United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, SECOND SESSION

Vol. 152 WASHINGTON, WEDNESDAY, SEPTEMBER 27, 2006 No. 123

House of Representatives

The House met at 10 a.m.

The Reverend Anthony George, Pastor, Aloma Baptist Church, Winter Park, Florida, offered the following prayer:

Our Father in heaven, we come to You this day acknowledging Your greatness, thanking You for Your benevolent and providential guidance in the founding and sustaining of this great Nation.

In these times of uncertainty as nations rage against us, we humbly ask that You protect our people by Your intervening mercy, that You grant favor to our troops in their efforts to preserve the hope of freedom, and that You bless our President and the men and women of this Chamber in all their deliberations which they undertake for the safety and prosperity of our great country.

Help us in our efforts to eliminate poverty, oppression and wickedness, and empower us to pursue truth, justice and righteousness.

Though our sins are many, we ask that You show us mercy. Grant us wisdom, grant us courage that we fail not man nor Thee. In the name of Christ we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

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

PLEDGE OF ALLEGIANCE

The SPEAKER. Will the gentleman from Florida (Mr. KELLER) come forward and lead the House in the Pledge of Allegiance.

Mr. KELLER 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.

WELCOMING PASTOR ANTHONY GEORGE OF ALOMA BAPTIST CHURCH

(Mr. KELLER asked and was given permission to address the House for 1 minute.)

Mr. KELLER. Mr. Speaker, I rise to welcome today's guest chaplain, Pastor Anthony George of Aloma Baptist Church in Winter Park, Florida. Thanks to Pastor George's leadership, Aloma Baptist is making a difference in central Florida and beyond. Let me give you some examples.

When Hurricane Katrina hit a little more than a year ago, Aloma Baptist Church acted, immediately dispatching teams to the gulf coast to provide humanitarian relief. Today, 1 year later, teams from Aloma Baptist have stayed the course and are still helping our gulf coast neighbors rebuild. And in central Florida, through Aloma Baptist Great Days of Service campaign, church members have gone into my community and poured countless hours into efforts like feeding the homeless, volunteering at the Ronald McDonald House, and mentoring children at summer camps.

Mr. Speaker, my community and this country are better places today because this humble country preacher from Mississippi came to central Florida to serve God and serve people. Pastors from across the country could learn a thing or two from Anthony George about how to build a difference-making church.

PERILS OF AMATEUR STRATEGY

(Mr. SKELTON asked and was given permission to address the House for 1 minute.)

Mr. SKELTON. Mr. Speaker, in 1926, Sir Gerald Ellison published the book, ''Perils of Amateur Strategy,'' the subject of which was a disastrous British campaign at Gallipoli in 1915. Here we are, in 2006, and we find that the Bush administration is busy writing its sequel, ''Perils of Amateur Strategy II,'' about the misadventure of the American attempt in Iraq. The high hopes of bringing stability and democracy are fading, mainly because of strategic mistakes that were avoidable.

These mistakes include the diplomatic failure to ensure passage for our troops through Turkey at an early phase of the war; disbanding the Iraqi army; failure to control the looting after the fall of Baghdad; the failure to secure the weapons caches; and of course the failure to use enough troops to successfully complete the mission.

In addition thereto, Mr. Speaker, on another subject, I note the failure of this Congress to fully implement the recommendations of the 9/11 Commission. Mr. Speaker, we must not adjourn until we pass those recommendations into law, which will prepare us against future terrorist attacks.

BULGARIAN MIRACLE CONTINUES

(Mr. WILSON of South Carolina asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WILSON of South Carolina. Mr. Speaker, today is a joyous day for the people of Bulgaria. This week, the European Commission recommended Bulgaria be admitted into the European Union in January 2007. In less than 16 years, Bulgaria has successfully transitioned from a Communist totalitarian regime into a free market democracy.

Just 3 years ago, I was honored to be at the White House with former Prime Minister Simeon Saxe-Coburg Gotha as Bulgaria was admitted into NATO. Bulgaria has proven to be a true ally in

Printed on recycled paper.

the global war on terrorism, and Bulgarian troops have bravely served in Iraq and Afghanistan. There are currently plans for three U.S. bases to be located within Bulgaria.

Bulgaria has one of the fastest growing economies, and membership in the EU will accelerate its pace. Economically and militarily, Bulgaria is secure.

Congratulations to Prime Minister Georgi Parvanov, Prime Minister Sergey Stanishev, Ambassador to Washington Elena Poptodorova, and my longtime friend Ambassador to Athens Stefan Stoyanov.

I am grateful to serve with Congresswoman ELLEN TAUSCHER as cochair of the Bulgarian Caucus, promoting the growing partnership between Bulgaria and America.

In conclusion, God bless our troops and we will never forget September 11th.

THE TIME TO IMPLEMENT THE RECOMMENDATIONS OF THE 9/11 COMMISSION IS NOW

(Mr. HASTINGS of Florida asked and was given permission to address the House for 1 minute.)

Mr. HASTINGS of Florida. Mr. Speaker, according to the majority leader, the House will adjourn 2 days from now and take a political vacation for 6 weeks. We will do this despite the fact that we will leave 300 million Americans less safe than if we stay here and implement the recommendations of the bipartisan 9/11 Commission.

Continuing to do nothing in the face of continued threats to our people and our way of life is hardly what the American people elected us to do. The 9/11 Commission focused their recommendations into three broad areas: We need to attack terrorists and their organizations; we need to prevent the continued growth of Islamist terrorism; and we need to protect against and prepare for terrorist attacks.

It pains me to say, though the American people must know, this administration and this Congress have failed miserably on all three of these counts. Instead of going after terrorists, we invaded Iraq and have caused an all-out civil war there that costs American lives on a daily basis.

The war in Iraq has not prevented the growth of terrorism. We are learning now that it has actually enhanced the growth of terrorism. Instead of protecting and preparing for the next terrorist attack, we busy ourselves building partial ''let's pretend'' fences. I recommend and unanimously request that we consider the bipartisan recommendations of the 9/11 Commission, less jaw jacking and more action.

THE DEMOCRATS MAY NOT LIKE IT, BUT WE ARE WINNING THE GLOBAL WAR ON TERROR

(Mrs. MILLER of Michigan asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MILLER of Michigan. Mr. Speaker, we have heard an awful lot in the last couple of days from the Democrats over the national intelligence estimate which partly says that our involvement in Iraq is creating a new generation of jihadist leaders.

What they fail to say is that the same NIE says that, I quote, ''Should jihadists leaving Iraq perceive themselves or be perceived to have failed, we judge fewer fighters will be inspired to carry on the fight.''

Mr. Speaker, I want to remind my colleagues that one of those new leaders cited in the report, Abu Musaab al Zarqawi, is now very much dead. Let's just say that he has failed.

The NIE says that the best way to kill the jihadist movement is to spread hope and democracy, which is exactly what we are doing in Iraq and Afghanistan.

Mr. Speaker, national security is the first and foremost responsibility of the Federal Government and of every Member of Congress, and we always need to put national security ahead of politics. And yet, the Democratic minority leader just last week said that she thinks that national security should not be an issue in this campaign.

She actually said that, that national security should not be an issue. Think about that.

HOMELAND SECURITY

(Ms. SCHWARTZ of Pennsylvania asked and was given permission to address the House for 1 minute.)

Ms. SCHWARTZ of Pennsylvania. Every day, Americans work hard to fulfill their obligations to their families, to pay their mortgage, to send their children to college, to save for retirement. Americans understand these priorities. At all times, but particularly at a time of war, Americans expect their leaders to understand that our priority should be securing our homeland. Yet this administration and the Republican Congress have no such plan.

The bipartisan 9/11 Commission noted, quote, ''a lack of urgency'' by this administration and the Republican Congress in addressing our homeland security vulnerabilities, and called their failures shocking.

Democrats have a plan to lead our Nation in a new direction. Democrats will immediately implement the recommendations of the 9/11 Commission. Democrats will secure our borders. Democrats will ensure that our police and firefighters can communicate with each other during times of crisis. And Democrats would never approve the sale of port security to a foreign nation. It is time for a new direction.

Americans deserve to feel secure and to know that our government is working hard to ensure that safety and security every day. Democrats know that government's paramount responsibility is to defend our citizens. Democrats will keep our country safe.

THE PRESIDENT AND GAS PRICES

(Ms. FOXX asked and was given permission to address the House for 1 minute.)

Ms. FOXX. Mr. Speaker, I rise today to address gas prices and the Democrats selective agenda on talking about them.

Up until recently, over the last year, gas prices have risen, and the Democrats jumped on this issue and played the blame game. They condemned President Bush repeatedly saying it was the President's fault.

The Republican-led Congress and administration began to explore new options to increase domestic output to help lower the cost at the pump. The Republican Congress continued their battle to open ANWR. Seventy-five percent of Alaskans want ANWR opened for oil exploration and all of the elected officials at the Federal level want it open. The area that would be explored is roughly the size of a postage stamp on a football field, yet the Democrats continue to obstruct this effort.

The Democrat solution to rising gas problems was not a policy or a proposal; it was simply ''no'' to Republican and administration proposals and blaming the President.

What astounds me so is now that the gas prices are falling, where is the Democrats' praise for the President's efforts? Gas prices are falling, and all I hear from the other side of the aisle are crickets.

□ 1015

FIRST TEE BENEFITS INNER CITY YOUTH

(Mr. TANNER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TANNER. Mr. Speaker, I come here this morning with the Congressional Roll Call Golf Cup here. We have Roll Call, a Capitol Hill newspaper here, which sponsors baseball games and football and basketball, and we have a Congressional Ryder Cup golf competition between the Democrats and Republicans every year. We recently had this for the First Tee organization. The First Tee organization and its president, Joe Louis Barrow, Jr., is an organization that brings golf and the skills and the character values that golf teaches people to inner city youth all across our country and to those who might otherwise not be exposed to the game.

May I announce that this is not a hard chore for me because the Democrats won this year for the first time ever.

I was privileged to serve as captain of the Democratic team, and Mike Oxley, who was tied up in conference and

asked me to go ahead with this this morning, was captain of the Republican team. The competition was fierce, but we did this for the children of our country who can be exposed to the principles of golf.

Golf is the only sport that doesn't have an umpire or referee. You play yourself, and the values that golf teaches is something that we think is worthwhile.

I want to congratulate the First Tee Roll Call, and the Republican team and the Democratic team who showed up for this very, very worthwhile project.

AMERICA'S STONEWALL

(Mr. POE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. POE. Mr. Speaker, Members of Congress are looking for border security answers, and the American people are demanding them. But it seems we are being stonewalled by our own Border Patrol hierarchy.

Get this, apparently our Border Patrol agents cannot talk or answer questions from Members of Congress without filing a lengthy detailed report, the same type of report they file when they arrest illegals, drug runners, or are even shot at by the Mexican military. This appears to intimidate our Border Patrol agents to not say a word about what is really going on.

When I have been on the border, the Border Patrol agents were very reluctant to say anything except scripted answers. Now I know why. What does the Border Patrol hierarchy have to hide? Apparently the truth because that is all we are after.

Why wouldn't homeland security want their agents talking to Members of Congress? Members of Congress are being forced to tear down the war of silence just to control our own border. The enemy is not Congress or the American people, it is the insurgents who infiltrate our border every day.

And that's just the way it is.

NO RECESS UNTIL ACTION ON ENERGY PRICES

(Mr. STUPAK asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. STUPAK. Mr. Speaker, the Bush administration and Republicans in this House enjoy a cozy relationship with big oil companies, one that is paying off for oil but is hurting American consumers.

For 5 years now, the President has stacked his administration with former energy executives, friends and former colleagues of his and the Vice President's. It is no wonder then that now the Nation's three largest oil companies have been posting record profits. They are benefiting from the Republican policies that allow them to price gouge and receive huge tax subsidies.

But when it comes to offering assistance or solutions to the American consumer, the Republicans in the Bush administration come up short. No money for home heating assistance, no money for consumer price relief, no money to invest in finding alternative fuels. Of course not, it is all going to the oil companies. There is just not enough left to help the average American.

Democrats demand action on this issue before Republicans take this House into yet another recess.

Therefore, I ask unanimous consent to bring up H.R. 4479, which repeals the oil company tax subsidies and allows us to find real solutions to the energy crisis.

The SPEAKER pro tempore (Mr. DUNCAN). Under the Speaker's announced guidelines, the Chair is constrained not to entertain such a request in the absence of express clearances by bipartisan committee and floor leadership.

NATIONAL INTELLIGENCE ESTIMATE AND WAR ON TERROR

(Mr. GINGREY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY. Mr. Speaker, I rise today to thank President Bush for declassifying key judgments from the National Intelligence Estimate so the American people can understand the absolute critical importance of our war on terror, and why the bills we are debating this week, from defense appropriations to military commissions, are essential to keeping America safe and our homeland secure.

Mr. Speaker, despite what my colleagues on the other side of the aisle might claim, American is not responsible for the rise of terrorism. We did not bring this war on the terrorists. They brought this upon themselves when they attacked freedom and our way of life in Kenya, Tanzania, aboard the USS Cole, New York City, Pennsylvania, and right here in Washington, D.C. on September 11.

America has a winning strategy of relentlessly hunting down those who wish us harm, and working to defeat terrorism by encouraging democracy in the Middle East. If the terrorists are emboldened by the spread of this newfound freedom, it is because they know that free people will terminate the terrorist way of life.

Mr. Speaker, it is absolutely incumbent upon us and this body to give President Bush, our CIA, and our military the tools they need to prevent future attacks on our Nation.

I hope my colleagues on the other side of the aisle will join me this week in voting to protect the American people.

RAISING THE MINIMUM WAGE

(Mr. GEORGE MILLER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEORGE MILLER of California. Mr. Speaker, Members of the House, for 10 years the Republicans have kept hardworking Americans away from an increase in the minimum wage. Over 7 million people who get up in the morning every day and go to work, all day long, all week long, all month long and all year long, and at the end of that year they end up in poverty. At the end of that year they end up with the inability to provide for their families.

For 10 years, the Republicans have fought an increase in the minimum wage. For 10 years the Republicans have made it official policy of this country that people who get up and go to work every day will end up in poverty. It is a poverty wage. And the Republicans are proud of it. The majority leader boasts that he has fought this his entire public life, and yet these people are stuck at 1950 wages.

But what is not stuck at 1950 is the price of groceries, the price of gasoline to go to work, the price of housing, and the price of health care. There is no relief for these hardworking Americans. There is no relief for their families because the Republicans refuse to entertain a clean vote on the minimum wage. A clean vote, so 7 million Americans could start to have an increase in their yearly take-home pay. That is what the Republicans refuse.

There is 72 hours left in this session. The Republicans can decide to do the decent thing, to provide a minimum wage increase for hardworking Americans. But the Republicans won't do that because they are not a party of decency. They have chosen to put these people into poverty and to keep them in poverty year after year after year. Yet they have chosen to have eight pay raises for Members of Congress at the same time they have chosen to keep hardworking Americans in poverty.

That's what the Republicans promise hardworking Americans, you end up in poverty.

The SPEAKER pro tempore. The gentleman's time has expired.

Mr. GEORGE MILLER of California. Mr. Speaker, I ask unanimous consent to take up H.R. 2429, the Fair Minimum Wage Act.

The SPEAKER pro tempore. Under the guidelines consistently issued by successive Speakers, as recorded on page 734 of the House Rules Manual, the Chair is constrained not to entertain the gentleman's request until it has been cleared by the bipartisan floor and committee leaderships.

Mr. GEORGE MILLER of California. Once again, the Republicans block a vote on the minimum wage.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair must ask Members to heed the gavel. The gentleman from California far exceeded his allotted time.

RAISING THE MINIMUM WAGE

(Mr. PASCRELL asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PASCRELL. Mr. Speaker, when is House Republican leadership going to allow a vote on the minimum wage bill to come to this floor? A clean minimum wage bill? As health care, grocery, and energy costs skyrocket for average consumers, House Republican leadership would rather help their CEO friends than average Americans who are just trying to make ends meet.

The fact is that the median annual household income has actually increased by $1,700 after inflation during the course of the Bush administration. The fact is that today, full-time workers who earn the minimum wage are bringing home a paltry $10,700.

This is simply not fair. House Republican leadership have refused to allow a clean minimum wage vote. Close to 15 million Americans will be affected if we did this. Do Republicans really expect a family to live on less than $11,000 a year?

Contrary to what the President and Republican leadership would have you believe, everything is not coming up roses when it comes it our national economy. There are more poor, more uninsured than ever before.

