United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRST SESSION

Vol. 151 WASHINGTON, THURSDAY, APRIL 28, 2005 No. 54

Senate

The Senate met at 9:30 a.m. and was called to order by the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire.

PRAYER

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

Let us pray.

Eternal spirit, You are our rock of safety. You are the Ancient of Days, yet the ever-new God. Thank you for Your mercies which are fresh each day. Your spirit restores our souls to newness of life. Because of You, we have discovered a new life, a new song, and a new hope that nothing in life or in death can dismay.

Today, bless the Members of this body. Guide their steps and inspire their hearts. May they use their talents to make the world better.

Be their strength and shield from every danger as You fill their hearts with joy. Lord, protect our military men and women who daily sacrifice to keep us free. Lead them like a shepherd and carry them forever in Your arms.

We pray in Your awesome Name. Amen

PLEDGE OF ALLEGIANCE

The Honorable JOHN E. SUNUNU led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 28, 2005.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable JOHN E. SUNUNU, a Senator from the State of New Hampshire, to perform the duties of the Chair.

TED STEVENS,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Today we will begin our session with a 1-hour period of morning business, and following morning business, the Senate will begin debate on the highway bill. Senator INHOFE has been on the floor over the course of the last 3 days and has encouraged Members to offer their amendments. I encourage them to do so at this time. I ask Senators to contact the chairman and ranking member if they do intend to offer an amendment so they can plan accordingly. We will make further progress on the bill today and tomorrow. Senators should not wait until the last minute to offer their amendments. Please come forward today and tomorrow with those amendments.

Also, I remind everyone that last night we filed two cloture motions on two Cabinet-rank nominations: Rob Portman to be USTR, and Stephen Johnson to be Administrator of EPA. Those votes will occur on Friday unless we reach an agreement for a confirmation vote on those two important nominations.

We will also consider the budget and supplemental conference reports when they are available. Members continued to work well into the evening last evening on both of these conference reports. The budget conference report, as my colleagues know, can be debated for up to a 10-hour statutory limit.

Having said that, Senators should be informed we have quite a bit of work to accomplish prior to our adjournment, and we are going to need to stay until we finish our business. Senators should expect rollcall votes each day.

COMMENDING ANNICE M. WAGNER, CHIEF JUDGE OF THE DISTRICT OF COLUMBIA COURT OF APPEALS

Mr. FRIST. I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be discharged from further consideration of S. Res. 107 and the Senate now proceed to its immediate consideration.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 107) commending Annice M. Wagner, Chief Judge of the District of Columbia Court of Appeals, for her public service.

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

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid on the table.

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

The resolution (S. Res. 107) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 107

Whereas Annice M. Wagner, Chief Judge of the District of Columbia Court of Appeals, entered Federal Government service in 1973 as the first woman to be appointed General Counsel of the National Capital Housing Authority, then a Federal agency;

Whereas, from 1975 to 1977, the Honorable Annice M. Wagner served as People's Counsel for the District of Columbia, an office created by Congress to represent the interests

Printed on recycled paper.

of utility consumers before the District of Columbia Public Service Commission and the District of Columbia Court of Appeals;

Whereas, in 1977, the Honorable Annice M. Wagner was appointed by President Carter and confirmed by the Senate to serve as an Associate Judge of the Superior Court for the District of Columbia;

Whereas, while serving as an Associate Judge of the Superior Court, the Honorable Annice M. Wagner served in the civil, criminal, family, probate, and tax divisions and served for 2 years as presiding judge of the probate and tax divisions;

Whereas, while serving as an Associate Judge of the Superior Court, Annice M. Wagner served on various commissions and committees to improve the District of Columbia judicial system, including serving as chairperson of the Committee on Selection and Tenure of Hearing Commissioners, and as a member of the Superior Court Rules Committee and the Sentencing Guidelines Commission;

Whereas, as an Associate Judge of the Superior Court, Annice M. Wagner served as chairperson of the Court's Advisory Committee on Probate and Fiduciary Rules and was largely responsible for the implementation of new rules intended to streamline and clarify procedures regarding missing, protected, and incapacitated individuals;

Whereas, as an Associate Judge of the Superior Court, the Honorable Annice M. Wagner served as chairperson of the Task Force on Gender Bias in the Courts, which conducted a comprehensive study of bias in the courts;

Whereas, under Annice M. Wagner's leadership, the District of Columbia courts established the Standing Committee on Fairness and Access to the Courts to ensure racial, gender, and ethnic fairness;

Whereas Annice M. Wagner was appointed by President George H.W. Bush and confirmed by the Senate in 1990 to be an Associate Judge of the District of Columbia Court of Appeals;

Whereas Annice M. Wagner was appointed in 1994 to serve as Chief Judge of the District Court of Appeals;

Whereas, while Chief Judge of the District of Columbia Court of Appeals, Annice M. Wagner served as Chair of the Joint Committee on Judicial Administration in the District of Columbia;

Whereas, under Annice M. Wagner's leadership, the District of Columbia courts initiated the renovation of the Old District of Columbia Courthouse (Old City Hall) in Judiciary Square, a National Historic Landmark, for future use by the District of Columbia Court of Appeals;

Whereas, under Annice M. Wagner's leadership, the District of Columbia courts initiated the master planning process for the renovation and use of unused or underutilized court properties, which will lead to the revitalization of the Judiciary Square area in the Nation's Capital;

Whereas, under Annice M. Wagner's leadership, the Court of Appeals, along with the District of Columbia Bar, the District of Columbia Bar Foundation, and the District of Columbia Consortium of Legal Service Providers, established the District of Columbia Access to Justice Commission, a commission that will propose ways to make lawyers and the legal system more available for poor individuals in the District of Columbia;

Whereas Annice M. Wagner served as President of the Conference of Chief Justices, an organization of Chief Justices and Chief Judges of the highest court of each of the 50 States, the District of Columbia, and the territories;

Whereas Annice M. Wagner served as Chairperson of the Board of Directors of the National Center for State Courts;

Whereas the Honorable Annice M. Wagner commands wide respect within the legal profession nationally, having been selected to serve as one of 11 members of the American Bar Association's Section on Dispute Resolution's Drafting Committee on the Uniform Mediation Act, which collaborated with the National Conference of Commissioners on Uniform State Laws in promulgating the Uniform Mediation Act, which, in 2001, was approved and recommended for enactment in all of the States, to foster prompt, economical, and amicable resolution of disputes through mediation processes which promote public confidence and uniformity across state lines;

Whereas, since 1979, Annice M. Wagner has been involved with the United Planning Organization, which was established in 1962 to conduct initiatives designed to provide human services in the District of Columbia and she has served as Interim President of the Organization's Board of Trustees;

Whereas, since 1986, Annice M. Wagner has participated as a member of a teaching team for the Trial Advocacy Workshop at Harvard Law School;

Whereas Annice M. Wagner, Chief Judge of the District of Columbia Court of Appeals, was born in the District of Columbia and attended District of Columbia Public Schools and received her Bachelor's and law degrees from Wayne State University in Detroit, Michigan; and

Whereas Annice M. Wagner's dedication to public service and the citizens of the District of Columbia has contributed to the improvement of the judicial system, increased equal access to justice, and advanced public confidence in the court system: Now, therefore, be it

Resolved, That the Senate commends the Honorable Annice M. Wagner for her commitment and dedication to public service, the judicial system, equal access to justice, and the community.

PUBLIC SERVICE RECOGNITION WEEK

Mr. FRIST. I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be discharged and the Senate proceed to S. Res. 108.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 108) expressing the sense of the Senate that public servants should be commended for their dedication and continued service to the Nation during Public Service Recognition Week, May 2 through 8, 2005.

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

Mr. FRIST. I ask unanimous consent the resolution be agreed to, the preamble be agreed to, and motion to reconsider be laid upon the table.

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

The resolution (S. Res. 108) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 108

Whereas Public Service Recognition Week provides an opportunity to honor and celebrate the commitment of men and women who meet the needs of the Nation through work at all levels of government;

Whereas over 18,000,000 individuals work in government service in every city, county, and State across America and in hundreds of cities abroad;

Whereas Federal, State, and local officials perform essential services the Nation relies upon every day;

Whereas the United States of America is a great and prosperous nation, and public service employees contribute significantly to that greatness and prosperity;

Whereas the Nation benefits daily from the knowledge and skills of these highly trained individuals;

Whereas public servants—

(1) help the Nation recover from natural disasters and terrorist attacks;

(2) provide vital strategic support functions to our military and serve in the National Guard and Reserves;

(3) fight crime and fire;

(4) deliver the United States mail;

(5) deliver social security and medicare benefits;

(6) fight disease and promote better health;

(7) protect the environment and the Nation's parks;

(8) defend and secure critical infrastructure;

(9) teach and work in our schools and libraries;

(10) improve and secure our transportation systems;

(11) keep the Nation's economy stable; and

(12) defend our freedom and advance United States interests around the world;

Whereas public servants at every level of government are hard-working men and women, committed to doing their jobs regardless of the circumstances;

Whereas members of the uniformed services and civilian employees at all levels of government make significant contributions to the general welfare of the United States, and are on the front lines in the fight against terrorism and in maintaining homeland security;

Whereas public servants work in a professional manner to build relationships with other countries and cultures in order to better represent America's interests and promote American ideals;

Whereas Federal, State, and local government employees have risen to the occasion and demonstrated professionalism, dedication, and courage while fighting the war against terrorism;

Whereas public servants alert Congress and the public to government waste, fraud, abuse, and dangers to public health;

Whereas the men and women serving in the Armed Forces of the United States, as well as those skilled trade and craft Federal employees who provide support to their efforts, contribute greatly to the security of the Nation and the world;

Whereas government workers have much to offer, as demonstrated by their expertise and innovative ideas, and serve as examples by passing on institutional knowledge to train the next generation of public servants;

Whereas May 2 through 8, 2005, has been designated Public Service Recognition Week to honor America's Federal, State, and local government employees;

Whereas the theme for Public Service Recognition Week 2005 is Celebrating Government Workers Nationwide to highlight the important work civil servants perform throughout the Nation; and

Whereas Public Service Recognition Week is celebrating its 21st anniversary through

job fairs, student activities, and agency exhibits: Now, therefore, be it

Resolved, That the Senate—

(1) commends public servants for their outstanding contributions to this great Nation;

(2) salutes their unyielding dedication and spirit for public service;

(3) honors those government employees who have given their lives in service to their country;

(4) calls upon a new generation of workers to consider a career in public service as an honorable profession; and

(5) encourages efforts to promote public service careers at all levels of government.

APPOINTMENT OF SHIRLEY ANN JACKSON AS A CITIZEN REGENT OF THE BOARD OF REGENTS OF THE SMITHSONIAN INSTITUTION

APPOINTMENT OF ROBERT P. KOGOD AS A CITIZEN REGENT OF THE BOARD OF REGENTS OF THE SMITHSONIAN INSTITUTION

Mr. FRIST. Mr. President, I ask unanimous consent that the Rules Committee be discharged from further consideration of H.J. Res. 19 and H.J. Res. 20 and the Senate proceed to their immediate consideration en bloc.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will state the resolutions by title.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 19) providing for the appointment of Shirley Ann Jackson as a citizen regent of the Board of Regents of the Smithsonian Institution

A joint resolution (H.J. Res. 20) providing for the appointment of Robert P. Kogod as a citizen regent of the Board of Regents of the Smithsonian Institution.

There being no objection, the Senate proceeded to consider the joint resolutions en bloc.

Mr. FRIST. I ask unanimous consent that the joint resolutions be read a third time and passed, the motions to reconsider by laid upon the table en bloc, and any statements be printed in the RECORD.

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

The joint resolutions (H.J. Res. 19) and (H.J. Res. 20) were read the third time and passed.

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 60 minutes with the first half of the time under the control of the Democratic leader or his designee and the last half under the control of the minority leader or his designee.

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

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

The legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, what is the question before the Senate?

The ACTING PRESIDENT pro tempore. The Senate is currently in a period of morning business, with time equally divided between the majority and minority leader.

Mr. BYRD. Mr. President, how much time might I have under the order?

The ACTING PRESIDENT pro tempore. The minority controls 30 minutes, the first 30 minutes of the period of morning business.

Mr. BYRD. Mr. President, I ask that I may proceed to speak out of order for as long as I need to speak and that it not be over 15 minutes.

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

SOCIAL SECURITY

Mr. BYRD. Mr. President, from the book of Matthew, chapter 7, verses 25, 26, and 27 of the King James version of the Bible, I read as follows:

And the rain descended and the floods came and the winds blew and beat upon the house, and it fell not for it was founded upon a rock. And everyone that heareth these sayings of mine, and doeth them not, shall be likened unto a foolish man, which built his house upon the sand. And the rain descended, and the floods came, and the winds blew, and beat upon that house; and it fell; and great was the fall of it.

Mr. President, 70 years ago the Social Security Program was founded upon a rock. It was designed to shelter workers in their old age and to withstand the storms that can wipe away their savings. For 70 years, the Social Security Program has stood as a protector of workers and families. It is their safeguard against economic peril.

Social Security provides the essential support for 405,000 West Virginians. In every county across the State, men and women, workers and retirees, their spouses and their children rely on their monthly Social Security check, and it comes as regularly as the mail man runs.

And so it is with great trepidation that they listen to apocalyptic tales about Social Security's future. It is difficult to understand, and perhaps incomprehensible to comprehend, how workers could spend their lifetime contributing to the Social Security Program only to find that the benefits promised to them may not be available when they retire. Demographic projections show that the next generation of workers cannot support the retirement and disability benefits promised to this generation of workers. The Social Security trustees warned us that this demographic storm would erode the rock upon which the retirement security of workers has been built. Soon the rain will descend. Soon the floods will come. Soon the winds will blow. Our challenge is to keep that house from falling. And our challenge is great.

It is within this context that President Bush has proposed changing the scope of the Social Security Program, adding personal accounts to wean workers from the traditional program. He offers the opportunity for higher returns in the financial markets in exchange for workers relinquishing a portion of their benefits guaranteed under the current system. Be careful.

Needless to say, the outcry to such a proposal has been deafening. In the State of West Virginia, thousands and thousands of constituents are contacting my office—phone calls, e-mails, letters—in opposition to the President's Social Security plan. These people fear that personal accounts are a scheme to take away their Social Security benefits. They fear it is an effort to crack open Social Security and break it apart, piece by piece. I, too, fear such efforts. Feeding that fear is the secret that permeates the administration's plans.

The X factors are multifarious, impacting every worker and every employer who pays into the Social Security Program, every future retiree and every future disabled worker who expects one day to receive Social Security benefits.

My constituents are right to be leery of a scheme to privatize Social Security, particularly when efforts to learn more about Social Security's reforms are being stonewalled. We cannot get that information. If we knew the answers, if we knew for certain the retirement security of our constituents would be protected, that would be one thing, but this proposal for personal accounts seems a lot like the kind of telephone scams we hear about when folks are told they have won a prize and then are asked for their bank account number. Hold on here.

We are all enticed by the idea of ensuring the solvency of Social Security, but what are workers being asked to give up? No one in the administration, no one in the White House is willing to tell. Hear me when I say I will oppose this plan as well as any plan where the costs are undefined and the benefit cuts so uncertain.

Four months of high-publicity tours and photo-ops by President Bush and members of his Cabinet all across America, including stops in West Virginia, have yielded little new information about how the President's plan would affect workers' benefits. We do not know. We have not been told. We cannot get the answers. We ask for the

plan, we ask for the details, and nothing happens. What level of benefit cuts is the President advocating? How much of their guaranteed benefits is the President asking workers to relinquish? On this subject the White House has been evasive. The White House has been equivocating.

What about the volatility of the financial markets? Recent news reports serve as a vivid reminder that the stock market has severe ups and downs. What happens when it comes time to retire and a worker discovers that he or she does not have enough saved to ensure a decent, respectable living? What guarantee would the administration support to ensure a minimum benefit from each individual account? The White House will not respond to this question. There is not a sound to be heard by way of answering that question. What are the costs of the President's Social Security plan? The White House Budget Office has $754 billion, but the Vice President says trillions of dollars. How about that? How can this administration reconcile mounting debt and its own warnings about the need to limit the further growth of deficits with a plan that requires borrowing trillions of dollars more? Again, the White House has no response to the question.

This week, the Senate Finance Committee began hearings on the President's plan. I hope these hearings will yield more information. Our senior citizens need answers to these questions.

I sent a letter to this President earlier this year urging him to send a detailed legislative proposal to the Congress. Send it up, a detailed legislative proposal. I have asked questions of the Secretary of the Treasury at Appropriations Committee hearings as recently as this week. The Congress and the people have been patient in waiting for answers, but still no answers come forth. Honesty and candor are now required. We cannot legislate on rumors and guesses. The ducking and the dodging on the part of the administration serve only to fuel speculation that it is hiding something—yes, hiding something—from the public or, worse, seeking to cut benefits surreptitiously.

Fortunately, any legislation submitted by the President to change Social Security will require 60 votes to pass the Senate; that is, as long as the nuclear option has not descended upon the Senate, as long as the filibuster is still around. Any legislation submitted by the President to change Social Security will require 60 votes to pass the Senate. Long live the filibuster. It may be needed to protect Social Security. The danger of the nuclear option becomes crystal clear as we contemplate the momentous debate on Social Security which looms just down the road, just up ahead.

Only the Senate, here in this forum, only the Senate has the ability to insist on its right to unlimited debate. I hope the Senators will stop, look, and listen. Only the Senate, may I repeat, has the ability to insist on its right to unlimited debate. Let's maintain that right. It has been there for 217 years. Its roots go back to the English Bill of Rights to which William III and Mary subscribed on February 13, 1689, 100 years before our own Republic began, the Bill of Rights, enacted on December 16 in Parliament. The Bill of Rights guaranteed freedom of speech in commons, and our own Constitution in section 6, article I, guarantees that right which cannot be questioned in any other place. Retain it, maintain it, keep it, hold it, collapse it to thy breast.

Only the Senate has the ability to insist on its right to unlimited debate. No Social Security legislation will fly through this Senate without thorough scrutiny, unless the nuclear option is employed. Senators can insist and Senators will insist on the time they need to probe the details of the President's plan and to extract answers to their questions. The Senate will have the opportunity to amend, the Senate will have the opportunity to debate, and then, if it desires, the Senate will have the opportunity to amend and debate some more. And then some more. The threat of a filibuster means that no legislation will be enacted into law without bipartisan support in this Senate, which means that no benefits will be cut, no taxes will be increased, and no radical change codified without adequate debate.

The Senate will require a compromise if and when Social Security reforms are ever enacted, fulfilling its role exactly as the Founding Fathers envisioned. Yes, yes, that is why we have a Senate. Thank God for the Great Compromise which was agreed to on July 16, 1787. Praise God for that Great Compromise. But for it, the Presiding Officer would not be sitting at the desk. But for it, I would not be standing here. But for it, this might never have been a Republic. That is why we have a Senate with its rules for unlimited debate—Lord, God, keep it, save it, collapse it to thy heart—to forge compromise and to ensure moderation in the laws enacted.

To those who advocate chipping away at that rule, limiting Senators' right to debate in regard to judicial nominees, hear me when I say the crucial need for keeping those rules strong in order to encourage compromise and moderation is right before us as the Senate proposes to debate changes in Social Security. Hear me out there in the Plains, in the prairies, across the rivers from the Atlantic to the Pacific. We ought to engage in a genuine effort to end the rumors and help the public understand exactly what is being asked of them with regard to their Social Security benefits—your benefits.

I urge this administration to lay its case before the American people. Come on, open up, lay the case before the American people. Tell us what your plan is. Give us the details of your plan. The last thing we need at this late point with the Social Security storm looming on the horizon is to find another house has been built upon the sand.

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

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

The legislative clerk proceeded to call the roll.

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

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

Mr. DOMENICI. Madam President, how much time remains on the minority side?

The PRESIDING OFFICER. The minority's time is now expired.

Mr. DOMENICI. Madam President, do I understand that the Senator from New Mexico has up to 10 minutes at this point in morning business?

The PRESIDING OFFICER. The Senator has up to 30 minutes, if he would like.

Mr. DOMENICI. Thank you very much.

JUDICIAL NOMINATIONS

Mr. DOMENICI. Madam President and fellow Senators, I want to start by submitting a couple of editorials from papers in the State of New Mexico.

First of all, I want to start with an editorial from a paper in New Mexico called the Santa Fe New Mexican. I do not want to editorialize too much about this paper, but I think it is fair to say this is not a conservative newspaper. I believe it is fair to say it is a pretty liberal paper. It is probably even more than mildly liberal, very liberal. But I was impressed by their grasp of this issue and a statement that was in their editorial.

Madam President, I ask unanimous consent that these editorials be printed in the RECORD.

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

[Santa Fe New Mexican (New Mexico), Feb. 24, 2003]

BINGAMAN SHOULD LEAD DEMS' FILIBUSTER RETREAT

As legendary prizefighter Joe Louis said of an upcoming opponent reputed to be fast on his feet: ''He can run, but he can't hide.''

Senate Democrats, along with the Republican majority, fled Washington last week as their way of honoring Presidents' Day. The annual recess suspended their filibuster against a federal judgeship vote. The Dems are making an unwarranted stand, and an unseemly fuss, over the nomination of Miguel Estrada to the U.S. Court of Appeals for the D.C. Circuit.

The filibuster—protracted talking under senatorial privilege—had consumed a week of debate about Estrada before the senators left town. Now they're gravitating back to the Potomac, and the Dems can hide no longer. Resumption of their verbose balking will make them look ridiculous—at a time when the nation needs statesmen to stand up

against the White House warmonger and his partisans commanding Capitol Hill.

The Democrats have chosen a particularly poor target: Estrada, who came from Honduras as a boy and went on to lead his law class at Harvard, is better qualified than many a Democratic appointee now holding life tenure on one federal bench or another.

But after confirming so many less-qualified judges while they held power, Estrada's senatorial tormentors now offer ''reasons'' why he shouldn't be confirmed: too young; too bashful about answering leading questions; appointed only because he's Hispanic—or, to some senators' way of thinking, not Hispanic enough.

What really rankles with the Democrats, though, is Estrada's politics. He's a conservative. Surprise, surprise; we've got a conservative president, and it's the president who makes the appointments to the federal judiciary.

As the party on the outs, the Dems had better get used to like-minded appointments from the president. If their game-playing goes on, a disgusted American public might keep George W. Bush in office for the next six years. The country certainly didn't see any reason to balance Bush against a Democratic Congress when it had a chance just a few months ago. With their spiteful behavior toward Bush appointees, the Dems aren't exactly gaining goodwill.

If they find the Republican so repugnant, let 'em vote against him; at least they'll be putting their ideals—or their party colors—on display. But this is no Mr. Smith against some diabolical establishment; it's a bunch of sore losers making themselves even more so.

To break a filibuster by cloture takes 60 senators. The Senate's 51 Republicans need nine of the 48 Democrats, or eight of them and ex-Republican Jim Jeffords of Vermont.

New Mexico's Jeff Bingaman should lead the Democratic blockade-runners. By all measures, Bingaman is a class act; a lawyer who knows that senators have no business obstructing appointments on purely political grounds. He also knows that Republicans aren't going to hold the White House forever; that sooner or later a Democratic president will be choosing judges. And he realizes that Republicans, like their mascot, have long memories.

The last thing our justice system needs is an ongoing feud over appointments to district and appellate judgeships. Let Judge Estrada's confirmation be a landmark of partisan politics' retreat from the courtroom.

[Albuquerque Journal, Apr. 27, 2005]

FILIBUSTER PUTS BAR TOO HIGH FOR JUDGES

Despite the cumbersome robes, Texas Supreme Court Justice Priscilla Owen has managed to jump some pretty high bars. She garnered 84 percent of the vote in her 2000 campaign for re-election. She received the American Bar Association's highest rating as a nominee for the federal appeals court.

