doing the right thing, preserving the jobs in the United States. That feature alone ought to be enough to have Members of this body vote no at the time of the consideration of the conference report.

I appreciate the indulgence of the Chair. I will reserve the remainder of my time.

Mr. GRASSLEY, Mr. President. I make a few points regarding the FDA issue and the regulation of tobacco. I voted for the FDA provision in this bill. I voted in conference to include FDA regulation of tobacco. But the House refused to accept it.

I voted for this, despite the growing problems that are coming to light about the FDA falling down on its current responsibilities.

Just in the last few months, the FDA has come under investigation, including from my own committee, regarding the way its failed regarding drugs causing suicide in children.

And where was the FDA regarding the recent Vioxx catastrophy and how it causes heart attacks? Just yesterday, it was revealed by my Finance Committee that it looks like the FDA pressured employees to suppress negative findings regarding Vioxx.

And, in today's paper, we read about what looks like the FDA falling down on the job in regard to the Flu vaccine crisis.

So, I hope some around here aren't trying to mislead the American people into thinking that FDA regulation is some kind of panacea for smoking.

I heard one Senator from the other side say that we sided with the tobacco companies when the FDA provision failed. Well that's interesting.

That's surely what opponents would like you to think. But, there's a dirty little secret involved here. Or, at least it's a secret vis a vis the public.

The fact is, the tobacco companies are divided on whether there should be FDA regulation. In fact, the largest tobacco company actually supports FDA regulation, and has been lobbying heavily and pouring money into the effort to get it.

Why? Well, for one thing, a great deal of its business is overseas, and it will therefore be immune from FDA regulation. This will give it a competitive edge against its competitors. So, the tobacco companies, or at least the biggest one, is much more in favor of FDA regulation than against it.

Therefore, anybody trying to frame this as tobacco vesus kids, or tobacco versus health groups, is just flatly misleading the public.

But, even for those of us who pushed for FDA oversight, our legs were cut right out from under us during the negotiations. And guess who cut the legs right out from under us? The leadership of the Democratic party cut the legs right out from under us. That's who.

The leader of the Democratic party, Senator KERRY, went down to North Carolina to talk to tobacco farmers. Guess what he said? He said he'd support a tobacco buyout with or without FDA regulation.

So, it looks to me like the senior Senator from Massachusetts didn't communicate very well with the junior Senator from Massachusetts—or viceversa.

Moreover, we had the democratic Senate campaign chairman saying the same thing last week. He said he didn't need FDA regulation with a tobacco buyout.

And, he even had his candidate for the North Carolina Senate seat up here lobbying right over in the conference committee room to get this buyout through, with or without FDA. Can you believe that?

And, to add insult to injury to the Democratic Senators from Massachusetts, and Iowa, the Senate Democratic leader even signed the conference report.

So, obviously, when the House leadership knew the votes were there in the Senate for a buyout without FDA, they weren't about to agree to it in conference, and there's no way we could have successfully pushed it.

Now, what more does it take from their own leaders to undermine what the Democratic Senators from Iowa and Massachusetts wanted to do? Seems to me the need to get their own house in order before criticizing others.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Mr. President, we still have a number of speakers. Under the order which we had set up, in which we would go back and forth with the majority and minority, it is now the majority's turn.

It is my understanding Senator STEVENS, the chairman of the Appropriations Committee, is on his way here to give a very short statement. I am wondering if that is, in fact, the case.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I will change places with you so you can make the unanimous consent request.

As I understand it, Senator STEVENS has asked for 5 minutes to make a speech before I make mine.

Mr. REID. It is my understanding we are also ready to move to the Defense Authorization conference report.

Mr. HATCH. Then, as I also understand it, the order should be Senator WARNER to make his unanimous consent request, Senator STEVENS for 5 minutes, then I for whatever time I need, and then Senator LANDRIEU for whatever time she wanted.

Mr. REID. I thought it was going to be Senator WARNER for 5 minutes, Senator STEVENS for 5 minutes, and then Senator LANDRIEU for an hour and half.

Mr. HATCH. If we can do it the way I suggested, it would be very acceptable.

I ask unanimous consent that be the order.

Mr. REID. The order has already been established. As soon as we finish with Senator WARNER and Senator STEVENS, Senator HATCH will take the floor.

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

Mr. REID. I thank the Chair.

The PRESIDING OFFICER (Mr. HATCH). The Senator from Virginia.

RONALD W. REAGAN NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2005—CONFERENCE REPORT

Mr. WARNER. Mr. President, I submit a report of the committee of conference on the bill (H.R. 4200) and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4200), to authorize appropriations for fiscal year 2005 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, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

The PRESIDING OFFICER. The Senate will proceed to the consideration of the conference report.

(The conference report is printed in the proceedings of the House in the RECORD for Friday, October 8, 2004.)

Mr. WARNER. Mr. President, on behalf of the distinguished ranking member, Mr. LEVIN, and myself, I now ask unanimous consent that the conference report be adopted and the motion to reconsider be laid on the table, all with no intervening action or debate.

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

The conference report was agreed to.

Mr. WARNER. Mr. President, this conference report represents the hard work of many, many individuals. I first thank my distinguished ranking member, Mr. LEVIN of Michigan, together with our subcommittee chairmen and all members of the committee. This was truly a bipartisan effort from start to finish. We achieved an extraordinary piece of legislation. I am proud to say, at the request of the chairman, myself, the bill is named the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

We do that in honor of our late President's extraordinary contributions to the men and women of the Armed Forces in his capacity as President and in his role as Commander in Chief at that time.

This conference report provides $420.6 billion for defense, an increase of $19.3 billion above the amount authorized by Congress last year. The report also authorizes an additional $25 billion for war-related costs in Iraq and Afghanistan.

I am proud to bring the conference report for the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 before the Senate for final passage. I thank my ranking member and partner for these 26 years, the senior Senator from Michigan, CARL LEVIN, for his consistently constructive help and leadership in bringing this important legislation to the floor. I would also like to thank our subcommittee chairman and ranking members, and all committee members for their hard work on this conference report. I am pleased that this legislation report has the unanimous support of the members of the committee.

I also want to thank Chairman DUNCAN HUNTER and Congressman SKELTON for their leadership and teamwork in producing this conference agreement.

No committee succeeds without a dedicated, professional staff, and I believe our committee has one of the finest on Capitol Hill. I particularly want to recognize the efforts of the Committee Staff Director, Judy Ansley and the Democratic Staff Director, Rick DeBobes in bringing this process to a successful conclusion. They have led a great staff, all of whom deserve great credit and recognition. This dedicated professional staff worked very long hours and helped the members reach the agreements that are contained in the conference report before us. I ask that the names of all members of the committee staff be printed in the record following my remarks.

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

(See exhibit 1.)

Mr. Warner. As we consider this conference report, we remain a nation at

war against terrorism around the world. There is no doubt that we will win this war because of the extraordinary Americans who volunteer to serve the cause of peace and freedom. All Americans are in their debt, and they and their families deserve our unwavering support. The legacy of President Ronald W. Reagan, to whom we and the Nation paid our last respects a few short months ago, is memorialized in this legislation. I can think of no better way to honor the service and sacrifice of the men and women of our Armed Forces and their families, than to provide them with the pay and benefits they so richly deserve, and to give them the equipment they need to carry out their critical missions on behalf of our Nation, as President Reagan fought so hard to do when he was President and their Commander-in-Chief.

This bill provides much needed benefits to those now serving in the Armed Forces—Reserve and Active Duty—as well as addressing long-standing needs of military retirees and veterans, and their families who served this Nation so well. There were many contentious issues to resolve—BRAC, Buy America, Tanker replacement, housing privatization and TRICARE for Reservists, among others. We did resolve them, however, and I am proud we have achieved our goal of concluding a conference which sends a strong message of support to our men and women in uniform.

As we stand here today hundreds of thousands of soldiers, sailors, airmen, and Marines, Active and Reserve, and countless civilians who support them, are serving bravely around the world from the Persian Gulf region and Afghanistan to Europe and North Korea. All Americans are justifiably proud of what the U.S. Armed Forces and their coalition partners have accomplished in the global war on terrorism. We are ever mindful that the defense of our homeland begins on the distant battlefields of the world.

We must pause and remember that military success is not achieved without significant sacrifice. No matter how well conducted, military victory does not come without sacrifice and loss. We extend our heartfelt sympathies to the families and loved ones of those who have lost their lives in these operations and in other military operations to make America and the world safer. We mourn their loss and resolve to forever remember their service. We give thanks to those who serve and have served their Nation with distinction throughout our history. We are blessed to have this new generation of great Americans, so committed to American traditions, values and ideals, carrying on the traditions of those who preceded them with such dedication and valor.

Without a doubt, the U.S. military is the most capable military force in the world today, a model of excellence, and the standard by which others are measured. The provisions in this conference report sustain and improve on that excellence.

This conference report continues the momentum of recent years in making real increases in defense spending—a 3.4 percent increase—to sustain readiness, enhance the quality of life of our military personnel and their families, modernize and transform the U.S. Armed Forces to meet current and future threats, and take care of our retirees and veterans. The conference report before us provides $420.6 billion for defense, an increase of $19.3 billion above the amount authorized by Congress last year. The conference report also authorizes an additional $25. billion for war-related costs in Afghanistan and Iraq.

There are many things contained in this conference report that are important and of which I am very proud, but I want to highlight just a few. First and foremost is the 3.5 percent pay raise for our men and women in uniform, and a new healthcare benefit for reservists who serve on extended active duty. Second, we have reached agreement on how to proceed in procuring new aerial refueling aircraft in a prudent manner, consistent with existing laws and regulations. Third, we have preserved the 2005 BRAC round—a much needed review of our basing infrastructure. This is critical for the efficiency and smart posturing of our Armed Forces to meet future challenges.

There are many other important initiatives, such as housing privatization, improved survivor benefits, funding for missile defense and other weapons systems. These important initiatives and authorities are contained in the conference report before you.

This conference report sends a clear signal to our citizens, and to nations around the world, that the United States is committed to a strong national defense. More important, this conference report sends a clear signal to our men and women in uniform, from the newest private to the most senior flag and general officer, that they have the support of the American people.

I thank my colleagues for their support of this conference report.

EXHIBIT 1

COMMITTEE STAFF OF THE COMMITTEE ON ARMED SERVICES

Judith A. Ansley, Staff Director
Richard D. DeBobes, Democratic Staff Director
Charles W. Alsup, Professional Staff Member
June M. Borawski, Printing and Documents Clerk
Leah C. Brewer, Nominations and Hearings Clerk
Alison E. Brill, Staff Assistant
Jennifer D. Cave, Special Assistant
L. David Cherington, Counsel
Christine E. Cowart, Administrative Assistant to the Minority
Daniel J. Cox, Jr., Professional Staff Member
Madelyn R. Creedon, Minority Counsel
Kenneth M. Crosswait, Professional Staff Member
Marie Fabrizio Dickinson, Chief Clerk
Regina A. Dubey, Research Assistant
Gabriella Eisen, Research Assistant
Evelyn N. Farkas, Professional Staff Member
Richard W. Fieldhouse, Professional Staff Member
Andrew W. Florell, Staff Assistant
Brian R. Green, Professional Staff Member
Creighton Greene, Professional Staff Member
William C. Greenwalt, Professional Staff Member
Bridget W. Higgins, Research Assistant
Ambrose R. Hock, Professional Staff Member
Gary J. Howard, Systems Administrator
Jennifer Key, Security Clerk
Gregory T. Kiley, Professional Staff Member
Michael J. Kuiken, Professional Staff Member
Maren R. Leed, Professional Staff Member
Gerald J. Leeling, Minority Counsel
Peter K. Levine, Minority Counsel
Thomas L. MacKenzie, Professional Staff Member
Michael J. McCord, Professional Staff Member
Elaine A. McCusker, Professional Staff Member
William G. P. Monahan, Minority Counsel
Lucian L. Niemeyer, Professional Staff Member
Stanley R. O'Connor, Jr., Professional Staff Member
Cindy Pearson, Assistant Chief Clerk and Security Manager
Paula J. Philbin, Professional Staff Member
Benjamin L. Rubin, Receptionist
Lynn F. Rusten, Professional Staff Member
Catherine E. Sendak, Staff Assistant
Arun A. Seraphin, Professional Staff Member
Joseph T. Sixeas, Professional Staff Member
Robert M. Soofer, Professional Staff Member
Scott W. Stucky, General Counsel
Diana G. Tabler, Professional Staff Member
Richard F. Walsh, Counsel
Bridget E. Ward, Staff Assistant
Nicholas W. West, Staff Assistant
Pendred K. Wilson, Staff Assistant

Mr. LEVIN. Mr. President, I am pleased to join the Chairman of the Senate Armed Services Committee and my good friend, Senator WARNER, in urging the adoption of the conference report on H.R. 4200, the National Defense Authorization Act for Fiscal Year 2005. We began work on this bill with our mark-up in early May. Since that time, we have spent 5 weeks on the Senate floor and nearly 4 months in conference. This conference agreement would not have been possible without the strength and perseverance of Senator WARNER.

This conference report will promote the national defense, improve the quality of life of our men and women in uniform, and make the investments we need to meet the challenges of the 21st century. First and foremost, the bill before us continues the increases in compensation and quality of life that our service men and women and their families deserve as they face the hardships imposed by continuing military operations around the world.

Mr. President, we all know that our Armed Forces today are deployed in harms' way around the world. As we stand on the Senate floor today, more than 130,000 soldiers, sailors, airmen and marines are engaged in taking on an aggressive insurgency and winning the peace in Iraq, with tens of thousands more supporting the war effort

from outside the country. At the same time, our military continues to bear the brunt of the continuing effort to stabilize and rebuild Afghanistan, keep the peace in Bosnia, Kosovo, and the Sinai, and contain the threat of North Korea—while also preparing to execute other missions in support of the national military strategy.

It has been clear to many of us for some time now that the Army and Marine Corps are simply stretched too thin, and that additional troops are badly needed to meet our worldwide commitments. I am pleased that this bill takes an important step toward that objective by increasing the active duty end strength of the Army by 20,000 and the active duty end strength of the Marine Corps by 3,000.

I am also pleased that the bill before us contains much of the amendment offered on the Senate floor by Senator DASCHLE and Senator GRAHAM to provide expanded TRICARE benefits for the National Guard and Reserve members who have made so many sacrifices and contributed so much to our nation over the last three years. In particular, the conference report would:

Make permanent the temporary authority for free TRICARE health care coverage for National Guard and Reserve members and their families up to 90 days before a mobilized service member reports for active duty and for 180 days after release from active duty; and

Authorize a new TRICARE benefit for Guard and Reserve members and their families when the member is not on active duty.

Under this provision, National Guard and Reserve members who are mobilized would be authorized, upon release from active duty, to enroll in TRICARE Prime for 1 year for every 90 days spent on active duty. This is the least that we can do for these brave men and women.

The bill would take a number of other important steps to improve the lives of our men and women in uniform. For example, the bill would:

Authorize a 3.5 percent across-the-board pay raise for military personnel;

Authorize a permanent increase in the rate of special pay for duty subject to hostile fire or imminent danger;

Authorize a permanent increase in the rate of the family separation allowance;

Improve the Survivor Benefit Plan by eliminating the reduction in SBP benefits for surviving spouses over age 62, phased in over 3½ years;

Ensure fair treatment of our disabled veterans by repealing the phase-in of concurrent receipt of retired pay and VA disability pay to military retirees with service-connected disabilities rated as 100 percent; and

Authorized a new program of educational assistance to members of the Selective Reserve, based on the GI Bill.

The bill would also directly address a number of specific problems and issues that have arisen in the course of our continuing operations in Iraq and Afghanistan.

First, the bill would provide our Armed Forces new flexibility to respond to changing circumstances on the ground by authorizing the use of up to $300 million for the Commanders' Emergency Response Program in Iraq and Afghanistan, under which commanders may use funds for small humanitarian and reconstruction projects; authorizing the use of up to $500 million for assistance to Iraq and Afghanistan military or security forces to enhance their ability to combat terrorism and support U.S. or coalition military operations in Iraq and Afghanistan; and authorizing the Special Operations Command to expend up to $25 million of existing funds to provide support to foreign forces, irregular forces, groups, or individuals, engaged in supporting or facilitating ongoing military operations by the United States special operations forces to combat terrorism; establishing a new rapid acquisition program to enable the Department of Defense to quickly acquire equipment needed by a combatant commander to eliminate deficiencies in equipment that have resulted in combat fatalities; and raising the thresholds for the use of streamlined acquisition procedures outside the United States in support of contingency operations.

Second, the bill contains important language from amendments offered by Senators DURBIN and LEAHY on the Senate floor, reaffirming the prohibition against subjecting any person in the custody or under the physical control of the United States to ''torture or cruel, inhuman, or degrading treatment or punishment that is prohibited by the Constitution, laws, or treaties of the United States.'' These provisions send an important message to the world that the United States will not permit, condone, tolerate, or encourage the kind of behavior so graphically depicted in the photographs from Abu Ghraib prison in Iraq. We all know that the abuses that occurred at Abu Ghraib and elsewhere have undermined the hard work and sacrifices of our military and tarnished the image of our armed forces. The provisions included in the conference report reaffirm that we are a Nation of laws and send the message that Congress will not accept mixed messages or ambiguous statements on the fundamental issue of human rights and dignity.

The bill contains several other important provisions addressing ongoing operations in Iraq and Afghanistan. These include:

A provision originally written by Senator DODD, which authorizes reimbursement of service members and their families for purchases of body armor and other protective equipment at a time when the Department of Defense did not have sufficient protective gear in Iraq to protect our men and women in uniform; a provision addressing deficiencies in the oversight and management of contractors on the ground in Iraq, and requiring the issuance of specific guidance and regulations to enhance the safety of contractor employees and improve coordination between our armed forces and the contractors who are there to support their rebuilding efforts; and a provision reauthorizing and extending the CPA Inspector General to ensure that we have continuing oversight over fraud, waste and abuse in the expenditure of funds for the rebuilding of Iraq.

The conference report also includes a number of provisions that will help improve the management of the Department of Defense and other federal agencies. These include: the Collins-Levin amendment permitting federal employees to be heard, for the first time, in bid protests appealing the results of public-private competitions; a provision that would extend the authority for energy savings performance contracts for an additional 2 years, enabling federal agencies to save hundreds of millions of dollars through improved energy efficiency; a provision that should help resolve the controversy over the Air Force's proposed lease of tanker aircraft by prohibiting the Air Force from entering a lease and instead requiring the use of a traditional multi-year contract; a provision that would require the Department of Defense to develop and implement a business enterprise architecture to gain better control over its finances; and a provision directing the Secretary of Defense to develop policies and regulations to discourage other countries from imposing ''offset agreements'' in defense trade, and thereby undermining our defense industrial base.

Finally, I am pleased that the conference report contains a series of provisions that will establish a workers' compensation-like program for nuclear workers who have cancers and other occupational-related injuries. The program will be administered by the Department of Labor and establishes a compensation scheme for both employees and survivors. Covered employees would receive the compensation benefits, as well as medical benefits under the provisions. The total amount of compensation under the provision would be capped at $250,000. Also included are provisions that would extend to uranium miners the opportunity to seek this workers' compensation-like benefit. Employees can elect to apply for this benefit or they may choose to remain in their individual state's workers' compensation system.

Mr. President, this is a good conference report, but no conference report is perfect.

I strongly disagree with a provision in the bill that would attempt to transfer from the Department of Defense to the Treasury the responsibility to provide the funding for military health care. Programs do not become ''free'' just because they are moved outside the Defense budget. That is why this provision was strongly opposed by the

chairman and ranking member of the Senate Budget Committee.

I am deeply disappointed that the House conferees refused to accept important Senate provisions addressing hate crimes. Acts of violence and bigotry based on factors like race, religion, national origin, gender, sexual orientation, or disability can undermine our nation's fabric by placing in question our continuing commitment to acceptance and diversity. The Kennedy-Smith hate crimes bill would address this problem head-on. The Senate has now passed the hate crimes bill on two separate occasions, and each time, the House has refused even to consider the provision on the merits.

I am equally disappointed that the House refused to include the Boxer amendment on abortion. Under the law as it stands today, Medicare funds may be used for abortions in cases of rape or incest, but Department of Defense funds may not. This kind of discrimination against women who put their lives on the line for their country is incomprehensible to me.

I am disappointed that, faced with a veto threat, we were able to get less than half of the provisions that we wanted to codify sound practices in public-private competition of work currently performed by government employees.

Finally, I am disappointed that this conference report includes a House provision reducing the authority of the base closure commission to address bases not recommended for closure or realignment by the Secretary of Defense.

Despite my concerns about these issues, I will vote for this bill because it contains so many other provisions that are so important for our national defense and for our men and women and uniform. At a time when our armed forces are under hostile fire in Iraq and Afghanistan, it is vitally important that we enact a defense authorization bill that provides the training and equipment that our military needs and the compensation and benefits that they deserve.

I would like to thank the chairman of the Armed Services Committee, Senator WARNER, once again for the effective leadership that he provided in bringing this bill through conference and back to the Senate floor. Senator WARNER's inclusiveness and openness in the way he manages the Committee and the conference have resulted in a far better bill than we would otherwise have had.

I would also like to thank the minority members of our Committee for the able work that they have done in support of this bill throughout the past year, starting with hearings in the Spring, and continuing through markup, floor deliberation, and conference. We have a truly talented group of members, whose dedication to the national defense shows in their work.

I would be remiss if I did not also mention the work of our dedicated committee staff, on both sides of the aisle. It is the hard work of this staff—under the able leadership of Judy Ansley and Rick DeBobes—that has made this bill possible. Rick and Judy and the staff have been working literally around the clock for the last month to put this conference report, and I think that the Senate owes a debt of gratitude to every one of them.

On the Majority staff Judy Ansley, Chuck Alsup, June Borawski, Leah Brewer, Alison Brill, Jennifer Cave, David Cherington, Marie Dickenson, Regine Dubey, Andy Florell, Brian Green, Bill Greenwalt, Bruce Hock, Gary Howard, Jennifer Key, Greg Kiley, Tom MacKenzie, Elaine McCusker, Lucian Niemeyer, Stan O'Connor, Cindy Pearson, Paula Philbin, Ben Rubin, Lynn Rusten, Katie Sendak, Joe Sixeas, Rob Soofer, Diana Tabler, Dick Walsh, Bridget Ward, Nick West, and Kelley Wilson.

On the Minority staff Rick DeBobes, Chris Cowart, Dan Cox, Madelyn Creedon, Mitch Crosswait, Brie Eisen, Evelyn Farkas, Richard Fieldhouse, Creighton Greene, Bridget Higgins, Mike Kuiken, Maren Leed, Gary Leeling, Peter Levine, Mike McCord, Bill Monahan, and Arun Seraphin.

Mr. President, I urge my colleagues to join me in supporting this bill.

Mr. LUGAR. Mr. President, while I support Senate passage of H.R. 4200, the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, and will not object to its passage, I am nevertheless concerned with language appearing in section 1225, ''Bilateral Exchanges and Trade in Defense Articles and Defense Services Between the United States and the United Kingdom and Australia.'' My concerns are shared by the ranking Democratic member of the Foreign Relations Committee, Senator BIDEN.

We maintain an amicable and beneficial working relationship between the Foreign Relations and Armed Services Committees. In many years past, we opposed efforts by the Armed Services Committee to legislate on matters under our Committee's unique jurisdiction. Last June, we offered an amendment to the defense authorization bill because we understood that our own authorization bill would not proceed, and that the Senate Armed Services Committee supported all of the provisions we offered. We also sought to provide a response to certain provisions in the House defense authorization bill.

The Chairman of the Armed Services Committee, Senator WARNER, introduced Senate Amendment 3429 to S. 2400, the Senate version of the defense authorization bill, on June 7, 2004. This amendment was identical to language in our committee's bill that provided exceptions to the requirements in subsection (j) of section 38 of the Arms Export Control Act regarding the content of any bilateral agreement that would waive International Traffic in Arms Regulations—the ITAR, 22 CFR 120–130—export license requirements for transfers of defense items or defense services to the United Kingdom and Australia. This legislation would have, in the case of the agreement with the Government of Australia, excepted the agreement from section 38(j)(2)(A) and, in the case of the agreement with the Government of the United Kingdom, excepted that agreement from the requirements of section 38 (j)(1)(A)(ii), (2)(A)(i), and (2)(A)(ii). The administration supported that language, and so did Senator WARNER when he offered our language on his bill.

The issue of the ITAR exemption agreements is a complex and important topic and, unfortunately, has become a major irritant in our special relationship with the United Kingdom. Perhaps more unfortunately, the bill the Senate will pass today will include not our language but rather language that may be prejudicial to U.S. interests on several grounds.

First, the bill no longer provides the exceptions we sought. Enactment of this provision may therefore make any future efforts to obtain such statutory exceptions for these most important allies all the more difficult. The Senate will now have effectively endorsed the House position. This may well harm our bilateral relationship with the United Kingdom.

Second, the language of section 1225(b) states: ''The Secretary of State shall ensure that any license application submitted for the export of defense articles or defense services to Australia or the United Kingdom is expeditiously processed by the Department of State, in consultation with the Department of Defense, without referral to any other Federal department or agency, except where the item is classified or exceptional circumstances apply.'' This language could do great harm to our government's ability to provide necessary and complete interagency review of munitions license applications. The phrase ''without referral to any other Federal department or agency'' is new law, and it far exceeds what wisdom would dictate. Under this language, the Departments of Justice and Homeland Security would not be allowed to review any case not involving classified defense items, unless it met an ''exceptional circumstances'' standard. The vast majority of defense exports to the United Kingdom and Australia that are governed under the ITAR are not classified items, and while the Foreign Relations Committee supports expeditious consideration of munitions license applications for these allies, we are concerned by provisions that could deny our government the ability to effectively staff and review license applications.

This concern is heightened by the fact that the provisions of section 1225 apply to all arms exports to the United Kingdom and Australia, irrespective of end-user. The bilateral agreements negotiated with the United Kingdom and Australia take a different approach. They afford relief from export license

requirements for certain unclassified exports, rather than merely expedited processing, but they also are limited in their application of a waiver to a finite group of U.S.-approved end-users. That limit is a sensible accommodation of U.S. national security concerns, and it is difficult to understand why the National Defense Authorization Act conferees decided to ignore it.

I fully expect that the Foreign Relations Committee and the House International Relations Committee will revisit this issue next year in an effort to correct the failings of the measure that is now before us.

SECTION 133

Mr. MCCAIN. Mr. President, I would like to review with my colleague Section 133 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Under the leadership of Senate Armed Services Committee Chairman WARNER and Ranking Member LEVIN, Congress has agreed to amend Section 135 of the National Defense Authorization Act for fiscal year 2004 by expressly prohibiting the Air Force from using previously granted authority to acquire, through a lease or purchase, Boeing 767 aircraft for use as aerial refueling tankers.

This provision succeeds in accomplishing Chairman WARNER's primary objective, as he stated in this chamber on October 23, 2003, to put the tanker replacement program back into a traditional budget, procurement, and authorization track. In other words, the Air Force's program to modernize its tanker fleet must be subject to the aerial refueling analysis of alternatives, the aerial refueling portion of the Mobility Capabilities Study, a new aerial refueling validated capabilities document and operational requirements document in accordance with all applicable Chairman of the Joint Chiefs of Staff Instructions, and the express approval of a Defense Acquisition Board in full accordance with Department of Defense regulations.

Mr. WARNER. The Senator from Arizona is correct. Section 133 specifically revokes the authority previously granted under Section 8159 of the Department of Defense Appropriations Act for Fiscal Year 2002, to the Air Force to lease aircraft for use as tankers. The conferees expressed their intent very strongly on this issue in eliminating all references to leasing aircraft throughout Section 135.

Mr. MCCAIN. I thank the Chairman for clarifying the intent of the legislation with respect to the prohibition on leasing tanker aircraft. Now, let's turn to what authority Section 133 grants with respect to purchase of tanker aircraft.

Mr. WARNER. Section 133 bars the Air Force from executing a contract for the multiyear purchase of aircraft specified under Section 8159, that is, general purpose Boeing 767 aircraft that would be modified as an aerial refueling aircraft. Section 8159 would have precluded full and open competition.

Mr. MCCAIN. The Chairman is correct. This means that, under Section 133, the Air Force may not acquire, either by lease or purchase, Boeing 767s without full and open competition. In other words, any program to acquire tankers must start from the beginning, as the Senator properly stated last year, on a traditional budget, procurement, and authorization track.

Mr. WARNER. The Senator from Arizona is correct. I thank him for that clarification.

Mr. MCCAIN. One last question. Have we obtained an opinion from the Congressional Budget Office as to how it would score the acquisition of tankers under Section 133?

Mr. WARNER. Yes, we have. The Congressional Budget Office would score this provision as a traditional procurement program which would expressly require the Air Force to pay for each tanker in the year it is purchased.

Mr. MCCAIN. I thank the Senator. I am grateful to the gentleman from Virginia for his leadership in this 3-year odyssey. I remind my colleagues that three out of the four defense committees that were required to approve the original proposal to lease 100 tankers, did so without so much as reading the contract for that $30 billion procurement proposal. It was the Senate Armed Services Committee that put the brakes on that costly and misguided misadventure. That having been said, the final chapter on the tanker lease program cannot be closed until those among Air Force leadership who engaged in misconduct are held accountable.

Mr. WARNER. I thank the Senator from Arizona for his steadfast leadership and vigilance on this critical issue. There could be no doubt as to the gentleman's sincerity in always protecting the interests of taxpayers and the warfighter.

Mr. KENNEDY. Mr. President, it is reprehensible that the GOP House leadership demanded the removal of the hate crimes provision from the Defense Authorization Act.

The provision had solid support in both the Senate and the House. Under the leadership of Senator WARNER and Senator GORDON SMITH, the Senate approved it as an amendment to the Defense Authorization bill in July by the nearly 2–to–1 bipartisan majority of 65 to 33. Eighteen Republicans joined all the Democrats in approving this measure. Last week, by a vote of 213 to 186, the House instructed its conferees to support this provision in the conference report on the bill.

The hate crimes provision is an essential response to a serious problem which continues to plague the nation. Since the September 11 attacks, we've had a shameful increase in the number of hate crimes committed in our country against Arabs and Muslims—murders, beatings, arson, attacks on mosques, shootings, and other assaults. In 2001, anti-Muslim incidents were the second highest-reported hate crimes based on religion—second only to anti-Jewish hate crimes.

Nevertheless, under current law, the Justice Department has to fight these vicious crimes with one hand tied behind its back. Outdated pre-9/11 restrictions limit Federal jurisdiction in hate crimes based on religion. Hate crimes based on sexual orientation are not even covered by the law. How can House Republican leaders say they're fighting a war on terrorism, when they're not prepared to fight it here at home?

Clearly, President Bush is worried about his right-wing base in the coming election, and the implication is obvious that the White House sent word to its Republican allies in the House—block the hate crimes provision, even if blocking it denies the clear will of the majority.

The carefully selected White House candidate for the Senate in Florida used the hate crimes issue to smear his opponent in the Republican primary in August. Former Congressman Bill McCollum, a respected law-and-order Republican, was smeared as ''anti-family'' and ''the new darling of the homosexual extremists'' and lost the primary—because he supported the hate crimes legislation. There is nothing ''anti-family'' or divisive about the hate crimes bill. It protects all victims of hate-motivated violence: citizens of all races, all religions, all sexual orientations. No one is left out.

Sadly, the despicable smear against Congressman McCollum in Florida is only one example of the vicious campaign tactics used by Republicans this year. In West Virginia and Arkansas, the Republican National Committee has sent out flyers suggesting that ''liberals'' want to ban the Bible. My colleague Senator ROBERT BYRD aptly described it as a ''desperation tactic'' and ''an insult to the intelligence of voters'' in his State.

In Oklahoma, the National Republican Senate Campaign is running a race-baiting advertisement on television attacking Democratic Senate candidate Brad Carson's record on immigration by showing images of Hispanic farm workers and African Americans receiving welfare dollars. We've seen such campaign appeals to racism and bigotry before in this country. Most of us hoped we would never see them again.

When President Bush condones outrageous tactics like these, how can he claim with a straight face that he's lived up to his campaign promise to be a uniter, not a divider?

The administration is wrong to have ordered its allies in the House to block our bipartisan hate crimes provision. However, this is not the end of our battle. We will be back again and again, and we will continue to bring this legislation up every opportunity we can until it is signed into law. It's heartening to know that we may soon have a President who will sign it—a President who is honestly committed to uniting, not dividing, the country.

Mr. BINGAMAN. Mr. President, I would like to congratulate the conferees on the National Defense Authorization Act for Fiscal Year 2005, for reforming the Energy Employee's Occupational Illness Act, EEOICPA, and ensuring that the Radiation Exposure Compensation Program, RECA, receives additional mandatory funding to pay the workers whose claims were originally subject to additional appropriations.

I view the reform of EEOICPA's subtitle D as particularly significant. From November 2003 through March 2004, the Energy and Natural Resources Committee held three hearings on this program. These hearings determined that the current program's subtitle D was not paying injured atomic workers. Subtitle D relied on the DOE to determine causation with a subsequent referral to State compensation systems. Typically these State compensations not only add add additional delay to the process but they are adversarial in nature because insurers can contest the claim against a sick and dying worker. As a result of these three Senate hearings, there was a bipartisan effort by 20 Senators to move subtitle D from the Department of Energy to the Department of Labor, where EEOICPA's subtitle B is administered. The Department of Labor specializes in providing worker compensation, so it only seems reasonable to consolidate the program there. Originally, the Senate's proposed reform of subtitle D required the Department of Labor to adjudicate each claim according to the workers' respective State compensation standard. This compensation procedure, while insuring that the original intent of EEOICPA remained intact, was determined by the conferees to be too hard to administer. In my view, and it was stated in the March 2004 hearing, the proper course of action to pay these sick workers was to use a uniform standard funded from a mandatory account similar to subtitle B.

The conference report's version of EEOICPA's subtitle D takes the right approach. Instead of a compensation scheme tied to each State as in the Senate proposal, the conference report chooses a uniform payment schedule according to disability and lost wages, for both living and deceased persons. Most importantly, subtitle D is funded out of the subtitle B mandatory account so it does not end up like the RECA program in lacking the necessary compensation funds once a positive determination is made. I am also pleased that the language contains the ombudsman provision, even though it is only authorized for three years. The ombudsman will report to Congress on the transition from the Department of Energy to the Department of Labor, and whether the intent of the reform language is adhered to, which is the quick compensation of sick workers.

I would like to thank the many Senate staffers listed below who held together as a group for the past seven months; their names are found at the end of this statement. Through this strong bipartisan effort, more was accomplished than any by any single member. I hope this effort sets a tone for other endeavors that we pursue in Congress.

Elizabeth Bellville, Office of Senator DeWine;
Catherine Boland, Office of Senator Voinovich;
David Cherington, Senate Armed Services Committee;
Doug Clapp, Office of Senator Murray;
Madelyn Creedon, Senate Armed Services Committee;
Angela Becker-Dippman, Office of Senator Cantwell;
Ken Ende, Office of Senator Murkowski;
Jonathan Epstein, Office of Senator Bingaman;
Holly Fechner, Health Education and Labor Committee;
Tom Horgan, Health Education and Labor Committee;
Kurt Kovarik, Office of Senator Grassley;
Kate Kimpan, Office of Senator Bunning;
Pete Lyons, Energy and Natural Resources Committee;
Sara Mills, Office of Senator Reid;
Beth Stein, Office of Senator Harkin;
Kristine Svinicki, Office of Senator Craig;
Katie Swaney, Office of Senator Talent;
Kim Taylor, Office of Senator Bunning;
Jason Unger, Office of Senator Reid;
Dan Utech, Office of Senator Clinton;
Tim Valentine, Office of Senator Alexander;
Karina Waller, Office of Senator Stevens;
Jenny Wing, Office of Senator Harkin;
Portia Wu, Health Education and Labor Committee.

Again, my thanks to the Chairman and Ranking members of both the House and Senate Armed Services Committees for ensuring that these innocent atomic workers, who helped win the cold war, clean up its former nuclear sites, and continue to maintain our nuclear deterrent, are adequately compensated for the injuries they sustained working at DOE's nuclear facilities.

Mr. McCAIN. Mr. President, I strongly support passage of the conference report on HR 4200, the National Defense Authorization Act for Fiscal Year 2005. This legislation funds over $420 billion for defense programs, which is a 3.4 percent increase or $20.9 billion above the amount authorized by Congress last year.

While I am pleased that we are able to act on this legislation prior to adjourning for the elections, I would be remiss if I did not mention that once again, the Defense Appropriations Act has been signed into law prior to final action on the Defense Authorization Act. The responsibilities of authorizors and appropriators are expected to be distinct. The Defense Authorization Act lays out the blueprint for the policies and funding levels for the Department of Defense and its programs. The role of the Appropriations Committee is to allocate funding based on policies provided by authorization bills. In reality however, the Appropriators' function, has expanded dramatically, and the Appropriations Committee now engages in significant policy decision making and micromanagement, largely usurping the role of the authorizing committees. I hope next year we will succeed in passing the authorization measure prior to the appropriations measure.

The men and women of our Nation's Armed Forces put their lives on the line every day to protect the very freedoms we Americans hold dear. It is our obligation to provide key quality of life benefits to the members of our military. Great strides will be made by this bill towards accomplishing that goal. For example, this Conference Report authorizes a 3.5 percent across-the-board pay raise for all military personnel. It repeals the requirement for military members to pay subsistence charges while hospitalized, and adds $7.8 million for expanded care and services at the Walter Reed Amputee Patient Care Center. Also, included in the conference report is a permanent increase in the rate of family separation allowance from $100 per month to $250 per month as well as a permanent increase in the rate of special pay for duty subject to hostile fire or imminent danger from $150 per month to $225 per month.

We continue to be increasingly reliant on the men and women of our Reserve forces and National Guard. In fact, around 40 percent of all the ground troops in Iraq and Afghanistan are composed of National Guard and Reserve forces as well as nearly all of the ground forces in Kosovo, Bosnia, and the Sinai. Many of these soldiers and sailors leave behind friends, families, and careers to defend our nation. Accordingly, it is the responsibility of policy makers to ensure we look after the needs of these patriots. Included in the conference report is the authorization for full medical and dental examinations and requisite inoculations when reservists mobilize and demobilize as well as a new requirement for pre-separation physical examinations for members of the reserve component. This provision is critical to maintain and, in some circumstances, increase the readiness of the total force.

In the Senate version of this legislation, we passed an important amendment to authorize an increase in the size of our Army by 20,000 and size of our Marine Corps by 3,000. I am very pleased this provision was included in the conference report. This increase is absolutely vital in our Army's ability to carry out its mission in the global war on terror. There is no shortage of evidence supporting an increase in Army endstrength. Recently, the Army pulled 3,600 troops out of South Korea to fill critical needs in Iraq. The Department of Defense should be able to move troops around as needed to address critical needs. However, in this case, we are sacrificing our readiness on the Korean peninsula because we do not have enough solders serving in the Army.

After returning home for a short period of time, soldiers and Marines are

already making preparations for their second tour in Iraq or Afghanistan in as many years. This is not good for morale, this is not good for retention, this is not good for readiness, and this is not good for the soldier's families. Eventually, recruitment will be seriously affected by these trends.

Additionally, the Army recently announced a new stop-loss policy. While, I certainly recognize the Army's authority and necessity to issue stop loss orders, their issuance in this instance is yet another reason why we need to increase the size of the Army. For all the benefits in group cohesion that results from extended tours, the Army will be facing a serious crisis when it comes time for these soldiers to reenlist on their own accord. I am concerned about the effect that these stop-loss orders will have on the morale of our Army. While I still do not believe that we need a draft, we do need to increase the size of the Army to carry out important defense missions.

Once again, I am disappointed that the development of this legislation lent the opportunity for the annual buy America battle. In a similar fashion as last year, the Senate had to beat back a provision in the house version of the legislation that sought to protect parochial interests at the cost of our defense industry and American jobs. It seems as if every year, we fight the same fight in conference. I am pleased that once again, the Senate prevailed over the protectionist leanings in the House.

As I have stated countless times before, we need to provide American servicemen and women with the best equipment at the best price for the American taxpayer. By following this simple philosophy, we will protect both the men and women in uniform, as well as our domestic defense industry.

The international considerations of buy America provisions are immense. Isolationist, go-it-alone approaches have serious consequences on our relationship with our allies. Our country is threatened when we ignore our trade agreements. Currently, the U.S. enjoys a trade balance in defense exports of 6-to-1 in its favor with respect to Europe, and about 12-to-1 with respect to the rest of the world. We don't need protectionist measures to insulate our defense or aerospace industries. If we enact laws that isolate our domestic defense industry, our allies will retaliate and the ability to sell U.S. equipment as a means to greater interoperability with NATO and non-NATO allies would be seriously undercut. Critical international programs, such as the Joint Strike Fighter and missile defense, would likely be terminated as our allies reassess our defense cooperative trading relationship.

The Senate also successfully defeated an amendment during Senate consideration and again in conference aimed at crippling the upcoming BRAC round. BRAC has taken on a new significance in the war against terror. There has not been a time in recent memory when it has been more important not to waste money on non-essential expenditures. To continue to sustain an infrastructure that exceeds our strategic and tactical needs will make less funding available to the forces that we are relying on to destroy the international network of terrorism. I am once again pleased that the Senate put the good of the Department of Defense over parochial interests and protected the upcoming BRAC round.

The Department of Defense has come out with very fair and reasonable criteria used to select what bases are chosen for BRAC. I have every confidence the Secretary of Defense will carry out this round of BRAC in a just and consistent manner. Sooner or later surplus bases must be closed. Delaying or canceling BRAC would only make the process more difficult and painful than necessary. The sooner the issue is addressed, the greater will be the savings that will ultimately go toward defense modernization and better pay and benefits for our hard working service members.

I understand that some of my colleagues are concerned about the potential negative effects a base closure may have on their local economy. But let me point out that previous base closure rounds have had many success stories. For example, after England Air Force Base closed in 1992, Alexandria, LA, benefitted from the creation of over 1,400 jobs—nearly double the number of jobs lost. Across the U.S., about 60,000 new jobs have been created at closing military bases. At bases closed more than 2 years, nearly 75 percent of the civilian jobs have been replaced. This is not to say that base closures are easy for any community, but it does suggest that communities can and will continue to thrive.

Another issue of considerable diverse views during conference deliberations concerned the aerial refueling tanker lease program. I would be remiss if I did not take the opportunity to praise the leadership of Senate Armed Services Committee Chairman WARNER and Ranking Member LEVIN for their steadfast vigilance during the three-year odyssey on the Air Force's failed Boeing 767 tanker program. I remind my colleagues, again, that three out of the four defense committees that were required to approve the original proposal to lease 100 tankers, did so without so much as reading the contract for the $30 billion procurement proposal. It was the Senate Armed Services Committee and the Commerce, Science, and Transportation Committee that put the brakes on that costly and misguided misadventure. And lest one thought otherwise, the Boeing 767 tanker investigations in the Department of Justice, Department of Defense, Office of Inspector General and the U.S. Senate are continuing and expanding.

Under Section 133 of the National Defense Authorization Act for Fiscal Year 2005, the Air Force may not enter into a sole-source multiyear contract for the lease or purchase of Boeing 767s. Indeed, the Conference Report makes clear that, at the end of the day, the Air Force's plan to modernize or update its fleet must be subject to full and open competition and the traditional budget, procurement and authorization track. The conference report brings the Air Force's plan back to square one.

The bottom line here is this. The aerial refueling tanker provision in the defense authorization bill does much to inject much needed sunlight in a program that has largely been insulated from public scrutiny. In so doing, this provision, that was adopted, directs the Air Force to begin—anew from the beginning—in its program to modernize its tanker fleet. The Air Force will have to now fully consider the Congress's direction, prohibiting the retirement of KC–135E tanker aircraft, as a worthwhile alternative to updating tankers through KC–135E to R conversions. The tanker legislation in this bill ensures that any effort by the Air Force to modernize and replace its fleet of tankers is done responsibly. We should expect no less from the Air Force. That having been said, the final chapter on the failed tanker lease program cannot be closed until those among Air Force leadership who engaged in misconduct, are held accountable.

I also would like to thank the chairman and ranking member, as well as Senators DODD, DEWINE, and HOLLINGS for their assistance in reauthorizing the Assistance to Firefighters Grant Program through Fiscal Year 2009. This program uses a competitive, merit-based review process to give grants directly to local fire departments for equipment, training, and fire prevention programs. Our nation's firefighters must be prepared to respond to a myriad of threats, and this legislation will help ensure that they are adequately trained and equipped to meet them.

Mr. President, Americans are blessed with nearly limitless freedoms and liberties. In exchange for all our country gives to us, it does not demand much in return. Yet throughout our history, millions of people have volunteered to give back to their nation through military service. The selfless acts of courage and sacrifice made by the men and women in our armed services have elevated our nation to the greatness we enjoy today.

America is defined not by its power but by its ideals. One of the great strengths of the American public is the desire to serve a cause greater than our own self interest. All too often, our younger generations are accused of selfishness and an unwillingness to sacrifice. I disagree. I see generations of people yearning to serve and help their fellow citizens. Each year, thousands of our young Americans decide to dedicate a few years or even a full career to

protecting the rights and liberties of others. They often do this with very real risks to their lives. They volunteer to do this not for profit, nor for self promotion, but out of a sense of duty, service, and patriotism.

I urge my colleagues to support this important legislation.

Ms. SNOWE. Mr. President, I rise today to speak briefly on the fiscal year 2005 national Defense authorization conference report.

I acknowledge the leadership of the senior Senator from Virginia, Mr. JOHN WARNER, chairman of the Armed Services Committee, in bringing this bill to final passage. Of course, I must also recognize the ranking member, Senator CARL LEVIN. I had the privilege of working with them on the committee for several years and I can attest that each year they work together tirelessly to pass the Defense authorization bill because they understand how absolutely vital this legislation is to the effectiveness and well-being of our Armed Forces.

For that matter, I also recognize every Senator on the committee for their efforts because this conference report authorizes the equipment, the training, and the operational funds necessary to support our troops who are right now operating across the globe to make our Nation and the world more secure.

It also reflects the service and sacrifice of our troops by making a solid investment in their quality of life by increasing their pay and enhancing educational and health care opportunities for our active duty military members, our National Guard and Reserve troops and their family members. And that is only right, for today we are asking a great deal of our gallant young men and women as they guard our Nation at home and abroad and, of course, risk their lives every day to restore freedom and prosperity to the oppressed peoples of Iraq and Afghanistan.

This legislation also recognizes that we owe a continuing debt to those who have served honorably by continuing to work on full concurrent receipt for those with a service connected disability, the same benefit available to every other retired Federal employee, the ability to collect full retirement pay and disability entitlements without offsets. Last year we made great strides in addressing the disparity by which disabled military retirees have their pension benefits reduced, dollar for dollar, by the amount of disability benefits they receive from the Department of Veterans Affairs. And this bill goes even further by removing disabled retirees, who are rated as 100 percent disabled, from the 10-year phase-in period. Thanks to this bill, those retirees will be authorized for full concurrent receipt effective January 2005.

This bill also finally corrects an inequity to those who have doubly sacrificed for our Nation, survivors of those who served this Nation well and honorably. First, they sacrificed each day as their loved one defended our Nation and they again sacrificed when they laid their hero to rest. And how did we repay them, by reducing their survivor benefit payment by over 30 percent once they reached age 62.

In the first session of this Congress, I sponsored S. 451, along with 46 cosponsors, a bill to correct this inequity. My colleague, Senator LANDRIEU, sponsored a similar measure for the same reasons. This year we worked together during the debate to include an amendment that would provide survivors relief from this ''widow's tax.'' I am very pleased to note that the conferees also recognized the unfairness of this reduction and approved a provision that will, over the next 3½ years, raise the percentage of the annuity available for survivors from 35 percent after age 62 back to the 55 percent they were collecting before their birthday.

This bill provides $420.6 billion for Defense programs in fiscal year 2005, an increase of $19.3 billion above the amount authorized by the Congress last year. In addition, the conferees authorized $25.0 billion for additional war-related costs for Operations Iraqi Freedom and Enduring Freedom, including more than $2 billion for force protection measures, including armor, munitions, communications and surveillance programs.

In particular, this bill also provides a little over $10 billion in an area that is critical to the security of the Nation, our shipbuilding capacity. It has become more and more apparent that as we engage the forces of terrorism around the world we have become increasingly dependent on the ability of our Navy to not only deliver troops and munitions to the fight, but to act as the sea base from which our forces can operate without restrictions virtually anywhere in the world.

Yet, as a former chair of the Seapower Subcommittee, I remain concerned about the Navy's shipbuilding program, particularly with respect to the surface combatant force. As part of the 2001 Quadrennial Defense Review, the Navy and DoD approved a plan for maintaining a 310-ship Navy including 116 surface combatants, cruisers, destroyers and frigates. By the end of fiscal year 2003, the Navy's surface combatant fleet had fallen to 106 ships and the Navy has notified Congress that by the end of fiscal year 2004, it was their intent to reduce the force of surface combatants to 103 ships.

Therefore, I am encouraged that this authorization provides $3.6 billion for the construction of three DDG–51 *Arleigh-Burke* class destroyers for it is these ships, along with cruisers and frigates, that provide protection to the carriers and amphibious ships deployed to the Persian Gulf and around the world to prosecute the war on terrorism. Moreover, it adds $100 million for the DDG in service modernization program to begin the insertion of advanced technologies that will dramatically reduce operation and support costs to the fleet and mitigate the risk of back-fitting these technologies on older ships. Above all, we must pursue every path necessary to provide technologies to our sailors that will ease their workload, enhance their training opportunities and increase the survivability of their ships.

However, this is the last planned funding for the DDG–51 acquisition program, and the next generation of surface combatants, the DD(X) and the Littoral Combat Ship, LCS, are being funded in the research and development accounts. Although this authorization provides $1.5 billion for the continued development of the DD(X), including an additional $84.4 million for the detailed design of the second DD(X) and $350 million for the continued development of the LCS in the RDT&E accounts, there is a looming gap in the shipbuilding and conversion, Navy account for surface combatants.

Without a focused effort on the part of the Navy to commit and invest in a robust surface combatant program, I am concerned not only about the ability of the Navy's surface combatant force to maintain current operating tempos but the continuing viability of our shipbuilding industrial base. Many have noted that in spite of Congress' efforts to stabilize the workload in our surface combatant shipyards, the Navy's changing construction profile is undermining those efforts.

I urge the Navy to heed the stated concerns of Congress, especially those of us with shipyards facing an uncertain future and do everything in their power to stabilize their shipbuilding accounts both in terms of budget and in schedule.

Importantly, this bill sets aside $66.5 billion in the research and development accounts to develop the advanced technologies our troops will use to maintain their technological superiority over their adversaries. Significantly, conferees authorized $11.2 billion for the critical science and technology programs which brings us close to the goal of setting aside 3 percent of the defense budget to invest in the ''seed corn'' of our future military capability.

Much of that S&T investment will be executed at universities and colleges throughout America. For example, the University of Maine system has been on the forefront of the development of advanced engineered wood structures and composites. The bill provides funds so the university can develop the advanced lightweight structures the Army needs to meet the requirement to establish forward operating bases for our expeditionary forces in the far-flung regions of the world.

In addition, this bill also authorizes continued research at the University of Maine into the structural reliability of fiber-reinforced polymers composites in ship assemblies that will help define and ultimately control the significant property variations found composite plates used in Navy ship construction.

I am deeply disappointed that the House provision to delay the 2005 BRAC round by 2 years was not maintained in this bill because I believe fervently that closing domestic bases at a time we are engaged in a global war is not in the best interests of our Nation.

During the Senate debate on the fiscal year 2005 authorization bill, I and my colleagues, Senators LOTT, DORGAN and FEINSTEIN offered an amendment that would have delayed the 2005 Base Realignment and Closing Process, BRAC, for 2 years in order to focus on a closing process for our overseas military installations because we believed that the Nation must reassess its current overseas force structure and adjust it to meet the threats of today. Unfortunately, our amendment was narrowly defeated by a vote of 47 to 49.

Since then, the President has announced a force restructuring that includes the closure of several overseas military facilities and a redeployment of troops and assets back to the United States. This is exactly the reason we offered our amendment and I continue to strongly believe that until our global defense posture is defined and our foreign basing requirements are thoroughly understood, closing our domestic bases is premature and ill-advised.

Finally, and most importantly, the bill continues our commitment to the men and women in the armed forces and their families through the enactment of several important pay and benefits provisions. First, it includes an across-the-board pay raise of 3.5 percent for all military personnel. It also contains a number of provisions that will directly aid the families of service members. For example, the bill removed the existing funding limitations on the military housing privatization authorities, which will allow the military services to continue to partner with the private sector to provide the highest quality housing for military members and their families in the shortest amount of time.

This authorization rightly recognizes that our Reservists and National Guard troops play an increasingly vital role in the war on terrorism, and extends to them expanded benefits in critical areas such as medical care and special pay rates. The bill approves permanent eligibility for up to 90 days of TRICARE coverage for Reserve members and their families prior to mobilization, and 180 days of transitional health benefits for Reserves, active duty members, and their families when the member separates from active duty service. It also authorizes a new program of educational assistance to members of the Selected Reserve, providing varying amounts of aid depending on the length of time they were mobilized.

Overall, this authorization provides the men and women of our armed forces with the equipment they need to accomplish their mission, the quality of life they have earned and security for their families. For these reasons, I support this legislation and urge my colleagues to pass this conference report unanimously because in a time when our Nation is facing unprecedented security challenges and dangers, we can do no less.

Ms. SNOWE. Mr. President, as chair of the Senate Committee on Small Business and Entrepreneurship, I express my views on the Conference Report for H.R. 4200, the fiscal year 2005 DOD Authorization Act. Defense authorization legislation typically contains a variety of provisions pertaining to government contracting, and these provisions have a significant impact on the ability of small firms to compete for Federal procurement dollars. Small businesses will find that this report contains both positive and negative provisions.