Mr. Speaker, no congressional pay raise until minimum wage is increased, period. It is time we pass a minimum wage bill so that 6 million Americans get a much-deserved pay raise.

Mr. Speaker, if I may, I ask unanimous consent to bring up H.R. 2429, and I know what you are going to say, but I ask it anyway.

The SPEAKER pro tempore. Under the guidelines consistently issued by successive Speakers, as recorded on page 734 of the House Rules Manual, the Chair is constrained not to entertain the gentleman's request until it has been cleared by the bipartisan floor and committee leaderships.

RUBBER-STAMP CONGRESS

(Mr. MEEK of Florida asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MEEK of Florida. Mr. Speaker, it is an outright shame what the Republican majority has done. They have expressed themselves as the rubber-stamp Republican majority to the Bush White House.

As you know, yesterday we took a vote here on this floor as relates to going into closed session to talk about the findings of the National Intelligence Estimate. I will tell you these are professionals that are working in clandestine agencies not only in this country, but throughout the world, and it is very, very important that the American people understand what is going on in Iraq.

We can only come to the floor and try to put forth some sort of representation on behalf of the American people on the Democratic side.

Mr. Speaker, the facts are right here. When it came down to voting for us to go into closed session to talk about national security, talk about the loss of our troops in Iraq, talk about those that are wounded, you want to talk about honor.

The bottom line is that one Republican voted to go into closed session to talk about this National Intelligence Estimate; and 215 Republicans voted against it; 14 didn't even show up to vote.

The bottom line is that the Democrats are willing to secure this country as we were voted and federalized to come up here and to do so. So when you walk up to this well here and see this word ''justice,'' give the American people some justice so we can go into closed session and protect the United States of America and not come to this floor and just talk. We are about action.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair has allowed Members to exceed the 1-minute time limit in completing their thoughts, but the Chair would request that Members abide more closely by the 1-minute concept.

TIME FOR A NEW DIRECTION

(Mr. BERRY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. BERRY. Mr. Speaker, I encourage everyone to keep in their hearts and minds and certainly in your prayers our men and women in uniform and those on the battlefield this morning.

Mr. Speaker, it is time, it is time for a new direction. It is time for health care that the American people can afford.

It is time for Social Security that we can depend on. It is time to have jobs that do not disappear. And it is amazing, it demonstrates the way the big oil companies have managed to abuse the American people to the point where they think $2.15 for gasoline is a good deal. That is shocking.

It is time for us to go in a new direction: Leadership that honestly serves our goals of peace and prosperity, security by getting the job done rather than blaming somebody else because of the failures of this administration.

It is time to go in this new direction, and we should not recess this Congress until these goals are reached.

HONORING OFFICER RODNEY JOHNSON

(Mr. AL GREEN of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. AL GREEN of Texas. Mr. Speaker, I thank God for our peace officers; and I especially thank God for Officer Rodney Johnson, who will be laid to rest today.

On Thursday he left the comfort and safety of his home so we might be safe in our homes. On Thursday, he put his life at risk so that our lives would not be at risk. On Thursday, he sacrificed his life so that we might have a better life.

A wife has lost a husband, children have lost their father, humanity has lost a great humanitarian.

Thank God for peace officer Rodney Johnson. May he rest in peace.

FIGHTING HIV/AIDS

(Mr. WATT asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WATT. Mr. Speaker, the members of the Congressional Black Caucus have throughout a long period of time led the fight against HIV and AIDS by insisting on the creation of a global fund to attack it internationally, insisting that we address the issue here in the United States, and that we take it as a serious proposition. Unfortunately, as we have been addressing it, it has grown to epidemic proportions in the African-American community here right in our own backyard.

And so we will have today a series of speakers coming to address that issue from the Congressional Black Caucus because we think it is time for the United States to declare a state of emergency and we are intent on taking the lead ourselves on this issue to dramatize it in our own communities, to talk about it, to be tested ourselves, to insist on mandatory testing, and support some new initiatives that will address this problem and get it in control in this country.

□ 1030

THE 9/11 COMMISSION'S RECOMMENDATIONS: INTEROPERABILITY

(Mr. THOMPSON of Mississippi asked and was given permission to address the House for 1 minute.)

Mr. THOMPSON of Mississippi. Mr. Speaker, earlier this month I wrote you to take action on measures that would fulfill many of the 9/11 Commission's recommendations.

On 9/11, the Commission's Republican Chair and Democratic Vice Chair expressed bipartisan concern that 5 years later, some of the most ''elementary and fundamental'' recommendations haven't been done. They said that ''there is nothing more important on the agenda of any policymaker than to make the people of this country more secure.''

Now they have told us, among other things, that we need to absolutely do interoperability.

We all remember the firefighters who lost their lives in the Twin Towers. And we remember the havoc in New Orleans during Katrina.

In light of that, Mr. Speaker, in light of the Republican leadership's unwillingness to move legislation on interoperability, I ask unanimous consent to bring up H.R. 1251, offered by Mrs. LOWEY of New York.

The SPEAKER pro tempore. Under the settled guidelines previously cited, that request cannot be entertained.

IRAN

(Mr. KUCINICH asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. KUCINICH. Mr. Speaker, Hans Blix, former chief U.N. weapons inspector, cautioned the U.S. before it attacked Iraq that Iraq was not an imminent threat. He was right. Iraq did not have weapons of mass destruction. Now America is more vulnerable than ever because of this administration's pathological deceptions.

Yesterday, Dr. Blix said Iran is not an imminent threat and we should open up direct talks with Iran, not attack Iran. He is right again.

Last week Intelligence Committee staff reports' deliberate distortion of the degree of Iran's uranium enrichment was exposed by the International Atomic Energy Agency. Nevertheless, according to credible reports, the administration has had covert operations in Iran, selected 1,500 bombing targets, and is preparing a naval blockade of the Strait of Hormuz, which will set the stage not only for a war against Iran, but also for $5 a gallon gasoline.

Meanwhile, the State Department and the Department of Defense will not even appear in classified briefings to discuss the plans for a war against Iran.

Wake up, America. There is another war being planned.

BIOFUEL ACT

(Mr. ETHERIDGE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ETHERIDGE. Mr. Speaker, I rise to call on this House to pass legislation to end America's dependency on foreign oil.

Earlier this week, I attended the opening of Piedmont Biofuels in Pittsboro, North Carolina. This plant is already producing thousands of gallons of B–100 biodiesel made from soybeans grown in my home State. This plant is a model for the future of our energy independence.

The technology exists today that can turn our crops into biofuels. What we don't have is the infrastructure to facilitate the use of these fuels.

My colleagues and I have introduced H.R. 5372, the BIOFUEL Act, to ramp up this infrastructure immediately. The legislation will facilitate the increased production of vehicles that run on biofuels and provide tax credits and incentives to gas station owners who update their equipment to be able to sell these fuels.

The legislation also increases research and development into biofuels, investing in cutting-edge technology that will utilize energy from sources such as agricultural waste and byproducts.

Now is the time to end America's dependency on foreign oil. The answer to our energy needs is growing in our fields.

THE DO-LESS-THAN-DO-NOTHING CONGRESS; NO RECESS UNTIL ACTION TAKEN ON 9/11 RECOMMENDATIONS

(Mr. MORAN of Virginia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MORAN of Virginia. Mr. Speaker, one duty we share as Members of this body is a solemn responsibility to make certain that we do everything possible to ensure the safety of the American citizens that we are elected to represent. Unfortunately, when it comes to homeland security and learning from the tragedy of September 11, this Republican Congress has failed miserably.

The independent and bipartisan 9/11 Commission put forth a report with recommendations for keeping our Nation secure. Despite their suggestions, the Bush administration and the Republican Congress have failed to pass or implement all of the recommendations for homeland security. In fact, the commission recently gave the administration and this Republican Congress five Fs and 12 Ds on homeland security.

Mr. Speaker, Democrats have been fighting to pass the 9/11 Commission's recommendations and to ensure the safety of our ports and airports. However, Republicans are preparing to adjourn for the campaign season without taking up these security measures.

So I ask unanimous consent to take up and pass and implement all of the 9/11 Commission's recommendations, Mr. Speaker.

The SPEAKER pro tempore. Under the settled guidelines previously cited, that request cannot be entertained.

RAISING THE MINIMUM WAGE; WE SHOULD INCREASE THE MINIMUM WAGE TODAY

(Ms. EDDIE BERNICE JOHNSON asked and was given permission to address the House for 1 minute.)

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, when are the House Republicans going to allow a minimum wage bill to come up on the floor where we actually vote on the minimum wage? It needs to become law.

As health care, groceries, energy, housing costs skyrocket for average consumers, House Republicans would rather help their CEO friends than average Americans who are just trying to make ends meet.

Today, full-time workers who earn the minimum wage are only bringing home $10,700 a year. The average corporate CEO makes that much money during his first 4 hours of work for the year. This is simply not fair. Yet, for months, House Republicans have refused to allow a clean minimum wage vote on this House floor. Do House Republicans really expect that a family can live on less than $11,000 a year?

The Democrats want to take the Nation in a new direction, one where the needs of all Americans are addressed. We want a clean vote on the minimum wage.

And, Mr. Speaker, in light of the Republican leadership's unwillingness to move legislation on the minimum wage, I ask unanimous consent to bring up H.R. 2429, the legislation to increase the minimum wage.

The SPEAKER pro tempore. Under the settled guidelines previously cited, that request cannot be entertained.

HIV/AIDS

(Ms. WATERS asked and was given permission to address the House for 1 minute.)

Ms. WATERS. Mr. Speaker, recent estimates indicate that there are 40,000 new AIDS infections each year in the United States.

African American men and women were disproportionately overrepresented among new AIDS diagnoses in 2004. African American women accounted for 67 percent of new AIDS diagnoses among women; and African American men accounted for nearly half, 44 percent, of new AIDS diagnoses among men. Today, African American women represent a staggering 71 percent of all the AIDS diagnoses among women.

Though African Americans comprised 17 percent of the teenage population, age 13 to 19 years of age, by the end of 2004, they represented 70 percent of all the HIV/AIDS cases among teenagers, age 13 to 19 years of age. Just more than one in ten, 13 percent and 15 percent, were represented by Latino and whites respectively in the same age groups.

The Congressional Black Caucus has decided that we are going to increase our efforts. Since the beginning of the HIV/AIDS epidemic, the Congressional Black Caucus has and will continue to assume a leadership role in addressing the issue through AIDS education and other actions. We are increasing our efforts to insist on personal responsibility, mandatory testing, outreach and education, advocating for increased funding, more legislation.

I have introduced H.R. 6038. This is a bill that would require routine testing of those entering prison, with counseling and treatment and referrals and follow-ups for those who are leaving.

We are going to conquer this epidemic.

REPUBLICANS PAD THE PROFIT MARGINS OF DRUG COMPANIES IN FLAWED PRESCRIPTION DRUG LAW

(Ms. SCHAKOWSKY asked and was given permission to address the House for 1 minute.)

Ms. SCHAKOWSKY. Mr. Speaker, there is no question where the loyalty of Washington Republicans rests when it comes to prescription drug coverage for America's seniors. Their loyalty rests in the boardrooms of the Nation's huge pharmaceutical companies.

One need only look to last Friday for proof. In pharmacies around the country, many seniors heard the bad news. Their drug purchases would not be covered under Medicare part D because they had reached the ''donut hole.'' These seniors lost coverage because they had already spent $2,250 on their prescriptions, and they won't qualify again until their expenses reach $5,100 for the year.

I heard from my constituent, Pauline, who said: ''I'm sure somewhere along the way the 'donut hole' phenomenon was described, but obviously was passed over in the tons of Medicare D explanations. All I know is that last month what I paid was $20 and it now costs me $96, and that was only on one prescription. What adds insult to injury is that we must now pay the premium, too, while we lose our benefits. Prior to Medicare part D, it was costing me approximately $400 for all my prescriptions; so I am now faced with full freight, inflated pharmacy bills due to the 'donut hole.' ''

Actually, Pauline will never get out of the donut hole. It is really a black hole for her.

So shame on Congress, Mr. Speaker, if it recesses before requiring the Secretary of HHS to negotiate for lower prescription drug prices for seniors and persons with disabilities.

THE HIV/AIDS CRISIS

(Mrs. CHRISTENSEN asked and was given permission to address the House for 1 minute.)

Mrs. CHRISTENSEN. Mr. Speaker, I rise to tell just part of the Herculean and steadfast efforts, the story of the CBC to control HIV/AIDS and reverse its tragic toll in our communities.

I came here 10 years ago and cut my congressional teeth working with and learning from MAXINE WATERS and Lou Stokes as we created the Minority AIDS Initiative. In 1998, the Clinton administration responded to our call for a state of emergency with an investment of $158 million, which grew to $400 million.

Despite our repeated calls to action under this administration, funding has been stagnant; capacity-building in communities of color, the hardest hit, has been lost; and we have been burdened by political and ideological policies that caused lives to be destroyed or lost. So today African Americans are more than 50 percent of new HIV and AIDS cases, and our death rate is almost three times that of whites.

We are again in crisis. We need a state of emergency for our health. Each and every CBC member has always and will continue to do their part here in our districts and, with BARBARA LEE, across the world. We call on Congress and the President to respond.

AIDS

(Ms. LEE asked and was given permission to address the House for 1 minute.)

Ms. LEE. Mr. Speaker, 25 years after the start of the devastating global HIV/AIDS pandemic, this disease is still devastating black America. Among young people, among women, among men, African Americans are most at risk of getting infected with HIV and developing AIDS and dying of this disease. Enough is enough.

Over the last 5 years, this Republican-led Congress has done nothing to recognize this pandemic and the scope of this problem. We need to focus our efforts on the spread of HIV and AIDS in our prison system and provide routine but rigorous HIV testing, linked with treatment, to all incarcerated individuals, and support Congresswoman WATERS' H.R. 6038, the Stop AIDS in Prisons Act.

We need to pass my bill, H.R. 6083, the JUSTICE Act, to allow condoms, yes, condoms, in our prisons and to demand accountability in stopping the spread of HIV and other sexually transmitted infections among incarcerated individuals.

Mr. Speaker, this is a state of emergency. Let us declare it. We must declare it. We must declare resources to confront it. The entire Congress needs to support more funding for the Minority AIDS Initiative, beginning with a minimum of $610 million for the Minority AIDS Initiative. Let us declare this state of emergency.

REPUBLICAN LEADERSHIP IGNORES LABOR-HHS-EDUCATION SPENDING BILL

(Mr. MCGOVERN asked and was given permission to address the House for 1 minute.)

Mr. MCGOVERN. Mr. Speaker, the Republicans want to recess the House at the end of this week, but we should not leave town when there is serious business that the Republican leadership has failed to complete.

Why won't the Republican leadership let this House vote on the Labor-HHS-Education appropriations bill? This bill was reported out of committee on June 20. Here we are, 3 months later, still waiting for the Republicans to bring this critical bill to the House floor.

Does the Republican leadership, the Republican majority in this House, believe that funding for our public schools, our students, financial aid, health care systems, senior citizens, workers, and our youngest children simply does not matter, isn't important, that it is somehow okay to let this bill just sit around?

This Republican majority is out of touch and, come November 7, hopefully will be out of power. Mr. Speaker, I am more than happy to stay in town another day or two to finish this bill to help our kids, to help our senior citizens, to help our workers.

And in light of the Republican leadership's failure to move an agenda to help the American people, I ask unanimous consent to bring H.R. 5647 to the House floor for immediate consideration.

The SPEAKER pro tempore. Under the guidelines consistently issued by successive Speakers, as recorded on page 734 of the House Rules Manual, the Chair is constrained not to entertain the gentleman's request until it has been cleared by the bipartisan floor and committee leaderships.

□ 1045

A LITTLE TRUTH GOES A LONG WAY

(Mr. PRICE of Georgia asked and was given permission to address the House for 1 minute.)

Mr. PRICE of Georgia. Mr. Speaker, are you impressed by these irresponsible and childish and petty partisan antics of the minority today? It is divisive, disgraceful, does a disservice to our body and to our Nation.

Now, I understand that it is that crazy political season, but a little truth will go a long way. Leadership on the other side has voted against the Deficit Reduction Act and responsible spending, has voted against pension reform and welfare reform, has voted against border protection and immigration reform, has voted against higher education reauthorization, has voted against the 9/11 Recommendations Implementation Act.

Mr. Speaker, the American people see through this charade, these political antics, and I call on my colleagues to respect each other, to respect the Congress, and to respect our Nation and to act responsibly and join us in making Americans safer and more prosperous.

THE DO-LESS-THAN-DO-NOTHING CONGRESS

(Ms. WATSON asked and was given permission to address the House for 1 minute.)