But since 2001, she hasn't been able to get the time of day on the Senate floor because Democrats will filibuster confirmation. That means Owen has to have a super majority of 60 votes—the number it takes to close off a filibuster. That bar is too high.

Democrats like to stress the number of U.S. District Court judges confirmed during the Bush administration. But the higher courts are the battleground, and there, Democrats have been able to hold Bush's confirmation rate (69 percent) well below that of recent presidents.

The Senate minority has used the filibuster or the threat of it on an unprecedented scale to deny Owen and 15 other appeals level nominees what the Constitution envisions, a straight majority vote.

Despite the time-honored Senate rule establishing senators' right to hold the floor and talk until death or until 60 votes can be rounded up, the time-honored norm has been to defer to the president, especially when the president's party holds a Senate majority.

What happens when traditions are trampled in the interest of short-term political goals? Other customs that have worked well become vulnerable to the escalating partisan crossfire over judicial nominees. For example, Judiciary Committee practice has been not to send a nomination to the floor without the accord of the senators from the nominee's state. Now that rule has been broken in the case of Michigan nominees.

The next level of escalation wasn't too hard to see coming: The majority party threatens to remove the filibuster option on judicial nominees. If that sounds radical, consider that 19 Democrats—including Sens. John Kerry, Edward Kennedy, Barbara Boxer and Jeff Bingaman—moved to eliminate the filibuster in 1995 when Democrats wielded majority power.

What they failed to do then, they may goad the Republican majority into accomplishing with regard to judicial nominations now. It would be an action both parties eventually could come to regret. The filibuster has allowed the minority to apply the brakes to majority will over the decades—but it was not intended to be a stone wall.

Senate leaders should keep talking and trying to avert a showdown on the filibuster. Democrats might negotiate for a Bush pledge to forgo recess appointments, to seek more pre-nomination advice along with Senate consent, and for expanded floor debate.

But, after every senator has had his moment on the floor, there should be a straight majority vote on the vast majority of this or any other president's nominees.

Mr. DOMENICI. Madam President, I want to read the operative paragraph from the Santa Fe New Mexican:

With this spiteful behavior toward Bush appointees, the Dems aren't exactly gaining goodwill.

If they find [these nominees] so repugnant, let 'em vote against [them]; at least they'll be putting their ideals—or their party colors—on display. But this is no Mr. Smith against some diabolical establishment; it's a bunch of sore losers making themselves even more so. . . .

This is not PETE DOMENICI speaking. I am reading from this editorial:

The last thing our justice system needs is an ongoing feud over appointments to district and appellate judgeships.

Now, yesterday, or maybe a day before, the major paper in the State, the Albuquerque Journal, had an editorial with a very interesting title: ''Filibuster Puts Bar [B-A-R] Too High for Judges.''

It is a very interesting editorial, with a play on words: ''Bar'' meaning the bench; and ''Bar,'' with the idea that you have to have 60 votes, is disavowed by this editorial. There is some nice recognition and discussion about the fact that a number of the Senators on the other side who are talking about this issue as if there was a filibuster allowed for judges—which I do not believe there is—the editorial explains that a number of Democrats were for doing away with the filibuster in its entirety about 10 years ago. At a point, that was a very major discussion here, and it was principally motivated by the Democratic Party, to get rid of the filibuster in its entirety. The editorial says how interesting and paradoxical it is that some of those who did not, at the time, want the filibuster around at all are arguing about it existing for judges—this is not conclusive but is interesting.

So I am here because I would like to make my case and explain to the Senate why this Senator from New Mexico thinks we should have an up-or-down vote on the circuit court judicial nominees of the President who are pending.

First, I want to make the point that I am not trying to change anything. So when people say, Republican Senators want to change the filibuster rule, I am for changing nothing.

What does that mean? That means I am for leaving the rule as it is. What does that mean? That means there is no filibuster rule relating to judges now. All the discussion about why should we change the rule is not the issue. The issue is, why are we denying circuit court judges an up-or-down vote—that is, majority rule—when that is what the precedent of the Senate has been for the last 200-plus years?

For anybody who thinks the filibuster rule is absolutely inherent in anything the Senate does, that the rule came down from the Constitution to the Senate as: Thou shalt have a filibuster rule, that is not so. Look in the Constitution. There is no mention of filibusters. As a matter of fact, the document is filled with references to majority rule. And where the Constitution requires that we have more than a majority, it says so. So look to the Constitution to see if there are any times when our Founding Fathers said a two-thirds vote or more than a simple majority are necessary, and you will find there are few occasions and they are mentioned specifically. Therefore, I would assume the Constitution does not require super-majorities for judicial nominees. If we tried to say otherwise, I assume it would be thrown out in a minute.

The question then is, what do we Republicans want? What do—maybe it won't all be Republicans in the end—we want now? We want judges who were nominated by this President for the circuit courts of appeal over a long period of time—and I will cite an example shortly—to have an up-or-down vote. I hope people understand, all these other questions that are asked of them, they beg the issue. The issue is, should a circuit court nominee who is otherwise qualified, meaning the American Bar Association and the people who work with them believe they are qualified, have a vote. That is the issue.

I cannot believe the majority of Americans, given that set of facts, would say no, you need to get two-thirds of the vote under those circumstances. What are those circumstances? Those circumstances are that some in this body don't like the

nominees. The Constitution didn't say this is an issue of whether you like the nominees. It said, you are voting advice and consent for the nominee. So the point is, you exercise your right by saying: I don't consent. In advising, I withhold my consent and say no. The Constitution doesn't say two-thirds of you must say you have advised and you consent. That is the issue.

As I see it on television and read about it, we can see people arguing that we shouldn't change. The filibuster is part of the fiber of the Senate. We should not alter it.

I have explained that it isn't part of the fiber of the Senate with regards to judicial nominees. As a matter of fact, even on other issues besides judges, it is not certain that it existed when we were founded. There is a long period of history when we are not even sure the filibuster existed. But I am not here saying the filibuster does not now exist. In fact, I am for the filibuster. I didn't vote in favor of getting rid of the filibuster. Half of my service in this body has been as a minority Senator. So I know what it is to be a minority Member who appreciates the filibuster. But I also don't like the filibuster sometimes. I get upset. I wonder why it holds up so much legislation.

I might add parenthetically that I don't like the way the filibuster is used around here now because it is used all the time for anything. Thirty times a year we have to have cloture filed. We didn't do that for 25 of the 30 years I have been here. It was very rare. In its earliest vintage, it was on matters of monumental importance to Senators, regions, or to Americans. Now every time we have a bill, if a few people say, we don't want to let that pass, you have a filibuster.

I am not for changing the filibuster because of irreverence toward the Senate's right to vote. I don't think I am voting to change it when I talk about judges, because you don't change if you are trying to say, do what we have been doing. I have tried my best to read, first, what is a filibuster. I have checked and I have read. I understand.

How do you get rid of it? I checked and I understand how you get rid of a filibuster. But I have also tried to find out when are filibusters used, and I have found that in the Senate it is not generally used with reference to voting on a nominee for Federal judgeships in the United States.

I am not in favor of our leadership pursuing a process that gives us an up-or-down vote, if that process gets rid of the filibuster for everything. I have already inquired. I am assured that is not the case. I have been assured we won't be voting on that. It will be only regarding judges.

So have we in the past filibustered judges? By that I mean, had a judge come down to the floor out of committee ready to be voted on and have we killed that judge's chance by filibustering? No, no. Never, never. One case is cited, and it is Abe Fortas.

Abe Fortas was a Lyndon Johnson appointee who was on the bench, already confirmed. The issue was, President Johnson wanted to put him in a vacancy that occurred for Chief Justice which you know we have to vote on. And the Senate got into a debate about whether he should get it, and there was great consternation on the floor of the Senate as to whether he should be confirmed for that. The truth is, he was not killed by filibuster. His name was voluntarily withdrawn. He later even left the Supreme Court. But the record is pretty certain that he was not killed by filibuster. That wasn't a judicial appointment, anyway. But even if you want to tie that in, that did not happen.

What have Senators around here said about this? I understand each can come down here and put it in whatever context they would like. My good friend, Senator KENNEDY from Massachusetts, said on February 3, 1998, page S295 of the CONGRESSIONAL RECORD:

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

That is not me. That is Senator KENNEDY.

Senator LEAHY said, June 8, 1998, page S6521 of the CONGRESSIONAL RECORD:

> I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported . . .

Interesting. I have seen the distinguished Senator from New York—I haven't heard him personally, but I have seen him and heard him on television with his right fist like this saying: We don't need any right wing judges or we don't need the right wing pushing us to appoint radical judges.

I could as well put up my left hand, but I won't, and say we don't need anybody telling us to appoint liberal judges. But the distinguished Senator from New York said:

> This delay makes a mockery of the Constitution, makes a mockery of the fact that we are here working, and makes a mockery of the lives of very sincere people who have put themselves forward to be judges and then they hang out there in limbo.

That is dated March 7, 2000, page S1211 of the CONGRESSIONAL RECORD. I also told you about the New Mexico editorials.

So people will understand how gross this abuse of the filibuster is and how it is prompted by personal angst, not qualifications, I am going to refer to one judge as an example. Let's take the nominee Priscilla Owen, Fifth Circuit, and let's look at her in comparison with judges who are on that court who have come before the Senate. Let's look at the first one, Patrick Higginbotham, nominated by Ronald Reagan, graduate of the University of Alabama, University of Alabama Law School. How long did it take to get through here? Twenty-six days. Nominee Emilio Garza, President Bush appointee, University of Notre Dame, University of Texas Law School, judicial experience, Bexar County Texas District Court.

I am sure controversial people had a thing to say, but I am also sure this and the previous nominee were recommended or were certified to be qualified by the American Bar which, incidentally, most of the time this Senator has been here, that was the sine qua non. If you didn't have that, you were in trouble. And if you had it, conversely, that was pretty good. You must be qualified. That is what the old rule was. I am sure they had that. Forty-three days for him to be confirmed.

Here we have Fortunato Benavides, nominated by President Clinton, University of Houston, University of Houston Law School, previous experience, 13th Court of Appeals for Texas, Texas Criminal Court of Appeals, 99 days to be confirmed. He got nominated and confirmed in 99 days. There was a lot of commotion about him. He got here for a vote.

Now we have Priscilla Owen, George W. Bush's nominee, Baylor University, Baylor University School of Law, Texas Supreme Court, 1994 to the present. Both of these nominees were qualified, according to the American Bar, both of these, Mr. Benavides, Judge Owen, a lot of letters of commendation from those who know about their judicial temperament, their qualifications. I told you where she came from, where she was educated, where she served. Look at the time she's been waiting for a vote—I know Americans will better understand our dilemma—1,450 days waiting for us to say what the American people I believe would like us to say, and what I think the Constitution says we ought to say, and that is yes or no. Not maybe; not, ''well, I don't like their ideals so you need 60 votes.'' That is a pretty long time to leave a qualified judge hanging here unless you are absolutely certain that person is not qualified to be a judge.

There is a lot more one can say about this, but I believe, as one who has been here a long time—I think right now there are only four people here sitting longer than I in the Senate—we should get this over with.

This is hanging over the Senate in a very damaging way. With the passing of each day, more and more is said, more and more joining sides is taking place, digging in your feet, more and more groups outside are adding to the vitriolic nature of the debate. The talking heads—the news people who talk all the time on TV and speak on radio and write all the time—are choosing sides. They are feeding a frenzy, and we are suffering. But most of all, the American people are suffering because if we keep on, it is going to be hard to get our work done.

I close by saying that our friends on the other side are led by a Senator whom I honestly and sincerely say is a good leader for the minority, Senator

HARRY REID, an excellent Senator—I believe he is fair and honest. I believe he would like to get this issue out of his mind and out of here. But he has suggested that if the majority party insists on doing what we are entitled to do—voting for these judges up or down by a majority vote—if we do that, which, I repeat, is not changing anything, the business of America will stop. We will pass nothing here. The Senate will be dead. America's business will go nowhere; it will disappear. That is an extraordinary threat, a threat that those who are making it better clearly understand.

Does that really mean that we won't get a highway bill, an energy bill, an appropriations bill that pays for education, a bill that pays for the operation of our military, that we won't get an appropriations bill through here that pays for our parks, for the Indian schools of our country, and on and on? Have we really reached a point where the minority is saying, we are going to insist on enforcing a rule that doesn't exist, that denies an up-or-down vote on judges who are qualified, and if we don't get our way, Government stops?

You know, I hope everybody understands that. I hope it doesn't happen. I think that editorial I read from suggests that those who do that are not going to come out of this with any accolades—nobody is going to be proud of that. I believe that is almost a minimum way of saying it. I think that will inure to the minority party being considered to be irresponsible on behalf of the people of this country.

I thank the Senate for listening, and I yield the floor.

The PRESIDING OFFICER. The Senator from Georgia is recognized.

Mr. ISAKSON. Madam President, I commend Senator DOMENICI for his remarks and for his service and commitment to the Senate and the United States. In some ways—I didn't plan it this way—it is kind of appropriate that he would speak and that I would follow. Senator DOMENICI has served this country in a long and distinguished career. He has been in this Senate for many years. You can tell by his thoughtful remarks he cares passionately about his traditions and about the responsibilities we have. I care deeply, too, but I am a new guy. I just got here. I didn't hear those speeches he quoted. I have read them, and I have heard a lot of speeches. I come from a little bit of a different perspective.

For a few minutes, I would like to tell you my opinion on the question of judicial confirmations and how I arrived at that. For, you see, although I address you as a Senator at this moment, the foundation of my beliefs is grounded in the preceding 2 years when I was a candidate for the Senate.

Beginning in January of 2002, the 108th Congress convened, and I was an announced candidate for this Senate seat. Shortly into that session, something changed in America—or at least changed here—because the holdup of judges for days counted, like Senator DOMENICI just recited, began to take place and the filibuster began to be used in a way it had never been used in the United States before.

As a candidate for the Senate, I was asked by members of the media, constituents, and Rotary and Kiwanis clubs: Mr. ISAKSON, if you were elected, what do you think the Senate ought to do? My answer was instinctively that I think every judge ought to get an up-or-down vote because, the way I understand it, that is the responsibility of the Senate. But as the intensity of the issue grew and as the campaign gained, as campaigns do, and the pressures grew, I did a little studying. I wanted to do my own homework. I didn't have history in the Senate, but I did have a Constitution.

On some of those long nights on the road between campaign stops, I would read about judicial confirmations, the Constitution, the responsibility of the Senate. For a few moments, I want to share, for informational purposes, with the Members here and those who may be watching or listening exactly what the Constitution says about the responsibility of this body.

It is very interesting. If you read the Constitution—I have a few underlined sections here. Everywhere the Constitution requires this body or the House to affirm a position by supermajority vote, it spells it out. A few years ago, we dealt with an impeachment issue, and the Constitution is clear: it takes a two-thirds vote to convict. We have dealt with constitutional amendments on a balanced budget and things of that nature, and the Constitution is quite clear: it takes a two-thirds vote. It is even so clear it says it takes a three-fourths vote of the States to ratify the amendment that it takes a two-thirds vote of the House and Senate to propose.

Then let's talk about advice and consent for a second. I want to read directly from the Constitution the provisions about the responsibilities of this Senate in advice and consent.

> He [referring to the President] shall have the power by and with the advice and consent of the Senate to make treaties provided two-thirds of the Senators present concur.

That is the first part of a compound sentence. It is saying that it is our responsibility to advise and consent on treaties, and it specifically requires two-thirds of us to do so for the treaty to be ratified.

Let me go to the second part of that compound sentence:

> And he [the President] shall nominate and, by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministries and councils, judges of the Supreme Court. . . .

Et cetera et cetera, with no requirement for a supermajority.

When I was running for the Senate and I was continually asked the question by opponents in the primary and later in the general and by the media: Mr. ISAKSON, what do you think about this business of judges not getting a vote? And if you are elected, what would you do? I said: It is really kind of simple to me. The Constitution says that it is a Senator's responsibility to advise and consent. The Constitution specifies it every place where it requires a supermajority vote. The Constitution, in the same sentence that it designates the responsibility for us to ratify treaties by a supermajority, confers upon us the responsibility to advise and consent with a majority vote of this body.

Since I have been elected and since I have been on the Senate floor and since I have heard all of the speeches, I have heard all of the adjectives assigned to the process we are debating. I will not get into any of them because they are more marketing than they are substance. But this document is not marketing; this document is substance. It has made the difference in the United States of America and any other country that has ever been formed since the creation of this Earth. While it may not be perfect, it is the best man ever did, and it is specific in what our responsibilities are. In no way does it say ''maybe,'' ''sometimes,'' or ''whatever.''

There is one point made from time to time which I would like to elaborate on and respond to. There are those who say: Well, but the Constitution, when it establishes the House and the Senate, the legislative branch, it says that both shall establish their rules under which they operate. Therefore, we are just using a rule to prohibit an up-or-down vote on the judges. Well, if you carry that argument to the logical extreme, what if we passed a rule that the Senate could pass by a majority vote the ratification of treaties? Could we contravene the Constitution? I think not, because the Constitution is specific. It is as specific in our responsibility for two-thirds to ratify treaties as it is specific in our responsibility for us to advise and consent on judges. I don't believe we could invalidate, through a rule, that responsibility any more than you can extrapolate that because we have a rule that includes a filibuster, that it applies to a constitutional responsibility and can invalidate our very requirement. It is just not really logical. That is not Republican or Democrat, it is not a marketing phrase or marketing phrase; it is real simple.

When I was sworn into the House of Representatives almost 7 years ago now, I was elected in a special election, and, unusual in the House of Representatives, when you are elected in a special election, you get to make a speech when you are sworn in.

I never worked harder on a speech in all my life because I knew I was going to be the only guy out of 435 down there, and I had 1 minute to say something intelligent. I struggled with what the right thing to do was.

Finally, I went back to my dad, who is not with us anymore, and he went

back to a quote he used to tell me as a young man. He loved Mark Twain. When we had one of those difficult decisions to make, he would always say: Son, remember what Mark Twain said. When confronted with a difficult decision, do what's right. You will surprise a few; you will amaze the rest.

A decision that is pretty simple has become very complex for this Senate. In the end, we should peel back the arguments and look back to the foundation under which all of us operate, and that is our Constitution. The question is simple and our responsibility is clear, and every judge nominated by this President, or any President, deserves an up-or-down vote one way or another. It is the responsibility of the Senate. It is the direction of the Constitution.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

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

The assistant legislative clerk read as follows:

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

Pending:

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

Bayh amendment No. 568 (to Amendment No. 567), to amend title VII of the Tariff Act of 1930 to provide that the provisions relating to countervailing duties apply to nonmarket economy countries.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. INHOFE. Madam President, we have several pages of amendments that are out there. We repeat our invitation on behalf of myself and Senator JEFFORDS. We want to invite all Democrats and Republicans who have amendments to the highway bill to bring them down. It is going to get crowded later as we go on. Now we have time for adequate consideration, for deliberation, and we encourage Members to bring their amendments to the floor.

I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. Madam President, I rise in support of the SAFETEA bill. Effective transportation is vital to our Nation, and I believe this bill will be an important step in helping to meet the country's transportation needs.

I would like to thank both Senator INHOFE and Senator JEFFORDS for working hard on this bill. The people of Oklahoma are blessed with the hard work Senator INHOFE has put forward, both in the Senate and when I had the opportunity to serve with him in the House.

This bill has required a lot of hard work and a lot of dedication. He has put forward an effort that I think we all appreciate. Sometimes we forget to say thank you for the hard work that goes into a bill such as this, including the hard work of the staff, I might add. The staff on both sides has been helpful in putting this legislation together.

In particular, I express my support for the public transportation title of the bill. While many people erroneously refer to this as the highways bill, it is actually a comprehensive reauthorization of the Nation's surface transportation programs, including transit. A healthy, well-functioning transit network can greatly enhance the effectiveness of other transportation modes, and as chairman of the Subcommittee on Housing and Transportation of the Banking Committee, I have had many opportunities to see the difference reliable public transportation can make for both individuals and communities.

I also express my thanks to the Banking Committee chairman, Chairman SHELBY. For many years he has been one of the leading champions for public transportation in the Senate. I appreciate his dedication. It has been a pleasure to work with him as subcommittee chairman on reauthorization of the mass transit programs.

I also recognize and thank Senator SARBANES, the ranking member of the Banking Committee, and Senator REED, the ranking member of the Housing and Transportation Subcommittee. They have been actively involved in the reauthorization process, and I appreciate the thoughtful perspective they brought to all of our discussions. Together I believe we have been able to accomplish a great deal to improve public transportation in a strong and bipartisan manner.

I thank again Senator INHOFE and all the other Republicans on the Environment and Public Works Committee for their hard work and leadership. I miss not being on the committee. I was on the committee when this bill first moved forward. I very much appreciate working with my colleagues.

Public transportation is a key component of our Nation's transportation infrastructure and provides safe, reliable, efficient, and economic service. Public transportation can create jobs and stimulate economic development, as well as reduce traffic congestion and pollution.

Because I represent the State of Colorado, some people wonder why I care about public transportation. Beyond the national policy concerns, these same people are often surprised when I explain how important public transportation is to my Colorado constituents.

Public transportation encompasses a great deal beyond the stereotype of subways and heavy rail. People in the Denver suburbs can now take light rail to their jobs downtown. Students in Boulder often use the bus system to get around town. Sick people on the eastern plains may rely on demand-responsive transit services to go to chemotherapy or dialysis appointments. Public transportation is important to many different types of people in many different locations. This bill will help ensure that all these people have access to reliable public transportation.

I believe the Senate passed an excellent transportation reauthorization bill this last year, and I was especially pleased with the transit title. I believe it made important progress in a number of areas while building upon the many successes of TEA–21. Fortunately, we come to the floor with substantially the same package, and I am hopeful this approach will speed things along and allow the bill to move forward with a minimal number of amendments.

I am very supportive of the formula changes made in the transit title. These go a long way toward addressing my longstanding concerns with the distribution of transit dollars. As my colleagues may know, one of my top priorities during the consideration of TEA–21 was to bring more equity to the distribution of transit dollars. Senator Rod Grams and I were able to make changes that allowed States such as Colorado to have greater access to this resource.

In drafting the reauthorization bill, greater equity has continued to be my top priority. While the traditional transit cities have many important needs, it is time to update the formulas to include other needs. Today's bill strikes a balance by providing for more traditional transit cities and also providing for new needs by creating several new formulas.

In particular, I strongly support the new growing States formula. Historically, many of the fastest growing areas in Western and Southern States have had a difficult time obtaining transit dollars. Yet their explosive growth makes transit all the more important. Mass transit can help growing areas reduce traffic congestion and air pollution, as well as increase access to jobs. The new growing States formula will help direct additional resources to the high-growth areas with the greatest need.

I also support the new transit-intensive cities formula. This new formula will reward smaller cities that are providing greater than average transit service. In addition to providing an incentive for cities to improve their transit service, I support the formula because it deliberately directs taxpayer dollars to areas that are utilizing them most efficiently.

Finally, I support the new rural low-density formula. This formula will help rural areas provide critically needed service. Rural areas and very small towns generally have older and less affluent citizens, the very people who often rely on public transportation. In

fact, rural America has an estimated 30 million nondrivers. The problem is exacerbated for rural-transit-dependent populations, as compared to urban dwellers, because they most often travel great distances, and alternate transportation, such as a taxicab, is generally not available. Yet more than 40 percent of residents in rural America have no access to public transportation and another 25 percent have negligible access.