First, I express my deep disappointment with the decision of the Conference Committee to remove from the act the legislative language requiring consideration of small business interests by the Office of Federal Procurement Policy's advisory panel on reform of government contract laws, extending the panel's term, and specifically requiring the panel to reports its findings to the Congressional small business committees. I originally proposed this language as Senate Amendment No. 3273. It was adopted unanimously by the Senate and codified in Section 805 of the DOD Authorization Act.

The work of this advisory panel, like its predecessor panels, is critical to the long-range direction of acquisition reforms. This panel, authorized by Section 1423 of the fiscal year 2004 National Defense Authorization Act, was to emphasize the study of commercial practices, performance-based contracting, the performance of acquisition functions across agency lines of responsibility, and the use of Governmentwide contracts. In making appointments to the panel, the administrator for Federal Procurement Policy was required to consult the agency heads as well as the House and Senate Armed Services Committees, Governmental Affairs Committee, and House Government Reform Committees. The panel's authorizing legislation required it to prepare a written report with recommendations and to submit this report to these named Committees along with the Office of Federal Procurement Policy Administrator, or OFPP.

Curiously, the panel's mandate was silent with regards to small business contracting, even though the Federal Government is committed by law to the goal of awarding 23 percent of all prime contracts to small businesses. My amendment, as adopted by the Senate, responded to this glaring omission by extending the panel's reporting period, requiring the panel to make recommendations on assuring small business participation in Government contracting, and directing the panel to submit its report to the House and Senate Small Business Committees.

Because of President Bush's strong support for small business contractors, the policies of Section 805 had solid backing from the administration. Over the summer, I wrote to the White House and requested that small businesses be represented both in the composition and in the work of this panel. In reply, OFPP Acting Administrator Robert Burton responded that, ''Based on your suggestion, I will ensure that senior level representation from the Small Business Administration will serve on the panel. Moreover the Office of Federal Procurement Policy will request the panel to specifically address small business contracting and subcontracting issues.''

Some recent changes to Federal procurement laws have had the effect of decreasing competition, accountability, and transparency in the procurement process while increasing the barriers to entry faced by small business contractors. Section 805 was designed to address this unfortunate trend, and I believe it should not have been removed.

I am particularly disappointed the conference report contradicts the public position of the administration that small business interests deserve consideration in formulating Federal procurement reforms by the Office of Federal Procurement Policy advisory panel. However, let me be clear: the Conference Committee's decision to remove Section 805 does not overrule the commitment of the OFPP administrator and does not prevent the Senate Small Business Committee from closely monitoring the work of the panel and holding in-depth oversight hearings on its report.

In addition, I find unfortunate the choice to permit exemption of the entire landscaping and pest control industries from the application of the Small Business Act. Adoption of this provision was not marked up by either the Senate Committee on Small Business and Entrepreneurship or the House Committee on Small Business.

I also regret the conference committee's decision not to authorize transitional counseling on federal procurement opportunities at the DOD and the Department of Veterans Affairs facilities. Our veterans, especially service-disabled veterans, deserve immediate assistance. However, I am encouraged that the Conference Committee directed the Comptroller General to conduct a study on this subject. I am also very pleased that HUBZone and service-disabled veteran-owned small businesses can now participate in the DOD Mentor-Protégé Program, preserved the parity between the small business reserve threshold and the simplified acquisition threshold in future threshold adjustments for inflation, limited the period of multi-year task order contracts to 10 years, protected small businesses engaged in the DOD satellite procurement against arbitrary changes, and refused to adopt changes to source selection criteria which may have favored large businesses over small contractors.

In conclusion, I again commend President Bush and Acting OFPP Administrator Burton for the administration's continued steadfast support of small business-friendly procurement policies. I look forward to continuing to work closely with the Office of Federal Procurement Policy.

Mr. REID. Mr. President, I want to express my appreciation to Senators WARNER and LEVIN for their expert guidance for moving this huge piece of legislation through the Congress. This will now go to the President of the United States.

One of the provisions in this legislation is so important to me—more important to 40,000 100-percent disabled Americans. Those who are 100-percent disabled will receive the concurrent receipts immediately. We had a 10-year phaseout. That will no longer be the case.

That was not easy, but it is really wonderful because, first of all, those 40,000 are either disabled, unable to work at all and, frankly, the vast majority of them may not live 10 years to receive their benefits. This is so important that these most dedicated members of our armed services, who are 100-percent disabled, will receive these benefits immediately.

I appreciate very much the work of the chairman and ranking member, Senator LEVIN.

I also want to express my appreciation to Senator HARKIN. Senator HARKIN basically had a hold on the work we do around here, meaning he was going to slow everything up. Senator HARKIN is a veteran himself. He understands that this is not something which needs to be held up.

I want the RECORD to be spread with the appreciation of the four leaders for Senator HARKIN's cooperation in this matter to allow this bill to go to the President right now.

Mr. WARNER. Mr. President, I join in that. Senator HARKIN was actually a Naval aviator. We have discussed that distinguished part of his career many times.

I thank the distinguished senior Senator from Nevada. He very quietly works on issues. I can remember a year ago we stood in this well when we weren't able to achieve that goal, the distinguished Senator from Nevada himself—I think Senator MCCAIN was very active and Senator LEVIN. We said: All right. This year we can't get it, but next year we will. Through the Senator's absolute resolute determination that was accomplished. He did it for a category of veterans who are well deserved of this recognition by the Congress and the American people for their services.

I thank the Senator.

TECHNICAL CORRECTION IN ENROLLMENT OF H.R. 4200

Mr. WARNER. Mr. President, I believe this has been cleared on both sides.

I ask unanimous consent that the Senate proceed to the immediate consideration of H. Con. Res. 514, which is at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The assistant legislative clerk read as follows:

A concurrent resolution (H. Con. Res. 514) directing the Clerk of the House of Representatives to make a technical correction in the enrollment of the bill H.R. 4200.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. WARNER. Mr. President, I ask unanimous consent the concurrent resolution be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (S. Con. Res. 514) was agreed to.

Mr. WARNER. I thank the distinguished Presiding Officer.

I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Alaska, chairman of the Appropriations Committee, is recognized.

Mr. STEVENS. I thank the Chair.

The House passed the military construction appropriations bill as well as the homeland security bill. No one voted against the bills. The first one was 374–0 and the second was 368–0.

Military construction contains $2.8 billion for the drought and $11.6 billion for disasters which includes the hurricanes. This bill affects all our States with farms that are suffering from the drought and it helps states like Florida and Alabama that were in the path of the hurricanes. FEMA will likely run out of money tonight, Saturday, October 9.

On October 1 FEMA had $836 million which included a $500 million carryover from FY 2004 and a $336 million apportionment under the continuing resolution. That means they get 51 days worth of cash since the CR takes us through November 20. But FEMA tells me that they burn through this money at approximately $65 million to $79 million a day. The balance in the disaster, fund yesterday, Friday, October 8, was only $150 million. The fund runs dry tonight.

It is true they can re-apportion under the CR, which means they can transfer funds from other areas but it will have to be taken from places like our Federal air marshals, air cargo inspections, port security, and more.

On homeland, many believe we will be attacked before the election. There is a continuing resolution in affect until November 20 but getting this bill increases much of the effort we are making to protect the United States.

It also has new programs that cannot be started until we pass this bill. Some of the program I refer to are radiations detection, aviation security technology, border surveillance, additional detention and removal programs. Getting more screeners at airports is on hold. All first responder grant allocations would be put on hold.

The Coast Guard will not be able to re-engine the HH–65 helicopter for at least 6 months, causing the Coast Guard to continue to experience alarming rates of engine failures. At current funding levels, there are insufficient funds to support the Coast Guard's increased force presence in Iraq port security units, patrol boats, and security forces on oil rigs.

Cargo screening will remain only at current levels—we will forgo a tripling of cargo screening on passenger aircraft. Research and development of new technologies for cargo security will be delayed.

TSA will not hire replacement screeners to fill vacancies at airports, causing longer lines at airports, particularly around the holiday period. TSA will delay airport modifications to install explosive detection devices to screen for explosives in carry-on baggage as recommended by the 9/11 Commission.

The department will not be able to hire additional Federal air marshals, FAMs and, in fact, may have to lay off FAMs that they have on staff, up to 500.

This bill includes significant increases in the intelligence capabilities of the department. A continuing resolution will prevent that expansion from taking place leaving the nation at risk.

Under a continuing resolution the Transportation Security Administration has very little funding for rail and transit security. All of the additional funding available for inspectors, canine teams, research and other activities is in the fiscal year 2005 appropriation. None of the additional funding for letters of intent for airport security modifications will be available.

Seven hundred and ninety-two new Coast Guard personnel will not be hired to enforce maritime security plans.

It prevents interoperable communications and personal protective equipment from reaching rural and smaller communities.

Fire departments will remain critically understaffed without the implementation of the SAFER Act.

The biowatch program will not be expanded in major urban areas, affecting our ability to detect the release of biological agents in the air.

It stops the procurement of 250 additional radiation detection/inspection systems.

It delays procurement of border surveillance systems to monitor and defend U.S. borders.

It delays Container Security Initiative, CSI needed to stay on schedule to add up 22 more ports to existing 25.

It delays establishment of fugitive operation teams and hinders immigration enforcement—limiting detention and arrest operations of criminal alien

fugitives and hindering our ability to keep jailed aliens from being released into our communities.

It delays staffing up for overseas operations to ensure no visas are granted to foreign visitors who pose a security risk.

It delays adding 750 beds to hold alien detainees, allowing 5,000 deportable aliens to stay in our communities.

It delays support to reduce the backlog in immigration prosecutions.

Delaying the bill delay this Nation's security. Delaying the bill delays help to those that are suffering from the after-affects of numerous hurricanes. Delaying the bill will delay much needed drought assistance.

Mr. President, I am here because the Military Construction appropriations bill, as well as Homeland Security appropriations bill, has passed the House. Both of them have passed the House. I know we are not supposed to talk about the vote over there, particularly about how many people voted. But I think we can say consistent with the rules that each one of these bills was passed unanimously with not one single opponent. Why? Because the Military Construction bill contains $2.8 billion to the drought program and $11.6 billion for the disasters, particularly those relating to the hurricanes in the Florida area.

This bill will affect all of the States that have farms that are suffering from drought. It certainly helps the Florida area and Alabama—particularly in the path of those hurricanes.

But the reason I have come to the floor now to talk to the Senate is I was reliably informed this afternoon that FEMA runs out of money tonight.

I want to say that again. I hope Senators will listen. FEMA runs out of money tonight. There will be no more payments made in Florida or Alabama. I am told people down there are living in tents. The temperature is rising. They are being given buckets of ice to try to keep cool. They have patients being moved from medical facilities. They are in temporary quarters.

This is probably the worst series of storms in the history of this country.

On October 1, FEMA had $836 million. That included a $500 million carryover from 2004, and they were allocated $336 million under the continuing resolution we passed that expires November 20.

As of tonight, that money is gone. This really is an emergency now.

We have been delayed for one reason or another as we tried to get these bills passed. There were riders offered on the bill in both Houses. We tried to work those out in conference. I know there are some people who are disturbed about some of the riders that weren't included. These were legislative riders that did not pertain to the bills themselves, and there are some that were accepted.

But we have to get this bill done and to the President as quickly as possible.

This covers everything you can think about in terms of the Homeland Security bill—Federal air marshals, air cargo inspections, port security.

As I said, we have a continuing resolution in effect until November 20. As far as the FEMA money, it is gone.

I think we have an absolute obligation to these people who are providing the security for this country to see to it that they get their money on time.

We were unable to get these bills done by the end of the fiscal year, which was September 30, because we had no budget resolution.

We have been working against all sorts of impediments in the appropriations process this year.

We have a number of things in this bill that are absolutely necessary.

We have funds for the Coast Guard, for instance. Many people don't realize the Coast Guard has a presence in Iraq. They have port security units and patrol boats. They have security forces near the oil rigs over there. They are part of our forces over there. They still also have this enormous problem in the United States. They need to increase money.

The continuing resolution continues all of these agencies at the level of money approved by Congress in 2003 for the 2004 period. This is the first quarter of 2005.

The money is for cargo screening. That level of demand has increased. We forego a tripling of cargo screening on passenger aircraft by virtue of the bill that was passed.

We have enormous demands now by the Transportation Security Agency to fill vacancies in airports. There will be longer lines at airports if we don't get this money out to them.

The Department also has the Federal air marshals. I am told that they may have to lay off up to 500 Federal air marshals because they are traveling under that continuing resolution. Their moneys are allocated on the basis of what we thought was necessary in the fall of 2003. This is money for 2005. It must start now.

Again, I don't understand why we can't vote tonight. The House took up these bills and passed them within 2 hours. Each one passed the House within 2 hours because they recognized the need for this money.

Now I am told we may not vote until Monday or Tuesday on these bills. I am sort of aggravated. These bills are necessary.

I would like to identify the people who are objecting to passage of these bills tonight. I hope they come to the floor and defend themselves.

I sat in the Chair and presided over the Senate this morning, and I heard the distinguished minority leader say we cannot leave until these bills pass. We cannot go into recess and go back for the election process until these bills are passed. That should be the bipartisan position of this Senate.

Forget these minute details about antagonism because some person's ego has been bruised because we have not done exactly what they want on these bills. We all have to be bigger than that.

It is time to pass these bills. These delays on this bill affect national security. There is no question that homeland security is the second line of defense now. Our first line of defense is protecting our perimeter. But we have national security as No. 1. We spent weeks on the Homeland Security bill. Now we are refusing to provide the money which we came to total agreement on which they need for next year. It is being delayed. I don't understand that at all.

I particularly don't understand why any Member in the Senate is opposing these bills when it was unanimously approved. Not one voice was raised against these bills in the other House. We represent the same constituents. On what basis does anyone want to oppose these bills, either for the hurricane, military construction, or Homeland Security? I am standing ready. Anyone who wants to debate them, I will be here all night. I want these bills passed. They have to pass. There is no reason why they should not pass.

I am pleased to explain any portion of these bills to any Member tonight, but I don't know why we can't come here and vote for these bills. Someone is objecting somewhere and I would like to find out who it is because I think the whole world—I hope someone is watching, anyway—will ask why. Why can't we do what the House did and approve the bills after such hard work we put in? As I said, it has been totally bipartisan. Not one word in the House from either party was raised against these bills.

I will be back.

I yield the floor.

The PRESIDING OFFICER. The distinguished Senator from Utah.

Mr. HATCH. Mr. President, I agree with the distinguished chairman of the Appropriations Committee. It is a catastrophic failure not to take care of these problems. I salute the chairman for making the statement he made and for the leadership he has provided in this Senate. We all know what a feisty, wonderful man he is. I hope we can get this resolved. I hope whoever has these objections will identify himself or herself and why they are making the objections.

I listened to the statement of the Senator from Massachusetts this afternoon, and to hear him you would think we are living in the most calamitous times in the history of the world, that our country is falling apart, that we are not employing people, that people are getting poorer, and nobody has a chance in our society anymore, all because George W. Bush became President of the United States. It is amazing to me how many comments are made by people who are in the business of politicizing these matters rather than talking sensibly about them.

Think about it, we lost over a million jobs shortly after September 11. Lost them. September 11 was the reason.

That was no fault of President Bush. That was the fault of the people who attacked our country. Over 1.9 million jobs have been created since August of 2003. We now have the lowest unemployment rate in the last 4 or 5 years, 5.4 percent. When I was chairman of the Labor Committee, if you could get unemployment below 6 percent, if you got it to 5.6 percent, you had full employment. When you count those who cannot work, those who don't need to work, and those who won't work, you basically had full employment. 5.4 percent is incredibly low by historical standards.

I might add that the Household Employment Survey shows 2.2 million jobs have been created, many more jobs than shown in the Payroll Survey. This is because the Household Survey counts the self-employed and the Payroll Survey does not. We have the highest rate of home ownership in history, which has been developed during this administration. I can go on and on. The fact of the matter is we can play politics with about everything in this overheated political campaign.

Since September 11, the employment rate peaked at 6.3 percent last year and has come down to 5.4 percent. The current 5.4 percent rate is well below the average rates of the 1970s, the 1980s, and the 1990s. Some have said the job growth has failed to keep up with population growth. That is simply not true. Since last June, total employment has increased by 2.2 million. The labor force has increased by 949,000. Unemployment has fallen by 1.2 million people.

In addition, we hear all the time how people are not making a good living. Let's be honest. In some respects we have priced ourselves out of the marketplace with some of the heavy-duty industries, and we know there are many reasons why that happens, and that goods and services are being produced elsewhere at a lower cost, and this benefits the consumers of America. The consumers of America then have more money and they will be spending more so we can create other businesses that will compete.

The fact of the matter is, I have listened to these complaints about the labor overtime regulations that the Secretary of Labor worked on. I happened to have chatted with her during that process and she was doing an absolutely wonderful job of trying to make sure we got more people eligible to receive overtime pay than ever before. But to listen to some on the other side, you would think the whole world was coming to an end and the fact is she has come up with very good regulations.

We could talk about these things all day, and I guess anyone can distort any statistical analysis. There is a lot of distortion that goes on in this Senate from time to time in these matters. Of course, we are in a heated Presidential election campaign and I have to say I make a certain allowance for that, but I hope the folks out there watching make an allowance for that as well, because we have a lot of heated rhetoric in the Senate that sometimes does not make sense.

I intend to speak about three different things today and I ask unanimous consent my respective remarks be placed in the appropriate context.

The PRESIDING OFFICER (Mrs. DOLE). Without objection, it is so ordered.

JUSTICE FOR ALL ACT

Mr. HATCH. Mr. President, I come to the Senate to discuss H.R. 5107, the Justice For All Act that the Senate adopted this morning. After days, months, and now years of hard-fought negotiations, we finally reached an agreement on one of the most significant bills that has come out of the 108th Congress.

Just days ago, the House passed H.R. 5107 by an overwhelming bipartisan vote of 393–14. I especially commend my friends and colleagues, chairman of the House Judiciary Committee JIM SENSENBRENNER from Wisconsin and Congressman Bill Delahunt of Massachusetts, for their leadership on this important bill. Nor could we have accomplished this matter without the cooperation and leadership of my friend from Vermont, Senator PATRICK LEAHY. As we know, the Senate adopted this bill this morning and we are pleased to send it to the President for his signature.

Our bill, the Justice for All Act, contains President Bush's DNA initiative. It also contains Senator LEAHY's Innocence Protection Act which has been modified by almost everyone on the committee, and Senators KYL and FEINSTEIN'S victims' rights legislation. This is a groundbreaking crime bill, one of the most important in history, that will allow us to unleash the power of evidentiary DNA and help provide law enforcement the ability to find and punish the guilty, yet give us the comfort of more certainty in criminal prosecution.

Passage of the bill is extremely important to people such as Debbie Smith and Kirk Bloodsworth after whom individual parts of the bill are named. March 3, 1989, Debbie Smith—who I know very well—was the victim of a brutal rape in Williamsburg, Virginia. It took 6 long years to finally analyze Debbie Smith's rape kit. Debbie Smith's rapist was ultimately caught because of this, but it took far too long to catch him.

According to the U.S. Department of Justice, a woman is raped every 6 minutes in this country and many rapists commit this crime 8 to 10 times before they are caught, which means that at any given moment there are literally millions of rape survivors waiting to hear that their attacker has been apprehended.

Debbie Smith waited 6 agonizing years for justice to be served. It was not just waiting for justice to be served; it was agonizing because she was never sure when she walked out of her house or even within her house whether this brutal rapist would return. It was something that affected her all of those years. Thankfully, through the use of DNA evidence, this awful person was apprehended and slammed in jail, where he deserves to be.

Some women are not that fortunate. The Justice Department reports there are approximately 150,000 to 500,000 rape kits nationwide that have yet to be analyzed because law enforcement officials are short on both the funds and the skilled personnel necessary to process these rape kits and match the evidence collected to existing DNA samples of known criminals. Imagine how many rapists we would have caught by now had those up to 500,000 rape kits been analyzed. By the way, some of those are 20 years old. I have been fighting for this bill for years. It is so difficult to get it through, but today is the day it has gone through the Senate and has passed the House.

This bill makes a giant leap in the rape kit backlog and specifies when and how DNA tests should and should not be used. The President has often indicated his commitment to unlocking the power of DNA to solve these crimes. Today the Senate has joined the House in stepping up to follow through with the President's plan.

It cannot be said any better than in Debbie Smith's own words:

> Each one of these stalled cases represents women's lives. Many women are paralyzed after an attack because their rapist is still out there, and you never know if he's going to come back.

Now, this bill will not take away the pain and anguish these victims have endured. It can, however, allow for health care professionals, law enforcement, and other first responders to assist victims by using the evidentiary power of DNA to apprehend and prosecute those responsible for these horrible crimes.

This bill was too important to be delayed any longer. As so many of my colleagues, I am well aware of the incomparable power of DNA testing to solve crimes, particularly sexual assault. This fact is reflected in newspaper headlines spread across the country each week. During the week of August 16 alone, the media reported that DNA evidence pinpointed a suspect in three rapes in Miami, FL, caused a man to be charged in a 20-year-old Missouri rape case, and proved critical in convicting a New York man accused of committing nine rapes over the course of a decade.

That is what DNA can do. If we had all these rape cases analyzed, we would be catching these rapists right and left and we would be protecting women all over this country from this type of violent, criminal activity in many cases. So I want to stand here and thank Debbie Smith from the bottom of my heart for her constant efforts to help us pass this bill. I have known her for

a long time. We have flown together. She has appeared at our hearings. She is leading the fight throughout America, along with a number of other very courageous women. This has to be a very important day for her.

When this bill is finally signed into law by our President, who will sign it into law, it is going to be a big day for the Debbie Smiths of this world and, I might add, every woman in this world who is the potential target of these vicious rapists.

Also contained in this bill are provisions that will give us assurance that those whom we arrest and convict are indeed those who have committed the crime. Kirk Bloodsworth, a former marine with no criminal background whatsoever, was arrested in 1984 for the brutal rape and murder of 9-year-old Dawn Hamilton on Maryland's Eastern Shore. Kirk Bloodsworth maintained his innocence but was convicted and sentenced to death. After 9 years in prison, two of them on death row, Kirk Bloodsworth, an innocent man, was exonerated by post-conviction DNA testing. Last year, prosecutors matched the DNA evidence in the case to another man, who subsequently pleaded guilty to the crime, for which he was sentenced to death.

This is the power of DNA when it is used and analyzed properly. I want to stand here and thank Kirk Bloodsworth from the bottom of my heart for his efforts to improve and pass this bill. The bill will help to protect unintentional victims of the criminal justice system.

I think we all owe a debt of gratitude to Kirk Bloodsworth. One reason I have stayed around here all day, although there are no more votes, is to be able to stand on this floor and personally pay tribute to Debbie Smith and Kirk Bloodsworth. They deserve it. They have been with us throughout this process, and I have nothing but respect for both of them.

Moreover, this bill includes Senator KYL's and Senator FEINSTEIN's critical Crime Victims Act that ensures victims rights are protected in criminal prosecutions. This bill is truly justice for all.

It is an important bill, and they fought for this for years and years, and we helped them to get it out of committee. I am so grateful it was matched with the DNA bill, and we now have these two bills brought together in one bill that will do a great deal of good for our society.

Finally, let me say I am grateful for the hard work and determination of so many people to get such a vital bill passed.

I thank my cosponsors of this bill. First, let me thank my good friend from Vermont, Senator LEAHY, for his commitment and willingness to set aside politics in a very political year and work with me to get such a critical bill passed.

I also want to recognize and specifically thank Senator BIDEN, Senator SPECTER, Senator FEINSTEIN, and Senator DEWINE for their calming voices of wisdom throughout the negotiations, our difficult committee markup, and in the final preparations to achieve a properly balanced bill. Without their unwavering support and counsel, this bill would not have occurred.

I also thank the chairman of the House Judiciary Committee, JIM SENSENBRENNER, and Representative DELAHUNT for their dogged determination on the House side in leading the House in passing this bill through the House on two occasions by overwhelming majorities.

I have worked side by side with Chairman SENSENBRENNER on many occasions. He is a true friend and he is a man of his word. I am pleased to have had the opportunity to work closely with Congressman DELAHUNT on this measure, and I can tell you, he is a man of honor and wisdom. I have enjoyed working with him. I will look forward to working with both of them again in the future.

I also want to make special mention that without the thorough consideration of this bill by Senators KYL, SESSIONS, and CORNYN, we would not be here today. Nearly two dozen changes were addressed and implemented at the insisting of these fine Senators, and this bill is a better bill because of it. And I have to admit, they have helped to improve the bill.

At times the process through the committee was a bit tension filled, but I commend Senators KYL, SESSIONS, and CORNYN for working to improve and refine this legislation. Some have unfairly criticized their efforts, but that is only because these critics apparently do not understand the committee process. I commend these colleagues and all of my colleagues for giving this bill the scrutiny it deserves.

Now, let me say that many have worked to make this bill a successful effort. We could not get much done around here if we did not have such an intelligent and dedicated staff. I want to thank those on my staff, including Reed O'Conner and Ted Lehman, for their commitment and dedication in getting this bill done. I especially want to single out Brett Tolman, a bright, young assistant U.S. attorney from Salt Lake City who is on assignment to the Judiciary Committee. We are fortunate to have him, and he has made a tremendous difference on this bill. Brett took the initiative for undertaking a lot of the analysis and negotiations that led to the final compromise language.

I am proud of him, and I think everybody else ought to be, too.

I want to thank Senator LEAHY's chief counsel Bruce Cohen and his lead counsel on this issue, Julie Katzman. Their efforts helped guide and drive this effort throughout and are greatly appreciated. We are also indebted to chief counsel Neil MacBride, Jon Meyer, and Louisa Terrell from Senator BIDEN's office. They continuously helped move the ball forward.

I give special thanks to Rob Steinbuch, a senior counsel in Senator DEWINE's Judiciary Committee office. Rob and Brett Tolman were key players on our side of the aisle in educating Members and staff about this bill and proposing creative solutions to problems that surfaced.

I also thank Joe Matal, William Smith, and Chip Roy, who ably represented the views of, respectively, Senators KYL, SESSIONS, and CORNYN.

On the House side, Phil Kiko, chief counsel for Chairman SENSENBRENNER, Jay Apperson, Katy Crooks, and Christine Leonard were instrumental in building the overwhelming support for this bill.

As well, I give special thanks to Matt McGhie and Bill Jensen from legislative counsel. On this type of bill it is critical to get the language exactly right, and they did so time and time again.

The list of contributors could go on and on because so many private and governmental organizations have also provided critical assistance.

Let me also say, while I had to get a little rough with the Justice Department—and I am still not over it—I am, nonetheless, grateful for their help in coming to compromises and getting this bill in acceptable form. I call upon Attorney General Ashcroft to urge the President to sign this good bill, and to do it quickly.

I thank the leadership, Majority Leader FRIST and Senator MCCONNELL, as well as Minority Leader DASCHLE and Senator REID for giving us floor time to get this done today.

Most of all, I am pleased to send to the President a bill that will make such a difference in the lives of victims of crime, including those wrongly accused or convicted of crimes across this country.

This bill passed 393 to 14 over in the House. We amended it in many ways to make it a far better bill because of the work of all of these people I have been chatting about. I have to say that it passed unanimously by the Senate today. This body sent that version back over to the House, and I am pleased to report that they took it up and passed it so that it may be sent to the President for his signature.

FSC/ETI

Madam President, I rise in strong support of the conference report for the American Jobs Creation Act. Before we leave, we have to pass this bill to protect domestic manufacturers, strengthen our economy, better help our U.S.-based multinational firms compete globally, and honor our trade obligations.

I congratulate the chairman and cochairman of the conference, Congressman BILL THOMAS and Senator CHUCK GRASSLEY, for completing the bill this week.

Many thought the task would be difficult or impossible given the large differences in the two versions and the

time constraints we in the conference faced. This could have taken many weeks—or even failed—yet they got it done.

The innovative conference process developed by the chairman and co-chairman made success possible. Conferencing a large and diverse pair of tax bills in the usual fashion could have taken many weeks and led to a likely failure to finish this bill before sine die adjournment of the 108th Congress. Again, I want to recognize the extraordinary achievement of this conference committee and thank its leaders and my fellow conferees for their hard and dedicated work.

Mr. President, this conference report represents what we hope will be the culmination of a very lengthy and fascinating issue that had its genesis decades ago but has festered into a growing problem over the past several years.

I will leave to others to go into detail about the long history of the export subsidies in our tax law that gave rise to this conference report, but the unusual nature of this bill and its difficulty in passing the Congress are reflections of the complexity of this issue.

The crux of the difficulty of the bill is that the rulings of the World Trade Organization on the trade-legality of our export tax subsidies put the Congress in a very tough position. In essence, we found ourselves needing to repeal these export subsidies, known as the Foreign Sales Corporation (FSC) provision and its replacement regime known as the Extraterritorial Income (ETI) exclusion.

By repealing these provisions, which we must do in order to honor our trade obligations, we effectively raise taxes by almost $6 billion per year on thousands of U.S. businesses that manufacture goods for export.

Leaving it at this, Mr. President, is simply unacceptable. Why should we have to convert a provision designed to help U.S. manufacturers compete in an ever-increasingly difficult global marketplace to a situation where they suffer a competitive disadvantage?

Yet, this is exactly the problem the Congress faces now that it is forced to repeal the export tax benefits.

When confronted with a similar problem in 2000 after the WTO ruled the FSC provision to be in violation of international trade rules, Congress passed the ETI in its place. With the ETI, we were able largely to replicate the benefits of the FSC regime, so that exporting taxpayers paid few if any extra taxes with the repeal of FSC. Unfortunately, the WTO subsequently ruled that the ETI provision also was an illegal trade subsidy that also must be repealed.

So, the conundrum facing the Congress with this situation was to find a way to enact other tax cut benefits for exporting manufacturers, to offset the increase from repealing ETI, without violating the WTO rules.

Unfortunately, Mr. President, this has proven impossible, so both the Senate and House bills attempted to find rough justice for business taxpayers by finding other ways to deliver tax benefits besides basing them on exports. Such attempts gave rise to the political and practical difficulties of this bill, including the fact that it took many months of hard effort to reach the point we are today.

For example, my own bill to address the FSC/ETI problem was S. 1475, the Promote Growth and Jobs in the USA Act, which I introduced in July 2003. This bill would have delivered rough justice tax relief in two ways.

First, it would simplify and rationalize the international tax rules that currently harm the ability of U.S. firms to compete globally, and second, it would provide incentives for companies to increase their ability to produce goods by acquiring new equipment and engaging in more research and development.

Other FSC/ETI solution bills were also introduced. On the same day I introduced S. 1475, Chairman THOMAS introduced H.R. 2896, the American Jobs Creation Act. The two bills were similar in many ways, and both included international tax reforms. The Thomas bill, however, included a number of other provisions designed to help U.S. businesses create jobs and better compete.

Another bill, introduced last year by Congressmen CRANE, RANGEL, and MANZULLO, offered a different direction still. This bill provided a deduction equal to 10 percent of a company's production activities.

In the Senate, Senators GRASSLEY and BAUCUS introduced a bill that included some of the best elements of all the other bills. Even though I preferred the solution set forth in my bill, I cosponsored the Grassley-Baucus bill because it represents a solid and reasonable solution to the problem. This bill, as modified, became the legislation reported by the Finance Committee and passed by the Senate.

After a great deal of travail and adjustments, the House also passed a FSC/ETI bill, and it was quite similar in many respects to the first Thomas American Jobs Creation Act. These are the bills the conference committee had to combine into one.

Madam President, I know that you and your colleague, Congressman BURR, and others from North California and South Carolina and all over the South have worked long and hard. Also, Senator MCCONNELL, Senator BUNNING and others from Kentucky have long worked to try to resolve these problems. I want to pay tribute to you folks for bringing this about. You deserve a lot of credit. Let's hope we can pass this bill.

I admit it is not everything that some wanted it to be, but it is certainly a step in the right direction, and it wouldn't have occurred except for the distinguished Senator from North Carolina, Mrs. DOLE, Congressman BURR, and others who have carried this ball very effectively up through this point.

I hope that we do not filibuster this bill. I hope nobody will filibuster this bill because it is a bill that just has to pass. If it does, much of the credit should go to the people I have just mentioned. There are others as well who should be mentioned. I don't mean to leave them out. But those in particular I know have been working assiduously on this for many years.

The result, as we know, is a bill that is far from perfect. Its enactment will result in a net tax increase for some exporting companies that now use the ETI provision, and in a net tax cut for many other U.S. manufacturing firms that may have not taken advantage of the ETI exclusion.

And while the bill includes many important other provisions, it leaves out some very important provisions that I advocated. For example, I am personally very disappointed that the House conferees voted against including my bill, the CLEAR ACT, in this conference report. This bill, which has passed the Senate at least three times and also has passed the House, would transform the auto industry by granting strong tax incentives for consumers who buy alternative fueled and advance technology vehicles, such as hybrid electric cars and, ultimately hydrogen cars.

From a broader point of view, most of my fellow Senate conferees and I would have liked to see the entire set of energy tax provisions from the Senate-passed bill included in the conference report. I believe it was a mistake to omit these important provisions.

I also very much regret that the House conferees refused to adopt my amendment to bolster our research tax credit. While it is true that the research credit was extended for a short time in the most recently passed tax bill dealing with individual tax cuts, that legislation left out an important element contained in the Senate FSC/ETI bill designed to improve the incentives this provisions gives for companies to engage in R&D activities.

Nevertheless, the conference report before us is worthy of our support, as we must honor our obligations under the World Trade Organization.

Of more immediate importance is the fact that the Europeans are levying an increasing level of trade sanctions against certain of our products exported to the EU. This is currently 12 percent and is growing by one percentage point per month. It is definitely having a very serious negative effect on certain U.S. industries and could amount to more than $4 billion in total cost, unnecessary cost to our country if this bill is not passed.

Moreover, the trade sanctions are authorized to continue to increase until next March, when they will have reached 17 percent. After this, the EU

may authorize even more serious sanctions against us that would surely harm our economic growth.

If we do not succeed in passing this conference report before sine die adjournment of the 108th Congress, we must start the process all over again next year.

Would this result in a better bill? Perhaps. But that is far from certain. What is more likely is that the resolution to this issue would be delayed for many more months, giving the trade sanctions more time to damage our economy and harm U.S. businesses.

Let me take a few minutes to discuss some of the specific provisions that are in the conference report and why I we should enthusiastically support them and why I support them.

Overall, this conference report has a good balance to it.

In addition to the vital repeal of the ETI provision and the quite reasonable transition relief it provides for current ETI users, the bill offers significant provisions for both small businesses and large multinational firms.

Mixed in is a generous portion of important tax relief for business interests of all kinds.

Also included in the conference report is significant relief specifically for small businesses.

Foremost in this category are the five sections that would simplify and reform the taxation of S corporations.

These are changes I have long fought for and sought with several of my colleagues and I am gratified to see them included by the conference.

Other provisions important to the balance of this bill are those designed to simplify and improve the rules by which this Nation taxes international business transactions.

Quite simply, our outdated, international tax rules are appalling.

Whether large, medium or small, U.S. businesses that decide to expand their markets beyond the borders of the United States confront a set of tax rules that are mind-numbingly complex. Far worse, these rules often result in double taxation and leave our companies on the downside of a tilted playing board when compared with competitors based in most other industrialized nations.

The bill before us includes about two dozen provisions that will improve the tax law for U.S. companies that have expanded their markets overseas.

As a senator who has long been interested in seeing this type of reform enacted—in fact I have introduced bills to do this since the mid-1990s—this is a particularly gratifying day.

Some of my colleagues have incorrectly concluded that improving our rules on international taxation will give an incentive to U.S. companies to move their jobs overseas. This is unfortunate, Mr. President. Cross-border investing is not only a necessity of our modern world, it is usually beneficial to both nations. Most U.S. companies that invest in expansion into markets in other nations do so to compete effectively with other suppliers in those markets and here at home.

A fact of life of our modern economy is that our U.S.-based business enterprises face competition from all parts of the globe. It is unrealistic to think that an American business can simply focus on markets here at home and thrive. Instead, most of today's businesses must be mindful of both markets and material and labor supplies around the world if they are to stay in business very long.

While no one likes to see U.S. jobs move overseas, we should be more concerned about creating and maintaining in the U.S. the kind of environment that attracts businesses. Part of that environment is ensuring that our tax system does not drive businesses offshore to other nations that tax them in a more favorable fashion. This bill moves our tax system a big step in that direction, and I am pleased to see these changes finally reach the point where they are about to become law.

Let me turn to the tobacco issues associated with this conference report.

At the center of the tobacco buyout is the tobacco farmer. The tobacco price support and tobacco quota programs have helped to secure a reasonable living for many family farmers.

At the same time, breaking the nicotine dependency of U.S. citizens and especially children requires us to address the dependency of tobacco growers on the tobacco industry and on the government programs.

It will not be an easy transition for many tobacco growers, and Congress is strongly on record as supporting measures to help these families survive it.

This proposal does a good job of getting the Government out the farming business while making temporary assistance available to farmers as they adjust to the free market. And, there is no cost to the Government.

As far as the provision requiring the Food and Drug Administration to regulate tobacco, let me say that I fully support measures to end tobacco use in the United States.

I can think of few public health dangers worse than tobacco, and this is especially true for young people.

I have heard from many concerned parents and health advocates in Utah who point out the need to take action against the devastating health consequences of tobacco use.

In many aspects, the DeWine-Kennedy language was written to achieve that goal, and in that spirit I supported it in conference.

In fact, much of the bill is taken from a measure that I authored several years ago with Senator DIANNE FEINSTEIN.

That being said, I am concerned about some aspects of the way the bill was written, and especially the impact of this language on the resources of the FDA.

First, the Committee of jurisdiction, the HELP Committee, should have the opportunity to consider this legislation—allowing the FDA to regulate tobacco—before we vote. Having been the Chairman of that Committee for several years, I know full well the complexities of the Federal Food, Drug and Cosmetic Act. Three hours of debate on the Senate floor was not enough time to consider legislation that made such dramatic changes to current law.

We also must be clear about the impact that such legislation would have on the FDA. Does it have adequate resources to regulate tobacco and still keep up with its other, extremely important responsibilities? I question whether it does. If we are not willing to give them the resources, then it is easy to see why that part of the request by Senators DeWine, Kennedy, myself, and others should be delayed until this matter is addressed.

While I recognize that user fees were included in the legislation, I am not convinced that those fees would have provided the FDA with sufficient resources to regulate tobacco. These concerns bear further examination.

They need committee hearings. They need to be examined thoroughly.

Finally, I want to touch on some of the revenue offsets included in the conference report.

I support the principle of keeping this revenue neutral, and I congratulate the conferees for doing so.

This was a particular sticky problem with the House Members, so I especially recognize their hard work in bowing to the Senate's demand that this bill be fully offset. I am very pleased to see that several revenue offset provisions that were in the Senate bill are not part of the conference report.

One of these is the codification of the economic substance doctrine. I believe enactment of this provision would have led to a great deal of unnecessary conflicts between taxpayers and the Internal Revenue Service and would have unfairly penalized companies for engaging in legitimate tax planning techniques.

One provision that did not make it into the conference report raises revenue in connection with the donation of used vehicles. This may appear to be a reasonable proviso, particularly in light of some of the alleged abuse surrounding the charitable donation of used vehicles. I am concerned about the impact of this change on charitable giving. A chilling effect on the donation of these used cars could leave many worthy charities short of vital funds needed to perform their valuable services to needy citizens in Utah and elsewhere. I would keep a watchful eye on the implementation of this change in the law to make sure it doesn't harm the charities. It may well be that we need to revisit this area of the law in the future.

I had one of my finest constituents call me last night—it may have been

the night before, things have been moving so fast here—she said it would really hurt their kidney foundation partners, which have raised hundreds of thousands of dollars in donations of used vehicles. She recognizes we have to do it right so that the Government is protected and our tax system is not abused, but I would hate to see her not have these moneys coming in for that important foundation, and others as well.

In conclusion, the conference report before us represents a good bill that deserves our support. As I have indicated, the bill is far from perfect, but given the difficult political circumstances surrounding this bill, it is remarkable that we were able to bring to the Senate floor a product as good as it really is. I urge colleagues to support the conference agreement.

MEDICARE PRESCRIPTION DRUG COVERAGE

Mr. HATCH. Madam President, finally, I have to respond to the outrageous charges made by colleagues on the other side of the aisle regarding the Medicare statement I delivered on the Senate floor yesterday. I was disturbed by several remarks—especially that seniors have flatly rejected the Medicare prescription drug benefit. That may be the hope of some people on the other side, but that is not reality.

How is that even possible when the drug benefit doesn't even go into effect until January 1, 2006? That is pure, unmitigated bunk. I am offended that this argument is even being made on the floor of the Senate by my colleagues because it is absolutely not true. It is being made to scare our seniors. And that is wrong. How is that possible when many Medicare beneficiaries are participating in the Medicare drug discount card and have seen savings in their drug costs up to 20 percent per drug? What is being said is just not true. I don't see that as an outright rejection. My colleagues need to be careful about their charges, especially when they don't have facts to back them up.

I take issue with the assertion that our prescription drug law is only a drug law in name. What do they mean by that? Let me remind the Senator from Illinois that because of this new Medicare prescription drug law, 40 million Medicare beneficiaries will have drug coverage if they want it. They will have the choice. The bill provides generous subsidies to low-income Medicare beneficiaries, who today cannot afford to purchase drugs; today they don't have the help. They are talking like this bill does nothing—the bill which spends $400 billion-plus to improve Medicare for our seniors and the disabled.

Prior to enactment of the Medicare Modernization Act, these beneficiaries had to make tough choices between buying prescription drugs and putting gas in their cars or buying prescription drugs and putting food on the table or buying prescription drugs and paying their rent. Once a Medicare drug plan goes into effect on January 1, 2006, those Medicare beneficiaries will no longer have to worry about this matter that they have to worry about now. To scare our seniors into thinking these benefits are not going to be great for them—it is incomprehensible to me that anybody has the gall to make those kinds of claims.

Here is another point that needs to be raised regarding this matter: If there were any proposals that deserve to be recognized as offering a drug benefit in name only, it is the two Democratic plans of 2 years ago, which were supported by 50 and 45 Democrats respectively, including the Democrat leader and Senator KERRY, their candidate for President. My colleague, Senator GRASSLEY, described these plans a few days ago. Let me take a few minutes to recap.

The first Democratic plan had a drug benefit that lasted just 6 years; that was the end of it. Talk about offering a drug benefit in name only. The second plan didn't even offer a benefit to the vast majority of beneficiaries. Seventy percent of beneficiaries would not have received any basic coverage, and they are coming on the floor and saying this $400 billion-plus plan does nothing? Give me a break. A plan that shuts out the vast majority, 70 percent, of beneficiaries—how can you call that a drug benefit? Those were their plans.

Guess what those 70 percent got. You are not going to believe this. They got a 5-percent discount on their drugs in their plan. Once they spent $3,300 out of pocket, they could qualify for catastrophic coverage. That was their plan. And they are criticizing this plan, which was bipartisan, overwhelmingly passed?

Some have taken issue with the Medicare reform bill, saying that the ''benefit'' stops after an initial coverage amount. I remind my colleagues on the other side of the aisle that their basic benefit would have never even started for 70 percent of beneficiaries—for 70 percent. They would have been left out by their plan, and they are criticizing this plan? Talk about a donut hole. These beneficiaries didn't even get a donut.

The Congressional Budget Office estimated that 66 percent of beneficiaries would not even meet the $3,300 threshold. Again, for these folks, the only help they would get was a 5-percent discount. And they are criticizing our drug discount card where they are getting an average of 20 percent and in some cases even more?

I was also extremely disappointed by the arguments by the Senator from Illinois and the Senator from California against what some have termed the ''non-interference'' provision. As I outlined, this provision has been included in the most prominent Democrat initiatives, starting with the Clinton Health Security Act a decade ago. Despite that fact—and it was in their bills—here we are listening to arguments against this bill. Apparently, what was good in a Democratic administration is very bad in a Republican one. They ought to be shouting for joy that we are putting some of their provisions into this bill. The problem is, these were not their provisions; they were all of our provisions, those of us who worked in a bipartisan way.

What was good in a Democrat Senate is bad in a Republican Senate—during an election year especially. It is almost as if my colleagues were not listening to what I said the other day. The argument that there is no authority for the Federal Government to bargain with pharmaceutical companies is getting to be a tired, wornout, old argument. Again, I will repeat myself from yesterday. First, the Democrat-sponsored bill from 2000, introduced by the Senator from South Dakota and cosponsored by 33 Democrats, had a specific provision which stated the following:

> In administering the prescription drug benefit program established under this part, the secretary may not [this is the Democrat language in their bill, which had almost every Democrat on it] (1) require a particular formulary or institute a price structure for benefits; (2) interfere in any way with negotiations between private entities and drug manufacturers or wholesalers; or (3) otherwise interfere with the competitive nature of providing a prescription drug benefit through private entities.

Again, this provision is from the bill introduced by Senator DASCHLE, which was cosponsored by 33 Democrats, including not only Senator KERRY, their candidate for President, but also Senators DURBIN and BOXER, who spoke against it on the floor yesterday. It takes time to do it correctly. CMS, the agency in charge of the Medicare program, needs time to implement the MMA regulations, accept bids from plans that wish to participate in the Medicare advantage programs, and, most important, it takes time to educate Medicare beneficiaries about the options that will be offered to them.

Let me remind all of my colleagues that even the Democrat proposals that have been considered in the past did not have the Medicare prescription drug programs go into effect immediately. So that is just a ludicrous charge.

In addition, I remind my colleagues that both the Democratic plans in consideration in December of 2002 didn't go into effect until 2005. I suspect that the authors of these plans recognized the same thing that we did, that it takes time to get a new, comprehensive drug program up and running. That is why the drug plan will not be available until January 1, 2006.

So, there is no subterfuge behind the 2006 date in the MMA. Moreover, at least the MMA offers immediate assistance through the drug card program. Their plans offered nothing until 2005, and then very little after that. And cost us a bundle more. They were not even well thought out, in my opinion.

I would also like to respond to the comments of my colleague from California comments about the Veterans

Administration system and the deficiencies which I described yesterday morning. If my colleague from California is surprised at the Republicans not using the VA model then my only guess is she is even more surprised that her own party did not. No, they wanted to have private plans negotiate with drug companies, the same approach taken in the MMA, the Medicare reform bill.

The VA system was not a model for any Medicare prescription drug plans considered on the Senate floor, advanced by either Democrats or Republicans.

Finally, let me address the idea of importing cheap drugs from Canada. First, nobody has a greater desire than I do to make prescription drugs more affordable, particularly for our seniors and the disabled who depend so heavily upon pharmaceuticals for their quality of life. I co-authored the 1984 bill, the Hatch-Waxman Act, which in essence created the modern generic drug industry, brought generic drugs to the marketplace to become the force for competition and affordability that they are today. It has been called the most important consumer legislation in the last century by some. It has saved at least $10 billion every year since 1984. That law was written by a conservative Republican in the Senate, myself, and a liberal Democrat in the House, Congressman HENRY WAXMAN, because we were willing to put differences aside, get together and do what was right.

With regard to drug importation, my colleagues seem to forget that the MMA does include a provision to permit the importation of prescription drugs from Canada, once a program is in place that is approved and certified for, guess what, safety and cost by the Secretary of the Department of Health and Human Services.

That sounds logical to me. We want those drugs to be safe and we want to know that we can afford to implement this program.

The bill also calls for the Secretary to establish a 13-member task force that will study proposals to make reimportation safe and cost effective. HHS Secretary Tommy Thompson has indicated that the panel's recommendations will be completed by the end of this year.

Up to 80 percent of imported drugs coming through our ports today, are knockoffs, out-of-date drugs or placebos.

Can you imagine what could happened if drugs tainted by terrorists come into this country? Drugs filled with gradual poison, or even instant poison? Our nation must be concerned about these things because they impact the safety of our citizens.

We should not overlook the fact that the FDA has documented many cases of what appeared to be FDA approved imported drugs that were in fact contaminated or counterfeit, contained the wrong product or incorrect dose, or were accompanied by incorrect directions or had outlived their expiration date. These drugs would be at minimum ineffective and could actually be harmful or even fatal.

The FDA is also concerned with the safety of allowing companies which are not licensed by States to practice pharmacy to sell prescription drugs without any limitation on the amount or frequency of drug imports permitted for individuals. In addition, reimportation legislation as it is written would allow risky drugs that are currently available in the U.S. only under strict safety rules or controls, to be reimported in any amount or frequency to anyone, even those who are at high risk to be seriously injured by the medication.

The FDA underscored these concerns in the Judiciary Committee's hearings on reimportation last July. The Agency stressed that opening our tightly regulated closed system of prescription drug distribution will open the door counterfeit and otherwise adulterated and misbranded drugs being widely distributed to unwitting American public. Mr. William K. Hubbard, Associate Commissioner for Policy and Planning for the FDA testified at this hearing and I would like to take this opportunity to read some of his testimony to my colleagues.

FDA remains concerns about the public health implications of unapproved prescription drugs from entities seeking to profit by getting around U.S. legal standards for drug safety and effectiveness. Many drugs obtained from foreign sources that either purport to be or appear to be the same as U.S. approved prescription drugs are in fact of unknown quality. Consumers are exposed to a number of potential risks when they purchase drugs from foreign sources or from sources that are not operated by pharmacies properly licensed under State pharmacy laws.

Patients are also at greater risk because there is no certainty what they are getting when they purchase some of these drugs. Although some purchasers of drugs from foreign sources may receive genuine product, others may unknowingly buy counterfeit copies that contain only inert ingredients, legitimate drugs that have been outdated and have been diverted to unscrupulous or dangerous sellers, subpotent or superpotent products that were improperly manufactured. Furthermore in the case of foreign based sources, if the consumer has an adverse drug reaction or any other problem, the consumer may have little or no recourse either because the operator of the pharmacy often is not known, or the physical location of the seller is unknown, or beyond the consumer's reach.

FDA has only limited ability to take action against these foreign operators.

These safety concerns are real. I strongly believe if we truly care about seniors and other patients who depend upon prescription drugs, we should not expose them to what currently amounts to pharmaceutical Russian roulette.

The FDA is working with some of my colleague on legislation that would give the FDA greater resources, limit the scope of imports, and provide greater power to the FDA to police imports. In recent comments, former Commissioner Mark McClellan, now head of CMS, has said these measures would give the agency the ability to assure the safety of prescription drugs imported from Canada.

In addition to these safety concerns, however, I am also concerned that reimported drugs pose a threat to the innovation that Americans and the rest of the world have come to expect from our pharmaceutical industry, the greatest industry in the world. Canada and other countries with lower drug prices generally import superior American products, but impose price controls to keep those costs down.

It may cost as much as $1 billion to produce a new drug, test it, win FDA approval, educate doctors, and make the drug available to patients. No pharmaceutical company can or would go through this immensely expensive process without a chance to recover some of those costs, which will not be possible if we impose, in America, however incorrectly, Canada's style of price controls.

But, wait, it not only costs $1 billion to create one of these drugs—6,000 experimentations that failed to finally arrive at a drug that is efficacious. And, in most cases, about three-quarters of the patent life is also consumed by that process. So the companies, to recoup that $1 billion and make a profit, they have maybe 5 years, in some cases, maybe less, to recoup their profits. That is the reason why drug prices are so high. These safety concerns are real and I strongly believe if we truly care about seniors and other patients who depend upon prescription drugs, we should not expose them to what currently amounts to pharmaceutical Russian roulette.

I do not believe that sacrificing the safety and future supply of our drugs by reimportation is the right answer to the high cost of prescription drugs.

I hope I have cleared up some of the misunderstandings that Medicare beneficiaries have about the MNA law. Again, we gain nothing by spreading untruths about the Medicare bill. I have been discouraged with some of the comments made by some of our colleagues who know better, or should know better. They need to review the bills that they cosponsored and wanted to pass on the Senate floor. In my opinion, those bills did not do nearly as much for seniors as the MMA. Frankly, those bills were more costly, and provided seniors with less benefits. The MMA law passed with bipartisan support in both Houses. The only thing that results from charges which have been made on this floor, is confusion of Medicare beneficiaries, the very people all of us are trying to help. I think that is regrettable.

It is astounding to me that some of our colleagues are scaring our seniors to death when we are spending $400-plus billion to provide them with better Medicare coverage. The MMA helps the truly poor so they don't have to worry about donut holes. In my opinion, the MMA is something all of us should support.

What gets me upset are some of the arguments being made on the floor that are not only erroneous but, I think, are misleading. I believe many are just being made for political purposes.

I think one Senator called my argument flimflam—yesterday. I defy anybody to refute the principles I have discussed here today and the remarks I have made here today. You can differ with them, you can disagree with them, but I don't think you can disagree with the facts.

It is time for all of us to start helping seniors by helping them to understand this bill so they can benefit from it. Deep down, I think one reason some oppose this bill so much is because it represents liberty and freedom in the case of the health savings accounts. HSAs was one of the most hard-fought provisions in the entire bill by the other side. I believe the opponents of the bill do not think the American people can save for their own health care. They don't trust the American people to save for their own health care. They believe the Government is the last answer to everything. They believe without the Federal Government telling them how to live, what to do, and what they can consume that they can't help themselves.

Can you imagine a young person who took advantage of that health savings account? That young person would have to assume the burden of paying for all of these Federal programs in health care. If that young person saved $1,000 a year tax free for his or her entire working life up to 56 or perhaps 70, because we are all living longer these days, that young person would have hundreds of thousands of dollars, if not a million, to take care of his or her own health care.

That is the way it ought to be. Isn't that the American way? Shouldn't we try to take care of ourselves first and then help others?

I believe the Federal Government should help those who cannot help themselves. Where I draw the line is I don't believe that the Federal Government should help those who could help themselves but won't. I think there is a difference between the two. But there is nobody more compassionate than I in helping those who truly need the help.

I wanted to set the record straight. I am disappointed in some of the remarks which have been made on the floor against the MMA. Some of those remarks have been overly excessive and I hope that type of rhetoric will be discontinued.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana has 90 minutes.

Ms. LANDRIEU. Madam President, I see my colleague from Alabama who has been waiting patiently, as I have, throughout the day to speak. He only wants to speak for 5 minutes. I yield 5 minutes of my time, and then I will reserve my right to speak for the 85 minutes remaining.