Ms. WATSON. Mr. Speaker, we have all heard about the do-nothing Congress of 1948 that met only 101 days. Well, Mr. Speaker, I am sad to report that this Republican-led Congress will go down in history as the do-less-than-nothing Congress.

Today is only the 78th day that we have met for legislative business. And

yet the Republican leadership insists on recessing at the end of this week to allow extra time for campaigning. Democrats believe we should not adjourn this body until we address this needs of all Americans, not just major corporations and the wealthy few.

To do that, we must deal with the issue of the skyrocketing college tuition costs that are plaguing so many students and their families. Democrats are fighting to restore the $12 million in student aid recently cut by the Republican Congress, and to finally expand the size of available Pell Grants that those on the other side of the aisle have been blocking for so many years.

Mr. Speaker, since Republicans in this body have no plans to address college affordability, before they head back to campaign, I ask for unanimous consent to bring up a revised Labor, Health and Human Services budget bill that ends the Republican raid on student aid.

The SPEAKER pro tempore. Under the settled guidelines previously cited, that request cannot be entertained.

NO CONGRESSIONAL RECESS UNTIL ACTION IS TAKEN ON ENERGY PRICES

(Mr. CARNAHAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CARNAHAN. Mr. Speaker, as the major oil companies know, it pays to have friends in high places. The Bush administration and this Republican-controlled Congress have an all-too-cozy relationship with Big Oil that has helped those companies rake in the largest profits in American history. The American people paid the price.

Throughout the summer, record high costs at the pump hit families hard. Now, as the winter months approach, these same working families know they may soon face soaring home heating bills. Yet House Republicans refuse to repeal the $8 billion in tax breaks to their friends in Big Oil.

Democrats want to repeal these outrageous subsidies and use those funds to provide consumers with real relief and real investment in new fuel technologies and biofuels from America's heartland, including my home State of Missouri, and not the Middle East.

House Republicans seem dead set on standing with Big Oil instead of American consumers. Therefore, Mr. Speaker, I ask unanimous consent to bring up a bill I am proud to cosponsor, H.R. 4479, which repeals the oil companies' subsidies and gives those breaks instead to consumers, small business and funds the Low Income Home Energy Assistance Program.

The SPEAKER pro tempore. Under the settled guidelines previously cited, that request cannot be entertained.

Mr. CARNAHAN. Mr. Speaker, may I make a parliamentary inquiry? Is that ruling tantamount to an objection to this?

The SPEAKER pro tempore. It is in the first instance an exercise of discretion in recognition. The gentleman was simply not recognized for the unanimous consent request under the previously announced guidelines for the exercise of discretion in recognition.

As recorded on page 734 of the House Rules Manual, the Chair is constrained not to entertain the gentleman's request unless it has been cleared by the bipartisan floor and committee leaderships.

HIV/AIDS IS WREAKING HAVOC ON AFRICAN AMERICAN COMMUNITIES ACROSS OUR NATION

(Ms. MOORE of Wisconsin asked and was given permission to address the House for 1 minute.)

Ms. MOORE of Wisconsin. Mr. Speaker, you have heard earlier today that the HIV/AIDS pandemic has wreaked havoc on the African American community across the Nation.

And that is also true for my own district in Milwaukee, Wisconsin, where since 1983 over 50 percent of the diagnosed AIDS cases were among African Americans. And while these data are appalling and frightening, we must remember that this is entirely preventable.

We must spread the hope of preventing AIDS. So despite this terrible human tragedy, we must never yield to complacency and silence and ignorance, because complacency and silence and ignorance, of course, leads to death.

We must encourage people to get educated, to get tested, to get involved in the fight against AIDS. But quite frankly, Mr. Speaker, it is this Congress's responsibility to fight this national epidemic by providing the resources for people to be involved in setting aside this pandemic. It is not enough to just say no to sex.

This commitment would involve reauthorizing the Ryan White Care Act. It would involve increasing funding for the Minority AIDS Initiative. Mr. Speaker, we must never look the other way and say that nothing can be done. And I urge my colleagues to take action and to fund these critical initiatives.

INCREASE COLLEGE GRANTS SO MORE TEENS CAN ATTEND COLLEGE

(Mr. BOREN asked and was given permission to address the House for 1 minute.)

Mr. BOREN. Mr. Speaker, at a time when America should be encouraging every high school student to attend college, the administration continues to drag its feet when it comes to making college more affordable.

While college costs at a 4-year public college have increased by 57 percent since 2001, the Pell Grant maximum has not been increased for 4 years straight. Investing in education must be a priority in the United States if it is going to maintain its advantage over other countries in an increasing global economy.

Our education policy must reflect that nothing is more important to our long-term economic growth than an educated work force. We should not leave this week without making this commitment to students across the country. We should bring up and pass an improved Labor, HHS appropriations bill that expands the size and the availability of the Pell Grants.

THE CONGRESSIONAL AGENDA REFLECTS ITS VALUES

(Mr. OBEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. OBEY. Mr. Speaker, we have heard a lot of talk on this House floor about values. I would suggest that how we spend our time reveals our values in many ways. This Republican-controlled Congress was able to take the time to debate the fate of horses. They were able to take the time to provide $290 billion in tax relief for 7,500 of the richest people in the country each year.

They were able to take the time to provide new tax breaks for oil companies. But there was no time, apparently, for providing comprehensive health care reform, and there was certainly no time, apparently, to provide an increase in the minimum wage, which has been frozen for 9 years.

The CEOs from your wealthiest corporations in this country earn more in 4 hours than a minimum wage worker earns in an entire year. And yet the Republican majority found the time to make life easier for the most well-off 1 percent of people in this country, but no time at all to help those who need it most. What kind of values does that represent?

REPEAL TAX BREAKS TO BIG OIL

(Mr. LANGEVIN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LANGEVIN. Mr. Speaker, despite the fact that Americans have paid record high prices at the gas pump this summer, the Bush administration and the Republican friends in this body have voted to give tax breaks to big oil companies.

At the same time, they refuse to move forward on policies to achieve energy independence and keep our Nation from relying so heavily on foreign oil. Now American families are facing a long winter of high home heating bills with no end in sight.

Mr. Speaker, Democrats strongly believe that this body should not adjourn until action is taken to address the energy concerns of all Americans. We support a comprehensive policy that will roll back the tax cuts for big oil companies and invest the savings into

developing alternative fuels and achieving energy independence.

Keeping fuel prices under control is essential to working Americans who are struggling to make ends meet. Mr. Speaker, in light of the Republican leadership's unwillingness to address the energy concerns of American families, I ask unanimous consent to bring up H.R. 4479, a bill to repeal subsidies for big oil companies and give them to consumers, low-income heating programs, and small businesses.

The SPEAKER pro tempore. Under the settled guidelines previously cited, the gentleman's request cannot be entertained.

NO CONGRESSIONAL RECESS UNTIL ACTION IS TAKEN ON PRESCRIPTION DRUG PRICES

(Mr. BUTTERFIELD asked and was given permission to address the House for 1 minute.)

Mr. BUTTERFIELD. Mr. Speaker, the Republican leaders of this Congress talk about what they have accomplished during this session. But the fact is, that we have met fewer days than any Congress in history. I am ashamed to say that they have made us the most do nothing Congress ever to serve.

Instead of actually tackling the issues that concern average American families, the Republicans have passed legislation to help their wealthy friends and the huge corporations that support their campaigns.

One example of this is the flawed Medicare prescription drug benefit. This program could have provided significant help to those who need it the most. Instead, it now helps those who need it the least, the drug companies. Democrats believe that the Secretary of Health and Human Services should have the authority to negotiate for lower drug prices under Medicare, just as the VA does.

And so I call on the Republican majority, again, to allow HHS to negotiate drug prices. It will help our seniors and it will help balance the Federal budget.

REAUTHORIZE THE RYAN WHITE ACT

(Mr. TOWNS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. TOWNS. Mr. Speaker, I am extremely disappointed that after an entire year, we cannot get the Ryan White reauthorization process right.

We should not be robbing Peter to pay Paul. That means we should not be cutting precious funds from places like New York, New Jersey, California, and many other States that have historically borne the burden of the HIV/AIDS epidemic.

We should have enough money to take care of the people who are most at risk, regardless of where they live. The amendment that I offered in committee that would have added the needed funds was defeated. But I plan to offer it again on the floor, and I hope that the outcome is very, very different.

We need to get the money to places that have substantially high HIV/AIDS populations, particularly African American and Hispanic women and men, and substance abusers. We cannot leave these most at-risk populations without medications and care.

This reauthorization in its present form does just that. And it is wrong, and I am hoping that the Members of this body will realize that we need to do something about this and should not leave people just to die and die because we are not acting properly.

□ 1100

REAUTHORIZE THE RYAN WHITE ACT

(Ms. NORTON asked and was given permission to address the House for 1 minute.)

Ms. NORTON. Mr. Speaker, the international war chest of AIDS is black Africa, and in our country it is black America. How did half the cases become African American? Even worse, new cases are overwhelmingly black.

We have seen this disease stereotyped as homosexual and now as black. The one constant is its spread. Yet, unlike many diseases today, AIDS is preventable and can be contained and defeated.

The answers are not complicated, beginning with far more visible and substantive leadership, leadership on testing—I will be tested on the Capitol complex grounds in a D.C. health van this afternoon to set an example to help prevent the epidemic spread of this disease among African Americans—leadership on safe sex and condoms; leadership on overcoming homophobia, which is in league with this disease in the black community; and above all, leadership from the Congress of the United States, which must not go home without reauthorizing the Ryan White Act.

HONORING BRUCE CARLSON

(Ms. LINDA T. SÁNCHEZ of California asked and was given permission to address the House for 1 minute.)

Ms. LINDA T. SÁNCHEZ of California. Mr. Speaker, I rise today to honor the life of Santa Ana Police Deputy Chief Bruce Carlson, who passed last Thursday after his long fight with liver cancer.

Bruce loved our community and the people of Santa Ana. Bruce joined the Santa Ana Police Department on January 7, 1973, as a patrolman. Through his dedication to service and understanding the concerns of others, Bruce rose in rank to become Field Operations Bureau Commander, overseeing the largest and the most complex operation at the department.

His legacy in Santa Ana is not confined to his work with the police department. Bruce's closest friends know him to be caring, to be a thoughtful man who would go out of his way to help his community.

Bruce demonstrated true courage and maintained a very positive outlook on life throughout his struggle with cancer. He was a tremendous leader and made many significant contributions that helped to make the Santa Ana Police Department the national leader that it is today, especially on homeland security.

Bruce Carlson is survived by his wife and his two children, and our thoughts and our prayers are with him today and with them.

COLLEGE LOANS

(Mr. PAYNE asked and was given permission to address the House for 1 minute.)

Mr. PAYNE. Mr. Speaker, middle-class Americans are feeling more and more squeezed by the economy that values productivity, but not enough to reward it with an increase in pay. Wages are simply not keeping up with inflation, making it more difficult for families to afford monthly bills.

One of the most daunting bills families face today is the bill for their children's college education. The average cost for a 4-year college at a State university is $40,000 and the cost for private colleges top $107,000.

Democrats want to help families better afford these ever-increasing costs. Republicans, on the other hand, refuse to join us in making college more affordable. Earlier this year, they actually made college more expensive for our Nation's students when they cut $12 billion from the higher education budget, forcing college kids to pay more interest on loans.

Valuable dollars for college assistance are being siphoned off by the war in Iraq, which this administration chose to wage rather than to devote dollars not only to domestic priorities but to finding Osama bin Laden.

Thank you, President Clinton, for telling it like it is and making the administration more accountable for their lack of vision and failed policies.

CHANGE IN LEADERSHIP

(Mr. SHERMAN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SHERMAN. Mr. Speaker, when this House votes to adjourn, we will be voting to put politics above policies, to put the needs of us as politicians over the needs of the American people, for leadership will insist that we leave without dealing with energy independence; leave while our seniors are falling into the donut hole provided in the poorly planned part D of Medicare; leave before we deal with college affordability; before we deal with tax relief for the middle class, especially the

alternative minimum tax, the dreaded AMT; and as I get to in a second, leave before we raise the minimum wage.

We should be working for the American people in October instead of spending the month going home to ask for their forgiveness for not working in October.

Let us look particularly at the minimum wage. We should be dealing with H.R. 2129 which would increase the minimum wage from its incredibly low $5.15 to something approaching a minimum wage.

So, Mr. Speaker, I ask unanimous consent to bring up H.R. 2129.

The SPEAKER pro tempore (Mr. SIMPSON). Under the guidelines consistently issued by successive Speakers, as recorded on page 734 of the House Rules Manual, the Chair is constrained not to entertain the gentleman's request until it has been cleared by the bipartisan floor and committee leaderships.

PARLIAMENTARY INQUIRIES

Mr. SHERMAN. Mr. Speaker, point of parliamentary inquiry.

The SPEAKER pro tempore. The gentleman may inquire.

Mr. SHERMAN. What you are citing there is the mere custom of this House and not an official rule of this House; is that correct?

The SPEAKER pro tempore. It is part of the Speaker's guidelines for the exercise of discretion in recognition.

Mr. SHERMAN. And, in fact, for the first 150 years of this House, we had no such guidelines.

The SPEAKER pro tempore. Under the settled guidelines previously cited, the request cannot be entertained.

Mr. SHERMAN. Mr. Speaker, point of parliamentary inquiry.

The SPEAKER pro tempore. The gentleman may inquire.

Mr. SHERMAN. You say that we cannot bring up this needed raise in the minimum wage?

The SPEAKER pro tempore. The Chair is saying that he cannot entertain the instant unanimous-consent request to that end.

Mr. SHERMAN. You cannot even entertain the request because it has not been cleared by the leadership of both parties; is what you are saying?

The SPEAKER pro tempore. At both committee and floor levels, that is correct.

Mr. SHERMAN. Well, it has been cleared by the Democratic Party. So it is really just the Republican Party that says we cannot raise the minimum wage.

The SPEAKER pro tempore. The gentleman is not stating a parliamentary inquiry.

IMPLEMENT THE 9/11 COMMISSION RECOMMENDATIONS

(Mr. RYAN of Ohio asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RYAN of Ohio. Mr. Speaker, the single most important thing this administration and this Republican Congress can do to keep us safe is immediately implement the 9/11 Commission recommendations, but this President and this Congress have failed to do so.

So what do we get instead? We get a bloody and costly war. We get incompetent leadership. We get Republican leadership in the House, the Senate and the White House that gets 5 Fs and 12 Ds from the 9/11 Commission. We get a Secretary of Defense that says that the next person that brings me a postwar plan, or asks us to do so, is going to get fired, and then no one in the administration gets fired for all the bumbling that goes on with this war. Not only do some of them not get fired, the Assistant Secretary of Defense actually got a promotion to the World Bank.

What else do we get? We get a report from a nonpartisan Intelligence Committee that said this war has made us less safe. We get $8 billion a month getting sent to a black hole. We are borrowing more money from foreign interests than we ever had. This President has borrowed more money from foreign interests than every President before him.

Mr. Speaker, the bottom line is this. This President, this Congress and his policies have made us less safe, not more safe.

REPUBLICAN INDIFFERENCE

(Mr. LARSON of Connecticut asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. LARSON of Connecticut. Mr. Speaker, I commend my colleagues for coming to the floor this morning, and certainly those of us listening today and throughout this country can understand that our frustration here is only superseded by the frustration of millions of Americans.

I am proud of the leadership on the Democratic side that is insisting that we take up these matters discussed here on this floor today, tomorrow, or Friday before we adjourn. They are that pressing.

The gentleman from Georgia came down and criticized this as being petty and not having respect. What about respect for the families of 9/11? What about the respect for people who need a minimum wage increase? For the middle class squeeze that is going on with energy and college tuition, what about respect for them?

Roosevelt said it best of our colleagues on the other side of the aisle, ''We do not question your patriotism or love of country.'' What he said, though, rings true, that ''you are frozen in the ice of your own indifference,'' your indifference towards working families, your indifference to the families of the 9/11 Commission report who seek a resolution here.

Please join us in bringing this forward.

CONGRESS SHOULD SHOW THAT IT IS COMMITTED TO SECURING THE AMERICAN PEOPLE TODAY

(Mr. WU asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WU. Mr. Speaker, the chairman of the independent, bipartisan 9/11 Commission said the Federal Government is not fulfilling its job of protecting the American people. The 9/11 Commission went on to say that the war in Iraq is a distraction, draining resources from critical American security needs.