Because of low-population density and the distances involved, rural populations can be much more difficult and expensive to serve. However, their need is as real as the need in urban centers. This new formula will begin to help rural States meet those needs.

The transit title also places more appropriate emphasis on bus programs. For too long, the mass transit programs have been viewed as rail programs. While we can all agree that rail is vitally important to a select group of cities, the vast majority of Americans rely on bus service. This bill takes a balanced approach, providing resources to expand and improve both bus and rail service.

Another way we can help expand the reach of Federal transit dollars is through bus rapid transit. As compared to rail, bus rapid transit is able to deliver similar capacity for a fraction of the cost. I believe we should find ways to not only allow but to promote the use of bus rapid transit. I support the bus rapid transit provisions and believe we should continue to ease the fixed guideway restrictions. In some areas, such as Colorado's mountains, geography or other factors make a fixed guideway requirement cost prohibitive. We must ensure bus rapid transit has sufficient flexibility to make it a viable option for many areas.

The Federal Government attempts to strike a balance between accountability and easing administrative burdens within its programs. However, the New Starts Program has gotten out of balance. I believe the Small Starts Program, as proposed in this bill, does strike a better, more appropriate balance. Under this program, all projects will be subject to the review process rather than exempting projects under $25 million. This threshold was causing project distortions and poor estimations in an attempt to deem a project under $25 million.

In addition to the incentive to underestimate a project, this approach lacks accountability for the taxpayer dollars at stake. By contrast, the Small Starts Program in the bill will subject all projects to the review process. However, to ease administrative burden, projects under $75 million will be subject to a streamline process. This will ensure that all projects receive scrutiny and will scale the level of scrutiny to be appropriate to the project size. This will also make it easier for smaller cities to add transit to their communities for the first time.

While public transit agencies are important in providing transit service, the private sector is also a key partner in providing effective, efficient service. By making a few modest changes, the transit title ensures they will be able to remain a part of the process. Public-private partnerships can benefit all parties, and our bill will help allow and encourage such partnerships.

Another important feature of this bill is its use of incentives rather than mandates and penalties. Until now, projects have little incentive to use good planning and forecasting or to stay on time and on budget. By offering incentives, we hope to change that. It is absurd that projects such as TREX in Denver have to return money because they did good planning and stayed on time and under budget. Transit agencies should not be punished for doing a good job. Rather, they should be rewarded. I believe they should be able to keep a portion of that money for other transit uses, and the bill before us today will let them do that.

Again I thank Banking Committee Chairman SHELBY and my colleagues on the committee for their work in producing the transit title of the bill that is before us today. I believe that under the SAFETEA bill, America's public transportation system will be able to serve more people more efficiently. I am hopeful the Senate will quickly complete action and enact a transportation reauthorization.

I reemphasize my sincere thanks to the chairman of the Environment and Public Works Committee, Senator INHOFE, for his great work, and the other Republicans and members of the committee working with the ranking member, Senator JEFFORDS. I am pleased this transportation bill, which is badly needed, is now moving forward.

I yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Oklahoma.

Mr. INHOFE. Mr. President, first I say to the Senator from Colorado, we miss him on the committee. He was an excellent member of the committee. However, he was replaced by some excellent freshmen who are as enthusiastic as was the Senator from Colorado. While we miss him on the committee, it is still a great committee, and we certainly appreciate very much the comments he made this morning and the contributions he has made to the Environment and Public Works Committee.

Mr. ALLARD. Mr. President, I thank the chairman.

Mr. INHOFE. Mr. President, it is my understanding the regular order is the amendment offered by the Senator from Indiana. He has agreed to set his amendment aside for the consideration of other amendments as they come to the floor, with the understanding he will regain the floor after those amendments are considered and action taken, if action is taken.

We do have an amendment from the chairman of the Subcommittee on Transportation, Senator BOND, who has worked tirelessly for years on this bill. I am sure he wants to offer it at this time.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside.

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

AMENDMENT NO. 592

Mr. BOND. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Missouri [Mr. BOND] proposes an amendment numbered 592.

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

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

The amendment is as follows:

(Purpose: To strike the highway stormwater discharge mitigation program)

Beginning on page 287, strike line 5 and all that follows through the matter following line 25 on page 290.

Mr. BOND. Mr. President, this amendment unties the hands of States which were handcuffed by a provision added in committee last year and is still in the bill, a provision on which debate was cut short last year, but now we can finish the job, and I hope we will. This provision will cost the States nearly $900 million in highway, bridge, and transit construction or rehabilitation funding unless we adopt the amendment.

The provision binding our States, section 1620 of the bill, mandates that every State, regardless of whether it needs it or not, set aside 2 percent, or nearly $900 million, for use for the life of the bill only on storm water mitigation activities. My amendment strikes this mandatory set-aside.

Without the amendment, States will be directed to set aside over $740 million from their Surface Transportation Program funds, funds that otherwise could construct or rehabilitate highways, bridges, or transit systems. Without this amendment, States would be forced to set aside over $125 million from the Equity Bonus Program set up by this bill to help States receive more highway dollars. Without this amendment, the States will be forced to use nearly $900 million only on storm water mitigation, regardless of the need of such activities.

Every State will lose highway dollars under this set-aside. We have tables available. Alabama, the set-aside would cost it $19 million; Alaska, $10 million; Arizona, $17 million; Arkansas, $12 million. I ask Members to look at how much the Federal Government would dictate how their highway funds would have to be spent.

Every office will receive a list, and we will have copies available. I urge every Member to look to see how it affects their State. We are fighting extremely hard on the Senate floor to

provide States with more transportation funds. This is something the chairman and the ranking member, my subcommittee ranking member, Senator BAUCUS, and I have done.

We are working with the Finance Committee, Chairman GRASSLEY, and the ranking member, Senator BAUCUS, to get the money. I know we will be inundated by Members wanting transportation projects in this bill. I know in my new role as chairman of the Transportation Appropriations Subcommittee I will be inundated with requests for projects in their State, but a Member voting to take funding from highways, bridges, and transit and set it aside for storm water would seem to indicate that their State has more than enough funding that they can afford to divert highway funds to storm water so the State may not need more highway funds.

Now, do not get me wrong. I support States having the ability to address their storm water needs if they must do so, and if they choose to do so. With my amendment, the States will remain fully authorized to use their highway funds to mitigate storm water problems. Indeed, this bill preserves and actually expands the ability of States to spend highway dollars on storm water mitigation, on a highway project if that is what is needed in their State.

Current law allows States to spend up to 20 percent of a project's cost using STP funds on storm water mitigation. That is unchanged. The bill also expands storm water eligibility by allowing States to spend up to 20 percent of a project's cost under the National Highway System funds on storm water mitigation. That is unchanged by this amendment.

I seek only to strike the mandatory set-aside; the Federal Government big daddy knows better than the States how to spend their funds to assure adequate transportation and protection of the environment.

There is no one in this body who has fought longer and harder than I have, my former colleague, my ranking member, Senator MIKULSKI, for Federal funding for water quality and drinking water. When we served as head of the Senate appropriations subcommittee that funded EPA, we restored hundreds of millions of dollars in proposed cuts to the clean water and safe drinking water funds. Every year we appropriated millions of dollars to protect, sustain, and restore the health of our Nation's water habitats and ecosystems. We spent millions funding water projects for the Chesapeake Bay, the Gulf of Mexico, Lake Champlain, Long Island Sound, and the Great Lakes. Last year, we sent hundreds of millions of dollars more to Members' States for targeted investments and water infrastructure. We do that every year for our colleagues because we believe so much in providing clean and safe drinking water for our families and local communities.

Forcing another arbitrary mandate on States, taking precious highway and transit construction dollars and diverting them for another purpose does not make sense. Decisions should be made by each State on a case-by-case, project-by-project basis, not as a result of another one-size-fits-all Federal mandate sent down from Washington.

Let me repeat, this amendment strikes only the set-aside mandate and leaves fully intact storm water funding eligibility. I urge my colleagues to let States keep $900 million for highway bridge and transit construction and to turn back this new Federal mandate on States. I urge my colleagues to support this amendment.

I ask unanimous consent that letters in support of this amendment from the American Association of State Highway and Transportation Officials; the Transportation Construction Coalition, a coalition of builders and union representatives; the Associated General Contractors of America; the American Road and Transportation Builders Association; and a list of other organizations and unions supporting this amendment be printed in the RECORD after my remarks.

I thank the Chair and I yield the floor.

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

ORGANIZATIONS SUPPORTING THE BOND AMENDMENT TO STRIKE THE STORMWATER SET-ASIDE

American Association of State Highway and Transportation Officials Associated General Contractors of America; American Road & Transportation Builders Association; American Coal Ash Association; American Concrete Pavement Association; American Concrete Pipe Association; American Council of Engineering Companies; American Society of Civil Engineers; American Subcontractors Association; American Traffic Safety Services Association; Asphalt Emulsion Manufacturers Association; Asphalt Recycling & Reclaiming Association; Associated Equipment Distributors; Association of Equipment Manufacturers; International Slurry Surfacing Association; International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers; International Union of Operating Engineers; Laborers-International Union of North America, AFL-CIO; National Asphalt Pavement Association; National Association of Surety Bond Producers; National Lime Association; National Ready Mixed Concrete Association; National Stone, Sand and Gravel Association; National Utility Contractors Association; Portland Cement Association; Precast/Prestressed Concrete Institute; The Road Information Program; and United Brotherhood of Carpenters and Joiners of America.

APRIL 27, 2005.

Hon. CHRISTOPHER S. BOND,
U.S. Senate,
Russell Senate Office Building,
Washington, DC.

DEAR SENATOR BOND: The transportation construction industry, working in partnership with federal, state and local government, recognizes its special responsibility to provide transportation improvements in a manner least disruptive possible to the natural environment. And our members are justifiably proud that they are actually able to provide environmental enhancements in the course of many projects they construct.

It is for these reasons that we support the provisions in the Senate Environment & Public Works Committee's proposed highway/transit program reauthorization bill, H.R. 3, that will give state transportation departments more flexibility in how—and how much—they fund transportation-related storm water mitigation activities.

What we do not support is a provision included in H.R. 3 that would force all states to spend at least two percent of their federal Surface Transportation Program (STP) funds on storm water mitigation. This misguided, if well-intentioned amendment, if left to stand, will divert nearly $900 million from highway construction projects nationwide over the life of the bill.

As mentioned, H.R. 3 takes a number of positive actions to advance and expand state expenditures on storm water mitigation—but it does so by leaving the decision making and choices to the state agencies that know best how much funding is necessary for this activity—in their state. For example, H.R. 3 will allow all states to not only use their STP funds for storm water mitigation, but also, for the first time, their National Highway System Program (NHS) funds as well—if they choose to do so.

H.R. 3 also, for the first time, would give states the option to use their federal funds for storm water mitigation activities on all federally-aided highway projects, not just those, as under current law, that are defined as ''reconstruction, rehabilitation, resurfacing, or restoration.''

The ''add on'' two percent mandatory STP set-aside included in H.R. 3 clearly is a federal ''command-and-control'' mechanism that is not necessary.

The American Road and Transportation Builders Association strongly supports your amendment to eliminate the proposed two percent storm water mitigation set-aside provision from H.R. 3. We urge all senators to join you in this important effort.

Sincerely,

T. PETER RUANE,
President & CEO.

APRIL 27, 2005.

Hon. DANIEL AKAKA,
U.S. Senate, Washington, DC.

DEAR SENATOR AKAKA: On behalf of the Associated General Contractors of America (AGC), I am writing to urge you to support a Bond amendment to H.R. 3, which would prevent states from losing nearly $900 million in critical highway and transit funding over the next five years. Specifically, the amendment proposes to strike a provision that mandates states to set aside 2 percent of their highway formula funding to be used only on stormwater mitigation activities.

Under current law, states can already choose to use their Surface Transportation Program (STP) funds—up to 20 percent of a project's cost—on stormwater mitigation activities. H.R. 3 already expands that funding eligibility to National Highway System (NHS) Program funds. The Bond amendment would not change this eligibility.

All states have unique needs that far exceed available resources. By striking the mandatory 2 percent set-aside for stormwater mitigation, the Bond amendment simply gives states maximum flexibility to use their federal highway funds as they see fit.

I have attached a table to this letter that shows the amount of funding your state would be forced to set aside from your highway and transit funding for stormwater mitigation if the Bond amendment is not adopted. The amount on the chart is funding that your state would not be able to use to maintain or improve the condition of its highways, bridges, or transit systems. Nationwide, the Bond amendment would give states an additional $900 million over the next five years.

States should be able to make their own decisions on how best to use their limited federal transportation dollars. Please oppose this arbitrary federal mandate by supporting the Bond amendment.

Sincerely,

JEFFREY D. SHOAF,
Senior Executive Director, Government and Public Affairs.

APRIL 27, 2005.

DEAR SENATOR: During the Senate debate on the Transportation Equity Act: A Legacy for Users, H.R. 3, you will have an opportunity to reject a new, top-down effort for federal management of state highway programs that would force highway funds to be diverted to non-transportation purposes. We urge you to support an amendment by Senate Transportation and Infrastructure Subcommittee Chairman Christopher Bond (R-Mo.) to eliminate a new program that would require a portion of federal highway formula funds to be used for storm water mitigation projects.

H.R. 3 includes a provision that would require states to use two percent of their federal Surface Transportation Program (STP) funds for storm water mitigation activities. Over the measure's life, this provision would result in nearly $900 million in highway formula funds that would not be available for highway, highway safety and bridge improvement activities.

This proposal contradicts the flexibility provided throughout the federal highway program and H.R. 3 that allows states the ability to meet their own unique transportation challenges. Storm water mitigation activities are currently eligible for STP funds—a choice left up to states, not mandated by federal law. In fact, H.R. 3 includes separate provisions that would broaden the eligibility for states to spend not only STP, but also National Highway System program funds on storm water projects.

H.R. 3 would also extend eligibility for federal funds to be used on storm water mitigation related to federal highway projects, not just those projects undergoing reconstruction, rehabilitation, resurfacing or restoration—as is the current law. Consequently, the proposed creation of a mandatory storm water mitigation ''set-aside'' is unnecessary and undermines the ability of states to make their own decisions about the best use of federal highway formula funds.

The nation has vast unmet surface transportation and water infrastructure needs. Depriving states the ability to address their highway and highway safety needs in order to fund storm water mitigation projects is a false choice. It is far more appropriate to complement state's current flexibility with the enactment of a comprehensive water infrastructure bill. Consequently, we urge you to support the Bond amendment to strike the storm water mitigation program from H.R. 3.

Thank you for your consideration of these views.

Sincerely,

THE TRANSPORTATION CONSTRUCTION COALITION.

APRIL 27, 2005.

Hon. CHRISTOPHER BOND,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR BOND: The American Association of State Highway and Transportation Officials (AASHTO) represents the State transportation agencies in the fifty States, the District of Columbia and Puerto Rico. On behalf of our member States, we support your Amendment to strike Section 1620 of SAFETEA, which would mandate that the States set-aside 2% of their Surface Transportation Program (STP) funds and of the STP portion of the Equity Bonus Program. This set-aside would divert $867 million from the core program that provides funding for highway and bridge construction, rehabilitation and repair.

Even if Section 1620 is removed, as you propose, any State could continue to spend up to 20% of a project's cost on storm water activities—but at the discretion of the State. Section 1620 would mandate that each and every State spend a specified amount of highway funds for construction of storm water facilities regardless of a State's funding priorities and needs with respect to transportation and water issues. Moreover, these funds would be set aside for storm water projects not necessarily associated with a particular highway project.

The storm water set-aside would merely divert scarce funds from the federal highway and transit program. It is through the core highway programs, including the STP program, that States and local governments build, maintain and operate a safe and efficient highway system. Erosion of the core programs through set-asides such as storm water diminishes the ability of state and local governments to respond to their needs.

We support your amendment to strike Section 1620 of SAFETEA and appreciate your leadership on this issue.

Sincerely yours,

JOHN HORSLEY,
Executive Director.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise in opposition to the Bond amendment to strike section 1620 of the underlying bill, the highway stormwater discharge mitigation program.

This section provides much-needed assistance to our States and local communities to deal with the impacts of highway stormwater discharges.

Without these funds, our Nation's highways are at risk of becoming a conduit for pollutants to reach fragile waterways and ecosystems.

In the last Congress, the Senate recognized the need for this program and adopted this provision as part of the transportation bill.

I urge my colleagues to continue their support for this vital program.

Our Nation is facing a water quality challenge.

Since the enactment of the Clean Water Act in 1970, we have taken steps to reduce pollution coming from point sources such as wastewater treatment plants and industry.

However, according to the EPA's most recent National Water Quality Inventory, 40 percent of our Nation's waterways are still impaired.

Non-point source pollution is the next hurdle for this Nation to overcome if we are to truly make progress and improve our water quality.

EPA states that urban run-off and storm sewers are the number four source of pollution in rivers, number three in lakes, and number two in estuaries.

When it rains or when snow melts, roads serve as conduits for pollutants such as oil and grease, heavy metals, and sediment that flow directly into rivers, streams, and lakes.

Because roads prevent rainfall and snowmelt from soaking into the ground, the physical characteristics of surrounding water bodies are also altered.

Groundwater recharge is reduced, affecting water supplies.

Stream channels erode due to rapid, heavy flows, leading to excessive situation in rivers and streams which severely impacts fish habitat. This is a major part of our stormwater problem in Vermont.

Water temperatures are altered, impacting wildlife.

In addition, flooding can occur which not only damages the environment but also puts human lives and property at risk.

The highway stormwater discharge mitigation program will ensure that communities have at least a portion of the resources to solve their water quality problems stemming from Federal-aid highways.

It authorizes 2 percent of surface transportation program funds to be used for highway stormwater discharge mitigation.

This would provide a total of $867 million over 5 years.

The program would reduce the impacts to watersheds from the development of highways and roads while addressing the goals in the Federal Clean Water Act by funding projects that improve water quality.

The new program emphasizes nonstructural solutions to managing stormwater runoff, which reduce costs to local communities, protect the natural water cycle, and provide more overall environmental benefits.

In my home State of Vermont, Lake Champlain, which also borders the State of New York, is threatened by pollution from storm water run off.

Although it is one of the cleanest large lakes in the United States, Lake Champlain is polluted with nutrients and sediment.

The fastest growing source of pollution reaching the lake is runoff from developed land, including highways.

Roadway drainage systems carry sediment and nutrients, and the cost of cleaning up existing roadway runoff to Lake Champlain is estimated at more than $500,000 each year for the next 9 years.

Similar problems exist in the Connecticut River basin in Vermont.

Currently, our State is struggling to deal with a backlog of expired storm water permits, extremely limited resources, and statewide storm water discharge water quality issues that threaten the growth of our economy by stalling development.

The two most important road improvement projects in our biggest city have been repeatedly delayed by storm water pollution concerns, slowing the construction schedules by months and even years.

One of our greatest assets in my home State of Vermont is our pristine environment, including Lake Champlain.

We need to ensure that as we improve our roadway network to meet the demands of a growing population we do

not sacrifice the quality of our environment that draws people to visit and move to Vermont in the first place.

I have heard some of my colleagues from more arid States question the need for these funds given climatic differences.

However, each and every State in the Nation has critical storm water mitigation needs.

Under new regulations that took effect in March 2003, over 50,000 small communities, counties, and other areas in every State must now manage stormwater runoff to meet Clean Water Act requirements.

The EPA estimated the cost to comply with these regulations to be about $1 billion per year.

Larger cities already manage stormwater pollution in order to meet discharge permits and other Clean Water Act requirements.

Every State in the country has at least one community covered by these regulations.

The arid and semi-arid western United States has receiving waters that are generally smaller than their eastern counterparts.

Therefore, the impacts of urban stormwater are more strongly felt in western waterways.

For example, in the State of Nevada, the Las Vegas Valley Stormwater Management Committee found in its 2003 annual report that zinc and lead concentrations were 10 to 96 times higher in stormwater runoff than in other parts of the Nation, an effect attributed to the fewer number of storms in the arid Southwest.

EPA estimates that Arizona communities will need about $150 million to meet stormwater regulatory requirements, plus an additional $40 million in estimated costs to address urban runoff. Arizona's portion of stormwater funding under section 1620 of the highway bill is about $17 million.

The California Department of Transportation estimates that the cost of stormwater controls on existing highways would range from between $4 million and $7.5 million per mile of highway.

The Chesapeake Bay Commission estimated in January of 2003 that stormwater retrofit costs across the watershed are more than $9 billion.

In demonstration of the nationwide support for this stormwater provision in the highway bill, I ask unanimous consent that multiple letters opposing the Bond amendment and endorsing the underlying provision be printed in the RECORD.

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

THE UNITED STATES CONFERENCE OF MAYORS,
Washington, DC, Apr. 25, 2005.

Hon. JAMES M. INHOFE,
Chair, Environment & Public Works, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

Hon. JAMES M. JEFFORDS,
Ranking Minority Member, Environment & Public Works Committee, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN INHOFE AND RANKING MINORITY MEMBER JEFFORDS: On behalf of The United States Conference of Mayors and the hundreds of cities we represent, I write to convey our strong support for the stormwater provisions of your Committee-approved SAFETEA plan to renew the nation's surface transportation programs.

These provisions, reserving less than ⅓ of a penny on every authorized dollar, is a very modest commitment to an enormous challenge before local governments struggling with contamination of drinking water and cleanup of streams, rivers, lakes and ponds from highway and street stormwater discharge, including oil, grease, lead and mercury. Moreover, we have been assured that these provisions limit funding to actual facilities on the federal aid system, which is a critical factor underlying our support of this program. This is important to the nation's cities since it ensures that users of these systems contribute something to the broader efforts under the Clean Water Act to reduce pollutants from the nation's major highways and roads.

Absent some commitment to retrofitting existing facilities on the federal aid system during this renewal period, stormwater pollution cleanup costs, including loadings attributable to the federal aid system, will be borne largely by local taxpayers through property taxes, other general taxes and wastewater utility user fees.

Finally, we disagree with the claim that this is a diversion of funds from highway construction and highway capacity needs. It is the belief of the nation's mayors that improved performance, whether it is pavement quality, the development of technology, or its stormwater quality features, are priorities for the nation as we work with you to provide a modern and fully functional transportation system for our citizens and their communities and regions.

America's mayors thank you for making these provisions part of your SAFETEA legislation and urge you to preserve this important commitment to stormwater pollution abatement efforts during your conference committee deliberations with the House. If you have any questions, please contact our Assistant Executive Director for Transportation Policy Ron Thaniel at (202) 861–6711 or e-mail at rthaniel@usmayors.org.

Sincerely,

TOM COCHRAN,
Executive Director.

ASSOCIATION OF STATE AND INTERSTATE WATER POLLUTION CONTROL ADMINISTRATORS,
Washington, DC, April 22, 2005.

DEAR SENATOR: On behalf of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), I urge your support for the Highway Stormwater Discharge Mitigation Program, Section 1620 of the Senate SAFETEA bill, S. 1072, in the 108th Congress. This new and modest program is designed to address stormwater runoff from the nation's existing transportation system. Stormwater runoff is a significant source of water pollution affecting large and small communities, as well as fish, wildlife and the natural environment.

Stormwater pollution results from paving over naturally porous ground, resulting in impervious surfaces that collect pollutants and increase overland stormwater volume and velocity. Stormwater becomes a direct conduit for pollution into the nation's rivers, lakes, and coastal waters. Studies have shown that roads contribute a large number of pollutants to urban runoff—metals, used motor oil, grease, coolants and antifreeze, spilled gasoline, nutrients from vehicle exhaust, and sediment. For example, the stormwater discharge from one square mile of roads and parking lots can contribute about 20,000 gallons of residual oil per year into the nation's drinking water supplies. Highways can increase the annual volume of stormwater discharges by up to 16 times the pre-development rate and reduce groundwater recharge.