Thank you.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the Senator from Louisiana for her courtesy. I will contain my time to 5 minutes and ask that I be notified at 4 minutes.

I wish to say while the distinguished chairman of the Judiciary Committee is here that he deserves great credit for the Justice For All Act. I had serious objections to some of the provisions in that bill in committee and objected to it, and thought we would never see the bill pass. I declared it at one point a bad bill. But Senator HATCH believed there was a problem with DNA analysis in America, and so did I. He believed there was a problem that could be improved with death penalty representation, and so did I. He worked with Senator LEAHY and Chairman SENSENBRENNER and Congressman DELAHUNT in the House, and others, and was able to deal with the problem in the legislation.

I am pleased we were able to see that bill cleared today. I think it is a bill that will be effective in dealing with the problems that we know exist in two of those areas.

Mr. HATCH. Madam President, if the Senator will yield, I thank the Senator for his comments. I thank him for his energetic good work on this bill. He and Senator CORNYN in particular helped to improve this bill, and we should all be proud of it.

I thank the Senator.

Mr. SESSIONS. I thank the Senator.

One of the problems we had was that the legislation restricted States from putting the DNA of those arrested into the system. We offered an amendment in committee to fix that. That has been fixed now. States can put into the system DNA of people who have been arrested but not convicted. In reality, history teaches us that many people kill more than once. We watch those ''Cold Case File'' shows, and you see people are arrested and not convicted. Later on they are arrested when they commit the second, third, or fourth murder. That is too often a pattern, unfortunately.

The bill allows forensic science spending now for other analyses if there is no DNA backlog. DNA represents 5 percent of the forensic scientific analysis done in these criminal cases. It is a critical and wonderful tool, but it is not the only tool to be used. We have a little more flexibility in the bill than we did before.

I was concerned—and I think others were—that the money that would be spent for training people to try death penalty cases would be spent by a governmental entity that is responsible to the people, not being given directly to an unaccountable special interest group. They did this in States around the country that have an ideological opposition to the death penalty. For some of them, that is their No. 1 goal. We have had problems in the past when those organizations received money. The Congress ended that in 1996. I think that was a good decision. We fixed that in this bill.

There are some marvelous lawyers who dedicate themselves to representation of convicts or people charged with capital murder. I respect them. I respect people who do not agree with the death penalty. I have concluded it is an appropriate penalty, but regardless, it is the law of the majority of the States of this country, and good representation is required. We ought to do it in the right way.

We made progress. Historically, judges appoint lawyers in criminal cases. That would have put the original language, put the training and payment and selection of attorneys, in an outside entity's hands. The commission would be set up in the States that include judges, former prosecutors, not current prosecutors, and certainly defense lawyers to help select and train trial attorneys. It also says 75 percent of the money should be spent on training for the trial, which is the heart of the process.

The appeal follows afterward, and we need fair, good trials, so we will focus most of the money on getting a fair trial so the appeals are less important. They are less important when the trial is done right to begin with than if it is messed up. It provides training for prosecutors because prosecutors sometimes also fail to handle the cases correctly, and good training can help them conduct a fairer trial with fewer problems.

This is a bill I can support. I was pleased to be able to do so. I thank Senator DEWINE and others who helped make this bill possible.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Ms. LANDRIEU. Mr. President, I appreciate the opportunity to speak for the next hour and a half, and, depending on whether other Senators want to speak later in the night and what the agreements are, I may want to speak even longer because the subject I want to speak about is extremely important to my constituents and to many constituents around the country.

I spent a couple of hours in the Senate yesterday speaking about the tax bill, the $137 billion tax relief bill the Senate and House have been negotiating now for 2 years. Not just the last few months, not just this Congress, but for 2 years the Congress has been putting together a tax relief bill because we basically were forced to put a bill together because of a decision made by

the World Trade Organization, of which we belong and encourage, that said part of our Tax Code was not in order.

I am not on the Finance Committee. The Presiding Officer and I serve together on the Appropriations Committee. I am not a member of the Finance Committee. The Finance Committee, 2 years ago, began to put a bill together to address that situation. It was about a $50 billion problem. That is a lot of money.

What happens around here is every time we open the Tax Code, it is very tempting for everyone else to try to get in the bill because if you can get in the bill, you can get money out of the Treasury. You could ask for additional tax relief. You could correct something that you think was an injustice to your business, whether you are a big business or a small business, an international business or a domestic business. You could ask for all sorts of help.

What happened was this bill started out as a very specific $50 billion fix for something that most everyone—not everyone but most everyone, including myself—thought we should fix. It has turned into a $137 billion tax relief bill. That is the truth. That is very troublesome.

That is not even why I am speaking. There are things in this bill that are good and bad, and Senators have had all sorts of ideas and expressions of their opinion, including an eloquent speech about an important provision by the Presiding Officer for leaving out the regulations on tobacco, putting in the buyout provisions from the farmers but leaving out the companion regulation that was in the bill when it left the Senate.

Other Senators have come to the Senate today to speak about different issues. I come to the Senate not saying those are not important. But there is one issue in my mind and in the minds of many of my constituents in Louisiana and around the country that transcends all of these issues and which is in a total category by itself. It is an issue that doesn't have anything to do with corporations or business; it just has to do with fairness, justice, truth, loyalty, and honesty.

The truth is that in 2 years, putting this bill together that went from $50 billion to $75 billion to $100 billion to now $137 billion, we forgot one group of people. Just one group I think was forgotten. This is the bill, $137 billion—pages and pages of the bill. It is like two big phone books. Two years we put a bill together. Almost every kind of business one can think of is in this bill, from energy companies to chemical companies to farmers to hospitals, health insurance; good companies that deserve help—I am not saying they don't—and good tax provisions. But the one group that is left out—if you read the bill from the beginning to the end, read it upside down, backward, in any language, you will not find one group of people in the bill. I hate to say who that group is because the people in America do not believe we could do this. We left out our troops. We left out the men and women on the front line.

This is my problem. They are so far away in Iraq on the front line that we cannot see them or we will not see them or we do not want to hear them, maybe, because they are on the front line and they do not have time to be at the Capitol lobbying for themselves, and so we just left them out.

When the House Members or Senate Members come to the Senate and say they cannot understand why we are not rushing through on this bill and why some Senators are holding it up, I will tell them why. This Senator thinks it is a shame, unconscionable, to work for 2 years and put a $137 billion bill together that helps everyone—and you could argue for good, for bad—yet leave our troops out.

Some of us, including the Presiding Officer, Republicans and Democrats—had put in the bill when it was in the Senate a very small but important provision that only cost $2 billion of the $137 billion—just $2 billion for our troops. Our troops are taking 100 percent of the risk. Our troops are bearing 100 percent of the sacrifice. We only asked for less than 2 percent, and we got nothing.

So this Senator is going to stay on this floor for as many hours as I can to tell the truth about this, and perhaps these words will reach to somewhere or people will be inspired or encouraged to take the political actions necessary to make sure these troops do not get left out next time or before we finish.

Let me read you some of the e-mails I am getting because we put this up on our Web page, and I have been doing interviews since I found out about this Wednesday night, as many as I can. I am going to continue to speak and debate and talk to anybody who wants to interview me about it.

I know some of these e-mails get a little political, but I think it is OK for me to read them here. But these are e-mails. I am happy to have them in the RECORD. I am not going to read all the political ones. I am trying to pick a mix of them. But I would like to start with this one to show the potential of this issue:

> As a Texas Republican voter, you inspired me, and now I will take a harder look at Democrats running for any office because I'm a retired military service member. I have pretty much believed the services were better represented by Republicans, and I voted that way. You showed me that my basic ideas may have been flawed, and I will now look wholeheartedly into that. Thank you for such a beautiful speech demanding that the military be represented in that bill. You really moved me and may have switched my party affiliation with that direct and memorable speech.

Mr. President, my office is being flooded with e-mails like this, but let me read you another one from a Democrat:

> Dear Mary, I'm writing to tell you about how proud I am of work you did on the floor today. As I write, you continue to articulate a logical and, for most of us, a compelling argument as to why the National Guard and Reserve should be treated as first class citizens rather than second class citizens in the tax bill pending before the Senate. Well done. Can I convince you to move to North Carolina?

This is not about me. I am reading these not because I want people to know or because I want to brag about this issue. I want the Members of this body, and particularly the House leadership, the House Republican leadership, that took this out of the bill, I want them to know, Chairman THOMAS, Speaker HASTERT, and Congressman DELAY, how strongly Americans of all parties feel about what was done to our men and women in the armed services.

Let me be just very clear. The Republican leadership in this body supported this effort. I want to be very out front about that. The Republican leadership in this body, along with the Democratic leadership, supported this provision. And it went over to the House. Only in conference, at the direction of the Republican chairman, Chairman THOMAS, was it taken out.

Now let me say this: I am so tired of seeing our troops in the pictures, in the photographs, riding with us in parades, waving the flag, taking the pictures, but when it comes time to put them in the budget, to give them relief, to put them in the tax credits, they are nowhere to be found—only in political propaganda and pictures. And this Senator and my constituents have had enough.

I want to talk about why this is important. This picture is up here because I want to demonstrate that one thing in the bill—and I am not trying to pick on the ceiling fan importers. I am sure it is a very legitimate request. But we have a tax provision to give help to those companies that import fans from China. Meanwhile, our troops do not get in the bill.

Now, if anybody needed a fan, our troops need one because it is hot in Iraq. It is about 105 degrees. If there were any way for me to get some of these fans to them, I would put an amendment on the bill. But the fans are in. The troops are out.

Now, another reason this is important is because the Members who are on the Armed Services Committee and many Senators who have served in the military understand this. I served on the Armed Services Committee for a while. I was very proud to do it. And I plan, hopefully, one day to be on the Defense Subcommittee on Appropriations so I can continue to fight for them and to articulate some of these views.

But I am not sure the country understands how much we are relying on our Reserve forces. We have a total of about 1.6 million Active troops and we have 1.2 million Reserve troops. So it is about 60/40.

Now, in 1953, not that long ago, during the Berlin crisis, we only called up 148,000 Reserve troops. In the Cuban

missile crisis, we called up approximately 14,000 Reserve troops. To fight in the Vietnam war, we only called up 37,000 Reserve troops. This comes to a total of 200,000. So for almost 35 years, we only called up 200,000 Reserve troops. So our Reserve was operating in a place where the men and women could sign up, go do their weekend work, get a pretty decent paycheck for that, get training, and serve their country.

These Guard and Reserve, some of them are retired Active military, but many of them are policemen and firemen and women who want to serve and are happy to be that citizen soldier, that part-time soldier. Their goals have not changed, but our country's needs have changed. We made the decision in the 1990s to say, to save taxpayer money, to make our forces better and stronger, we are going to rely more on our Reserve and less on our Active Duty, and we cut our Active strength, therefore relying more on our Guard and Reserve.

The only problem with that is we keep forgetting them. We send them to the front line, we deploy them year after year, and then we forget about them. We are not sending them the pay they need, the benefits they need, the equipment they need. I am wondering, what is going on?

In the Persian Gulf war we had to call up 238,000 Reserve troops. In Haiti, we called up 3,000 Reserve troops; in Bosnia, 29,000; Operation Southern Watch, 2,000; Kosovo, 6,000; and the war in Iraq, 410,000 Guard and Reserve—currently about 5,000 of them are from my State of Louisiana.

Just 2 weeks ago, I went to Leesville, LA, the proud home of Fort Polk, where many of our troops train. It is a joint training base. I was with my mayors and my Governor, and we saluted our troops. We prayed with our troops. We were with them. We sent them off. The 256th Infantry Brigade is getting deployed. This is affecting thousands of families around Louisiana. This is not just happening in Louisiana. This is happening in the State of the Senator from Ohio, in Chairman GRASSLEY's State of Iowa, in Texas and California. Thousands of families are being separated, husbands from wives, wives from husbands, fathers from children, to go fight on the front line.

So you can see the increase and the frequently that we have called them up, so you would think that if we are calling them up more, we would help them more. But we help them less. You would think that if we have a tax bill going through, this is the group of people who should be on the front page. But they are not on any page. They are not on the front page. They are not in the middle. They are not on the last page. They did not even write a note to say: Sorry we couldn't help you this time. Maybe we can help you next time. Not even a PS.

I have been proud to support tax relief since I have been here for 8 years. I haven't supported all the tax relief packages, but I believe people deserve tax relief. I wish we could live in a world with no taxes. As soon as we figure out how to do that, that would make everybody happy. I am not sure how to do it, but I am sure somebody will think of an idea someday because we sure eliminate taxes right and left for everybody.

We have been spending the last 4 years providing tax relief, $2.1 trillion. This is direct tax relief, either special benefits, including military families and the earned-income tax credit, ideas like their combat pay or their severance pay would not be taxed. Tax benefits to our military basically amounted to $1.37 billion. Everybody else gets $2.1 trillion. But the guys and gals on the front line get $1.37 billion.

Someone will say: Surely, Senator, some of the $2.1 trillion will go to the military families. And, yes, that will happen. Middle-class families generally are in here, and our troops are also middle-class families. The Republican side will disagree with this, but what the Democratic side says is, since so much of this tax relief is targeted to families earning over $100- or $200,000, I would argue that very little of this money is going to get to military families. Why? Because most of these families only make $50,000. The average is $30,000 in the active lower ranks. Very few people in the military make over $150,000. So who are we helping? Not the guys fighting the war. Not the guys taking the bullets.

The reason I am particularly offended on behalf of the soldiers is that we can afford to help them. If we didn't have the money, if we just couldn't afford it, then I would go to them and say: Look, you all know more about sacrifice than anybody. It is in the code of the military. Sacrifice, it is what they do; it is what they are. So everybody has to sacrifice. But the fact is, not everybody is sacrificing because everybody else is not sacrificing anything. They are getting extra. And only the military is being asked to sacrifice, not just their life but their paychecks.

I guess what really is upsetting, as I learn more about this and as I read the materials that are sent out by our own Government, this is the ''family readiness paradigm.'' It is www.defenselink.military, I think from the Pentagon. Secretary Rumsfeld is quoted and President George Bush on this chart. I want to quote what the President said:

> The National Guard and Reserve are a vital part of America's national defense. [They] display values that are central to our nation: character, courage, and sacrifice, [and demonstrate] the highest form of citizenship. And while you may not be full-time soldiers, you are full-time patriots.

That is lovely. It is wonderful. Except these words are not backed up with actions because actions would have put the patriots in the bill and said: You deserve a portion of this tax cut because the Guard and Reserve that go to the front lines are taking a 41 percent pay cut, according to the Government Accountability Office study.

And why is that? Because the Guard and Reserve are citizen soldiers. They work in regular life as truck drivers and architects and doctors and nurses. They might make $60-, $70-, $100-, $150,000. But when they are activated and they go to the front line, they leave their civilian paycheck at home and they pick up their Army, Navy, or Marine paycheck. And it is only $30,000 or $35,000 or $40,000. Some of these families are taking a 50-percent pay cut.

So while they are on the front lines taking the bullets, their families are back home. I have a letter from one of the families in Louisiana that said: Thank you, Senator, for fighting for us. We live on a very modest and meager income. I have been pouring water in my children's cereal to make ends meet because the grocery bill is getting pretty high.

I have to go home and tell that lady in Hammond that we couldn't find $1 in the bill to help her with her grocery bill. This is particularly upsetting to me.

The chart says ''Self-reliant families,'' I like that word ''self-reliant.'' I think it is important for us to be self-reliant, to be strong, to not be overly dependent. I believe in self-sufficiency and economic independence and pulling yourself up by your bootstraps. But why is it that we have to put a chart up for our Guard and Reserve asking them to be self-reliant, when this bill doesn't represent self-reliance? This bill represents companies and individuals who came to the Government to ask for help and aid, not self-reliance.

But in the charts that we send out to these families as they wave their loved ones goodbye, we tell them: Forget about being in the bill. Here is your brochure that talks about self-reliance. And if you need help, call the outreach family readiness coordinator. Maybe we can help you organize your finances because we know your situation is tough.

That is wonderful, except what they really would need from us is a whole paycheck. I am not asking for a bonus for them. I am not asking for any special tax break. Just make their paycheck whole. Just keep their paycheck whole. The way we did that in the Senate FSC–ETI bill was by giving the employers in this country, the patriotic employers who are basically subsidizing their salaries by saying: Harry is leaving us tomorrow. We can't let his family have to live on $30,000 less.

So here is a small business. I can just see them now getting together in the coffee room: Harry has to go. Can we make it? Can we help him? Can we keep his pay going because he is going to be gone for a year?

That small business digs deep. Harry goes to the front line. They keep sending him a check—even though he is not at work for them, he is at work for us—

and keeping that paycheck whole for that family.

And all of us in the Senate thought that was the right thing to do. These are patriotic businesses. Let's give them a tax credit, at least half, so those small businesses that are doing this could be rewarded. They could be recognized, voluntarily. They don't have to pay their active duty Guard and Reserve employees. But if they are doing it, they should get a 50-percent tax credit.

So, in essence, our amendment was creating a partnership between all the small businesses in America, patriotic businesses and large corporations that are keeping the front line going.

But Chairman THOMAS decided in his committee that this bill and the things in it represented a higher priority than keeping the paychecks whole for the men and women taking the bullets for us on the front line. I am still waiting to hear from Chairman THOMAS about why he thought that or what it is that I have missed. I haven't heard a thing.

I would like to read the letter I sent to the President. I put it in the RECORD yesterday. I will read the letter I sent to the President because I want to say again, as I said yesterday, I don't think the President of the United States knows about this. I think if he did, he wouldn't have let it happen. I want to read my letter again. I hope to get a response. I just sent it to him yesterday about 24 hours ago.

Mr. President:

I am writing to bring a grave injustice to your personal attention. During the Senate consideration of the FSC/ETI legislation, the Members of the Senate added a modest provision to assist our troops. GAO studies have concluded that 41 percent of our Guardsmen and Reservists called to serve their country on the front line must take a pay cut to do so. Fortunately, some companies around the country have stepped up to the plate and taken the patriotic step to make up the pay-gap of these brave men and women. The provisions that we added in the Senate would have provided a tax credit of up to 50 percent to cover the cost of these companies who make up the difference. In doing so, we hoped both to acknowledge the patriotism of the existing companies and at the same time encourage more employers to take this step.

Mr. President, no doubt that you have traveled the country and you have confronted the same stories I have from some of the military families struggling to make ends meet. We have had to ask an awful lot of our Guard and Reserve. They ask so little from us. So trying to take this worry off the minds of our men and women on the front lines seems to me to be the least that we could do. So it is with deep embarrassment for our Government that I must report that this very modest release for our troops was stripped from the conference report by Congressman Thomas and the leadership of the U.S. House.

While I am certain that representatives of your administration participated in this conference, I presume that you did not have personal knowledge of this decision to cut support for our military families. Regrettably, this decision has placed all of us in a very difficult position. While I endorse many aspects of this bill, I simply cannot support a measure that places so many lesser priorities ahead of our most important priority.

It goes on to say that I respectfully request that the President exert his significant influence to correct this at the earliest possible time. It could be by vetoing this bill and sending it back and telling us in a veto order to fix it, which has been done before and could be done. That is unlikely. It is very difficult to do, but I think these are difficult times. Or the President and the House leadership could admit they made a mistake and promise, in writing or in other ways, to include it in the next bill through here. This letter was signed by myself and Senator JAMES JEFFORDS from Vermont.

Many other Senators signed a letter to the conference. For the record, I want to make sure that people understand that Senators MURRAY, JOHNSON, CANTWELL, CORZINE, BOXER, KERRY, DURBIN, DODD, PRYOR, REID, LINCOLN, BOND, GRAHAM, DAYTON, and many others signed onto a letter to the conference committee when this bill was being decided. It is addressed to Senators GRASSLEY and BAUCUS, who are very supportive of this measure. It was also sent to Representative BILL THOMAS and Representative CHARLES RANGEL. I do know that CHARLES RANGEL, the Democratic ranking member of the Ways and Means Committee, supported this. It was a decision made by the House Republican leadership, and it was a bad decision. It is a decision that needs to be changed at the earliest possible time.

Mr. President, one other thing that is very disturbing to me and particularly hard or difficult to articulate is that I have met so many men and women in uniform. I have met so many men and women in uniform, and they trust us to represent them and to do our best by them. When they are on the front lines, they don't have time to have lobbyists here.

They have many Members of this Senate who have put in additional benefits—I see the chairman of the Appropriations Committee here, who has worked very hard for our men and women in uniform—and we have put in time and time again help for them. So we have tried to respond in the Senate. But they trust us to look out for them.

In this bill, when it left the Senate, this provision was in the bill. When it went to conference, it was taken out. Again, there are many other items that were not included. I understand that. I am not arguing that anything in this bill is not worth our attention, because some Member felt strongly about it or it would not have been in the bill. I am not arguing about what is in the bill. I am arguing about the one provision that I know about that was left out of the bill. It is not Senator LANDRIEU's provision; it is a provision for our Guard and Reserve, to keep their paychecks whole so they can save for their future, so they can send their children to college, so they can fight and keep their minds on the front line and not have to worry about the homefront. I am wondering why they were taken out.

Again, I feel obligated and very motivated to try to spend some time in the last days, as we wind down the session, to speak about a grave injustice. That injustice is that we have 1.2 million Guard and Reserve in our country, representing about 40 percent of our total force. They are fighting on the front line in Iraq, in Afghanistan, in places all over the globe. You can see on this chart that these are percentages of our Guard and Reserve that have been activated. Thirty-six percent of my Guard and Reserve—I think I have close to 12,000 Guard and Reserve units in Louisiana—are on the front lines. If you look at Washington State on the chart, it is 46 percent. Over here in Florida, it is 47 percent. You can see the States and the percentages of the Guard and Reserve.

Every one of these percentages represents thousands and thousands of families who are being called up to go to the front line. What could be more central to our security than the troops going to the front line? Why would this Congress, led by the House Republican leadership, spend 2 years putting together a tax relief bill and leave them out so that they have to take a pay cut while everybody else gets a bonus or they take a pay cut and everybody else gets extra financial help or everybody else gets their tax bill lowered, but they have to pay the same taxes, and they get not even a whole paycheck?

The Senator from Iowa came down earlier to the floor of the Senate and made a couple of comments about this conference. I just have to respond, and I know he is not here, but it will be in the RECORD. He will be here tomorrow, and we can talk face to face about this. I have the utmost respect for the Senator from Iowa, the chairman of the Finance Committee. It has been very difficult for him to put this bill together, I know. The ranking member from Montana has been very helpful in putting this bill together.

I do want to take issue with something the Senator from Iowa said. He said it has been a long road to what I hope will be a final passage of this legislation. American workers, especially those in the manufacturing sector, put in the work necessary to make the U.S. the most productive economy in the world. We Senators should employ the same work ethic. We have to match our constituents' work productivity. We cannot delay this matter any longer. We cannot leave the jobsite without finishing our work.

I understand we want to get this bill finished, but I think spending some time talking about the soldiers on the front line, who were left out, is something that is important to do so we can either get this fixed before the end of the time for this bill to have to be considered or we can cause the focus to be such that it can be fixed in the next tax bill that passes this body.

He goes on to say that in his opinion it was a very open conference. Now, that may be his opinion, but from what

we understand from Members who were there, basically the House Republican leadership laid down their mark, and out of a $137 billion bill there was only $182 million worth of amendments that were changed from the Republican leadership written bill. So of $137 billion, only $182 million—only seven items of this entire bill, which could be on one page—were added or changed from the House mark. So the House leadership wrote the bill and they left the troops out.

In the conference, the seven items, it could have been any seven, but it was rural carriers, letter carriers, were added at a cost of $33 million. The SUV loophole was closed. The National Health Service Corps loan repayment was put in that added $72 million to the cost; small issue bonds; electric cooperatives; marginal stripper wells; and whatever the blue ribbon task force on tax reform was, it is no longer existing because it was taken out.

So out of $137 billion, there were seven items, for a total of $182 million, that were changed.

When the argument is made that it was a very open process and the Senate put in some things and the House put in some things and it was all open and everybody talked and everybody negotiated, it is not true. What is true is for 2 years in many meetings, in many hearings, in many speeches, over many hours, a bill was put together and time and time again in those meetings and on this floor and in the committee, letters were sent to the Republican House leadership, please do not forget the troops. But when the final print was done, when the bill was printed for distribution, they were left out.

I have stated until this issue is addressed, I am going to vote against this bill. I have not had one person in Louisiana call me and say: Senator, how could you possibly vote against my tax relief that is in this bill? Because the people in Louisiana are very patriotic and they do not think anyone should stand in the front of the line, except the troops. Time and time again, the people of Louisiana show their respect in real and significant ways to our troops. So while there are tax credits in here for the oil and gas industry and for shipbuilders and for fishermen, and many things that are important to my State—and I want them to know I support those industries—I also know and can say with confidence there is not an industry or a business or a person in my State that thinks they should be ahead of the Guard and the National Reserve, not one.

I promise that if anyone from Louisiana calls me to tell me they do think they should be ahead, I will be happy to admit I was wrong.

Our troops depend on us in many ways, and in the middle of a war when we are fighting one, as we are, with a lot of rancor and different views and different opinions, it is important when we can send our words of support that our actions match those words and that in every way we can tell our troops, because it has been a difficult time, we are in an election year, there are different opinions about the way this war is being prosecuted, but I would think at this time in particular we would want to send, by our action, not our words, real support for our troops.

What could we send more than a paycheck? When we do not take the opportunity to put the paycheck in this tax bill—and maybe people will come and say, Senator, we put all of the help for the Army and the Navy and the Reserve in the Defense bill,—let me say what will happen when we leave them out of this tax bill: We end up having to argue in the Defense appropriations bill whether we want to spend money for their helmets, their rifles, their covered Humvees or do we want to spend the money for their paychecks. Why are we making them choose between a helmet and a paycheck?

That is what happens when we just focus on the Defense appropriations bill and divvy up the money. It is not fair to them. It is not right. It is not what we should do. When we have a tax bill moving through that could provide obviously $2 billion of the $137 billion we are giving, we could have given them tax relief. If there was a health care bill coming through, which there has been, we could provide health care provisions out of the general health care bill for our troops. Then in the Defense bill, we do our best to allocate those moneys as fairly as we can.

So that is why I am particularly upset, because I have been in those discussions on the Appropriations Committee and I know how tough it is. Do we give a 10-percent pay increase or do we invest in operations and maintenance on the bases? There is never enough money to go around. For what our troops are doing for us and the times our country is in and the challenges we face, we should not make them have to make those choices when we obviously have other options.

Let me read a couple of other e-mails I have received from people who feel strongly about this, because I think it is important.

I am a retired Army Reservist who was activated and deployed to the Gulf during Desert Shield/Storm. Because the company where I had worked for 16 years at the time was going through financial difficulties the best they could do was to continue with my family health plan, and I really appreciated that especially in their predicament.

Now, think about this. This is a guy going to the front line and he is especially appreciative that his company has decided, out of their patriotism and generosity, to keep his family receiving health care. They are not making his paycheck whole and he is not even angry about it. That is how men and women in uniform are. They do not even want to ask for help because they believe in self-reliance. They believe in sacrifice. But they also believe in fairness and honesty. It is not fair to leave them out of the bill. They deserve more. They deserve our truthfulness, our honesty, our hard work and our fairness, and we let them down.

He goes on to write:

> Other reservists serving with me but who came from stronger financial private or public work settings enjoyed all prior pay and perks; most soldiers found themselves somewhere in between those two positions.

So he is saying he went over there with very little. Some went over there with the ability of their employers to keep their pay whole, but most people fell in the middle, he says.

> Your proposal about the Administration and Congress backing up the rhetoric with real money would benefit employers, employees and in the long run the services in their retention efforts.

I want to talk about retention.

I don't know how many times the generals have to come before us to speak about retention. I don't know how many times some of us on the Armed Services Committee have to come to this Chamber to say we are having a tough time recruiting for our armed services, not because we don't have brave men and women, not because they don't want to serve, but when the compensation and the pay packages get so out of line with what people can make in the civilian world, it puts a lot of pressure on them. Believe me, I have talked with these soldiers. With tears in their eyes, sometimes, they tell me: Senator if it were up to me I would go and you wouldn't have to pay me a thing. This isn't about me. But I can't bear having to watch my wife take a second job or not be able to be home with our two children because I'm away. Please tell them I am not asking for myself, I am asking for my spouse. I am asking for my children.

I want to speak for them. Could we not just keep their paycheck whole? A report last month let us know—I will supply it for the RECORD—that the Guard and Reserve, for maybe the first time in a long time, I don't know exactly the number of years, but for the first time in many years, fell short of its goal. It fell short by 5,000 in its recruitment.

You might understand why. It is not because Americans are not patriotic. It is because of this issue. It is about pay. It is about benefits. It is about whether our Government cares enough for the soldier to take care of their family when they are away. The soldiers would fight for nothing. They don't eat very well over there, and they don't care about it. But they do care about their families and their children back home. We should care as much as they do. We can help by keeping that paycheck whole, sending it home for our soldiers on the front line. But we did not do that when we put this bill together.

As I said, I am sorry to have to report to the President that is the case because I don't think he has any personal knowledge. Maybe he will have

gotten the letter in the last 24 hours. He has been very busy. I know it is a very busy time. But I know somewhere in the White House they are reading that letter, and I am looking forward to them letting me know what they think about it. Do they think it was a good idea? Do they think we could fix it shortly in a different bill? Do they think we could find $2 billion to keep those paychecks whole?

Here's another e-mail—

Let me start by saying that I do not reside in your State but I still listened to you on C–SPAN and I loved it. Yes, the very people who we depend on for our national security cannot make ends meet. This is something many people do not understand, because they have never been affiliated with the military. Painful to note, billions of our tax dollars go to help overseas, but not for our troops' loved ones. I, along with the other girls, we get together for our weekly quilting group. And we opened up other people's eyes about this subject matter many months ago. I don't know that we can get them to vote any differently, but it sure felt good to hear you tell the truth.

I am not reading this for my own benefit. I am saying that there are many people around the country—one of the girls, probably an older woman, I would imagine—who quilts with a group of friends. They, evidently, talk about this. They know about military families. They are probably part of a group somewhere in this community that collects cans of food and other helps for the families at home. There is a great support network in this country.

Why can't the Government be part of the support group? I don't understand it. The Government has more money than everybody put together, and we can't find a half a billion? $250 million? We can't find a few thousand dollars in the tax bill? And we have Americans sitting around their kitchen tables collecting food for our troops on the front line?

In one way it is a wonderful thought. In another way it is awful to think about. I am happy Americans are supporting the troops. Our Government should do the same, and not just in the photographs, and not just in the pictures but in the budget.

I am going to have a lot more to say about this subject. Again, for people watching, as I wrap up and put us into a quorum call for the next little bit, I want to say again, the underlying bill is an important bill, and it needs to be passed. This Congress has worked on it for 2 years. There are many important provisions in this bill. But for the life of me I cannot understand how we have 150,000 troops in Iraq, why we left them out. About 40 percent of them are Reserve.

When they go to that front line they don't take a whole paycheck with them. We could have helped make it whole, but we chose other priorities. I don't know a higher priority than supporting our troops. Again, not just in the pictures, not just in the photographs, not just in the parades but in the budget, in our actions not just our words.

Mr. STEVENS. Mr. President, I have received this letter from Tom Ridge, who is the Secretary of the Department of Homeland Security.

I ask unanimous consent that it be printed in the RECORD.

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

U.S. DEPARTMENT OF HOMELAND SECURITY,
Washington, DC, October 9, 2004.

Hon. TED STEVENS,
Chairman, Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: Earlier today the House of Representatives overwhelmingly passed the FY 2005 Homeland Security Appropriations Conference Report. I urge the Senate to pass the final legislation expeditiously, so that DHS can continue the important mission of securing the homeland.

While the Continuing Resolution currently enacted allows DHS to continue its operations in support of the existing security of our Homeland, we urgently need the additional spending authority and new initiatives contained in the Conference Report on the Department's FY 2005 Appropriation. During this increased period of risk, DHS must continue to improve capabilities in several critical areas including enhancing law enforcement, strengthening our borders, and improving transportation security, I remain concerned about operating under a lengthy Continuing Resolution. For example, under the Continuing Resolution, DHS would not have the funding to maintain the current on-board strength of the Federal Air Marshals; development and deployment work on the legislatively required 2005 deadlines for US Visit will be slowed; the Border Patrol will be unable to continue the critical work to upgrade and update the surveillance technology used on our land borders; and additional Detention and Removal programs and bed space will not be provided. Additionally, necessary program enhancements such as the Container Security Initiative, Radiation Portal Monitors, targeting systems, and critically needed aviation security technology are also on hold. Finally, FEMA's Disaster Relief Fund is in need of supplemental funding as soon as possible.

I appreciate the Senate's continued commitment and diligence in passing these critical pieces of legislation. If there is anything I or my staff can do to assist in expediting this process, please contact me or Under Secretary Janet Hale.

Sincerely,

TOM RIDGE,
Secretary.

UNANIMOUS-CONSENT AGREEMENT—S. 2845

Mr. STEVENS. Mr. President, I brought this to the Senate floor because, as I stated previously, I was informed that tonight the moneys for distribution in the hurricane area that FEMA supports will expire. We have to pass the MilCon bill and we have to pass the Homeland Security bill as rapidly as possible.

We do not have copies of the intelligence bill that was passed. All of us have had requests for it.

I ask unanimous consent that the intelligence reform bill, S. 2845, be printed as passed so we may distribute copies of that and so that the conference committee can have copies of that bill.

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

Ms. LANDRIEU. I don't see anyone wanting to speak. 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. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Ohio, Senator DEWINE, be recognized for up to 12 minutes.

Ms. LANDRIEU. Reserving the right to object, only for the purposes of his statement, and then I would like to be recognized. Otherwise, I will object.

Mr. REID. Otherwise what?

Ms. LANDRIEU. I am going to object. Only to be recognized for the purposes of reading a statement, after which the Senator from Louisiana be recognized; otherwise, I will object.

Mr. REID. I will not agree to that.

The PRESIDING OFFICER. Is there objection?

Mr. DEWINE addressed the Chair.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. DEWINE. Mr. President, I rise this evening to thank——

Ms. LANDRIEU. We are in a quorum call.

Mr. REID. There was an objection.

The PRESIDING OFFICER. We were out of a quorum call.

Ms. LANDRIEU. I note the absence of a quorum.

The PRESIDING OFFICER. The Senator from Ohio has the floor.

Ms. LANDRIEU. We were in a quorum call.

Mr. REID. There was a request for the Senator from Ohio to be recognized. The Senator from Louisiana asked that it be modified so she would be recognized afterwards. I said I wouldn't agree to that.

The PRESIDING OFFICER. The Senator is correct. But the Senator then yielded the floor. The Senator from Ohio sought recognition and had been recognized.

The Senator from Ohio.

(The remarks of Mr. DEWINE are printed in today's RECORD under ''Morning Business.'')

Mr. DEWINE. Mr. President, I thank the Chair and yield the floor.

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

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

Mr. DEWINE. Mr. President, I ask unanimous consent that I be allowed to

speak for 12 minutes and that immediately after I speak Senator LANDRIEU be recognized.

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

JUSTICE FOR ALL ACT

Mr. DEWINE. Mr. President, several hours ago, Senator HATCH came to the floor to discuss the DNA bill that we have been able to pass. I congratulate him for the fine work on that bill. A number of people have worked on that bill.

I became interested in this issue a number of years ago. I have been interested in the whole area of crime technology, frankly, going back to my work as county prosecuting attorney in Greene County, OH, many years ago.

In those days, we did not have DNA. We did not have a lot of the technology we have today. I have been able to watch over the years, as I know the current occupant of the chair has, the great development of technology which has revolutionized what we can do today in law enforcement to solve crime. It has been one of the things I have worked on since I have been in public office—first, my time in the State legislature, then in the House of Representatives, and when I was Lieutenant Governor of the State of Ohio, and now, in the last decade, in the Senate.

I specifically became interested in what turned out to be this bill we have been talking about today, the DNA bill, several years ago when I met with the BCI back in Ohio, which is our State lab and State bureau, and went out there to find out some of the things that needed to be done. I had a long discussion with them in London, OH, about the real problem we have in Ohio and the problem we have across this country.

It is a problem of what we call rape kits; where there is a rape victim, the police go in, they take evidence from that victim, and then many times, tragically, I have learned—I know my colleague who is in the chair understands this—these rape kits are stored, they are never processed, and that information never gets into any central database. There is a tremendous backlog of this across this country.

Because of this, to try to help clear up this backlog, I introduced S. 149, the Rape Kits and DNA Evidence Backlog Elimination Act of 2003. About the same time, roughly the same time, Senator BIDEN introduced a bill which had the same intent to deal with this problem. Chairman HATCH asked me later on to combine my bill with his and those of other Members to create the bill we have today. When he asked me to do that, I gladly agreed.

Today, we all proudly stand as cosponsors of this bipartisan legislation. I know my colleague in the chair has worked on this legislation. I think it is a piece of legislation that all Americans can be proud of and that will help Americans be safer. The provisions of my original bill that are included in the legislation we passed today will protect innocent victims and will, in fact, put criminals behind bars. It will do both.

This bill includes my language to authorize over $1 billion to eliminate the backlog of over half a million rape kits that are sitting on the shelves of evidence lockers in police stations across this Nation.

Let me emphasize again that there are over half a million rape kits that have not been tested and therefore have not been put into a central database. How many of these rape kits contain evidence that would take a rapist off the streets? Well, we can't be sure, but we do know statistically that approximately one in eight of all kits currently tested in Ohio do, in fact, result in a match in our DNA database to a rapist. That is an unbelievable figure, one in eight will result in this statistical match.

In fact, approximately the same number will link the rape to another crime scene, giving our law enforcement officers one more piece of critical evidence that may, in fact, lead to the arrest of a criminal and the prevention of future crimes.

If you add these two figures together, you can see that nearly one in four of all rape kits tested will result in key evidence for law enforcement. That is a staggering statistic and demonstrates the power of modern technology when, in fact, it is used to fight crime.

This bill also includes my language that will expand the number of criminals that we put in our Federal DNA database. Very simply, this language will expand the current reporting requirement to include all Federal felons, not just a few specific felons as required under current law. Of course, the more information that goes into the DNA database, the more likely it becomes that we will match evidence from the crime scene to the DNA profile of the criminal in the database.

Additionally, this language will permit States to cross-reference DNA information from people under State indictment with the current Federal database. For example, if a criminal is arrested and indicted in New York, and the New York law enforcement officers enter the DNA information in their State database, this law permits New York to share this information with the Federal database so all participating States can access the information.

This means that a police officer could link DNA evidence from a crime in Ohio to an arrestee in New York. Again, by realizing the full potential of available technology, we will identify more criminals, prevent more crimes, and protect more innocent victims.

Finally, this bill includes my language that will extend the period of time in which law enforcement officers can utilize DNA evidence to solve crimes. Under current law, the statute of limitations for all Federal offenses starts when the crime is committed.

Under my language, if DNA evidence is found at the crime scene, the statute of limitations for most crimes does not start to run until the DNA evidence is matched to a criminal in the database. This means that criminals will not be able to escape justice merely because they were able to avoid capture for a specific period of time.

This bill also contains the Crime Victims Act for which I am an original cosponsor. This act provides victims with the right to be heard and considered during Federal criminal prosecutions.

As I know everyone here agrees, we owe it to rape victims, crime victims in our society as a whole, to do all we can to apprehend violent criminals. This bill takes a significant step in that direction.

I thank Senator HATCH for his excellent leadership, being so steadfast in doggedly pursuing the agreement necessary in the Senate to pass this bill. Passage of this bill is a testament to his leadership as chairman of our committee. I also thank Senators LEAHY, BIDEN, and FEINSTEIN for working tirelessly to achieve this momentous outcome.

I thank Chairman SENSENBRENNER, as well as Representative DELAHUNT in the House for their outstanding leadership that resulted in a nearly unanimous vote of support by that body.

Our great Nation will be safer and our confidence in our standing judicial system will be reinforced as a result of this timely and much needed legislation.

I would also like to thank the many staff who worked on this bill. Specifically, I would like to recognize the Chief Counsels of the Senate and House Judiciary Committees for their commitment to get this bill done: Bruce Artim and Phil Kiko. I also thank Brett Tolman, who crafted a key compromise in the bill that allowed the parties to come together; Katy Crooks, who worked tirelessly to better this bill; Jay Apperson and Mark Agrast, who brought their outstanding wisdom to the process, Julie Katzman, Neil McBride, Jon Meyer, Christine Leonard, Louisa Terrell, Bruce Cohen, Tara Magner, David Brog, Ted Lehman and David Hantman for their strong knowledge of critical issues; and my exceptional legislative team that worked so very hard on this for me and the people of Ohio: Paul Palagyi, Peter Levitas, Robin Blackwell, Ann O'Donnell and my Crime Counsel Robert Steinbuch. And my former Crime Counsel Evelyn Fortier.

The PRESIDING OFFICER (Mr. HATCH). Under the previous order, the Senator from Louisiana is recognized.

Ms. LANDRIEU. Mr. President, under the previous order, I asked to be recognized after the remarks of Senator DEWINE. I really appreciate the leadership trying to work out our schedule. It has been a long couple of days. It is getting late into the night. I really appreciate everybody trying to work forward to getting some of these bills

passed. But as I said, one of the most important bills that we have remaining to pass is a $137 billion tax relief bill.

There are many good provisions in this bill. There are many industries, large and small, in Louisiana that are going to be helped by it. I would have liked to have voted for the bill. There are energy tax breaks. There are shipping interests that are bolstered and supported in here, which means a lot of jobs to Louisiana. I would have wanted to vote for this bill.

I am not going to be able to vote for the bill, and won't vote for the bill unless we have some specific action on one provision—not the Landrieu provision, as some of the others have said, not an individual, personal Landrieu provision, but the provision for the Guard and Reserve, the men and women on the front line fighting for us whom every Republican and every Democrat in this body voted to support. Everyone, all of the Senators, from both parties, by unanimous vote, voted to send that provision over to the House to give modest tax relief to businesses, the small businesses and medium- and large-size businesses that are keeping those paychecks going to the front line.

We thought it was a good idea to take $2 billion of the $137 billion to provide some tax relief for those employers so that the Guard and Reserve that make up 40 percent of our armed services that are picking up more of the burden and are taking all the bullets on the front line, whether it is in Iraq or Afghanistan or somewhere else, so their paychecks could be made whole.

I want people to understand. The Senate of the United States felt strongly about that. But we sent the provision over. And when it got over to the House, it was summarily, unjustly, unconscionably cut out by the House Republican leadership. And it is a shame.

So over the course of the last few days, as we have tried to have debates about this bill in the morning and the afternoon and into the evening, I have spoken about this issue. The reason this poster is up is because it is a visual of what is in the bill and what is out of the bill. Ceiling fans are in the bill. Ceiling fans are really important in Louisiana. I know they are to the Senator from Nevada because we are from States that are very hot. We like air-conditioning, and we like ceiling fans. I am not picking on the ceiling fan industry. It is an important industry, and I am sure there is a good reason. I can't articulate what it is because it wasn't my provision. But someone could probably give a good explanation as to why the ceiling fan industry is getting a tax break.

But the Guard and Reserve, going to Iraq, taking the bullets, fighting on the front line, were left out of the bill, and ceiling fans are in the bill.

That is the truth. It is a shame. Many of us believe strongly that this injustice needs to be corrected.

I see the Senator from Iowa, Mr. HARKIN, has raised other issues that he feels very strongly about that were either not addressed appropriately or properly in either this bill or several others. I want my constituents to know, and I would like my colleagues to know, I do not want to make these schedules difficult. I do not. I understand the pressures that are on the Members of this body.

But I also understand the pressures that are on the families who have their father or mother or brother or sister or husband or wife on the front line. I understand the pressures of these families. So do many other colleagues in this Chamber. If we can do something to help them, then we should. Maybe we cannot get them in this bill. But I have had conversations with the good leadership on the Republican and Democratic side, who are working as we speak to find a way to help the Guard and Reserve so they are not left out of this $137 billion tax bill with over 509 items. But they are not an item, they are not a line, they are not a paragraph or diddly-squat in the bill. So we are talking about how we could possibly get them included in some other bill that might pass before we go home for the election.

I can promise you, in the elections that we are getting ready to have, Members of Congress, Members of the Senate, the President, and the challenger for the Presidency, our nominee, Senator KERRY—everybody is going to be taking pictures with the troops. I guess that is appropriate. But this Senator thinks that is enough of the pictures. Could we please put them in the budget?

I am not up for reelection this year, so this is not a campaign speech. The people in Louisiana have been supporting our troops. Our Guard and Reserve are the best in the Nation. Maybe a Senator would argue, but we have awards to prove it. We win awards. We are about the best—in the top 5 in the Nation. I know these men and women. They don't ask for much. They don't ask to be on the front of every tax break and giveaway. They are willing to sacrifice. But for Heaven's sake, we are going to pass a tax bill and give everybody in America $137 billion and leave them out? I don't think that is right. I don't think my colleagues think it is right or just.

I hope that sometime over the next 3 or 4 days that we are here—I know it is Saturday night. I have two small children. I had to make arrangements so I could be on the floor. I have a husband at home. I know everybody is going to go to church tomorrow, and people were at synagogue today and yesterday. I understand that. But I think we need to spend a little time talking about this issue. Why were they left out? How could we afford $137 billion and not afford a tax cut for them? Was it too complicated to figure out?

There are a lot of complicated things in here. It would make people's eyes twist if I explained how we were giving tax credits to foreign corporations so they could close down here and go to the Bahamas and open a post office box and get a tax check. There are more complicated things in here than saying to businesses in America: Thank you for being patriotic and for voluntarily sending that paycheck to the front line, closing the gap between what the reservists make as part of the Reserve and what they made for your company. We would like to honor that and give you a tax credit. You can pick up 50 percent of the burden, and the Government can pick up the other half.

Evidently, this is too much for us to pick up. It is not too much for me to stand here. I know the hour is getting late. The Senator from Iowa wants to speak. I just say again that I am going to get to the floor over the course of the next few days and I will speak about this issue. I thank the leadership for working in a cooperative manner to allow that to happen because I am still hopeful that we can fix this bill. Maybe the President will veto the bill when he finds out it is not in there. Maybe it could be fixed in a different way. Maybe another bill could be attached. I know if there is a way the leadership in this body wants to fix this, they could. I think the men and women on the front line deserve our best effort in that regard.

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

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

TOBACCO REGULATION

Mr. HARKIN. Mr. President, first of all, I want to thank a number of people. I thank Senator DEWINE for his dynamic and great leadership on the issue of FDA regulation of tobacco products. He has been in the forefront of this fight for a long time. I thank him for his leadership, working again with Senator KENNEDY on this issue and so many others on both sides of the aisle to get that position established by the Senate, which we did, and that was that we would have a tobacco buyout but also FDA regulation of tobacco, finally. We spoke on that, but, of course, the House didn't go along, and we find ourselves now with this great big tax bill of around 630 pages we have on our desk. Guess what. No FDA regulation of tobacco.

I thank Senator DEWINE and I thank Senator LANDRIEU for her strong and dynamic leadership in being here on a Saturday night to continue to make the point about what happened to our guardsmen and reservists in the United States. It is unconscionable what the House and the President did on this issue. We ought to put the blame where it really lies; it is at the White House. That is where it lies. I might say the House, but they are just doing what the White House wants them to do. They

are just a rubberstamp for the White House. It is the White House that called the shots on that one.

I thank Senator LANDRIEU for sticking up for our people in uniform, for those all over the country who have been shortchanged by this so-called tax bill.

Mr. President, I want to take some time here to speak about tobacco and how unconscionable it is that this bill does not have FDA regulation of tobacco included. Over the last several days, we have heard a great deal about the dangers of smoking and the devastation caused to millions of families every year. With the results of the conference report on Wednesday, I fear colleagues have not been listening to the details of the public health crisis our Nation faces regarding tobacco and smoking.

Let me repeat them loudly and clearly so Members understand what they are opposing and why we so urgently need FDA regulation of tobacco.

One, smoking kills more than 450,000 Americans every year.

Over the last 10 years, smoking has claimed more than 4.4 million lives.

Smoking is the leading cause of preventable death in this country.

Smoking causes heart disease, cancer, emphysema, and a host of other related illnesses.

Two-thousand kids start smoking every day, and, ultimately, one in three will die of smoking-related causes.

Smoking-related medical expenditures have indirect costs resulting from lost work activity.

There are 250 chemicals in tobacco smoke that are toxic or cause cancer in humans.

Tobacco use accounts for at least 30 percent of all cancer deaths.

Smoking causes nearly 87 percent of all lung cancers, which is the leading cause of cancer deaths.

Last year, nearly 70,000 women died from lung cancer in the United States. That is more deaths than from breast cancer and all gynecological cancers combined—70,000 women.

If these facts don't paint a stark picture of the urgency for FDA regulation of tobacco, I don't know what will. You know, when there is an outbreak of food poisoning in a local school, we move Heaven and Earth to find the source and take appropriate action to make sure our kids don't get sick again. But somehow, when it comes to protecting our kids from a known toxin—tobacco—we find our hands tied. Why? Well, it is because of big tobacco. There is too much at stake in terms of profit loss for tobacco companies to allow this regulation to go through. They have been fighting it for years.

I introduced the first-ever comprehensive bipartisan FDA regulation with, I might say, Senator BOB GRAHAM and former Senator John Chafee of Rhode Island.

That bill was introduced almost 6 years ago. I heard the same reasons then that I do now on how unnecessary FDA regulation is. Quite frankly, our bill went much further and was much tougher than this one. Creating a more sensible policy for tobacco has been a goal of mine for many years. It was in 1977, in my second term in the House of Representatives, over 21 years ago, that I first introduced legislation calling for repeal of the tax deductibility of tobacco advertising and marketing.

Unfortunately, victories in the tobacco wars for consumers and for our kids have come few and far between. Tobacco wins every time.

With the mounting evidence we have today about the absolute dangers of smoking, it is paramount we pass a comprehensive plan that would once and for all change how this Nation deals with tobacco and dramatically cut the number of our kids addicted to this deadly product.

That said, I am afraid the power of big tobacco has once again superseded the need to protect public health. The fact is we know now that 90 percent of current smokers became hooked on tobacco as kids. That should sound alarms that something needs to be done to stop this from happening, and to prevent senseless disease and death that is linked with this addiction. This is a drug addiction. Tobacco is a drug. It is addictive, just like methamphetamine, cocaine, and heroin. It is addictive and it kills you.

For too long, kids have been getting an unfiltered message from the tobacco industry: Smoking is cool. Smoking is harmless. Smoking is glamorous. Smoking is for active young people and will make you look more attractive.

Today, big tobacco companies spend more than $11.5 billion a year in advertising and marketing their products. Children are exposed to messages that are deliberately designed to attract a new generation to the smoking habit. The motivations are clear: Anything to make more money for big tobacco.

Now we hear from tobacco companies all the time that, oh, no, their advertising is to get people to shift brands, go from one brand to the other. Well, I will illustrate here very shortly that is not what they are up to.

Many think regulation is unwarranted after some of the restrictions that were agreed to as part of the master settlement agreement a few years ago. The good old MSA, the master settlement agreement. Yes, there are billboard restrictions and a few things such as that, but now we have much more sophisticated mechanisms.

Let me refresh some memories. Here is Joe Camel, a smooth character, Joe, flying his jet airplane with the afterburners going. He has a beautiful young woman looking over her shoulder, looking at Joe Camel with his Camel cigarette.

Who is this appealing to? Kids.

Now, there is another Joe Camel here. Here is Joe Camel, with Camel Lights, cool Joe. He has his red convertible and black T-shirt and Levi's, and Joe is cool. Joe Camel is a neat guy.

Well, we forced big tobacco to get rid of Joe. They did. We do not see Joe Camel any longer so we can take old Joe down. Joe Camel is gone. I want to refresh memories. I want to refresh memories, because there was a time—and I will repeat this, there was a time—a study was done that kids in America recognized Joe Camel more than they recognized Mickey Mouse. It is true. But we got rid of Joe Camel.

One might ask, what now do you need? I will show my colleagues why we need to have FDA regulation, because tobacco has gotten smart. They are now spending more than ever on predatory marketing since the MSA was agreed to. Big tobacco is spending 60 percent more on marketing than they were before the master settlement agreement.

Again, are they trying to get people to switch? Let us take a look. Here is Liquid Zoo. Now, I had a pack of those with me when we were in conference. I was one of the conferees arguing to keep the FDA regulation that we had in the Senate, and I had strawberry flavor. This was Liquid Zoo, strawberry flavor. When you smell it, why, you would swear you were in a strawberry patch. It smelled wonderful. It smelled like strawberries.

This is the tobacco. Liquid Zoo-flavored cigarettes are an exotic blend of strawberry-flavored tobaccos for a sweet, fresh taste and aroma.

Do they really think they are trying to get someone to switch from Marlboros or Winstons or Camels to that? That is going right to our kids. That is what this is about.

Then we have Kool Rapper here. We have another one. Here is the Kool Rapper. Here is a rapper. He is cool. He has his mike and he is spinning the disk or CD or whatever it is there, and everyone is dancing and that is called Kool Rapper.

Now, do my colleagues think they are trying to go after adults with that? Do my colleagues think they are trying to go after 40 and 50-year-old people to get them to switch from Marlboro or Winston or Camel to that? No. This is for kids. They are getting to young people. They are spending 60 percent more on marketing now than they did before the master settlement agreement, and we took away Joe Camel on billboards, but now they are spending 60 percent more and this is where it is going.

Because what do they know? They know 90 percent of all tobacco smokers today started when they were young. They get them hooked early.

I have another Kool Rapper here. This is just, again, special edition packs. Now, they do not any longer have the little coupons where you can get gear and all that kind of stuff. That is gone, but now they have special edition packs: Celebrate the sound track to the streets. It does not take a genius to figure out who they are targeting with that.

So big tobacco has found tricks and dodges to circumvent the law, and they have been very effective. From the birth of Joe Camel to the birth of Liquid Zoo and Kool Rapper, we have seen broken promises and bad faith again and again from big tobacco.