Like the 9/11 Commissioners, I am concerned that the war in Iraq is preventing us from dealing with the real threat, a terrorist attack in America. Over the last 3 years, the war in Iraq has cost the American taxpayers more than $320 billion, and yet, as the unanimous National Intelligence Estimate shows, we are less safe today because of the continuing war in Iraq. At the end of this year, the war in Iraq will have gone on longer than World War II.

Despite this distraction from the real struggle against terrorism, as the National Intelligence Estimate said, this Congress should show that it is committed to securing the American people today. We cannot afford to wait until after the November election.

NO RECESS UNTIL ACTION IS TAKEN ON ENERGY PRICES

(Ms. SLAUGHTER asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, this do-less-than-nothing Congress just returned from another recess, and already the Republicans are preparing to adjourn at the end of this week so they can go home and campaign. This is not what people sent us here to do. They expect us to address issues of importance and to do our best to improve their quality of life.

Yet, Republicans in this body seem content to head back home, having had ''dead-horse week'' and bills yesterday that will never see the light of day in the Senate; and they are expecting us at home to do this to improve their quality of life.

Democrats are committed to finding solutions, not ones that involve destroying our natural resources for short-term gains or ones that rely on Middle Eastern potentates to ensure our way of life, and certainly not the so-called solutions that provide tax breaks to oil companies and not to consumers.

Instead, we are committed to cracking down on price gouging, repealing the $8 billion in tax breaks to oil companies, and investing in new energy technologies to really end our dependence on foreign oil.

Mr. Speaker, we do not have time to do nothing about the energy crisis. I ask unanimous consent to bring up

H.R. 4479 to repeal the oil company subsidies and give a break to consumers and small businesses.

The SPEAKER pro tempore. Under the settled guidelines previously cited, that request cannot be entertained.

MEDICARE PRESCRIPTION DRUG BENEFIT

(Mr. DEFAZIO asked and was given permission to address the House for 1 minute.)

Mr. DEFAZIO. Mr. Speaker, Medicare part D, confusing, complicated, very costly. In fact, the Bush administration lied about the cost. They had estimates that said it would cost $750 billion to $1 trillion, but they suppressed that to get votes from conservatives on their side. They said not a penny more than 400 million, and it is very costly to seniors.

We now have 3 million seniors who have fallen into something called the donut hole. They get to spend $2,600 out of pocket before they get any more Medicare prescription drug benefit, and they have to pay a higher price for the drugs during that time period than they could get at the local drugstore, let alone getting it from Canada or if it was centrally purchased by the government.

We have it in our power to fix it today, save the taxpayer $750 billion, get the seniors out of the donut hole, but they are going to say it is the custom and practice of the House not to consider such things.

The custom and the practice of the House is to fix problems confronting the people of the United States of America. It is cleared on my side of the aisle. If he objects, it is only the Republicans who object.

Mr. Speaker, I ask unanimous consent to take up the bill, H.R. 752.

The SPEAKER pro tempore. Under the settled guidelines previously cited, that request cannot be entertained.

Mr. DEFAZIO. The Republicans have objected.

□ 1115

MILITARY COMMISSIONS ACT OF 2006

(Mr. MARKEY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MARKEY. Mr. Speaker, the Military Commissions Act, which we are taking up today, will not make us more secure. It will endanger American personnel overseas, undermine the Geneva conventions, and give a get-out-of-jail-free card to people who may have committed war crimes.

If an American is captured in North Korea, Iran, Syria, or Somalia and held and interrogated under the same kangaroo court process this bill will create, every single Member of this House would be outraged at that miscarriage of justice.

The public is tired of a Republican majority that retreats to fear-mongering instead of trying to find constructive solutions to the serious security problems facing Americans. The Republicans refuse to screen for nuclear bomb material coming in in ships, they refuse to screen cargo going onto American passenger planes, and they refuse to require that chemical plants in our country have mandatory security built around them.

By passing this bill today, we are lowering our standards and we are encouraging other countries to lower their standards as well. And it will be the American troops captured on a future battlefield who will pay the price.

DO-LESS-THAN-NOTHING CONGRESS

(Ms. CORRINE BROWN of Florida asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. CORRINE BROWN of Florida. Mr. Speaker, working families are feeling the financial squeeze now more than ever. At a time when gas prices, tuition bills, and housing costs are skyrocketing, real wages for full-time workers are declining.

Low-income families are suffering even more, with the lowest inflation adjustment minimum wage in 50 years. The Bush economy has made it difficult for the income of all working Americans to keep up with the rising costs. Democrats have a plan to reserve these misguided tax cuts and redirect them to the middle class and working people who need them most.

Mr. Speaker, since the Republicans in this body have refused to raise the minimum wage for the past 9 years, and since they seem intent on adjourning this body before taking up a straight up-or-down vote on raising it, I now ask unanimous consent to bring up H.R. 2429, Congressman GEORGE MILLER's Fair Minimum Wage Act.

The SPEAKER pro tempore. Under the settled guidelines previously cited, that request cannot be entertained.

Ms. CORRINE BROWN of Florida. Cannot be entertained under the Republican leadership.

REPUBLICANS HAVE GOOD RECORD IN PASSING COMMON-SENSE ENERGY SOLUTIONS

(Mr. WESTMORELAND asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. WESTMORELAND. Mr. Speaker, over the last year, House Republicans have focused on common sense energy solutions to help lower gas prices, create jobs for American workers, and reduce America's reliance on foreign energy sources. And what have the Democrats done? Democrats voted against the Deep Ocean Energy Resources Act, which would create thousands of family wage American jobs and allow more of our energy resources to be produced in the deep seas while empowering States to protect their coastlines.

Democrats voted against the Refinery Permit Process Schedule Act, which would encourage new refinery capacity in order to increase gasoline supplies and drive down high prices.

Democrats voted against the American-Made Energy and Good Jobs Act, authorizing environmentally safe energy production in ANWR, creating 1 million family wage jobs and increasing the supply of American-made energy to lower gasoline prices.

Mr. Speaker, I keep hearing from the other side of the aisle this refrain of the ''do-nothing Congress.'' I would say it is more the ''do-nothing Democrats.'' Republicans have a strong record in passing commonsense energy solutions, something Democrats can't claim.

It is time for the other side to quit whining and start working.

CONGRESS SHOULD MAKE COLLEGE MORE AFFORDABLE TODAY BY PASSING LABOR-HHS BILL

(Mr. CLYBURN asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CLYBURN. Mr. Speaker, for 6 years now, Washington Republicans have done absolutely nothing to help college students better afford college. President Bush promised to increase Pell Grants during his first presidential election in 2000, but has refused to live up to that promise. The maximum Pell Grant has been frozen for 4 straight years, and now only covers 32 percent of tuition costs.

Inaction was not the problem earlier this year when the Republican Congress raided student aid programs. Our Republican colleagues raided $12 billion from college education programs, forcing the Education Department to raise interest rates on college loans to over 8 percent.

Democrats reject these Republican actions. At a time when college students are confronting skyrocketing tuition costs, we think this Congress should be coming up with creative solutions to help college students better afford their education.

Today, we should pass an improved Labor-HHS appropriation bill that restores the massive cuts in college tuition assistance imposed on this Congress and expand the size and availability of Pell Grants.

PROVIDING FOR CONSIDERATION OF H.R. 6166, MILITARY COMMISSIONS ACT OF 2006

Mr. COLE of Oklahoma. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1042 and ask for its immediate consideration

The Clerk read the resolution, as follows:

H. RES. 1042

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 6166) to amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes. The amendment printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted. The bill, as amended, shall be considered as read. The previous question shall be considered as ordered on the bill, as amended, to final passage without intervening motion except: (1) two hours of debate, with 80 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on armed services and 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; and 92) one motion to recommit with or without instructions.

The SPEAKER pro tempore. The gentleman from Oklahoma (Mr. COLE) is recognized for 1 hour.

Mr. COLE of Oklahoma. Mr. Speaker, for the purposes of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

GENERAL LEAVE

Mr. COLE of Oklahoma. Mr. Speaker, I ask unanimous consent that all Members may have 5 days within which to revise and extend their remarks and insert tabular and extraneous material in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

Mr. COLE of Oklahoma. Mr. Speaker, on Tuesday, the Rules Committee met and reported a closed rule for consideration of H.R. 6166, the Military Commissions Act of 2006. The rule provides 2 hours of debate, with 80 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services, and 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. It waives all points of order against consideration of the bill.

Additionally, it provides that the amendment printed in the Rules Committee report accompanying the resolution shall be considered as adopted, and it provides one motion to recommit with or without instructions.

Mr. Speaker, I rise today in support of the resolution and the underlying bicameral compromise legislation. This critical legislation ensures that we align the procedural protections for captured terrorists with our Constitution. In doing so, we are extending unprecedented legal and procedural protections to enemies who provide no protections to their captives and victims, and who have neither signed nor operate by the Geneva Convention.

To further ensure American Security and to ensure that terrorist detainees are not released to once again wreak havoc, it is necessary to move this legislation and develop a clear set of standards for military commissions.

Mr. Speaker, make no mistake, time is of the essence in moving forward with this legislation. These commissions will provide an important tool for our servicemen and women in obtaining operationally sensitive information from terrorists captured on the battlefield. However, the reform of the tribunal system to ensure certain procedural rights for these terrorists will also provide an impetus and an opportunity for those currently in our detainee system to cooperate more fully.

Mr. Speaker, as I know you are aware, the underlying legislation was developed after intense negotiations between both the legislative and executive branches of government. Furthermore, its development has been supported by senior Members of both parties and has largely received bipartisan support in both the House and the Senate. Indeed, I predict once the legislation is actually presented, it will be passed by a strong bipartisan majority in this House.

Indeed, when an earlier, stronger and more restrictive version of this same bill moved through the House Armed Services Committee, it passed by a vote of 52–8, with one member voting present. This strong bipartisan majority on the primary committee of expertise and jurisdiction should be taken as a sign of its importance and the support for moving forward with the prosecution of those terrorists who, if set free, would resume killing American civilians and our servicemen and women as a matter of course and a tactic of terror.

Mr. Speaker, today we may well hear several concerns about the way in which the bill was brought forward to the floor. As we all know, when you can't win a debate on the merits of a piece of legislation, process attacks are the best way of slowing down and obstructing progress of that legislation. But the fact remains that within the last 2 weeks, both the House Armed Services Committee and the House Judiciary Committee passed legislation even stronger than the legislation we are voting on today. Since then, bicameral negotiations have resulted in even more modifications to the underlying legislation ensuring even more rights for the terrorists accused of war crimes. But, Mr. Speaker, time is of the essence. We must move this legislation to the President's desk. It does much to enhance America's security and to create an equitable system for prosecuting terrorists captured on the battlefield.

Lastly, Mr. Speaker, before I close, I would like to speak to what protections the underlying legislation provides to those who would like to kill Americans. It provides: The right to counsel, provided by the government at trial throughout the appellate process; an impartial military judge; a presumption of innocence; a standard of proof beyond a reasonable doubt; the right to be informed of the charges against the accused as soon as practicable; the right to service of charges sufficiently in advance of trial to prepare a defense; the right to reasonable continuances; the right to peremptory challenge against members of the commission and challenges for cause against members of the commission and the military judge; witnesses must testify under oath; judges, counsel, and members of the military commission must take an oath; a right to enter a plea of not guilty; the right to obtain witnesses and other evidence; the right to exculpatory evidence as soon as practicable; the right to be present in court with the exceptions of certain classified evidence involving national security, preservation of safety or preventing disruption of proceedings; the right to a public trial except for national security issues or physical safety issues; the right to have any findings or sentences announced as soon as determined; the right against compulsory self-incrimination; the right against double jeopardy; the defense of a lack of mental responsibility; prohibitions against unlawful command influence toward members of the commission, counsel, or military judges; it requires a two-thirds vote of members for conviction, three-fourths vote required for sentences of life or over 10 years, and unanimous verdict required for the death penalty; it requires a verbatim authenticated record of the trial; cruel or unusual punishments are prohibited; treatment and discipline during the confinement the same as afforded to prisoners in U.S. domestic courts; the right to review the full factual record by the convening authority; and the right to at least two appeals, including a Federal article 3 appellate appeal.

Mr. Speaker, with that said, all these protections that we are willing to provide terrorists are the very same protections that they ignore when beating, mutilating, and killing our civilians and servicemen. These terrorists have no respect for the rule of law. They are not signatories to the Geneva Convention. They do not fight in uniforms, and they kill innocent civilians of all faiths and all nationalities routinely, yet we are willing to grant to them substantive legal protections that I honestly believe go beyond the actual requirements of the Geneva Convention.

With that said, I would urge my colleagues to support both the rule and the underlying legislation.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman for yielding, and I yield myself such time as I may consume.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, the critically important legislation before

us today is being presented as a bipartisan compromise, but nothing could be further from the truth. It was authored by the administration and by the Republican leaders of this Congress.

As Chairman HUNTER testified in the Rules Committee yesterday, no Democrats were involved in any way in the negotiations that were conducted over the weekend to produce this bill, nor did the Rules Committee make in order any of the 15 amendments that Democrats offered to address the sections of the bill that most offend our democratic values and violate our most fundamental traditions.

The closed rule governing this bill means this Republican Congress is turning its back on a real debate here today. It is a reality made all the more egregious by the historic importance of this moment. We are at a crossroads today, and I fear we will not be judged kindly by future Americans for what my Republican friends want to do to us today.

□ 1130

The bill sends a clear message to both our friends and our enemies about what kind of people we are. It shows them whether or not we are really willing to practice what we preach about freedom and democracy and human dignity.

It is moments like this one when we reveal our true colors and even our true values. Sadly, Mr. Speaker, those watching today will conclude that when the going gets tough, America's leaders are willing to abandon our values, abandon them in favor of thuggish tactics that they hope might make them safer for a little while.

In his second inaugural address, our President used noble words to describe America's role in the world and its duty as a beacon of hope for all nations. He said, ''From the day of our founding, we have proclaimed that every man and woman on this Earth has rights, and dignity, and matchless values.''

That might be disputed by the generations of persons held in slavery and by the women of America who had no say in anything or standing anywhere, but, nonetheless, it sounds good. They are inspirational words.

But here is the reality: For years, this administration has circumvented our Constitution in the name of security. Its officials have dismissed even the most important of our legal documents, such as the Geneva Convention, as being nothing more than ''quaint.'' It was described that way by the present Attorney General, the chief law officer, I might add.

This administration and Republican Congress have allowed detainees to sit in prison for years without charging them with any crime. They are willing to deprive people of even the most basic due process rights that our country has always afforded those held by the government. They are willing to convict people of crimes without giving them any opportunity to review the evidence the government is using against them. They are willing to try to convict people based on unreliable evidence acquired through cruel, inhumane and degrading treatment that the rest of the world recognizes as torture.

They are willing to allow government officials to degrade and torment other human beings in ways that civilized nations outlawed 60 years ago. They are even willing to take any new legislation that we pass today and make it retroactive to protect people who have already committed torture, so that past abuses will be forgotten instead of being sincerely addressed.

What this Congress is showing the world today is that they are willing to trade our national birthright for a false and temporary sense of security.

Let me emphasize that, because it is indeed a false sense of security, Mr. Speaker. After 5 years of secret detentions, torture, warrantless surveillance, hyped up stories about weapons of mass destruction, are we any safer today from the threat of terrorism? The answer is no, we are not. In fact, as we learned earlier this week, our country's intelligence agencies informed the President a few months ago that we are actually less safe than we were in 2001.

Mistreating our prisoners and depriving them of the basic due process rights of our legal system is not making us any safer. All it is doing is slowly wearing away at the fabric of our democratic society, undermining the essential nature that made us different from other countries. When we degrade and mistreat our prisoners, we degrade ourselves and the democratic values we have inherited from generations of brave and decent Americans.

We are ceding the moral high ground those who founded this country, and the men and women who served it ever since, won with their blood, sweat and tears.

What is more, legislation like this puts our soldiers at risk. During the course of the national debate on this issue, a number of prominent admirals, generals and other military leaders have spoken out against this bill. They have told us time and time again that ignoring our American values puts our U.S. military personnel deployed overseas in danger. That falls on deaf ears here. They have said that respect for the rules of military engagement and prisoner treatment are more than just important parts of our American heritage. They also protect Americans who are captured and imprisoned by foreign powers.

Mr. Speaker, how is endangering our troops making us any safer? How is undermining our moral standard helping us win allies in the war of ideas that we face?

The answer is simple. It is not. At this very moment, there are hundreds, if not thousands of people held in facilities whose fate will depend on this legislation. I want to take a moment to talk about one of them.