Communities throughout the nation, including many smaller towns and counties, are required under the Clean Water Act to obtain discharge (NPDES) permits for their stormwater. Those communities, which have long understood the value of protecting their drinking water sources and recreational waters from stormwater impacts, are hard-pressed to absorb the costs of discharges from highways in addition to their other stormwater management responsibilities. This presents an unfair burden to these communities and we believe it is fair for the transportation funding system to help remedy this problem where existing highways and other roads cause significant runoff problems.

We urge you to continue to demonstrate your leadership in protecting America's waters by supporting the stormwater mitigation provision in SAFETEA. We appreciate your willingness to consider the views of the State and Interstate Water Pollution Program officials responsible for the protection and enhancement of the nation's water quality resources.

Sincerely,

ARTHUR G. BAGGETT, JR.
President.

THE ENVIRONMENTAL COUNCIL OF THE STATES,
Washington, DC, April 25, 2005.

Hon. JAMES INHOFE,
U.S. Senate,
Washington, DC.

DEAR SENATOR INHOFE: On behalf of the environmental Council of the States (ECOS*), I'm writing to request your support for the Highway Stormwater Discharge Mitigation Program, the new provision included in S. 732, the Safe, Accountable, Flexible, and Efficient Transportation Act of 2005 (SAFETEA), section 1620.

EOS strongly supports the provision because stormwater compliance is a serious issues for the states and this provision provides for $867 million over five years, specifically for stormwater mitigation projects associated with the nation's federal-aid highways. The provision would provide states with much needed resources to help meet stormwater and water quality requirements of the Clean Water Act. These funds are particularly critical during this time of budgetary constraints.

Please feel free to contact me if you would like to discuss this matter further. I may be reached at 202–624–3600.

Sincerely,

R. STEVEN BROWN,
Executive Director.

WATER ENVIRONMENT FEDERATION,
Alexandria, VA, February 7, 2005.

Hon. JAMES JEFFORDS,
Ranking Member Environment and Public Works Committee, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR JEFFORDS: The Water Environment Federation (WEF) urges you to support a dedicated funding program to mitigate the negative impacts of stormwater runoff from our nation's highways. The Highway Stormwater Discharge Mitigation Program was included in the Senate Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2003 (SAFETEA) bill, S. 1072, in the 108th Congress. It is critical that this program be included in this year's version of the transportation bill.

According to U.S. EPA, contaminated stormwater is the largest contributor to the impairment of water quality in U.S. coastal waters and the second largest source of impairment in estuaries. Contaminated stormwater is also the single largest factor in beach closures and advisories. The cost to address these problems is large, too. The U.S. EPA estimates at least $8.3 billion over 20 years in local funding needs to address Clean Water Act stormwater requirements, and an additional $142 billion to address stormwater infiltration and other problems in separate and combined sewer systems.

Congress has recognized that contaminated runoff from highways is a significant source of water quality impairment in previous highway bills (ISTEA and TEA-21), but has not succeeded in getting adequate funding directed toward this problem. A dedicated fund to address stormwater impacts from existing federal aid highways will help to prevent further degradation of streams, lakes, and beach waters. This funding will benefit all Americans by helping communities comply with Clean Water Act stormwater requirements and to clean up waters impaired by highway runoff.

On behalf of the members of the Water Environment Federation, who are professionals working to protect water quality around the world, thank you for your support of this important provision that will help to improve the nation's water resources.

Sincerely,

TIM WILLIAMS,
Managing Director, Government Affairs.

ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES,
Washington, DC, April 22, 2005.

Re Support for S. 721 and the Highway Stormwater Discharge Mitigation Program.

Hon. JAMES M. INHOFE,
Chair, Environment and Public Works Committee, Dirksen Senate Office Building, U.S. Senate, Washington, DC.

Hon. JAMES M. JEFFORDS,
Ranking Member, Environment and Public Works Committee, Dirksen Senate Office Building, U.S. Senate, Washington, DC.

DEAR CHAIRMAN INHOFE AND SENATOR JEFFORDS: We are writing to express our strong support for the Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2005 (SAFETEA) (S. 732) as passed March 16 by the Senate Environment and Public Works Committee. The Committee's bill includes a provision to authorize $867.6 million over five years for stormwater mitigation projects, using just 2% of the Surface Transportation Program funds. Such projects include stormwater retrofits, the recharge of groundwater, natural filters, stream restoration, minimization of stream bank erosion, innovative technologies, and others.

According to the U.S. Environmental Protection Agency, polluted stormwater from impervious surfaces such as roads is a leading cause of impairment for nearly 40% of U.S. waterways not meeting water quality standards. Roadways produce some of the highest concentrations of pollutants such as phosphorus, suspended solids, bacteria, and heavy metals.

AMSA represents hundreds of publicly owned treatment works, many of which have municipal stormwater management responsibilities. Your continued support for S. 732, including the Highway Stormwater Discharge Mitigation Program, would provide much-needed support to these communities. Thank you for your leadership and please feel free to contact me at 202/833-4653 if AMSA can provide you with additional information.

Sincerely,

KEN KIRK,
Executive Director.

ASSOCIATION OF METROPOLITAN WATER AGENCIES,
Washington, DC, April 22, 2005.

DEAR SENATOR: On behalf of the nation's largest publicly owned drinking water systems, I write today to express support for section 1620 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (S. 732), which would provide $870 million over five years for stormwater mitigation projects.

This language makes progress toward addressing the billions of dollars in costs that state and local governments will incur to control stormwater generated by our nation's highways.

Stormwater runoff has a significant effect on thousands of miles of the nation's rivers and streams. The bill acknowledges this impact and assists states and local communities in addressing this growing water quality problem.

Thank you for your consideration.

Sincerely,

DIANE VANDE HEI,
Executive Director.

ASSOCIATION OF STATE FLOODPLAIN MANAGERS, INC.
Madison, Wisconsin, April 25, 2005.

Hon. JAMES M. INHOFE,
Chairman, Environment & Public Works Committee, Dirksen Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN AND SENATOR JEFFORDS: The Association of State Floodplain Managers (ASFPM) is very supportive of a provision in the Senate Safe, Accountable, Flexible and Efficient Transportation Equity Act (S. 732) which provides for a Highway Stormwater Discharge Mitigation Program.

The membership of the Association of State Floodplain Managers includes state and local officials all over the country who work with FEMA and other federal agencies to reduce loss of life and property due to flooding. Our membership of almost 7,000 also includes many other professionals in the field.

We are extremely pleased that the Senate Environment and Public Works Committee has recognized the alterations that often occur in floodplains due to construction and modification of highways and roads as well as the effects of runoff pollutants on waterways, lakes, and wetlands. A commitment of 2% of the Surface Transportation Program funds to assist local officials in mitigating the effects of stormwater runoff will be a wise and important element of highway planning and construction. The funds can also be used for retrofit of already built highways to mitigate existing inadvertent adverse impacts.

ASFPM has developed a conceptual framework for alleviating such inadvertent effects on flood risk. The ''No Adverse Impact'' or ''NAI'' concept seeks to guide state and local decision makers in evaluating the effects of development and the creation of impervious surfaces. The No Adverse Impact approach focuses on planning for and lessening flood impacts resulting from land use changes. It is essentially a ''do no harm'' policy that will significantly decrease the creation of new flood damages. Further information on the concept can be found at our website: www.floods.org.

Providing for mitigation of stormwater runoff effects would significantly contribute to implementation of a No Adverse Impact approach to flood loss reduction in our nation. As the full Senate will soon consider S. 732, we would like you to be aware of our very strong support for the stormwater runoff mitigation provision. ASFPM is grateful for your commitment to this provision and urges your continued commitment.

Very sincerely,

CHAD BERGINNIS,
ASFPM Chair.

TROUT UNLIMITED,
March 15, 2005.

Re Support of Highway Stormwater Discharge Mitigation Funding in the Transportation Bill.

Hon. JIM INHOFE,
Chairman, Environment and Public Works Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN INHOFE: Trout Unlimited, the nation's leading trout and salmon conservation organization, urges you to support funding to mitigate stormwater runoff in this year's transportation bill. A similar provision, Section 1620, the Highway Stormwater Discharge Mitigation Program, was included in last year's Senate transportation bill, S. 1072.

Stormwater runoff is a significant source of pollution for all the nation's waters, and is a major cause of trout and salmon habitat loss. Roads are a major source of stormwater runoff. Road building in the United States has created millions of miles of impervious surfaces that collect water and pollutants. When mixed with rain and melting snow, these pollutants flow unimpeded into nearby streams, undermining water quality and warming water temperatures to the point where trout habitat is damaged. Furthermore, excessive and poorly designed road building through watersheds can turn normal rainstorms into small flash floods that scour stream bottoms and de-stabilize stream banks, leading to poorer quality streams over time.

Congress has recognized that runoff pollution from highways lowers water quality and destroys habitat in receiving waters in previous highway bills (ISTEA and TEA–21), but has not yet succeeded in getting adequate funding directed at curbing this pollution. In 2000, EPA estimated at least $8.3 billion over 20 years in local funding needs to address stormwater requirements. The time to take action is now as you consider the new Highway Bill.

In addition to providing much-needed funding, the bill encourages projects with the least impact on streams and promotes the use of non-structural techniques, such as created wetlands, to mitigate the negative impacts of stormwater. These approaches are generally more cost-effective and do more to protect and improve water quality and protect habitat.

Thank you for your support of this important provision in this year's transportation bill.

Sincerely yours,

STEVE MOYER,
Vice President, Government Affairs and Volunteer Operations.

FEBRUARY 10, 2005

Re Highway Stormwater Discharge Mitigation Funding in the Transportation Bill.

DEAR SENATOR: The undersigned organization dedicated to protecting America's waters urge you to support funding to mitigate stormwater runoff in this year's transportation bill. A similar provision, Section 1620, the Highway Stormwater Discharge Mitigation Program, was included in last year's Senate transportation bill, S. 1072.

Stormwater runoff is a significant source of pollution for all the nation's waters, and roads are a major source of stormwater runoff. When rain falls on a natural landscape, the water is absorbed by plants and soil where it is filtered and released slowly into nearby streams and rivers and replenishes ground water supplies. Road building in the United States has created millions of miles of impervious surfaces that collect water and pollutants, including oil, grease, lead and other heavy metals. When mixed with rain and melting snow, these pollutants flow unimpeded into nearby streams, ditches, rivers and ponds. Excessive and poorly designed road building through watersheds can turn normal rainstorms into small flash floods that damage natural systems and are very costly to local communities. Stormwater runoff also pours into sewers causing overflows of untreated sewage into drinking water supplies and recreational waters.

Congress has recognized that runoff pollution from highways contaminates downstream waters in previous highway bills (ISTEA and TEA–21), but has not yet succeeded in getting adequate funding directed at curbing this pollution. Under the Clean Water Act, thousands of local communities must obtain permits for their stormwater discharges and develop programs to mitigate runoff.

In 2000, U.S. EPA estimated at least $8.3 billion over 20 years in local funding needs to address stormwater requirements, and an additional $92 billion and $50.3 billion to address stormwater infiltration and other problems in separate and combined sewer . . .

Environmental Integrity Project—Michele Merkel, Washington, DC; National Audubon Society—Kasey Gillette, Washington, DC; Natural Resources Defense Council—Nancy Stoner, Washington, DC; The Ocean Conservancy—Catherine Hazlewood, Washington, DC; Sierra Club—Ed Hopkins, Washington, DC; Smart Growth America—Don Chen, Washington, DC; Surface Transportation Policy Project—Ann Canby, Washington, DC; Trust for Public Land—Alan Front, Washington, DC; U.S. Public Interest Research Group—Christy Leavitt, Washington, DC; Delaware Nature Society—Eileen Butler, Hockessin, DE.

Control Growth Now, Inc.—Dan Lobeck, Sarasota, FL; Keep Manatee Beautiful—Ingrid McClellan, Bradenton, FL; Reef Relief—Paul G. Johnson, Crawfordville, FL; South Walton Turtle Watch—Sharon Maxwell, NW Coast, FL; St. Lucie Audubon Society—Harold Philips, Fort Pierce, FL; Munson Area Preservation, Inc.—Margaret Fogg, Tallahassee, FL; Apalachicola Bay & Riverkeeper—Apalachicola, FL/GA; Georgia River Network—April Ingle, Athens, GA; Upper Chatahoochee Riverkeeper—Elizabeth Nicholas, Atlanta, GA.

American Bottom Conservancy—Kathy Andria, East St. Louis, IL; Center for Neighborhood Technology—Jacky Grimshaw, Chicago, IL; Chicagoland Transportation & Air Quality Commission—Melissa Haeffner, Chicago, IL; Environmental Law & Policy Center of the Mid-West—Albert Ettinger, Chicago, IL; Prarie Rivers Network—Jean Flemma, Champaign, IL; Kentucky Waterways Alliance—Judith Peterson, Munfordville, KY; Gulf Restoration Network—Cynthia Sarthou, New Orleans, LA; Save the Illinois River—Ed Brocksmith, Tahlequah, OK; Connecticut River Watershed Council—Tom Miner, Greenfield, MA.

Leominster Land Trust—Peter Angelini, Leonminster, MA; Massachusetts Watershed Coalition—Leominster, MA; North and South Rivers Watershed Association—Samantha Woods, Norwell, MA; Taunton River Watershed Alliance—Bill Fitzgerald, Franklin, MA; American Fisheries Society—Jessica Geubtner, Bethesda, MD; Anacostia Watershed Society—Jim Connolly, Bladensburg, MD; Chesapeake Bay Foundation—Roy Hoagland, Annapolis, MD; Maryland Conservation Council—Mary Marsh, Arnold, MD; Patapsco Riverkeeper—Lee Walker Oxenham, Baltimore, MD.

Missouri Coalition for the Environment—Edward J. Heisel, St. Louis, MO; Environmental Coalition of Mississippi—Jackie Rollins, Madison, MS; American Wildlands—Amy Stix, Bozeman, MT; Citizens for a Better Flathead—Mayre Flowers, Kelispell, MT; Lower Neuse Riverkeeper & Neuse River Foundation—Larry Baldwin, New Bern, NC; New Hampshire Rivers Council—Carl Paulsen, Concord NH; Hackensack Riverkeeper, Inc.—Hugh M. Carola, Hackensack, NJ; New York/New Jersey Baykeeper—Andrew Willner, Keyport, NJ; and Amigos Bravos—Rachel Conn, Taos, NM.

Mr. JEFFORDS. The Bond amendment is opposed by the: U.S. Conference of Mayors, State Water Pollution Control Administrators, Environmental Council of States, Trout, Unlimited, Metropolitan Sewerage Agencies, Metropolitan Water Agencies, American River, and a host of other organizations.

I ask unanimous consent that a letter from the League of Conservation Voters indicating its opposition to the Bond amendment and its intent to score this vote be printed in the RECORD.

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

LEAGUE OF CONSERVATION VOTERS,
Washington, DC, April 26, 2005.

Re: S. 732 Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (SAFETEA). Remove provisions that weaken the Clean Air Act and National Environmental Policy Act (NEPA). Oppose the Bond (D–MO) motion to strike stormwater mitigation funds.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: The League of Conservation Voters (LCV) is the political voice of the national environmental community. Each year, LCV publishes the National Environmental Scorecard, which details the voting records of Members of Congress on environmental legislation. The Scorecard is distributed to LCV members, concerned voters nationwide, and the press.

LCV urges Congress to pass a balanced transportation bill that protects public health and the environment as it encourages the development of transportation options. SAFETEA, as drafted, will mean increased air pollution from cars and trucks and weakened environmental review of projects.

To keep growth in traffic from undermining regional air pollution control strategies, the Clean Air Act requires that regional transportation plans contribute to the timely attainment of health-based air standards. S. 732 would weaken these requirements, by constraining the analysis of transportation impacts to 10 years, rather than the 20-year planning horizon now used. As a result, the actual impacts of new projects would not be considered, resulting in long-term increases in air pollution, traffic and sprawl, and increased public health impacts.

Signed into law in 1970 by the Nixon administration, NEPA requires the federal government to examine the potential environmental impact of federally funded activities and share its findings with the public. Under NEPA, the Department of Transportation is afforded the opportunity to fix problems with environmental compliance and review before decisions are finalized. The government's own findings demonstrate that environmental reviews are not a significant cause of delays. If, however, this bill includes new, rigid deadlines and review procedures, federal agencies would be forced to cut corners. This could lengthen the process down the line by spurring legal challenges and forcing agencies to make time-consuming revisions.

In addition, LCV urges you to oppose the Bond (R–MO) motion to strike the Highway Stormwater Discharge Mitigation Program, Section 1620. This motion would eliminate a critical program, which would provide up to $867.6 million (only two percent of Surface Transportation Program funds) to mitigate the effects of stormwater runoff from roads and highways. This is especially important since nearly half of the pollution in our waterways is due to runoff from roads and parking lots.

LCV's Political Advisory Committee will consider including votes on these issues in compiling LCV's 2004 Scorecard. If you need more information, please call Tiernan Sittenfeld or Barbara Elkus in my office at (202) 785–8683.

Sincerely,

DEB CALLAHAN.

Mr. JEFFORDS. One of our Nation's most precious resources is our water. Water quality affects the environment, wildlife, our health, and our economy.

Section 1620 of the transportation bill recognizes the significant contribution that roads make to stormwater pollution, and it provides critical funding to help States and local communities mitigate these damages.

I urge my colleagues to oppose the Bond amendment.

I yield the floor.

Mr. WARNER. Mr. President, I thank the distinguished managers of this bill. I had been discussing with Senator BOND options with regard to this amendment. Those discussions as yet have not yielded any course of action. I judge that he took the initiative here; I just was unaware he had taken it.

At this time I am chairing a hearing in the Armed Services Committee on military intelligence. We have finished our open session. We are now proceeding to S. 407 to conclude our hearing with a closed session. I am not able at this juncture to address this important amendment from the perspective of the Senator from Virginia who is the sponsor of the amendment in the committee, which was adopted as part of the markup. So I thank the distinguished chairman. My understanding is he did address the Senate with regard to my unavailability at this time. I

will, however, at a time mutually convenient, come to the floor and give my response to the Bond amendment.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. I thank the Senator from Virginia. I serve on the Armed Services Committee under his capable leadership. He chairs that committee. He is also the longest serving member of the committee that I chair, Environment and Public Works. It is very rare that I would oppose something he is in favor of. This might be that exception. But let me give him our assurance that nothing is going to happen to dispose of this amendment until he has adequate time to complete his hearing and come down and be heard on this amendment.

Mr. WARNER. Mr. President, I thank the distinguished Senator from Oklahoma for his usual gracious work with his colleagues here in the Senate. I will return.

Mr. INHOFE. Mr. President, we have talked about this issue several times before. The distinguished Senator from Virginia has very strong beliefs. Those beliefs are shared by the ranking minority member and by several members of our committee. This amendment was added in committee. It is one I voted against at the time. I did oppose it. However, I know there are very strong feelings about it and I want to make sure everybody gets to be heard, and I am sure we will end up with a rollcall vote. I would only make a couple of comments.

There are flexible provisions in the underlying bill that will help States address their storm water needs and maintain their ability to determine how to spend these limited dollars. For that reason I had felt a mandatory 2-percent set-aside in this bill was not necessary.

Currently, States are allowed to use their STP funds for environmental enhancements which include a variety of projects, including storm water mitigation. Our bill gives States the option to use STP and NHS money for storm water mitigation. Our bill allows those States that wish to use highway money to address storm water runoff and help communities comply with phase 1 and 2 on clean water runoff to do so.

I think probably one of the reasons for my opposition to this is I spent 4 terms as mayor of a major city, Tulsa, OK. I have always been a strong believer that the closer you get to home, the better the decisions are. In other words, the idea that somehow Washington knows more about my State of Oklahoma than the people in my State of Oklahoma is something I have disagreed with.

If this amendment should be agreed to and the bill should become law, if we in the State of Oklahoma want to spend 2 percent or even more of our money for this purpose, we can do it. But if we have other priorities that are greater, as determined by those of us in Oklahoma, then I think that should take precedence.

For that reason I will respectfully support this amendment. I am sure there will be more discussion on it later on.

I am sure the ranking minority member will agree with me, we do not want to do anything further other than hear debate until Senator WARNER, whose provision it was that was put in the bill in committee, has ample time to debate it and to come to the floor and try to work out any compromises he may be successful in working out with the author of the amendment, Senator BOND.

With that, let me renew our appeal to Members to come down with their amendments. I am glad we are finally getting some activity here, some amendments coming down. It is very important we move on with this bill. We have several pages of amendments. I know a lot of these amendments are going to be agreed to in a managers' amendment we will be propounding before too long. There are some that will have to be fought out on the floor. It is my desire, and I am sure the desire of the ranking minority member, that we get on with these amendments. I have been here long enough to know what is going to happen. We are going to have all day today to handle amendments, and tomorrow. People are not going to bring them down. Then when something happens or when cloture is filed, everyone is going to get hysterical and say, Why didn't I have time to offer my amendment?

You may not have time. We are serving warning to you right now, that could happen. Now there is time and we encourage you to come down. This amendment under discussion now, which the Senator from Indiana has graciously set aside—it is his amendment—is one that will be controversial and I suspect there will be many members on the minority side of our committee who want to be heard. I think they were unanimous in supporting Senator WARNER in the committee at that time.

We hope those people will come down and get the debate out of the way so we can proceed with this amendment and with any other amendments that come to the floor. Let's keep in mind, as I said yesterday on more than one occasion, what will happen if we are not successful in getting this bill passed. We are on our sixth extension. The extensions do not work. Our money is not well spent. People are dying on the highways. There are things that are happening that will not happen unless we pass this bill. Without an extension there is not going to be any chance to improve the donor status. My State is a donor State. I remember when it was 75 percent as a guarantee to come back to the States for money paid into the highway trust fund, revenues that were collected in my State of Oklahoma. Now it is up to 90.5 percent. If we had been successful with the bill last year, it would have been 95 percent.

Senator JEFFORDS and I did everything we could to get our bill passed. We are going to try to make that happen this time. But for those States that are concerned about their donor status, they better be lining up and supporting this. We do not know in conference what is going to come out in terms of a number, but we do know this: Donor status of 90.5 percent will at least go up to 91 or 92 percent. So they are going to be better off, but not if we operate on an extension. If we operate on an extension, we are not going to have any new safety core programs.

They call this SAFETEA. I know there is an effort by the chairman of the committee in the other body to rename it TEALU. I do not have a real problem with that. But it is a safety bill. We have many safety provisions, core programs that respond to the thousands of deaths each year on our roadways. If we go on extensions, we are not going to make any of these safety provisions a reality.

If we go on extensions instead of a bill, there is not going to be any new streamlining. In fact, some of the current obstacles in helping us to get roads built and bridges improved can be corrected, but they can only be corrected if we are able to pass this bill. If we operate on extensions, there is no increased ability to use innovative financing, thereby giving the States more tools.

This is something that is so important. Ever since the Eisenhower administration, we haven't changed the way we fund our road program. There are a lot of ideas out there where we could use the public-private partnership to build more roads and bridges. In fact, we have in this bill a provision that establishes a commission to study various ways, innovative ways to change the way we finance our roads, highways, bridges, and infrastructure in America. But if we are on an extension, if we do not pass this bill, we are not going to be able to do that.

We have one provision in here, Safe Routes to School, which is one I felt strongly about, but I was not the leader on it. There are several on our committee as well as over on the House side. As I recall, this is one of the programs Congressman OBERSTAR felt very strongly about. If we operate on an extension, we are not going to have the Safe Routes to School Program. We could have deaths of young people as a result of our failure to act. That is why this is so important.