Giving the FDA the power it needs to end these false messages is exactly what is needed to stop big tobacco's exploitation of our kids. The only message our young kids should hear about tobacco is the truth: Smoking is a killer. It is a drug. It is addictive. It causes cancer. It causes emphysema. It causes a lot of other illnesses. That message needs to come through loudly and clearly. Since industry will not convey that message, we need strong FDA regulation to make it happen.

Instead, what do we do here now with this big tax bill we have? We allow big tobacco to further confuse kids when it comes to the actual safety of cigarettes.

This morning I got up and I had my Cheerios. I actually had a bowl of Cheerios this morning. Now, the bowl of Cheerios I ate this morning had to go through a multistep process set up by the Food and Drug Administration to earn its health claims that it is heart healthy and lowers cholesterol. It had to go through certain steps.

Somehow tobacco, a known health risk, does not have to go through any of those steps whatsoever. In fact, tobacco companies are free to add anything they want to their product without having to inform consumers or without any regard to the health effects of those additives.

For example, tobacco companies have added ammonia to their products. I do not know if my colleagues have ever smelled ammonia, but they get an idea of what it is like. They add ammonia to tobacco products on the ground that it improves ''tobacco satisfaction.'' They add the ammonia in order to create a ''free base'' form of nicotine that creates the highly addictive quick delivery form of nicotine to the brain. It goes from your lungs to your brain in 8 to 10 seconds when they add ammonia. We know this. So tobacco companies add ammonia so that you get a bigger kick right away, in 8 to 10 seconds. Adding ammonia to cigarettes is analogous to what crack cocaine was to cocaine—it just gives you a faster high, it goes to your brain quicker. But guess what. The tobacco companies do not have to tell you that. They just tell you have a Kool Wrapper there. They don't have to tell you anything else.

The industry claims that many of its ingredients are benign flavoring agents like strawberry that are on the FDA GRAS list. That stands for Generally Recognized As Safe. The tobacco companies say we put these ingredients in and they are benign; however, those ingredients such as chocolate, licorice, and other flavors are not safe when they are combusted, and they often create toxic chemicals when they are inhaled by the smoker. So, yes, maybe licorice is safe to eat, but when you combust it, then it creates toxics that you inhale. The industry will not tell you that either.

No other industry in America is allowed to add ingredients to their products without first having them tested and approved by the Federal Drug Administration for safety. For example, Kraft Foods, a subsidiary of Altria Group along with Philip Morris, could not add ammonia to Kraft macaroni and cheese on the grounds that it improves cheese satisfaction for its customers. Why can't they add ammonia to macaroni and cheese? They can't add ammonia to macaroni and cheese because it is not on the FDA list of products that are generally recognized as safe. They can add ammonia to cigarettes; they can't add it to Kraft macaroni and cheese. The FDA has more authority to regulate macaroni and cheese than it does cigarettes. Imagine that.

I have this to show what I mean by that. Here is something called Omni cigarettes. Here is what it reads:

> Omni is the first premium cigarette created to significantly reduce carcinogenic PAHs and nitrous amines, which are the major causes of lung cancer in smoking.''

That is what they say.

Says who? The tobacco company says that. But we have no way of verifying that. They can make all the claims they want, like low tar, light, less carcinogenic, but we the public have no way to verify that because the Federal Food and Drug Administration has no authority to regulate tobacco or to go in and tell us what is in there or to make the tobacco companies verify what they say.

I have an Eclipse one here, too. Here is an Eclipse. This is interesting:

> The best choice for smokers who worry about their health is to quit. Here is the next best choice. Are you ready for Eclipse? Get the facts.
>
> I have the support of my wife..if I'm going to smoke, she'd prefer I smoke Eclipse.
>
> A better way to smoke.

Talk about a warped message:

> Omni, there is no better way to smoke.

A better way to smoke? There is a better way to get cancer. There is a better way to get emphysema. This cigarette will give it to you faster. They don't tell you that, but that is what is happening.

During debate in the conference committee, one of my colleagues on the House side mentioned that the Founding Fathers would be shocked if they knew that Congress was trying to regulate an industry that was in part responsible for the early prosperity of our country. It is more likely that they are rolling over in their graves at the fact that we have known for more than 30 years that tobacco kills and that we have not done one thing about it. They didn't know it in the 1700s. They didn't know, but we know now.

The Congress is now considering, one more time, giving immunity to big tobacco and turning a blind eye to their responsibility to protect our kids and the public health. That is what is not in this tax bill. There are tax breaks for all kinds of things. There are tax breaks in here for gamblers who come from foreign countries to gamble here. Imagine that, they need a tax break. There is a tax break in here for people who import ceiling fans from China.

Lord only knows what else is in this tax bill. No one has really read it. No one knows what all these numbers and staff mean. There is a tax break here and a tax gimmick there; a tax break here and a tax gimmick there.

When this bill was before the Senate, this Senate added a provision that did two things. It allowed for a buyout of tobacco farmers' quotas—which I have been in favor of for years, by the way. Coupled with that is FDA regulation of tobacco.

Again, as someone who sits on the Agriculture Committee and also on the HELP Committee, I have been involved in both sides. I have espoused for a long time that we have a tobacco buyout, that we buy out these quotas. Why should we do that? These quotas were put on 60 or 70 years ago. They have been built into the price of the land. I can't go back and undo that. It is a fact of life. Many farmers in tobacco growing States—some of them are small farmers. All they have is that quota. They don't have anything else. The land is really not worth that much. So it is like taking away their income base. So I have always said we need to buy these quotas out and get rid of this tobacco program for once and for all. On the HELP Committee side, I have also said, if we are going to do that, then we ought to have FDA jurisdiction over tobacco.

This debate went on and on for years, and final we agreed. I might say that Philip Morris was one of those who agreed with us. I commend them for that. So we got it through the Senate.

It goes to the House. Guess what the House did. The tobacco buyout that we passed in the Senate, the money that is going to go to those tobacco farmers did not come from the taxpayers. It came from the tobacco companies. Of course, the tobacco companies will pass that on to tobacco smokers, so the smokers were going to pay for the buyout of the quotas. That is as it should be. Why should the taxpayers pay for it? We agreed on that. Philip Morris agreed on that. We agreed that we would have FDA jurisdiction.

Here is what the House did. They broke that agreement. First of all, the House of Representatives, and I am sure with the approval of the Bush White House because they wouldn't have done it unless the White House agreed, they made the buyout of the quotas paid for by the taxpayers of the country. All of you who do not smoke, you are now going to pay to buy out those tobacco farmers. That is what was in the House bill, plus they took away the FDA jurisdiction over tobacco.

In the final analysis, they put back in the companies paying for the buyout, but they left out the FDA regulation of tobacco. So here we are. No FDA regulation. That is what is not in this FSC bill.

It was my understanding the purpose of this bill was to repeal an illegal export subsidy. Now it has morphed into a big special interest giveaway that will help everyone from restaurant owners to makers of bows and arrows, tackle boxes, sonar fishfinders, NASCAR track owners, Alaskan whalers, foreign gamblers, as I mentioned, who win at U.S. horse and dog tracks.

I want to repeat that.

In this bill, there are provisions to give tax breaks to foreign gamblers who win at U.S. horse and dog tracks. Those interests trump the 2,000 kids hooked on smoking every day by the big tobacco companies. Imagine that.

What are our priorities around here? What is the priority of the White House? I am telling you it could never have happened unless the President signed off on it.

You go out there, Mr. President. You have some more days before the election. Go out there and tell the American people how you pulled the rug from underneath FDA regulations of tobacco, how you sided with the big tobacco companies to get our kids hooked on tobacco every day—2,000 every day. Go out and look those mothers and fathers in the eye and tell them your priority is the big tobacco companies and not their kids.

Yes. This would never have been done if the White House had not OK'd taking FDA jurisdiction away. Shame on the White House.

We had the opportunity here to pass this legislation once and for all, and to stamp out youth smoking in this country and protect kids from joining the ranks of the 450,000 who die from smoking each year. The tobacco industry has been engaged in a systematic campaign of distortion and deceit to hook kids and hide the facts from the American people for far too long.

I met a fifth grader, Ted Stanton, from Des Moines, IA, a few months ago who reminded me how important regulation is. Ted won a statewide poster contest sponsored by the American Academy of Family Physicians for his efforts to raise awareness about smoking. He is a fifth grader. What happened was Ted has had to watch his dad struggle with the habit of smoking for years. He drew a poster. His poster is an attempt to warn kids about smoking.

Here is his poster and here is why he won the prize. ''Invest in your future.'' He has the date 2054. ''Pay to the order of big tobacco companies $73,000.'' That is $4 a pack every day times 50 years. In other words, you smoke a pack a day for 53 years and you will pay big tobacco companies $73,000.

I thought Ted Stanton, a fifth grader, really pointed it out. That is what you are doing when you start smoking. You are going to smoke for 50 years, if you are a teenager, a pack a day, $73,000.

We do have some kids like Ted and others who realize they are being targeted by big tobacco, but they are defenseless. What are we doing to help them? What we are doing is protecting big tobacco—the same guys who conspired years ago to hide the truth about tobacco and instead pushed their deadly products on our most valued treasure, our kids.

It is disgraceful that this body has not acted yet. It is disgraceful that we are getting half of the deal we had worked on for years, the tobacco buyout of the quotas. Guess what happened. The way they worked this tobacco quota buyout is you are going to buy out the quotas, but now tobacco will be growing cheaper. Now the tobacco companies will be able to buy tobacco cheaper than they had before, making more money, hooking more kids, without FDA authority.

The reason I say that is because when we passed the bill in the Senate, we had a provision that provided for a licensing program that would prohibit more and more people growing tobacco in this country. The House took that out. So we got the worst of all possible worlds—no FDA regulation, a buyout of the quotas, more people will be able to grow tobacco, and the tobacco companies will get it cheaper and make more money to hook our kids. What a deal. Yet we can take care of foreign gamblers who come to bet on horses. But we can't take care of our kids. Shame on us.

(Mr. HATCH assumed the Chair.)

I know the hour is getting late. I see the occupant of the Chair, someone for whom I have great respect, the Senator from Utah.

I will state publicly that the senior Senator from Utah has also been in the forefront of the fight against tobacco. He always has been. I compliment him for that. I know he feels as strongly about antismoking and stopping kids from smoking as I do, or as Senator DEWINE does, or Senator KENNEDY, or anybody else does. The Senator from Utah has been stalwart in his support for getting FDA regulation of tobacco. I thank him for that. I encourage him to keep up his leadership on that because we have not yet fired the last shot. We are going to be back.

I wish the President of the United States, using the bully pulpit of the White House, had come out in an address to the Nation and said we need FDA regulations for tobacco, we need to stop our kids from getting hooked, and call upon the House and the Senate and say he will not sign this bill, he will veto this bill unless we protect our kids.

Think of what would have happened if the President of the United States had said that. We would have a tax bill here, but we would have FDA regulation of tobacco in here. I am sorry the President missed a golden opportunity and thus we have missed a golden opportunity. Thus, tomorrow and the day after, and next month, and next month, and next year, thousands of kids every day might pick up a pack of Liquid Zoo, because it smells nice. It tastes like strawberries. They will say, There is no harm in that, plus it makes me look glamorous. That is what all the ads say.

Think about it. That is what is going to happen. Shame on us.

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

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

Mr. HARKIN. I see the occupant of the chair, and I know he wants to go home. But I said to the managers I can be interrupted when they are ready to wrap up. I want the occupant to know I am not holding him here.

I will talk about one other item that is not in this FSC bill that we got stiffed on. We passed it four times in the Senate and twice in the House. I am talking about overturning the regulations that this administration put out that will deny overtime rights to over 6 million people.

Again, just last week, in a replay of what happened a year ago, the Bush administration used the conference to kill my provision to stop the Department of Labor's new rule on overtime pay that if allowed to stand will strip 6 million people of their right to time and a half overtime.

The bill before the Senate today serves the simplest of purposes. This tax bill has everything in it for everyone, but what is not in it is protection for the workers of America, protection for those who make over $23,660 a year. Actually, for some below because of little gimmicks that can be used to deny them their right to overtime.

Again, this is simply a matter of fairness. People believe if they put in more than 40 hours of work a week, they are giving up premium time, time with their family. I had a woman who wrote me and said: Look, I go home from work and my second job starts. I go home, take care of my kids, I get dinner ready, help them with their homework, and then I have to do washing, and this and that. But my time with my family is my premium time. If I am asked to give up my premium time with my family to work on my job, I ought to get premium pay.

What the Bush administration has done is said: No, sorry, we will ask you to work overtime and we will not pay you one cent more.

Again, a little history. It has been sacrosanct since 1938, the Fair Labor Standards Act. If you work over 40 hours a week, you get time-and-a-half pay. It has been that way since 1938. We

have modified it a little bit here, a little bit there, but every single time we have changed the Fair Labor Standards Act, we have enlarged the pool of people who get covered by time and a half. This is the first time where up to 6 million people will lose their right to overtime pay.

Now, some will say but they raised the base to $23,660. In other words, anyone who earns under that is automatically eligible for overtime. Quite frankly, most people working there are already eligible because they are not salaried, they are hourly workers. While that is fine, we should raise the base. The administration then went and took away overtime pay rights for anyone making over $23,660 a year. If you are making $23,661, you are in a separate category. Just barely over—well, that is poverty wages—and you still are not eligible for time and a half overtime.

I also say every time since 1938 when we have changed the Fair Labor Standards Act, it has come to Congress. We go through the committees, the committees have hearings, we bring in witnesses, they draft a bill, it is debated in the Senate, and it finally goes to the President. That is the way it ought to be. That is transparent; it is open; everyone gets their say. We can debate it and amend it. We, the elected representatives of the people, get to debate and amend it—a strange concept, I guess, to this administration.

What this administration did 1½ years ago, sort of in the stealth of night without having one public hearing, they promulgated these new rules on overtime.

Some might say: Well, they have had hearings since then. Yes, thanks a lot, after the horse is out of the barn and they closed the door. Fine. But that is not the way it should have been.

So now we have a situation where they finalize the rules on August 23. We have never really debated or amended that in the Senate. I have on four different occasions in the Senate offered amendments to overturn those rules, to go back to square one, to start over. Let's do it the right way. We have passed them here, but the administration says no every time.

I watched the debate last night, and I heard the President talking about domestic policies and jobs and economic growth. And I thought, wait a minute, he even talked about overtime. He said people are working overtime. I heard him say it last night. I thought, they are working overtime, but what the administration wants to do is take away their overtime pay.

That is exactly what is happening. We have facts. We have the data. People are now being denied time and a half overtime for working over 40 hours a week because they are being ''reclassified.'' Guess who is getting hit first. Women. Why do I say that? Many women raise families, start later in life, and start at lower income jobs. Many of these are salaried positions. Because they are on a salary, they will be reclassified. As they get reclassified, they will be exempt from the overtime laws. If overtime is free to the employer, it will be overused.

This chart shows a study by the Center for Women's Work at Rutgers University. The chart shows those who are eligible for overtime, in the green, are protected; the red are not protected. Those protected by overtime work are about 20 percent of workers working 40 hours a week. If they are protected, chances are 20 percent of these people work over 40 hours a week. If they are not protected by overtime, 44 percent of these people work over 40 hours a week—twice as many. So now we will take away this protection from this 20 percent. Then they will be working overtime, and they will not get paid for it.

Right now, if they are covered by overtime protection, only 5 percent work over 50 hours a week. If they are not covered by overtime, 15 percent, three times as many people not covered by overtime laws work over 50 hours a week.

That says it right there. If the employer does not have to pay you time and a half, work them more, and they will not hire any new workers.

It is interesting to note—the occupant of the chair will find this interesting—in 1933, 5 years before the Fair Labor Standards Act was signed into law, the Senate voted 53 to 30 to set a cap on the number of hours in a workweek. Was the cap 50 hours? Was it 40 hours? No, it was 30 hours. Imagine in 1933, this Senate, in this Chamber, voted 53 to 30 to say that the workweek would be 30 hours. You could not pass 60 hours here now. Imagine that. In 1933, this Senate voted 53 to 30 to set a 30-hour workweek. Amazing. The compromise was reached 5 years later at 40 hours a week, and that is what it has been ever since.

Again, we know what the intent of this proposed rule is. The intent of this proposed rule is to allow employers to work employees longer than 40 hours a week and not have to pay them time and a half. And we have a final rule on that, a final rule. These are going to be low- to middle-income workers. They are not organized. They do not have a strong voice. So the administration feels they can run roughshod over their rights.

For the life of me, I cannot understand this. People work hard. Many families are working two jobs where the husband and wife are both working, trying to make ends meet, trying to save a little money to put away for the kid's college education, maybe to buy a better house, move up the ladder a little bit. For those who work overtime, 25 percent of their income comes from overtime.

I see the managers are here to wrap up. I will just conclude by saying that, again, just as it is a shame and a shame on us that we do not have FDA control of tobacco, shame on us also, and shame on this administration, for taking away the overtime rights of 6 million people in this country.

With that, I yield the floor.

Mr. HATCH. Mr. President, I express my strong support for the conference report to accompany the American Jobs Creation Act. In order to protect our domestic manufacturers, strengthen our economy, better help U.S.-based multinational firms compete globally, and honor our trade obligations, the Senate must pass this critically important and overdue legislation before recessing for the elections.

I wish to start by congratulating the chairman of the conference committee on this bill, Congressman BILL THOMAS, and the cochairman, Senator CHUCK GRASSLEY, for their leadership and exceptional cooperation in finishing the conference on this bill in time to bring it to the House and Senate floor this week. Many thought completion of this task would be difficult or impossible, given the large differences in the Senate and House versions and the time constraints the conference committee faced.

The innovative conference process developed by the chairman and cochairman made success possible. Conferencing a large and diverse pair of tax bills in the usual fashion could have taken many weeks and led to a likely failure to finish this bill before sine die adjournment of the 108th Congress. Again, I recognize the extraordinary achievement of this conference committee and thank its leaders and my fellow conferees for their hard and dedicated work.

This conference report represents what we hope will be the culmination of a very lengthy and fascinating issue that had its genesis decades ago but has festered into a growing problem over the past several years.

I will leave to others to go into detail about the long history of the export subsidies in our tax law that gave rise to this conference report, but the unusual nature of this bill and its difficulty in passing the Congress are reflections of the complexity of this issue.

The crux of the difficulty of the bill is that the rulings of the World Trade Organization on the trade-legality of our export tax subsidies put the Congress in a very tough position. In essence, we found ourselves needing to repeal these export subsidies, known as the Foreign Sales Corporation, FSC, provision and its replacement regime known as the Extraterritorial Income, ET, exclusion.

By repealing these provisions, which we must do in order to honor our trade obligations, we effectively raise taxes by almost $6 billion per year on thousands of U.S. businesses that manufacture goods for export.

Leaving it at this is simply unacceptable. Why should we have to convert a provision designed to help U.S. manufacturers compete in an ever-increasingly difficult global marketplace to a

situation where they suffer a competitive disadvantage?

Yet, this is exactly the problem the Congress faces now that it is forced to repeal the export tax benefits.

When confronted with a similar problem in 2000 after the WTO ruled the FSC provision to be in violation of international trade rules, Congress passed the ETI in its place. With the ETI, we were able largely to replicate the benefits of the FSC regime, so that exporting taxpayers paid few if any extra taxes with the repeal of FSC. Unfortunately, the WTO subsequently ruled that the ETI provision also was an illegal trade subsidy that also must be repealed.

So, the conundrum facing the Congress with this situation was to find a way to enact other tax cut benefits for exporting manufacturers, to offset the increase from repealing ETI, without violating the WTO rules.

Unfortunately, this has proven impossible, so both the Senate and House bills attempted to find rough justice for business taxpayers by finding other ways to deliver tax benefits besides basing them on exports. Such attempts gave rise to the political and practical difficulties of this bill, including the fact that it took many months of hard effort to reach the point we are today.

For example, my own bill to address the FSC/ETI problem was S. 1475, the Promote Growth and Jobs in the USA Act, which I introduced in July 2003. This bill would have delivered rough justice tax relief in two ways.

First, it would simplify and rationalize the international tax rules that currently harm the ability of U.S. firms to compete globally, and second, it would provide incentives for companies to increase their ability to produce goods by acquiring new equipment and engaging in more research and development.

Other FSC/ETI solution bills were also introduced. On the same day I introduced S. 1475, Chairman THOMAS introduced H.R. 2896, the American Jobs Creation Act. The two bills were similar in many ways, and both included international tax reforms. The Thomas bill, however, included a number of other provisions designed to help U.S. businesses create jobs and better compete.

Another bill, introduced last year by Congressmen CRANE, RANGEL, and MANZULLO, offered a different direction still. This bill provided a deduction equal to 10 percent of a company's production activities.

In the Senate, Senators GRASSLEY and BAUCUS introduced a bill that included some of the best elements of all the other bills. Even though I preferred the solution set forth in my bill, I cosponsored the Grassley-Baucus bill because it represents a solid and reasonable solution to the problem. This bill, as modified, became the legislation reported by the Finance Committee and passed by the Senate.

After a great deal of travail and adjustments, the House also passed a FSC/ETI bill, and it was quite similar in many respects to the first Thomas American Jobs Creation Act. These are the bills the conference committee had to combine into one.

The result, as we all know, is a bill that is far from perfect. Its enactment will result in a net tax increase for some exporting companies that now use the ETI provision, and in a net tax cut for many other U.S. manufacturing firms that may have not taken advantage of the ETI exclusion.

And while the bill includes many important other provisions, it leaves out some very important provisions that the Senate conferees agreed with me should be in there. Unfortunately, the House conferees disagreed and they were omitted from the final product.

For example, I am personally very disappointed that the House conferees voted against including the CLEAR ACT in this conference report. This bill, which has passed the Senate at least three times and also has passed the House, would transform our auto industry by granting strong tax incentives for consumers who buy alternative fueled and advance technology vehicles, such as hybrid electric cars.

Moreover, it would move us to a more responsible age of cleaner air and less fuel dependency on the Middle East by simultaneously breaking down the three barriers that keep our nation from adopting the already-existing technology to help us meet these goals—the higher cost of such vehicles, the higher cost of alternative fuel, and the lack of a refueling infrastructure.

From a broader point of view, most of my fellow Senate conferees and I would have liked to see the entire set of energy tax provisions from the Senate-passed bill included in the conference report. It was a mistake to omit these important provisions.

I also very much regret that the House conferees refused to adopt the amendment I offered, accepted by the Senate conferees, which would have bolstered our research tax credit. While it is true that the research credit was extended for a short time in the most recently passed tax bill dealing with individual tax cuts, that legislation left out an important element that was contained in the Senate FSC/ETI bill designed to improve the incentives this provision gives for companies to engage in R&D activities.

Nevertheless, the conference report is worthy of our support. As I mentioned, as a nation we must honor the obligations under the World Trade Organization. Of more immediate importance is the fact that the Europeans are levying an increasing level of trade sanctions against certain of our products exported to the E. U. This level is currently at 12 percent and is growing by one percentage point per month and is definitely having a very serious negative effect on certain U.S. industries.

Moreover, the trade sanctions are authorized to continue to increase until next March, when they will have reached 17 percent. After this, the E. U. may authorize even more serious sanctions against us that would surely harm our economic growth.

As all of my colleagues well know, if we do not succeed in passing this conference report before sine die adjournment of the 108th Congress, we must start the process all over again next year.

Will this result in a better bill?

Perhaps, but such an outcome is far from certain. What is more likely is that the resolution to this issue would be delayed for many more months, giving the trade sanctions more time to damage our economy and harm U.S. businesses.

Now, I take a few minutes to discuss some of the specific provisions that did make it into the conference report and why I believe my colleagues should enthusiastically support them.

First, let me express my satisfaction that this conference report has a good balance to it. In addition to the vital repeal of the ETI provision and the quite reasonable transition relief it provides for current ETI users, the bill offers significant provisions for both small businesses and large multinational firms. Mixed in is a generous portion of important tax relief for business interests of all kinds.

Central among these relief provisions is the manufacturing deduction. This provision is designed to lower the tax burden of any business entity that engages in production activities in the United States. I am happy to see that the Senate provision allowing this deduction to be taken by unincorporated businesses was retained in conference.

Also included in the conference report is a significant section of relief designed specifically for small businesses. Foremost in this category are the five sections that would simplify and reform the taxation of S corporations. These are changes I have long sought. Along with my colleagues, Senators BREAUX, SMITH, and LINCOLN, we have attempted to get these and other S corporation improvements passed for several years now. I am gratified to see them included in the conference report.

Other provisions that are very important to the balance of this bill are those designed to simplify and improve the rules by which this Nation taxes international business transactions. Quite simply, the current state of our international tax rules is appalling. This part of our Tax Code generally dates back to the early 1960s, and was designed for a different world from the one in which we live now.

U.S. businesses, whether large, medium, or smaller, that decide to expand their markets beyond the borders of the United States confront a set of tax rules that are not only mind-numbingly complex, but far worse result in double taxation and often leave them on the down side of a tilted playing board when compared with competitors based in most other industrialized nations.

Our rules governing the foreign tax credit, for example, which are designed to eliminate the double taxation of income, often are ineffective, some blatantly so. A provision added to the Internal Revenue Code in 1986 reduces the foreign tax credit by 10 percent to the extent it reduces the alternative minimum tax. There is little or no justification for this double taxation that I can see, and this conference report repeals this unfair provision.

The bill includes about two dozen provisions that will help improve the tax law for our companies that have expanded their markets overseas. I have long been interested in getting this type of reform passed by the Congress, having introduced bills to do this since the mid-1990s. It is gratifying to finally see this long overdue relief come to pass.

Some of my colleagues have incorrectly concluded that improving our rules on international taxation will give an incentive to U.S. companies to move their jobs overseas. This is unfortunate. Cross-border investing is not only a necessity of our modern world, it is usually beneficial to both nations. Most U.S. companies that invest in expansion into markets in other nations do so to compete effectively with other suppliers in those markets and here at home.

A fact of life of our modern economy is that our U.S.-based business enterprises face competition from all parts of the globe. It is unrealistic to think that an American business can simply focus on markets here at home and thrive. Instead, most of today's businesses must be mindful of both markets and material and labor supplies around the world if they are to stay in business very long.

While no one likes to see U.S. jobs move overseas, we should be more concerned about creating and maintaining in the United States the kind of environment that attracts businesses. Part of that environment is ensuring that our tax system does not drive businesses offshore to other nations that tax them in a more favorable fashion. This bill moves our tax system a big step in that direction, and I am pleased to see these changes finally reach the point where they are about to become law.

I now say a few words about the issues regarding tobacco associated with this conference report. I have not forgotten that at the center of the tobacco buyout is the tobacco farmer. I understand that the tobacco price support and tobacco quota programs have helped to secure a reasonable living for many family farmers.

I have also come to the understanding that breaking the dependency of U.S. citizens and especially children on nicotine requires us to address the dependency of tobacco growers on the tobacco industry and on the government programs. It will not be an easy transition for many tobacco growers, and we need to help these families to survive it.

Contrary to the belief of some, the United States Department of Agriculture, USDA, does not provide a direct subsidy to tobacco growers. However, the USDA does maintain artificially high prices for tobacco leaf by managing the loan, or-price support, program for tobacco growers which serves to maintain artificially high prices for tobacco and cigarettes in this country.

The USDA also manages the tobacco quota system to keep down the amount of tobacco grown each year. This, again, keeps the price of tobacco and cigarettes high. All direct and administrative costs for these two programs are reimbursed to the USDA by tobacco farmers and their trade association. There is no net cost to the government as a result of the tobacco program. In fact, smokers carry most of the burden of the tobacco program through higher costs for the tobacco products they purchase.

Shifting tobacco farming away from tight government management toward the free market has risks for our farmers. This proposal does a good job of getting the government out the farming business while making temporary assistance available to farmers as they adjust to the free market. And, it is at no cost to our government.

As far as the provision requiring the Food and Drug Administration to regulate tobacco, let me say that I fully support measures to end tobacco use in the United States.

I can think of few public health dangers worse than tobacco, and this is especially true for young people.

I have heard from many concerned parents and health advocates in Utah who point out the need to stop the devastating health consequences of tobacco use.

In many aspects, the DeWine/Kennedy language was written to achieve that goal, and in that spirit I supported it in conference. In fact, much of the bill is taken from a measure that I authored several years ago with Senator DIANNE FEINSTEIN.

That being said, I am concerned about some aspects of the way the bill was written, and especially the impact of this language on the resources of the Food and Drug Administration.

First, the Committee of jurisdiction, the HELP Committee, should have the opportunity to consider this legislation before it is brought to the full Senate for a vote the next time. Having been the chairman of that committee for several years, I know full well the complexities of the Federal Food, Drug and Cosmetic Act. Three hours of debate on the Senate floor was not enough time to consider legislation that made such dramatic changes to current law.

I also want to make sure that we in the Congress are clear about the impact that such legislation would have on the Food and Drug Administration and whether or not the FDA has adequate resources to regulate tobacco, and, in addition, keep up with its other, extremely important responsibilities, such as the approval of drugs, medical devices, and protecting our food supply.

While I understand that user fees were included in the legislation, I am not convinced that those user fees would have provided the FDA with sufficient resources to regulate tobacco. I am someone who has fought to provide FDA with adequate resources and have led the fight on unifying the FDA campus. I do not want anything to jeopardize the progress we have made in those areas so before we consider similar legislation again. I believe it is imperative to work closely with the FDA to find out exactly how much money is necessary for the agency to regulate tobacco, and whether or not the agency is capable of overseeing the regulation of tobacco.

Again, let me make one thing perfectly clear—I believe that tobacco should be regulated, however, it needs to be a well-thought-out process. Therefore, allowing the proper committees of jurisdiction to review and consider the legislation and consultation with the FDA must take place before similar legislation is voted upon by the full Senate and House of Representatives before we consider another measure.

Finally, I want to touch on some of the revenue offsets included in the conference report. I want to make it clear that I support the principle of keeping this bill revenue neutral, and I congratulate the conferees for doing so. This was a particularly sticky problem with the House Members, so I especially recognize their hard work in bowing to the Senate's demands that this bill be fully offset.

I am very pleased to see that several revenue offset provisions that were in the Senate bill are not part of the conference report. One of these is the codification of the economic substance doctrine. I believe enactment of this provision would have led to a great deal of unnecessary conflicts between taxpayers and the Internal Revenue Service, and would have unfairly penalized companies for engaging in legitimate tax planning techniques.

One provision that did make it into the conference report raises revenue in connection with the donation of used vehicles. In essence, the provision requires that taxpayers wait to take a deduction for the donation of a used vehicle until the donee charity has sold the item in an auction. Then, the deduction is limited to the actual purchase price.

While this may appear to be a reasonable requirement, particularly in light of some of the alleged abuse surrounding the charitable donation of used vehicles, I am concerned that these changes will result in far fewer used vehicles being donated to charities. Some charities, such as the National Kidney Foundation of Utah, rely heavily on such donation programs for a great deal of their funding. A chilling

effect on the donation of these used cars could leave many worthy charities short of vital funds needed to perform their invaluable services to needy citizens in Utah and elsewhere.

I will keep a watchful eye over the implementation of this change in the law, to make certain it does not harm the charities that have relied on donated vehicles for funding. While I agree that we should preclude any real abuse of the law, I do not think we should create a burdensome new requirement that would discourage charitable giving. It may well be that we need to revisit this area of the law in the future.

In conclusion, the conference report before us represents a good bill that deserves our support.

As I have tried to indicate in these remarks, the bill is far from perfect. But given the very difficult political and other circumstances surrounding the issues this bill addresses, it is remarkable we were able to bring to the Senate floor a product that is as good as it is. I urge my colleagues to support the conference agreement.

SECTION 422

Mr. SMITH. Mr. President, I would like to ask if the Chairman of the Committee on Finance would entertain additional questions regarding the American Jobs Creation Act of 2004.

Mr. GRASSLEY. Mr. President, I would be glad to take questions from the Senator from Oregon.

Mr. SMITH. I ask for additional clarification regarding the conferees' intent with respect to the rule in section 422 of the American Jobs Creation Act of 2004 that disallows deductions for expenses ''properly allocated and apportioned to the deductible portion.'' I would ask for clarification of the type of expenses that may be ''properly allocated and apportioned''. Would it be reasonable to say that properly allocable and apportioned expenses would not include general and administrative costs not directly related to generating the income being repatriated and such indirect expenses as research and development costs, interest, state and local income taxes, sales and marketing costs, depreciation, and amortization.

Mr. GRASSLEY. Yes, your understanding is correct. I would add that directly related expenses would include, but is not limited to, stewardship costs and directly related legal and accounting fees.

Mr. SMITH. Thank you Mr. Chairman. Under the conference report's provision on the temporary dividends received deduction, the amount that may be brought back to the United States may be determined by the reference to the ''applicable financial statement''. In general, this term looks to the most recently certified financial statement filed on or before June 30, 2003. In the case of a taxpayer that subsequently re-filed or restated its pre-July 1, 2003 certified financial statement, it is not clear how this would be determined. Is it the legislative intent to lock in the earnings permanently reinvested amount from the most recent pre-June 30, 2003 financial statement, which had been certified, regardless of any subsequent restatement?

Mr. GRASSLEY. The applicable financial statement is the most recent statement that had been certified, and filed with the Securities and Exchange Commission if required, on or before June 30, 2003. However, in the event of a subsequent restatement of a financial statement that had been certified, and filed if required, on or before June 30, 2003, if the subsequent restatement contains a lower permanently reinvested amount, then the lower amount shall apply.

Mr. SMITH. I thank the chairman for this clarification.

IRS

Mr. SANTORUM. Mr. President, I read with great interest an exchange of letters in the House between my colleague from Pennsylvania, Mr. ENGLISH and the chairman of the Committee on Ways and Means, regarding regulations issued by the Internal Revenue Service under section 263(g) of the Internal Revenue Code in the context of the Conference Report on H.R. 4520.

The issue raised in their discussion relates to the IRS decision in regulations published on January 17, 2001, to expand its authority under that section. Without at this point questioning the IRS interpretation of the law, the colloquy notes that the IRS has in some case imposed its new interpretation retroactively. The colloquy urges the Department of Treasury to take the position that the new interpretation should be applied only on a prospective basis.

I rise to agree with my friends in the House. Our practice in Congress is to give taxpayers notice when we intend to change the law in ways that could affect ongoing transactions that were undertaken in reliance on the law as it existed. Certainly Treasury can and should follow the same rules.

I hope the Treasury Department will take note and act accordingly.

BUSINESS AIRCRAFT

Mr. BROWNBACK. I want to thank the distinguished chairman of the Committee on Finance, as well as the chairman of the Ways & Means Committee, Mr. THOMAS, and all the conferees on H.R. 4520, for retaining the provision allowing business aircraft purchased this year to qualify for bonus depreciation if the aircraft is delivered and placed in service in 2005.

This provision is important to the hard-working Kansans who build these aircraft. Provisions such as this will help to further bolster our rebounding economy with respect to expensive and complicated equipment like business aircraft. Without bonus depreciation, there is a risk of a shortage of orders for delivery next year with a resulting impact on employment.

It would have been better if this legislation had been enacted earlier this year, but, even now, this provision will allow manufacturers several extra weeks to take orders for delivery by the end of 2005. That should help to ensure that there will be planes to build in 2005.

I ask the chairman a technical question on the effective date of this provision.

Mr. GRASSLEY. I thank the Senator from Kansas for his kind words, and would be happy to respond

Mr. BROWNBACK. The effective date of the placed-in-service-extension, section 336 of the conference report, states that the amendments ''shall take effect as if included in the amendments made by section 101 of the Job Creation and Worker Assistance Act of 2002.'' I believe that this means only that, if a purchaser orders a plane for delivery in 2005, the limitations on the amount of the deposit, time for construction and purchase price must be met. It does not mean that taxpayers who did not or will not take delivery and place the aircraft in service after December 31, 2004, would retroactively be subjected to these limitations. The limitations apply only if a taxpayer wishes to take advantage of the extended placed-in service period. Does the Chairman agree with this interpretation?

Mr. GRASSLEY. The Senator is correct. The new provision is not intended to apply to aircraft placed in service before January 1, 2005 and does not limit or deny bonus depreciation for aircraft or any other asset that would qualify under the general rules. I would refer the senator to page 30 of the Conference Report. On that page, the conferees clearly state that this provision ''will modify the treatment only of property placed in service during calendar year 2005,''

Mr. BROWNBACK. I ask the chairman for a further clarification. Section 336 of the conference report includes amendment of clause (iv) of Internal Revenue Code section 168(k)(2)(A) to apply the additional year to place an asset in service to assets described in subparagraphs (B) and (C). Subparagraph (B) of the Code applies to certain property having longer production periods. Section 336 of the bill adds subparagraph (C). I would like to be sure that, by using the word ''and'', the conferees did not intend that a business aircraft would have to be described in both the existing subparagraph (B) and the new subparagraph (C) in order to qualify for the additional year to place the aircraft in service. As the chairman knows, the standards for qualification are substantially different under the two subparagraphs.

Mr. GRASSLEY. I agree that the drafting is not as clear as it might have been. However, it is very clear from all the legislative history that, by adding the new subparagraph, we intended to add a new class of property, business aircraft, to those assets which qualify for the additional year to be placed in service. We did not intend

that aircraft which qualify under subparagraph (C) must also qualify under subparagraph (B).

Mr. BROWNBACK. I would like to ask the chairman to address one final point. As the chairman knows, an amendment added to the Senate bill during floor debate temporarily reversed a Tax Court decision, affirmed by the Eighth Circuit Court of Appeals, concerning the limitation of business deductions for personal entertainment use of a business aircraft. This provision was drastically expanded and made permanent in the conference report. I am very concerned that this provision will have a substantial negative impact on the sales of new aircraft because, much of the business deduction for a new aircraft in its first few years is depreciation. In the same bill that Congress extends the period to place an aircraft in service and still qualify for bonus depreciation, Congress also reverses current law and limits depreciation and other business deductions, even when an employee has income imputed to him for any personal use of the aircraft.

I can understand that the facts of the tax court case that was intended to be reversed involved a high percentage of nonbusiness use. However, it would seem to me that some sort of de minimis amount of personal travel treated as taxable compensation should be allowed without reducing otherwise applicable business deductions. I can also understand limiting deductions for incremental operating costs incurred for a personal flight, but the aircraft depreciates whether it is in the air or on the ground. I do not see the rationale for this extraordinary provision in the conference agreement far beyond the scope of the original Senate provision. The section which the conference report amends concerns entertainment facilities such as hunting and fishing lodges which have no other use than for business or personal entertainment. An aircraft is purchased by a business because they have a business need to be served. It is not the same thing as a hunting lodge. It is difficult for me to believe that, if a court addressed the specific question of whether a business aircraft were an ''entertainment facility'' under present law, that it would rule against the taxpayer.

I hope that the chairman would be willing to consider a de minimis rule or other modification to limit the scope of this limitation in future tax legislation to allow occasional personal use without limiting otherwise deductible business expense deductions relating to the ownership and use of a business aircraft.

Mr. GRASSLEY: I appreciate the Senator's concerns and will keep them in mind in the future, although I would not anticipate repeal of the full provision included in this conference report.

SECTION 422

Mr. SMITH. Mr. President, I ask if the chairman of the Committee on Finance would entertain additional questions regarding the American Jobs Creation Act of 2004.

Mr. GRASSLEY. Mr. President, I would be glad to take a question from the Senator from Oregon.

Mr. SMITH. Mr. President, I have a question about how to interpret one of the rules contained in section 422 of the conference agreement for the American Jobs Creation Act. Would the chairman please clarify what the rule that disallows deductions for expenses ''properly allocated and apportioned to the deductible portion'' of the dividend is intended to cover?

Mr. GRASSLEY. I thank the Senator from Oregon for his question. The rule and the statement of managers contain some ambiguity as to which deductions are disallowed. The intent of the rule is to disallow only deductions for expenses that relate directly to generating the dividend income in question.

Mr. SMITH. I thank the chairman.

Mr. MCCONNELL. The tobacco buyout is very important to Kentucky, and it is also important that the provisions of the buyout included in the conference report are interpreted and implemented properly. The conference report provides financial assistance for producers in return for the termination of tobacco marketing quotas and related price support. For kinds of tobacco other than fluecured and burely tobacco, the payments to producers will reflect ''the basic tobacco farm acreage allotment for the 2002 marketing year established by the secretary for quota tobacco produced on the farm.''

My understanding is that for this calculation, the secretary will take into account non-disaster transfer of allotments that were made for the 2002 marketing year. As the Chairman of the Agriculture Committee, is that correct?

Mr. COCHRAN. Yes. For producer payments, such transfers for these crops will be taken into account as they are for the other tobaccos. The payments will be based on the actual amount available on the farm after those transfers.

Mr. MCCONNELL. I thank the Chairman of the Agriculture Committee for clarifying this point for me on this important aspect of the conference report.

Mr. LAUTENBERG. Mr. President, I rise to discuss the FSC/ETI conference report. What the Republican Leadership did to this bill in conference is downright shameful.

In July, I supported an amendment Senators DEWINE and KENNEDY offered to this bill that combined a tobacco buyout with a provision giving the Food and Drug Administration regulatory authority over tobacco.

The Senate passed the FDA amendment by a vote of 78–15. That is a strong show of support.

But something strange happened in conference. The FDA portion disappeared. So in this conference report we have the buyout, but not FDA authority over tobacco products. That is unacceptable.

It is nothing more than a sweetheart deal for tobacco companies. They get cheaper tobacco and continue to avoid FDA regulation.

I have a long history of working on tobacco control. As a former smoker, this is a personal issue to me. And the more I learn about that menace the happier I am for myself and my loved ones.

I have worked hard in the Senate to protect Americans—especially children—from the deadly effects of cigarettes and other tobacco products.

In 1987, long before tobacco control became a mainstream issue, I worked with then Congressman DURBIN to author the law banning smoking on airplanes. That law brought about a seachange in our society's attitudes about smoking.

Once non-smokers could experience a smoke-free environment—in this instance, the cabin of an airplane—they began to demand it.

I also wrote the law banning smoking in all federally-funded places that serve children. And I have long supported FDA jurisdiction over this deadly addiction.

I am deeply disappointed that the Republican leadership is putting politics ahead of the health of our children by opposing FDA authority over tobacco.

Make no mistake: tobacco addiction is still a huge problem in America. Tobacco continues to be the number one cause of preventable death and disease in our Nation. Each year, tobacco claims an estimated 440,000 lives prematurely here in the United States.

According to the Centers for Disease Control, if current tobacco use patterns continue in the United States, over five million children alive today will die prematurely from a smoking-related disease. That is because nearly 4,000 young people try cigarettes for the first time each and every day—a statistic I find mind-boggling.

In addition to the terrible human costs, there are massive economic costs to our Nation. It is estimated that direct medical expenditures attributed to smoking now total more than 75 billion dollars per year.

Despite all of this, the FDA has not been able to take actions to reduce tobacco's harm on society.

A pro-tobacco Congressman recently said:

> Tobacco faces enough federal regulation.

But that is a joke. Cigarettes are essentially unregulated. When you go in a grocery store, the only consumable product you can't find a listing of the ingredients for is what's in cigarettes.

The Republican leadership is throwing away an historic opportunity to give the FDA the legal authority it needs to protect the public's health.

Today, we have worthless health warnings on cigarettes, no control over what tobacco companies claim about the relative health effects of their products, no authority to curtail marketing tobacco to kids, and no ability

to order the industry to remove especially hazardous ingredients.

The bottom line is: FDA authority will protect kids and save lives.

The 1998 legal settlement between the States and the tobacco companies prohibited the companies from taking ''any action, directly or indirectly, to target youth . . . in the advertising, promotion or marketing of tobacco products.''

But the tobacco companies are ignoring these promises.

Since the settlement, the tobacco companies have actually increased their marketing expenditures by 66 percent. According to the Federal Trade Commission, the tobacco industry spends more than $11.2 billion per year—over $30.7 million a day—marketing its deadly products just in the United States alone, often targeting youth.

For example, in 2002, Brown & Williamson unveiled a new marketing promotion for their Kool brand of cigarettes called Kool Mixx. This advertising campaign was designed with one simple goal: target young African-Americans and addict them to nicotine.

The ''Kool Mixx'' campaign included new cigarette packages with images of young DJs and dancers:

It is an outrageous attempt to addict youth.

Brown & Williamson doesn't even bother to be subtle when it comes to targeting African-American youth in this campaign.

The press release from Brown & Williamson announcing the campaign contained almost comical sentences revealing their racial targeting.

This is what the company's press release said:

> Kool understands the vibrant urban world of the trendsetting, multicultural smoker.

It goes on to say:

> Kool keeps it real and remains linked to the latest urban trends.

This campaign to addict young African Americans to cigarettes doesn't stop at product packaging and slick ads. Kool is sponsoring a nationwide ''DJ Competition'' in cities such as New York, Atlanta, Washington, St. Louis, and Chicago.

It seems that ''Kool Mixx'' is the new ''Joe Camel'' for minority teenagers.

This overt racial targeting of youth shows that the tobacco industry has not really changed its ways since its settlement with the State attorneys general.

The big tobacco companies have reverted back to the same atrocious behavior we all saw before they promised they would become good ''corporate citizens.''

Here is something even more outrageous difficult as that is to believe: one of the tobacco industry's new tactics is the introduction of candy-flavored cigarettes and other sweet-flavored tobacco products.

R.J. Reynolds—the same company that once marketed cigarettes to kids with the infamous cartoon character, Joe Camel has launched a series of flavored cigarettes,

One flavor is a pineapple and coconut cigarette called ''Kauai Kolada''; another is a citrus-flavored cigarette called ''Twista Lime.''

These names sound more like bubble gum flavors than deadly cigarettes—which is the point.

These new marketing techniques aimed at kids are especially troubling, given that over 550,000 children will become regular smokers this year alone.

FDA regulation is critical for many reasons. One reason—as we see with these candy-flavored cigarettes—is to keep kids away from these deadly products. Another reason we need FDA regulation is to make sure that preventable dangers in cigarettes are removed.

There are thousands of products for sale in America that people consume, but tobacco products are the only ones—the only ones—which don't have their ingredients disclosed.

That is amazing when you consider that cigarettes are by far the most deadly product you can buy in a grocery store.

Right now, the FDA can regulate a box of macaroni and cheese, but not a pack of cigarettes. If you wanted to know the ingredients of macaroni and cheese, they're listed on the package. But for cigarettes, there is no information whatsoever on the ingredients, toxins, chemicals, etc. It makes no sense.

When a smoker lights a cigarette, the burning ingredients create other chemicals. Some of these are carcinogenic. But tobacco manufacturers are not required by law to disclose the ingredients of their products to the public, including the toxic and cancer-causing ingredients.

A Surgeon General's report in 1989 reported that cigarettes contain 43 known carcinogens.

I wonder how many smokers realize that one of these chemicals is arsenic. I bet most smokers don't know that.

It boils down to this: by stripping out the FDA regulatory authority over tobacco products, we are failing our children. We are putting their health in jeopardy.

This conference report provides billions of dollars to tobacco farmers and boosts tobacco industry profits, but it does absolutely nothing nothing to reduce tobacco's terrible human and economic toll.

I don't know how any Member of this body who is truly concerned about children's health can, in good conscience, support this bill without the FDA provision.

We had a deal; everyone knew it: the tobacco buyout in exchange for FDA regulation. The Republican leadership broke that deal.

I urge my colleagues to oppose this conference report until we give the FDA the authority it needs to regulate tobacco as it does other products.

Mr. FRIST. Mr. President, it has been a long day, and I thank those Senators who have been here, and especially the presiders who we have had throughout the evening. We now have two appropriations conference reports at the desk ready for consideration. They are military construction appropriations and the homeland security appropriations, obviously two enormously important pieces of legislation, especially given the disaster relief package that is part of the military construction legislation.

It had been my hope to act on these as quickly as possible. I understand there are objections to these and that we will need to file cloture motions to bring these to a vote. I understand there is an issue relating to the military construction bill, but I am unaware of any issue with the appropriations bill relating to homeland security.

Homeland security clearly has important resources that address just what the title says; that is, the safety and security of the American people. I believe the American people, indeed, deserve that we act on this bill in a timely way and in an expeditious way, but it looks like we are being stopped from doing so.

I will file the cloture motions on both of these measures, but I would ask my colleagues on the other side of the aisle who are objecting to proceeding to please consider their objections overnight and allow us to proceed. I urge them, do not force a cloture vote on the homeland security bill, which addresses the security and safety of the American people. I ask that they consider allowing us to vitiate this cloture and move forward tomorrow.

MILITARY CONSTRUCTION APPROPRIATIONS ACT, 2005—CONFERENCE REPORT

Mr. FRIST. Mr. President, I move to proceed to the conference report to accompany H.R. 4837, the military construction appropriations bill.

The PRESIDING OFFICER. Without objection, the motion is agreed to. The clerk will report.

The legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4837), making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

The Senate proceeded to consider the conference report.

(The conference report is printed in the proceedings of the House in the RECORD of today, October 9, 2004.)

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented

under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 4837, a bill making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes.

Bill Frist, Kay Bailey Hutchison, Ted Stevens, Thad Cochran, Wayne Allard, Chuck Grassley, Norm Coleman, Lamar Alexander, Pat Roberts, Sam Brownback, Mitch McConnell, George Allen, Craig Thomas, Orrin Hatch, Richard Lugar, Mike DeWine, Gordon Smith.

DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2005—CONFERENCE REPORT

Mr. FRIST. Mr. President, I now move to proceed to the conference report to accompany H.R. 4567, the homeland security appropriations bill.

The PRESIDING OFFICER. Without objection, the motion is agreed to. The clerk will report.

The legislative clerk read as follows:

The Committee of Conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4567), making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes, having met, have agreed that the House recede from its disagreement to the amendment of the Senate, and agree to the same with an amendment, and the Senate agree to the same signed by a majority of the conferees on the part of both Houses.

The Senate proceeded to consider the conference report.

(The conference report is printed in the proceedings of the House in the RECORD of today, October 9, 2004.)

CLOTURE MOTION

Mr. FRIST. Mr. President, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the conference report to accompany H.R. 4567, a bill making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes.

Bill Frist, Thad Cochran, Ted Stevens, Kay Bailey Hutchison, Wayne Allard, Chuck Grassley, Norm Coleman, Lamar Alexander, Pat Roberts, Sam Brownback, Mitch McConnell, George Allen, Craig Thomas, Orrin Hatch, Richard Lugar, Mike DeWine, Gordon Smith.

Mr. FRIST. Mr. President, I now ask unanimous consent that the two live quorums with respect to these conference reports be waived.

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I now ask unanimous consent that the Senate begin a period of morning business, with Senators permitted to speak for up to 5 minutes each.

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

HONORING OUR ARMED FORCES

ARMY SPECIALIST ALLEN JEFFREY ''A J.'' VANDAYBURG

Mr. DEWINE. Mr. President, I rise this evening to say thank you to the men and women serving in our Armed Forces. Too often, we don't take the time to show our appreciation and tell them what their service means to us. They are there for us each day, dedicated to protecting all that we hold dear. They are there for us, making our world more secure. They are there for us, making our world a better place—a safer place. They are there for us, protecting our freedom.

That freedom, though, as we know so well, does not come without a price. It does not come without sacrifice. As General Douglas MacArthur once said:

The soldier, above all other men, is required to perform the highest act of religious teaching—sacrifice. . . . The soldier who is called upon to offer and to give his life for his country is the noblest development of mankind.

This evening, I rise to honor a Mansfield, OH, serviceman who selflessly gave his life while saving those of his comrades. Army SP Allen Jeffrey Vandayburg—''A.J.'' to his family and friends—earned the Bronze Star Medal with Valor for his final act of bravery—an act that ultimately saved the lives of the men and women serving with him.

On April 9, 2004, in Barez , Iraq, A.J. and other members of the Army's 1st Infantry Division—the ''Big Red One''—found themselves in the middle of a fierce firefight with Iraqi insurgents. A.J. was manning the gunner position of his Bradley fighting vehicle when his unit was fired upon. According to an official Army report, A.J. fought valiantly, drawing enemy fire to himself. The report detailed the following:

Vandayburg's unparalleled reflexes allowed him to destroy an [enemy] who was attempting to fire a rocket propelled grenade within 50 meters of his vehicle. Vandayburg had to swivel the entire turret, acquire the target, and destroy the enemy before the rocket-propelled grenade could be fired.

A.J. prevented that grenade from hitting his convoy. He saved many lives that day—an act that ultimately took his own life. His valiant efforts prompted the insurgents to focus their fire on his vehicle. A.J. was killed in the onslaught. He was just 20 years old.

A.J. was truly a great soldier—a courageous young man who put the safety of others above his own. We will never be able to repay A.J. for what he has done, and we will never be able to honor him the way he truly deserves. We can, however, remember this American hero as he was—as a strong, independent young man who did a great deal of good in this world.

In his all too brief 20 years, A.J. touched many lives. His mother, Chantil, fondly recalls that ''everybody loved him.'' It was his smile; it was hard to stay mad at him.'' A.J.'s father, Allen, remembers that he was the kind of kid who could walk into a room and just light it up.

A.J. loved his family very much. In the summers, A.J. always looked forward to their family vacation to Myrtle Beach, SC. A.J. loved kids. Family friend, Kim Loveland, recalled that she would pay A.J. to watch her children, only to have him turn around and use the money to buy the kids candy.

A.J. went to Mansfield High School, where he played golf and baseball. He was known as a ''good guy'' who had a lot of good friends. After graduation in 2001, A.J. enlisted in the Army. He would eventually serve in Kosovo, Germany, Kuwait, and Iraq. Allen and Chantil Vandayburg treasure the picture they have of their son with children in Kosovo. Allen likes to call A.J. ''a warrior who also had a soft side.''

A.J. was a lot like his father. Allen is a 25-year veteran of the Mansfield Police Department. A.J. learned from his dad the value of public service and how to trust your comrades—lessons he would bring with him overseas. A.J.'s parents knew that their son believed in what he was doing in Iraq. A.J. e-mailed them as often as he could and would tell them not to worry—that he trusted his fellow soldiers and knew they would look out for him. In his final battle, it was A.J. who paid the ultimate sacrifice for his comrades and for Iraqis he did not know.