Bilal Hussein is an Iraqi who worked as a photographer for the Associated Press. He is also a Pulitzer Prize winner. He has been held in Iraq by American forces for 5 months. He was accused of aiding and abetting the insurgency, but he has yet to be charged with any crime. He has been given no access to a lawyer or to a court and has not been able to see any evidence against him. The Associated Press has stood by him and repeatedly defended his innocence. We want to make sure he is alive. We will be writing the Secretary of Defense today to give us some information on his case.

But under this bill, Mr. Speaker, Bilal Hussein could be declared to be an enemy combatant, sent to an American detention facility and kept there indefinitely. No charges would ever have to be brought against him. His permanent detention would never have to be defended in a court of law.

Imagine if another nation held an American citizen without charging him of a crime. Imagine if it refused to even let him see the evidence against him. What would we say about such a country?

So, I ask my friends on the other side of the aisle, what are we supposed to say about our country today? Again, in his inaugural address of 2 years ago, the President had this say about the soul of America: ''When the Declaration of Independence was first read in public and the Liberty Bell was sounded in celebration, a witness said it rang as if it meant something. In our time, it means something still.''

This bill gives the lie to that speech and it gives the lie to what should be our Nation's greatest asset, our greatest weapon in the fight against terrorism and oppression, and that is our values.

I ask everyone in the House to reject this bill. I ask everyone here to chart a new course for America. If we reject torture, if we stand up for a legal system and fundamental rights that are the basis for liberty and the only real source of security that we have, then we will have come a long way in our battle against the threats our Nation faces in the world today.

My friends and colleagues, please don't turn your back on the past. It is in its lessons and principles that we will find the key to a safer and more just future.

Mr. Speaker, I reserve the balance of my time.

Mr. COLE of Oklahoma. Mr. Speaker, I just quickly want to note, I am very proud of my country. I am proud that we extend protections to our adversaries that they do not extend to us. I am proud that in the few cases where there are transgressions, those are vigorously prosecuted and exposed by this country. So I have great pride in the United States of America.

Mr. Speaker, I am pleased to yield such time as he may consume to the

gentleman from California (Mr. DREIER), the distinguished chairman of the Rules Committee.

(Mr. DREIER asked and was given permission to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, I want to begin by thanking my friend from Oklahoma and associating myself with his remarks.

This is a very, very important debate that we are having. I believe that yesterday's news conference that President Bush and the very brave and courageous President of Afghanistan, Hamid Karzai, held yesterday at the White House, underscores how important that debate that we are going to be facing today is.

We were reminded in the remarks that President Karzai offered in response to a question posed to him about how we are handling this issue with the following statement. I am going to read this from the transcript of the news conference, Mr. Speaker.

President Karzai said: ''These extremist forces were killing people in Afghanistan and around for years, closing schools, burning mosques, killing children, uprooting vineyards, with vine trees, grapes hanging on them, forcing populations to poverty and misery.''

Mr. Speaker, he went on to say, ''They came to America on September 11th, but they were attacking you before September 11th in other parts of the world. We are a witness in Afghanistan to what they are and how they can hurt. You are a witness in New York. Do you forget people jumping off the 80th floor or the 70th floor when the planes hit them? Can you imagine what it will be for a man or a woman to jump off that high? Who did that? And where are they now? And how do we fight them? How do we get rid of them, other than going after them? Should we wait for them to come and kill us again? That is why we need more action around the world, in Afghanistan and elsewhere, to get them defeated, extremism, their allies, terrorists and the like.''

Mr. Speaker, those were the words of President Hamid Karzai standing in the White House yesterday. He said we have absolute responsibility to make sure that we go after them and we must bring them to justice.

Now we are faced with a challenging situation here. We have a court decision with which we have to contend. When the Hamdan decision was handed down, I ask my friends on the other side of the aisle, did they offer their plan for interrogation or tribunals? Absolutely not. Nothing was offered whatsoever.

When we as Republicans were in the midst of an open and honest debate over the past several days, a bicameral debate, as we were reminded by Mr. COLE, about detainee treatment, did the Democrats offer their own plan? Did they come forward with a plan for interrogation and tribunals? No, they didn't.

When we met just last night at the Rules Committee, did the Democrats offer their own plan for interrogation and tribunals? Absolutely not.

And now, when faced with a critical vote for the safety of the American people, the Democrats are picking at procedure. They talk about closed rules, sunset provisions. They ask what is the urgency? Anything to distract from the fact that there is nothing behind their curtain.

Mr. Speaker, over the last hour, we have listened to our Democratic colleagues stand here and talk about the fact that we need to do everything that we possibly can to have an up-or-down vote on a wide range of issues. An up-or-down vote. Well, that is exactly what we are going to do right here.

Mr. SKELTON. Mr. Speaker, will the gentleman yield?

Mr. DREIER. I am happy to yield to my friend from Missouri.

Mr. SKELTON. I hasten to correct you. The Democrats did have a proposal in the Armed Services Committee, as you well know. Please give us credit for offering that.

Mr. DREIER. Reclaiming my time, I am going to get to that. I am going to get to that right now. Let me just first say that the urgency of this measure really needs no explanation. We have the alleged mastermind of 9/11 in our custody waiting to be brought to justice, and Members on the other side of the aisle ask, what is the rush? We have intelligence operatives hesitant to interrogate high value targets because their parameters are unclear, and Members on the other side of the aisle ask, what is the rush?

We need every single tool. As President Karzai underscored in his statement, we need every single tool to stay ahead of the people who want to kill us, and our friends on the other side of the aisle say, what is the rush?

Let me point out that during the Judiciary Committee markup, the Democrats offered no substitute at all. In response to my friend from Missouri (Mr. SKELTON), it is true that my friends, including Mr. SKELTON, in the Armed Services Committee, offered a substitute. What was that substitute? It was the McCain language. That was the Democratic alternative that was offered, the package submitted by our colleague, Senator MCCAIN.

The problem is that the bill before us represents an agreement between us, the administration and the very same Senators who propounded what was offered as the Democratic substitute in the Armed Services Committee.

We have heard a lot about Mr. SKELTON's amendment. As I understand it, this amendment would be somewhat redundant. The bill calls for expedited judicial review of H.R. 6166. We are here working on this legislation because the courts told us to do exactly what we are doing. The judicial branch directed Congress to establish procedures for military commissions. We have done that with this bill. Now the minority party wants to hand this issue back to the courts.

The bill before us, Mr. Speaker, represents a very delicate compromise that allows us to continue to vigorously prosecute the war on terror while at the same time upholding our international and moral obligations to humane treatment of prisoners.

I also want to make very clear that under this rule, the minority will still have an opportunity to offer a substitute or any other germane amendment by way of the motion to recommit. They will have an hour of debate time during the 2 hours that we have granted in this rule to offer an explanation of what their approach is.

But, Mr. Speaker, I believe that at the end of the day, we will see a strong bipartisan vote. Democrats have already spoken in support of this compromise that we are bringing forward today, and I believe that when it comes to the rollcall, we will have Republicans and Democrats voting to help us address the very, very pressing issue as was put forth so eloquently by Afghanistan's President Hamid Karzai.

□ 1145

Ms. SLAUGHTER. Mr. Speaker, I want to remind the Chair of the Rules Committee that Democrats brought 15 amendments up last night, including amendments by the ranking members of Armed Services and Intelligence, that were not allowed.

Mr. DREIER. Mr. Speaker, will the gentlewoman yield?

Ms. SLAUGHTER. I yield to the gentleman from California.

Mr. DREIER. I thank my friend for yielding. And let me just say that, again, as I mentioned, this is a very delicate compromise that we have been able to fashion and put together here, which enjoys bipartisan support. And while there were a wide range of amendments that were submitted, there was no firm alternative provided to our package that was a solution.

Ms. SLAUGHTER. I reclaim my time.

You negotiated with yourselves. We were completely shut out.

Mr. Speaker, I yield 4 minutes to the gentleman from Florida (Mr. HASTINGS).

Mr. HASTINGS of Florida. The able Chair, who is so articulate and capable, also is the master of immediate revisionist history. As he cites the whole set of events that have brought us here, he ignores the fact that over the weekend all of the negotiations were with the administration and with the Republican majority.

Go to the record from yesterday's Rules hearing, and you will find that DUNCAN HUNTER, the Chair of the Armed Services Committee, said no Democrat was involved in those negotiations.

So how disingenuous can you be?

Mr. DREIER. Will the gentleman yield? That is exactly what I said in my remarks.

MR. HASTINGS of Florida. How disingenuous can you be by suggesting,

among other things, that we have offered no plan when we can't even get to the table to offer a plan? We were shut out.

And you, Mr. Chairman, have been the master of closed rules. No lesser person than you when I came to this body argued vehemently against closed rules.

We are about the business here of undertaking serious business without the will of the House being hampered.

Mr. DREIER. Will the gentleman yield?

Mr. HASTINGS of Florida. Mr. Chairman, I don't have sufficient time. If your body will give us time, then I will be happy to yield to you.

Mr. COLE of Oklahoma. I yield 30 seconds to the gentleman.

Mr. HASTINGS of Florida. I yield to the gentleman from California.

Mr. DREIER. I thank my friend for yielding. And let me just say that I believe that if you look at the remarks that I made, I talked about those negotiators. I never said that there were Democrats involved in those actual negotiations.

What I was saying is that we have a delicate compromise that was fashioned here that enjoys the support of many Democrats who have come forward and spoken in support of what it is that we are trying to do to make sure that we can successfully win this war on terror.

And I believe that we made it very clear in the record here, and I think that there was no substantive alternative that did come forward from the Members of the minority at all.

Mr. HASTINGS of Florida. No one really disputes whether or not this legislation is needed. In fact, all of us are acutely aware that it is imperative that we establish the legal parameters needed to properly apprehend and prosecute villains who act against this country. Those whom we deem a threat to our country should be given at least an opportunity to be put on trial properly, and if found guilty of their crimes, should be promptly put in prison or executed.

But our responsibility, that we are not discharging fairly, is to make law that is constitutional and consistent with our international obligations.

Mr. Speaker, I am not going to support today's legislation in its current form. We cannot overturn hundreds of years of judicial precedent specifically referring to habeas corpus for the sake of political expediency.

Our judicial system has guaranteed the right to be heard in court, the right to know the evidence presented against you—when Mr. COLE was giving his litany of the rights that are being offered these terrible people, he left out that particular aspect—and an opportunity to contest your charge in a meaningful way. The government should not deny the minimum legal process to certain individuals now and risk the loss of freedom for all people in the future.

Additionally, as the Supreme Court has ruled—and I predicted before, you are going to get a chance to rule on the constitutionality of this measure, and it should have been expedited pursuant to the plan offered by Mr. SKELTON that was ignored in the Rules Committee—the United States is required under the Supreme Court to uphold the standards codified in the Geneva Convention.

The current treatment of prisoners in Guantanamo Bay is questionable. Someone argued just a moment ago, what was the rush? We have this person who committed 9/11. And that is true. But everybody in the Intelligence Community has said all 14 of the prisoners that were transferred to Guantanamo, their intelligence has been exhausted and their value for intelligence has been exhausted.

We also run the risk of approving prior transgressions. I shan't spend much time on that.

This war on terror has reached global proportions and the world is watching our conduct closely. In the words of the distinguished late Senator William Fulbright, ''If America has a service to perform in the world, and I believe she has, it is in large part the service of her own example.''

I close, Mr. Speaker: Those who would give up essential liberty to purchase a little temporary safety deserve neither liberty nor safety. Ask Ben Franklin. That is what he said.

Mr. COLE of Oklahoma. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from Michigan (Mrs. MILLER).

Mrs. MILLER of Michigan. Mr. Speaker, we are a nation at war. We are at war with terrorists who hide in the shadows and prey on the innocent because they want to strike fear in the hearts of Americans, because they hate our freedom. And there should be no doubt that terrorists who perpetrate these acts are the enemy, and we need to treat them like the enemy, and that is why we are here today.

This legislation will give this administration and future administrations the authority to try these terrorists. It also expands the definition of terrorists to those who would provide arms or financing to those who would seek to murder our citizens. It would allow confessions secured through tough interrogations to be used in court, confessions that have stopped many terrorist plots, plots to kill Americans.

And it is astonishing to hear some in this House speaking out against these provisions.

Mr. Speaker, if you contract for murder, you are a murderer, you are guilty of murder. And we need to give our professional interrogators clear direction and clear law, because right now, if you can believe it, they are actually faced with the prospect of buying liability insurance so they don't get sued as war criminals in a Federal court. This is ridiculous.

One of the reasons that we are the strongest fighting force the world has ever seen is that we are an all-volunteer military. And I would ask you, are you going to volunteer to serve in a military that may inadvertently make you a lawbreaker just because you are doing your job of protecting America? Are we going to be asking our marines, who are breaking down doors in Fallujah, whether or not they should be reading Miranda rights to insurgents?

I believe the American people are demanding that we stand strong against the terrorists and are demanding that we keep the information we need to keep our Nation safe.

Mr. Speaker, the first and foremost responsibility of the Federal Government is to provide for the national defense, that is in the preamble of our Constitution. And national defense should always be above politics. Yet, the Democratic minority leader of this House has said that national security should not be an issue in the upcoming election. Think about that.

She has said that, that national security should not be an issue in the upcoming elections. And I would think that our brave men and women in the military would beg to differ with that.

It is my hope that we can stand together in a bipartisan fashion to do what is right for America. I urge my colleagues to support this rule and the underlying legislation.

Ms. SLAUGHTER. I yield 4 minutes to the gentlewoman from California (Ms. MATSUI).

(Ms. MATSUI asked and was given permission to revise and extend her remarks.)

Ms. MATSUI. I thank the gentlewoman from New York for yielding me time.

Mr. Speaker, I rise in opposition to this closed rule and the underlying bill. This is a debate about whether we are willing to preserve the fundamental protections our Nation has fought for centuries to maintain.

As written, the underlying bill rejects these essential protections in favor of vague assurances and provisions open to interpretation. The potential erosion of our legal safeguards is a serious matter. That is why several members of our armed services raised these concerns when they testified to Congress several weeks ago.

Mr. Speaker, certain rights are considered so fundamental to our Nation and to our Constitution that they cannot be sacrificed. The right of every American to have his or her day in court is one such right.

But a number of law experts, including Martin Lederman, who worked at the Department of Justice for both President Clinton and President Bush, believe that this legislation would put that right in jeopardy. As written, this legislation could be used by the President as evidence of congressional agreement of a number of his legal assertions. That includes his assertion that holding an American citizen indefinitely without access to a lawyer is legal.

From my family's personal experience, I know something about what can happen to the rights of Americans when the executive branch overreaches in a time of war.

Restricting the legal rights of our citizens is something which, if done at all, must be done carefully and with a proper balancing of concerns. I know that Members of both Chambers tried to meet that standard with the administration on this legislation, but this proposal fails to achieve that balance. For that reason alone, we should reject this bill.

I am also concerned because the history of this legislation fits a pattern we have seen before, one in which officials assert expanded powers while ignoring their career professionals in the process.

A few weeks ago, Congress heard from a long line of generals and judge advocates general. Their collective testimony outlined a swift, tough approach to these tribunals that protected our troops, and it did so while preserving our moral authority in the world. This bill disregards their testimony and their expertise.

They argued forcefully for detainees to see the evidence presented against them, with some adjustment for classified evidence. They stated that evidence obtained through torture should not be permitted, not only because it is morally offensive but also because it is inherently untrustworthy. They clearly reiterated their position that judicial review must be preserved.

And, above all, they argued strenuously that any legislation must affirm the United States' commitment to the Geneva Conventions. They believe this because they know, better than anyone, that these safeguards protect our troops fighting on battlefields around the globe.

Unfortunately, Congress did not listen to these experts in military law. Instead, the bill made in order under this closed rule would permit evidence obtained through torture in some cases.

The legislation does include a list of certain grave breaches of the law. Beyond those, however, it gives the President the authority to determine what is and what isn't torture as long as he publishes it in the Federal Register first.

These provisions undermine our Nation's moral authority, and, once given away, it will be that much harder to earn back.

In closing, Mr. Speaker, the underlying bill is vague when it should be specific; it is casual with regards to important legal protections when it should be vigilant; and it is a fundamentally flawed approach to prosecuting terrorists.

I urge all Members to reject this rule and to vote against the underlying bill.

Mr. COLE of Oklahoma. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from California, my good friend, Mr. LUNGREN.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I rise in support of the rule. Listening to the debate, it is very interesting. The gentlewoman from New York's description of our treatment of captured alleged terrorists was astonishing. As a matter of fact, after listening to her litany of complaints, President Chavez's comments at the United Nations appear mild.