Certainty in planning: On an extension, there is no certainty. You think we are going to get the same amount of money that was already authorized previously, but nothing else has changed. We don't know what is going to happen next year. We don't know whether we are going to have a bill that will be passed a month from now or 2 months from now or a year from now. Therefore, there is no long-range planning that can take place.

I served in the State legislature in Oklahoma many years ago. I know when you start planning for the future

you have to plan for your contract season. It is not as severe in Oklahoma as it is in Vermont or some of the Northern States, but certainly these things have to be considered. We have to have our labor supply ready to absorb, to be able to accommodate a heavy schedule of construction, so we need to be able to plan for that.

In this bill we have a border program, Borders and Corridors. It is very important we do these to accommodate the States such as Texas, California, Arizona, and other border States along the northern border, to help them out with that program. Without this bill we are not going to be able to do that.

There are chokepoints. A lot of people think of the highway bill as just highways. This is intermodal transportation. It affects railroad crossings. Our State of Oklahoma is a State that has a channel. It comes all the way to my town of Tulsa, OK. A lot of people don't know that. We know there are chokepoints where barge traffic will come up; it will go to rail traffic; it will go to truck traffic. This bill addresses intermodal transportation and eliminates chokepoints.

Finally, we have the firewalls. What has bothered me more over the years than anything else I can think of is how people will raid trust funds. Politicians in State legislatures—it has happened here in Washington—when no one is looking and there is a large surplus in some trust fund, what do they do with a large surplus, I ask Senator JEFFORDS? They run in there and they raid it. Consequently there are no real protections under an extension. But we do have protections in the bill that is before you.

I have every confidence—I don't want to sound as though I am doubting whether we are going to have a bill. But we need to pass it in time to get it to conference, back from conference, get it voted on, and in law by May 31. That is getting very close.

In the Senate we will be going into a recess next week. We will not be here for 7 days. It is my expectation as soon as we get back, we will be in a position to finish this bill, get it to conference, and meet this deadline.

I know I speak on behalf of our minority member, the ranking member, the Democratic member on the committee, Senator JEFFORDS, in urging people to come down and offer their amendments.

Mr. JEFFORDS. If I may interrupt for a moment, I support what you are saying 100 percent. I warn Members they should not give any thought, right now, anyway, of believing they do not need to be here. We have to get this done. The country needs it.

Mr. INHOFE. The Senator and I know they are up there right now. Come on down.

Mr. JEFFORDS. Mr. President, I join the chairman in urging colleagues to bring amendments to the floor. It is time to get this bill out of the traffic jam it is currently stuck in. If we are going to get the highway bill done before the end of May, the Senate needs to accelerate action and shift into higher gear. Our States, cities, and towns need this bill. The American public needs this bill. We have heard from the National Governors Association, the National Conference of State Legislatures, the Council of State Governments, the National Association of Counties, the U.S. Conference of Mayors, and the National League of Cities.

All asking the same thing, get this bill done.

The bill before us will strengthen our nation's transportation system, create hundreds of thousands of jobs, improve the safety of our roads, highways and bridges, and support and improve our transit systems.

We cannot afford to wait any longer to make these much needed investments.

Our transportation system needs help now: 38 percent of our major roads are in poor or fair condition; 28 percent of our bridges are structurally deficient and unsafe for travel; 5.7 billion gallons of fuel are wasted annually while motorists sit in traffic.

Traffic congestion means longer delays, higher costs, increased accidents, more pollution, added frustration and keeps us from spending time with our family and friends.

In 2001, according to the American Public Transportation Association, congestion costs to American motorists were nearly $70 billion.

Each peak-period road user lost approximately $1,200 in wasted fuel and productivity.

It is time to get this bill on the fast track and start making some progress.

Once again I thank Chairman INHOFE, and Senators BOND and BAUCUS for the collaborative process in which we have proceeded on this bill.

We are ready to take up amendments. I urge my colleagues to come to the floor and offer them.

I yield the floor.

Mr. INHOFE. Mr. President, I agree wholeheartedly with the comments made by the ranking member, Senator JEFFORDS. It is interesting when he reads off the list of people anxious for a bill.

In the case of Oklahoma, when I was mayor of the city of Tulsa, we were interested in being able to plan ahead. We have our Council of Governments saying they need to have it. We have our State department of transportation that says they are going to miss their construction season. We have to get it done.

While Senator JEFFORDS and I many times philosophically disagree, the fact we agree so much on getting this bill completed speaks well of what we are trying to do. It demonstrates the broad base of support. I don't have any doubt we will be able to get passage. The problem is if we do not get the amendments for consideration, it will be a logjam when we return from recess and could very well be a problem in meeting our deadline of May 31. That is what we need to focus on.

We are in agreement on most of the provisions. There is some disagreement on the formula. Formulas are always a problem. I have been very happy about the way the Senate has done this. After having spent 8 years in the other body and serving on the Transportation Committee of the House of Representatives, I remember meetings we had. I don't say this in a critical way, but they operate on the basis of projects. We do, too, except the difference is we talk about formulas and try to be as equitable as possible and let the States determine their projects.

It gets back to the argument, who is in a better position to know the needs of my constituents in the State of Oklahoma? Is it Washington or our transportation commissioners responsible to the State legislature and the needs in the State?

Some people say in an expensive bill, there is pork. There is no pork in the bill. There are only two projects in the entire bill. People need to understand that.

This will change to some degree when we get to conference because it has to be agreed to by a majority of the conferees on the House, as well as a majority of the conferees from the Senate. To devise a formula that no one will disagree with is absolutely impossible. The only choice we have if we look for unanimity in approving a formula would be to have Senator JEFFORDS and me go to 60 Senators and say we will take care of you and we will forget about the other 40. We would have a bill and do it and it would be perfectly legitimate and not unethical.

We take into consideration the Interstate Maintenance Program. It varies from State to State. We take into consideration the National Highway System, the lane miles, the principal arteries, excluding the interstate VMT on principal arteries, excluding the interstate diesel fuel used on highways, and total lane miles on principal arteries divided by population. All these things have gone into the formula.

The Surface Transportation Program, which we have talked about, is part of the consideration in terms of total lane miles.

The Highway Bridge Replacement Rehabilitation Program I am particularly sensitive to because Oklahoma ranks last in terms of the condition of bridges. These things have to be considered.

The Recreation Trails Program varies from State to State. There has to be something in a formula that will take into consideration these programs.

Border planning and operations: Since the passage of NAFTA and now they are considering CAFTA, there are unusual situations taking place from State to State. We have low-income States. My State, Oklahoma, is a low-income State. We have low-population States such as Wyoming, Montana, and

some of the States where they still have to have roads, but they do not have the number of people so that has to be part of the consideration and part of a formula.

They have low-population density States, high-fatality States. Some States have higher fatalities than other States. That has to be taken into consideration.

All these things—donor status, donee status—all are important. But the bottom line is, I can take all 12 or 14 factors and put them into a formula program. I can find areas where Oklahoma is not considered as well as Texas or as Vermont. I can find factors that treat Vermont worse than they treat Montana or some of the other States. If someone is looking to be ahead on all factors, there is not 1 of 50 States that can say they are.

I ask our Members to consider that. Formulas consider a lot of things. We have done a good job with the approach we have. It is a harder approach to take than the approach the other body uses. It is easier for them to get a bill on and off the floor. Timing is important. There is not a Member of this Senate who does not agree we need to get a bill passed.

Members may not like the bill as it is. Come on down with amendments. We are waiting for you. We invite Members.

I yield the floor.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Do I understand, Mr. President, that the amendment that would strike the storm water mitigation provisions from the bill that was reported out by the committee is the pending business?

The PRESIDING OFFICER. The Senator is correct.

Mr. SARBANES. Mr. President, I rise in strong opposition to this amendment. First, I commend the committee, the chairman, the ranking member, and my colleagues, Senator WARNER and Senator CHAFEE, for including this provision in the legislation before the Senate.

This provides for a set-aside of a State Surface Transportation Program for storm water runoff mitigation. All of our local officials—our mayors, our county commissioners, and others—say this is essential as we address reauthorization of the Surface Transportation Program. It is a very modest amount in the overall context of the bill, less than $900 million nationwide to meet a very important and pressing need that confronts local governments struggling to deal with the contamination of drinking water and the cleanup of streams, rivers, lakes, and ponds from highway and street storm water discharge.

A great deal of the pollution comes from these runoffs off the roadways. We are talking about oil, grease, lead, mercury. In my own State, where we are working so hard on the Chesapeake Bay, we know the runoff from highways contributes very large amounts of nitrogen and phosphorous and sediment to the bay and confronts the State with a very serious clean water program.

Many of our Nation's highways and roads were built before the implementation of storm water regulations. States are required to have pollution reduction from new highways under EPA regulations, but we need to have a mitigation program to deal with pollution from existing Federal highways and associated paved services. Otherwise, we will have great difficulty in meeting federally mandated water quality standards. The standards have been put into place. The question now is, How do we reach the standards?

My colleagues on the committee have done a very skillful job. I, again, commend the chairman, the ranking member, and Senators WARNER and CHAFEE who, of course, are on the committee and try and find ways to provide help to States and localities in fixing this problem.

This is an effort, of course, to make funding available to deal with the storm water impact to water quality and the stream channels. The estimates are quite large in terms of what is needed. This amendment has very strong support from a broad range of groups. It is a relatively small amount out of the total highway budget, but it deals in a very focused way with a significant problem. It is a very wise investment of these moneys in order to achieve a very marked improvement with respect to the mitigation of the pollution impacts of storm water discharge.

I commend the committee for the work they have done on this amendment, for its inclusion in the legislation. I very strongly support the committee bill and very much hope my colleagues will oppose the amendment which would strike a provision that is in the committee bill. This amendment takes out of the committee bill a provision developed within the committee in a very skillful way that addresses a very important problem. I very much hope my colleagues will reject this amendment which strikes the storm water mitigation provisions reported in the committee.

Mr. JEFFORDS. If the Senator will yield, I thank him for his excellent presentation. We assure the Senator we are listening and we will take the Senator's advice.

Mr. SARBANES. I thank the ranking member very much.

What the committee has done is a very important step forward in a very balanced bill. I very much hope we will sustain this provision in the committee-reported bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. INHOFE. Mr. President, while we are again encouraging people to bring amendments down to the floor, I would like to make some comments on a statement that was made yesterday that affects our committee, the Environment and Public Works Committee.

Yesterday evening, the junior Senator from Delaware discussed his hold on Stephen Johnson's nomination to be Administrator of the EPA. His main complaint about Steve Johnson is about a lack of technical data from EPA on Clear Skies. We are talking about the Clear Skies legislation we considered in our committee that the administration has come forth with.

But there has been no lack of technical data. The EPA has provided the Environment and Public Works Committee with over 10,000 pages of modeling on costs, job impacts, fuel switching, air quality, and deaths avoided for the various multi-emissions proposals.

This information provides extensive detail about the impacts on the Nation as a whole, regions, and individual States. Claims that EPA did not supply sufficient information to make an informed decision simply do not have any credibility.

In fact, this is in direct contrast to 2002, when then-Chairman Jeffords—I have been making all kinds of complimentary remarks about the ranking member, Senator JEFFORDS. Back in 2002, Senator JEFFORDS was the chairman and I was the ranking member. He came forth with something he had very strong feelings about, and that was the Clean Power Act. When he marked it up, we had less than 1 week to review a 53-page bill, without any modeling information whatsoever. Let me repeat that: less than 1 week to mark up a 53-page bill, which was substituted for the original 5-page bill. I do not say that critically because we did it. Nonetheless, we did it without the information I believed was necessary at that time. We did not have information.

In addition, the quality of information in 1990—this is back when we considered the Clean Air Act Amendments—paled in comparison to what the executive branch has been able to produce for us using today's more sophisticated models run on powerful supercomputers. The committee had far more information about the impacts of the Clear Skies legislation than the entire Senate had in 1990 during the debate on the Clean Air Act amendments of 1990.

Now, what has been particularly frustrating is that the EPA data request was used as a red herring to vote against Clear Skies. It is now being used as an excuse to oppose Steve Johnson. I do want to talk about Steve Johnson a minute because it is very unusual we have the opportunity to have a Director with the background of Mr. JOHNSON.

When we notified the minority last November 15 of our intentions of marking up the Clear Skies bill in February,

they never once raised the issue of needing more data from the EPA until after we delayed the first markup on February 16. Then they mentioned the need to get more data from the EPA almost as an afterthought.

When we offered to delay the markup 2 weeks, in order to negotiate a compromise, we were told they needed data from EPA, which would take 6 months to produce. This, of course, was after our committee already spent 5 years conducting 24 hearings on the topic. We were told, after all this committee work and the 10,000 pages of analysis, that the minority still needed more analysis before they would be willing to even begin negotiating.

Nevertheless, EPA has offered to spend considerable resources to analyze each of the multi-emission proposals using an identical methodology to guarantee that comparisons of the three bills are apples to apples. Yet the charge is being leveled that this offer still is not enough.

Last week, the EPA offered to conduct even more analysis to satisfy Senator CARPER, offering detailed data on S. 131, the President's Clear Skies proposal; secondly, the Clear Skies manager's amendment from March 9, 2005—that was ours; S. 843, Senator CARPER's Clean Air Planning Act; and, fourth, S. 150, Senator JEFFORDS' Clean Power Act.

The data would consist of the cost of each bill; the fuel mix for electricity production; Henry-Hub natural gas prices; average mine mouth coal prices; regional electricity prices; emission allowance prices; national and regional coal production; the response of electric generating facilities—for example, the capacity retrofitted with pollution control equipment; national and State-by-State emission levels for sulfur dioxide, nitrogen oxide, and mercury; the national aggregate CO_2 emissions; public health and environmental provisions benefits of each bill, such as the total monetized health benefits, premature mortality benefits, and visibility benefits; and the effects of each bill on nonattainment areas—for example, for each current nonattainment area, EPA will list the counties in the area and project whether the area comes into attainment with ozone and particulate matter.

This is for all four pieces of legislation, not just one, everything that has been asked for. This was an unprecedented offer of information by the administration to the junior Senator from Delaware and, frankly, it is more information than I believe he needs in order to move forward on Clear Skies. This is in addition to the 10,000 pages of data the committee has already received. This information would take the staff of EPA 6 to 8 weeks to complete.

Unfortunately, even this offer is not enough. The junior Senator from Delaware is insisting on the same level of analysis that the administration conducted for the President's proposal, which would take a half a year. Strangely, he insists this would allow him to negotiate multiemissions legislation this spring.

This is a level of detail that no administration has ever conducted for a legislative proposal at this stage in the process and, quite frankly, a level of detail that is inappropriate to request. If the EPA were requested to conduct this type of analysis for every bill, we would have to double the size of the EPA, and all of their employees would be working full time on congressional requests. To suggest that a congressional committee needs this type of analysis before it can move on legislation is ridiculous.

In the history of the Clean Air Act, we have more and better quality data today than we have ever had in moving legislation, including the amendments of 1990. Those are the amendments that were so significant and have had such a positive effect on air quality. We have more data than we ever had in moving any environmental legislation.

This demand for data was an excuse for delaying the Clear Skies legislation and, quite frankly, it was an excuse to delay or obstruct Steve Johnson's nomination. This appears to be part of a larger strategy to obstruct this President's EPA nominees. Last Congress, Governor Leavitt's nomination hearing was first boycotted by the minority, then delayed for over 50 days. Today, Steve Johnson is also being obstructed.

For just a moment, I wish to say something about the nomination of Steve Johnson to be the next Administrator of the Environmental Protection Agency. It is unfortunate we find ourselves in a position of having that nomination filibustered by the Democratic side. Mr. Johnson is not a partisan politician. In fact, he is neither a partisan nor a politician. I can't tell you right now whether he is a Democrat or Republican. I don't think it makes any difference.

Steve Johnson is a career EPA employee who has risen through the ranks under both Republican and Democratic administrations. He joined the EPA during the Carter administration and was promoted to senior management posts during the Clinton administration. He has also been confirmed twice by the Senate, both times without opposition. Stephen Johnson is not a partisan. He is also a scientist and, if confirmed, would be both the first scientist and first career EPA employee to serve as the head of the agency. We never had someone who has a scientific background as Administrator of the EPA, nor have we had anyone who has gone through the ranks of the EPA. There has never before been a nominee who has known this agency so well prior to becoming Administrator.

One of the big problems we have had with Administrators who are not familiar with the agency is when we have something that needs to be done, it takes them forever to sort through to find out where the bad guys and good guys are and where the reports are coming from. He already knows. He spent 24 years doing this.

He is trained in biology and pathology. After graduating from college, he worked for the Computer Sciences Corporation at the Goddard Space Flight Center and was signed to serve as a junior member of the launch support team for the first Synchronous Meteorological Satellite, SMS–1. He joined EPA during the Carter administration as a health scientist in the Office of Pesticides and Toxic Substances. He left EPA briefly in 1982 to join a private lab and then returned in 1984 to EPA's Office of Prevention, Pesticides and Toxic Substances. Throughout the years Mr. Johnson climbed through the ranks, eventually being appointed to senior management positions by the Clinton administration, including Deputy Director of the Office of Pesticide Programs and the Principal Deputy Assistant Administrator at that time.

I have to say I was there when this happened during the Clinton administration. I asked him a lot of serious questions, and I did not object to his nomination even though it was propounded by the Clinton administration.

In 2001, he was nominated by President Bush to serve as the Assistant Administrator for that program office. He was confirmed without opposition. Just last year when Mike Leavitt became Administrator he was nominated to the No. 2 spot at the agency. Once again, he was confirmed without any opposition.

Steve Johnson's qualifications are beyond question. The question is, why are we here fighting for cloture on not just a qualified nominee but a nominee who has been consistently promoted by both Democratic and Republican Presidents? I believe Jonathan Adler did a good job describing this nomination process when he wrote the following in the National Review:

> President Bush's selection of Steven L. Johnson as administrator of the Environmental Protection Agency was universally praised in Washington, D.C. Democrats and Republicans, environmental activists and industry lobbyists all hailed the pick as a positive step for the troubled agency. Stalwart conservative Sen. James Inhofe . . .

—that's me—

> applauded the choice while the Environmental Working Group's Ken Cook called it a ''spectacularly good appointment.'' The era of good feelings did not last long, however. Once slated for a quick and easy confirmation, Johnson is now the victim of an old-fashioned political obstruction as Senate Democrats again target the administration's environmental policies.

This isn't the first time in recent history that an EPA Administrator has been held up. In fact, that precedent was set the last time someone was nominated by this President. Governor Mike Leavitt was treated with equal courtesy as Steve Johnson. I know some, including the junior Senator from Delaware, are now saying: I supported Mike Leavitt and was there for him. But that is simply not accurate.

In fact, when the committee was scheduled to vote on the Leavitt nomination, the vote was boycotted by the Democrats. Not a single committee Democrat showed up, including the Senator from Delaware. It was part of the boycott.

The three Administrators previous to Mike Leavitt took an average of 8 days to confirm. Mike Leavitt's confirmation took 50 days, 50 days to confirm a Cabinet-level position for an individual who clearly is qualified.

So this is nothing new for a qualified EPA Administrator nominated by President Bush. It has been nearly a month that Steve Johnson has awaited confirmation. The time has come to confirm Mr. Johnson.

During the debate we will likely hear some negative comments about the President's record on the environment. What you hear from the Democrats will likely be a very distorted view. The facts are very plain, very easy to understand. By virtually every measure, under this President's stewardship, our air, our water, and our land are cleaner. We have a cleaner and healthier environment than we did prior to George W. Bush taking over as President. That is simply the simple truth.

Just to highlight a few of the actions by the President, he signed into law historic bipartisan legislation that has accelerated the cleanup of brownfields—all of the States are concerned about that—better protecting public health, creating jobs, and revitalizing communities. George W. Bush is the first President ever to require the reduction of mercury emissions by powerplants. I can remember when there were full-page ads during the campaign saying that this President is lowering the emissions. There were no restrictions before he came in. He is the one who made the first reduction in our history. This President has imposed a mandatory 70-percent reduction in mercury emissions from these sources.

Just a year ago, the President announced an aggressive new national goal, moving beyond the policy of no net loss wetlands to a new policy of an actual net increase for wetlands each year. His Great Lakes Legacy Program will help to clean up one of the largest systems of freshwater on Earth, roughly 18 percent of the world's supply. His Clear Skies initiative would have reduced SO_X, NO_X and mercury emissions by 70 percent—the largest mandated reduction of any President in the history of America. It wasn't Bill Clinton. It was George W. Bush.

Despite all the rhetoric to the contrary, the environment and our families are healthier because of George W. Bush. The facts don't lie.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Oregon.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak for up to 10 minutes as in morning business.

Mr. INHOFE. Reserving the right to object, let me say to my good friend from Oregon that the leader is coming down to make a statement. Would he withhold his request until the leader gets here and makes his statement?

Mr. WYDEN. If I could engage my colleague in a colloquy, I assume the leader is going to speak relatively briefly as well. If that is the case, I certainly want to be courteous. I ask unanimous consent, then, that I have up to 10 minutes to speak after the majority leader has spoken and that my colleague from Rhode Island, Senator REED, have the opportunity to speak for up to 10 minutes after me.

The PRESIDING OFFICER. Is there objection?

Mr. INHOFE. I object.

The PRESIDING OFFICER. Objection is heard.

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

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

ORDER OF PROCEDURE

Mr. FRIST. Mr. President, again, we find ourselves with an objection to a committee meeting and doing its work. There is objection on the other side of the aisle to the Judiciary Committee meeting. Therefore, we need to recess the Senate to allow the committee to meet.

I ask unanimous consent that the Senate stand in recess until 2 p.m. today.

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FRIST. With that objection, I ask unanimous consent that when the Senate reconvenes at 2 p.m., following the remarks of the two leaders, Senator WYDEN be recognized for up to 10 minutes as in morning business, to be followed by Senator THUNE for up to 10 minutes, to be followed by Senator REED for up to 10, to be followed by Senator SALAZAR for up to 10.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, I move that the Senate stand in recess until 2 p.m. today, and 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 motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS) is necessarily absent.

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

The result was announced—yeas 98, nays 1, as follows:

[Rollcall Vote No. 112 Leg.]

YEAS—98

Akaka	Domenici	McCain
Alexander	Dorgan	McConnell
Allard	Durbin	Mikulski
Allen	Ensign	Murkowski
Bayh	Enzi	Murray
Bennett	Feingold	Nelson (FL)
Biden	Feinstein	Nelson (NE)
Bingaman	Frist	Obama
Bond	Graham	Pryor
Boxer	Grassley	Reed
Brownback	Gregg	Reid
Bunning	Hagel	Roberts
Burns	Harkin	Rockefeller
Burr	Hatch	Salazar
Byrd	Hutchison	Santorum
Cantwell	Inhofe	Sarbanes
Carper	Inouye	Schumer
Chafee	Isakson	Sessions
Chambliss	Jeffords	Shelby
Coburn	Johnson	Smith
Cochran	Kennedy	Snowe
Coleman	Kerry	Specter
Collins	Kohl	Stabenow
Conrad	Kyl	Stevens
Cornyn	Landrieu	Sununu
Corzine	Lautenberg	Talent
Craig	Leahy	Thomas
Crapo	Levin	Thune
Dayton	Lieberman	Vitter
DeMint	Lincoln	Voinovich
DeWine	Lott	Warner
Dodd	Lugar	Wyden
Dole	Martinez	

NAYS—1

Clinton

NOT VOTING—1

Baucus

The motion was agreed to.

RECESS

The PRESIDING OFFICER. The Senate stands in recess until the hour of 2 p.m.