A friend of A.J.'s, Nathan Pival, who is serving in Afghanistan, posted the following message on a Web site honoring A.J.:

A.J.—I found out what happened to you my first week in Afghanistan. To say the least, I felt like a piece of me died, too. I mean, who would have thought that you and me would end up in the Army after high school? I know you didn't find out I was in the service until you tried to call my cell when I was in Basic, but I want you to know that you were the person that helped to convince me that the military would help me out. It has helped me. . . . You are a hero, and you did the right thing, and that is what matters. I believe in a higher purpose, so I know I will see you again some day, but I'm still pretty upset that I am going to have to wait so long to tell my Army stories to my buddy who motivated me to join. If it wasn't for you, I'd probably . . . be going nowhere. I'm sorry I couldn't be there for you man. See you again someday.

A.J.'s family found solace in the final act of devotion from one brother to another. Though he described it as ''the hardest thing I've ever had to do,''

A.J.'s brother Chris, a Marine, crossed military branches to escort his brother's body from Dover Air Force Base to their home in Mansfield.

Hundreds of people came to support the Vandayburg family at A.J.'s memorial service. Hundreds more lined the funeral route. The outpouring of support was a truly moving display. At the memorial service, Reverend David Root spoke to the standing-room-only crowd. He said:

> [A.J.] was special and that is why you are all here. He chose to take the tough road. He knew the risks. . . . He changed the history of this country.

A.J. Vandayburg was indeed special. He will be remembered always for his bravery, compassion, and sacrifice. He will be remembered as a hero.

I close my remarks with the heartfelt words of A.J.'s 11-year-old sister, Taylor. Her words speak volumes about A.J., her hero—and A.J., her big brother:

> Bubby, you are my biggest hero, and I will always love you, but that does not mean I am still not mad at you for leaving, 'cause I am. But, I will always and forever love you. I miss you so much. You are loved and missed so much by me, Mom, Dad, and Chris. . . . You are my hero and my bubby and I love you so much. I am not saying goodbye because you are not gone. You are still with me, and you are the biggest and bravest soldier I know and I know God has a plan for you, but I had one for you to be right here beside me. You still are. I love you so much.

ABUSE OF FOREIGN DETAINEES

Mr. LEAHY. Mr. President, as we near the end of this session, I am disappointed to report that Congress seems content to let the issue of foreign prisoner abuse linger without effective congressional oversight. Some have argued that continuing to investigate this matter will drag it out, and have the effect of preventing us from putting the scandal behind us. I disagree. We have to uncover the full truth in order to ensure that such abuses are not repeated. I am sorry to report that each week brings new allegations that reveal how much we still do not know.

Last week, I spoke on this floor about a recent Los Angeles Times article that raised troubling new allegations about the abuse of Afghan detainees in Gardez, including the death of one detainee that was never reported up the chain of command. The article revealed what appears to be a complete disregard for established Army procedure among certain units in Afghanistan.

I sent a letter to Defense Secretary Donald Rumsfeld on October 1, 2004, asking him several questions about the allegations raised in the news article. I asked Secretary Rumsfeld to explain how the special forces base at Gardez was allegedly allowed to operate with no recordkeeping requirements or standing operating procedures—an allegation that was corroborated by a U.S. Army investigator in Afghanistan. I asked whether any official policy allowed special forces units to suspend normal recordkeeping requirements while operating in Afghanistan or Iraq. I asked if there is an official policy to allow special forces units to detain prisoners in local Afghan jails or other undisclosed facilities. I asked Secretary Rumsfeld for a prompt response and hope that he delivers one soon.

Even without the answers to these questions, we now know that senior officials in the White House, the Justice Department, and the Pentagon set in motion a systematic effort to minimize, distort, and even ignore our international agreements on torture and the treatment of prisoners. I am dismayed to report that some Members of Congress are now attempting to make it much easier for the administration to circumvent our treaty obligations. The 9/11 Recommendations Implementation Act, H.R. 10, was recently introduced by the House Republican leadership. Sections 3032 and 3033 of that bill would make it official U.S. policy to exclude certain non-citizens from the protection of the Convention Against Torture, a treaty to which the United States is a party. To enact such language after the abuses that took place at Abu Ghraib and other locations would further undermine the once distinguished reputation of the United States as a world leader on human rights.

Reports of the administration's support of these provisions are conflicting. Last week, Speaker HASTERT's office claimed that the Justice Department ''wants and supports'' the provisions. The Justice Department declined to offer an official endorsement of sections 3032 and 3033, but claimed that it favored any ''provisions that will better secure our borders and protect the American people from terrorists.'' In an attempt to reconcile these statements, Senator KENNEDY and I sent Attorney General Ashcroft a letter on October 1 urging him to repudiate the Department's support for these sections. We were pleased to learn this week that the White House went on record in opposition to the provisions, but we still await a reply from the Attorney General definitively stating the position of the Department of Justice.

Next Friday, October 15, is the deadline imposed by a Federal judge for the administration to turn over or identify all documents relating to the treatment of prisoners held by the United States at military bases and other detention facilities overseas. In his order, Judge Hellerstein stated: ''No one is above the law: not the executive, not the Congress, not the judiciary.'' I could not agree more. Unfortunately, this administration has continually ignored my requests for these documents—I will not be surprised if it refuses to comply with this court order. I would note that the original Freedom of Information Act request for these documents was submitted in October 2003, a year ago. Any embarrassment their release may cause now—less than 3 weeks before the Presidential election—is due to the administration's own stonewalling.

As the 108th Congress comes to a close, many questions about the prison abuse scandal will undoubtedly remain unanswered. Several Pentagon investigations are now complete, but none of them paint a complete and unbiased assessment of the prisoner abuse scandal. This Senate, and in particular the Judiciary Committee and Governmental Affairs Committee, failed to fulfill its oversight responsibilities. I have said many times there needs to be a thorough, independent investigation of the actions of those involved, from the people who committed abuses, to the officials who set these policies in motion. Perhaps in the new year, with a new Congress, the administration in power will be ready to seek the full truth about this scandal and begin the process of restoring honor to our nation.

I ask unanimous consent that the letters to Secretary Rumsfeld and Attorney General Ashcroft, both dated October 1, 2004, be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 1, 2004.

HON. DONALD RUMSFELD,
Secretary of Defense,
Washington, DC.

DEAR SECRETARY RUMSFELD: As you know, I am deeply troubled by the revelations of abuse of prisoners in U.S. custody overseas. I have closely monitored the numerous ongoing and completed investigations instigated by the Pentagon, but remain skeptical that these investigations will uncover the full truth. Each of these probes is limited in scope or authority and, therefore, none will comprehensively investigate the abuse of detainees. Each week brings new allegations that reveal how much we still do not know.

I am particularly disturbed by a story published in the Los Angeles Times on September 21, 2004. This article raises troubling new allegations about the abuse of Afghan detainees in Gardez, but also reveals what appears to be a complete disregard for established Army procedure among certain units in Afghanistan. According to the news report, based in part on a report written by Afghan prosecutors for the Afghan Attorney General, U.S. Army Special Forces arrested eight Afghan soldiers in March 2003 at the request of the provincial governor. The prosecutors' report and an internal memorandum prepared by a United Nations delegation both allege American mistreatment of the detainees including repeated beatings, immersion in cold water, electric shocks, being hung upside down, and having toenails torn off. One detainee, Jamal Naseer, reportedly died as a result of the torture. The U.S. Army Criminal Investigation Command (CID) recently opened a criminal probe into Naseer's death.

This incident is very troubling, but it points to a much larger problem. CID received a tip about Naseer's death earlier this year, but stated that it could not investigate the matter due to a lack of information. Christopher Coffey, an Army detective based at Bagram air base, told the L.A. Times: ''We're trying to figure out who was running the base. We don't know what unit was there. There are no records. The reporting

system is broke across the board. Units are transferred in and out. There are no SOPs [standard operating procedures] . . . and each unit acts differently.''

Apparently, because these units failed to follow Army procedure, Naseer's death was never reported up the chain of command. Yet, Lt. Gen. Mikolashek's report on detainee operations inspection, released in July of this year, conclusively stated that the team ''that visited Iraq and Afghanistan discovered no incidents of abuse that had not been reported through command channels; all incidents were already under investigation.'' We now know that this statement cannot be accurate. What we do not know is whether and how many other deaths, let alone cases of abuse, may have gone unreported.

I also have new questions about the Defense Department's involvement in the ''ghost detainee'' matter. The Fay-Jones report revealed that the ghost detainee problem in Iraq was far more pervasive than the Defense Department had previously acknowledged, but that report placed much of the blame on the CIA. The L.A. Times story, however, accuses U.S. Special Forces commanders in Afghanistan of using local jails to hide prisoners off of the official roles.

In order to better understand the situation in Afghanistan, and the role of the Department in monitoring the actions of forces on the ground, I ask that you respond to the following questions by October 8, 2004.

1. Please explain how the Special Forces base at Gardez was allowed to operate with no recordkeeping requirements or Standing Operating Procedures (SOPs).

2. Did any official policy allow Special Forces units to suspend normal recordkeeping requirements or chain of command reporting while operating in Afghanistan or Iraq?

3. Did any official policy allow Special Forces units to detain prisoners in local Afghan jails, or in any other undisclosed facilities?

4. Mr. Coffey's quote above suggests that an unknown number of detention centers have operated or are now operating in Afghanistan with total impunity. In light of the allegations raised in the L.A. Times story, what actions is the Pentagon taking to investigate the situation and resolve the problems?

5. In the absence of recordkeeping and SOPs, do you agree that none of the ongoing or completed Pentagon investigations can claim to have uncovered all allegations of abuse?

6. Are any other government entities, such as the CIA or other intelligence agencies, involved in the operation of these detention centers or in the treatment or interrogation of prisoners? If so, please describe the agencies and their role. If the answer to this or any other question contained in this letter is classified, please submit your answer in classified form and make it available to appropriately cleared staff.

As stated above, I request that you answer these questions by October 8, 2004. Thank you for your prompt attention to this matter.

Sincerely,

PATRICK LEAHY,
Ranking Member.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 1, 2004,

Hon. John D. Ashcroft,
Attorney General, Department of Justice, Washington, DC.

DEAR ATTORNEY GENERAL ASHCROFT: We write to express our deep concern about the report in yesterday's Washington Post that the Department supports the ''rendition'' of detainees to nations where they are likely to be tortured.

The United States is a party to the Convention Against Torture, which provides that ''No State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing he would be in danger of being subjected to torture.'' Since 9/11, there have been numerous reports that detainees in the custody of U.S. military or intelligence officials have been transferred for interrogation to governments known to torture prisoners. According to such reports, detainees who refuse to cooperate with U.S. interrogators have been ''rendered'' to foreign intelligence services in Saudi Arabia, Jordan, Morocco, Syria, and other countries that practice torture. One report stated that Deputy Attorney General Thompson approved the rendition to Syria of a Canadian citizen, who was confined in a small dark cell for a year and beaten on his palms, wrists, and back with an electric cable. Syrian officials later released him, telling reporters they found no link to Al Qaeda.

Until now, Administration officials have denied any involvement in this practice. At a Senate Armed Services Committee hearing on May 11, Undersecretary of Defense for Intelligence Stephen Cambone testified that ''to the best of [his] knowledge'' the Administration was fully complying with all legal requirements and that all reports of U.S. officials engaging in the practice of rendition were false.

Yesterday's report, however, states that the Department is urging House Republicans to include provisions in the 9/11 intelligence reform legislation authorizing the practice of renditions. Sections 3032 and 3033 of the bill, H.R. 10, would require the Secretary of Homeland Security to issue new regulations to exclude certain non-citizens from the protection of the Convention Against Torture. The changes would increase the burden of proof on any person being deported or rendered to establish ''by clear and convincing evidence that he or she would be tortured,'' and would deny the jurisdiction of courts to review the new regulations or claims brought under the Convention Against Torture by aliens at ports of entry.

These changes would violate longstanding U.S. law and policy, undermine basic humanitarian and human rights standards, expose U.S. soldiers and citizens traveling abroad to greater danger, and further weaken America's standing in the world.

Yet the spokesman for House Speaker Hastert is quoted in the report as saying that the Department ''really wants and supports'' these provisions. Department spokesman Mark Corallo was also quoted as saying, ''We can't comment on any specific provision, but we support those provisions that will better secure our borders and protect the American people from terrorists.''

No Department official should express support, either openly or behind the scenes, for provisions that so clearly violate fundamental human rights. Torture defies our laws and stains our ideals. The abuses at Abu Ghraib prison have been a major setback in the war on terrorism. An essential part of winning that war and protecting the country for the future is respect for the ideals that America stands for at home and throughout the world.

The Department has already undermined those ideals by issuing legal memoranda attempting to weaken the definition of torture and eliminate restraints imposed by U.S. laws and international treaties on the conduct of Executive Branch officials. We urge you to repudiate immediately and without qualification the Department's support for sections 3032 and 3033 in the House legislation, and to put an immediate halt to any Administration involvement in the illegal practice of rendition.

Sincerely,

EDWARD M. KENNEDY,
U.S. Senator.
PATRICK LEAHY,
Ranking Member.

MEDICARE MODERNIZATION ACT

Mr. HATCH. Mr. President, I have to respond to the outrageous charges made by my colleagues on the other side of the aisle regarding the Medicare statement I delivered yesterday.

I was disturbed by several remarks, especially that seniors have flatly rejected the Medicare prescription drug benefit. How is that even possible when the drug benefit doesn't even go into effect until January 1, 2006?

How is that possible when many Medicare beneficiaries are participating in the Medicare Drug Discount Card and have seen savings in their drug costs up to 20 percent per drug? I do not see that as an outright rejection at all.

My colleagues need to be careful about their charges, especially when they do not have the facts to back them up. I also take issue with my colleague's assertion that our prescription drug law is only a drug law in name. What does he mean by that?

Let me remind the Senator from Illinois that because of this new Medicare prescription drug law, 40 million Medicare beneficiaries will have drug coverage if they want it. The bill provides generous subsidies to low-income Medicare beneficiaries who, today, cannot afford to purchase drugs.

Prior to enactment of the Medicare Modernization Act, these beneficiaries had to make tough choices between buying their prescription drugs and putting gas in their cars. Or buying prescription drugs or putting food on the table. Or buying prescription drugs or paying their rent. Once the Medicare prescription drug plan goes into effect on January 1, 2006, those Medicare beneficiaries will no longer have to worry. And another point that needs to be raised regarding this matter—if there were any proposals that deserve to be recognized as offering a drug benefit in name only, it's the two Democratic plans of two years ago—plans supported by 50 and 45 Democrats respectively, including the Democratic Leader and Senator KERRY.

My colleague, Senator GRASSLEY, described those plans a few days ago, but let me take a few minutes to recap. The first Democratic plan had a drug benefit that lasted just six years. Talk about offering a drug benefit in name only.

The second plan didn't even offer a benefit to the vast majority of beneficiaries. Seventy percent of beneficiaries would not have received any basic coverage. A plan that shuts out the vast majority of beneficiaries—how can you call that a drug benefit? Guess what those 70 percent got.

You are not going to believe this—a five percent discount on their drugs. Once they spent $3,300 out of pocket, they could qualify for catastrophic coverage.

Some have taken issue with the MMA, saying that the ''benefit'' stops after an initial coverage amount. I would like to remind my colleagues on the other side of the aisle that their basic benefit would have never even started for 70 percent of beneficiaries! Talk about a doughnut hole; these beneficiaries didn't even get a doughnut!

The Congressional Budget Office estimated that 66 percent of beneficiaries wouldn't meet the $3,330 threshold—again, for these folks, the only help they would get was a five percent discount! A five percent discount!

I was also extremely disappointed by the arguments made by the Senator from Illinois and the Senator from California against what some have termed the ''non-interference'' provision. As I outlined, this provision has been included in the most prominent Democrat initiatives, starting with the Clintons' Health Security Act over a decade ago. Despite that fact, here we are again listening to arguments against it. Apparently, what was good in a Democratic administration is bad in a Republican one.

And what was good in a Democratic Senate is bad in a Republican Senate during an election year. It is almost as if my colleagues were not listening to what I said. The argument that there is no authority for the federal government to bargain with the pharmaceutical companies is getting to be a tired argument. Again, let me repeat myself from yesterday.

First, the Democrat-sponsored bill from 2000, introduced by Senator Tom Daschle and supported and cosponsored by 33 Senate Democrats, had a specific provision which stated the following:

> In administering the prescription drug benefit program established under this part, the Secretary may not (1) require a particular formulary or institute a price structure for benefits; (2) interfere in any way with negotiations between private entities and drug manufacturers, or wholesalers; or (3) otherwise interfere with the competitive nature of providing a prescription drug benefit through private entities.

Again, this provision is from S. 2541, the Medicare Expansion for Needed Drugs, a bill that was introduced by Senator DASCHLE and cosponsored by 33 Democrats, including not only Senator KERRY but also Senator DURBIN and Senator BOXER who spoke against it on the floor yesterday.

Now, it is every Senator's right to change his or her mind, but you would think we would hear some discussion about the basis for this flip-flop. Instead, there is much dialogue about the so-called ''evil'' pharmaceutical companies, and virtually no admission that many Democrats, many prominent Democrats, have been on record in favor of the provision they now castigate.

And what is even more outrageous is the fact that they are the ones who first came up with the concept.

When I hear my colleague from California talk about how the Medicare drug law does not do much for seniors, let me just remind my colleagues on both sides of the aisle that she is sadly mistaken.

On the contrary, the Medicare prescription law improves health care coverage for Medicare beneficiaries by first, giving them the option to have prescription drug coverage, something that they do not have today and something Medicare beneficiaries have wanted for close to 40 years!

In addition, the MMA provides beneficiaries new preventive health benefits including a first-time, Welcome to Medicare Physical Examination, cardiovascular and diabetes screening and improved payments for mammography.

It also provided rural health care providers with increased reimbursement so they may continue to provide Medicare beneficiaries living in rural areas with quality health care. I don't know about California or Illinois, but that is most welcome in Utah!

It also provides beneficiaries with a choice in coverage. Seniors will be able to choose the drug benefit that best suits their needs, rather than be forced in a one-size fits all government plan which is what many of my colleagues on the other side of the aisle support.

Another important provision in the bill helps all Americans by offering them Heath Savings Accounts, HSAs. HSAs are tax-advantaged savings accounts which may be used to pay for medical benefits. The inclusion of these new accounts is a significant part of the Medicare law.

Allowing individuals to take charge of their own savings for future health care expenses is an important and necessary change in the direction of our health care policy, and is one that I support strongly.

Another point raised by my colleague from California is the doughnut hole. I think she called the doughnut hole a ''benefit shutdown.'' I agree that the MMA law is not perfect and, yes, this is an area I wish we could have improved upon. But calling it a ''benefit shutdown'' is not only wrong, it is deceptive.

The reason it is wrong to call the doughnut hole a ''benefit shutdown'' is that it would not affect the majority of seniors, and since our first responsibility is to take care of the very poor beneficiaries, that is entirely fitting. In fact, the Congressional Budget Office told us that only one-quarter of Medicare beneficiaries will have spending that actually reaches the non-coverage window of the doughnut hole.

Finally, let me remind my colleague from California that the Medicare prescription drug amendment the Democrats brought to the floor in 2002 sunsetted the Medicare prescription drug program. My good friend from Iowa, Senator GRASSLEY, the Chairman of the Senate Finance Committee was talking about this irony the other day on the floor.

Let me recap what Senator GRASSLEY said.

When we were considering the Medicare Tripartisan bill on the Senate floor on 2002, the first Graham-Kennedy Medicare proposal was not permanent. Let me read the language from their proposal:

''No obligations shall be incurred, no amounts shall be appropriated and no amounts expended, for the expenses incurred for providing coverage of outpatient drugs after December 31, 2010.''

Isn't that just remarkable? And they are calling the MMA a drug plan in name only? Who are they trying to kid?

The fact that the Graham-Kennedy proposal offered a drug benefit that ended 6 years after it started is unbelievable. But they sunsetted the benefit to hide the true cost of their proposal.

At the time, the Congressional Budget Office said it would cost over $100 billion each year to extend the Graham-Kennedy drug benefit past the sunset—$100 billion a year without a plan to pay for this enormous cost!

And the argument made about the MMA not going into effect until after the election is just more election year political jabber. That is a ridiculous charge, one that does not even warrant a response. But I will respond to it by saying that it takes time to put together a benefit that will cover over 40 million Americans.

It takes time to do it correctly. The agency in charge of the Medicare program needs time to implement the MMA regulations, accept bids from plans that wish to participate in the Medicare Advantage programs and, most important, it takes time to educate Medicare beneficiaries about the options that will be offered to them.

And let me remind all of you that even the Democrat proposals that have been considered in the past did not have the Medicare prescription drug programs go into effect immediately, so that is just a ludicrous charge.

In addition, I will remind my colleagues that both the Democratic plans under consideration in the summer of 2002 didn't go into effect until 2005 because they recognized the same thing we did—that it will take some time to get a new program like this up and running.

And so, there's no subterfuge behind the 2006 date in the MMA. Moreover, at least the MMA offers immediate assistance through the drug card program. Their plans offered nothing until 2005 and then very little after that!

I would also like to respond to my colleague from California's comments about the Veterans Administration system and the deficiencies of which I described this yesterday morning. If she's surprised at the Republicans for not using the VA model, then my only guess is that she's even more surprised that her own party didn't.

No—they wanted to have private plans negotiate with drug companies—the same approach taken in the MMA. The VA system was not a model for any Medicare prescription drug plans considered on the Senate floor.

Finally, let me address the idea of importing cheap drugs from Canada.

First, nobody has a greater desire than I to make prescription drugs more affordable, particularly for our seniors and the disabled, who depend so heavily upon pharmaceuticals for their quality of life. I co-authored the 1984 bill which, in essence, brought generic drugs to the marketplace to become the force for competition and affordability that they are today.

My colleagues seem to forget that the MMA does include a provision to permit the importation of prescription drugs from Canada once a program is in place that is approved and certified for safety and cost by the Secretary of the Department of Health and Human Services (HHS). The law also calls for the Secretary to establish a 13-member task force that will study proposals to make re-importation safe and cost effective.

HHS Secretary Tommy Thompson has stated he is hopeful the panel's study will be completed by the end of this year. We shouldn't overlook the fact that the FDA has documented many cases of what appeared to be FDA-approved imported drugs that in fact were contaminated or counterfeit, contained the wrong product or incorrect dose, were accompanied by inadequate directions, or had outlived their expiration date.

These drugs would be at a minimum ineffective, and could actually be harmful or fatal.

The FDA is also concerned with the safety of allowing companies which are not licensed by states to practice pharmacy to sell prescription drugs without any limitation on the amount or frequency of drug imports permitted for individuals.

In addition, reimportation legislation as it is written would allow risky drugs that are currently available in the U.S. only under strict safety controls to reimported at any amount or frequency to anyone—even those who are at high risk to be seriously injured by the medication.

The FDA underscored these concerns in the Judiciary Committee's hearing on drug importation last July. The agency stressed that opening our tightly regulated, closed system of prescription drug distribution will open the door to counterfeit and otherwise adulterated or misbranded drugs being widely distributed to an unwitting American public.

Mr. William K. Hubbard, the Associate Commissioner for Policy and Planning for the FDA testified before the Senate Judiciary Committee on this important matter. I would like to take this opportunity to read some of his testimony to my colleagues:

FDA remains concerned about the public health implications of unapproved prescription drugs from entities seeking to profit by getting around U.S. legal standards for drug safety and effectiveness. Many drugs obtained from foreign sources that either purport to be or appear to be the same as U.S. approved prescription drugs are, in fact, of unknown quality. Consumers are exposed to a number of potential risks when they purchase drugs from foreign sources or from sources that are not operated by pharmacies properly licensed under state pharmacy laws.

Patients also are at greater risk because there is no certainty about what they are getting when they purchase some of these drugs. Although some purchasers of drugs from foreign sources may receive genuine product, others may unknowingly buy counterfeit copies that contain only inert ingredients, legitimate drugs that are outdated and have been diverted to unscrupulous resellers, or dangerous sub-potent or super-potent products that were improperly manufactured. Furthermore, in the case of foreign-based sources, if a consumer has an adverse drug reaction or any other problem, the consumer may have little or no recourse either because the operator of the pharmacy often is not known, or the physical location of the seller is unknown or beyond the consumer's reach. FDA has only limited ability to take action against these foreign operators.

These safety concerns are real, and I strongly believe that if we truly care about seniors and other patients who depend upon prescription drugs, we should not expose them to what currently amounts to pharmaceutical Russian roulette.

Now the FDA is working with some of my colleagues on legislation that would give the FDA greater resources, limit the scope of imports, and provide greater power to the FDA to police imports. In recent public comments, former Commissioner Mark McClellan has said these measures would give the agency the ability to assure the safety of prescription drugs imported by Canada.

In addition to these safety concerns, however, I am also concerned that reimported drugs pose a threat to the innovation Americans—and the rest of the world—have come to expect from our pharmaceutical industry. Canada and other countries with lower drug prices generally import superior American products, but impose price controls to keep costs down.

However, it can cost as much as $1 billion to produce a new drug, test it, win FDA approval, educate doctors, and make the drug available to patients. No pharmaceutical company could go through this immensely expensive process without a chance to recover some of its costs, which will not be possible if we impose in America—however indirectly—Canadian-style price controls. I do not believe that sacrificing the safety and future supply of our drugs by reimportation is the right answer to the high cost of prescription drugs.

I hope that I have cleared up any misunderstandings that Medicare beneficiaries have about the MMA law. Again, we gain nothing by spreading mistruths about the Medicare bill.

The only thing that results from those types of charges is confusion of Medicare beneficiaries—the very people who all of us are trying to help. And that is regrettable.

ANTISEMITISM

Mr. SMITH. Mr. President, I speak about antisemitisim, an ancient pestilence that has torn at the fabric of society for too long. Specifically, I have become concerned with the dissemination of antisemitic attitudes through political cartoons.

Last month, on the eve of Rosh Hashanah, I stood in this chamber along with a bipartisan group of my colleagues to speak about the cancerous effect that antisemitism continues to have on humanity. As I stated then, it is of the highest priority for our Nation to stand up against this venomous invective and bigotry directed at the Jewish people.

It is an unfortunate reality that some newspapers in the Arab world blatantly promote antisemitism. For my remarks, I had prepared several posters of cartoons that appeared in Arabic-language newspapers to illustrate to my colleagues their insidious nature, but in the end, I found them too unsettling to display.

What I find disconcerting, however, is the fact that this sentiment is creeping into political cartoons both in Europe as well as here in the United States. Newspapers across the country and the world have published cartoons that have gone beyond reasonable differences of opinion and expanded into the realm of antisemitism.

For example, I have seen a cartoon of a man lying on the ground, bleeding and clutching a small Palestinian flag. Impaled in his back is a large American flag with its stars arranged to form the Star of David. This graphic image, insinuating that an Israeli-controlled America has killed the state of Palestine, is appalling.

In Italy, the Newspaper La Stampa ran a cartoon depicting an Israeli tank rumbling toward a baby Jesus, who is crying ''Surely they don't want to kill me again?!'' This is not a criticism of policy or leadership. This is nothing other than an antisemitic attack thinly veiled as political parody.

In the Greek Newspaper Ethnos, a cartoon appeared showing two Israeli soldiers stabbing captive Arabs. One of the Israeli soldiers is depicted as saying to the other ''Don't feel guilty, brother. We were not in Auschwitz and Dachau to suffer but to learn!'' How can that be construed as anything other than bigotry? This kind of hatred is simply unacceptable, and I urge my colleagues in the Senate, as well as leaders across the world, to make every effort to end this terrible plague of hatred.

RELATIONS WITH KYRGZSTAN

Ms. LANDRIEU. Mr. President, I make special note of the visit to the United States by the distinguished

President of the Republic of Kyrgystan, Askar Akaev. President Akaev was in the our country for the opening of the session of the United Nations and also traveled to Utah to discuss the reforms taking place in his country and to talk about the efforts his nation is taking in the war on terrorism. Today we face a global war against terror, a war we cannot win alone. It is in that spirit that we should recognize and support democracies worldwide, particularly those burgeoning democracies for which freedom is a new concept. The Republic of Kyrgyzstan, is just such an example.

A small country of 5 million in Central Asia, the Kyrgyz Republic has been one of the most progressive countries in the region, especially amongst the countries which once made up the former Soviet Union. Plagued by an inflation rate of 88% in the year 1994, Kyrgyzstan under the leadership of President Akaev was successful in carrying out a number of market reforms, which allowed it to lower that inflation rate to 15 percent in just three years.

President, Askar Akaev was first elected in October of 1990 and is internationally recognized for his promotion of science, human rights and democracy world wide. He has received many International Awards, including the Grand Cross of the Order of Liberty and Unity from the Association for Unity Latin America in 1995, the Prize of Javaharlal Neru's International Foundation for Unity also in 1995, the Prize of Crans Montana World Forum in 1996 and the North American-Kyrgyz Business Councils International Leadership Award in 1997. More recently, however, President Akaev's wife and first lady, Mairam Akaeva was awarded an honorary doctorate by Utah Valley State College during a trip to the United States late last month. She is also internationally known for her efforts with women and children, spreading the value of education, which is highly regarded in the Kyrgyz Republic, which enjoys a literacy rate of 98 percent.

I thank President Akaev's commitment to the war on terrorism and express our gratitude for providing a military base for our troops in his country. There are a number of companies with operations in the region that have helped supply our troops with what they need to prevail.

As we continue to search for allies in this critical region of the world, it is important to commend those who are trying and slowly succeeding with new found freedoms and economic opportunities.

BULLETPROOF VEST PARTNERSHIP GRANT PROGRAM

Mr. LEAHY. Mr. President, I am pleased that late last night the House of Representatives passed H.R. 2714 with the Leahy-Hatch amendment to reauthorize the highly successful Department of Justice Bulletproof Vest Partnership Grant Program. I thank the Chairman of the Senate Judiciary Committee, Senator HATCH, for joining me on this amendment. This bipartisan legislation now goes to the president for his signature into law.

Our amendment contains the same legislative language as the Campbell-Leahy-Hatch Bulletproof Vest Partnership Grant Act of 2003, S. 764. The Bulletproof Vest Partnership Grant Act passed the Senate by unanimous consent on July 15, 2003, and has been awaiting consideration by the House of Representatives since then.

This measure marks the third time that I have had the privilege of teaming with my friend and colleague Senator CAMPBELL to work on the Bulletproof Vest Partnership Grant Program. We authored the Bulletproof Vest Grant Partnership Act of 1998, which responded to the tragic Carl Drega shootout in 1997 on the Vermont-New Hampshire border, in which two State troopers who did not have bulletproof vests were killed. The federal officers who responded to the scenes of the shooting spree were equipped with life-saving body armor, but the state and local law enforcement officers lacked protective vests because of the cost.

Two years later, we successfully passed the Bulletproof Vest Partnership Grant Act of 2000, and now we will go 3-for-3 this time around. Senator CAMPBELL brings to our effort invaluable experience in this area and during his time in the Senate he has been a leader in the area of law enforcement. As a former deputy sheriff, he knows the dangers law enforcement officers face when out on patrol. I am pleased that we have been joined in this effort by 12 other Senate cosponsors, including Senator HATCH.

Our bipartisan legislation will save the lives of law enforcement officers across the country by providing more help to state and local law enforcement agencies to purchase body armor. Since its inception in 1999, this highly successful Department of Justice program has provided law enforcement officers in 16,000 jurisdictions nationwide with nearly 350,000 new bulletproof vests. In Vermont, 60 municipalities have been fortunate to receive funding for the purchase of 1,905 vests.

The Bulletproof Vest Partnership Grant Act of 2003 will further the success of the Bulletproof Vest Partnership Grant Program by re-authorizing the program through fiscal year 2007. Our legislation would continue the Federal-State partnership by authorizing up to $50 million per year for matching grants to state and local law enforcement agencies and Indian tribes at the Department of Justice to buy body armor.

We know that body armor saves lives, but the cost has put these vests out of the reach of many of the officers who need them. This program makes it more affordable for police departments of all sizes. Few things mean more to me than when I meet Vermont police officers and they tell me that the protective vests they wear were made possible because of this program. This is the least we should do for the officers on the front lines who put themselves in danger for us every day. I want to make sure that every police officer who needs a bulletproof vest gets one.

HONORING FAVORITE TEACHERS

Mr. DAYTON. Mr. President, nearly 4,000 Minnesotans honored their favorite teacher at my Minnesota State Fair booth this summer. I would like to honor these teachers further by submitting their names to the CONGRESSIONAL RECORD.

Forest Lake Senior High School—Alan Anderson, Charles Anderson, Ann Astrup, Rena Benedict, Lee Anne Brockman, John Buck, Jamie Bullock, Julie Busby, Tiffany Busby, Sara Cameron, Julianne Carver, Charles Chalberg, Benjamin Chamberlain, Jenny Coates, Michael Coffee, Colleen Collins, Coleen Colton, Mary Colvin, Anne Dahl, Robert Dettmer, Judy Dittberner, Diane Dugas, Terryl Eikren, Nancy Ellias, Patrick Ellias, Chad Erichsrud, Megan Espe-Och, Alesa Fabini, Benjamin Fisher, Daniel Forsythe, Kristin Gorczynski, Charles Gunderson, Heather Guy, Richard Hahn, Larry Harris, Sara Hartman, Elizabeth Haven, Henry Hebert, Holli Hebl, Dana Herman, James Herman, Judy Hill, Thomas Hipkins, Kristine Hovland, Jennifer Hreha, Susan Jarrett, Ryan Johnson, Joseph Jurasin, Maria Kaiser, Paul Karlsson, Janelle Kendrick, Anthony Kowalewski, Gail Law, Bruce Leventhal, Jeffrey Lewis, Marcus Lewton, James Lindstrom, David Livermore, Laura Livermore, Robyn Madson, Christine Magnan, Robert Marzlof, Larry Matzdorf, Tracy Maxwell, Victoria McDougall, William McElrath, Kenneth Mikolajcyk, Michael Miron, Kristen Nellis, Timothy Newcomb, Thomas Newell, Kelly Nicholls, William Olson, Marilyn Orlich, Nancy Sonnon-Pechmann, Kristina Prescott, Cynthia Riesgraf, Nicolle Ristow, Lyn Ruetten, Ryan Rutten, Barbara Schellinger, Laura Schuster, Theresa Snodie, Kristen Soderlund, Suzanne Stennes-Rogness, Dorothy Sunne, Brenda Swanson, Larry Syverson, Sandra Teichner, Donald Thompson, Larry Tietje, Ronald Tungseth, Bradley Ward, Paul Wieland, Jeffrey Wilson, and Kelly Wing.

Century Junior High School—Mark Allaman, Sherri Alm, Penny Baker, Karleen Boettner, Susan Brown, Nancy Calkins, Katrina Callan, Patricia Cheyne, David Daniels, Steven Ekdahl, Reid Fore, Tiffany Freeman, Kristina Granias, Kristin Gustafson, Joel Hall, Michael Hall, Megan Halverson, Kathleen Hellen, Jennifer Hesse, Richard Hofstede, Kay Jackson, Bonnie Johnson, Brian Johnson, Kathryn Johnson, Paul Kendrick, Glen King, Joy Kleppe, Carolyn Kluk, David Kryzer, Maury, Laqua, Tracy Larson, Karen Lewis, Susan Lidstrom, Stephanie Lourey, William Loushine, Jeri Lovett, Michelle Lynch, Alice Lysaker, Geoff McLaughlin, Lance Meier, Joen Moen-Pearson, Kelly Nuss, Deborah Paul, James Pearson, Pauletter Perkovich, Linnea Peterson, Lynn Randazzo, Brian Rigwald, Pamela Robson, Carol Rupar, Alecia Sand, Justin Sheider, Pamela Schultze, Jan Stauffer, Sandra Swenson, Vicky Trampe, Christopher Vogel, Scott Walcker, David Walker, Louise Walker, Lois Weber, Cynthia Weiss, and Edward Zweber.

Southwest Junior High School—Janelle Bernauer, Donald Bjerke, Margaret Burns-

Hook, Linda Caddy, Amanda Colby, Thomas Cooper, Shawn Everson, Carland Gaustad, Travis Gjerning, Bruse Hafften, Lou Ann Hanson, Debra Hecker, Annerre Hegler, Jeffry Henry, Dennis Hughes, Crystal Ivanish, Paul Jacobs, Daniel Kne, Sheree Koehler, Joanne Leavens, Kimberly MacDonald, Thomas Malerich, Jennifer Mayer, Cheryl McMahan, Lee McNiesh, Daniel Monroe, Benjamin Munsch, Katherine Nagel, James Noll, Kathleen Norquist, Kristin Pariseau, Greg Patchin, Susan Peterson, Arwen Peopard, William Porter, Rosalie Quale, Philip Raaen, Katie Siebert, James Stromber, William Sullivan, Philip Sundblad, Matthew Thelander, Lawrence Underkoffler, Cynthia Walker, Mary Windsor, Heidi Wollschlager.

Forest Lake Area Learning Center—Deborah Anderson, Laura Anton, Ronald Burris, James Caldwell, Eugenia Cerghizan, Shawn Dylla, Richard Elliot, Heidi Errickson-Grahek, Mary Pat Flandrick, Amy France, Theresa Gieschen, Loren Lynch, George Malone, Michael Meier, Brian Roy, Britt Schachtele, Lisa Sodren, Seth Webster, Alliseon Whittlef.

Columbus Elementary—Christine Brewster, Nancy Bulinski, Steven Carr, Jodie Classen, Kathleen Damon, Sharon Deraad, Terry Burei, James Focht, Kathleen Gross, Danna Grundei, Robert Holewa, Mary Johnson, Alison Linderman, Paulette Miller, Jill Nuebel, Heidi Sapa, Cynthia Solberg, Claudia Stepnick, Frederic Tatting, Kathleen Vail, Mary Vangen, Kimberly Webb, Daniel Winkelman, Barbara Zawadski, and Lois Zemke.

Forest Lake Elementary—Krista Armitage, Donna Benson, Carol Carlson, Daniel Cavanaugh, Christine Davis, Gary Downing, Kelly Duncan, Dianna Heineman, Georgia Heisserer, Mary Holland, Diane Iverson, Michael Jensen, Katherine Jurasin, Clare Kazmierczak, Mary Kryzer, Carol Luschke, Cheri Larson, Julie Larson, Janice Lee, Catherine Massey, Jeanette Maxfield, Jan Mrozinski, Mary Pooch, David Seaburg, Sandra Severson, Joy Sietsema, Nancy Smiley, Mark Smith, Diane Talbot, Michelle Zimmer.

Forest View Elementary—Bruce Abbe, Paul Alexander, Leslie Bergerson, Arlene Bevin, Terry Burk, Margret Cosary, Laurie Ehlers, Brenda Ely, Linda Foster, Jennifer Franklin, Susan Hansen, Sara Heckel, Kale Henry, Patricia Hoglund, Karl Holle, Amy Huset, Malcom Johnson, Michelle Johnson, Christopher Kotys, Kelly Lessman, Michelle Lewis, Julie Myles, Carol Nygaard, Julie Ohman, Jill Genaw-Olson, Kimberly Rogers, Linda Rygh, Patricia Sargent, David Sauer, Darci Sauvageau, Donna Sobiech, Ryan Soukup, Barbara Teawalt, Cynthia Turry, Amy VanBergen, Marlene Wolinski.

Lino Lakes Elementary—Wendy Amon, Kristin Buckner, Jennifer Currier, Constance Durei, Mary Fortner, Lynn Furnstahl, Diane Giorgi, Amy Greenfield, Katherine Hansen, Mary Beth Higgins, Jeffrey Johnson, Kelly Johnson, Nichole Laven, Renee Loberg, Barbara Lundborg, Brittany Lynch, George Martin, Donna Newell, Bonita Peck, Kristina Quan, Jill Schmidt, Pamela Soukkala, Rosemary Valentine, Barbara Voedisch, Darla Wright.

Linwood Elementary—Christine Amsler, Connie Atchison, Sandra Burton, Mary Seidel-Cox, Cynthia Cunningham, Shelley Guptil, Lisa Guzy, Agnes Hall, Beth Hartway, Diane Hipkins, Christine Hudspeth, Gae Jarvis, Michael Knox, Jami Larson, Judith Marleau, Elizabeth Miller, Susan Montgomery, Susan Mullen, Kimberly Nowicki, Monica O'Rourke, Deanna Pesek, Erin Peterson, Heather Peterson, Janice Schwister, Cynthia Prestegaard, Karen Ralidak, Kathryn Robinson, Kathryn Schwister, Ann Severson, Sandra Ternti, and Scott Urness.

Scandia Elementary—Diane Anderson, Joan Arnholt, Laurie Bauer, Kathleen Beach, Barbara Carlson, Jean Clausen, Holly Engvall, Kathleen Garry, Sandra Holcomb, Jan Hughes, Jenna Joelson, Frances Klausen, Cynthia Kramer, Gregory Krentz, Marilyn Larson, Rebecca Magnuson, Jacqueline McMahon, Molly Nemec, Joyce Partyka, Maureen Schwab, Geraldine Seaburg, John Severson, Ellen St. Sauver, Jeremy Swensen, Sandra Valleen, Marlene Wirth, Carol Young, Emily Ziemer.

Wyoming Elementary—Marsha Baer, Michele Bahnmiller, Cheryl Binder, Terri Buerkle, Gail Chalbi, Richard Clayton, Daniel Cremsino, Mary DeFord, Mary Ellen Dellwo, Diane Dummer, Kathleen Edwards, Carol Geiger, Connie Glowacki, Mary Gookins, Joan Harms, Jill Johnson, John Kay Kery Kruger, James Lundborg, Mary Malrick, Lisa Mansell, Kristin Maser, Debra Matheson, Kathleen Mcmorrow, Penny O'Brien, Christine Pietsch, Carrie Pulczinski, Rochelle Quillen, Crystal Rademacher, Diane Reyzlaff, Karen Richards, Cheryl Runquist, Kelly Schuder, Julie Sorensen, Andrew Stoyke, Pamela Thomas, Diana Urness, Jacqueline Wright, Kathleen Wright.

Central Montessori—Laurie Chelgren, Gina Eberspacher, Tara Hahnm Christine Hebert, Sandra Learned, Sylvia Nelson, Vicki Peopard, Joyce Reed, Christina Sparby, Mary Tenjack.

Forest Lake School District—Joy Ballou-Jantzen, Joseph Bauer, Elizabeth Benshoof, Lisa Berg, Jame Bona, Kathleen Briguet, Heidi Christian, Lori Dahlquist, Charles Dodson, Tammy Dunrun, Berni Ester, Diane Fairchild, Edward Gibson, Mary Guler, Lisa Houska, Kelli Kaetterhenry, Alexandra Kaslow-Briggs, Loretta Monson, Charles Moses, Heide Muhs, Alissa Nelson, Gayla Peterson, Rachel Peterson, Wendy Pickar, Cynthia Saarela, Priscilla Scherman, Lynn Schwiebert, Nicole Shabelski, Jill Somrock, Donald Spears, Kathryn Stading, Joel-Lynn Tinklenberg, Jennifer Tolzmann, and Callie Tresco.

MESSAGE FROM THE HOUSE

At 10:02 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House agreed to the amendment of the Senate to the bill (H.R. 1533) to amend the securities laws to permit church plans to be invested in collective trash trusts.

The message also announced that the House agreed to the amendment of the Senate to the bill (H.R. 2608) to reauthorize the National Earthquake Hazards Reduction Program, and for other purposes.

The message further announced that the House agreed to the amendment of the Senate to the bill (H.R. 2714) to reauthorize the State Justice Institute.

The message also announced that the House agreed to the amendment of the Senate to the bill (H.R. 4175) to increase, effective as of December 1, 2004, the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of certain-connected disabled veterans, and for other purposes.

The message further announced that the House passed the following bills, without amendment:

S. 524. An act to expand the boundaries of the Fort Donelson National Battlefield to authorize the acquisition and interpretation of lands associated with the campaign that resulted in the capture of the for in 1862, and for other purposes.

S. 1368. An act to authorize the President to award a gold medal on behalf of the Congress to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King in recognition of their contributions to the Nation on behalf of the civil rights movement.

S. 2195. An act to amend the Controlled Substances Act to clarify the definition of anabolic steroids and to provide for research and education activities relative to steroids and steroid precursors.

S. 2864. An act to extend for eighteen months the period for which chapter 12 of title 11, United States Code, is reenacted.

S. 2883. An act to authorize the Gateway Arch in St. Louis, Missouri, to be illuminated by pink lights in honor of breast cancer awareness month.

S. 2896. An act to modify and extend certain privatization requirements of the Communications Satellite Act of 1962.

The message also announced that the House passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2760. An act to limit United States assistance for Ethiopia and Eritrea if those countries are not in compliance with the terms and conditions of agreements entered into by the two countries to end hostilities and provide for a demarcation of the border between the two countries, and for other purposes.

H.R. 4917. An act to amend title 5, United States Code, to authorize appropriations for the Administrative Conference of the United States for fiscal years 2005, 2006, and 2007, and for other purposes.

H.R. 5245. An act to extend the liability indemnification regime for the commercial space transportation industry.

H.R. 5294. An act to amend the John F. Kennedy Center Act to reauthorize appropriations for the John F. Kennedy Center for the Performing Arts, and for other purposes.

H.R. 5295. An act to amend part III of title 5, United States Code, to provide for the establishment of programs under which supplemental dental and vision benefits are made available to Federal employees, retirees, and their dependents, to expand the contracting authority of the Office of Personnel Management, and for other purposes.

The message further announced that the House passed the bill (S. 2292) to require a report on acts of anti-Semitism around the world, with amendments.

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 1350) to reauthorize the Individuals with Disabilities Education Act, and for other purposes, requests a conference asked by the Senate on the disagreeing votes of the two Houses thereon and appoints the following members as the managers of the conference on the part of the House:

From the Committee on Education and the Workforce, for consideration of the house bill and the Senate amendment, and modifications committed to conference: Messrs. BOEHNER, CASTLE, EHLERS, KELLER, WILSON of South Carolina, GEORGE MILLER of California, Ms. WOOLSEY, and Mr. OWENS.

From the Committee on Energy and Commerce, for consideration of section

101 and title V of the Senate amendment, and modifications committed to conference: Messrs. BARTON of Texas, BILIRAKIS, and DINGELL.

From the Committee on the Judiciary, for consideration of section 205 of the House bill, and section 101 of the Senate amendment, and modifications committed to conference: Messrs. SENSENBRENNER, SMITH of Texas, and CONYERS.

The message further announced that the House has agreed 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. 1047) to amend the Harmonized Tariff Schedule of the United States to modify temporarily certain rates of duty, to make other technical amendments to the trade laws, and for other purposes.

ENROLLED BILLS SIGNED

The message also announced that Speaker has signed the following enrolled bills:

S. 1791. An act to amend the Lease Lot Conveyance Act of 2002 to provide that the amounts received by the United States under that Act shall be deposited in the reclamation fund, and for other purposes.

S. 2178. An act to make technical corrections to laws relating to certain units of the National Park System and to the National Park programs.

S. 2511. An act to direct the Secretary of the Interior to conduct a feasibility study of a Chimayo water supply system, to provide for the planning, design, and construction of a water supply, reclamation, and filtration facility for Espanola, New Mexico, and for other purposes.

The enrolled bills were signed subsequently by the President pro tempore (Mr. STEVENS).

At 3:14 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrence of the Senate:

H. Con. Res. 514, Concurrent resolution directing the Clerk of the House of Representatives to make a technical correction in the enrollment of the bill H.R. 4200.

H. Con. Res. 518. Concurrent resolution providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate.

The message also announced that the House has agreed 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. 4200) to authorize appropriations for fiscal year 2005 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.

The message further announced that the House has agreed 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. 4567) making appropriations, for the Department of Homeland Security for the fiscal year ending September 30, 2005, and for other purposes.

The message also announced that the House has agreed 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. 4837) making appropriations, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2005, and for other purposes.

At 3:46 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 following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 519. Concurrent resolution correcting the enrollment of H.R. 5107.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 2949. A bill to amend the Low-income Home Energy Assistance Act of 1981 to reauthorize the Act, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SCHUMER:

S. 2969. A bill entitled the ''Fair Gift Card Act''; to the Committee on Banking, Housing, and Urban Affairs.

By Ms. SNOWE:

S. 2970. A bill to redesignate the project for navigation, Saco River, Maine, as an anchorage area; to the Committee on Environment and Public Works.

By Ms. CANTWELL:

S. 2971. A bill to permanently increase the maximum annual contribution allowed to be made to Coverdell education savings accounts; to the Committee on Finance.

By Ms. CANTWELL:

S. 2972. A bill to amend the Internal Revenue Code of 1986 to permanently increase the maximum annual contribution allowed to be made to Coverdell education savings accounts, and to provide for a deduction for contributions to education savings accounts; to the Committee on Finance.

By Mr. CORZINE (for himself, Mrs. BOXER, Mrs. MURRAY, Mr. SCHUMER, Mr. LAUTENBERG, and Mr. LEAHY):

S. 2973. A bill to clarify the applicability of State law to national banks, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. HARKIN (for himself and Mrs. LINCOLN):

S. Res. 454. A resolution expressing the sense of the Senate that the 108th Congress should provide the necessary funds to make disaster assistance available for all customarily eligible agricultural producers as emergency spending and not funded by buts to the farm bill; considered and agreed to.

ADDITIONAL COSPONSORS

S. 1700

At the request of Mr. LEAHY, the names of the Senator from Michigan (Mr. LEVIN) and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 1700, a bill to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

S. 2338

At the request of Mrs. HUTCHISON, her name was added as a cosponsor of S. 2338, a bill to amend the Public Health Service Act to provide for arthritis research and public health, and for other purposes.

S. 2395

At the request of Mr. CONRAD, the names of the Senator from Connecticut (Mr. DODD) and the Senator from South Dakota (Mr. DASCHLE) were added as cosponsors of S. 2395, a bill to require the Secretary of the Treasury to mint coins in commemoration of the centenary of the bestowal of the Nobel Peace Prize on President Theodore Roosevelt, and for other purposes.

S. 2571

At the request of Mr. JOHNSON, his name was added as a cosponsor of S. 2571, a bill to clarify the loan guarantee authority under title VI of the Native American Housing Assistance and Self-Determination Act of 1996.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SCHUMER:

S. 2969. A bill entitled the ''Fair Gift Card Act'', to the Committee on Banking, Housing, and Urban Affairs.

Mr. SCHUMER. 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:

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 ''Fair Gift Card Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) GIFT CERTIFICATE, STORE GIFT CARD, OTHER PREPAID CARDS.—The terms ''gift certificate'', ''store gift card'', and ''general-use prepaid card'' have the following meanings:

(A) GIFT CERTIFICATE.—The term ''gift certificate'' means a written promise that is—

(i) usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo;

(ii) issued in a specified amount and cannot be increased;

(iii) purchased on a prepaid basis in exchange for payment; and

(iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

(B) STORE GIFT CARD.—The term ''store gift card'' means a plastic card or other electronic payment device that is—

(i) usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo;

(ii) issued in a specified amount and may or may not be increased in value or reloaded;

(iii) purchased on a prepaid basis in exchange for payment; and

(iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

(C) GENERAL-USE PREPAID CARD.—

(i) IN GENERAL.—The term ''general-use prepaid card'' means a card or other electronic payment device issued by a bank or financial institution, or by a licensed money transmitter that is—

(I) usable at multiple, unaffiliated merchants or service providers, or at automated teller machines;

(II) issued in a requested amount whether or not that amount may be, at the option of the issuer, increased in value or reloaded if requested by the holder;

(III) purchased or loaded on a prepaid basis; and

(IV) honored, upon presentation, by merchants for goods or services, or at automated teller machines.

(ii) EXCEPTION.—The term ''general-use prepaid card'' does not include a debit card that is linked to a demand deposit or share draft account.

(D) EXCLUSION.—The terms ''gift certificate'', ''store gift card'', and ''general-use prepaid card'' do not include a written promise, plastic card, or other electronic device that is—

(i) used solely for telephone services; or

(ii) associated with a demand deposit, checking, savings or similar account in the name of the individual at a bank or financial institution, and that provides payment solely by debiting such account.

(2) DEBIT CARD.—The term ''debit card'' has the meaning given that term under section 603(r)(3) of the Fair Credit Reporting Act (15 U.S.C. 1681a(r)(3)).

(3) FINANCIAL INSTITUTION.—The term ''financial institution'' has the meaning given that term under section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(4) DORMANCY FEE; INACTIVITY CHARGE OR FEE.—The terms ''dormancy fee'' and ''inactivity charge or fee'' mean a fee, charge, or penalty for non use or inactivity of a gift certificate, store gift card, or prepaid general-use card.

(5) SERVICE FEE.—The term ''service fee'' means a periodic fee, charge, or penalty for holding or use of a gift certificate, store card, or prepaid general use card.

(6) LICENSED MONEY TRANSMITTER.—The term ''licensed money transmitter'' means a person who sells or issues payment instruments or engages in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means, including but not limited to payment instrument, wire, facsimile or electronic transfer.

SEC. 3. REGULATION OF UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN CONNECTION WITH GIFT CARDS.

(a) IMPOSITION OF FEES OR CHARGES.—

(1) IN GENERAL.—Except as provided for in paragraphs (2), (3), and (4) it is unlawful for any person to impose with respect to a gift certificate, store gift card, or general-use prepaid card a dormancy fee, inactivity charge or fee or a service fee.

(2) EXCEPTION.—A dormancy fee, inactivity charge or fee, or service fee described in paragraph (1) may be charged with respect to a gift certificate, store gift card, or general-use prepaid card if—

(A) at the time the charge or fee is assessed the certificate or card has a remaining value of $5 or less;

(B) the charge or fee does not exceed $1;

(C) there has been no activity with respect to the certificate or the card for at least 24 consecutive months;

(D) the holder of the certificate or the card may reload or add value to the certificate or the card; and

(E) the requirements of paragraph (3) are met.