We have not violated the rights of individuals. This bill creates a fair and orderly process to detain and prosecute al Qaeda members and others captured during the war on terror. We extend more rights to these individuals than our POWs would ever expect under the Geneva Accords.

And the suggestion raised by another Member on the other side, that somehow we are violating hundreds of years of precedent, is absolutely wrong. We are not talking about the great writ that is found in the Constitution, the great writ of habeas corpus. We are talking about a statutory writ, which the Supreme Court has said time and time again Congress has the right to create, Congress has the right to constrict, Congress has the right to eliminate.

We do not just leave these people devoid of an opportunity for appeal. Rather, we set up a mechanism where an appeal can go to a single court, the District Court of Appeals for the District of Columbia, so that we can avoid the violations of justice that take place by the abuse of habeas corpus by some already involved.

Besides, we already made this decision in this Congress a year ago. What this does is say to the Supreme Court, we meant what we said when we passed the law a year ago which said this should apply to people already in Guantanamo.

That was our intent. Unfortunately, the Supreme Court believed it not to be found in the language. This makes it clear that what we said a year ago we say again, only we say to the Supreme Court, ''This time we really mean it. Please follow it.''

It is not a violation of any rights. It extends more rights to these people than they are allowed under any other regime of law in the world, and any nonsense spoken on this floor to suggest otherwise ought to be rejected in whole and in part. We ought to support this rule and support this bill.

□ 1200

Ms. SLAUGHTER. Mr. Speaker, I think it is a proven fact that people have been imprisoned for several years without any due process.

I am pleased to yield 3 minutes to the gentleman from Missouri (Mr. SKELTON) who did not have an opportunity to have his amendment made in order.

(Mr. SKELTON asked and was given permission to revise and extend his remarks.)

Mr. SKELTON. Mr. Speaker, if you want to be tough on terrorists, pass a statute that will meet the scrutiny of the Supreme Court of our country. If you want to be tough on terrorists, let's not pass something that rushes to judgment and has legal loopholes that will reverse a conviction. Once a conviction occurs, you want it to stick.

Mr. Speaker, I had the privilege of practicing law a good number of years as a small town country lawyer, and part of that I was prosecuting attorney for Lafayette County, and I know what it is to obtain a hard-fought conviction of a criminal. And the specter that hangs over every prosecuting attorney on every case that is tried is a specter of that case being reversed on appeal.

There are two manners by which a case may be reversed. One is, of course, something went wrong in the evidence or the instructions, something occurred during the trial, maybe even a comment by one of the counsel. The other is a constitutional question regarding the statute on which the defendant was convicted. That's what we deal with here.

I am concerned that portions of the statute that you are attempting to pass will give an appellate court the opportunity to reverse the case and send it back. That bothers me.

I had an amendment that would give an expedited procedure. It was not allowed. Mrs. TAUSCHER of California had an amendment regarding common article 3 of the Geneva Convention. Ms. HARMAN had one regarding interrogation techniques. Ms. SANCHEZ had one regarding appeals process. And Mr. MEEHAN had one regarding habeas corpus, and they were all turned down.

I have in my possession a letter from the chief counsel to the commissions, Colonel Dwight H. Sullivan. And in this letter he points out just what I am talking about. We should have an expedited procedure, which my amendment would have given, so if there are flaws, and I think there are flaws in this statute, and he does, too, as I will point out, you should have it corrected and give this Congress an opportunity to correct it as quickly as possible.

DEPARTMENT OF DEFENSE,
OFFICE OF THE CHIEF DEFENSE COUNSEL,
Washington, DC, September 26, 2006.

Re Military Commission Act of 2006

Hon. DUNCAN HUNTER,
Hon. IKE SKELTON,
House of Representatives,
Washington, DC.

DEAR CHAIRMAN HUNTER AND RANKING MEMBER SKELTON: I am writing to express my views on the desirability of requiring that the Federal courts provide expedited review of any new military commission system. I am the Chief Defense Counsel for the Office of Military Commissions and I am writing in that capacity. I do not purport to speak for the Administration, the Department of Defense, or any other entity.

In December 2005, Congress adopted legislation to preclude habeas corpus relief for Guantanamo detainees. Of course, in Hamdan v. Rumsfeld, the Supreme Court interpreted that legislation as applying only to future habeas petitions and not to habeas cases that had already been filed. If the Supreme Court had ruled the other way—an

outcome that the current version of the Military Commission Act of 2006 would achieve—the results would have been disastrous.

In Hamdan, the Supreme Court declared that the old military commission system was ''illegal.'' Having been intimately familiar with the actual practice in the old military commission system, I agree with the Supreme Court that the old system would not have produced trials that were fair or that appeared to be fair. If the Detainee Treatment Act of 2005 had been interpreted as applying retroactively, then I would be in Guantanamo Bay today for a military commission trial. The decision by the Supreme Court declaring the system illegal wouldn't have come for years. The result then would be to wipe out many convictions obtained at a cost of tens of millions of dollars. Thank goodness the Supreme, Court reviewed the military commission system when it did.

Many aspects of the Military Commission Act of 2006 will be the subject of constitutional challenge. And whatever bill Congress passes will be the subject of judicial scrutiny. As Justice Kennedy noted in his crucial Hamdan concurrence, ''Because Congress has prescribed these limits, Congress can change them, *requiring a new analysis consistent with the Constitution* and other governing laws.'' *Hamdan* v. *Rumsfeld*, 126 S. Ct. 2749, 2808 (2006) (Kennedy, J., concurring) (emphasis added).

Consider, for example, the bill's approach to hearsay evidence conflicts with the most basic Anglo-American concept of the right to confront one's accuser. The bill appears to set up a system in which an individual can be convicted—and possibly sentenced to death—on the basis of mere written statements. It would allow an individual to be sentenced to death without ever having the opportunity to look his accuser in the eye and subject him to cross-examination. As Justice Scalia has written for the Supreme Court, our Founding Fathers adopted the Confrontation Clause in response to arguments that ''[n]othing can be more essential than the cross examining [of] witnesses, and generally before the triers of the facts in question. . . . [W]ritten evidence . . . [is] almost useless; it must be frequently taken ex parte, and but very seldom leads to the proper discovery of truth.'' *Crawford* v. *Washington*, 541 U.S. 36, 49 (2004) (quoting Richard Henry Lee, Letter IV by the Federal Farmer (Oct. 15, 1787), reprinted in 1 Bernard Schwartz, The Bill of Rights: A Documentary History 469, 473 (1971)). The military commission system established under this legislation is vulnerable to constitutional challenge along these lines, and many others. It is in everyone's interest to know sooner, rather than later, whether the new system is unconstitutional. If not, it is in everyone's interest to fix the legislation sooner rather than later.

Instead of seeking to delay judicial assessment of the military commission system, Congress should expedite it. The Military Commissions Act should provide for a three-judge district court to immediately hear a challenge to the constitutionality of the new system. In the Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81, Congress anticipated a constitutional challenge and set up a system to quickly resolve such a challenge. That approach succeeded spectacularly. See *McConnell* v. *FEC*, 540 U.S. 93 (2003). If the new military commission system is constitutionally permissible, allow it to proceed with the judiciary's imprimatur. If, as I believe, it is constitutionally deficient, then allow the judiciary to quickly identify its faults so that they can be corrected.

But regardless of whether you agree with such an expedited approach, attempting to prevent the courts from, analyzing the new military commission system for years is the worst approach of all. I urge you to reject the portions of the Military Commission Act of 2006 that would deprive the federal courts of any ability to review the military commission system until after it has produced a final conviction.

I would be happy to provide any additional information. The best way to contact me is by e-mail at sullivad@dodgc.osd.mil.

Very Respectfully,

DWIGHT H. SULLIVAN,
Colonel, USMCR.

Mr. COLE of Oklahoma. Mr. Speaker, I yield 1 minute to the gentleman from California (Mr. HUNTER), chairman of the Armed Services Committee.

Mr. HUNTER. I thank the gentleman for yielding.

My colleagues, let's get this straight, the Supreme Court did not say that Congress did not have the right to prescribe this new structure under which we are going to prosecute terrorists. They said we had the obligation. They said that the President couldn't do this himself, that it had to be participated in by Congress and we should put together these rules and regulations.

We have put together a structure that will allow us to prosecute terrorists efficiently and effectively, and at the same time, understand the exigencies of the battlefield.

If you use the UCMJ, which I know a lot of folks on the other side want to do, under the testimony of our experts, and that means JAG officers who have tried hundreds of cases, you would have to give Miranda warnings to an insurgent who shot at you outside of Kabul, Afghanistan, at the moment you captured him and threw him over the hood of your Humvee. You can't do that. You can't follow the UCMJ in that respect.

We have given a boatload of rights. We have given the right to counsel, the right to an impartial judge, presumption of innocence, standard of proof beyond a reasonable doubt, right to be informed of the charges as soon as practicable, right to service of charges sufficiently in advance of trial, right to reasonable continuances. This list goes on and on. So Khalid Sheikh Mohammed, who was alleged to have designed the attack on 9/11 that killed thousands of Americans, will have a greater body of rights, as Mr. LUNGREN has said, in his trial than anybody under a similar tribunal system has ever had.

Ms. SLAUGHTER. Mr. Speaker, I yield 2½ minutes to the gentlewoman from California (Mrs. TAUSCHER).

Mrs. TAUSCHER. Mr. Speaker, let me be very clear: I believe that there is a special place in hell reserved for the planners and perpetrators of 9/11. But 5 years after 9/11, we have yet to hold and try one single terrorist accountable. And sadly, today we have before us a bill that, if passed in its current form, will do nothing but put us in further legal limbo, further delaying punishment for these terrorists.

We need clear legislation and swift, tough and fair justice to be sure that we don't observe another 9/11 anniversary without these terrorists punished.

How do we go about that? Well, I can tell you that we don't do it by passing this bill. We need a bill that is not going to be turned over by the Supreme Court, a bill that is clear about our commitment in the United States to common article 3 and to the kind of rule of law and the law of war that will be sure that these perpetrators of 9/11 and others meet justice and do it quickly.

Right now, we have before us a bill that the Republicans pretty much negotiated among themselves that allows the President to redefine torture when and how he sees fit, and will put our armed services at risk for abuse if they are ever captured while doing little to obtain the intelligence we need from captured terrorists.

That is why so many retired generals, JAG officers and senior military experts oppose the President's plan and say very clearly that we must not go down this road that will put our troops in danger.

The former chairman of the Joint Chiefs, General Shalikashvili, and over 40 former military officers and Pentagon officials, wrote recently that the Geneva Conventions are currently the only source of legal protection for many of our troops deployed in harm's way throughout the world.

That is why my amendment that was not approved by the Rules Committee is an important opportunity to get this right. We do have to do this now. It is important to do it now. But we cannot rush to judgment and get it wrong again.

Keep in mind the President's original plan has not given us the ability to prosecute anyone because they got it wrong. And because they blew it, and are about to blow it again, we are still not going to be able to bring the 9/11 perpetrators to justice, which is what we want to do.

Ladies and gentlemen, please support a ''no'' vote on the previous question so we can amend this bill, do the right thing, and get a bill that we can bring to the President to sign soon.

Mr. COLE of Oklahoma. Mr. Speaker, I yield 3 minutes to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Speaker, I thank the gentleman for yielding.

Mr. HUNTER. Mr. Speaker, will the gentleman yield?

Mr. GINGREY. I yield to the gentleman from California.

Mr. HUNTER. Mr. Speaker, let me make a point about an error that was just made in the statement of my good friend, the gentlewoman from California.

The President cannot redefine torture. The grave offenses are prohibited and defined as war crimes. You cannot do them, and torture is defined as one of the grave offenses. The President cannot redefine torture. All the President can do is do administrative regulations with respect to offenses that are not grave offenses, and that includes torture. The President cannot redefine torture.

Mr. GINGREY. Mr. Speaker, I rise today in full support of the rule for H.R. 6166.

I hear from a number of my colleagues on the other side of the aisle, and particularly heard in our hearing yesterday in the Rules Committee, a complaint about process.

I understand that, Mr. Speaker. That is what the minority party does. That is what we would do if we were in that situation. That is what we have done in the past. I understand those complaints about process.

But this is now where the rubber meets the road. This is about policy. This is a bill that we need their full support on. The men and women that work in our intelligence community, the CIA agents, the interrogators, the military personnel, they need our support. We shouldn't be giving more rights to the terrorists than we do to our own people who are fighting every day to protect us.

Mr. Speaker, I want to remind my colleagues that these detainees, whether they are in prison in eastern Europe or at Guantanamo Bay, they are not there because they were caught chewing bubble gum in class, or throwing spitballs. These are very, very bad guys that were caught on the battlefield in Afghanistan with weapons in hand. Or in some instances, preparing improvised explosive devices to blow our young men and women to smithereens. So I don't think they deserve any special rights. They deserve the right to counsel and a fair trial, and that is what we are giving them. These people are out of uniform. They are not fighting for any particular government. They are targeting civilians. They are beheading the prisoners, including Daniel Pearl, Nick Berg, and from my own district, Mr. Speaker, a government contract worker, a husband and a father, Jack Helmsley.

They don't qualify for rights under the Geneva Convention, even though the President has tried to extend them those rights. The Supreme Court, of course, in their recent ruling, says we have to do that, so that is what we are doing. We are giving them rights. We are being a whole lot kinder to them than they ever would be to us because of our moral standards. I think that is important.

I think this is a bill that gets it right and it deserves the support of Members on both sides of the aisle. I hope my colleagues, when the rubber meets the road, when we get to the vote, they will think about policy and not process.

Ms. SLAUGHTER. Mr. Speaker, I am pleased to yield 1 minute to the gentlewoman from California (Ms. PELOSI), the minority leader.

Ms. PELOSI. Mr. Speaker, as I always remind my colleagues, I am a mother of five children and I have five grandchildren going on six in October. Their personal safety is of paramount importance to me, as it is to every parent of their children and grandchildren in our country.

As elected officials, our primary responsibility is to protect and defend our country, to provide for the common defense. It is in the Constitution of the United States.

So to come to this floor on this very important debate and to hear the Representative from Georgia, to imply that this issue of punishing those who do harm or could do harm to our country is not a priority for every Member of this body is a disservice to this debate and dishonors our Constitution.

How dare you come to this floor and imply that we think that these people are being tried for chewing gum. They have committed the most heinous acts that we have witnessed in our lives. Every American wants them prosecuted and punished. Every American wants them prosecuted and punished.

I will not yield. You had your time. You demeaned this debate by implying that we think they were being tried for chewing gum. That is what you said. The RECORD will show it.

But it isn't just you. It isn't just you. It is the condescension and the disrespect for something that we should expect every Member of this body on both sides of the aisle to take very, very seriously: To provide for the common defense.

□ 1215

We have that officially as our responsibility. It is our first responsibility because, unless our people are safe, nothing else really matters. And as a mother, as a parent, as a mother of five and a grandmother of five going on six, as I constantly remind you all, I identify with the concerns of all of America's families for safety in their neighborhoods while these Republicans are cutting the Community Policing program, Cops on the Beat program. So it just is very pervasive.

But, again, we all want a safe home, a safe community, a safe neighborhood, homeland security, and to be able to protect our country wherever our interests are threatened in the world. And the ability to anticipate what those dangers may be is a very important one as well.

It is 5 years since 9/11. Not one person who has been directly responsible for 9/11 has been prosecuted and punished. There is something wrong with this picture. And this bill that is here today, because it does violence to the Constitution of the United States, also, as Mr. SKELTON said, will produce convictions that may well be overturned because the bill does not heed the instructions from the Supreme Court, a Supreme Court friendly to this administration, which has directed it to go back to the drawing board.

Democrats bring to this debate an unshakeable commitment, as do Republicans, to the proposition that terrorists who attack Americans must be caught, convicted, and punished in a judicial process that will withstand the scrutiny of the Supreme Court. We want them in jail. We want them punished, whatever that punishment is. We don't want it overturned. And that is what this debate is about today.

The American people want those who perpetrated and are responsible for 9/11 to be prosecuted without further delay. It is 5 years later, and they want convictions to stick so that justice will not be further postponed. It is inexplicable. How do you explain to people that 5 years later this has not happened, and not one single planner has even been brought to trial?

The bill does not help us achieve the goal of bringing anyone to trial. It is badly flawed. It threatens the safety of our troops, our ability to prosecute terrorists effectively, our ability to protect the American people, and to honor our oath of office to protect and defend the Constitution. Rather than welcoming suggestions for improvements, Republicans refuse to hear them at all.