Thereupon, the Senate, at 12:51 p.m., recessed until 2:03 p.m. and reassembled when called to order by the Presiding Officer (Mr. ALEXANDER).

The PRESIDING OFFICER. The majority leader.

JUDICIAL NOMINATIONS

Mr. FRIST. Mr. President, throughout the judicial obstruction debate, emotions have run high on both sides. This should remind us all, once again, of the need to return to civility in our Nation's Capitol. The American people want their elected leaders to work together to find solutions. To them, doing what is Republican or Democrat matters far less than doing what is right for America.

Let me briefly discuss how we got here. Never, in 214 years—never, in the history of the Senate—has a judicial nominee with majority support been denied an up-or-down vote until 2 years ago. In the last Congress, the President submitted 34 appeals court nominees to the Senate. A minority of Senators denied 10 of those nominations and threatened to deny another 6 up-or-down votes. They would not allow votes because they knew the nominees would be confirmed and become judges. The nominees had the support of a majority of Senators.

Now, in this new Congress, the same minority says it will continue to obstruct votes on judges. Even worse, if they don't get their way, they threaten to shut down the Senate and obstruct Government.

Throughout this debate, we have held firm to a simple principle: Judicial nominees deserve up-or-down votes. Vote for them, vote against them, but give them the courtesy of a vote. Yet judicial nominees have not been given that courtesy. They have gone 2, 3, or even 4 years without a vote. Now, 46 seats on the Federal bench are vacant as case after case and appeal after appeal stack up.

One nominee, Priscilla Owen, has served 10 years as a justice on the Texas Supreme Court. She won reelection with 84 percent of the vote in Texas. Yet she can't get the courtesy of a vote to be confirmed by the Senate.

Judicial nominees are being denied; justice is being denied. The solution is simple. Allow the Senators to do their job and vote.

In a spirit of civility, and with sincere hope for solution, I make an offer. This offer will ensure up-or-down votes on judicial nominees after fair, open, and some might say exhaustive debate. It is a compromise that holds to constitutional principles.

First, never in the history of the Senate had a judicial nominee with majority support been denied an up-or-down vote until 2 years ago. However, it was not unprecedented, either for Republicans or Democrats, to block judicial nominees in committee. Whether on the floor or in committee, judicial obstruction is judicial obstruction. It is time for judicial obstruction to end, no matter which party controls the White House or the Senate.

The Judiciary Committee will continue to play its essential oversight and investigative roles in the confirmation process, but the committee, whether controlled by Republicans or Democrats, will no longer be used to obstruct judicial nominees.

Second, fair and open debate is a hallmark of the Senate. Democrats have expressed their desire for more time to debate judicial nominees. I respect that request and honor it. When a judicial nominee comes to the floor, we will set aside up to 100 hours to debate that nomination. Then the Senate, as a whole, will speak with an up-or-down vote. The Senate operated this way before we began to broadcast debates on television in 1986. This would provide more than enough time for every Senator to speak on a nominee, while guaranteeing that nominee the courtesy of a vote.

Third, these proposals will apply only to appeals court and Supreme Court nominees. Judges who serve on these courts have the awesome responsibilities of interpreting the Constitution. So far, only up-or-down votes on appeals court nominees have been denied. I sincerely hope the Senate minority does not intend to escalate its judicial obstructions to potential Supreme Court nominees. That would be a terrible blow to constitutional principles and to political civility in America. I hope my offer will make it unnecessary for the minority to further escalate its judicial obstruction.

Fourth, the minority of Senators who have denied votes on judicial nominees are concerned that their ability to block bills will be curbed. As majority leader, I guarantee that power will be protected. The filibuster, as it existed before its unprecedented use on judicial nominees in the last Congress, will remain unchanged.

The Democratic leader and I have been talking on this issue almost every day. I am hopeful he will accept my offer as a solution. It may not be a perfect proposal for either side, but it is the right proposal for America. For 70 percent of the 20th century, the same party controlled the White House and the Senate. Yet no minority ever denied a judicial nominee with majority support an up-or-down vote until the last Congress. These minorities showed self-restraint. They treated judicial nominees with fairness, and they respected the Senate's role in the appointments process, as designed by the Framers of the Constitution. Resolving the judicial obstruction debate for me is not about politics. It is about constitutional principles. It is about fairness to nominees. It is about Senators doing their duty and doing what is right for our country.

Arbitrarily voting on just a few judicial nominees, as some have proposed, will fail to restore the Senate's 214-year practice of up-or-down votes for all judicial nominees who come to the Senate. Senators have a duty to vote up or down on judicial nominees. Confirm them or deny them but give them all the courtesy of a vote.

I yield the floor.

The PRESIDING OFFICER. The Democrat leader.

Mr. REID. Mr. President, first, I express my appreciation to the distinguished Republican leader for his proposal. I am happy to see we are working toward a solution to this very difficult issue that now faces the Senate.

I say to my distinguished friend, no matter how many times you say it, if something is wrong, it does not become true. Over the course of this country's history there have been many filibusters of judges from the very beginning of our Republic. Until 1917, there was no way to stop a filibuster, so a number of judges fell by the wayside as a result.

As I said previously, in 1917, the Senate changed its rules, and two-thirds of the Senators elected could stop a filibuster. Then, in 1964 at the height of the civil rights battle, it was changed to 60 on most everything. Only one thing is still different, and that is as it relate to rules where it takes 67. Without getting into the numbers game, there have been a lot of filibusters of judges where a majority of the Senators liked a nominee. Abe Fortas is a good example of that. We do not need to reinvent history. It is simply the way it is. I am not going to get into the individual judges. We can do that, we can go over them one by one, but I don't think that is what the country needs at this stage.

We have heard in the Senate that 69 judges of President Clinton never made it to the Senate. We continually hear my friends on the other side of the aisle say: We need a vote on these judges. They had a vote in keeping with the rules of the Senate.

I agree with my friend, the distinguished Senator from Tennessee, for whom I have so much respect and admiration. He said that the circuit court and Supreme Court are more important than the lower courts. I believe that, in fact, is the case. That being so, we need to focus more attention on them rather than less.

You have to break the rules to change them in this instance because if you follow the rules, you cannot do it with a simple majority. If you can break the rules to change the rules on a judge, then what about the other nominations of the President? We have a matter in the Senate now that is in the newspaper every day, regarding a man by the name of Mr. Bolton. I don't know him. I recognize him because he has a very uncharacteristic mustache, which I kind of like. My point is, that may be something that people will wish to talk a long time on. I don't know that to be the case. The hearings have not been completed. But I do know that the administration really likes this man. The Secretary of State likes him. She has said so. Does that mean the rules will be changed because this is one of the President's fair-haired persons he wants to become his ambassador to the United Nations? We cannot go down that slippery slope.

This proposal of Senator FRIST is not exactly new. We had a proposal like this last Congress by my friend, the distinguished Senator from Georgia, Zell Miller. It was very similar to this proposal. I don't mean to demean the proposal, and I will take a close look at it and see if there is a way we can work with it. I would say, for lack of a better description, it is a big fat wet kiss to the far right. It just is not appropriate. The rules are the rules.

It is unacceptable for a number of reasons. First, this is slow-motion nuclear option. After 100 hours, the rights of the minority are extinguished. This has never been about the length of the debate. This is about constitutional checks and balances.

No. 2, this is probably worse than the nuclear option because it also speeds up the committee's consideration. I am happy to look at that. As the distinguished majority leader knows, I talked to him earlier about trying to do something in the committee system to make it better. I am happy to take a look at that. We will talk in more detail. I don't think this is appropriate.

Third, this deals with only half of the advice and consent. We have to deal with the pesky little document called the Constitution. This is something you take as a whole. This is very short, but we have to stick with this and advise and consent.

We have failed to recognize we have the future ahead of us, not what went on in the past. I am not here to criticize what went on in the Clinton years. I am not here to condone or criticize what went on in the last 4 years. I am here to look forward.

I say to my friends on the other side of the aisle, any proposal I have made said let's look forward. Let's take this nuclear option off the table, and let's work on these judges we have ahead of us. I can never say there will never be a filibuster because I cannot say that, but I don't think this Senate is in the mood for a number of filibusters. I don't think Members feel like it. We should go forward.

I told my distinguished friend, the Senator from Kentucky, I told my distinguished friend—and I say ''friend'' in the true sense of the word—from Tennessee, if we somehow fail on the good faith, and they think we filibuster too much, talk too much, you always have the next Congress. Let's try to look forward. Let's not look back.

I want to leave here today or tomorrow—whenever we leave—with a good feeling. People get locked in: this is not good enough. I am not going to berate him for this offer he has made. It is an offer. I appreciate that. It is the first offer we have had. I have had one. He has had one. Legislation is the art of compromise.

While this is not truly legislation, it is in keeping with what we do here. We try to build consensus. We try to work toward an end that is satisfactory. I hope we can do that. I hope calmer heads prevail. I say that on my side as well as the other side of the aisle. If we did it right, we would take his suggestion to the Rules Committee, have them come back on it, and we would vote on it here. That is how we change rules.

I had the good fortune—and I say that without hesitation or reservation—to serve for many years on the Ethics Committee. I was chairman; I was vice chair. Senator Bob Smith from New Hampshire and I worked a full year, we worked hard, trying to change the very difficult rules we have in the Ethics Committee, which is part of the Senate Standing Rules. We brought it to the Senate after our staff worked hundreds of hours. Bob Smith and I worked on it many hours. We were rejected. I felt so bad because I personally believe the Senate did the wrong thing. But they did it. We tried to comply with the rules. That is what we should do here. We both tried to make our case to the public. And I will speak for a while this afternoon, not specifically on the leader's proposal but about things in general. In the very worst way, I want to try to work our way through this.

Again, I do not really like the proposal given, but I am not going to throw it away. I am going to work on it and see if I can come back with something that is in keeping with what I think is the ''Mr. Smith Goes to Washington'' scenario. Because I really do believe that even though we are in the minority now—and I have thought about this a lot. I have thought about this. If someday in the future—and it will happen; I hope I am around to be part of that—I became the majority leader, I would not want this rule. I would not want this rule. I do not know if I would have the integrity, intellectual integrity to change it so that you folks could do what I thought was in keeping with the rules. But I have thought about that.

We are not always going to be in the minority here. I believe very seriously that this is something that every party should have. I say to my friends, and everyone within the sound of my voice, test us. Let's see how we can do in the future. I cannot say there will not be any filibusters, but I think we are going to have a much better situation. People are very concerned about the Supreme Court, and they should be. They should be. But let's not direct our attention to changing the Senate rules for fear of something that may never happen.

I repeat, what I would like to do is say there is no nuclear option in this Congress, and then move forward on this. And, as I say, they always have the power. I would like to think that a little miracle would happen and we would pick up five seats this time. I guess miracles never cease. But I say, respectfully, to everyone, I think the Republican Senators would have this power next Congress as they do now.

So I appreciate my friend making this offer. We have so much to do. We have the highway bill to work on today and finish when we come back. We have the budget, we have the supplemental appropriations bill. We need good feelings around here.

As we have indicated, there has been some talk about my closing down the Senate. I have recognized since the Newt Gingrich days that does not work very well. But I do think we would be working as much off our agenda as the majority's agenda—a big clash of heads. We would be talking about things we want to talk about and they want to talk about. I would hope we can get past that and go on to do some real legislative work in the months to come.

I would hope that the legacy I leave and that BILL FRIST leaves is that we had two leaders who, in spite of their tremendous political differences—and we have some different political philosophies—I hope people can look back at us and say: Those are two men who worked very hard to try to get this institution to work.

I am saying this in good faith. I want the other side, in good faith, to trust what we are going to do on the judges in the future. That is all I ask.

Mr. President, I ask unanimous consent that after I suggest the absence of a quorum I then be recognized when the quorum call is called off.

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

Mr. REID. 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, what is the order now before the Senate?

The PRESIDING OFFICER. The Senator has the right to recognition.

Mr. REID. Mr. President, under the order previously entered, it is my understanding when I have completed my remarks, Senator WYDEN will be recognized. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. REID. Mr. President, I have finished my remarks.

Thank you, Mr. President.

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

Mr. WYDEN. Thank you very much, Mr. President.

(The remarks of Mr. WYDEN pertaining to the introduction of S. 946 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS—Continued

AMENDMENT NO. 593 TO AMENDMENT NO. 567

The PRESIDING OFFICER. Under the previous order, the Senator from South Dakota is recognized.

Mr. THUNE. Mr. President, may I inquire as to the pending business before the Senate?

The PRESIDING OFFICER. The Senate is in morning business.

Mr. THUNE. Mr. President, I have an amendment to offer to the pending bill, H.R. 3, the transportation bill.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from South Dakota [Mr. THUNE] proposes an amendment numbered 593.

The amendment is as follows:

(Purpose: To retain current levels of State authority over matters relating to preservation, historic, scenic natural environment, and community values)

On page 230, strike lines 6 through 15 and insert ''Section 109 of''.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. THUNE. Mr. President, the amendment I am offering would remove a substantive grant of authority the U.S. Department of Transportation

will be given under the bill as reported by the Environment and Public Works Committee. The House and Senate have been working for the past 2 years to reauthorize TEA–21. I understand one of the underlying goals has been to improve upon the existing process States must follow from project inception to completion. Many of my colleagues would be amazed to learn that on average it takes 8 years to complete a construction project from inception to its completion. Some Members have told me it takes longer than that.

While I applaud Chairman INHOFE and Ranking Member JEFFORDS for their work to make needed improvements in the transportation process, my State Department of Transportation in South Dakota has brought to my attention a problematic provision they believe will further delay and complicate further transportation projects across the country.

To clarify for my colleagues, section 1605(a) of the underlying bill would grant the Federal Highway Administration the authority to ''ensure'' that a highway facility ''will consider the preservation, historic, scenic, natural environment and community values.''

I have been unable to get anyone to give me a good explanation as to why this particular provision was included in the bill. Currently each of our respective State Departments of Transportation already follows strict Federal rules when it comes to such things as environmental review, historic preservation, and planning requirements. States also have to follow their own State rules regarding these issues. To give an example, this is the book State DOTs have to follow. This pertains to rules and regulations that apply to highway projects. It seems to me to be quite thick already.

The amendment I am offering does nothing to take away from the existing environmental reviews, historic preservation, and planning requirements each transportation project is subject to. Very simply, it removes the prospect that this provision will result in the Federal Government imposing new requirements on top of those already in law or rule, including in the subjective area of ''community values.''

I believe many of my colleagues would agree the best decisions are made by individuals at the State and local levels. If this provision were to be signed into law, I fear States will be told by the Federal Government what their community values are. Even more concerning to me and my department of transportation is the risk that there will be varying interpretations of community values from State to State and regional divisions of the Federal Highway Administration. Our current design, planning, and construction processes are difficult enough as it is.

Unless we remove section 1605(a) from this bill, we will effectively be allowing the Federal Highway Administration to tell our States what their respective community values are. Furthermore, unless we remove this provision, I fear one of the major goals in the reauthorization bill, which is project streamlining, will be unachievable. Moreover, while I certainly heard about this from my own State Department of Transportation, I have received letters from the following groups supporting the removal of section 1605(a) of the bill: AASHTO, the American Association of State Highway and Transportation Officials, has written asking that this provision be removed; AGC, the Associated General Contractors of America; ARTBA, the American Road and Transportation Builders Association; the American Highway Users Alliance; the American Council of Engineering Companies; the Transportation Construction Coalition; and the U.S. Chamber-led Americans for Transportation Mobility Coalition. I will submit for the RECORD some of those letters that have been sent to us with respect to this particular provision of the bill.

I want my colleagues to know what the executive director of AASHTO said in his letter:

States should have the flexibility to determine how they will work with other state agencies and local communities to address these values rather than having them dictated by the federal government.

NEPA and other environmental laws already provide regulatory oversight. Additional requirements will only burden the project delivery process, which we are tying to streamline.

Mr. President, I ask unanimus consent that those letters I mentioned be printed in the RECORD.

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

AMERICAN ASSOCIATION OF STATE HIGHWAY AND TRANSPORTATION OFFICIALS,

APRIL 26, 2005.

Hon. JAMES INHOFE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR INHOFE: The American Association of State Highway and Transportation Officials (AASHTO) represent the State transportation agencies in the fifty states, the District of Columbia and Puerto Rico. On behalf of our member States, I urge you to maintain the current commitment to simplifying and expediting the highway project delivery process, and to remove Section 1605(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (S. 732) which—contrary to that commitment—would impose additional requirements and standards for each and every highway project.

Specifically, Section 1605(a) of SAFETEA adds language that grants additional authority to the U.S. Department of Transportation to ensure that individual projects on every highway facility are designed to achieve ''preservation, historic, scenic, natural environmental and community values.'' States should have the flexibility to determine how they will work with other state agencies and local communities to address these values rather than have these values dictated by the federal government. In addition, regulatory oversight is already required under the National Environmental Policy Act (NEPA), historic preservation laws and other environmental statutes. Additional requirements will do nothing more than further burden the current project delivery process, which we are trying to streamline.

Sincerely yours,

JOHN HORSLEY,
Executive Director.

THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA,

APRIL 26, 2005.

Hon. DANIEL AKAKA,
U.S. Senate,
Washington, DC.

DEAR SENATOR AKAKA: On behalf of the Associated General Contractors of America (AGC), I am writing to urge you to support a Thune amendment to H.R. 3 that would maintain state and local flexibility over the transportation planning process by striking unnecessary and burdensome requirements contained in Section 1605(a) of the federal highway and transit reauthorization bill.

Section 1605(a) adds language that grants additional authority to the U.S. Department of Transportation to ensure that individual transportation projects are designed to achieve ''preservation, historic, scenic, natural environmental, and community values.'' While environmental and historic impacts are carefully considered when designing transportation improvements, the federal government should not dictate what ''values'' are important to states and localities.

Current planning requirements establish a highly comprehensive process that effectively enables appropriate agencies and the public to have input on transportation decisions in their communities. Proposals to complicate or add to this process will only add to the length of time that it already takes to deliver transportation projects. We believe Section 1605(a) is contrary to the commitment to streamline the transportation project delivery process, which is critical to addressing the nation's transportation needs.

Again, I urge you to support the Thune amendment.

Sincerely,

JEFFREY D. SHOAF,
Senior Executive Director, Government and Public Affairs.

AMERICAN ROAD & TRANSPORTATION BUILDERS ASSOCIATION,

APRIL 28, 2005.

Hon. JOHN THUNE,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR THUNE: On behalf of the 5,000 members of the American Road & Transportation Builders Association, I write in strong support of your amendment to H.R. 3 to reject a new federal directive to states on what they must consider when attempting to meet their own unique transportation challenges.

One of the key objectives of the Transportation Equity Act for the 21st Century (TEA–21) when it was enacted in 1998 was to shorten the amount of time transportation improvement projects spend in the environmental review and approval process. To accomplish this objective, the measure included provisions to facilitate concurrent reviews by involved federal agencies and consolidated the transportation planning process.

Unfortunately, H.R. 3 injects a number of new planning requirements that states and metropolitan planning organizations (MPOs) must consider in the transportation planning process. Specifically, the measure requires the U.S. Department of Transportation (U.S. DOT) to ensure federally-aided highway improvement projects are designed to meet, among other things, the ''community values'' of an area. In addition, to this objective being entirely subjective and impossible to define, these ''value judgment'' decisions arc best made by transportation planners at the local level—not U.S. DOT officials.

Thank you for your leadership on this amendment to strike the new community

values standard for highway improvement projects. We urge all senators to support the Thune Amendment and all efforts to avoid adding new federal requirements on state and local planning authorities.

Sincerely,

T. PETER RUANE,
President & CEO.

Mr. THUNE. Mr. President, in closing, as I have outlined today on the floor—in addition to the views expressed by the leading transportation groups in the country—it is my hope the bill managers will be able to accept this commonsense amendment to ensure that community values are decided at the State level and not in Washington, DC.

Again, I will close by saying this particular document already provides a tremendous amount of paperwork and regulation and rules that State DOTs and those who participate in Federal projects and highway funding issues have to comply with. It certainly seems to me that to add a nebulous and subjective additional requirement of ''community values,'' one, adds additional paperwork burden and redtape to the process that is already extensive and, secondly, it allows the Federal Government to interfere in an area that ought to be decided at a State and local level.

I hope the managers will accept the amendment. In the event they don't, I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? At this time, there is not a sufficient second.

Mr. THUNE. 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. THUNE. 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. THUNE. Mr. President, I request the yeas and nays on my amendment.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

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

THE NUCLEAR OPTION

Mr. REED. Mr. President, I will speak on the issue of the so-called nuclear option.

We are at an important crossroads in our Nation's history today. I believe my Republican colleagues should think long and hard about the long-term effects of what they are proposing on the vitality and utility of this institution that we call the U.S. Senate.

As Thomas Paine once stated:

> He that would make his own liberty secure, must guard even his enemy from opposition; for if he violates this duty, he establishes a precedent that will reach himself.

I believe that this so-called crisis is really an artificial crisis. The Senate has confirmed 206 of President Bush's judicial nominees and rejected 10. The Senate has confirmed 95 percent of the President's nominees. We have the lowest court vacancy rate since the administration of Ronald Reagan.

As almost everyone in this body is aware, President Clinton had over 60 judicial nominees and 200 executive branch nominees blocked by the Republicans. Many of these nominees were not even granted the courtesy of a hearing, let alone a vote. We call this ''pocket filibustering'' in the Senate. It was according to the rules, and we followed the rules and did not attempt to change the rules. That is the difference today. The Republicans are trying, through extralegal means perhaps, to change the rules of the Senate.

Senator FRIST and many of my other Republican colleagues have been involved in both filibustering and pocket filibustering of judicial nominees, and they did not object to their own actions or purport to suggest that their own actions were unconstitutional or in any way violated the spirit or the rules of the Senate.

In 2000, Clinton nominee Richard Paez was filibustered by a number of my colleagues, but Democrats and Republicans defeated the filibuster by finding common ground and, under the rules of the Senate, moved to a vote.

Although almost every Senator in this Chamber believes that bipartisan improvements could and should be made to the nomination process, this President and the majority have not made any such attempts.

For example, returning to the tradition of allowing home State Senators and/or home State advisory boards to make recommendations to the President regarding eminent lawyers and jurists he should consider when nominating men and women for lifetime appointments on Federal courts would be one possible way to make this whole process less partisan.

If we want thoughtful, intelligent men and women to even want to take on the job of Federal judge, we would all benefit from depoliticization of the judicial process.

There are many ways President Bush and the Republicans in the Senate could work with Democrats to make the judicial nomination process work more smoothly. But in light of the rejection of the minority leader's proposal and the subsequent proposal made by the majority leader, it is clear this debate is not really about making the process work better. This whole debate should be seen for what it is—a grab for power.

This is not the first time a President, with the help of his own party, has attempted to grab complete and total power over the judicial nomination process.

In 1937, President Franklin Roosevelt, a Democrat, sent a bill to Congress that would have drastically reorganized the judiciary and added up to six more justices on the Supreme Court. Why? Because he didn't like what the Supreme Court was doing to his legislative proposals. Although the Senate Judiciary Committee rejected the bill, finding it, in their words, ''essential to the continuance of our constitutional democracy that the judiciary be completely independent of both the executive and legislative branches of Government,'' the majority leader, Joseph Robinson, supported the bill and brought it to the floor.

A determined group of Senators, using the filibuster for 8 days, defeated this proposal. It was the right to free and open debate that defeated President Roosevelt's attempt to consolidate his power over the judicial branch of Government. It is that same right we are talking about today. It is the right that allows the Senate to play its unique role in our constitutional democracy.