(3) REQUIREMENTS.—The requirements of this paragraph are that—

(A) the certificate or card clearly and conspicuously states in 10-point font—

(i) that a charge or fee described in paragraph (1) may be charged; and

(ii) the amount of the charge or fee, how often the charge or fee may be assessed, and that the charge or fee may be assessed for inactivity; and

(B) the issuer of the certificate or card informs the purchaser of the charge or the fee before the certificate or card is purchased, regardless of whether the certificate or card is purchased in person, over the Internet, or by telephone.

(4) EXCLUSION.—The prohibitions and requirements contained in this subsection shall not apply to gift certificates that—

(A) are distributed pursuant to an award, loyalty, or promotional program and with respect to which there is no money or other value exchanged; or

(B) expire not later than 30 days after the date they are sold and are sold below the face value of the certificate to an employer, or to a nonprofit or charitable organization for fundraising purposes.

(b) LIMITATIONS ON EXPIRATION DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), it is unlawful for any person to sell or issue a gift certificate, store gift card, or general-use prepaid card that is subject to an expiration date.

(2) EXCEPTIONS.—A gift certificate, store gift card, or general-use prepaid card may contain an expiration date if the expiration date is not less than 5 years from the date the card is purchased. Expiration terms must be prominently disclosed in at least 10-point font and in all capital letters.

SEC. 4. RELATION TO STATE LAWS

The Act and any regulations or standards established pursuant to this Act shall not supersede any State law or regulation with respect to charges, fees, and expiration dates of gift certificates, store gift card, or general-use prepaid cards.

SEC. 5. ENFORCEMENT.

(a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—A violation of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(b) ACTIONS BY THE COMMISSION.—The Federal Trade Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act.

(c) INDIVIDUAL CAUSE OF ACTION.—Nothing in this Act shall be construed to limit an individual's rights to enforce a State law relating to unfair or deceptive acts or practices.

By Ms. CANTWELL:

S. 2971. A bill to permanently increase the maximum annual contribution allowed to be made to Coverdell education savings accounts; to the Committee on Finance.

By Ms. CANTWELL:

S. 2972. A bill to amend the Internal Revenue Code of 1986 to permanently increase the maximum annual contribution allowed to be made to Coverdell education savings accounts, and to provide for a deduction for contributions to education savings accounts; to the Committee on Finance.

Ms. CANTWELL. Mr. President, I rise today to talk about increasing educational opportunities by improving a tax-free way to save for college. A college education is invaluable in today's workforce, requiring new skills and a post-secondary education to stay competitive in our global economy. That's why I am introducing two pieces of legislation that will help make paying for college easier:

The Education Savings for Students Act and College Savings Act both expand current Coverdell education savings accounts by permanently increasing the annual contribution amount to $5,000.

The College Savings Act would allow families to deduct from income the amount they contribute to their education savings account. The Education Savings Act keeps the current conditions under Coverdells that investment earnings grow tax-free and withdrawals from their account are tax-exempt when their child goes to school, but permanently increases the minimum annual contribution from $2,000 to $5,000.

Both bills provide a financial incentive to put away money for college where parents have the ability to save now through deductible contributions or bank on projected savings through tax-deferred earnings and withdrawals.

It's incredible how fast kids grow. One day they're in kindergarten, and the next day they're packing up and leaving for college. What's even more incredible is that higher education costs grow just as fast as they do.

I understand that parents have a lot to worry about, especially when their children are young. But with rising college costs, parents must also be concerned about how to pay for their child's college education. Mounting tuition costs and prices for books and materials, plus room and board have made colleges and universities less affordable for most families.

College is expensive. There are many parents whose children have aimed to go to college, but soon discover they can't afford it because of rising costs.

In 2002, the National Center for Public Policy and Higher Education reported national trends which—if remain unaddressed—will have adverse consequences for expanding students' opportunities to pursue a higher education and future career.

This report found that over the last two decades, the cost of attending two- and four-year public and private colleges have not only grown more rapidly than inflation, but faster than family incomes, increasing the share of family income that is needed to pay for tuition and other college expenses. From 1991 through 2001, tuition at four-year public colleges and universities rose faster than family income in 41 states, including my home State of Washington.

The Washington State Higher Education Coordinating Board reports that, over the last ten years, tuition and fees have far outpaced family income, increasing 89 percent compared to 51 percent in per capita personal income in my state. In comparison, the cost of most consumer goods increased an average of 20 percent during the same time. And, per capita personal income in Washington increased 51 percent during this period.

As a result, more students and families at all income levels are borrowing more money than ever before to pay for college. In 1981, loans accounted for 45 percent and grants for 52 percent of federal student financial aid. In 2000, loans represented 58 percent of Federal student financial aid, and grants represented 41 percent.

Unfortunately, the steepest increases in college and university tuition have been imposed during times of greatest economic hardship. Just in the past three years, our economy has experienced a loss of 1.8 million private sector jobs and 2.7 million manufacturing jobs. It is my priority that we prepare our workers for the jobs of today and the careers of the future. If we want to maintain our economic competitiveness, we need to make college more affordable. We must keep up with the demand for skilled workers across all sectors of the economy.

In February, the Bureau of Labor Statistics reported that six of the ten fastest-growing occupations in the U.S. economy require an associate's degree or bachelor's degree, and that all ten of these careers will require some type of skills training. By 2010, 40 percent of all job growth will require some form of post-secondary education.

Workers with a college degree make 75 percent more than those without. A college education pays tremendous dividends—not just to individuals, but also to their entire communities. On average, a one-year increase in a metropolitan area's educational level raises wages by three to five percent.

Affordability is key to expanding opportunities to go to college. Let's face it, we're not all going to pay for college by winning the lottery. Saving for college early and often will help lift the pressures off of parents who are feeling the financial squeeze of increased tuition and fees.

For these families, Coverdell Education Savings plans provide a needed relief for the middle class. The purpose of education savings plans are to increase saving by increasing net returns. Today, parents can put up to $2,000 a year into a Coverdell Education Savings account. The actual contribution is not tax deductible, but all earnings in this account are free from taxes when they are withdrawn to pay for school.

However, the current $2,000 annual limit on Coverdell contributions will be repealed in 2010 unless Congress acts to extend it. If we don't extend the contribution level, the maximum contribution will drop to $500.

While the current tax benefit makes it easier to save for college, the Education Savings Act would increase the annual contributions from $2,000 to $5,000 and making this change permanent ensures greater savings for families. By increasing the amount parents can put aside for their children's college savings, middle-income parents will be able to more easily save for their child's college education.

Say for example, parents start saving when their child turns eight years old. If they put away just $100.00 a month—at an interest rate of savings of four percent—by the time their kid turns 18, their account would have earned more than $12,400 in interest. Parents will save over $3,100 in taxes when that child is old enough to go to school.

In addition to projected savings, parents also have the option to save now. The College Savings Act would offer families the ability to deduct their contributions each year——

Both of these bills, the College Savings Act and the Education Savings Act are financial incentives for people to save by allowing families to deduct the amount they contribute and take tax-free earnings when their child is ready to go to school, would further lessen the financial burden that parents bear by saving money early and often.

Permanently expanding the Coverdell maximum contribution from its current threshold of $2,000 to $5,000 a year and allowing this contribution to be tax deductible is a common-sense savings vehicle that keeps future college costs from spinning out of control. Increasing contribution caps will make school more affordable at a time when a college education and advanced job training is becoming more and more important for economic success.

By Mr. CORZINE (for himself, Mrs. BOXER, Mrs. MURRAY, Mr. SCHUMER, Mr. LAUTENBERG, and Mr. LEAHY):

S. 2973. A bill to clarify the applicability of State law to national banks, and for other purposes; to the Committee on Banking, Housing and Urban Affairs.

Mr. CORZINE. Mr. President, I rise today to introduce legislation along with Senators BOXER, MURRAY, SCHUMER, LAUTENBERG, and LEAHY the Preservation of Federalism in Banking Act, to clarify the relationship between state consumer protection laws and national banks.

This legislation responds to a sweeping new rule issued by the Office of the Comptroller of the Currency, the agency that regulates national banks. The OCC's new rule gives the agency unprecedented authority to pre-empt State laws, thereby shielding national banks and their non-bank and State-chartered bank affiliates from many important consumer protections. It also potentially limits the ability of States to enforce many related laws. The most important immediate consequence of the OCC rule has been the preemption of State anti-predatory lending laws.

I feel strongly about the need to address predatory lending, which can trap people in endless cycles of debt and escalating fees. Many States, such as my own state of New Jersey, have enacted tough laws to deal with the problem. Unfortunately, the OCC's ruling substantially undermines these laws by regulatory fiat. That will leave many consumers unprotected, and it shifts too many responsibilities to a single agency here in Washington that is not equipped to handle them. After all, according to its own website, the OCC ''does not have the mandate to engage in consumer advocacy''.

Although the OCC has a long and successful record of regulating for safety and soundness, it has little experience dealing with abusive local practices, such as predatory lending. Believe it or not, the OCC actually is proposing to handle all consumer complaints through a single 22-person call center in Houston. This is totally unrealistic. Each year, State officials receive thousands of related complaints, which usually are very local in nature. These officials are at the forefront of the enforcement effort, identifying and combating new practices as they arise. The OCC's system simply could not fill this role without major changes.

The OCC rule also raises concerns about regulatory charter competition, the viability of a broad range of state laws, and the ability of consumers and state officials to seek remedies in court.

The OCC rule has provoked strong opposition from governors, attorneys general, banking supervisors, and many consumer advocacy groups, not to mention the public. The OCC received over 2,600 letters in response to its rules, and more than 90 percent opposed them.

The Preservation of Federalism in Banking Act is a limited and reasonable response to the OCC rule. The bill will clarify the state consumer protection laws with which banks and their

affiliates must comply. It also will protect financial institutions from overreaching state laws that seek to directly regulate the core activities of national banks.

While the OCC has long had the statutory responsibility to regulate the activities of national banks, it has never denied the ability of states to protect their citizens. The OCC historically has used its authority under the National Bank Act in a reasonable way to shield national banks from state banking laws that intrude on the OCC's congressionally-granted powers. While we should continue to support the appropriate use of the agency's authority, it is important that we immediately intervene to reverse the OCC's regulatory overreach and prevent the agency from preempting all state consumer protection laws and state authority to enforce related laws.

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. 2973

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 ''Preservation of Federalism in Banking Act''.

SEC. 2. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS CLARIFIED.

(a) IN GENERAL.—Chapter 1 of title LXII of the Revised Statutes of the United States (12 U.S.C. 21 et seq.) is amended by inserting after section 5136B (12 U.S.C. 25a) the following new section:

''SEC. 5136C. STATE LAW PREEMPTION STANDARDS FOR NATIONAL BANKS AND SUBSIDIARIES CLARIFIED.

''(a) STATE CONSUMER LAWS OF GENERAL APPLICATION.—

''(1) IN GENERAL.—Notwithstanding any other provision of Federal law, any State consumer law of general application (including any law relating to unfair or deceptive acts or practices and any consumer fraud law) shall apply to any national bank.

''(2) NATIONAL BANK DEFINED.—For purposes of this section, the term 'national bank' includes any Federal branch established in accordance with the International Banking Act of 1978.

''(b) STATE BANKING LAWS ENACTED PURSUANT TO FEDERAL LAW.—

''(1) IN GENERAL.—Notwithstanding any other provision of Federal law and except as provided in paragraph (2), any State law that—

''(A) is applicable to State banks; and

''(B) was enacted pursuant to or in accordance with, and is consistent with, an Act of Congress, including the Gramm-Leach-Bliley Act and the Consumer Credit Protection Act, that permits States to exceed or supplement the requirements of any comparable Federal law,

shall apply to any national bank.

''(2) EXCEPTIONS.—Paragraph (1) shall not apply with respect to any State law if—

''(A) the State law discriminates against national banks; or

''(B) the State law is inconsistent with other provisions of Federal law, but only to the extent of the inconsistency (as determined in accordance with the other provision of Federal law).

''(c) NO NEGATIVE IMPLICATIONS FOR APPLICABILITY OF OTHER STATE LAWS.—No provision of this section shall be construed as altering or affecting the applicability, to national banks, of any State law which is not described in subsection (a) or (b).''.

(b) DENIAL OF PREEMPTION NOT A DEPRIVATION OF A CIVIL RIGHT.—The preemption of any provision of the laws of any State with respect to any national bank shall not be treated as a right, privilege, or immunity for purposes of section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983).

(c) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title LXII of the Revised Statutes of the United States, is amended by inserting after the item relating to section 5136B the following new item:

''5136C. State law preemption standards for national banks and subsidiaries clarified.''.

SEC. 3. VISITORIAL STANDARDS.

Section 5136C of the Revised Statutes of the United States (as added by section 2(a) of this Act) is amended by adding at the end the following new subsection:

''(d) VISITORIAL POWERS.—No provision of this title which relates to visitorial powers or otherwise limits or restricts the supervisory, examination, or regulatory authority to which any national bank is subject shall be construed as limiting or restricting the authority of any attorney general (or other chief law enforcement officer) of any State to bring any action in any court of appropriate jurisdiction—

''(1) to enforce any applicable Federal or State law, as authorized by such law; or

''(2) on behalf of residents of such State, to enforce any applicable provision of any Federal or State law against a national bank, as authorized by such law, or to seek relief and recover damages for such residents from any violation of any such law by any national bank.''.

SEC. 4. CLARIFICATION OF LAW APPLICABLE TO STATE-CHARTERED NONDEPOSITORY INSTITUTION SUBSIDIARIES.

Section 5136C of the Revised Statutes of the United States (as added and amended by this Act) is amended by adding at the end the following new subsection:

''(e) CLARIFICATION OF LAW APPLICABLE TO NONDEPOSITORY INSTITUTION SUBSIDIARIES OF NATIONAL BANKS.—

''(1) IN GENERAL.—No provision of this title shall be construed as preempting the applicability of State law to any State-chartered nondepository institution subsidiary of a national bank, except to the extent that the preemption is explicitly provided by an Act of Congress.

''(2) DEFINITIONS.—For purposes of this subsection, the terms 'depository institution' and 'subsidiary' have the same meanings as in section 3 of the Federal Deposit Insurance Act.''.

SEC. 5. DATA COLLECTION AND REPORTING.

(a) COLLECTING AND MONITORING CONSUMER COMPLAINTS.—

(1) IN GENERAL.—The Comptroller of the Currency shall record and monitor each complaint received directly or indirectly from a consumer regarding a national bank or any subsidiary of a national bank and record the resolution of the complaint.

(2) FACTORS TO BE INCLUDED.—In carrying out the requirements of paragraph (1), the Comptroller of the Currency shall include—

(A) the date on which the consumer complaint was received;

(B) the nature of the complaint;

(C) when and how the complaint was resolved, including a brief description of the extent, and the results, of the investigation made by the Comptroller into the complaint, a brief description of any notices given and inquiries made to any other Federal or State officer or agency in the course of the investigation or resolution of the complaint, a summary of the enforcement action taken upon completion of the investigation, and a summary of the results of subsequent periodic reviews by the Comptroller of the extent and nature of compliance by such national bank or subsidiary with the enforcement action; and

(D) if the complaint involves any alleged violation of a State law (whether or not Federal law preempts the application of such State law to such national bank) by such bank, a cite to and a description of the State law that formed the basis of the complaint.

(b) REPORT TO THE CONGRESS.—

(1) PERIODIC REPORTS REQUIRED.—The Comptroller of the Currency shall submit a report semi-annually to the Congress on the consumer protection efforts of the Office of the Comptroller of the Currency.

(2) CONTENTS OF REPORT.—Each report submitted under paragraph (1) shall include the following:

(A) The total number of consumer complaints received by the Comptroller during the period covered by the report with respect to alleged violations of consumer protection laws by national banks and subsidiaries of national banks.

(B) The total number of consumer complaints received during the reporting period that are based on each of the following:

(i) Each title of the Consumer Credit Protection Act (reported as a separate aggregate number for each such title).

(ii) The Truth in Savings Act.

(iii) The Right to Financial Privacy Act of 1978.

(iv) The Expedited Funds Availability Act.

(v) The Community Reinvestment Act of 1977.

(vi) The Bank Protection Act of 1968.

(vii) Title LXII of the Revised Statutes of the United States.

(viii) The Federal Deposit Insurance Act.

(ix) The Real Estate Settlement Procedures Act of 1974

(x) The Home Mortgage Disclosure Act of 1975.

(xi) Any other Federal law.

(xii) State consumer protection laws (reported as a separate aggregate number for each State and each State consumer protection law).

(xiii) Any other State law (reported separately for each State and each State law).

(C) A summary description of the resolution efforts by the Comptroller for complaints received during the period covered, including—

(i) the average amount of time to resolve each complaint;

(ii) the median period of time to resolve each complaint;

(iii) the average and median time to resolve complaints in each category of complaints described in each clause of subparagraph (B); and

(iv) a summary description of the longest outstanding complaint during the reporting period and the reason for the difficulty in resolving such complaint in a more timely fashion.

(3) DISCLOSURE OF REPORT ON OCC WEBSITE.—Each report submitted to the Congress under this subsection shall be posted by the Comptroller of the Currency in a timely fashion, and maintained on the website of the Office of the Comptroller of the Currency on the World Wide Web.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 454—EXPRESSING THE SENSE OF THE SENATE THAT THE 108TH CONGRESS SHOULD PROVIDE THE NECESSARY FUNDS TO MAKE DISASTER ASSISTANCE AVAILABLE FOR ALL CUSTOMARILY ELIGIBLE AGRICULTURAL PRODUCERS AS EMERGENCY SPENDING AND NOT FUNDED BY BUTS TO THE FARM BILL

Mr. HARKIN (for himself and Mrs. LINCOLN) submitted the following resolution; which was considered and agreed to:

S. RES. 454

Whereas, agriculture has been the cornerstone of every civilization throughout history and remains the driving force behind the nation's economy;

Whereas, American farmers and ranchers help keep food affordable in this country and also help to feed the world;

Whereas, America's farmers and ranchers produce the food and fiber that is so vital to our economy while protecting our soil, helping to keep our waters clean, and reducing air pollution across the country;

Whereas, all sectors of our country rely in some way on a successful, strong and vibrant agriculture industry;

Whereas, it is the nature of agriculture that farmers and ranchers will suffer production losses because of the vagaries of weather;

Whereas, Congress has responded to natural disasters by providing assistance to those affected including the nation's farmers and rancher to help restore financial stability in times of such losses; and

Whereas, Congress has traditionally provided such assistance on an emergency basis without cutting programs to the class of those suffering.

Resolved, That it is the Sense of the Senate that the 108th Congress should provide the necessary funds to make disaster assistance available for all customarily eligible agricultural producers as emergency spending and not funded by cuts to the farm bill.

AMENDMENTS SUBMITTED AND PROPOSED

SA 4045. Mr. MCCONNELL (for himself and Mr. REID) proposed an amendment to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence.

SA 4046. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 2656, to establish a National Commission on the Quincentennial of the discovery of Florida by Ponce de Leon; which was referred to the Committee on Energy and Natural Resources.

SA 4047. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill H.R. 1630, to revise the boundary of the Petrified Forest National Park in the State of Arizona, and for other purposes; which was ordered to lie on the table.

SA 4048. Mr. FRIST (for Mr. SPECTER) proposed an amendment to the bill S. 2485, to amend title 38, United States Code, to improve and enhance the authorities of the Secretary of Veterans Affairs relating to the management and disposal of real property and facilities, and for other purposes.

SA 4049. Mr. FRIST (for Mr. SPECTER) proposed an amendment to the bill H.R. 3936, to amend title 38, United States Code, to increase the authorization of appropriations for grants to benefit homeless veterans, to improve programs for management and administration of veterans' facilities and health care programs, and for other purposes.

TEXT OF AMENDMENTS

SA 4045. Mr. MCCONNELL (for himself and Mr. REID) proposed an amendment to amendment SA 3981 proposed by Mr. MCCONNELL (for himself, Mr. REID, Mr. FRIST, and Mr. DASCHLE) to the resolution S. Res. 445, to eliminate certain restrictions on service of a Senator on the Senate Select Committee on Intelligence; as follows:

Page 2, line 10, strike ''primarily''

Page 5, line 20 and 21, strike ''Ranking Member'' and insert ''Vice Chairman''

Page 4, lines 9 through 13, strike.

At the end of Section 101(b)(1) insert the following: ''The jurisdiction of the Committee on Homeland Security and Governmental Affairs in this paragraph shall supersede the jurisdiction of any other committee of the Senate provided in the rules of the Senate.''.

SA 4046. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill S. 2656, to establish a National Commission on the Quincentennial of the discovery of Florida by Ponce de Leon; which was referred to the Committee on Energy and Natural Resources; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ponce de Leon Discovery of Florida Quincentennial Commission Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) COMMISSION.—The term ''Commission'' means the National Commission on the Quincentennial of the discovery of Florida by Ponce de Leon established under section 3(a).

(2) GOVERNOR.—The term ''Governor'' means the Governor of the State of Florida.

(3) QUINCENTENNIAL.—The term ''Quincentennial'' means the 500th anniversary of the discovery of Florida by Ponce de Leon.

SEC. 3. ESTABLISHMENT OF COMMISSION.

(a) ESTABLISHMENT.—There is established a commission to be known as the ''National Commission on the Quincentennial of the discovery of Florida by Ponce de Leon''.

(b) DUTIES.—The Commission shall plan, encourage, coordinate, and conduct the commemoration of the Quincentennial.

(c) MEMBERSHIP.—

(1) COMPOSITION.—The Commission shall be composed of 10 members, including—

(A) 2 members, to be appointed by the President, on the recommendation of the Majority Leader and the Minority Leader of the Senate;

(B) 2 members, to be appointed by the President, on the recommendation of the Speaker of the House of Representatives and the Minority Leader of the House of Representatives; and

(C) 4 members, to be appointed by the President, taking into consideration the recommendations of the Governor, the Director of the National Park Service, and the Secretary of the Smithsonian Institution.

(2) CRITERIA.—A member of the Commission shall be chosen from among individuals that have demonstrated a strong sense of public service, expertise in the appropriate professions, scholarship, and abilities likely to contribute to the fulfillment of the duties of the Commission.

(3) DATE OF APPOINTMENTS.—Not later than 60 days after the date of enactment of this Act, the members of the Commission described in paragraph (1) shall be appointed.

(d) TERM; VACANCIES.—

(1) TERM.—A member shall be appointed for the life of the Commission.

(2) VACANCY.—A vacancy on the Commission—

(A) shall not affect the powers of the Commission; and

(B) shall be filled in the same manner as the original appointment was made.

(e) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold the initial meeting of the Commission.

(f) MEETINGS.—The Commission shall meet annually at the call of the co-chairpersons described under subsection (h).

(g) QUORUM.—A quorum of the Commission for decision making purposes shall be 5 members, except that a lesser number of members, as determined by the Commission, may conduct meetings.

(h) CO-CHAIRPERSONS.—The President shall designate 2 of the members of the Commission as co-chairpersons of the Commission.

SEC. 4. DUTIES.

(a) IN GENERAL.—The Commission shall—

(1) plan and develop activities appropriate to commemorate the Quincentennial including a limited number of proposed projects to be undertaken by the appropriate Federal departments and agencies that commemorate the Quincentennial by seeking to harmonize and balance the important goals of ceremony and celebration with the equally important goals of scholarship and education;

(2) consult with and encourage appropriate Federal departments and agencies, State and local governments, Indian tribal governments, elementary and secondary schools, colleges and universities, foreign governments, and private organizations to organize and participate in Quincentennial activities commemorating or examining—

(A) the history of Florida;

(B) the discovery of Florida;

(C) the life of Ponce de Leon;

(D) the myths surrounding Ponce de Leon's search for gold and for the ''fountain of youth'';

(E) the exploration of Florida; and

(F) the beginnings of the colonization of North America; and

(3) coordinate activities throughout the United States and internationally that relate to the history and influence of the discovery of Florida.

(b) REPORTS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Commission shall submit to the President and the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a comprehensive report that includes specific recommendations for—

(A) the allocation of financial and administrative responsibility among participating entities and persons with respect to commemoration of the Quincentennial; and

(B) the commemoration of the Quincentennial and related events through programs and activities, including—

(i) the production, publication, and distribution of books, pamphlets, films, electronic publications, and other educational

materials focusing on the history and impact of the discovery of Florida on the United States and the world;

(ii) bibliographical and documentary projects, publications, and electronic resources;

(iii) conferences, convocations, lectures, seminars, and other programs;

(iv) the development of programs by and for libraries, museums, parks and historic sites, including international and national traveling exhibitions;

(v) ceremonies and celebrations commemorating specific events;

(vi) the production, distribution, and performance of artistic works, and of programs and activities, focusing on the national and international significance of the discovery of Florida; and

(vii) the issuance of commemorative coins, medals, certificates of recognition, and stamps.

(2) ANNUAL REPORT.—The Commission shall submit an annual report that describes the activities, programs, expenditures, and donations of or received by the Commission to—

(A) the President; and

(B) the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(3) FINAL REPORT.—Not later than December 31, 2013, the Commission shall submit a final report that describes the activities, programs, expenditures, and donations of or received by the Commission to—

(A) the President; and

(B) the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives.

(c) ASSISTANCE.—In carrying out this Act, the Commission shall consult, cooperate with, and seek advice and assistance from appropriate Federal departments and agencies, including the Department of the Interior.

(d) COORDINATION OF ACTIVITIES.—In carrying out the duties of the Commission, the Commission, in consultation with the Secretary of State, may coordinate with the Government of Spain and political subdivisions in Spain for the purposes of exchanging information and research and otherwise involving the Government of Spain, as appropriate, in the commemoration of the Quincentennial.

SEC. 5. POWERS OF THE COMMISSION.

(a) IN GENERAL.—The Commission may provide for—

(1) the preparation, distribution, dissemination, exhibition, and sale of historical, commemorative, and informational materials and objects that will contribute to public awareness of, and interest in, the Quincentennial, except that any commemorative coin, medal, or postage stamp recommended to be issued by the United States shall be sold only by a Federal department or agency;

(2) competitions and awards for historical, scholarly, artistic, literary, musical, and other works, programs, and projects relating to the Quincentennial;

(3) a Quincentennial calendar or register of programs and projects;

(4) a central clearinghouse for information and coordination regarding dates, events, places, documents, artifacts, and personalities of Quincentennial historical and commemorative significance; and

(5) the design and designation of logos, symbols, or marks for use in connection with the commemoration of the Quincentennial and shall establish procedures regarding their use.

(b) ADVISORY COMMITTEE.—The Commission may appoint such advisory committees as the Commission determines necessary to carry out the purposes of this Act.

SEC. 6. ADMINISTRATION.

(a) LOCATION OF OFFICE.—

(1) PRINCIPAL OFFICE.—The principal office of the Commission shall be in St. Augustine, Florida.

(2) SATELLITE OFFICE.—The Commission may establish a satellite office in Washington, D.C.

(b) STAFF.—

(1) APPOINTMENT OF DIRECTOR AND DEPUTY DIRECTOR.—

(A) IN GENERAL.—The co-chairpersons, with the advice of the Commission, may appoint and terminate a director and deputy director without regard to the civil service laws (including regulations).

(B) DELEGATION TO DIRECTOR.—The Commission may delegate such powers and duties to the director as may be necessary for the efficient operation and management of the Commission.

(2) STAFF PAID FROM FEDERAL FUNDS.—The Commission may use any available Federal funds to appoint and fix the compensation of not more than 4 additional personnel staff members, as the Commission determines necessary.

(3) STAFF PAID FROM NON-FEDERAL FUNDS.—The Commission may use any available non-Federal funds to appoint and fix the compensation of additional personnel.

(4) COMPENSATION.—

(A) MEMBERS.—

(i) IN GENERAL.—A member of the Commission shall serve without compensation.

(ii) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

(B) STAFF.—

(i) IN GENERAL.—The co-chairpersons of the Commission may fix the compensation of the director, deputy director, and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(ii) MAXIMUM RATE OF PAY.—

(I) DIRECTOR.—The rate of pay for the director shall not exceed the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

(II) DEPUTY DIRECTOR.—The rate of pay for the deputy director shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(III) STAFF MEMBERS.—The rate of pay for staff members appointed under paragraph (2) shall not exceed the rate payable for grade GS-15 of the General Schedule under section 5332 of title 5, United States Code.

(c) DETAIL OF FEDERAL GOVERNMENT EMPLOYEES.—

(1) IN GENERAL.—On request of the Commission, the head of any Federal agency or department may detail any of the personnel of the agency or department to the Commission to assist the Commission in carrying out this Act.

(2) REIMBURSEMENT.—A detail of personnel under this subsection shall be without reimbursement by the Commission to the agency from which the employee was detailed.

(3) CIVIL SERVICE STATUS.—The detail of the employee shall be without interruption or loss of civil service status or privilege.

(d) OTHER REVENUES AND EXPENDITURES.—

(1) IN GENERAL.—The Commission may procure supplies, services, and property, enter into contracts, and expend funds appropriated, donated, or received to carry out contracts.

(2) DONATIONS.—

(A) IN GENERAL.—The Commission may solicit, accept, use, and dispose of donations of money, property, or personal services.

(B) LIMITATIONS.—Subject to subparagraph (C), the Commission shall not accept donations—

(i) the value of which exceeds $50,000 annually, in the case of donations from an individual; or

(ii) the value of which exceeds $250,000 annually, in the case of donations from a person other than an individual.

(C) NONPROFIT ORGANIZATION.—The limitations in subparagraph (B) shall not apply in the case of an organization that is—

(i) described in section 501(c)(3) of the Internal Revenue Code of 1986; and

(ii) exempt from taxation under section 501(a) of the Internal Revenue Code of 1986.

(3) ACQUIRED ITEMS.—Any book, manuscript, miscellaneous printed matter, memorabilia, relic, and other material or property relating to the time period of the discovery of Florida acquired by the Commission may be deposited for preservation in national, State, or local libraries, museums, archives, or other agencies with the consent of the depositary institution.

(e) POSTAL SERVICES.—The Commission may use the United States mail to carry out this Act in the same manner and under the same conditions as other agencies of the Federal Government.

(f) VOLUNTARY SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Commission may accept and use voluntary and uncompensated services as the Commission determines to be necessary.

SEC. 7. STUDY.

The Secretary of the Interior shall—

(1) in accordance with section 8(c) of Public Law 91–383 (16 U.S.C. 1a–5(c)), conduct a study to assess the suitability and feasibility of designating an area in the State of Florida as a unit of the National Park System to commemorate the discovery of Florida by Ponce de Leon; and

(2) not later than 3 years after the date on which funds are made available to carry out the study, submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a report that describes—

(A) the findings of the study; and

(B) any conclusions and recommendations of the Secretary of the Interior with respect to the study.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Subject to subsection (b), there is authorized to be appropriated to carry out the purposes of this Act $250,000 for each of fiscal years 2005 through 2013.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated under this section for any fiscal year shall remain available until December 31, 2013.

SEC. 9. TERMINATION OF AUTHORITY.

The authority provided by this Act terminates effective December 31, 2013.

SA 4047. Mr. DOMENICI submitted an amendment intended to be proposed by him to the bill H.R. 1630, to revise the boundary of the Petrified Forest National Park in the State of Arizona, and for other purposes; which was ordered to lie on the table; as follows:

On page 2, line 9, strike ''June'' and insert ''July''.

SA 4048. Mr. FRIST (for Mr. SPECTER) proposed an amendment to the

bill S. 2485, to amend title 38, United States code, to improve and enhance the authorities of the Secretary of Veterans Affairs relating to the management and disposal of real property and facilities, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Veterans Health Programs Improvement 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. Reference to title 38, United States Code.

TITLE I—ASSISTANCE TO HOMELESS VETERANS

Sec. 101. Authorization of appropriations.

TITLE II—VETERANS LONG-TERM CARE PROGRAMS

Sec. 201. Assistance for hiring and retention of nurses at State veterans' homes.
Sec. 202. Treatment of Department of Veterans Affairs per diem payments to State homes for veterans.
Sec. 203. Extension of authority to provide care under long-term care pilot programs.
Sec. 204. Prohibition on collection of copayments for hospice care.

TITLE III—MEDICAL CARE

Sec. 301. Sexual trauma counseling program.
Sec. 302. Centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries.
Sec. 303. Enhancement of medical preparedness of Department of Veterans Affairs.

TITLE IV—MEDICAL FACILITIES MANAGEMENT AND ADMINISTRATION

Subtitle A—Major Medical Facility Leases

Sec. 401. Major medical facility leases.
Sec. 402. Authorization of appropriations.
Sec. 403. Authority for long-term lease of certain lands of University of Colorado.

Subtitle B—Facilities Management

Sec. 411. Department of Veterans Affairs Capital Asset Fund.
Sec. 412. Annual report to Congress on inventory of Department of Veterans Affairs historic properties.
Sec. 413. Authority to acquire and transfer real property for use for homeless veterans.
Sec. 414. Limitation on implementation of mission changes for specified Veterans Health Administration facilities.
Sec. 415. Authority to use project funds to construct or relocate surface parking incidental to a construction or nonrecurring maintenance project.
Sec. 416. Inapplicability of limitation on use of advance planning funds to authorized major medical facility projects.
Sec. 417. Improvements to enhanced-use lease authority.
Sec. 418. First option for Commonwealth of Kentucky on Department of Veterans Affairs Medical Center, Louisville, Kentucky.
Sec. 419. Transfer of jurisdiction, General Services Administration property, Boise, Idaho.

Subtitle C—Designation of Facilities

Sec. 421. Thomas E. Creek Department of Veterans Affairs Medical Center.
Sec. 422. James J. Peters Department of Veterans Affairs Medical Center.
Sec. 423. Bob Michel Department of Veterans Affairs Outpatient Clinic.
Sec. 424. Charles Wilson Department of Veterans Affairs Outpatient Clinic.
Sec. 425. Thomas P. Noonan, Jr. Department of Veterans Affairs Outpatient Clinic.

TITLE V—PERSONNEL ADMINISTRATION

Sec. 501. Pilot program to study innovative recruitment tools to address nursing shortages at Department of Veterans Affairs health care facilities.
Sec. 502. Technical correction to listing of certain hybrid positions in Veterans Health Administration.
Sec. 503. Under Secretary for Health.

TITLE VI—OTHER MATTERS

Sec. 601. Extension and codification of authority for recovery audits.
Sec. 602. Inventory of medical waste management activities at Department of Veterans Affairs health care facilities.
Sec. 603. Inclusion of all enrolled veterans among persons eligible to use canteens operated by Veterans' Canteen Service.
Sec. 604. Annual reports on waiting times for appointments for specialty care.
Sec. 605. Technical clarification.

SEC. 2. REFERENCE TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—ASSISTANCE TO HOMELESS VETERANS

SEC. 101. AUTHORIZATION OF APPROPRIATIONS.

Section 2013 is amended in paragraph (4) by striking ''$75,000,000'' and inserting ''$99,000,000''.

TITLE II—VETERANS LONG-TERM CARE PROGRAMS

SEC. 201. ASSISTANCE FOR HIRING AND RETENTION OF NURSES AT STATE VETERANS' HOMES.

(a) IN GENERAL.—(1) Chapter 17 is amended by inserting after section 1743 the following new section:

''§ 1744. Hiring and retention of nurses: payments to assist States

''(a) PAYMENT PROGRAM.—The Secretary shall make payments to States under this section for the purpose of assisting State homes in the hiring and retention of nurses and the reduction of nursing shortages at State homes.

''(b) ELIGIBLE RECIPIENTS.—Payments to a State for a fiscal year under this section shall, subject to submission of an application, be made to any State that during that fiscal year—

''(1) receives per diem payments under this subchapter for that fiscal year; and

''(2) has in effect an employee incentive scholarship program or other employee incentive program at a State home designed to promote the hiring and retention of nursing staff and to reduce nursing shortages at that home.

''(c) USE OF FUNDS RECEIVED.—A State may use an amount received under this section only to provide funds for a program described in subsection (b)(2). Any program shall meet such criteria as the Secretary may prescribe. In prescribing such criteria, the Secretary shall take into consideration the need for flexibility and innovation.

''(d) LIMITATIONS ON AMOUNT OF PAYMENT.—(1) A payment under this section may not be used to provide more than 50 percent of the costs for a fiscal year of the employee incentive scholarship or other employee incentive program for which the payment is made.

''(2) The amount of the payment to a State under this section for any fiscal year is, for each State home in that State with a program described in subsection (b)(2), the amount equal to 2 percent of the amount of payments estimated to be made to that State, for that State home, under section 1741 of this title for that fiscal year.

''(e) APPLICATIONS.—A payment under this section for any fiscal year with respect to any State home may only be made based upon an application submitted by the State seeking the payment with respect to that State home. Any such application shall describe the nursing shortage at the State home and the employee incentive scholarship program or other employee incentive program described in subsection (c) for which the payment is sought.

''(f) SOURCE OF FUNDS.—Payments under this section shall be made from funds available for other payments under this subchapter.

''(g) DISBURSEMENT.—Payments under this section to a State home shall be made as part of the disbursement of payments under section 1741 of this title with respect to that State home.

''(h) USE OF CERTAIN RECEIPTS.—The Secretary shall require as a condition of any payment under this section that, in any case in which the State home receives a refund payment made by an employee in breach of the terms of an agreement for employee assistance that used funds provided under this section, the payment shall be returned to the State home's incentive program account and credited as a non-Federal funding source.

''(i) ANNUAL REPORT FROM PAYMENT RECIPIENTS.—Any State home receiving a payment under this section for any fiscal year, shall, as a condition of the payment, be required to agree to provide to the Secretary a report setting forth in detail the use of funds received through the payment, including a descriptive analysis of how effective the incentive program has been on nurse staffing in the State home during that fiscal year. The report for any fiscal year shall be provided to the Secretary within 60 days of the close of the fiscal year and shall be subject to audit by the Secretary. Eligibility for a payment under this section for any later fiscal year is contingent upon the receipt by the Secretary of the annual report under this subsection for the previous fiscal year in accordance with this subsection.

''(j) REGULATIONS.—The Secretary shall prescribe regulations to carry out this section. The regulations shall include the establishment of criteria for the award of payments under this section.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after section 1743 the following new item:

''1744. Hiring and retention of nurses: payments to assist States.''.

(b) IMPLEMENTATION.—The Secretary of Veterans Affairs shall implement section 1744 of title 38, United States Code, as added by subsection (a), as expeditiously as possible. The Secretary shall establish such interim procedures as necessary so as to ensure that payments are made to eligible

States under that section commencing not later than June 1, 2005, notwithstanding that regulations under subsection (j) of that section may not have become final.

SEC. 202. TREATMENT OF DEPARTMENT OF VETERANS AFFAIRS PER DIEM PAYMENTS TO STATE HOMES FOR VETERANS.

Section 1741 is amended by adding at the end the following new subsection:

''(e) Payments to States pursuant to this section shall not be considered a liability of a third party, or otherwise be used to offset or reduce any other payment made to assist veterans.''.

SEC. 203. EXTENSION OF AUTHORITY TO PROVIDE CARE UNDER LONG-TERM CARE PILOT PROGRAMS.

Subsection (h) of section 102 of the Veterans Millennium Health Care and Benefits Act (38 U.S.C. 1710B note) is amended—

(1) by inserting ''(1)'' before ''The authority of''; and

(2) by adding at the end the following new paragraph:

''(2) In the case of a veteran who is participating in a pilot program under this section as of the end of the three-year period applicable to that pilot program under paragraph (1), the Secretary may continue to provide to that veteran any of the services that could be provided under the pilot program. The authority to provide services to any veteran under the preceding sentence applies during the period beginning on the date specified in paragraph (1) with respect to that pilot program and ending on December 31, 2005.''.

SEC. 204. PROHIBITION ON COLLECTION OF CO-PAYMENTS FOR HOSPICE CARE.

Section 1710B(c)(2) is amended—

(1) by striking ''or'' at the end of subparagraph (A);

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) to a veteran being furnished hospice care under this section; or''.

TITLE III—MEDICAL CARE

SEC. 301. SEXUAL TRAUMA COUNSELING PROGRAM.

(a) PERMANENT AUTHORITY FOR PROGRAM.—Section 1720D(a) is amended—

(1) in paragraph (1), by striking ''During the period through December 31, 2004, the'' and inserting ''The''; and

(2) in paragraph (2), by striking '', during the period through December 31, 2004,''.

(b) EXTENSION TO COVER ACTIVE DUTY FOR TRAINING.—Such section is further amended by inserting ''or active duty for training'' in paragraph (1) before the period at the end.

SEC. 302. CENTERS FOR RESEARCH, EDUCATION, AND CLINICAL ACTIVITIES ON COMPLEX MULTI-TRAUMA ASSOCIATED WITH COMBAT INJURIES.

(a) IN GENERAL.—(1) Subchapter II of chapter 73 of title 38, United States Code, is amended by adding at the end the following new section:

''§ 7327. Centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries

''(a) PURPOSE.—The purpose of this section is to provide for the improvement of the provision of health care services and related rehabilitation and education services to eligible veterans suffering from complex multi-trauma associated with combat injuries through—

''(1) the development of improved models and systems for the furnishing by the Department of health care, rehabilitation, and education services to veterans;

''(2) the conduct of research to support the provision of such services in accordance with the most current evidence on multi-trauma injuries; and

''(3) the education and training of health care personnel of the Department with respect to the provision of such services.

''(b) DESIGNATION OF CENTERS.—(1) The Secretary shall designate an appropriate number of cooperative centers for clinical care, consultation, research, and education activities on combat injuries.

''(2) Each center designated under paragraph (1) shall function as a center for—

''(A) research on the long-term effects of injuries sustained as a result of combat in order to support the provision of services for such injuries in accordance with the most current evidence on complex multi-trauma;

''(B) the development of rehabilitation methodologies for treating individuals with complex multi-trauma; and

''(C) the continuous and consistent coordination of care from the point of referral throughout the rehabilitation process and ongoing follow-up after return to home and community.

''(3) The Secretary shall designate one of the centers designated under paragraph (1) as the lead center for activities referred to in that paragraph. As the lead center for such activities, such center shall—

''(A) develop and provide periodic review of research priorities, and implement protocols, to ensure that projects contribute to the activities of the centers designated under paragraph (1);

''(B) oversee the coordination of the professional and technical activities of such centers to ensure the quality and validity of the methodologies and statistical services for research project leaders;

''(C) develop and ensure the deployment of an efficient and cost-effective data management system for such centers;

''(D) develop and distribute educational materials and products to enhance the evaluation and care of individuals with combat injuries by medical care providers of the Department who are not specialized in the assessment and care of complex multi-trauma;

''(E) develop educational materials for individuals suffering from combat injuries and for their families; and

''(F) serve as a resource for the clinical and research infrastructure of such centers by disseminating clinical outcomes and research findings to improve clinical practice.

''(4) The Secretary shall designate centers under paragraph (1) upon the recommendation of the Under Secretary for Health.

''(5) The Secretary may designate a center under paragraph (1) only if the center meets the requirements of subsection (c).

''(c) REQUIREMENTS FOR CENTERS.—To be designated as a center under this section, a facility shall—

''(1) be a regional lead center for the care of traumatic brain injury;

''(2) be located at a tertiary care medical center and have on-site availability of primary and subspecialty medical services relating to complex multi-trauma;

''(3) have, or have the capacity to develop, the capability of managing impairments associated with combat injuries;

''(4) be affiliated with a school of medicine;

''(5) have, or have experience with, participation in clinical research trials;

''(6) provide amputation care and rehabilitation;

''(7) have pain management programs;

''(8) provide comprehensive brain injury rehabilitation; and

''(9) provide comprehensive general rehabilitation.

''(d) ADDITIONAL RESOURCES.—The Secretary shall provide each center designated under this section such resources as the Secretary determines to be required by such center to achieve adequate capability of managing individuals with complex multi-trauma, including—

''(1) the upgrading of blind rehabilitation services by employing or securing the services of blind rehabilitation specialists;

''(2) employing or securing the services of occupational therapists with blind rehabilitation training;

''(3) employing or securing the services of additional mental health services providers; and

''(4) employing or securing additional rehabilitation nursing staff to meet care needs.

''(e) COOPERATION WITH DEPARTMENT OF DEFENSE.—(1) The Secretary of Veterans Affairs may assist the Secretary of Defense in the care of members of the Armed Forces with complex multi-trauma at military treatment facilities by—

''(A) making available, in a manner that the Secretary of Veterans Affairs considers appropriate, certified rehabilitation registered nurses of the Department of Veterans Affairs to such facilities to assess and coordinate the care of such members; and

''(B) making available, in a manner that the Secretary of Veterans Affairs considers appropriate, blind rehabilitation specialists of the Department of Veterans Affairs to such facilities to consult with the medical staff of such facilities on the special needs of such members who have visual impairment as a consequence of combat injury.

''(2) Assistance shall be provided under this subsection through agreements for the sharing of health-care resources under section 8111 of this title.

''(f) AWARD OF FUNDING.—Centers designated under this section may compete for the award of funding from amounts appropriated for the Department for medical and prosthetics research.

''(g) DISSEMINATION OF INFORMATION.—(1) The Under Secretary for Health shall ensure that information produced by the centers designated under this section that may be useful for other activities of the Veterans Health Administration is disseminated throughout the Administration.

''(2) Information shall be disseminated under this subsection through publications, through programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title, and through other means.

''(h) NATIONAL OVERSIGHT.—The Under Secretary for Health shall designate an appropriate officer to oversee the operation of the centers designated under this section and provide for periodic evaluation of the centers.

''(i) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to the Department of Veterans Affairs for the centers designated under this section amounts as follows:

''(A) $7,000,000 for fiscal year 2005.

''(B) $8,000,000 for each of fiscal years 2006 through 2008.

''(2) In addition to amounts authorized to be appropriated by paragraph (1) for a fiscal year, the Under Secretary for Health may allocate to each center designated under this section, from other funds authorized to be appropriated for such fiscal year for the Department generally for medical and for medical and prosthetic research, such amounts as the Under Secretary for Health determines appropriate to carry out the purposes of this section.''.

(2) The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7326 the following new item:

''7327. Centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries.''.

(b) DESIGNATION OF CENTERS.—The Secretary of Veterans Affairs shall designate the centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries required by section 7327 of title 38, United States Code (as added by subsection (a)), not later than 120 days after the date of the enactment of this Act.

(c) ANNUAL REPORTS.—(1) Not later than eighteen months after the date of the designation of centers for research, education, and clinical activities on complex multi-trauma associated with combat injuries required by section 7327 of title 38, United States Code (as so added), and annually thereafter through 2008, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the status and activities of such centers during the one-year period beginning on the date of such designation, for the first such report, and for successive one-year periods, for subsequent reports.

(2) Each such report shall include, for the period covered by such report, the following:

(A) A description of the activities carried out at each center, and the funding provided for such activities.

(B) A description of any advances made in the participating programs of each center in research, education, training, and clinical activities on complex multi-trauma associated with combat injuries.

(C) A description of the actions taken by the Under Secretary for Health pursuant to subsection (g) of that section (as so added) to disseminate throughout the Veterans Health Administration information derived from such activities.

SEC. 303. ENHANCEMENT OF MEDICAL PREPAREDNESS OF DEPARTMENT OF VETERANS AFFAIRS.

(a) PEER REVIEW PANEL.—In order to assist the Secretary of Veterans Affairs in selecting facilities of the Department of Veterans Affairs to serve as sites for centers under section 7328 of title 38, United States Code, as added by subsection (c), the Secretary shall establish a peer review panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the selection of such facilities. The panel shall be established not later than 90 days after the date of the enactment of this Act and shall include experts in the fields of toxicological research, infectious diseases, radiology, clinical care of veterans exposed to such hazards, and other persons as determined appropriate by the Secretary. Members of the panel shall serve as consultants to the Department of Veterans Affairs. Amounts available to the Secretary for Medical Care may be used for purposes of carrying out this subsection. The panel shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(b) PROPOSALS.—The Secretary shall solicit proposals for designation of facilities as described in subsection (a). The announcement of the solicitation of such proposals shall be issued not later than 60 days after the date of the enactment of this Act, and the deadline for the submission of proposals in response to such solicitation shall be not later than 90 days after the date of such announcement. The peer review panel established under subsection (a) shall complete its review of the proposals and submit its recommendations to the Secretary not later than 60 days after the date of the deadline for the submission of proposals. The Secretary shall then select the four sites for the location of such centers not later than 45 days after the date on which the peer review panel submits its recommendations to the Secretary.

(c) REVISED SECTION.—(1) Subchapter II of chapter 73 is amended by inserting after section 7327, as added by section 302(a)(1) of this Act, a new section with—

(A) a heading as follows:

"§ 7328. Medical preparedness centers"; and

(B) a text consisting of the text of subsections (a) through (h) of section 7325 of title 38, United States Code, and a subsection (i) at the end as follows:

''(i) FUNDING.—(1) There are authorized to be appropriated for the centers under this section $10,000,000 for each of fiscal years 2005 through 2007.

''(2) In addition to any amounts appropriated for a fiscal year specifically for the activities of the centers pursuant to paragraph (1), the Under Secretary for Health shall allocate to the centers from other funds appropriated for that fiscal year generally for the Department medical care account and the Department medical and prosthetic research account such amounts as the Under Secretary determines necessary in order to carry out the purposes of this section.''.

(2) The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7327, as added by section 302(a)(2) of this Act, the following new item:

''7328. Medical preparedness centers.''.

TITLE IV—MEDICAL FACILITIES MANAGEMENT AND ADMINISTRATION

Subtitle A—Major Medical Facility Leases

SEC. 401. MAJOR MEDICAL FACILITY LEASES.

The Secretary of Veterans Affairs may enter into contracts for major medical facility leases at the following locations, in an amount for each facility lease not to exceed the amount shown for that location:

(1) Wilmington, North Carolina, Outpatient Clinic, $1,320,000.

(2) Greenville, North Carolina, Outpatient Clinic, $1,220,000.

(3) Norfolk, Virginia, Outpatient Clinic, $1,250,000.

(4) Summerfield, Florida, Marion County Outpatient Clinic, $1,230,000.

(5) Knoxville, Tennessee, Outpatient Clinic, $850,000.

(6) Toledo, Ohio, Outpatient Clinic, $1,200,000.

(7) Crown Point, Indiana, Outpatient Clinic, $850,000.

(8) Fort Worth, Texas, Tarrant County Outpatient Clinic, $3,900,000.

(9) Plano, Texas, Collin County Outpatient Clinic, $3,300,000.

(10) San Antonio, Texas, Northeast Central Bexar County Outpatient Clinic, $1,400,000.

(11) Corpus Christi, Texas, Outpatient Clinic, $1,200,000.

(12) Harlingen, Texas, Outpatient Clinic, $650,000.

(13) Denver, Colorado, Health Administration Center, $1,950,000.

(14) Oakland, California, Outpatient Clinic, $1,700,000.

(15) San Diego, California, North County Outpatient Clinic, $1,300,000.

(16) San Diego, California, South County Outpatient Clinic, $1,100,000.

SEC. 402. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary of Veterans Affairs for fiscal year 2005 for the Medical Care account, $24,420,000 for the leases authorized in section 401.

SEC. 403. AUTHORITY FOR LONG-TERM LEASE OF CERTAIN LANDS OF UNIVERSITY OF COLORADO.

Notwithstanding section 8103 of title 38, United States Code, the Secretary of Veterans Affairs may enter into a lease for real property located at the Fitzsimmons Campus of the University of Colorado for purposes of a medical facility (as that term is defined in section 8101 of title 38, United States Code) for a period of up to 75 years.

Subtitle B—Facilities Management

SEC. 411. DEPARTMENT OF VETERANS AFFAIRS CAPITAL ASSET FUND.

(a) ESTABLISHMENT OF FUND.—(1) Subchapter I of chapter 81 is amended by adding at the end the following new section:

"§ 8118. Authority for transfer of real property; Department of Veterans Affairs Capital Asset Fund

''(a)(1) The Secretary may transfer real property under the jurisdiction or control of the Secretary (including structures and equipment associated therewith) to another department or agency of the United States, to a State (or a political subdivision of a State), or to any public or private entity, including an Indian tribe. Such a transfer may be made only if the Secretary receives compensation of not less than the fair market value of the property, except that no compensation is required, or compensation at less than fair market value may be accepted, in the case of a transfer to a grant and per diem provider (as defined in section 2002 of this title). When a transfer is made to a grant and per diem provider for less than fair market value, the Secretary shall require in the terms of the conveyance that if the property transferred is used for any purpose other than a purpose under chapter 20 of this title, all right, title, and interest to the property shall revert to the United States.

''(2) The Secretary may exercise the authority provided by this section notwithstanding sections 521, 522, and 541 through 545 of title 40. Any such transfer shall be in accordance with this section and section 8122 of this title.

''(3) The authority provided by this section may not be used in a case to which section 8164 of this title applies.

''(4) The Secretary may enter into partnerships or agreements with public or private entities dedicated to historic preservation to facilitate the transfer, leasing, or adaptive use of structures or properties specified in subsection (b)(3)(D).

''(5) The authority of the Secretary under paragraph (1) expires on the date that is seven years after the date of the enactment of this section.

''(b)(1) There is established in the Treasury of the United States a revolving fund to be known as the Department of Veterans Affairs Capital Asset Fund (hereinafter in this section referred to as the 'Fund'). Amounts in the Fund shall remain available until expended.

''(2) Proceeds from the transfer of real property under this section shall be deposited into the Fund.

''(3) To the extent provided in advance in appropriations Acts, amounts in the Fund may be expended for the following purposes:

''(A) Costs associated with the transfer of real property under this section, including costs of demolition, environmental remediation, maintenance and repair, improvements to facilitate the transfer, and administrative expenses.

''(B) Costs, including costs specified in subparagraph (A), associated with future transfers of property under this section.

''(C) Costs associated with enhancing medical care services to veterans by improving, renovating, replacing, updating, or establishing patient care facilities through construction projects to be carried out for an amount less than the amount specified in 8104(a)(3)(A) for a major medical facility project.

''(D) Costs, including costs specified in subparagraph (A), associated with the transfer, lease, or adaptive use of a structure or other property under the jurisdiction of the Secretary that is listed on the National Register of Historic Places.