The only one recourse that we have is to defeat this rule so that we can offer amendments to address some of the bill's most glaring deficiencies in the areas of, one, habeas corpus; two, Geneva Conventions standards; and the appeals process. If we do not, I believe, as I have said, that we will be headed for a repeat of Hamdan v. Rumsfeld, a Supreme Court defeat for the President and a decision that sends us back to square one in terms of bringing those responsible for 9/11 to trial.

By seeking to strip Federal courts of habeas corpus review, this bill is practically begging to be overturned by the courts. Habeas corpus is one of the hallmarks of our legal system and our democracy. It is the last line of defense against arbitrary executive power. And on that subject, we had a rule that was proposed by Mr. MEEHAN. It was rejected by the Rules Committee. Hopefully, we can reject the previous question so that we can bring that up.

Then, permitting indefinite detention under conditions that cannot be challenged in court is so contrary to our history and our values that it should raise all sorts of red flags. Yet this bill rushes us headlong into a court-stripping misadventure that will have disastrous consequences for our efforts to combat terrorism. Let us not go there. That is habeas corpus.

In addition, the bill establishes an appeals process, and it is interesting, Mr. Speaker. The appeals process in this bill ignores the existing highly respected appellate military system that provides a direct route to the Supreme Court, expedited. Rather than deferring to the military justice system that is very respected by the military and that is now in place, the bill creates a new appeals court with no track record and a longer, longer path to the Supreme Court review, which will delay justice.

Perhaps most distressing, this bill could very well boomerang on us, putting American troops in danger.

Redefining the Geneva Conventions in ways that lower the treatment standards the Conventions create poses a real risk to American forces.

This is a time when the Golden Rule really should be in effect. Do not do unto others what you would not have them do unto your troops, your CIA agents, your people in the field.

And God bless our military personnel, our men and women in uniform, our intelligence officers who are out there for their patriotic service to our country. They are best protected by an international commitment to the highest possible standards for the treatment of prisoners. Why would we want to do something that at the same time jeopardizes the safety of our troops and weakens the moral basis for our efforts against terrorists? And experts have testified over and over again that that kind of treatment does not produce intelligence that is of value and reliability that we need to protect the American people and to bring these terrorists to justice.

Democrats have proposed amendments on these issues, habeas corpus, Geneva Conventions, the appeals process, but the rule, as drafted, will not let us consider them. This House once again is shutting us down on debate. As yesterday, this House said ''no'' to the resolution that said we want all Members of Congress to see the National Intelligence Estimate so that we can stipulate, all of us together, to a set of facts of how the war in Iraq is having a negative impact on the war on terror. Yesterday they said ''no.'' Today the Republicans said ''no.'' It is just a constant chant.

These subjects are just too important to allow those results to stand. If we defeat the previous question, the opposition to which is being led by Congresswoman SLAUGHTER—and I thank you, Congresswoman SLAUGHTER, for your leadership on this important issue on the Rules Committee. Under your leadership, if we win, we can thoroughly debate all of the matters raised by this legislation.

Let us do the job that we were elected to do on this, one of the pivotal issues of our time. Let us honor our oath of office to protect and defend the Constitution and our responsibility to protect the American people and to prosecute and punish those who would do harm to them.

Mr. COLE of Oklahoma. Mr. Speaker, I just want to say quickly for the record I think we are operating by the Golden Rule. I wish our opponents were. I wish they extended to American soldiers the same rights that they are given under this legislation.

With that, Mr. Speaker, I would like to yield 2 minutes to the distinguished gentleman from Florida, my fellow Rules Committee member, Mr. LINCOLN DIAZ-BALART.

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I rise today in support of this important legislation.

Is it perfect? No. Do we have an obligation to pass it? Yes. It is very important that this Congress passes it as soon as possible.

First of all, the most important thing that this legislation does, that it accomplishes, is that it protects our troops and intelligence officers. Sources and methods of intelligence gathering are protected. The security of this country, the American people, thus and for many other reasons, the security of this country is protected and is enhanced by this legislation. And that is the most important ingredient, I believe, in this legislation.

Secondly, it conforms with the rule of law, including international law, specifically common article 3 of the Geneva Conventions. Ad hoc courts are not acceptable. And what is necessary is established by this legislation, regularly constituted courts established by law, with judgments appealable to the Federal appellate court in the District of Columbia. The rule of law is satisfied by this legislation.

It is a very delicately balanced legislation, that while satisfying our obligations under the Geneva Conventions, at the same time it protects the methods and sources of gathering intelligence and our intelligence officers and the troops in the field.

This is very important legislation. It is important that the Congress pass it as soon as possible. I strongly support it and urge its passage.

Ms. SLAUGHTER. Mr. Speaker, I yield 5 minutes to the gentleman from Massachusetts (Mr. MCGOVERN).

Mr. MCGOVERN. Mr. Speaker, I rise in opposition to this closed rule and to the underlying bill. We are rushing through a bill under a closed rule without the right to debate amendments.

This is a bill which will have tremendous ramifications for our Nation, our judiciary, and our military, and we are given a closed rule. This process is an absolute outrage. It demeans our democracy. I regret that we must even consider such legislation, but we must because the Bush administration has broken and abused the honor, integrity, and standing of the United States.

For the past 5 years, the Bush administration has repeatedly acted in ways that betray America's commitment to the rule of law. Prisoners have been held in secret prisons without any due process or even access by the Red Cross. Others have been held at Guantanamo to avoid judicial oversight and the application of U.S. treaty obligations toward detainees.

The executive branch has operated under a bizarre set of legal theories that have been rejected by dozens of our highest-ranking former military officers and representatives of the Judge Advocates General Corps, all of whom have warned of the dangers such opinions pose to our own uniformed men and women in the field, now and in the future.

Interrogation practices were approved at the highest levels of the Pentagon, which General Counsel of the Navy Alberto Mora described as ''clearly abusive and clearly contrary to everything we were ever taught about American values.''

According to press reports, the CIA has used a variety of methods that the United States has previously prosecuted as war crimes and routinely denounced as torture when they were used by other governments.

Mr. Speaker, we would not need to be here if the Bush administration had simply adhered to the letter and spirit of U.S. law and the Geneva Conventions. We would not be here if the Bush administration had called upon our best and most experienced military interrogators, those who undergo rigorous training at Fort Huachuca in Arizona, because violations of U.S. and international law would not have occurred, and we likely would have obtained intelligence of higher quality and value.

We would not be here if the Bush administration had directed all interrogators across all agencies to adhere to the letter of the Army Field Manual and the Geneva Conventions.

Now, I wish I could say President Bush and his advisers have come to grips with how they have undermined and tarnished America's reputation as a nation that stands foursquare in support of the rule of law, justice, and human rights. But this legislation proves that precious little has been learned.

Instead, this bill will prevent any accountability for violations of the law carried out in the past. It will immunize from prosecution anyone who might have committed abuses or crimes. And when we immunize those who carried out abuses, we extend that blessing to those who issued such orders and provided such guidance.

Mr. Speaker, scores of military officers in the field rejected the orders and guidance to use so-called ''alternative methods'' during interrogation, namely, torture. They knew those orders violated the law. But we are not rewarding those fine officers for sticking with the law. They are not being honored for their professionalism or for the quality of the intelligence they provided.

But those who broke the law will be rewarded along with those who ordered them to break the law. If this bill passes, we will even strip individuals who are detained of their rights and ability to challenge the factual and legal basis of their detention. Why? Because the White House does not believe in the checks and balances of democracy.

□ 1230

They are angry that twice the Supreme Court has pointed out the failures of our detainee policies, practices and procedures.

Mr. Speaker, how can we do this? If some other country were holding American citizens in detention and rewriting their laws in just this way to deal with our people, would we be encouraging such an effort?

Mr. Speaker, let me say quite simply why I oppose this bill. I oppose this bill because I am a proud American, and this bill runs contrary to the very values on which our country was founded

and for which we stand like a beacon to the rest of the world: The rule of law, due process and respect for human rights.

Mr. Speaker, I fear for the soul of this Nation.

Mr. COLE of Oklahoma. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. GOHMERT).

Mr. GOHMERT. Mr. Speaker, there are some things that need to be addressed. For one thing, putting the judge advocate generals of the service, as great as some of them are, on a pedestal is inappropriate. When I served 4 years in the Judge Advocate General Corps on active duty, we had one TJAG that did not even know what post he was at from time to time. So it must be taken in context.

But when I hear Members here on the floor say, gee, by passing this bill we are putting troops at risk, let me tell you what will put troops at risk, when we start applying criminal law standards that I observed during my years as a judge and chief justice, you start applying those, the forensics in the battleground area, you are putting troops at risk.

When a man and a woman has to fire in self-defense and also be thinking about, gee, can I go get that that has fingerprints, DNA, I better go collect evidence for the trial that will be upcoming, then that puts them at risk. Please do not put our troops at further risk by making them comply with civil standards back here in this country.

You know, people have declared war on us, and to say that those people will deserve constitutional standards, let me tell you, there are judges that have ruled the Constitution means inmates require electric typewriters, televisions, things like that. It is totally inappropriate.

The Constitution itself says, in article I, that: ''We shall constitute tribunals.'' We will do these things. That is what we are doing. It is constitutional. To respond to perhaps the rhetorical question by the minority leader, how dare we? How dare we? How dare I? Because the Constitution says: We will provide for the common defense, not provide for the criminal defense of those at war with us. That is how dare I, that is how dare we.

Ms. SLAUGHTER. Mr. Speaker, I will be asking for a ''no'' vote on the previous question so that I can amend this closed rule and allow the House to consider three critical amendments that were rejected by the Rules Committee last evening.

Mr. Speaker, I ask unanimous consent to insert the text of the amendments and extraneous materials immediately prior to the vote on the previous question.

The SPEAKER pro tempore (Mr. GILLMOR). Is there objection to the request of the gentlewoman from New York?

There was no objection.

Ms. SLAUGHTER. Mr. Speaker, the first amendment offered by Representative MEEHAN would restore habeas corpus, one of the most basic principles in our legal system which allows a person detained by the Government to have a judge review his or her case.

The next amendment, which was offered by Mrs. TAUSCHER, strikes the provision in the bill that would reinterpret and weaken our commitment to the Geneva Conventions. The last amendment, by Representative LORETTA SANCHEZ, would modify the appeals process by providing that the existing and experienced U.S. Court of Appeals for the Armed Forces, and then the Supreme Court would be used instead of creating a brand new court system that is untested and untried.

Mr. Speaker, the bill we will be considering shortly makes very extraordinary changes to the way we deal with interrogation and treatment of prisoners of war, and those incarcerated from the war on terror.

It is undoubtedly one of the most deadly serious issues we will deal with in this Congress. The impact of this legislation is not just about the effect that it will have on those individuals that our Nation apprehends in wartime and in the War Against Terror.

Every bit as important are the far-reaching implications that it will have for our soldiers and citizens who may be captured. This is about protecting them from torture and other inhumane treatment. The three amendments are critical components in this process. They need to be a part of the process today.

Let's do the right thing and vote ''no'' on the previous question so that we may consider these issues today. The lives of the brave men and women protecting our great Nation depend on it. Again, I urge a ''no'' vote.

Mr. Speaker, I yield back the balance of my time.

Mr. COLE of Oklahoma. Mr. Speaker, today in closing, I want to again draw the attention of Members to the strength of the underlying bicameral compromise legislation, H.R. 6166. We have had a vigorous and good debate on the rule which I believe will help convince the House to support this vital measure.

I honestly believe when Members sit back and consider the underlying legislation carefully, they know we must move forward and pass both the rule and the bill. This is not an issue that we can take lightly, and we must act to enhance and secure America's security by providing the proper legal tools for our forces.

I believe that my colleagues on the other side of the aisle who have spoken against this measure are very sincere and are very honorable in their intentions. But I want to conclude by adding a personal perspective on this particular issue. I had an uncle who served in the United States Navy during the Second World War.

He was captured in the Philippines in 1942, did the Bataan Death March, served throughout the war, first in the Philippines and then in the mainland of Japan as a prisoner of war.

During that process, he suffered enormous abuse. The first speech I gave on the floor of this House when I was privileged to serve was in support of a resolution that was presented in a bipartisan fashion that we would hold the then-Iraqi government of Saddam Hussein accountable for their treatment of any American POWs that might fall into their hands.

And, frankly, when we had the discussion on the Armed Services Committee about Abu Ghraib, I was probably as tough as anybody certainly on my side of the aisle in pointing out where I thought we had had inconsistencies, shortcomings and failures, and that those needed to be corrected.

But I have also had the opportunity, serving in this body, to go to Guantanamo and to talk to our interrogators and talk to our guards and talk to them about the nature of the enemy with which we deal. I need to remind my good friends, we are not dealing with criminals. We are dealing with terrorists.

We are not dealing with people who have broken our law, we are dealing with people that want to kill our citizens. We are dealing with an enemy that is very unlike any we have confronted before in the history of our country.

These are not uniformed combatants in the service of a foreign country; these terrorists are not uniformed; they are not under the supervision of legitimate governments; they do not recognize the Geneva Convention; they do not extend to the prisoners that they take of all faiths, of all nationalities, any rights, any privileges, any protections whatsoever.

We can be enormously proud as Americans that we have not stooped to that standard, that this legislation has been carefully crafted and negotiated, ensures the rights, ensures protections, sets up standards. And I have no doubt that our courts, our military, our judicial system, our legal system, will hold anybody who violates those rights to very high standards, as indeed we have done in the past.

Mr. Speaker, this is a very good rule and a very good bill. It offers us the opportunity for an up-or-down vote, which, as the chairman of the Rules Committee pointed out earlier, we have heard a great deal about this morning, the need for up and down votes and clarity. We have got that here.

Mr. Speaker, I predict at the end of the day we will have an exceptionally strong bipartisan vote in support of this resolution.

Mr. Speaker, I intend to vote for the rule and the underlying legislation—and I would urge my colleagues to do the same.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in opposition to H. Res. 1042, a closed rule providing for consideration of H.R. 6166, the Military Commissions Act of 2006. I oppose the rule because it forecloses members

from offering constructive amendments that would improve a bill that otherwise is unlikely to pass constitutional muster.

Mr. Speaker, among other things, H.R. 6166, seeks to correct the deficiencies in the Administration's regime of military commissions identified by the Supreme Court in *Hamdan* v. *Rumsfeld,* 548 U.S. ____, 05–184 (June 29, 2006).

Although there were more than a dozen amendments offered, the Rules Committee did not see fit to make any of them order. This is very unfortunate because many of these amendments would lessen the likelihood the bill would be found unconstitutional.

For example, I offered a simple and uncontroversial amendment. It simply provided that any costs incurred by the United States to ensure that an unlawful enemy combatant receives a fair trial under the system of military commissions established by the Act by affording him the right to a civilian attorney, interpreter fluent in his native language, and expert witnesses where necessary can and shall be recouped from any assets confiscated or seized from the terrorist organization to which the accused belongs.

I offered this amendment, Mr. Speaker, because the American people are generous and fair-minded. We believe in fundamental fairness and due process. We believe that the accused in a penal proceeding is entitled to the effective assistance of counsel. We believe that the adversary legal system depends upon vigorous advocacy, which in turns requires that the accused feel free to communicate with his counsel candidly and fully, secure in the knowledge that his communications to his counsel are privileged from disclosure. We believe that in a criminal case, the Government must bear the burden of proving guilt beyond a reasonable doubt, and it should be able to do so without resorting to secret evidence or evidence it unlawfully obtained.

But Americans are not foolish. And it would be foolish to expect Americans to pick up the tab to pay for competent counsel and expert witnesses to testify on his behalf when the accused, or his organization, has the means to pay for these services himself. Nothing in the Constitution, our law, traditions, or way of life entitles an accused to these services free of charge. After all, even in a regular criminal case, the Government is obligated to provide the accused an attorney only if he cannot afford one. It would be passing strange indeed if in our desire to afford an unlawful enemy combatant a fair trial, we treated the accused better than we do a common criminal.

My amendment would have ensured that if a member of al Qaeda is tried in a military commission, the costs of his defense would be paid out of the captured or confiscated resources of al Qaeda and it allies, and not out of the pockets of the American people. This common sense amendment was not made in order, as were other sensible and constructive amendments offered by my colleagues.

Mr. Speaker, the treatment and trials of detainees by the United States is too important not to do it right. This closed rule is not the right way to justice by the American people. I therefore cannot support this closed rule and urge my colleagues to vote against the rule. We have time to come up with a better product and we should. The American people deserve no less.

The material previously referred to by Ms. SLAUGHTER is as follows:

THE VOTE ON THE PREVIOUS QUESTION: WHAT IT REALLY MEANS

''This vote, the vote on whether to order the previous question on a special rule, is not merely a procedural vote. A vote against ordering the previous question is a vote against the Republican majority agenda and a vote to allow the opposition, at least for the moment, to offer an alternative plan. It is a vote about what the House should be debating.