One of the most basic concepts behind the construction of the Constitution is the concept that absolute power corrupts. After fighting a revolution to escape from the tyranny of an absolute monarch, the Founding Fathers were very focused on coming up with a system of government that would prevent one ruler or one faction of people from controlling all of the mechanisms of power.

James Madison believed that ''the causes of faction cannot be removed and that relief is only to be sought in the means of controlling its effects.''

As he stated in Federalist Paper No. 10: ''Among the numerous advantages promised by a well-constructed union, none deserves to be more accurately developed than its tendency to break and control the violence of factions.'' He further goes on to state that ''Complaints are everywhere heard from our most considerate and virtuous citizens . . . that the public good is disregarded in the conflicts of rival parties, and that measures are too often decided, not according to rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority.''

It was the desire of the Founding Fathers to protect the rights of the minority from ''the superior force of an interested and overbearing majority'' which caused them to create three branches of Government.

Because of the skills and temperament required of a judge, the Founding Fathers decided that judges would not be elected like the other two branches of Government but would be nominated by the President with the advice and consent of the Senate.

Article II, section 2 states that the President:

> . . . shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law. . . .

In effect, Madison and the Founding Fathers believed that the independence

of the judiciary was so important that lifelong judicial appointments needed to be made by consensus between the executive and legislative branches. Alexander Hamilton stated in Federalist Paper No. 78 that:

This independence of the judges is equally requisite to guard the Constitution and the rights of individuals from the effects of those ill humors which the arts of designing men, or the influence of particular conjunctures, sometimes disseminate among the people themselves, and which, though they speedily give place to better information, and more deliberate reflection, have a tendency in the meantime, to occasion dangerous innovations in the government and serious oppressions of the minor party in the community.

Resonating throughout the Federalist Papers is the notion that the test of this Government is not the success of the majority but the fact that minority rights are protected. Minority rights on this floor could be extinguished if the rules of this Senate are disregarded. This is why I am here today on the floor of the Senate to speak out.

It is important that we do not let another President try to pack the courts. The Senate cannot become merely a rubberstamp for any President. The independence of the courts is critical to protecting the Constitution and the rights of individuals. It is for this reason that preserving the right to open and free debate in the Senate is so important. Indeed, if the Founding Fathers wanted a system of pure majority rule, they would have only created one Chamber.

These decisions should not be made on a political whim. The impact of judicial appointments outlasts party changes in both the executive and legislative branch of Government. Indeed, some Members of the other party have complained about the abuse of power by ''activist'' judges. Frankly, I cannot think of a better way to protect against activist judges than by protecting the current cloture rule. If two-thirds of the Senate believes a nominee is qualified for the position and will do the job well, that candidate is probably not going to be an activist judge on either the right or the left.

Opponents of the filibuster have questioned its constitutionality. However, time and again, the courts have shown a reluctance to interpret the rules of either House of Congress or to review the application of such rules.

The Founding Fathers stated in article I, section 5, clause 2 of the Constitution:

Each House may determine the Rules of its Proceedings.

Much of the current debate around the Republican leadership's proposal to change a 200-year-old Senate tradition regarding the right to unlimited debate revolves around rule XXII of the Standing Rules of the Senate. This rule is clearly constitutional. Rule XXII is about the precedence of motions. The relevant part is as follows:

Is it the sense of the Senate that debate shall be brought to a close? And if that question shall be decided in the affirmative by three-fifths of the Senators duly sworn—except on a measure or motion to amend the Senate rules, in which case the necessary affirmative vote shall be two-thirds of the Senators present and voting—then said measure, motion, or other matter pending before the Senate, or the unfinished business, shall be the unfinished business to the exclusion of all other business until disposed of.

This rule encapsulates an agreement between the majority and minority that an amendment to the Senate rules is so important that it requires a two-thirds vote—the same number of votes required to vote on treaties, overcome a Presidential veto, and impeach a President—to change the Standing Rules of the Senate. And beyond all the current maneuvers on the floor, the real goal of the Republican majority is to change the rules of the Senate.

In addition to the filibuster, the Senate has adopted other practices to protect minority rights, including unanimous consent rules, holding legislation or nominations in committee, and the blue-slip process. When some of these procedures, in addition to the filibuster, have been challenged, the courts have given deference to the Senate to make its own rules on how to deliberate.

Clearly, if the majority party is arguing that the filibuster is unconstitutional, then certainly all other methods of blocking a nomination, including never holding a hearing or vote in committee, would be as well.

I daresay the same individuals arguing for the end of the filibuster because it is unconstitutional would not state that they acted unconstitutionally in blocking 60 of President Clinton's judicial nominees.

In fact, the Constitution is notably silent on what advice and consent means on a Presidential nomination. The majority are interpreting this to mean that each nominee deserves a vote, but the Constitution is actually silent on this issue. It is left to the Senate to determine what advice and consent really means.

I think we are well served by the current rule and 200 years of checks and balances, and we should not give up our right to debate without realizing the serious consequences this will have on our institution, not just today but for decades, in fact, the history of this country going forward. Finally, let me talk briefly about the claim that unlimited debate or the filibuster has never been used against a judicial nominee. That is simply untrue. The first recorded instance occurred in 1881 when Republicans were unable to end the filibuster of Stanley Matthews to the Supreme Court. There were nine other occasions in the 19th century when the Senate held no floor votes on Supreme Court nominations. More recently, the nomination of Associate Justice Abe Fortas to be Chief Justice of the Supreme Court and Homer Thornberry to be an Associate Justice failed when they were filibustered on the Senate floor by Republican Senator Robert Griffen and others.

Our predecessors also believed that certain judicial nominations were too problematic to be approved. If we are focused on improving the judicial nomination process right now, there is much we can do together to make it work better. This should be the issue before us today, not taking away the voice of the minority in one of the most important decisions we are asked to make as Senators, protecting the independence of the judiciary.

I also think we should be talking about real crises on the Senate floor, such as a $422 billion deficit, a historic trade deficit, the devastating budget the majority will be presenting to us this afternoon, and the need to stabilize a country in the Middle East that we have been engaged in for more than two years and has cost us American lives and billions of dollars. I urge the majority to reconsider this ill-advised abuse of power and work with us to forge some solutions to these real crises and to maintain the balance and integrity of our democratic institutions.

I yield the floor.

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

Mr. SALAZAR. Mr. President, I ask unanimous consent that the pending amendments be set aside.

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

AMENDMENT NO. 581 TO AMENDMENT NO. 567

Mr. SALAZAR. Mr. President, I have an amendment at the desk, amendment No. 581, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Colorado [Mr. SALAZAR] proposes an amendment numbered 581.

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

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

The amendment is as follows:

(Purpose: To modify the percentage of apportioned funds that may be used to address needs relating to off-system bridges)

In section 144(f)(2)(A) of title 23, United States Code (as amended by section 1807(a)(4)), strike ''15 percent'' and insert ''20 nor more than 35 percent''.

Mr. SALAZAR. Mr. President, before discussing my amendment, allow me to commend the work of Senator JEFFORDS and Senator INHOFE and their staffs for their work on this very important bill for the people of America. It is good work, and it is about the people's business. This is a vitally important bill on a vitally important topic. Without their efforts, we would not be where we are today. I look forward to the day when we can have a transportation bill passed that we can send to the President for his signature, hopefully very soon.

I also wish to say that I am glad we are taking this bill up at this time because the last Congress was not able to

get it through. We are hopeful this time around that we will be able to succeed. This is an issue which I believe is at the top of the concerns of people throughout the country. In my travels throughout the State of Colorado, county commissioners, mayors, and local people tell me time and time again that moving forward with the reauthorization of the Transportation Act is something we should do and we should do as soon as possible.

The amendment that I have proposed addresses a problem that faces many of our States across our country, particularly those States that have many miles of rural roads and bridges. Ensuring that rural areas receive adequate funding to fix the increasing number of structurally deficient bridges in rural America is a priority. I know it is a challenge in Oklahoma, and I know it is a challenge in Vermont.

In my State of Colorado, 17 percent of our bridges are in disrepair, and many of those bridges are in parts of rural Colorado. Currently, the Federal Bridge Program apportions funds to States for the replacement and fixing of bridges, and for over 25 years the program has directed a minimum of 15 percent of those Federal funds to be used on bridges on those State and local roads that do not receive any Federal aid. We call these bridges off-system bridges.

We need to increase the percentage from 15 percent to 20 percent. It is imperative when addressing the needs of transportation infrastructure in Colorado and across America that we ensure there is adequate funding to address the needs of rural America. Let us make clear the scope of this problem. In this country, there are 307,000 on-system bridges; 23 percent of those bridges are structurally deficient or functionally obsolete—23 percent of those bridges are in bad shape.

There are 286,000 off-system bridges. Of those 286,000 off-system bridges, 30 percent are deficient and in need of repair. And consider this, across this great country of America, over 80 percent of bridges are found on non-Federal-aid highways. We must ensure that these bridges in rural communities have the kind of repair to ensure the safety and quality of life for the residents of those communities.

The House version of this Transportation bill has increased the level of funding out of this fund to 20 percent. I agree with the House of Representatives, and I believe along with the National League of Cities, the National Association of Counties, the American Public Works Association, and the National Association of County Engineers that we should do the same thing, and my amendment will do that.

Our roads, our bridges, our transit system, our rail lines, and our ports need assistance to ensure that our Nation has a first-class infrastructure needed to reinvigorate our economy and to make our country strong and competitive.

Senator INHOFE, Senator JEFFORDS, and their staffs have worked to ensure that we have a comprehensive bill that addresses these needs. This small fix improves this bill, and I hope my colleagues will join me in ensuring it passes the Senate and gets to the President.

I will take just a second to address an amendment that we will be voting on shortly, and that is the amendment offered by my colleague from Missouri, which would essentially take away the 2 percent that has been allocated in the portion of these funds to deal with the problem of storm water discharge. That is an issue which is a reality that faces communities across our country.

We have 5,000 communities that will be affected if, in fact, that 2-percent allocation is stripped from this particular legislation. It is important for us to make sure that we are protecting the environment, but it is also important for us to make sure we are supporting the local and State governments that will benefit from the money that is currently included in our version of the bill. Therefore, I urge my colleagues to vote against the amendment that has been offered by our good friend from Missouri.

Keeping this provision that we are talking about in this bill is important to the U.S. Conference of Mayors, the Association of State and Interstate Water Pollution Control Administrators, the Association of Metropolitan Water Agencies, the Association of State Floodplain Managers, the Association of Metropolitan Sewerage Agencies, and others.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I am happy to work with the Senator from Colorado on the needs of his particular State. This measure before us would enable his State to spend more on bridges if that is the need but to require States to spend 5 percent more where in our State for various reasons we only spend a minimum of 15 percent, and other States may be in our same situation, I am very much concerned about a mandate because we have bad bridges, but we kill people on our highways. We kill people on our highways because we have two-lane highways that are carrying heavy truck traffic and passenger traffic that warrant four lanes. Rebuilding bridges is not going to solve that problem. So for our State, this would be a real problem.

As chairman of the subcommittee, I would be happy to work with the Senator to see if we can reach an accommodation, but I am very much concerned about what I think the gist of his amendment is.

I believe the Senator from South Carolina has a brief statement. I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. DEMINT. Mr. President, I ask unanimous consent to speak for 3 minutes as in morning business.

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

(The remarks of Mr. DEMINT are printed in today's RECORD under ''Morning Business.'')

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I see my distinguished colleague from Colorado. I believe I was to follow him. Is that the order? I do want to adhere to the order.

The PRESIDING OFFICER. There is no order in effect.

Mr. WARNER. I want to address the amendment of the distinguished Senator from Missouri, Mr. BOND, which is one of several pending amendments. If the Chair so desires, could we ask our colleague from Colorado, is this a matter related to the bill? We need some orientation so that I can accommodate the Senator from Colorado or he can accommodate me, as the case may be.

Mr. SALAZAR. If the distinguished Senator from Virginia would give me 30 seconds, I will make my point.

Mr. WARNER. The Senator is ever so generous. Let's give him a full minute.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. SALAZAR. I thank the distinguished Senator from Virginia.

I say this to my distinguished friend from Missouri: I believe the needs of rural America, especially with respect to transportation, are important. I believe having legislation here that would change the percentage allocation by 5 percent, so we could have the rural bridges of our country have more resources to be able to get the job done, is something that is very important. I accept his offer to work with him, and look forward to seeing how we can address the needs of rural America with respect to the rural bridges we have across our country.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I rise to address the underlying bill which, in markup in the committee on which I am privileged to serve, was a markup of 17 yeas and 1 nay.

I rise in opposition to the Bond amendment. I hasten to point out this body has already disapproved the Bond amendment when they approved the earlier highway bill. This body has acted and approved the current mark that is in the underlying bill, which my good friend from Missouri seeks to strike.

What is this all about? In its simplest form, it is the mayors and the county supervisors and those officials in the State entrusted with the supervision of the construction, modernization, improvements, and renovation of our road system, usually the assistant secretary for transportation or whatever it is designated in the State—it is a whole realm of State officials on one side. I

will call it by one name, the mayors. It is the mayors versus my good friend from Missouri, Mr. BOND. The mayors desperately want to keep intact the bill as written by the committee and keep this provision which helps these individuals deal with a mandate from the Congress of the United States under the Clean Water Act, which says you must, in new construction, and as they rehabilitate the existing road system, deal with storm water runoff. That runoff contributes up to 50 percent of the total storm water which is daily worsening our drinking water. That is a quick synopsis.

Now I would like to go into a somewhat more lengthy dissertation. I express my strongest opposition. I should say I urge colleagues to affirm the markup of the committee. Leave the bill as it is. But to do so, we have to oppose the Bond pending amendment.

The program is urgently needed to fund local governments, the mayors and the supervisors, to reduce the runoff of polluted water. As I say, this was already approved by the Senate when they approved the first highway bill. There is no change of the language in the amendment I put in and incorporated in the markup of the bill. It was included and passed by the Senate last year.

The bill in its present form—and this provision, the Warner amendment, is in the bill—will for the first time begin to address the unfunded mandates affecting our local communities. It helps the mayors and the boards of supervisors and others deal with the unfunded mandate placed upon them with regard to the storm water runoff. I regret that my colleague opposes helping our localities with such serious financial burdens as now imposed on them by the Clean Water Act.

The rest of the story is that the Clean Water Act requires all of our communities to obtain permits for their storm water discharge. Along with this requirement comes the mandate that local governments are to fund projects that will control storm water runoff. These can be very expensive projects. Again, our existing highways are up to 50 percent the contributors to the problem associated with storm water runoff affecting our drinking water and other clean water uses.

Look at this debate we are having now as one regarding public health. What is more important to us than our clean drinking water? It is a matter of public health. Local governments that finance and manage our public drinking water systems tell me and they tell you, every one of you, it is becoming more and more difficult and more expensive to filter and treat our drinking water to remove the pollutants, many of which derive from storm water runoff, particularly from our roads. Stop to think of the contamination that exists on the roads that accumulates over the use of the road. Along comes one of our greatest gifts, a rain shower, and it takes those pollutants and runs them off and they find their way into our drinking water.

Many organizations that are on the front lines dealing with the problem strongly support this very modest provision to begin to address pollution for the existing highway structures. I point out that we have already acted in this body in previous legislation to say all new construction will have set aside by the States as required the funds necessary to deal with the storm water runoff from new construction. This measure very modestly is to take care of the existing road structures—when they need to be repaired at times, when they need to be upgraded.

I will bet I could go to dozens of places in my State, and each of you could go to places in your State, where you have new construction going on over here and it is funded to handle the storm water runoff, and not a mile distant is one of the old roads which doesn't have the precautions, and the runoff from both feeds the same stream which then goes into our water supplies. So unless you correct the old system, what is the sense of trying to correct the new system, in many instances? Stop to think about that. We have already exercised our wisdom to make sure the new construction is adequately financed and this is but a modest provision to finance the existing system.

It is a small provision. It is $170 million a year—$170 million a year out of a $284 billion bill. It will help more than 5,000 local communities in each of our States. Most importantly, our States themselves want this program. The Association of State and Interstate Water Pollution Control Administrators, our State officials responsible for improving the water quality of our rivers and lakes and streams, has written to each of us urging that the Senate retain the markup which was approved—again, 17 to 1 in the committee.

I refer my colleagues to a portion of the letter from the State and Interstate Water Pollution Administrators:

> Communities throughout the Nation, including numerous smaller towns and counties, are required under the Clean Water Act to obtain discharge permits for storm water. Even those communities which have long understood the value of protecting their drinking sources and recreational sources from storm water impacts are hard-pressed to absorb the costs of discharges from the highways. This presents an unfair burden to these small communities, and we believe it is fair for the transportation funding system to help remedy this problem where existing highways and other roads cause significant runoff problems.

Storm water runoff is an $8 billion national problem. Yet there is no financial assistance to help our localities with the existing road structure. The storm water program in this bill takes the first step. I am very proud, indeed humbled, to represent these small communities. I urge my colleagues to let this bill remain as is.

The Association of Metropolitan Sewerage Agencies, representing our municipally owned sewage treatment plants, has joined in this debate.

I ask unanimous consent that several letters I have from the various State organizations be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. WARNER. This organization likewise has written in strong support of the committee's storm water provision. They also cite the undisputed fact that polluted storm water from impervious surfaces such as roads is a leading reason why nearly 40 percent of our Nation's waters fail meeting our Nation's water quality standards.

Similar letters of strong support have come from the U.S. Conference of Mayors which emphasize ''absent some . . . [other Federal funding] storm water pollution cleanup costs, including loadings attributable to the Federal highway system will be borne largely by local taxpayers through property taxes and other general taxes and wastewater utility fees.''

Hear this: These are your mayors reaching out to you for help.

I could go on. I have a great many letters. I am pleased to say our distinguished Governor of Virginia, Mark Warner, states:

> A program such as this could help improve water quality in the Chesapeake Bay, and other watersheds in the Commonwealth.

The Virginia Association of Counties has strongly endorsed this program with the view that these provisions, reserving less than one-third of a penny of every highway dollar, are a very modest commitment to an enormous challenge before local governments struggling with contamination of drinking water from highway/street storm water discharge. The support for the committee's provision is strong because everyone recognizes that storm water runoff from highways is a known impediment to good water quality.

Accordingly, from the Environmental Public Agency, storm water runoff is the leading cause of pollution for nearly half of our rivers, lakes, and streams.

Roads collect pollutants from tailpipe emissions, brake lines, oil, and other sources. During storms, they mix with other contaminants of heavy metals and road salts that wash into our waters, and eventually, regrettably, work their way, in many instances, into our drinking water.

Today, every new highway must include methods to control this runoff. We have already spoken to this issue, spoken to this need, and funded in connection with new construction. I am talking about a very modest amount, one-third penny, to help these existing road systems.

We are here to help our local communities. The mayors have reached out. The chairman of the Board of Supervisors has reached out. Those folks that come to our offices and visit, we slap them on the back, and they leave

that office thinking they are going to get help. This is the kind of help they need. It is not much, one-third of one penny of every highway dollar.

The demands of those who are in opposition to this—namely, the road builders, and I am not speaking disrespectfully—have powerful lobbies, unlimited requirements. This is one-third of one penny for the mayors.

EXHIBIT 1

THE UNITED STATES CONFERENCE OF MAYORS,
Washington, DC., April 25, 2005.

Hon. JAMES M. INHOFE,
Chair, Environment & Public Works, U.S. Senate, Washington, DC.
Hon. JAMES M. JEFFORDS,
Ranking Minority Member, Environment & Public Works Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN INHOFE and RANKING MINORITY MEMBER JEFFORDS: On behalf of The United States Conference of Mayors and the hundreds of cities we represent, I write to convey our strong support for the stormwater provisions of your Committee-approved SAFETEA plan to renew the nation's surface transportation programs.

These provisions, reserving less than 1/3 of a penny on every authorized dollar, is a very modest commitment to an enormous challenge before local governments struggling with contamination of drinking water and cleanup of streams, rivers, lakes and ponds and highway and street stormwater discharge, including oil, grease, lead and mercury. Moreover, we have been assured that these provisions limit funding to actual facilities on the federal aid system, which is a critical factor underlying our support of this program. This is important to the nation's cities since it ensures that users of these systems contribute something to the broader efforts under the Clean Water Act to reduce pollutants from the nation's major highways and roads.

Absent some commitment to retrofitting existing facilities on the federal aid system during this renewal period, stormwater pollution cleanup costs, including loadings attributable to the federal aid system will be borne largely by local taxpayers through property taxes, other general taxes and wastewater utility user fees.

Finally, we disagree with the claim that this is a diversion of funds from highway construction and highway capacity needs. It is the belief of the nation's mayors that improved performance, whether it is pavement quality, the deployment of technology, or its stormwater quality features, are priorities for the nation as we work with you to provide a modern and fully functional transportation system for our citizens and their communities and regions.

America's mayors thank you for making these provisions part of your SAFETEA legislation and urge you to preserve this important commitment to stormwater pollution abatement efforts during your conference committee deliberations with the House. If you have any questions, please contact our Assistant Executive Director for Transportation Policy Ron Thaniel.

Sincerely,

TOM COCHRAN,
Executive Director.

ASSOCIATION OF STATE AND INTERSTATE WATER POLLUTION CONTROL ADMINISTRATORS,
Washington, DC, April 22, 2005.

DEAR SENATOR: On behalf of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), I urge your support for the Highway Stormwater Discharge Mitigation Program, Section 1620 of the Senate SAFETEA bill, S. 1072, in the 108th Congress. This new and modest program is designed to address stormwater runoff from the nation's existing transportation system. Stormwater runoff is a significant source of water pollution affecting large and small communities, as well as fish, wildlife and the natural environment.

Stormwater pollution results from paving over naturally porous ground, resulting in impervious surfaces that collect pollutants and increase overland stormwater volume and velocity. Stormwater becomes a direct conduit for pollution into the nation's rivers, lakes, and coastal waters. Studies have shown that roads contribute a large number of pollutants to urban runoff—metals, used motor oil, grease, coolants and antifreeze, spilled gasoline, nutrients from vehicle exhaust, and sediment. For example, the stormwater discharge from one square mile of roads and parking lots can contribute about 20,000 gallons of residual oil per year into the nation's drinking water supplies. Highways can increase the annual volume of stormwater discharges by up to 16 times the pre-development rate and reduce groundwater recharge.

Communities throughout the nation, including many smaller towns and counties, are required under the Clean Water Act to obtain discharge (NPDES) permits for their stormwater. Those communities, which have long understood the value of protecting their drinking water sources and recreational waters from stormwater impacts, are hard-pressed to absorb the costs of discharges from highways in addition to their other stormwater management responsibilities. This presents an unfair burden to these communities and we believe it is fair for the transportation funding system to help remedy this problem where existing highways and other roads cause significant runoff problems.

We urge you to continue to demonstrate your leadership in protecting America's waters by supporting the stormwater mitigation provision in SAFETEA. We appreciate your willingness to consider the views of the State and Interstate Water Pollution Program officials responsible for the protection and enhancement of the nation's water quality resources.

Sincerely,

ARTHUR G. BAGGETT, Jr.
President.

ASSOCIATION OF METROPOLITAN WATER AGENCIES,
Washington, DC, April 22, 2005.

DEAR SENATOR: On behalf of the nation's largest publicly owned drinking water systems, I write today to express support for section 1620 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005, (S. 732), which would provide $870 million over five years for stormwater mitigation projects.

This language makes progress toward addressing the billions of dollars in costs that state and local governments will incur to control stormwater generated by our nation's highways.

Stormwater runoff has a significant effect on thousands of miles of the nation's rivers and streams. The bill acknowledges this impact and assists states and local communities in addressing this growing water quality problem.

Thank you for your consideration.

Sincerely,

DIANE VANDE HEI,
Executive Director.