''(c) The Secretary shall include in the budget justification materials submitted to Congress for any fiscal year in support of the President's budget for that fiscal year for the Department specification of the following:

''(1) The real property transfers to be undertaken in accordance with this section during that fiscal year.

''(2) All transfers completed under this section during the preceding fiscal year and completed and scheduled to be completed during the fiscal year during which the budget is submitted.

''(3) The deposits into, and expenditures from, the Fund that are incurred or projected for each of the preceding fiscal year, the current fiscal year, and the fiscal year covered by the budget.''.

(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 8117 the following new item:

''8118. Authority for transfer of real property; Department of Veterans Affairs Capital Asset Fund.''.

(b) INITIAL AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Department of Veterans Affairs Capital Asset Fund established under section 8118 of title 38, United States Code (as added by subsection (a)), the amount of $10,000,000.

(c) TERMINATION OF NURSING HOME REVOLVING FUND.—(1) Section 8116 is repealed.

(2) The table of sections at the beginning of chapter 81 is amended by striking the item relating to section 8116.

(d) TRANSFER OF UNOBLIGATED BALANCES TO CAPITAL ASSET FUND.—Any unobligated balances in the nursing home revolving fund under section 8116 of title 38, United States Code, as of the date of the enactment of this Act shall be deposited in the Department of Veterans Affairs Capital Asset Fund established under section 8118 of title 38, United States Code (as added by subsection (a)).

(e) PROCEDURES APPLICABLE TO TRANSFERS.—(1) Paragraph (2) of section 8122(a) is amended to read as follows:

''(2) Except as provided in paragraph (3), the Secretary may not during any fiscal year transfer to any other department or agency of the United States or to any other entity real property that is owned by the United States and administered by the Secretary unless the proposed transfer is described in the budget submitted to Congress pursuant to section 1105 of title 31 for that fiscal year.''.

(2) Section 8122(d) is amended—

(A) by inserting ''(1)'' before ''Real property''; and

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

''(2) The Secretary may transfer real property under this section, or under section 8118 of this title, if the Secretary—

''(A) places a notice in the real estate section of local newspapers and in the Federal Register of the Secretary's intent to transfer that real property (including land, structures, and equipment associated with the property);

''(B) holds a public hearing;

''(C) provides notice to the Administrator of General Services of the Secretary's intention to transfer that real property and waits for 30 days to elapse after providing that notice; and

''(D) after such 30-day period has elapsed, notifies the congressional veterans' affairs committees of the Secretary's intention to dispose of the property and waits for 60 days to elapse from the date of that notice.''.

(3) Section 8164(a) is amended by inserting ''8118 or'' after ''rather than under section''.

(4) Section 8165(a)(2) is amended by striking ''nursing home revolving fund'' and inserting ''Department of Veterans Affairs Capital Asset Fund established under section 8118 of this title''.

(f) CONTINGENT EFFECTIVENESS.—Subsection (d) and the amendments made by subsection (c) shall take effect at the end of the 30-day period beginning on the date on which the Secretary of Veterans Affairs certifies to Congress that the Secretary is in compliance with subsection (b) of section 1710B of title 38, United States Code.

(g) ANNUAL UPDATE.—Following a certification under subsection (f), the Secretary shall submit to Congress an annual update on that certification.

SEC. 412. ANNUAL REPORT TO CONGRESS ON INVENTORY OF DEPARTMENT OF VETERANS AFFAIRS HISTORIC PROPERTIES.

(a) IN GENERAL.—Not later than December 15 of 2005, 2006, and 2007, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the historic properties administered or controlled by the Secretary.

(b) INITIAL REPORT.—In the initial report under subsection (a), the Secretary shall set forth a complete inventory of the historic structures and property under the jurisdiction of the Secretary. The report shall include a description and classification of each such property based upon historical nature, current physical condition, and potential for transfer, leasing, or adaptive use.

(c) SUBSEQUENT REPORTS.—In reports under subsection (a) after the initial report, the Secretary shall provide an update of the status of each property identified in the initial report, with the proposed and actual disposition, if any, of each property. Each such report shall include any recommendation of the Secretary for legislation to enhance the transfer, leasing, or adaptive use of such properties.

SEC. 413. AUTHORITY TO ACQUIRE AND TRANSFER REAL PROPERTY FOR USE FOR HOMELESS VETERANS.

(a) AUTHORITY.—Upon identification of a parcel of real property meeting the description in subsection (b), the Secretary of Veterans Affairs may acquire that property (with the structures and improvements thereon) or, in the case of property owned by the United States and administered by another Federal department or agency, may accept administrative jurisdiction over that property, with the expectation of promptly transferring that property to a homeless assistance provider identified under paragraph (2) of subsection (b), subject to the condition that the primary purpose for which the property shall be used is to provide housing for homeless veterans.

(b) SPECIFIED PROPERTY.—A parcel of real property referred to in subsection (a) is a parcel in the District of Columbia—

(1) that the Secretary determines to be suitable for use for housing for homeless veterans; and

(2) for which there is an identified homeless assistance provider that is prepared to acquire the property for such purpose from the Secretary promptly upon the acquisition of the property by the Secretary.

(c) TRANSFER OF PROPERTY.—Upon acquiring real property under subsection (a), the Secretary shall immediately transfer all right, title, and interest of the United States (other than the reversionary interest retained under subsection (e)) to the homeless assistance provider identified under subsection (b)(2). Such transfer shall be for such consideration as the Secretary determines appropriate.

(d) TERMS AND CONDITIONS.—The acquisition and transfer of real property under this section shall be made upon such terms and conditions as the Secretary may specify not inconsistent with other applicable provisions of law.

(e) REVERTER.—The terms of the transfer shall provide that if the property is no longer used for the purpose for which conveyed by the Secretary, title to the property shall revert to the United States.

SEC. 414. LIMITATION ON IMPLEMENTATION OF MISSION CHANGES FOR SPECIFIED VETERANS HEALTH ADMINISTRATION FACILITIES.

(a) LIMITATION.—The Secretary of Veterans Affairs may not implement a mission change for a medical facility of the Department of Veterans Affairs specified in subsection (c) until—

(1) the Secretary submits to the Committees on Veterans' Affairs of the Senate and House of Representatives a written notice of the mission change; and

(2) the period prescribed by subsection (b) has elapsed.

(b) CONGRESSIONAL REVIEW PERIOD.—(1) The period referred to in subsection (a)(2) is the period beginning on the date of the receipt of the notice under subsection (a)(1) by the committees specified in that subsection and ending on the later of—

(A) the end of the 60-day period beginning on the date on which the notice is received by those committees; or

(B) the end of a period of 30 days of continuous session of Congress beginning on the date on which the notification is received by those committees or, if either House of Congress is not in session on such date, the first day after such date that both Houses of Congress are in session.

(2) For the purposes of paragraph (1)(B)—

(A) the continuity of a session of Congress is broken only by an adjournment of Congress sine die; and

(B) any day on which either House is not in session because of an adjournment of more than three days to a day certain is excluded in the computation of any period of time in which Congress is in continuous session.

(c) SPECIFIED FACILITIES.—A facility referred to in subsection (a) as being specified in this subsection is any of the following facilities of the Department of Veterans Affairs:

(1) The Department of Veterans Affairs medical centers in Boston, Massachusetts.

(2) The Department of Veterans Affairs medical centers in New York City, New York.

(3) The Department of Veterans Affairs medical center in Big Spring, Texas.

(4) The Carl Vinson Department of Veterans Affairs Medical Center, Dublin, Georgia.

(5) The Department of Veterans Affairs medical center in Montgomery, Alabama.

(6) The Department of Veterans Affairs medical center in Louisville, Kentucky.

(7) The Department of Veterans Affairs medical center in Muskogee Oklahoma, and the outpatient clinic in Tulsa, Oklahoma.

(8) The John J. Pershing Department of Veterans Affairs Medical Center, Poplar Bluff, Missouri.

(9) The Department of Veterans Affairs medical center in Ft. Wayne, Indiana.

(10) The Department of Veterans Affairs Medical Center in Waco, Texas.

(11) The Jonathan M. Wainwright Department of Veterans Affairs Medical Center, Walla Walla, Washington.

(d) COVERED MISSION CHANGES.—For purposes of this section, a mission change for a medical facility shall consist of any of the following:

(1) Closure of the facility.

(2) Consolidation of the facility.

(3) An administrative reorganization of the facility covered by section 510(b) of title 38, United States Code.

(e) REQUIRED CONTENT OF NOTICE OF MISSION CHANGE.—Written notice of a mission change for a medical facility under subsection (a) shall include the following:

(1) An assessment of the effect of the mission change on the population of veterans served by the facility.

(2) A description of the availability and quality of health care, including long-term care, mental health care, and substance abuse programs, available in the area served by the facility.

(3) An assessment of the effect of the mission change on the economy of the community in which the facility is located.

(4) An analysis of any alternatives to the mission change proposed by—

(A) the community in which the facility is located;

(B) organizations recognized by the Secretary under section 5902 of title 38, United States Code;

(C) organizations that represent Department employees in such community; or

(D) the Department.

(f) MEDICAL FACILITY CONSOLIDATION.—For the purposes of subsection (d)(2), the term ''consolidation'' means an action that closes one or more medical facilities within a geographic service area for the purpose of relocating those activities to another medical facility or facilities.

(g) COORDINATION OF PROVISIONS.—In the case of a mission change covered by subsection (a) that is also an administrative reorganization covered by section 510(b) of title 38, United States Code, both this section and such section 510(b) shall apply with respect to the implementation of that mission change.

SEC. 415. AUTHORITY TO USE PROJECT FUNDS TO CONSTRUCT OR RELOCATE SURFACE PARKING INCIDENTAL TO A CONSTRUCTION OR NONRECURRING MAINTENANCE PROJECT.

Section 8109 is amended by adding at the end the following new subsection:

''(j) Funds in a construction account or capital account that are available for a construction project or a nonrecurring maintenance project may be used for the construction or relocation of a surface parking lot incidental to that project.''.

SEC. 416. INAPPLICABILITY OF LIMITATION ON USE OF ADVANCE PLANNING FUNDS TO AUTHORIZED MAJOR MEDICAL FACILITY PROJECTS.

Section 8104 is amended by adding at the end the following new subsection:

''(g) The limitation in subsection (f) does not apply to a project for which funds have been authorized by law in accordance with subsection (a)(2).''.

SEC. 417. IMPROVEMENTS TO ENHANCED-USE LEASE AUTHORITY.

Section 8166(a) is amended by inserting ''land use,'' in the second sentence after ''relating to''.

SEC. 418. FIRST OPTION FOR COMMONWEALTH OF KENTUCKY ON DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, LOUISVILLE, KENTUCKY.

(a) REQUIREMENT.—Upon determining to convey, lease, or otherwise dispose of the Department of Veterans Affairs Medical Center, Louisville, Kentucky, or any portion thereof, the Secretary of Veterans Affairs shall engage in negotiations for the conveyance, lease, or other disposal of the Medical Center or portion thereof solely with the Commonwealth of Kentucky.

(b) DURATION OF REQUIREMENT.—The requirement for negotiations under subsection (a) shall remain in effect for one year after the date of the determination referred to in that subsection.

(c) SCOPE OF NEGOTIATIONS.—The negotiations under subsection (a) shall address the use of the medical center referred to in subsection (a), or portion thereof, by the Commonwealth of Kentucky for the primary purpose of the provision of services for veterans and related activities, including use for a State veterans' home.

SEC. 419. TRANSFER OF JURISDICTION, GENERAL SERVICES ADMINISTRATION PROPERTY, BOISE, IDAHO.

(a) TRANSFER.—The Administrator of General Services shall transfer to the Secretary of Veterans Affairs, under such terms and conditions as the Administrator and the Secretary agree, jurisdiction, custody, and control over the parcel of real property, including any improvements thereon, consisting of approximately 2.3 acres located at the General Services Administration facility immediately north of the Army Reserve facility in Boise, Idaho.

(b) UTILIZATION.—The Secretary of Veterans Affairs shall utilize the property transferred under subsection (a) for purposes relating to the delivery of benefits to veterans.

Subtitle C—Designation of Facilities

SEC. 421. THOMAS E. CREEK DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER.

(a) IN GENERAL.—The Department of Veterans Affairs medical center in Amarillo, Texas, shall after the date of the enactment of this Act be known and designated as the ''Thomas E. Creek Department of Veterans Affairs Medical Center''.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the medical center referred to in subsection (a) shall be considered to be a reference to the Thomas E. Creek Department of Veterans Affairs Medical Center.

SEC. 422. JAMES J. PETERS DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER.

(a) IN GENERAL.—The Department of Veterans Affairs medical center in the Bronx, New York, shall after the date of the enactment of this Act be known and designated as the ''James J. Peters Department of Veterans Affairs Medical Center''.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the medical center referred to in subsection (a) shall be considered to be a reference to the James J. Peters Department of Veterans Affairs Medical Center.

SEC. 423. BOB MICHEL DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC.

(a) IN GENERAL.—The Department of Veterans Affairs outpatient clinic located in Peoria, Illinois, shall after the date of the enactment of this Act be known and designated as the ''Bob Michel Department of Veterans Affairs Outpatient Clinic''.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the outpatient clinic referred to in subsection (a) shall be considered to be a reference to the Bob Michel Department of Veterans Affairs Outpatient Clinic.

SEC. 424. CHARLES WILSON DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC.

(a) IN GENERAL.—The Department of Veterans Affairs outpatient clinic located in Lufkin, Texas, shall after the date of the enactment of this Act be known and designated as the ''Charles Wilson Department of Veterans Affairs Outpatient Clinic''.

(b) REFERENCES.—Any reference in any law, regulation, map, document, record, or other paper of the United States to the outpatient clinic referred to in subsection (a) shall be considered to be a reference to the Charles Wilson Department of Veterans Affairs Outpatient Clinic.

SEC. 425. THOMAS P. NOONAN, JR. DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC.

(a) IN GENERAL.—The Department of Veterans Affairs outpatient clinic in Sunnyside, Queens, New York, shall after the date of the enactment of this Act be known and designated as the ''Thomas P. Noonan, Jr. Department of Veterans Affairs Outpatient Clinic''.

(b) REFERENCES.—Any reference in any law, map, regulation, document, paper, or other record of the United States to the outpatient clinic referred to in subsection (a) shall be considered to be a reference to the Thomas P. Noonan, Jr. Department of Veterans Affairs Outpatient Clinic.

TITLE V—PERSONNEL ADMINISTRATION

SEC. 501. PILOT PROGRAM TO STUDY INNOVATIVE RECRUITMENT TOOLS TO ADDRESS NURSING SHORTAGES AT DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITIES.

(a) PILOT PROGRAM.—(1) Not later than 90 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall designate a health care service region, or a section within such a region, in which health care facilities of the Department of Veterans Affairs are adversely affected by a shortage of qualified nurses.

(2) The Secretary shall conduct a pilot program in the region or section designated under paragraph (1) to determine the effectiveness of the use of innovative human capital tools and techniques in the recruitment of qualified nurses for positions at Department health care facilities in such region or section and for the retention of nurses at such facilities. In carrying out the pilot program, the Secretary shall enter into a contract with a private sector entity for services under the pilot program for recruitment of qualified nurses.

(b) PRIVATE SECTOR RECRUITMENT PRACTICES.—For purposes of the pilot program under this section, the Secretary shall identify and use recruitment practices that have proven effective for placing qualified individuals in positions that are difficult to fill due to shortages of qualified individuals or other factors. Recruitment practices to be reviewed by the Secretary for use in the pilot program shall include—

(1) employer branding and interactive advertising strategies;

(2) Internet technologies and automated staffing systems; and

(3) the use of recruitment, advertising, and communication agencies.

(c) STREAMLINED HIRING PROCESS.—In carrying out the pilot program under this section, the Secretary shall, at health care facilities of the Department in the region or section in which the pilot program is conducted, revise procedures and systems for selecting and hiring qualified nurses to reduce the length of the hiring process. If the Secretary identifies measures to streamline and automate the hiring process that can only be implemented if authorized by law, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives recommendations for such changes in law as may be necessary to enable such measures to be implemented.

(d) REPORT.—Not later than one year after the date of the enactment of this Act, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the extent to which the pilot program achieved the goal of improving the recruitment and retention of nurses in Department of Veterans Affairs health care facilities.

SEC. 502. TECHNICAL CORRECTION TO LISTING OF CERTAIN HYBRID POSITIONS IN VETERANS HEALTH ADMINISTRATION.

Section 7401(3) is amended—

(1) by striking ''and dental technologists'' and inserting ''technologists, dental hygienists, dental assistants''; and

(2) by striking ''technicians, therapeutic radiologic technicians, and social workers'' and inserting ''technologists, therapeutic radiologic technologists, social workers, blind rehabilitation specialists, and blind rehabilitation outpatient specialists''.

SEC. 503. UNDER SECRETARY FOR HEALTH.

Section 305(a)(2) is amended—

(1) in the matter preceding subparagraph (A), by striking ''shall be a doctor of medicine and''; and

(2) in subparagraph (A), by striking ''and in health-care'' and inserting ''or in healthcare''.

TITLE VI—OTHER MATTERS

SEC. 601. EXTENSION AND CODIFICATION OF AUTHORITY FOR RECOVERY AUDITS.

Section 1703 is amended by adding at the end the following new subsection:

''(d)(1) The Secretary shall conduct a program of recovery audits for fee basis contracts and other medical services contracts for the care of veterans under this section, and for beneficiaries under sections 1781, 1782, and 1783 of this title, with respect to overpayments resulting from processing or billing errors or fraudulent charges in payments for non-Department care and services. The program shall be conducted by contract.

''(2) Amounts collected, by setoff or otherwise, as the result of an audit under the program conducted under this subsection shall be available for the purposes for which funds are currently available to the Secretary for medical care and for payment to a contractor of a percentage of the amount collected as a result of an audit carried out by the contractor.

''(3) The Secretary shall allocate all amounts collected under this subsection with respect to a designated geographic service area of the Veterans Health Administration, net of payments to the contractor, to that region.

''(4) The authority of the Secretary under this subsection terminates on September 30, 2008.''.

SEC. 602. INVENTORY OF MEDICAL WASTE MANAGEMENT ACTIVITIES AT DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITIES.

(a) INVENTORY.—The Secretary of Veterans Affairs shall establish and maintain a national inventory of medical waste management activities in the health care facilities of the Department of Veterans Affairs. The inventory shall include the following:

(1) A statement of the current national policy of the Department on managing and disposing of medical waste, including regulated medical waste in all its forms.

(2) A description of the program of each geographic service area of the Department to manage and dispose of medical waste, including general medical waste and regulated medical waste, with a description of the primary methods used in those programs and the associated costs of those programs, with cost information shown separately for in-house costs (including full-time equivalent employees) and contract costs.

(b) REPORT.—Not later than June 30, 2005, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on medical waste management activities in the facilities of the Department of Veterans Affairs. The report shall include the following:

(1) The inventory established under subsection (a), including all the matters specified in that subsection.

(2) A listing of each violation of medical waste management and disposal regulations reported at any health care facility of the Department over the preceding five years by any Federal or State agency, along with an explanation of any remedial or other action taken by the Secretary in response to each such reported violation.

(3) A description of any plans to modernize, consolidate, or otherwise improve the management of medical waste and disposal programs at health care facilities of the Department, including the projected costs associated with such plans and any barriers to achieving goals associated with such plans.

(4) An assessment or evaluation of the available methods of disposing of medical waste and identification of which of those methods are more desirable from an environmental perspective in that they would be least likely to result in contamination of air or water or otherwise cause future cleanup problems.

SEC. 603. INCLUSION OF ALL ENROLLED VETERANS AMONG PERSONS ELIGIBLE TO USE CANTEENS OPERATED BY VETERANS' CANTEEN SERVICE.

The text of section 7803 is amended to read as follows:

''(a) PRIMARY BENEFICIARIES.—Canteens operated by the Service shall be primarily for the use and benefit of—

''(1) veterans hospitalized or domiciled at the facilities at which canteen services are provided; and

''(2) other veterans who are enrolled under section 1705 of this title.

''(b) OTHER AUTHORIZED USERS.—Service at such canteens may also be furnished to—

''(1) personnel of the Department and recognized veterans' organizations who are employed at a facility at which canteen services are provided and to other persons so employed;

''(2) the families of persons referred to in paragraph (1) who reside at the facility; and

''(3) relatives and other persons while visiting a person specified in this section.''.

SEC. 604. ANNUAL REPORTS ON WAITING TIMES FOR APPOINTMENTS FOR SPECIALTY CARE.

(a) ANNUAL REPORTS.—Not later than January 31 each year through 2007, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on waiting times for appointments for specialty health care from the Department of Veterans Affairs under chapter 17 of title 38, United States Code, during the preceding year.

(b) REPORT ELEMENTS.—Each report under subsection (a) shall specify, for the year covered by the report, the following:

(1) A tabulation of the number of veterans whose appointment for specialty health care furnished by the Department was more than three months after the date of the scheduling of such appointment, and the waiting times of such veterans for such appointments, for each category of specialty care furnished by the Department, broken out by Veterans Integrated Service Network.

(2) An identification of the categories of specialty care furnished by the Department for which there were delays of more than three months between the scheduling date of appointments and appointments in each Veterans Integrated Service Network.

(3) A discussion of the reasons for the delays identified under paragraph (2) for each category of care for each Veterans Integrated Service Network so identified, including lack of personnel, financial resources, or other resources.

(c) CERTIFICATION ON REPORT INFORMATION.—The Comptroller General of the United States shall certify to the committees of Congress referred to in subsection (a) whether or not each report under this section is accurate.

SEC. 605. TECHNICAL CLARIFICATION.

Section 8111(d)(2) is amended by inserting before the period at the end of the last sentence the following: ''and shall be available for any purpose authorized by this section''.

SA 4049. Mr. FRIST (for Mr. SPECTER) proposed an amendment to the bill H.R. 3936, to amend title 38, United States Code, to increase the authorization of appropriations for grants to benefit homeless veterans, to improve programs for management and administration of veterans' facilities and health care programs, and for other purposes; as follows:

Amend the title so as to read: ''A bill to amend title 38, United States Code, to increase the authorization of appropriations for grants to benefit homeless veterans, to improve programs for management and administration of veterans' facilities and health care programs, and for other purposes.''.

DEPARTMENT OF VETERANS AFFAIRS REAL PROPERTY AND FACILITIES MANAGEMENT IMPROVEMENT ACT OF 2004

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 718, S. 2485.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2485) to amend title 38, United States Code, to improve and enhance the authorities of the Secretary of Veterans Affairs relating to the management and disposal of real property and facilities, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Veterans' Affairs with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

(Strike the part shown in black brackets and insert part shown in italic.)

S. 2485

[SECTION 1. SHORT TITLE; REFERENCES TO TITLE 38, UNITED STATES CODE.

[(a) SHORT TITLE.—This Act may be cited as the ''Department of Veterans Affairs Real Property and Facilities Management Improvement Act of 2004''.

[(b) REFERENCES TO TITLE 38 UNITED STATES CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

[SEC. 2. AUTHORITY TO USE PROJECT FUNDS TO CONSTRUCT OR RELOCATE SURFACE PARKING INCIDENTAL TO A CONSTRUCTION OR NON-RECURRING MAINTENANCE PROJECT.

[Section 8109 is amended by adding at the end the following new subsection:

[''(j) Funds in a construction account or capital account that are available for a construction project or non-recurring maintenance project may be used for the construction or relocation of a surface parking lot incidental to such project.''.

[SEC. 3. IMPROVEMENTS OF ENHANCED-USE LEASE AUTHORITIES.

[(a) BUSINESS PLAN CRITERIA.—Section 8162 is amended—

[(1) in subsection (a)(2)(B), by striking ''the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services'' and inserting ''one of the Under Secretaries for applying the consideration under such a lease to the programs and activities of the Department''; and

[(2) in subsection (b)(4)(A), by striking ''on the leased property''.

[(b) CONSIDERATION OF PROPOSALS FOR LEASES.—(1) Section 8163 is amended—

[(A) in subsection (a), by striking the first sentence and inserting the following new sentence: ''If the Secretary proposes to enter into an enhanced-use lease with respect to certain property, the Secretary shall conduct a public hearing before entering into the lease.'';

[(B) in subsection (b), by striking ''of the proposed designation and of the hearing'' in the matter preceding paragraph (1) and inserting ''on the proposed lease and the hearing to the congressional veterans' affairs committees and to the public''; and

[(C) in subsection (c)—

[(i) in paragraph (1)—

[(I) by striking ''to designate the property involved'' and inserting ''to enter into an enhanced-use lease of the property involved''; and

[(II) by striking ''to so designate the property'' and inserting ''to enter into the lease'';

[(ii) in paragraph (2), by striking ''90-day'' and inserting ''45-day''; and

[(iii) by striking paragraph (4).

[(2)(A) The heading of such section is amended to read as follows:

[''§ 8163. Proposals for property to be leased''.

[(B) The table of sections at the beginning of chapter 81 is amended by striking the item relating to section 8163 and inserting the following new item:

[''8163. Proposals for property to be leased.''.

[(c) DISPOSAL AUTHORITY.—Section 8164 is amended—

[(1) in subsection (a)—

[(A) by striking ''by requesting the Administrator of General Services to dispose of the property pursuant to subsection (b)''; and

[(B) by striking the last sentence;

[(2) in subsection (b)—

[(A) by striking ''and the Administrator of General Services jointly determine'' and inserting ''determines''; and

[(B) by striking ''and the Administrator consider'' and inserting ''considers''; and

[(3) in subsection (c), by striking ''90 days'' and inserting ''45 days''.

[(d) USE OF PROCEEDS.—Section 8165 is amended—

[(1) in subsection (a)—

[(A) in paragraph (1), by striking ''Funds received'' and inserting ''Except as provided in paragraph (2), funds received'';

[(B) by redesignating paragraph (2) as paragraph (3);

[(C) by inserting after paragraph (1) the following new paragraph (2):

[''(2) Funds received by the Department under an enhanced-use lease implementing a business plan proposed by the Under Secretary for Benefits or the Under Secretary for Memorial Affairs and remaining after any deduction from such funds under subsection (b) shall be credited to applicable appropriations of the Veterans Benefits Administration or National Cemetery Administration, as the case may be.''; and

[(D) in paragraph (3), as so redesignated, by striking ''nursing home revolving fund'' and inserting ''Capital Asset Fund established under section 8122A of this title'';

[(2) in subsection (b)—

[(A) by inserting ''(1)'' after ''(b)''

[(B) in paragraph (1), as so designated, by striking ''for that fiscal year''; and

[(C) by adding at the end the following new paragraph:

[''(2) The Secretary may also deduct from the proceeds of any enhanced-use lease an amount to reimburse applicable appropriations of the Department for any expenses incurred by the Secretary in the development of additional enhanced-use leases. Amounts so deducted shall be utilized to reimburse such appropriations.''; and

[(3) by striking subsection (c).

[SEC. 4. DISPOSAL OF REAL PROPERTY OF THE DEPARTMENT OF VETERANS AFFAIRS.

[(a) IN GENERAL.—(1) Subchapter II of chapter 81 is amended by inserting after section 8122 the following new section:

[''§ 8122A. Disposal of real property

[''(a) IN GENERAL.—(1) To the extent provided in advance in appropriations Acts, the Secretary may, in accordance with this section and sections 8122 and 8164 of this title, dispose of real property of the Department, including land and structures and equipment associated with such property, that is under the jurisdiction or control of the Secretary by—

[''(A) transfer to or exchange with another department or agency of the Federal Government;

[''(B) conveyance to or exchange with a State or a political subdivision of a State, an Indian tribe, or other public entity; or

[''(C) conveyance to or exchange with any private person or entity.

[''(2) The Secretary may exercise the authority in paragraph (1) notwithstanding the following provisions of law:

[''(A) Sections 521, 522, and 541 through 545 of title 40.

[''(B) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

[''(3) In any transfer, exchange, or conveyance of real property under this subsection, the Secretary shall obtain consideration in an amount equal to the fair market value of the property, as determined by the Secretary.

[''(b) TREATMENT OF PROCEEDS.—Proceeds from the transfer, exchange, or conveyance of real property under subsection (a) shall be deposited in the Capital Asset Fund under subsection (c).

[''(c) CAPITAL ASSET FUND.—There is established on the books of the Treasury of the United States a revolving fund known as the Capital Asset Fund (in this section referred to as the 'Fund').

[''(d) ELEMENTS OF FUND.—The Fund shall consist of the following:

[''(1) Amounts authorized to be appropriated to the Fund.

[''(2) Proceeds from the transfer, exchange, or conveyance of real property under subsection (a) that are deposited in the Fund under subsection (b).

[''(3) Funds to be deposited in the Fund under section 8165(a)(3) of this title.

[''(4) Any other amounts specified for transfer to or deposit in the Fund by law.

[''(e) USE OF AMOUNTS IN FUND.—Subject to the provisions of appropriations Acts, amounts in the Fund shall be available for purposes as follows and in the following order of priority:

[''(1) For costs of the Department in disposing of real property, including costs associated with demolition, environmental clean-up, maintenance and repair, improvements to facilitate disposal, and associated administrative expenses.

[''(2) For costs of the Department associated with proposed disposals of real property of the Department.

[''(3) For costs of non-recurring capital projects of the Department.

[''(f) REPORTS.—The Secretary shall include with the budget justification documents submitted to Congress each year with the budget of the President for the fiscal year beginning in such year (as submitted pursuant to section 1105 of title 31) a report setting forth the following:

[''(1) A statement of each disposal of real property to be undertaken in such fiscal year that is valued in excess of the major medical facility project threshold specified in section 8104(a)(3)(A) of this title.

[''(2) A description of each disposal of real property that was completed in the fiscal year ending in the year before such report is submitted.''.

[(2) The table of sections at the beginning of such chapter is amended by inserting after the item relating to section 8122 the following new item:

[''8122A. Disposal of real property.''.

[(b) CONFORMING AMENDMENT.—Section 8164(a) is amended in the second sentence by inserting ''or 1822A'' after ''section 8122''.

[(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Department of Veterans Affairs for fiscal year 2005, $10,000,000 for deposit in the Capital Asset Fund under section 1822A(c) of title 38, United States Code (as added by subsection (a)).

[SEC. 5. MODIFICATION OF OTHER REAL PROPERTY DISPOSAL AUTHORITIES.

[(a) GENERAL LIMITATIONS ON DISPOSAL.—Paragraph (2) of subsection (a) of section 8122 is amended to read as follows:

[''(2) Except as provided in paragraph (3) of this subsection, the Secretary may not during any fiscal year dispose of real property owned by the United States and under the jurisdiction and control of the Secretary that has an estimated value in excess of the major medical facility project threshold specified in subsection 8104(a)(3)(A) of this title unless—

[''(A) the disposal is described in the budget justification documents submitted to Congress each year with the budget of the President for the fiscal year beginning in such year (as submitted pursuant to section 1105 of title 31);

[''(B) the Department receives consideration for the real property equal to the fair market value of the property, as determined by the Secretary; and

[''(C) the net proceeds of the disposal are deposited in the Capital Asset Fund under section 8122A(c) of this title.''.

[(b) DISPOSAL PROCEDURES.—Subsection (d) of such section is amended—

[(1) by inserting ''(1)'' after ''(d)''; and

[(2) by adding at the end the following new paragraphs:

[''(2)(A) In the case of property (including land and structures and equipment associated with such property) that has an estimated value less than the major medical facility project threshold specified in section 8104(a)(3)(A) of this title, the Secretary may dispose of the property if—

[''(i) the Secretary notifies the Administrator of General Services of an intent to dispose of the property; and

[''(ii) a period of 30 days elapses after notice under clause (i) during which period no other department or agency of the Federal Government expresses an interest in assuming jurisdiction of the property under the condition of paying the Secretary the fair market value of the property, as determined by the Secretary, of the property.

[''(B) In disposing of property under subparagraph (A), the Secretary shall publish a notice of sale in the real estate section of a local newspaper of general circulation serving the market in which the property is located.

[''(3) In the case of property (including land and structures and equipment associated with such property) that has an estimated value in excess of the major medical facility project threshold specified in section 8104(a)(3)(A) of this title, the Secretary may dispose of the property if—

[''(A) the Secretary complies with subsection (a)(2) with respect to the property;

[''(B) the Secretary—

[''(i) notifies the Administrator of General Services of an intent to dispose of the property;

[''(ii) publishes in the Federal Register notice of an intent to dispose of the property; and

[''(iii) notifies the committees of an intent to dispose of the property;

[''(C) a period of 30 days elapses after notice under subparagraph (B)(i) during which period no other department or agency of the Federal Government expresses an interest in assuming jurisdiction of the property under the condition of paying the Secretary the fair market value of the property, as determined by the Secretary, of the property; and

[''(D) a period of 60 days elapses after notice under subparagraph (B)(iii).''.

[SEC. 6. TERMINATION OF NURSING HOME REVOLVING FUND.

[(a) TERMINATION.—(1) Section 8116 is repealed.

[(2) The table of sections at the beginning of chapter 81 is amended by striking the item relating to section 8116.

[(b) CONFORMING AMENDMENT.—Section 8165(a)(3), as redesignated by section 3(d)(1)(D) of this Act, is further amended by striking ''nursing home revolving fund'' and inserting ''Capital Asset Fund under section 1822A of this title''.

[(c) TRANSFER OF UNOBLIGATED BALANCES TO CAPITAL ASSET FUND.—Any unobligated balances in the nursing home revolving under section 8116 of title 38, United States Code, as of the date of the enactment of this Act shall be deposited in the Capital Asset Fund under section 8122A of title 38, United States Code (as added by section 4(a) of this Act).

[SEC. 7. INAPPLICABILITY OF LIMITATION ON USE OF ADVANCE PLANNING FUND TO AUTHORIZED MAJOR MEDICAL FACILITY PROJECTS.

[Section 8104 is amended by adding at the end the following new subsection:

[''(g) The limitation specified in subsection (f) shall not apply to projects for which funds have already been authorized by law in accordance with subsection (a)(2).''.

[SEC. 8. LEASE OF CERTAIN NATIONAL CEMETERY ADMINISTRATION PROPERTY.

[(a) IN GENERAL.—Chapter 24 is amended by adding at the end the following new section:

[''§ 2412. Lease of land and buildings

[''(a) LEASE AUTHORIZED.—The Secretary may lease any undeveloped land and unused or underutilized buildings, or parts or parcels thereof, belonging to the United States and part of the National Cemetery Administration.

[''(b) TERM.—The term of a lease under subsection (a) may not exceed 10 years.

[''(c) LEASE TO PUBLIC OR NONPROFIT ORGANIZATIONS.—(1) A lease under subsection (a) to any public or nonprofit organization may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5).

[''(2) Notwithstanding section 1302 of title 40 or any other provision of law, a lease under subsection (a) to any public or nonprofit organization may provide for the maintenance, protection, or restoration of the leased property by the lessee, as a part or all of the consideration for the lease.

[''(d) NOTICE.—Before entering into a lease under subsection (a), the Secretary shall give appropriate public notice of the intention of the Secretary to enter into the lease in a newspaper of general circulation in the community in which the lands or buildings concerned are located.

[''(e) NATIONAL CEMETERY ADMINISTRATION FACILITIES OPERATION FUND.—(1) There is established on the book of the Treasury an account to be known as the 'National Cemetery Administration Facilities Operation Fund' (in this section referred to as the 'Fund').

[''(2) The Fund shall consist of the following:

[''(A) Amounts authorized to be appropriated to the Fund.

[''(B) Proceeds from the lease of land or buildings under this section.

[''(C) Proceeds of agricultural licenses of lands of the National Cemetery Administration.

[''(D) Any other amounts authorized for deposit in the Fund by law.

[''(3) Amounts in the Fund shall be available to cover costs incurred by the National Cemetery Administration in the operation and maintenance of property of the Administration.

[''(4) Amounts in the Fund shall remain available until expended.''.

[(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

[''2412. Lease of land and buildings.''.]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Department of Veterans Affairs Real Property and Facilities Management Improvement Act of 2004''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. References to title 38, United States Code.

TITLE I—REAL PROPERTY AND FACILITIES MATTERS

Subtitle A—Real Property and Facilities Administration

Sec. 101. Restatement and enhancement of real property disposal authorities.

Sec. 102. Improvements of enhanced-use lease authorities.

Sec. 103. Authority to use project funds to construct or relocate surface parking incidental to a construction or non-recurring maintenance project.

Sec. 104. Limitation on implementation of mission changes for Veterans Health Administration health care facilities.

Sec. 105. Termination of nursing home revolving fund.

Sec. 106. Inapplicability of limitation on use of advance planning fund to authorized major medical facility projects.

Sec. 107. Lease of certain National Cemetery Administration property.

Subtitle B—Transfers of Property

Sec. 111. Transfer of jurisdiction, General Services Administration property, Boise, Idaho.

Subtitle C—Designation of Facilities

Sec. 121. Designation of Department of Veterans Affairs Medical Center, Bronx, New York, as James J. Peters Department of Veterans Affairs Medical Center.

Sec. 122. Designation of Prisoner of War/Missing in Action National Memorial, Riverside National Cemetery, Riverside, California.

Subtitle D—Other Matters

Sec. 131. First option for Commonwealth of Kentucky on Louisville Department of Veterans Affairs Medical Center, Kentucky.

TITLE II—BENEFITS MATTERS

Sec. 201. Prohibition on collection of copayments for hospice care.

Sec. 202. Expansion and permanent extension of authority for counseling and treatment for sexual trauma.

Sec. 203. Treatment of Department of Veterans Affairs per diem payments to State homes for veterans.

Sec. 204. Care for newborn children of women veterans receiving maternity care.

Sec. 205. Centers for research, education, and clinical activities on blast injuries of veterans.

Sec. 206. Extension of various authorities relating to veterans benefits.

Sec. 207. Annual reports on waiting times for appointments for health care and services.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—REAL PROPERTY AND FACILITIES MATTERS

Subtitle A—Real Property and Facilities Administration

SEC. 101. RESTATEMENT AND ENHANCEMENT OF REAL PROPERTY DISPOSAL AUTHORITIES.

(a) RESTATEMENT AND ENHANCEMENT OF GENERAL PROPERTY DISPOSAL AUTHORITIES.—Subchapter II of chapter 81 is amended by inserting after section 8122 the following new section:

''§ 8122A. Disposal of real property

''(a) AUTHORITY TO DISPOSE OF REAL PROPERTY.—To the extent provided in advance in appropriations Acts, the Secretary may dispose of real property of the Department, including land and structures and equipment associated with such property, that is under the jurisdiction or control of the Secretary by—

''(1) transfer to or exchange with another department or agency of the Federal Government;

''(2) conveyance to or exchange with a State or a political subdivision of a State, an Indian tribe, or another public entity; or

''(3) conveyance to or exchange with any private person or entity.

''(b) INAPPLICABILITY OF CERTAIN DISPOSAL REQUIREMENTS.—The Secretary may exercise the authority in subsection (a) without regard to the following provisions of law:

''(1) Sections 521, 522, and 541 through 545 of title 40.

''(2) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).

''(c) LIMITATION ON DETERMINATION OF PROPERTY TO BE EXCESS.—Real property under the jurisdiction of the Secretary may not be declared excess by the Secretary and disposed of by the General Services Administration or any other entity of the Federal Government unless the Secretary determines that the property is no longer needed by the Department in carrying out its functions and is not suitable for use for the provision of services to homeless veterans by the Department or by another entity under an enhanced-use lease of such property under section 8162 of this title.

''(d) DISPOSAL PROCEDURES.—(1) Except as provided in paragraph (3), the Secretary may not during any fiscal year dispose of real property (including land and structures and equipment associated with such property) owned by the United States and administered by the Secretary that has an estimated value in excess of

the major medical facility project threshold specified in section 8104(a)(3)(A) of this title unless—

''(A) the disposal is described in the budget justification documents submitted to Congress with the budget of the President for the fiscal year beginning in such year (as submitted pursuant to section 1105 of title 31);

''(B) the Secretary—

''(i) notifies the Administrator of General Services of an intent to dispose of the property;

''(ii) publishes in the Federal Register notice of an intent to dispose of the property; and

''(iii) notifies the committees of an intent to dispose of the property;

''(C) a period of 30 days elapses after notice under subparagraph (B)(i) during which period no other department or agency of the Federal Government expresses an interest in assuming jurisdiction of the property under the condition of paying the Secretary the fair market value of the property, as determined by the Secretary, of the property; and

''(D) a period of 60 days elapses after notice under subparagraph (B)(iii).

''(2) Except as provided in paragraph (3), the Secretary may dispose of real property (including land and structures and equipment associated with such property) owned by the United States and administered by the Secretary that has an estimated value less than the major medical facility project threshold specified in section 8104(a)(3)(A) of this title if—

''(A) the Secretary notifies the committees and the Administrator of General Services of an intent to dispose of the property;

''(B) the Secretary publishes a notice of sale in the real estate section of a local newspaper of general circulation serving the market in which the property is located; and

''(C) a period of 30 days elapses after notice under subparagraph (A) during which period no other department or agency of the Federal Government expresses an interest in assuming jurisdiction of the property under the condition of paying the Secretary the fair market value of the property, as determined by the Secretary, of the property.

''(3)(A) Notwithstanding paragraphs (1) and (2) or any other provision of law relating to the disposition of real property by the United States and subject to subparagraph (B), the Secretary may transfer to a State for use as the site of a State nursing-home or domiciliary facility real property owned by the United States and administered by the Secretary that the Secretary determines to be excess to the needs of the Department.

''(B) A transfer of real property may not be made under this paragraph unless—

''(i) the Secretary has determined that the State has provided sufficient assurance that it has the resources (including any resources which are reasonably likely to be available to the State under subchapter III of chapter 81 of this title and section 1741 of this title) necessary to construct and operate a State home nursing or domiciliary care facility; and

''(ii) the transfer is made subject to the conditions that—

''(I) the property be used by the State for a nursing-home or domiciliary care facility in accordance with the conditions and limitations applicable to State home facilities constructed with assistance under subchapter III of chapter 81 of this title; and

''(II) if the property is used at any time for any other purpose, all right, title, and interest in and to the property shall revert to the United States.

''(C) A transfer of real property may not be made under this paragraph until—

''(i) the Secretary submits to the committees, not later than June 1 of the year in which the transfer is proposed to be made (or the year preceding that year), a report providing notice of the proposed transfer; and

''(ii) a period of 90 consecutive days elapses after the report is received by the committees.

''(D) A transfer under this paragraph shall be made under such additional terms and conditions as the Secretary considers appropriate to protect the interests of the United States.

''(e) CONSIDERATION.—In any transfer, exchange, or conveyance under the authority in this section (other than a transfer described in subsection (d)(3)), the Secretary shall obtain consideration in amount equal to the fair market value of the property, as determined by the Secretary.

''(f) TREATMENT OF PROCEEDS.—Proceeds from the transfer, exchange, or conveyance of real property under this section shall be deposited in the Capital Asset Fund under section 8122B of this title.

''(g) REPORTS.—The Secretary shall include with the budget justification documents submitted to Congress each year with the budget of the President for the fiscal year beginning in such year (as submitted pursuant to section 1105 of title 31) a report setting forth the following:

''(1) A statement of each disposal of real property to be undertaken in such fiscal year that is valued in excess of the major medical facility project threshold specified in section 8104(a)(3)(A) of this title.

''(2) A description of each disposal of real property that was completed in the fiscal year ending in the year before such report is submitted.''.

(b) CAPITAL ASSET FUND.—Subchapter II of chapter 81, as amended by subsection (a), is further amended by inserting after section 8122A the following new section:

''§ 8122B. Capital Asset Fund

''(a) CAPITAL ASSET FUND.—There is established on the books of the Treasury of the United States a revolving fund known as the Capital Asset Fund (in this section referred to as the 'Fund').

''(b) ELEMENTS OF FUND.—The Fund shall consist of the following:

''(1) Amounts authorized to be appropriated to the Fund.

''(2) Proceeds from the transfer, exchange, or conveyance of real property under subsection (a) of section 8122A of this title that are deposited in the Fund under subsection (f) of such section.

''(3) Funds to be deposited in the Fund under section 8165(a)(3) of this title.

''(4) Any other amounts specified for transfer to or deposit in the Fund by law.

''(c) USE OF AMOUNTS IN FUND.—Subject to the provisions of appropriations Acts, amounts in the Fund shall be available for purposes as follows and in the following order of priority:

''(1) For costs of the Department in disposing of real property under sections 8122A and 8164 of this title, including costs associated with demolition, environmental clean-up, maintenance and repair, improvements to facilitate disposal, and associated administrative expenses.

''(2) For costs of the Department associated with proposed disposals of real property of the Department under such sections.

''(3) For costs of non-recurring capital projects of the Department.''.

(c) REPEAL OF SUPERSEDED AUTHORITIES.—(1) Section 8122 is amended—

(A) in subsection (a)—

(i) by striking ''(1)''; and

(ii) by striking paragraphs (2) and (3); and

(B) by striking subsection (d).

*(2) The heading of such section is amended by striking ''**and dispose of**''.*

(d) CONFORMING AMENDMENT.—Section 8164(a) is amended by striking ''section 8122'' and inserting ''section 8122A''.

(e) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 81 is amended—

(1) in the item relating to section 8122, by striking ''and dispose of''; and

(2) by inserting after the item relating to section 8122 the following new items:

''8122A. Disposal of real property.

''8122B. Capital Asset Fund.''.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Department of Veterans Affairs for fiscal year 2005, $10,000,000 for deposit in the Capital Asset Fund under section 1822B of title 38, United States Code (as added by subsection (b)).

SEC. 102. IMPROVEMENTS OF ENHANCED-USE LEASE AUTHORITIES.

(a) BUSINESS PLAN CRITERIA.—Section 8162 is amended—

(1) in subsection (a)(2)(B), by striking ''the Under Secretary for Health for applying the consideration under such a lease to the provision of medical care and services'' and inserting ''one of the Under Secretaries for applying the consideration under such a lease to the programs and activities of the Department''; and

(2) in subsection (b)(4)(A), by striking ''on the leased property''.

(b) INAPPLICABILITY OF CERTAIN DISPOSAL REQUIREMENTS.—Section 8164 is amended—

(1) by redesignating subsections (b) and (c) as subsection (c) and (d), respectively; and

(2) by inserting after subsection (a) the following new subsection (b):

''(b) The Secretary may dispose of property under this section without regard to the following provisions of law:

''(1) Sections 521, 522, and 541 through 545 of title 40.

''(2) Section 501 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11411).''.

(c) USE OF PROCEEDS.—Section 8165(a) is amended—

(1) in paragraph (1), by striking ''Funds received'' and inserting ''Except as provided in paragraph (2), funds received'';

(2) by redesignating paragraph (2) as paragraph (3);

(3) by inserting after paragraph (1) the following new paragraph (2):

''(2) Funds received by the Department under an enhanced-use lease implementing a business plan proposed by the Under Secretary for Benefits or the Under Secretary for Memorial Affairs and remaining after any deduction from such funds under subsection (b) shall be credited to applicable appropriations of the Veterans Benefits Administration or National Cemetery Administration, as the case may be.''; and

(4) in paragraph (3), as so redesignated, by striking ''nursing home revolving fund'' and inserting ''Capital Asset Fund under section 8122B of this title''.

SEC. 103. AUTHORITY TO USE PROJECT FUNDS TO CONSTRUCT OR RELOCATE SURFACE PARKING INCIDENTAL TO A CONSTRUCTION OR NON-RECURRING MAINTENANCE PROJECT.

Section 8109 is amended by adding at the end the following new subsection:

''(j) Funds in a construction account or capital account that are available for a construction project or non-recurring maintenance project may be used for the construction or relocation of a surface parking lot incidental to such project.''.

SEC. 104. LIMITATION ON IMPLEMENTATION OF MISSION CHANGES FOR VETERANS HEALTH ADMINISTRATION HEALTH CARE FACILITIES.

Section 8110 is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following new subsection (e):

''(e)(1) The Secretary may not implement a mission change for a medical facility (other than a mission change prescribed by the Secretary in the Capital Asset Realignment for Enhanced Services (CARES) initiative) until 90 days after the date on which the Secretary submits to the committees written notice of the mission change.

''(2) For purposes of this subsection, a mission change for a medical facility shall consist of any of the following:

''(A) Closure of the facility.

''(B) Consolidation of the facility.

''(C) An administrative reorganization of the facility covered by section 510(b) of this title.

''(3) Written notice of a mission change for a medical facility under paragraph (1) shall include—

''(A) an assessment of the impact of the mission change on the population of veterans served by the facility;

''(B) a description of the availability and quality of health care, including long-term care, mental health care, and substance abuse programs, available in the area served by the facility;

''(C) an assessment of the impact of the mission change on the economy of the community in which the facility is located; and

''(D) an analysis of any alternatives to the mission change proposed by the community in which the facility is located, organizations recognized by the Secretary under section 5902 of this title, organizations that represent Department employees in such community, or the Department.

''(4) In the case of a mission change covered by paragraph (1) that is also an administrative reorganization covered by section 510(b) of this title, both this subsection and such section 510(b) shall apply with respect to the implementation of such mission change.''.

SEC. 105. TERMINATION OF NURSING HOME REVOLVING FUND.

(a) TERMINATION.—(1) Section 8116 is repealed.

(2) The table of sections at the beginning of chapter 81 is amended by striking the item relating to section 8116.

(b) TRANSFER OF UNOBLIGATED BALANCES TO CAPITAL ASSET FUND.—Any unobligated balances in the nursing home revolving under section 8116 of title 38, United States Code, as of the date of the enactment of this Act shall be deposited in the Capital Asset Fund under section 8122B of title 38, United States Code (as added by section 103(b) of this Act).

SEC. 106. INAPPLICABILITY OF LIMITATION ON USE OF ADVANCE PLANNING FUND TO AUTHORIZED MAJOR MEDICAL FACILITY PROJECTS.

Section 8104 is amended by adding at the end the following new subsection:

''(g) The limitation specified in subsection (f) shall not apply to projects for which funds have already been authorized by law in accordance with subsection (a)(2).''.

SEC. 107. LEASE OF CERTAIN NATIONAL CEMETERY ADMINISTRATION PROPERTY.

(a) IN GENERAL.—Chapter 24 is amended by adding at the end the following new section:

''§ 2412. Lease of land and buildings

''(a) LEASE AUTHORIZED.—The Secretary may lease any undeveloped land and unused or underutilized buildings, or parts or parcels thereof, belonging to the United States and part of the National Cemetery Administration.

''(b) TERM.—The term of a lease under subsection (a) may not exceed 10 years.

''(c) LEASE TO PUBLIC OR NONPROFIT ORGANIZATIONS.—(1) A lease under subsection (a) to any public or nonprofit organization may be made without regard to the provisions of section 3709 of the Revised Statutes (41 U.S.C. 5).

''(2) Notwithstanding section 1302 of title 40 or any other provision of law, a lease under subsection (a) to any public or nonprofit organization may provide for the maintenance, protection, or restoration of the leased property by the lessee, as a part or all of the consideration for the lease.

''(d) NOTICE.—Before entering into a lease under subsection (a), the Secretary shall give appropriate public notice of the intention of the Secretary to enter into the lease in a newspaper of general circulation in the community in which the lands or buildings concerned are located.

''(e) NATIONAL CEMETERY ADMINISTRATION FACILITIES OPERATION FUND.—(1) There is established on the book of the Treasury an account to be known as the 'National Cemetery Administration Facilities Operation Fund' (in this section referred to as the 'Fund').

''(2) The Fund shall consist of the following:

''(A) Amounts authorized to be appropriated to the Fund.

''(B) Proceeds from the lease of land or buildings under this section.

''(C) Proceeds of agricultural licenses of lands of the National Cemetery Administration.

''(D) Any other amounts authorized for deposit in the Fund by law.

''(3) Amounts in the Fund shall be available to cover costs incurred by the National Cemetery Administration in the operation and maintenance of property of the Administration.

''(4) Amounts in the Fund shall remain available until expended.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

''2412. Lease of land and buildings.''.

Subtitle B—Transfers of Property

SEC. 111. TRANSFER OF JURISDICTION, GENERAL SERVICES ADMINISTRATION PROPERTY, BOISE, IDAHO.

(a) TRANSFER.—The Administrator of General Services shall transfer, without reimbursement, to the administrative jurisdiction of the Secretary of Veterans Affairs the parcel of real property, including any improvements thereon, consisting of approximately 2.3 acres located at the General Services Administration facility immediately north of the Army Reserve facility in Boise, Idaho.

(b) UTILIZATION.—The Secretary of Veterans Affairs shall utilize the property transferred under subsection (a) for purposes relating to the delivery of benefits to veterans.

Subtitle C—Designation of Facilities

SEC. 121. DESIGNATION OF DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, BRONX, NEW YORK, AS JAMES J. PETERS DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER.

The Department of Veterans Affairs medical center in the Bronx, New York, shall after the date of the enactment of this Act be known and designated as the ''James J. Peters Department of Veterans Affairs Medical Center''. Any reference to such medical center in any law, regulation, map, document, record, or other paper of the United States shall be considered to be a reference to the James J. Peters Department of Veterans Affairs Medical Center.

SEC. 122. DESIGNATION OF PRISONER OF WAR/MISSING IN ACTION NATIONAL MEMORIAL, RIVERSIDE NATIONAL CEMETERY, RIVERSIDE, CALIFORNIA.

(a) FINDINGS.—Congress makes the following findings:

(1) The most reliable statistics regarding the number of members of the United States Armed Forces who have been held as prisoners of war or listed as missing in action indicate that more than 586,000 members of the Armed Forces have been taken prisoner since the American Revolution and more than 89,000 members have been listed as missing.

(2) The Department of Defense continues to locate and identify the remains of members of the Armed Forces who have been missing in action since the Korean and Vietnam Wars.

(3) The United States currently lacks a national memorial dedicated to the bravery and sacrifice of those members of the Armed Forces who have been held as prisoners of war and listed as missing in action.

(4) An appropriate memorial to former prisoners of war and members of the Armed Forces listed as missing in action, including those who remain unaccounted for, is under construction at Riverside National Cemetery in Riverside, California.

(5) The memorial will honor all those members of the Armed Forces who have been held as prisoners of war or listed as missing in action and is dedicated to the memory of those members who remain missing in action.

(b) DESIGNATION.—The memorial to former prisoners of war and members of the Armed Forces listed as missing in action that is under construction at Riverside National Cemetery in Riverside, California, is hereby designated as the Prisoner of War/Missing in Action National Memorial.

(c) EFFECT OF DESIGNATION.—The national memorial designated by this section is not a unit of the National Park System, and the designation of the national memorial shall not be construed to require or permit Federal funds (other than any funds provided for as of the date of the enactment of this Act) to be expended for any purpose related to the national memorial.

Subtitle D—Other Matters

SEC. 131. FIRST OPTION FOR COMMONWEALTH OF KENTUCKY ON LOUISVILLE DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, KENTUCKY.

(a) REQUIREMENT.—Upon determining to convey, lease, or otherwise dispose of the Louisville Department of Veterans Affairs Medical Center, Kentucky, or any portion thereof, the Secretary of Veterans Affairs shall engage in negotiations for the conveyance, lease, or other disposal of the Medical Center or portion thereof solely with the Commonwealth of Kentucky.

(b) DURATION OF REQUIREMENT.—The requirement for negotiations under subsection (a) shall remain in effect for one year after the date of the commencement of the negotiations.

(c) SCOPE OF NEGOTIATIONS.—The negotiations under subsection (a) shall address the utilization of the Medical Center, or portion thereof, by the Commonwealth of Kentucky for the primary purpose of the provision of services for veterans and related activities, but may address or result in the utilization of the Medical Center, or portion thereof, by the Commonwealth of Kentucky for other purposes.

TITLE II—BENEFITS MATTERS

SEC. 201. PROHIBITION ON COLLECTION OF COPAYMENTS FOR HOSPICE CARE.

Section 1710B(c)(2) is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) by redesignating subparagraph (B) as subparagraph (C); and

(3) by inserting after subparagraph (A) the following new subparagraph (B):

''(B) to a veteran being furnished hospice care under this section; or''.

SEC. 202. EXPANSION AND PERMANENT EXTENSION OF AUTHORITY FOR COUNSELING AND TREATMENT FOR SEXUAL TRAUMA.

(a) PERMANENT EXTENSION.—Subsection (a) of section 1720D is amended—

(1) in paragraph (1), by striking ''During the period through December 31, 2004, the Secretary'' and inserting ''The Secretary''; and

(2) in paragraph (2), by striking '', during the period through December 31, 2004,''.

(b) COUNSELING FOR RESERVES.—Such section is further amended—

(1) in subsection (a)—

(A) by redesignating paragraph (2), as amended by subsection (a)(2) of this section, as paragraph (3); and

(B) by inserting after paragraph (1) the following new paragraph (2):

''(2) In operating the program under paragraph (1), the Secretary shall also provide counseling and appropriate care and services to former members of the Reserves who the Secretary determines require such counseling and care and services to overcome psychological trauma, which in the judgment of such a mental health professional, resulted from a physical assault of a sexual nature, battery of a sexual nature, or sexual harassment which occurred while

such individual was a member of the Reserves not serving on active duty.'';

(2) by striking ''a veteran'' each place it appears (other than subsection (b)(1)) and inserting ''an individual'';

(3) by striking ''that veteran'' each place it appears and inserting ''that individual''; and

(4) in subsection (c), by inserting ''and other individuals'' after ''veterans'' each place it appears.

SEC. 203. TREATMENT OF DEPARTMENT OF VETERANS AFFAIRS PER DIEM PAYMENTS TO STATE HOMES FOR VETERANS.

Section 1741 is amended by adding at the end the following new subsection:

''(e) Payments to States pursuant to this section shall not be considered a liability of a third party, or otherwise be utilized to offset or reduce any other payment made to assist veterans.''.

SEC. 204. CARE FOR NEWBORN CHILDREN OF WOMEN VETERANS RECEIVING MATERNITY CARE.

(a) AUTHORITY TO FURNISH.—Subchapter VIII of chapter 17 is amended by adding at the end the following new section:

''§ 1786. Care for newborn children of women veterans receiving maternity care

''The Secretary may furnish care to a newborn child of a woman veteran who is receiving maternity care furnished by the Department for up to 14 days after the birth of the child if the veteran delivered the child in a Department facility or in a non-Department facility pursuant to a Department contract for the delivery services.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by adding at the end following new item:

''1786. Care for newborn children of women veterans receiving maternity care.''.

SEC. 205. CENTERS FOR RESEARCH, EDUCATION, AND CLINICAL ACTIVITIES ON BLAST INJURIES OF VETERANS.

(a) IN GENERAL.—(1) Subchapter II of chapter 73 is amended by adding at the end the following new section:

''§ 7327. Centers for research, education, and clinical activities on blast injuries

''(a) PURPOSE.—The purpose of this section is to provide for the improvement of the provision of health care services and related rehabilitation and education services to eligible veterans suffering from multiple traumas associated with a blast injury through—

''(1) the conduct of research to support the provision of such services in accordance with the most current evidence on blast injuries;

''(2) the education and training of health care personnel of the Department; and

''(3) the development of improved models and systems for the furnishing of services by the Department for blast injuries.

''(b) ESTABLISHMENT.—(1) The Secretary shall establish and operate at least one, but not more than three, centers for research, education, and clinical activities on blast injuries.

''(2) Each center shall function as a center for—

''(A) research on blast injury to support the provision of services in accordance with the most current evidence on blast injuries, with such research to specifically address injury epidemiology and cost, functional outcomes, blast injury taxonomy and measurement system, and longitudinal outcomes;

''(B) the development of a rehabilitation program for blast injuries, including referral protocol, post-acute assessment, and coordination of comprehensive treatment services;

''(C) the development of protocols to optimize linkages between the Department and the Department of Defense on matters relating to research, education, and clinical activities on blast injuries;

''(D) the creation of innovative models for education and outreach on health-care and related rehabilitation and education services on blast injuries, with such education and outreach to target those who have sustained a blast injury and health care providers and researchers in the Veterans Health Administration, the Department of Defense, and the Department of Homeland Security;

''(E) the development of educational tools and products on blast injuries, and the maintenance of such tools and products in a resource clearinghouse that can serve as resources for the Veterans Health Administration, the Department of Defense, the Department of Homeland Security, and other departments and agencies of the Federal Government;

''(F) the development of interdisciplinary training programs on the provision of health care and rehabilitation care services for blast injuries that provide an integrated understanding of the continuum of care for such injuries to the broad range of providers of such services, including first responders, acute-care providers, and rehabilitation service providers; and

''(G) the implementation of strategies for improving the medical diagnostic coding of blast injuries in the Department to reliably identify veterans with blast injuries and track outcomes over time.

''(3) The Secretary shall designate a center or centers under this section upon the recommendation of the Under Secretary for Health.

''(4) The Secretary may designate a center under this section only if—

''(A) the proposal submitted for the designation of the center meets the requirements of subsection (c);

''(B) the Secretary makes the finding described in subsection (d); and

''(C) the peer review panel established under subsection (e) makes the determination specified in subsection (e)(3) with respect to that proposal.

''(5) The authority of the Secretary to establish and operate centers under this section is subject to the appropriation of funds for that purpose.

''(c) PROPOSAL REQUIREMENTS.—A proposal submitted for the designation of a center under this section shall—

''(1) provide for close collaboration in the establishment and operation of the center, and for the provision of care and the conduct of research and education at the center, by a Department facility or facilities (in this subsection referred to as the 'collaborating facilities') in the same geographic area that have a mission centered on the care of individuals with blast injuries and a Department facility in that area which has a mission of providing tertiary medical care;

''(2) provide that not less than 50 percent of the funds appropriated for the center for support of clinical care, research, and education will be provided to the collaborating facilities with respect to the center; and

''(3) provide for a governance arrangement among the facilities described in paragraph (1) with respect to the center that ensures that the center will be established and operated in a manner aimed at improving the quality of care for blast injuries at the collaborating facilities with respect to the center.

''(d) FINDINGS RELATING TO PROPOSALS.—The finding referred to in subsection (b)(4)(B) with respect to a proposal for the designation of a site as a location of a center under this section is a finding by the Secretary, upon the recommendation of the Under Secretary for Health, that the facilities submitting the proposal have developed (or may reasonably be anticipated to develop) each of the following:

''(1) An arrangement with an affiliated accredited medical school or university that provides education and training in disaster preparedness, homeland security, and biodefense.

''(2) Comprehensive and effective treatment services for head injury, spinal cord injury, audiology, amputation, gait and balance, and mental health.

''(3) The ability to attract scientists who have demonstrated achievement in research—

''(A) into the evaluation of innovative approaches to the rehabilitation of blast injuries; or

''(B) into the treatment of blast injuries.

''(4) The capability to evaluate effectively the activities of the center, including activities relating to the evaluation of specific efforts to improve the quality and effectiveness of services on blast injuries that are provided by the Department at or through individual facilities.

''(e) DEPARTMENTAL SUPPORT ON EVALUATION OF CENTER PROPOSALS.—(1) In order to provide advice to assist the Secretary and the Under Secretary for Health to carry out their responsibilities under this section, the official within the central office of the Veterans Health Administration responsible for blast injury matters shall establish a peer review panel to assess the scientific and clinical merit of proposals that are submitted to the Secretary for the designation of centers under this section.

''(2) The panel shall consist of experts in the fields of research, education and training, and clinical care on blast injuries. Members of the panel shall serve as consultants to the Department.

''(3) The panel shall review each proposal submitted to the panel by the official referred to in paragraph (1) and shall submit to that official its views on the relative scientific and clinical merit of each such proposal. The panel shall specifically determine with respect to each such proposal whether or not that proposal is among those proposals which have met the highest competitive standards of scientific and clinical merit.

''(4) The panel shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

''(f) AWARD OF FUNDING.—Clinical and scientific investigation activities at each center established under this section—

''(1) may compete for the award of funding from amounts appropriated for the Department for medical and prosthetics research; and

''(2) shall receive priority in the award of funding from such amounts insofar as funds are awarded from such amounts to projects and activities relating to blast injuries.

''(g) DISSEMINATION OF INFORMATION.—(1) The Under Secretary for Health shall ensure that information produced by the centers established under this section that may be useful for other activities of the Veterans Health Administration is disseminated throughout the Administration.

''(2) Information shall be disseminated under this subsection through publications, through programs of continuing medical and related education provided through regional medical education centers under subchapter VI of chapter 74 of this title, and through other means. Such programs of continuing medical education shall receive priority in the award of funding.

''(h) SUPERVISION.—The official within the central office of the Veterans Health Administration responsible for blast injury matters shall be responsible for supervising the operation of the centers established under this section and shall provide for ongoing evaluation of the centers and their compliance with the requirements of this section.

''(i) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to the Department of Veterans Affairs for the centers established under this section amounts as follows:

''(A) $3,125,000 for fiscal year 2005.

''(B) $6,250,000 for each of fiscal years 2006 through 2008.

''(2) In addition to amounts authorized to be appropriated by paragraph (1) for a fiscal year, the Under Secretary for Health shall allocate to each center established under this section, from other funds authorized to be appropriated for such fiscal year for the Department generally for medical and for medical and prosthetics research, such additional amounts as the Under

Secretary for Health determines appropriate to carry out the purpose of this section.''.

(2) The table of sections at the beginning of chapter 73 is amended by inserting after the item relating to section 7326, the following new item:

''7327. Centers for research, education, and clinical activities on blast injuries.''.

(b) DESIGNATION OF CENTERS.—The Secretary of Veterans Affairs shall designate at least one center for research, education, and clinical activities on blast injuries as required by section 7327 of title 38, United States Code (as added by subsection (a)), not later than January 1, 2005.

(c) ANNUAL REPORTS.—(1) Not later than February 1 of each of 2006, 2007, and 2008, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and House of Representatives a report on the status and activities during the previous fiscal year of the center for research, education, and clinical activities on blast injuries established under section 7327 of title 38, United States Code (as so added). Each such report shall include the following:

(A) A description of the activities carried out at each center, and the funding provided for such activities.

(B) A description of the advances made at each of the participating facilities of each center in research, education and training, and clinical activities on blast injuries.

(C) A description of the actions taken by the Under Secretary for Health pursuant to subsection (g) of that section (as so added) to disseminate information derived from such activities throughout the Veterans Health Administration.

(D) The assessment of the Secretary of the effectiveness of the centers in fulfilling the purposes of the centers.

SEC. 206. EXTENSION OF VARIOUS AUTHORITIES RELATING TO VETERANS BENEFITS.

(a) FIVE-YEAR EXTENSION OF REPORTS BY SPECIAL MEDICAL ADVISORY GROUP.—Section 7312(d) is amended by striking ''December 31, 2004'' and inserting ''December 31, 2009''.

(b) PILOT PROGRAMS RELATING TO LONG-TERM CARE.—Section 102(h) of the Veterans Millennium Health Care and Benefits Act (Public Law 106–117; 38 U.S.C. 1710B note) is amended by striking ''the date that is three years after the date of the commencement of that pilot program'' and inserting ''December 31, 2005''.

SEC. 207. ANNUAL REPORTS ON WAITING TIMES FOR APPOINTMENTS FOR HEALTH CARE AND SERVICES.

(a) ANNUAL REPORTS.—Subchapter III of chapter 17 is amended by inserting after section 1730 the following new section:

''§ 1730A. Annual reports on waiting times for appointments for care and services

''(a) ANNUAL REPORTS.—Not later than January 31 each year, the Secretary shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the waiting times of veterans for appointments for care and services from the Department under this chapter during the preceding year.

''(b) REPORT ELEMENTS.—Each report under subsection (a) shall specify, for the year covered by the report, the following:

''(1) A tabulation of the waiting time of veterans for appointments with the Department for each category of primary or specialty care or services furnished by the Department, broken out by particular Department facility and by Veterans Integrated Service Network.

''(2) An identification of the categories of specialty care or services for which there are lengthy delays for appointments at particular Department facilities or throughout particular Veterans Integrated Service Networks, and, for each category so identified, recommendations for the reallocation of personnel, financial, and other resources to address such delays.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 17 is amended by inserting after the item relating to section 1730 the following new item:

''1730A. Annual reports on waiting times for appointments for care and services.''.

Amend the title so as to read: ''A bill to amend title 38, United States Code, to improve and enhance the authorities of the Secretary of Veterans Affairs relating to the management and disposal of real property and facilities, to improve and extend other benefits for veterans, and for other purposes.''.

Mr. SPECTER. Mr. President, I have sought recognition to comment on a substitute amendment I propose to make to S. 2485, the ''Veterans Health Programs Improvements Act of 2004,'' as part of my request that the bill, as so amended, be approved by the Senate. The underlying bill, S. 2485, was reported by the Senate Committee on Veterans' Affairs on July 20, 2004, and is explained in detail in Senate Report 108–358. My comments at this time are limited to explaining how the proposed substitute amendment, which reflects a bipartisan agreement between Senate and House Veterans' Affairs Committees on veterans' medical benefits-related issues, differs from the provisions of S. 2485, as reported.

The House has approved a number of bills—H.R. 1318, H.R. 4231, H.R. 4248, H.R. 4317, H.R. 4608, H.R. 4768, and H.R. 4836—that overlap with provisions drawn from various Senate bills that are contained in S. 2485, as reported. The language of the substitute amendment, in some cases, fine tunes language to harmonize these overlapping provisions without significant or substantive modification. Further, the substitute amendment adds provisions that are drawn from House-approved bills that had not been considered by the Senate. Among those provisions are measures which will assist the Department of Veterans Affairs—VA—and State veterans homes in procuring needed nursing services; provisions which authorize VA major medical facility leases and grant programs to assist providers of services to homeless veterans; and measures requiring VA reports on historic properties and medical waste management activities. Also included are VA facility ''naming'' provisions which, in addition to a measure already approved by the Veterans' Committee, would name VA facilities in Amarillo, TX; Peoria, IL; Lufkin, TX; and Sunnyside, Queens, NY. All of these additional provisions, and all clarifications and modifications to language contained in the reported bill, are outlined in the ''Explanatory Statement'' which I will append to this statement.

Each of the additions to S. 2485 that have resulted from negotiations with our colleagues in the House are all useful and productive. The bill as it would be modified by the managers' amendment, then, merits the Senate's approval.

I yield the floor and ask unanimous consent that the Explanatory Statement be printed in the RECORD.

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

EXPLANATORY STATEMENT ON S. 2485, AS AMENDED

S. 2485, as amended, (hereinafter, the ''Compromise Agreement'') reflects a negotiated agreement reached by the House of Representatives and Senate Committees on Veterans' Affairs concerning provisions from a number of bills considered by the House and the Senate during the 108th Congress. Legislative provisions contained in the compromise were derived from: H.R. 1318, H.R. 4231, H.R. 4248, H.R. 4317, H.R. 4608, H.R. 4658, H.R. 4768, H.R. 4836, and S. 2485, as reported by the Senate Committee on Veterans' Affairs on July 20, 2004 (hereinafter, ''S 2485, as reported'').

The House and Senate Committees on Veterans' Affairs have prepared the following explanation of the Compromise Agreement. Differences between the provisions of the Compromise Agreement and the related provisions originally contained in House or Senate bills are noted, except for clerical corrections, conforming changes made necessary by the Compromise Agreement, and minor drafting, technical, and clarifying changes.

TITLE I—ASSISTANCE TO HOMELESS VETERANS

SEC. 101—AUTHORIZATION OF APPROPRIATIONS

Current Law

Public Law 107–95, the Homeless Veterans Comprehensive Assistance Act of 2001, authorized appropriations of $75 million per year for a program to make grants to providers of comprehensive services for homeless veterans. The program expires on September 30, 2005.

House Bill

Section 2 of H.R. 4248, as reported on June 9, 2004, would increase the annual authorized appropriation for this program to $100 million and extends the program through September 30, 2008.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 101 of the Compromise Agreement increases the authorization level to $99,000,000 and removes the section from the House Bill that would have extended this program through 2008.

TITLE II—VETERANS LONG-TERM CARE PROGRAMS

SEC. 201—ASSISTANCE FOR HIRING AND RETENTION OF NURSES AT STATE VETERANS HOMES

Current Law

Subchapter V, chapter 17 of title 38, United States Code, authorizes the Department of Veterans Affairs (hereinafter, ''VA'') to make payments to State homes for veterans receiving care in a State home.

House Bill

Section 5 of H.R. 4231, as amended, would amend subchapter V, chapter 17 of title 38, United States Code, to add a new section 1744 to authorize the Secretary of Veterans Affairs (hereinafter, ''the Secretary'') to make payments to States for the purpose of assisting State homes in the hiring and retention of registered nurses.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 201 of the Compromise Agreement follows the House language.

SEC. 202—TREATMENT OF DEPARTMENT OF VETERANS AFFAIRS PER DIEM PAYMENTS TO STATE HOMES FOR VETERANS

Current Law

Section 1741 of title 38, United States Code, establishes criteria for VA payments to

State homes for veterans receiving care in a State home.

House Bill

The House Bill contains no comparable provision.

Senate Bill

Section 203 of S. 2485, as reported, would amend section 1741 of title 38, United States Code, to add a new subsection (e) to clarify that *per diem* payments made by VA to State veterans' homes would not be used to offset or reduce other third party payments made to assist veterans.

Compromise Agreement

Section 202 of the Compromise Agreement follows the Senate language.

SEC. 203—EXTENSION OF AUTHORITY TO PROVIDE CARE UNDER LONG-TERM CARE PILOT PROGRAMS

Current Law

Section 102 of Public Law 106–117, The Veterans Millennium Health Care and Benefits Act, directed VA to carry-out three pilot programs over a three-year period to determine the feasibility and practicability of different models for providing long-term care. The authority for the pilot program expires on December 31, 2004.

House Bill

Section 107 of H.R. 4768, as amended, would extend VA's authority to provide health care services under the long-term care pilot programs authorized in Public Law 106–117 until December 31, 2005.

Senate Bill

Section 206 of S. 2485, as reported, would extend VA's authority to provide health care services under the long-term care pilot programs authorized in Public Law 106–117 until December 31, 2005.

Compromise Agreement

Section 203 of the Compromise Agreement follows the language of the House and Senate Bills.

SEC. 204—PROHIBITION ON COLLECTION OF COPAYMENTS FOR HOSPICE CARE

Current Law

Section 1710B(c) of title 38, United States Code, requires certain veterans to pay a copayment for extended care services furnished under Section 1710B.

House Bill

The House Bills contain no comparable provision.

Senate Bill

Section 201 of S. 2485, as reported, would exempt all veterans being furnished hospice care under Section 1710B from copayment obligations that would otherwise apply.

Compromise Agreement

Section 204 of the Compromise Agreement follows the Senate language.

TITLE-III MEDICAL CARE

SEC. 301—SEXUAL TRAUMA COUNSELING PROGRAM

Current Law

Public Law 103–452 authorized VA to provide counseling services to servicemembers who were victims of sexual trauma while on active duty in service. This authority expires on December 31, 2004.

House Bill

H.R. 4248 would make permanent the program authorized under Public Law 103–452 to provide sexual trauma counseling services to former service-members.

Senate Bill

S. 2485, as reported, would make permanent the program authorized under Public Law 103–452, and expand the authority to include the treatment of former Members of the Reserves who were victims of sexual trauma while on active duty for training.

Compromise Agreement

Section 301 of the Compromise Agreement makes VA's authority to provide sexual trauma counseling services permanent and extends the authority to include former Reserves and Guard members who were victims of sexual trauma while on active duty for training.

SEC. 302 CENTERS FOR RESEARCH, EDUCATION, AND CLINICAL ACTIVITY ON COMPLEX MULTI-TRAUMA ASSOCIATED WITH COMBAT INJURIES

Current Law

No similar provision exists under current law.

House Bill

The House Bills contained no comparable provision.

Senate Bill

Section 205 of S. 2485, as reported, would establish at VA, in collaboration with the Department of Defense, at least one, but not more than three, War-Related Blast Injury Centers. These centers would provide comprehensive rehabilitation programs, targeted education and outreach programs, and research initiatives.

Compromise Agreement

Section 203 of the Compromise Agreement authorizes centers for research, education, and clinical activities to improve the rehabilitation services available to veterans suffering from complex multi-trauma associated with combat injuries. The Compromise Agreement incorporates successful current VA practices, including cooperation with the Department of Defense, the treatment of traumatic brain injuries, and VA's conception for the future of combat-injury rehabilitation.

SEC. 303—ENHANCEMENT OF MEDICAL PREPAREDNESS OF DEPARTMENT

Current Law

Public Law 107–287, the Department of Veterans Affairs Emergency Preparedness Act of 2002, requires the Secretary to establish four Medical Emergency Preparedness Research Centers. These centers have not been established.

House Bill

Section 202 of H.R 4768, as amended, would amend chapter 73, of title 38, United States Code to add a new section 7327, to direct the Secretary to take a series of specific actions to establish four Medical Emergency Preparedness Research Centers by dates certain.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 303 of the Compromise Agreement follows section 202(a) through (c) of the House language, but does not include section 202(d) of the House bill that would have provided a rule of construction.

TITLE IV—MEDICAL FACILITIES MANAGEMENT AND ADMINISTRATION SUBTITLE A—MAJOR MEDICAL FACILITY LEASES

SEC. 401—MAJOR MEDICAL FACILITY LEASES

Current Law

Section 8104(a)(2) of title 38, United States Code, prohibits VA from obligating or expending more than $600,000 per year for a lease unless that lease has been specifically authorized by law.

House Bill

Section 101 of H.R. 4768 would authorize major medical facility leases in the following locations and amounts: (1) Greenville, North Carolina, Outpatient Clinic, $1,220,000; (2) Wilmington, North Carolina, Outpatient Clinic, $1,320,000; (3) Oakland, California, Outpatient Clinic, $1,700,000; (4) Toledo, Ohio, Outpatient Clinic, $1,200,000; (5) Crown Point, Indiana, Outpatient Clinic, $850,000; and (6) Denver, Colorado, Health Administration Center, $1,950,000; (7) Norfolk, Virginia, Outpatient Clinic, $1,250,000; (8) Summerfield, Florida, Marion County Outpatient Clinic, $1,230,000; (9) Knoxville, Tennessee, Outpatient Clinic, $850,000; (10) Fort Worth, Texas, Tarrant County Outpatient Clinic, $3,900,000; (11) Plano, Texas, Collin County Outpatient Clinic, $3,300,000; (12) San Antonio, Texas, Northeast Central Bexar County Outpatient Clinic, $1,400,000; (13) Corpus Christi, Texas, Outpatient Clinic, $1,200,000; (14) Harlingen, Texas, Outpatient Clinic, $650,000; (15) San Diego, California, North County Outpatient Clinic, $1,300,000; and (16) San Diego, California, South County Outpatient Clinic, $1,100,000.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 401 of the Compromise Agreement follows the House language.

SEC. 402—AUTHORIZATION OF APPROPRIATIONS

Current Law

Section 8104(a)(2) of title 38, United States Code, prohibits VA from obligating or expending more than $600,000 per year for a lease unless that lease has been specifically authorized by law.

House Bill

Section 101 of H.R. 4768 authorized $24,420,000 to carry out major medical facility leases.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 402 of the Compromise Agreement follows the House language.

SEC. 403—AUTHORITY FOR LONG-TERM LEASE IN DENVER, COLORADO

Current Law

Section 8104(a)(2) of title 38, United States Code, prohibits VA from obligating or expending more than $600,000 per year for a lease unless that lease has been specifically authorized by law.

House Bill

Section 101 of H.R. 4768 authorizes VA to enter into a long-term lease of up to 75 years for land to construct a new VA Medical Facility on the Fitzsimons Campus of the University of Colorado, Aurora, Colorado.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 403 of the Compromise Agreement follows the House language. The authority provided in this section is permissive and intended by the Committees to foster good-faith negotiations between the partners to this agreement. In the event that the Secretary of Veterans Affairs determines the terms or conditions of the lease not to be in the best interest of the United States, the Secretary should propose an alternative strategy to Congress.

Subtitle B—Facilities Management

SEC. 411—DEPARTMENT OF VETERANS AFFAIRS CAPITAL ASSET FUND

Current Law

Under current law, the Secretary is authorized to dispose of property administered

by VA and retain the proceeds from such a disposal, but only if: (1) the property is considered excess to the needs of VA; (2) there is no use for it in providing services to homeless veterans; and (3) the property is valued at less than $50,000 or, in cases where it is valued at more than $50,000, the disposal was proposed in the most recent budget submitted to Congress by the President. In the event property is so transferred, all proceeds must be deposited into the Nursing Home Revolving Fund. Funds in the Nursing Home Revolving Fund may only be used for the construction, acquisition, or alteration of nursing home facilities.

House Bill

Section 102 of the H.R. 4768 would amend chapter 81 of title 38, United States Code, to add a new section 8118 to provide the Secretary with new authority to transfer by sale, exchange or lease unneeded real property currently in VA's portfolio. It would establish a new ''Capital Asset Fund'' to finance actions taken to facilitate the transferring of real property, including demolition, environmental restoration, maintenance and repair, and historic preservation and administrative expenses. Section 102 would also establish ''fair market value'' as the basis for property transfers. Further, it would require the Secretary to include in each year's budget submission to Congress a report of both the uses of the Capital Asset Fund and descriptive information on each completed, pending and planned property disposal. Finally, Section 102 would repeal the Nursing Home Revolving Fund in section 8116 of title 38, United States Code.

All of the authorities extended to the Secretary, as outlined above, would be contingent upon the Secretary certifying that VA facilities maintain long-term care capacity as required by section 1710B(b) of title 38, United States Code.

Senate Bill

Section 101 of S. 2485, as reported, would authorize VA for 5 years to dispose of excess real property by sale, transfer or exchange to a Federal agency, a State or political subdivision of a State, or to any public or private entity. Such transfers would not be subject to restrictions currently in force. Further, the Committee bill would allow VA to retain the proceeds generated by such disposals of property in a new Capital Asset Fund rather than the Nursing Home Revolving Fund. Funds in the new account could be used to perform non-recurring maintenance, develop construction proposals, or dispose of other VA property.

Compromise Agreement

The Compromise Agreement follows the House language except that the contingencies upon which the House authorization rested are no longer included. Instead, the Compromise Agreement makes the transfer of funds from, and elimination of, the Nursing Home Revolving Fund contingent on the Secretary certifying that VA facilities maintain long-term care capacity as required by section 1710B(b) of title 38, United States Code. All other authorities would take effect immediately.

SEC. 412—ANNUAL REPORT TO CONGRESS ON INVENTORY OF DEPARTMENT OF VETERANS AFFAIRS HISTORIC PROPERTY

CurrentLaw

No similar provision exists under current law.

House Bill

Section 103 of H.R. 4768 would require VA to establish a national inventory of historic VA properties and would require reports to Congress over several years on the status of such properties.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

The Compromise Agreement follows the House language.

SEC. 413—AUTHORITY TO ACQUIRE AND TRANSFER REAL PROPERTY FOR USE FOR HOMELESS VETERANS

Current Law

Section 8103 of title 38, United States Code, authorizes the Secretary to acquire such land as is necessary for the purpose of providing medical services.

House Bill

The House Bills contains no comparable provision.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

The Compromise Agreement permits the Secretary to acquire land, in the District of Columbia, suitable for providing services to homeless veterans if the Secretary has identified a homeless assistance provider that is prepared to acquire the property from the Secretary promptly following the acquisition of the land by the Secretary.

SEC. 414—LIMITATION ON IMPLEMENTATION OF MISSION CHANGES FOR SPECIFIED VETERANS HEALTH ADMINISTRATION FACILITIES

Current Law

Section 401 of Public Law 108–193, the ''Veterans Health Care Authorities Extension and Improvement Act of 2003,'' requires VA to notify Congress of facility closings proposed under the Capital Asset Realignment for Enhanced Services initiative, and prohibits such closings from occurring until the lapse of 60 days following the notification or 30 days of continuous session of Congress, whichever is longer.

House Bill

The House Bills contains no comparable provision.

Senate Bill

Section 104 of S. 2485, as reported, would prohibit the Secretary from implementing a mission change for a medical facility (other than a mission change prescribed by the Secretary in his Capital Asset Realignment for Enhanced Services initiative Final Report) until 90 days after the date on which the Secretary submits to the Committees on Veterans' Affairs written notice of the mission change.

Compromise Agreement

Section 414 of the Compromise Agreement prohibits the Secretary from implementing a mission change until the lapse of 60 days following notification or 30 days of continuous session of Congress, whichever is longer, at VA Medical Centers in the following locations: Boston, Massachusetts; New York City, New York; Big Springs, Texas; Dublin, Georgia; Montgomery, Alabama; Louisville, Kentucky; Muscogee (including the outpatient clinic in Tulsa), Oklahoma; Poplar Bluff, Missouri; Ft. Wayne, Indiana; Waco, Texas; Walla Walla, Washington.

SEC. 415—AUTHORITY TO USE PROJECT FUNDS TO CONSTRUCT OR RELOCATE SURFACE PARKING INCIDENTAL TO A CONSTRUCTION OR NON-RECURRING MAINTENANCE PROJECT

Current Law

Under current law, all money spent for the construction of VA parking lots must be derived from the Parking Revolving Fund which receives all of its deposits from fees charged for parking. VA may not spend ''construction'' funds on parking lots because those funds are not drawn from the Parking Revolving Fund.

House Bill

Section 104 of H.R. 4768 would authorize the use of funds in a construction or capital account for the relocation of a surface parking facility if the relocation is necessitated by a construction or non-recurring maintenance project.

Senate Bill

Section 103 of S. 2485, as reported, would authorize the use of funds in a construction or capital account for the relocation of a surface parking facility if the relocation is necessitated by a construction or non-recurring maintenance project.

Compromise Agreement

Section 415 of the Compromise Agreement follows the language of the House and Senate Bills.

SEC. 416—INAPPLICABILITY OF LIMITATION ON USE OF ADVANCE PLANNING FUNDS TO AUTHORIZED MAJOR MEDICAL FACILITY PROJECTS

Current Law

Under current law, VA may not spent more than $500,000 from its Advanced Planning Fund for the development of a construction proposal unless it notifies Congress of its intention to do so and waits for a period of 30 days.

House Bill

Section 105 of H.R. 4768 would provide more flexibility to VA by eliminating the ''notice and wait'' provision if the project VA is planning has already been authorized by law.

Senate Bill

Section 105 of S. 2485, as reported, also would eliminate the ''notice and wait'' provision if the project VA is planning has already been authorized by law.

Compromise Agreement

Section 416 of the Compromise Agreement follows the language of the House and Senate Bills.

SEC. 417—ENHANCEMENT TO ENHANCE-USE LEASE AUTHORITY

Current Law

Under current law, VA is authorized to lease real property administered by VA to non-Federal entities in cases where VA determines that such a lease will advance the mission of VA and enhance the use of the property. In making the determination to enter into such an ''enhanced-use lease'', VA may only consider the needs of the Veterans Health Administration as outlined in business plans set forth by the Under Secretary for Health. Further, Section 8166 of title 38, United States Code, provides the Secretary permissive authority to disregard State and local laws relating to building codes, permits or inspections that would regulate or restrict construction, alternation, repair, remodeling or improvement of VA property associated with an enhanced-use lease under section 8162 of title 38, United States Code.

House Bill

Section 106 of H.R. 4758 would add to existing exemptions from State and local laws for enhanced-use leases any land-use laws.

Senate Bill

Section 102 of S. 2485, as reported, would allow VA, as part of making a determination to enter into an enhanced-use lease, to consider the needs of the Veterans Benefits Administration or the National Cemetery Administration, as outlined in business plans developed by the respective Under Secretaries of those Administrations.

Compromise Agreement

Section 417 of the Compromise Agreement includes the language from the House Bill.

SEC. 418—FIRST OPTION FOR COMMONWEALTH OF KENTUCKY ON DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER, LOUISVILLE, KENTUCKY

Current Law

Under current law, VA generally may not transfer any property to a State unless VA receives compensation equal to the fair market value of the property and the transfer, as proposed, is described in the VA budget for the fiscal year within which the proposed transfer will take place. However, VA may transfer property to a State for use as a State nursing home or domiciliary.

House Bill

The House Bills contains no comparable provision.

Senate Bill

Section 131 of S. 2485, as reported, would require VA for one year, if it determines that it will convey, lease, or otherwise dispose of all or part of the Louisville VA Medical Center, to negotiate for the conveyance, lease, or other disposal of the Medical Center to the Commonwealth of Kentucky for its use to provide services for veterans or for other purposes. The bill would not relieve the Commonwealth from the burden of paying fair market value for the land.

Compromise Agreement

Section 418 of the Compromise Agreement follows the Senate language.

SEC. 419—TRANSFER OF JURISDICTION, GENERAL SERVICES ADMINISTRATION PROPERTY, BOISE, IDAHO

Current Law

No similar provision exists under current law.

House Bill

The House Bills contains no comparable provision.

Senate Bill

Section 111 of S. 2485, as reported, would direct the transfer of certain land in Boise, Idaho, administered by the General Services Administration to VA.

Compromise Agreement

Section 419 of the Compromise Agreement follows the Senate language.

Subtitle C—Designation of Facilities

SEC. 421—THOMAS E. CREEK DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

Current Law

No similar provision exists under current law.

House Bill

H.R. 4836 would designate the Department of Veterans Affairs Medical Center in Amarillo, Texas, the ''Thomas E. Creek Department of Veterans Affairs Medical Center''.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 421 of the Compromise Agreement follows the House language.

SEC. 422—JAMES J. PETERS DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

Current Law

No similar provision exists under current law.

House Bill

The House Bills contain no comparable provision.

Senate Bill

Section 121 of S. 2485, as reported, would designate the Department of Veterans Affairs Medical Center in the Bronx, New York, the ''James J. Peters Department of Veterans Affairs Medical Center''

Compromise Agreement

Section 422 of the Compromise Agreement follows the Senate language.

SEC. 423—BOB MICHEL DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC

Current Law

No similar provision exists under current law.

House Bill

H.R. 4608 would designate the Department of Veterans Affairs outpatient clinic in Peoria, Illinois, the ''Bob Michel Department of Veterans Affairs Outpatient Clinic''.

Senate Bill

S. 2596 would designate the Department of Veterans Affairs outpatient clinic in Peoria, Illinois, the ''Bob Michel Department of Veterans Affairs Outpatient Clinic''.

Compromise Agreement

Section 423 of the Compromise Agreement follows the language of the House and Senate Bills.

SEC. 424.—CHARLES WILSON DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC

Current Law

No similar provision exists under current law.

House Bill

H.R. 4317 would designate the Department of Veterans Affairs outpatient clinic in Lufkin Texas the ''Charles Wilson Department of Veterans Affairs Outpatient Clinic''.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 424 of the Compromise Agreement follows the House language.

SEC. 425—THOMAS P. NOONAN, JR. DEPARTMENT OF VETERANS AFFAIRS OUTPATIENT CLINIC

Current Law

No similar provision exists under current law.

House Bill

H.R. 1318 would designate the Department of Veterans Affairs outpatient clinic in Sunnyside, Queens, New York, the ''Thomas P. Noonan, Jr. Department of Veterans Affairs Outpatient Clinic''.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Bill

Section 425 of the Compromise Agreement follows the House language.

TITLE V—PERSONNEL ADMINISTRATION

SEC. 501—PILOT PROGRAM TO STUDY INNOVATIVE RECRUITMENT TOOLS TO ADDRESS NURSING SHORTAGES AT DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITIES

Current Law

No similar provision exists under current law.

House Bill

Section 2 of H.R. 4231 would establish a pilot program within VA to study the use of outside recruitment, advertising and communications agencies, and the use of interactive and online technologies, to improve VA's program for recruiting nursing personnel.

Senate Bill

The Senate bill contains no comparable provision.

Compromise Agreement

Section 501 of the Compromise Agreement follows the House language.

SEC. 502—CORRECTION TO LISTING OF CERTAIN HYBRID POSITIONS IN THE VETERANS HEALTH ADMINISTRATION

Current Law

Section 7401 of title 38, United States Code, authorizes VA to appoint medical care personnel, under title 5, United States Code, or title 38, United States Code, depending on the duties of such personnel.

House Bill

Section 4 of H.R. 4231, as amended, would authorize the appointment under title 38, United State Code, of blind rehabilitation specialists and blind rehabilitation outpatient specialists.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 502 of the Compromise Agreement follows the House language.

SEC. 503 UNDER SECRETARY FOR HEALTH

Current Law

Section 305(A)(2) of title 38, United States Code, requires that the Under Secretary for Health be a ''doctor of medicine.''

House Bill

Section 7 of H.R. 4231, as amended, would repeal the requirement that VA's Under Secretary for Health be a medical doctor.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 503 of the Compromise Agreement follows the House language.

TITLE VI—OTHER MATTERS

SEC 601—EXTENSION AND CODIFICATION OF AUTHORITY FOR RECOVERY AUDITS

Current Law

Public Law 108–199, the ''Fiscal Year 2004 VA-HUD and Independent Agencies Appropriations Act,'' requires VA to conduct a program of recovery audits for fee basis contracts and other medical services contracts for the care of veterans.

House Bill

The House Bill contains no comparable provision.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 601 of the Compromise Agreement requires VA to enter into a contract with a private entity or entities to conduct a program of recovery audits for fee basis contracts and other medical services contracts for the care of veterans. The requirement expires on September 30, 2008.

The Committee is concerned that third-party health insurers are not following the regular process for handling third-party claim appeals throughout the Veterans Health Administration. The Committee encourages the Secretary to assist third-party insurers in processing disputed claims. Further, the Committee encourages the Secretary, should he deem it to be in the interest of the United States, to use an automated and electronic system of downloading information in a standardized format to ensure third-party insurer compliance with the rules and regulations of dispute resolution through the appeals process.

SEC. 602—INVENTORY OF MEDICAL WASTE MANAGEMENT ACTIVITIES AT DEPARTMENT OF VETERANS AFFAIRS HEALTH CARE FACILITIES

Current Law

No similar provision exists under current law.

House Bill

Section 401 of H.R. 4658 requires the Secretary to establish and maintain an inventory of medical waste management activities in VA medical facilities and submit a report on such activities by April 15, 2005.

Senate Bill

The Senate bill contains no comparable provision.

Compromise Agreement

Section 602 of the Compromise Agreement follows the House language, except that the required report would be due on June 30, 2005.

SEC. 603—INCLUSION OF ALL ENROLLED VETERANS AMONG PERSONS ELIGIBLE TO USE CANTEENS OPERATED BY VETERANS' CANTEEN SERVICE

Current Law

Section 7803 of title 38, United States Code, defines those persons eligible to use the Veterans' Canteen Service.

House Bill

Section 201 of H.R 4768, as amended, would expand the definition of persons eligible to use the Veterans' Canteen Service to include all individuals enrolled in VA health care under section 1705 of title 38, United States Code, or such individuals' families, and persons employed at VA facilities.

Senate Bill

The Senate bill contains no comparable provision.

Compromise Agreement

Section 603 of the Compromise Agreement follows the House language.

SEC. 604—ANNUAL REPORTS ON WAITING TIMES FOR APPOINTMENTS FOR SPECIALTY CARE

Current Law

No similar provision exists under current law.

House Bill

The House bills contain no comparable provision.

Senate Bill

Section 207 of S. 2485, as reported, would require VA to report annually on patient appointment waiting times, including specialty and primary care services.

Compromise Agreement

Section 604 of the Compromise Agreement requires the Secretary to report, not later than January 31 of each year through 2007, on veterans waiting more than 3 months for scheduled appointments in specialty care clinics and on the reasons for such delays. Further, the Compromise Agreement requires the Comptroller General to certify the accuracy of the report submitted under this section.

SEC. 605—TECHNICAL CLARIFICATION

Current Law

Section 8111 of title 38, United States Code, requires the Secretary and the Secretary of Defense to enter into agreements and contracts for the mutually beneficial sharing of health care resources. Section 8111 also establishes a fund, known as the ''DOD-VA Health Care Sharing Incentive Fund,'' to provide incentives to enter into such sharing initiatives.

House Bill

Section 6 of H.R. 4231, as amended, makes the established DOD-VA Health Care Sharing Incentive Fund available for any purpose authorized by section 8111.

Senate Bill

The Senate Bill contains no comparable provision.

Compromise Agreement

Section 605 of the Compromise Agreement follows the House language.

Mr. FRIST. Mr. President, I ask unanimous consent that the substitute amendment at the desk be agreed to, the committee amendment, as amended, be agreed to, the bill, as amended, be read a third time, and the Veterans' Affairs Committee then be discharged from further consideration of H.R. 3936, and the Senate proceed to its immediate consideration. I further ask consent that all after the enacting clause be stricken, and the text of S. 2485, as amended, be inserted in lieu thereof; the bill, as amended, be read a third timed and passed, the amendment to the title, as amended, be agreed to, the motions to reconsider be laid upon the table en bloc, and that any statements relating to the bill be printed in the RECORD.

I ask unanimous consent that S. 2485 be returned to the calendar.

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

The amendment (No. 4048) was agreed to.

(The text of the amendment is printed in today's RECORD under ''Text of Amendments.'')

The committee amendment, as amended, was agreed to.

The bill (H.R. 3936), as amended, was read the third time and passed.

The amendment (No. 4049) was agreed to, as follows:

AMENDMENT NO. 4049

Amend the title so as to read: ''A bill to amend title 38, United States Code, to increase the authorization of appropriations for grants to benefit homeless veterans, to improve programs for management and administration of veterans' facilities and health care programs, and for other purposes.''.

GRANTING A FEDERAL CHARTER TO THE NATIONAL AMERICAN INDIAN VETERANS, INCORPORATED

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 788, S. 2938.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2938) to grant a Federal charter to the National American Indian Veterans, Incorporated.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read three times and passed, the motion to reconsider be laid upon the table, all with no intervening action or debate, and that any statements related to this measure be printed in the RECORD.

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

The bill (S. 2938) was read the third time and passed, as follows:

S. 2938

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

SECTION 1. RECOGNITION AS CORPORATION AND GRANT OF FEDERAL CHARTER FOR NATIONAL AMERICAN INDIAN VETERANS, INCORPORATED.

(a) IN GENERAL.—Part B of subtitle II of title 36, United States Code, is amended by inserting after chapter 1503 the following new chapter:

''CHAPTER 1504—NATIONAL AMERICAN INDIAN VETERANS, INCORPORATED

''**Sec.**
''150401. Organization.
''150402. Purposes.
''150403. Membership.
''150404. Board of directors.
''150405. Officers.
''150406. Nondiscrimination.
''150407. Powers.
''150408. Exclusive right to name, seals, emblems, and badges.
''150409. Restrictions.
''150410. Duty to maintain tax-exempt status.
''150411. Records and inspection.
''150412. Service of process.
''150413. Liability for acts of officers and agents.
''150414. Failure to comply with requirements.
''150415. Annual report.

''§ 150401. Organization

''The National American Indian Veterans, Incorporated, a nonprofit corporation organized in the United States (in this chapter referred to as the 'corporation'), is a federally chartered corporation.

''§ 150402. Purposes

''The purposes of the corporation are those stated in its articles of incorporation, constitution, and bylaws, and include a commitment—

''(1) to uphold and defend the Constitution of the United States while respecting the sovereignty of the American Indian, Alaska Native, and Native Hawaiian Nations;

''(2) to unite under one body all American Indian, Alaska Native, and Native Hawaiian veterans who served in the Armed Forces of United States;

''(3) to be an advocate on behalf of all American Indian, Alaska Native, and Native Hawaiian veterans without regard to whether they served during times of peace, conflict, or war;

''(4) to promote social welfare (including educational, economic, social, physical, cultural values, and traditional healing) in the United States by encouraging the growth and development, readjustment, self-respect, self-confidence, contributions, and self-identity of American Indian veterans;

''(5) to serve as an advocate for the needs of American Indian, Alaska Native, and Native Hawaiian veterans, their families, or survivors in their dealings with all Federal and State government agencies;

''(6) to promote, support, and utilize research, on a nonpartisan basis, pertaining to the relationship between the American Indian, Alaska Native, and Native Hawaiian veterans and American society; and

''(7) to provide technical assistance to the 12 regional areas without veterans committees or organizations and programs by—

''(A) providing outreach service to those Tribes in need; and

''(B) training and educating Tribal Veterans Service Officers for those Tribes in need.

''§ 150403. Membership

''Subject to section 150406 of this title, eligibility for membership in the corporation, and the rights and privileges of members, shall be as provided in the constitution and by-laws of the corporation.

''§ 150404. Board of directors

''Subject to section 150406 of this title, the board of directors of the corporation, and the

responsibilities of the board, shall be as provided in the constitution and bylaws of the corporation and in conformity with the laws under which the corporation is incorporated.

"§ 150405. Officers

''Subject to section 150406 of this title, the officers of the corporation, and the election of such officers, shall be as provided in the constitution and bylaws of the corporation and in conformity with the laws of the jurisdiction under which the corporation is incorporated.

"§ 150406. Nondiscrimination

''In establishing the conditions of membership in the corporation, and in determining the requirements for serving on the board of directors or as an officer of the corporation, the corporation may not discriminate on the basis of race, color, religion, sex, national origin, handicap, or age.

"§ 150407. Powers

''The corporation shall have only those powers granted the corporation through its articles of incorporation and its constitution and bylaws which shall conform to the laws of the jurisdiction under which the corporation is incorporated.

"§ 150408. Exclusive right to name, seals, emblems, and badges

''(a) IN GENERAL.—The corporation shall have the sole and exclusive right to use the names 'National American Indian Veterans, Incorporated' and 'National American Indian Veterans', and such seals, emblems, and badges as the corporation may lawfully adopt.

''(b) CONSTRUCTION.—Nothing in this section shall be construed to interfere or conflict with established or vested rights.

"§ 150409. Restrictions

''(a) STOCK AND DIVIDENDS.—The corporation shall have no power to issue any shares of stock nor to declare or pay any dividends.

''(b) DISTRIBUTION OF INCOME OR ASSETS.—(1) No part of the income or assets of the corporation shall inure to any person who is a member, officer, or director of the corporation or be distributed to any such person during the life of the charter granted by this chapter.

''(2) Nothing in this subsection shall be construed to prevent the payment of reasonable compensation to the officers of the corporation, or reimbursement for actual and necessary expenses, in amounts approved by the board of directors.

''(c) LOANS.—The corporation shall not make any loan to any officer, director, member, or employee of the corporation.

''(d) NO FEDERAL ENDORSEMENT.—The corporation shall not claim congressional approval or Federal Government authority by virtue of the charter granted by this chapter for any of its activities.

"§ 150410. Duty to maintain tax-exempt status

''The corporation shall maintain its status as an organization exempt from taxation as provided in the Internal Revenue Code of 1986.

"§ 150411. Records and inspection

''(a) RECORDS.—The corporation shall keep—

''(1) correct and complete books and records of accounts;

''(2) minutes of any proceeding of the corporation involving any of its members, the board of directors, or any committee having authority under the board of directors; and

''(3) at its principal office, a record of the names and addresses of all members having the right to vote.

''(b) INSPECTION.—(1) All books and records of the corporation may be inspected by any member having the right to vote, or by any agent or attorney of such member, for any proper purpose, at any reasonable time.

''(2) Nothing in this section shall be construed to contravene the laws of the jurisdiction under which the corporation is incorporated or the laws of those jurisdictions within which the corporation carries on its activities in furtherance of its purposes within the United States and its territories.

"§ 150412. Service of process

''With respect to service of process, the corporation shall comply with the laws of the jurisdiction under which the corporation is incorporated and those jurisdictions within which the corporation carries on its activities in furtherance of its purposes within the United States and its territories.

"§ 150413. Liability for acts of officers and agents

''The corporation shall be liable for the acts of the officers and agents of the corporation when such individuals act within the scope of their authority.

"§ 150414. Failure to comply with requirements

''If the corporation fails to comply with any of the restrictions or provisions of this chapter, including the requirement under section 150410 of this title to maintain its status as an organization exempt from taxation, the charter granted by this chapter shall expire.

"§ 150415. Annual report

''(a) IN GENERAL.—The corporation shall report annually to Congress concerning the activities of the corporation during the preceding fiscal year.

''(b) SUBMITTAL DATE.—Each annual report under this section shall be submitted at the same time as the report of the audit of the corporation required by section 10101(b) of this title.

''(c) REPORT NOT PUBLIC DOCUMENT.—No annual report under this section shall be printed as a public document.''.

(b) CLERICAL AMENDMENT.—The table of chapters at the beginning of subtitle II of title 36, United States Code, is amended by insert after the item relating to chapter 1503 the following new item:

"1504. National American Indian Veterans, Incorporated 150401''.

MEASURE PLACED ON THE CALENDAR—S. 2949

Mr. FRIST. Mr. President, I understand there is a bill at the desk due for its second reading.

The PRESIDING OFFICER. The clerk will read the bill for the second time.

The legislative clerk read as follows:

A bill (S. 2949) to amend the Low-Income Home Energy Assistance Act of 1981 to reauthorize the Act, and for other purposes.

Mr. FRIST. Mr. President, I object to further proceedings on the measure at this time in order to place the bill on the calendar under the provisions of rule XIV.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

ORDERS FOR SUNDAY, OCTOBER 10, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 10:30 a.m. on Sunday, October 10. I further ask that following the prayer and the pledge, the morning hour be deemed to have expired, the Journal of the proceedings be approved to date, the time for the two leaders be reserved, and the Senate resume consideration of the conference report to accompany H.R. 4520, the FSC/ETI JOBS bill; provided that the time until 1 p.m. be equally divided between the two managers, with the exception of 20 minutes under the control of Senator BYRD, who will speak as in morning business.

Mr. REID. Mr. President, if I could ask the majority leader to modify his request to the Chair and include therein that Senators GRASSLEY and BAUCUS would be recognized from 12:30 to 1 o'clock, and Senator BYRD from 12:10 to 12:30, Senator LANDRIEU from 11:40 to 12:10, and that the remaining time be allocated to the minority, with Senator HARKIN for 5 minutes, Senator KENNEDY for 5 minutes, and Senator DORGAN for 5 minutes.

Mr. FRIST. Yes. And provided further that if cloture is invoked, Senator LANDRIEU be recognized immediately following the vote to speak for up to 1 hour.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow the Senate will resume consideration, in an unusual session on Sunday, of the FSC/ETI JOBS conference report. Under the previous order, we will vote at 1 p.m. on cloture of the FSC bill. I hope cloture is invoked and that we could then reach an agreement for a time certain for passage.

In addition, moments ago I filed cloture on two appropriations matters: Military Construction and Homeland Security. Both are very important bills. It was necessary to file cloture because of the obstruction that has played out over the last 2 days from the other side of the aisle. The votes will likely occur on Monday.

We have those three remaining issues prior to our adjournment. When we complete action on the FSC/ETI bill and the two appropriations bills, then we will have concluded our work that was set out by the Democratic leader and myself days ago; we will be finished.

It has been a tough several days, with a very unusual session today, a full day on Saturday, with votes. Because of these cloture votes, which have certain time limits, we are really forced to come back tomorrow in order to complete our business. It looks like we will be going into the holiday on Monday as well, which is mutually agreed upon between both sides of the aisle in order to complete our business. The bills before us, such as Homeland Security, we need to get through this body. A lot of people watching are wondering, why in the world can't the Senate move more quickly? I hope we can do so.

Right now, we will stay on course and we will enter tomorrow with the schedule that we have outlined, and I think we can make continued progress and complete our work, hopefully, Monday morning. We will continue to consider other legislative or executive items that can be cleared as we go forward.

Again, I thank Members for their participation over the course of yesterday, today, and tomorrow. This is all vitally important work. That is why we were here all day today and well into the evening tonight, and that is why we will be here tomorrow morning in this very unusual session.

I understand that the Chair has an announcement.

CORRECTING THE ENROLLMENT OF H.R. 5107

The PRESIDING OFFICER. Pursuant to the previous order, the Senate having received from the House H. Con. Res. 519, to correct the enrollment of H.R. 5107, that concurrent resolution is agreed to, and the motion to reconsider is laid on the table.

The concurrent resolution (H. Con. Res. 519) was agreed to.

ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:43 p.m., adjourned until Sunday, October 10, 2004, at 10:30 a.m.