ASSOCIATION OF METROPOLITAN SEWERAGE AGENCIES,
April 22, 2005.

Re Support for S. 732 and the Highway Stormwater Discharge Mitigation Program.

Hon. JAMES M. INHOFE,
Chair, Environment and Public Works Committee, U.S. Senate, Washington, DC.
Hon. JAMES M. JEFFORDS,
Ranking Member, Environmental and Public Works Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN INHOFE AND SENATOR JEFFORDS: We are writing to express our strong support for the Safe, Accountable, Flexible and Efficient Transportation Equity Act of 2005 (SAFETEA) (S. 732) *as passed* March 16 by the Senate Environment and Public Works Committee. The Committee's bill includes a provision to authorize $867.6 million over five years for stormwater mitigation projects, using just 2% of the Surface Transportation Program funds. Such projects include stormwater retrofits, the recharge of groundwater, natural filters, stream restoration, minimization of stream bank erosion, innovative technologies, and others.

According to the U.S. Environmental Protection Agency, polluted stormwater from impervious surfaces such as roads is a leading cause of impairment for nearly 40% of U.S. waterways not meeting water quality standards. Roadways produce some of the highest concentrations of pollutants such as phosphorus, suspended solids, bacteria, and heavy metals.

AMSA represents hundreds of publicly owned treatment works, many of which have municipal stormwater management responsibilities. Your continued support for S. 732, including the Highway Stormwater Discharge Mitigation Program, would provide much-needed support to these communities. Thank you for your leadership and please feel free to contact me at 202/833–4653 if AMSA can provide you with additional information.

Sincerely,

KEN KIRK,
Executive Director.

TROUT UNLIMITED,
March 15, 2005.

Re Support of Highway Stormwater Discharge Mitigation Funding in the Transportation Bill.

Hon. JIM INHOFE,
Chairman, Environment and Public Works Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN INHOFE: Trout Unlimited, the nation's leading trout and salmon conservation organization, urges you to support funding to mitigate stormwater runoff in this year's transportation bill. A similar provision, Section 1620, the Highway Stormwater Discharge Mitigation Program, was included in last year's Senate transportation bill, S. 1072.

Stormwater runoff is a significant source of pollution for all the nation's waters, and is a major cause of trout and salmon habitat loss. Roads are a major source of stormwater runoff. Road building in the United States has created millions of miles of impervious surfaces that collect water and pollutants. When mixed with rain and melting snow, these pollutants flow unimpeded into nearby streams, undermining water quality and warming water temperatures to the point where trout habitat is damaged. Furthermore, excessive and poorly designed road building through watersheds can turn normal rainstorms into small flash floods that scour stream bottoms and de-stabilize stream banks, leading to poorer quality streams over time.

Congress has recognized that runoff pollution from highways lowers water quality and destroys habitat in receiving waters in previous highway bills (ISTEA and TEA–21), but has not yet succeeded in getting adequate funding directed at curbing this pollution. In 2000, EPA estimated at least $8.3 billion over 20 years in local funding needs to address stormwater requirements. The time to take action is now as you consider the new Highway Bill.

In addition to providing much-needed funding, the bill encourages projects with the least impact on streams and promotes the use of non-structural techniques, such as created wetlands, to mitigate the negative impacts of storm water. These approaches are generally more cost-effective and do more to protect and improve water quality and protect habitat.

Thank you for your support of this important provision in this year's transportation bill.

Sincerely yours,

STEVE MOYER,
Vice President, Government Affairs and Volunteer Operations.

COMMONWEALTH OF VIRGINIA,
OFFICE OF THE GOVERNOR,
April 19, 2004.

The Hon. JOHN W. WARNER,
U.S. Senate,
Washington, DC.

DEAR SENATOR WARNER: As always, the Commonwealth deeply appreciates your efforts to improve our environment as well as our transportation system. I am writing to provide my strong support for your amendment to the Senate Surface Transportation Reauthorization Bill that provides for a highway stormwater discharge mitigation program.

A program such as this could help to improve water quality in the Chesapeake Bay, and other watersheds in the Commonwealth. Virginia is prepared to work with you and other states to ensure that these funds can be flexibly managed by VDOT to achieve our shared goal of improving stormwater discharge from existing or future federal-aid highways.

I appreciate your continuing support of the many and varied interests across the Commonwealth. I look forward to furthering these interests through the reauthorization of the Surface Transportation Act.

Sincerely,

MARK R. WARNER.

COMMONWEALTH OF VIRGINIA
COUNTY OF FAIRFAX,
Fairfax, Virginia, April 27, 2005.

Senator JOHN W. WARNER,
Washington, DC.

DEAR SENATOR WARNER: I am writing to you in my capacity as the President of the Virginia Association of Counties (VACO) to urge your continued support for the stormwater provisions of your Committee-approved SAFETEA plan to renew the nation's surface transportation programs.

These provisions, reserving less than 1/3 of a penny on every authorized dollar, are a very modest commitment to an enormous challenge before local governments struggling with contamination of drinking water and cleanup of streams, rivers, lakes and ponds from highway and street stormwater discharge, including oil, grease, lead and mercury. Moreover, I have received assurances that these provisions limit funding to actual facilities on the federal aid system, which is a critical factor underlying my support of this program. This is important to the local governments since it ensures that users of these systems contribute something to the broader efforts under the Clean Water Act to reduce pollutants from the nation's major highways and roads.

Absent some commitment to retrofitting existing facilities on the federal aid system during this renewal period, stormwater pollution cleanup costs, including loadings attributable to the federal aid system, will be borne largely by local taxpayers through property taxes, other general taxes and wastewater utility user fees.

As Fairfax County and other localities within the Chesapeake Bay watershed work to limit stormwater runoff and improve the Bay's health, I ask that you and your colleagues show your support for this critical component of SAFETEA. It is vital that environmental mitigation efforts are regarded as an integral feature of a safe and efficient national transportation network.

I appreciate your making these provisions part of your SAFETEA legislation and urge you to preserve this important commitment to stormwater pollution abatement efforts during your conference committee deliberations with the House.

Sincerely,

GERRY CONNOLLY.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, obviously, my good friend, the Senator from Virginia, and I view this very differently. I will outline some of the differences we have.

Let me clarify. The Senator from Virginia noted that the bill passed last year in the Senate with the storm water provision included. I ask my colleagues to recall that we did so only with the agreement that I would not raise it in the Senate in order to get it to conference, and we would address it in conference. I did so out of deference to my colleagues to get the bill off the floor and to conference in what turned out to be the vain hope we could get a conference agreement on the bill which we badly needed last year.

I did not want to hold up progress on the bill last year. We did not have time to debate it fully. But this year, we have time to debate it fully. It is appropriate we do so.

First, let me address the concept that this is a modest amendment, a small amendment.

Back home, $900 million is not a small amount. I live in a State where $900 million means a whole lot. Do you know to whom it means a lot? It means a lot to the mayors. The mayors want safety for their citizens. These are community leaders who come to Washington to talk to me about how badly they need the money for their roads.

I don't think $900 million is small. I don't think we should take $900 million from the highway, bridge, transit construction budget.

But if Senators think their State has more than enough highway dollars and can afford to give money away for storm water, I would be glad to know that as we move forward on appropriations matters and other matters dealing with transportation.

With respect to what this underlying bill will do, section 1620, which was sponsored by the Senator from Virginia, mandates States set aside 2 percent of the funds in their main highway accounts—nearly $900 million total over the life of the bill—to be used only, regardless of need, on storm water mitigation activities.

If allowed to remain in the bill, the mandatory set-aside would force all States to divert $740 million from their Surface Transportation Program funds. The mandatory set-aside would also force States to divert over $125 million from the Equity Bonus Program set up to help almost every State receive more transportation. That is where I get the $900 million figure.

However, if this figure is struck, if the State of Virginia or any other State wants to use it, storm water mitigation activities are already eligible for funding. States can spend up to 20 percent of a project's cost using STP funds on storm water mitigation if they choose. The underlying bill also expanded funding eligibility for storm water mitigation by adding it to the eligible activities. The National Highway System program states they will be able to spend up to 20 percent of a project's costs using NHS on storm water mitigation if they choose.

I have already listed what the impact of the mandatory set-aside would be. The occupant of the chair is from Minnesota. That would be a $17.7 million hit on Minnesota. In addition, the State of Virginia would have to set aside $23 million. But I guess they would want to use that money on storm water anyhow.

Mr. WARNER. Will the Senator yield?

If the Senator is reading from the same statistics, give the full information.

The Senator said to our distinguished Presiding officer of Minnesota that indeed $17 million would be taken out of the asphalt and concrete. But I point to the next column: Your State holds $471 million under the mandate by the EPA for clean water. I have calculated that $17 million is helping, in a very modest way, the obligation of your State for $471 million to meet the mandate put on by the Senate and House of Representatives.

I know, as a former Governor, how you——

Mr. BOND. I would like to respond and finish my presentation. Then we can get into a discussion.

Mr. WARNER. I have always admired the Senator for so many reasons. I really regret to be out here so forcefully taking him on with his arm in a sling.

Mr. BOND. You have no conscience.

Mr. WARNER. No conscience.

I ask you—you are out here accusing me of putting in a mandate—how many

mandates in this bill are you the author of?

For instance, Safe Walks to Schools—hurray. I am all for it. Very good one.

Mr. BOND. I didn't support that.

Mr. WARNER. I beg your pardon?

Mr. BOND. I didn't vote for that. I will address that at some point.

Mr. WARNER. Do you have a question to put to me?

Mr. BOND. I thought I had the floor.

The PRESIDING OFFICER. The Senator from Missouri has the floor.

Mr. WARNER. But I will get it back.

Mr. BOND. All good things come to an end. I appreciate the comments. I was going to address the need for clean water, but my good friend from Virginia is saying we need to make this into a water bill. He said we need to fund local water projects for Governors.

I thought this was a transportation bill. I have already pointed out that the States can use up to 20 percent of STP in the national highway funds on storm water mitigation. But there are lots of unfunded mandates that this body has put, in the past, on our local governments to clean up local water.

Do you know something. For the last dozen years, I have fought as chairman of the VA–HUD Appropriations subcommittee, with my colleague and very good friend, Senator MIKULSKI of Maryland, to provide the funds we need to try to help States and local governments meet their obligations.

There is something called the State revolving funds, and every year the Office of Management and Budget—it does not matter whether it is a Republican or Democrat—cuts it. Those are the most important funds we can provide. We put in over $2 billion each year. It gets cut. We put it back in the next year to go into the State revolving funds. Senator MIKULSKI and I have funded hundreds and hundreds of millions of dollars of water cleanup projects in various States—including Virginia, I am proud to say, a State of which I am very fond—and helping them deal with their clean water needs.

This is a transportation bill. I hear a lot from mayors and local government officials. They need transportation. There are waters needs, yes, but these water needs are about $200 billion—$200 to $250 billion—and unfunded. We could take the entire transportation budget, dump it into water, and still not meet the needs.

He has talked about how important safe drinking water is for health. And I agree. Really, it is one of the best environmental investments we could make. But when you are talking about public health, let's talk about the slaughter on the highways. The whole purpose of this bill is called SAFETEA. The administration says, and I believe, we need to make our highways safer. We kill three people a day or more on Missouri highways. Over 365 of those people die every year because our highways are inadequate. We have narrow two-lane roads that really should be divided four-lane highways, and people get killed on them. Jobs do not come to town when we do not have adequate roads. We contribute to pollution when we tie up traffic on these roads. We need to put these dollars to work.

As I said, the good Senator from Virginia mentioned the mayors support it. Well, my mayors support money for highways and bridges and transportation. But I can tell you, the States strongly support my amendment. They do not want their hands tied by a new Federal mandate. We have too many mandates in this bill, and I would be willing to take a look at some of the others.

But the State departments of transportation want and need the flexibility to spend their own highway dollars. That is why the organization of State highway directors, AASHTO, said: ''We need your immediate help.'' They absolutely want the help of every person in this body to support the Bond amendment to strike section 1620. They say:

> Section 1620 mandates that States set-aside 2%. . . . This will divert $867 million from a core program that provides funding for highway, bridge and transit construction, rehabilitation and repair. If this provision is removed, any State can continue to spend up to 20% of a project's cost on storm water activities—but at the discretion of the State.

So here we are asking this body to be, again, a ''daddy knows best.'' We are going to tell States they have to spend $900 million—which is not much in ''Washington speak,'' but it is an awful lot in my ''home State speak''—for storm waters.

I have already submitted the letters of support. Let me give you some more of the organizations, in addition to AASHTO: the United Brotherhood of Carpenters and Joiners of America, Laborers-International Union of North America, the International Union of Operating Engineers, the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, the American Society of Civil Engineers, the American Council of Engineering Companies—and the list goes on. These people understand how badly we need these highway dollars. Anybody who thinks the $284 billion that we were able to get to bring this bill to the floor is adequate has not gone home and listened to the people.

Mr. INHOFE. Will the Senator yield?

Mr. BOND. I am happy to yield.

Mr. INHOFE. This has been a very good debate and lively debate, and you both adequately confused me. I think that we should maybe draw this to an end. In a moment I would like to make a unanimous consent request that would limit the debate on the amendment. I have been checking with you individually. So I ask I be recognized at the conclusion of the Senator's remarks and any remarks the Senator from Virginia may have for that request.

Mr. WARNER. Mr. President, I certainly have no objection. How might we best accommodate the managers of the bill? A few more minutes on my side, a few more minutes I presume from my colleague, and we would be—

Mr. INHOFE. I was going to propound a UC that you have 3 additional minutes, the Senator from Missouri has 3 additional minutes, and Senator JEFFORDS 2 additional minutes, if that is all right.

Mr. BOND. Do you want 2?

Mr. INHOFE. No, I don't want 2. I already had my 2.

Mr. BOND. Go ahead, please.

Mr. INHOFE. Thank you. So if there is no objection—

Mr. WARNER. Reserving the right to object, I wonder if you would ask that I be recognized at the conclusion of the debate for purposes of making a tabling motion.

The PRESIDING OFFICER. Is there objection?

Mr. INHOFE. Let me go ahead and put this in order, then.

ORDER OF PROCEDURE

Mr. President, I ask unanimous consent that there be 8 minutes remaining for debate prior to a vote in relation to the Bond amendment No. 592, with Senator WARNER in control of 3 minutes, Senator BOND in control of 3 minutes, Senator JEFFORDS in control of 2 minutes, and that Senator WARNER would be recognized to make a tabling motion; provided further, that following that debate, the Senate proceed to a vote in relation to the amendment, with no amendment in order to the amendment prior to the vote—

Mr. WARNER. Mr. President, the purpose of my recognition is to move to table. Is that clearly understood?

Mr. BOND. Yes.

Mr. INHOFE. Yes, it is clearly understood. Let me finish here.

Further, that following that vote, the Senate proceed to executive session for the consideration en bloc of Calendar No. 67, Calendar No. 68; further, that there then be 30 minutes equally divided between the chairman and ranking member or their designees; provided further, that following that debate the Senate return to legislative session and the votes occur on the confirmation of the two nominations at a time determined by the majority leader, after consultation with the Democrat leader, and that following those votes the President be notified of the Senate's action, and the Senate resume legislative session.

The PRESIDING OFFICER. Objection was heard to unanimous consent request.

Is there objection?

Mr. WARNER. No. I withdraw any objection. I thank the Presiding Officer. And I just might add by way of courtesy to the Senators, they can expect a rollcall vote within the next 10 minutes or so. Would that not be correct?

Mr. INHOFE. That would be correct.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Missouri.

Mr. BOND. To conclude my opening comments, I would note that the administration, in its statement of policy, says: The inclusion of a mandatory 2-percent set-aside from the STP program to support a highway storm water mitigation program is opposed. Storm water discharge mitigation costs are already eligible under STP.

I very much appreciate the assistance of the chairman of the committee, Senator INHOFE, who supports my amendment and spoke eloquently earlier on it.

Mr. President, I reserve the remainder of my time and now turn the floor over to——

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

You have just advised the Senate that the administration has taken a position. I wish to add, is that the current AP or the one that was given last year?

Mr. BOND. April 26, 2005.

Mr. WARNER. Fine.

Mr. BOND. You may find it at the top of page 2.

Mr. WARNER. I accept the proffer.

Mr. President, while the Senator is on his feet, I say to the Senator, you say that this mandate is going to take some money from the bill. I have added up a number of mandates that our committee has put into this bill which are funded out of highways. Two of them, I commend you for. One is the NHS connecters—that is connecting some of our local systems to the interstate—which are valid. That is $900 million. Safe roads and paths to schools—that is a mandate. I commend you for that. That is $312 million. And Railroad diversion of highway funds, $893 million. It goes on and on.

I have to tell you, I think this is a well-crafted bill. It has my support. The chairman knows that. But, please, do not point the finger to me as if I am the only one who put a mandate in to help the little fellows. They are in here, plenty of them.

Thank you for your smile. That is all I wish to say. You agree with me.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise in opposition to the Bond amendment.

This section provides much-needed assistance to our States and local communities to deal with the impacts of highway storm water discharges.

I urge my colleagues to continue their support for this vital program which the full Senate adopted in the 108th Congress.

My colleague from Missouri argues that this provision takes money away from State highway departments.

That is not the case.

This provision simply ensures that of the funds provided to State highway departments, an extremely small percentage, 2 percent, will be spent on storm water problems caused by Federal aid highways.

Who will benefit?

Local communities will benefit. That is why the U.S. Conference of Mayors is opposed to the Bond amendment.

Without the funds set aside by the storm water program in the highway bill, local communities will be left holding the bill for compliance with storm water regulations in areas where Federal aid highways contribute to storm water pollution.

Our Nation's wildlife will benefit.

One of this section's greatest supporters is Trout Unlimited.

They recognize that storm water runoff presents a huge risk to fish populations all across the Nation.

Other groups opposed to the Bond amendment include the League of Conservation Voters.

A vote against the Bond amendment is a vote for clean water.

A vote against the Bond amendment is a vote for local communities.

I urge my colleagues to oppose the Bond amendment.

I yield the remainder of my time to the Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I wish to point out that as Senators come down to vote, I will put this sheet down for their examination. It shows the current allocation of aggregate Surface Transportation Program funds to their respective States, followed by a column which indicates the amount of money that the current markup with the Warner provision in it takes for the storm water. And then in the right-hand column is what their States owe under the EPA mandate to clean up water.

You will find that I offset by just a small percentage the enormous obligation each Senator's State has with regard to the EPA-mandated cleanup of the water.

I thank the Chair and thank my colleagues for a very good debate. I hope we have fairly and adequately framed it for all Senators.

I move to table Bond amendment No. 592, and I ask for the yeas and nays.

The PRESIDING OFFICER. The Senator from Missouri has 2 minutes remaining.

Mr. WARNER. I will withhold.

Mr. BOND. Mr. President, I thank my colleagues.

This particular mandate of the good Senator from Virginia is one that I don't like. He put in another mandate to increase funding for metropolitan planning organizations. If we could pass a Clear Skies bill, we wouldn't need to waste all that time on planning activities because we would clean up our air with a heavy restriction on utilities. That is a debate for another time. But just because there are too many mandates in this bill already does not justify keeping $900 million in State budgets out of transportation needs and putting it into storm water.

Don't forget, as we have said, the States now can spend up to 20 percent of their STP and the National Highway System money on storm water cleanups. Granted, there are tremendous needs for cleaning up the water, wastewater and drinking water. We need to address those. I wish we could address them more generously in the water cleanup bills. But this is taking money away from the lifeblood of transportation lifesaving highway construction that we need in our States.

Our mayors—in Missouri, the ones I have talked to—and community leaders are very strongly in favor of it. I guess the good Senator and I will have dueling charts showing how much money is set aside from the State budgets. We know the amounts set aside in the State budgets pale by comparison to the water needs, but the needs for highways go far beyond that in our States. I strongly urge my colleagues to oppose the motion to table because we need better, safer transportation to meet the goals of SAFETEA.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I simply wish to reply that the amendment that is in the bill provides jobs. The same construction worker who is on the project building the new road comes down and repairs the old road. It requires concrete and asphalt to repair the old road, to divert the water. So it is highway construction. It is jobs. There is no digression of the funds except to provide a safety measure.

Mr. BOND. Mr. President, all of the labor organizations, the State highway officials, all of the groups that provide those funds strongly support my amendment and would oppose the motion to table of the Senator from Virginia.

Mr. WARNER. Mr. President, those organizations have been misinformed.

I move to table the Bond amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 113 Leg.]

YEAS—51

Akaka	Durbin	McCain
Alexander	Ensign	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Bennett	Harkin	Nelson (NE)
Biden	Hatch	Obama
Bingaman	Inouye	Pryor
Boxer	Jeffords	Reed
Cantwell	Johnson	Reid
Carper	Kennedy	Rockefeller
Chafee	Kerry	Salazar
Clinton	Kohl	Sarbanes
Coleman	Lautenberg	Schumer
Corzine	Leahy	Smith
Dayton	Levin	Stabenow
Dodd	Lieberman	Warner
Dorgan	Lincoln	Wyden

NAYS—49

Allard	DeWine	McConnell
Allen	Dole	Murkowski
Bond	Domenici	Roberts
Brownback	Enzi	Santorum
Bunning	Frist	Sessions
Burns	Graham	Shelby
Burr	Grassley	Snowe
Byrd	Gregg	Specter
Chambliss	Hagel	Stevens
Coburn	Hutchison	Sununu
Cochran	Inhofe	Talent
Collins	Isakson	Thomas
Conrad	Kyl	Thune
Cornyn	Landrieu	Vitter
Craig	Lott	Voinovich
Crapo	Lugar	
DeMint	Martinez	

The motion was agreed to.

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

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 593

Mr. GREGG. Mr. President, I ask unanimous consent that Senators THOMAS and JOHNSON be added as cosponsors of Thune amendment No. 593.

I further ask unanimous consent that the yeas and nays previously ordered on the amendment be vitiated and that the amendment be adopted.

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

The amendment (No. 593) was agreed to.

AMENDMENT NO. 594 TO AMENDMENT NO. 567

Mr. GREGG. Mr. President, I ask unanimous consent that the amendment at the desk submitted by Senator ISAKSON be considered; provided further that the amendment be agreed to, and the motion to reconsider be laid upon the table.

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

The clerk will report the amendment.

The bill clerk read as follows:

The Senator from New Hampshire [Mr. GREGG], for Mr. ISAKSON, proposes an amendment numbered 594 to amendment No. 567.

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

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

The amendment (No. 594) was agreed to as follows:

(Purpose: To require the Secretary of Transportation to approve a certain construction project in the State of Georgia, provide for the reservation of Federal funds for the project, and clarify that the project meets certain requirements)

At the end of subtitle H of title I, add the following:

SEC. 18___. APPROVAL AND FUNDING FOR CERTAIN CONSTRUCTION PROJECTS.

(a) IN GENERAL.—Not later than 30 days after the date of receipt by the Secretary of a construction authorization request from the State of Georgia, Department of Transportation for project STP–189–1(15)CT 3 in Gwinnett County, Georgia, the Secretary shall—

(1) approve the project; and

(2) reserve such Federal funds available to the Secretary as are necessary for the project.

(b) CONFORMITY DETERMINATION.—

(1) IN GENERAL.—Approval, funding, and implementation of the project referred to in subsection (a) shall not be subject to the requirements of part 93 of title 40, Code of Federal Regulations (or successor regulations).

(2) REGIONAL EMISSIONS.—Notwithstanding paragraph (1), all subsequent regional emissions analysis required by section 93.118 or 93.119 of title 40, Code of Federal Regulations (or successor regulations), shall include the project.

N O T I C E

Incomplete record of Senate proceedings.
Today's Senate proceedings will be continued in Book II.