Mr. Clarence Cannon's Precedents of the House of Representatives, (VI, 308–311) describes the vote on the previous question on the rule as ''a motion to direct or control the consideration of the subject before the House being made by the Member in charge.'' To defeat the previous question is to give the opposition a chance to decide the subject before the House. Cannon cites the Speaker's ruling of January 13, 1920, to the effect that ''the refusal of the House to sustain the demand for the previous question passes the control of the resolution to the opposition'' in order to offer an amendment. On March 15, 1909, a member of the majority party offered a rule resolution. The House defeated the previous question and a member of the opposition rose to a parliamentary inquiry, asking who was entitled to recognition. Speaker Joseph G. Cannon (R–Illinois) said: ''The previous question having been refused, the gentleman from New York, Mr. Fitzgerald, who had asked the gentleman to yield to him for an amendment, is entitled to the first recognition.''

Because the vote today may look bad for the Republican majority they will say ''the vote on the previous question is simply a vote on whether to proceed to an immediate vote on adopting the resolution . . . [and] has no substantive legislative or policy implications whatsoever.'' But that is not what they have always said. Listen to the Republican Leadership Manual on the Legislative Process in the United States House of Representatives, (6th edition, page 135). Here's how the Republicans describe the previous question vote in their own manual: Although it is generally not possible to amend the rule because the majority Member controlling the time will not yield for the purpose of offering an amendment, the same result may be achieved by voting down the previous question on the rule . . . When the motion for the previous question is defeated, control of the time passes to the Member who led the opposition to ordering the previous question. That Member, because he then controls the time, may offer an amendment to the rule, or yield for the purpose of amendment.''

Deschler's Procedure in the U.S. House of Representatives, the subchapter titled ''Amending Special Rules'' states: ''a refusal to order the previous question on such a rule [a special rule reported from the Committee on Rules] opens the resolution to amendment and further debate.'' (Chapter 21, section 21.2) Section 21.3 continues: Upon rejection of the motion for the previous question on a resolution reported from the Committee on Rules, control shifts to the Member leading the opposition to the previous question, who may offer a proper amendment or motion and who controls the time for debate thereon.''

Clearly, the vote on the previous question on a rule does have substantive policy implications. It is one of the only available tools for those who oppose the Republican majority's agenda to offer an alternative plan.

PREVIOUS QUESTION FOR H. RES. 1042

H.R. 6166—MILITARY COMMISSIONS ACT OF 2006

Strike all after the resolved clause and insert in lieu there of the following:

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 6166) to amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived. General debate shall be confined to the bill and shall not exceed two hours equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on Armed Services. After general debate the bill shall be considered for amendment under the five-minute rule. The bill shall be considered as read. The amendment printed in Section 2 of this resolution shall be considered as adopted. No other amendments shall be in order except those printed in Section 3 of this resolution. Each such amendment may be offered only in the order printed in Section 3, may be offered only by the Member designated or a designee, shall be considered as read, shall be debatable 60 minutes equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against such amendments are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. The amendment considered as adopted in Section 1 is as follows:

Page 18, line 21, strike ''violate'' and all that follows through the end of line 24 and insert ''amount to cruel, inhuman, or degrading treatment prohibited by section 1003 of the Detainee Treatment Act of 2005.''.

Page 20, line 13, insert ''examine and'' after ''and to''.

Page 27, line 19, strike ''military counsel detailed'' and insert ''detailed military counsel''.

Page 81, line 3, strike ''36(b)'' and insert ''36''.

Page 91, line 22, strike the closing quotation marks and second period.

Page 91, after line 22 insert the following new paragraph:

''(5) DEFINITION OF GRAVE BREACHES.—The definitions in this subsection are intended only to define the grave breaches of common Article 3 and not the full scope of United States obligations under that Article.''.

SEC. 3. The amendments referred to in Section 1 are as follows:

(a) Amendment to be offered by Representative Meehan of Massachusetts

AMENDMENT TO H.R. 6166 OFFERED BY MR. MEEHAN OF MASSACHUSETTS

In section 950j of title 10, United States Code, as added by section 3(a)(1) of the bill—

(1) strike ''(a) FINALITY.—''; and

(2) strike subsection (b).

Strike section 7 (relating to habeas corpus matters).

(b) Amendment to be offered by Representative Tauscher of California

AMENDMENT TO H. R. 6166

OFFERED BY MRS. TAUSCHER OF CALIFORNIA

Strike section 6 (relating to implementation of treaty obligations).

(c) Amendment to be offered by Representative Loretta Sanchez of California

AMENDMENT TO H.R. 6166

OFFERED BY MS. LORETTA SANCHEZ OF CALIFORNIA

Strike sections 950c through 950j of title 10, United States Code, as added by section 3(a)(1) (page 51, line 10, and all that follows through page 61, line 15), and insert the following (and conform the table of sections at the beginning of subchapter VI, as added by section 3(a)(1) (page 46, after line 20, through page 47, before line 1), accordingly):

"§ 950c. Waiver or withdrawal of appeal

''(a) WAIVER OF RIGHT OF REVIEW.—(1) An accused may file with the convening authority a statement expressly waiving the right of the accused to appellate review by the United States Court of Appeals for the Armed Forces under section 950f(a) of this title of the final decision of the military commission under this chapter.

''(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

''(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice of the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

''(b) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

''(c) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

"§ 950d. Appeal by the United States

''(a) INTERLOCUTORY APPEAL.—(1) Except as provided in paragraph (2), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the United States Court of Appeals for the Armed Forces under section 950f of this title of any order or ruling of the military judge that—

''(A) terminates proceedings of the military commission with respect to a charge or specification;

''(B) excludes evidence that is substantial proof of a fact material in the proceeding; or

''(C) relates to a matter under subsection (c) or (d) of section 949d of this title.

''(2) The United States may not appeal under paragraph (1) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

''(b) NOTICE OF APPEAL.—The United States shall take an appeal of an order or ruling under subsection (a) by filing a notice of appeal with the military judge within five days after the date of the order or ruling.

''(c) APPEAL.—An appeal under this section shall be forwarded, by means specified in regulations prescribed the Secretary of Defense, directly to the United States Court of Appeals for the Armed Forces. In ruling on an appeal under this section, the Court may act only with respect to matters of law.

"§ 950e. Rehearings

''(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

''(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

''(A) the accused may not be tried for any offense of which he was found not guilty by the first military commission; and

''(B) no sentence in excess of or more than the original sentence may be imposed unless—

''(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

''(ii) the sentence prescribed for the offense is mandatory.

''(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

"§ 950f. Review by United States Court of Appeals for the Armed Forces and Supreme Court

''(a) REVIEW BY UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES.—(1) Subject to the provisions of this subsection, the United States Court of Appeals for the Armed Forces shall have exclusive jurisdiction to determine the final validity of any judgment rendered by a military commission under this chapter.

''(2) The United States Court of Appeals for the Armed Forces may not determine the final validity of a judgment of a military commission under this subsection until all other appeals from the judgment under this chapter have been waived or exhausted.

''(3)(A) An accused may seek a determination by the United States Court of Appeals for the Armed Forces of the final validity of the judgment of the military commission under this subsection only upon petition to the Court for such determination.

''(B) A petition on a judgment under subparagraph (A) shall be filed by the accused in the Court not later than 20 days after the date on which written notice of the final decision of the military commission is served on the accused or defense counsel.

''(C) The accused may not file a petition under subparagraph (A) if the accused has waived the right to appellate review under section 950c(a) of this title.

''(4) The determination by the United States Court of Appeals for the Armed Forces of the final validity of a judgment of a military commission under this subsection shall be governed by the provisions of section 1005(e)(3) of the Detainee Treatment Act of 2005 (42 U.S.C. 801 note).

''(b) REVIEW BY SUPREME COURT.—The Supreme Court of the United States may review by writ of certiorari pursuant to section 1257 of title 28 the final judgment of the United States Court of Appeals for the Armed Forces in a determination under subsection (a).

"§ 950g. Appellate counsel

''(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications of counsel for appearing before military commissions under this chapter.

''(b) REPRESENTATION OF UNITED STATES.—Appellate counsel may represent the United States in any appeal or review proceeding under this chapter. Appellate Government counsel may represent the United States before the Supreme Court in case arising under this chapter when requested to do so by the Attorney General.

''(c) REPRESENTATION OF ACCUSED.—The accused shall be represented before the United States Court of Appeals for the Armed Forces or the Supreme Court by military appellate counsel, or by civilian counsel if retained by him.

"§ 950h. Execution of sentence; suspension of sentence

''(a) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

''(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgement as to the legality of the proceedings (and with respect to death, approval under subsection (a)).

''(2) A judgement as to legality of proceedings is final for purposes of paragraph (1) when—

''(A) the time for the accused to file a petition for review by the United States Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by the Court; or

''(B) review is completed in accordance with the judgment of the United States Court of Appeals for the Armed Forces and (A) a petition for a writ of certiorari is not timely filed, (B) such a petition is denied by the Supreme Court, or (C) review is otherwise completed in accordance with the judgment of the Supreme Court.

''(c) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.

"§ 950i. Finality of proceedings, findings, and sentences

''(a) FINALITY.—The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, except as otherwise provided by the President.

''(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES AND ACTIONS.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of enactment of this chapter, relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.''.

Mr. COLE of Oklahoma. Mr. Speaker, I yield back the balance of my time and move the previous question on the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

PROVIDING FOR AN ADJOURNMENT OR RECESS OF THE TWO HOUSES

Mr. BOEHNER. Mr. Speaker, I send to the desk a privileged concurrent resolution (H. Con. Res. 483) providing for an adjournment or recess of the two Houses, and ask for its immediate consideration.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 483

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Friday, September 29, 2006, Saturday, September 30, 2006, or Sunday, October 1, 2006, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Thursday, November 9, 2006, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; that when the House adjourns on the legislative day of Thursday, November 9, 2006, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Monday, November 13, 2006, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; that when the Senate recesses or adjourns on any day from Friday, September 29, 2006, through Wednesday, October 4, 2006, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Thursday, November 9, 2006, or such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns on Thursday, November 9, 2006, on a motion offered by its Majority Leader or his designee, it stand recessed or adjourned until noon on Monday, November 13, 2006, or Tuesday, November 14, 2006, as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, or their respective designees, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble at such place and time as they may designate if, in their opinion, the public interest shall warrant it.

The SPEAKER pro tempore. The question is on the concurrent resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

Pursuant to clause 8 of rule XX, this 15-minute vote on House Concurrent Resolution 483 will be followed by 5-minute votes on ordering the previous question on H. Res. 1042; and on adoption of H. Res. 1042, if ordered.

The vote was taken by electronic device, and there were—yeas 227, nays 194, not voting 11, as follows:

[Roll No. 487]

YEAS—227

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Chabot
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—194

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—11

Cardin
Castle
Cleaver
Culberson
Davis (FL)
Jackson-Lee (TX)
Lewis (GA)
Meehan
Millender-McDonald
Ney
Strickland

□ 1307

So the concurrent resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PROVIDING FOR CONSIDERATION OF H.R. 6166, MILITARY COMMISSIONS ACT OF 2006

The SPEAKER pro tempore (Mr. SHIMKUS). The pending business is the vote on ordering the previous question on House Resolution 1042, on which the yeas and nays are ordered.

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 225, nays 191, not voting 16, as follows:

[Roll No. 488]

YEAS—225

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cantor
Capito
Carter
Chabot
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Paul
Pearce
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—191

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Melancon
Michaud
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—16

Cannon
Cardin
Castle
Cleaver
Culberson
Davis (FL)
Ferguson
Green, Gene
Jackson-Lee (TX)
Jones (NC)
Lewis (GA)
Meehan
Millender-McDonald
Ney
Pence
Strickland

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised there are 2 minutes remaining in this vote.

□ 1314

So the previous question was ordered.

The result of the vote was announced as above recorded.

Stated for:

Mr. FERGUSON. Mr. Speaker, on rollcall No. 488 I was unavoidably detained. Had I been present, I would have vote "yea."

PERSONAL EXPLANATION

Mr. CARDIN. Mr. Speaker, earlier today, I was unavoidably detained and missed two rollcall votes.

Had I been present, I would have voted "nay" on rollcall vote 487 and "nay" on rollcall vote 488.

The SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Ms. SLAUGHTER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 222, noes 194, not voting 16, as follows:

[Roll No. 489]

AYES—222

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Chabot
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris Rodgers
Melancon
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—194

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)

Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Filner
Ford
Frank (MA)
Gilchrest
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jefferson
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Michaud
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—16

Castle
Cleaver
Culberson
Davis (FL)
Fattah
Jackson-Lee (TX)
Johnson (CT)
Lewis (GA)
Marshall
Meehan
Millender-McDonald
Ney
Oxley
Rangel
Strickland
Weldon (PA)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

□ 1322

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PRIVILEGED REPORT ON RESOLUTION OF INQUIRY TO SECRETARY OF STATE

Mr. BARRETT of South Carolina, from the Committee on International Relations, submitted a privileged report (Rept. No. 109–689) on the resolution (H. Res. 985) directing the Secretary of State to provide to the House of Representatives certain documents in the possession of the Secretary of State relating to the report submitted to the Committee on International Relations of the House of Representatives on July 28, 2006, pursuant to the Iran and Syria Nonproliferation Act, which was referred to the House Calendar and ordered to be printed.

PERSONAL EXPLANATION

Ms. WOOLSEY. Mr. Speaker, on September 21, I inadvertently voted ''aye'' on rollcall 470, the Appalachian Regional Development Act Amendments of 2006. Please let the RECORD reflect that I enter a ''no'' vote on this rollcall.

MILITARY COMMISSIONS ACT OF 2006

Mr. HUNTER. Mr. Speaker, pursuant to House Resolution 1042, I call up the bill (H.R. 6166) to amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 1042, the amendment printed in House Report 109–688 is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 6166

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Military Commissions Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Construction of Presidential authority to establish military commissions.
Sec. 3. Military commissions.
Sec. 4. Amendments to Uniform Code of Military Justice.
Sec. 5. Treaty obligations not establishing grounds for certain claims.
Sec. 6. Implementation of treaty obligations.
Sec. 7. Habeas corpus matters.
Sec. 8. Revisions to Detainee Treatment Act of 2005 relating to protection of certain United States Government personnel.
Sec. 9. Review of judgments of military commissions.
Sec. 10. Detention covered by review of decisions of Combatant Status Review Tribunals of propriety of detention.

SEC. 2. CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO ESTABLISH MILITARY COMMISSIONS.

The authority to establish military commissions under chapter 47A of title 10, United States Code, as added by section 3(a), may not be construed to alter or limit the authority of the President under the Constitution of the United States and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.

SEC. 3. MILITARY COMMISSIONS.

(a) MILITARY COMMISSIONS.—

(1) IN GENERAL.—Subtitle A of title 10, United States Code, is amended by inserting after chapter 47 the following new chapter:

''CHAPTER 47A—MILITARY COMMISSIONS

''Subchapter
''I. General Provisions 948a
''II. Composition of Military Commissions 948h
''III. Pre-Trial Procedure 948q
''IV. Trial Procedure 949a
''V. Sentences 949s
''VI. Post-Trial Procedure and Review of Military Commissions 950a
''VII. Punitive Matters 950p

''SUBCHAPTER I—GENERAL PROVISIONS

''Sec.
''948a. Definitions.
''948b. Military commissions generally.
''948c. Persons subject to military commissions.
''948d. Jurisdiction of military commissions.
''948e. Annual report to congressional committees.

''§ 948a. Definitions

''In this chapter:

''(1) UNLAWFUL ENEMY COMBATANT.—(A) The term 'unlawful enemy combatant' means—

''(i) a person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda, or associated forces); or

''(ii) a person who, before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense.

''(B) CO-BELLIGERENT.—In this paragraph, the term 'co-belligerent', with respect to the United States, means any State or armed force joining and directly engaged with the United States in hostilities or directly supporting hostilities against a common enemy.

''(2) LAWFUL ENEMY COMBATANT.—The term 'lawful enemy combatant' means a person who is—

''(A) a member of the regular forces of a State party engaged in hostilities against the United States;

''(B) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or

''(C) a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

''(3) ALIEN.—The term 'alien' means a person who is not a citizen of the United States.

''(4) CLASSIFIED INFORMATION.—The term 'classified information' means the following:

''(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

''(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

''(5) GENEVA CONVENTIONS.—The term 'Geneva Conventions' means the international conventions signed at Geneva on August 12, 1949.

''§ 948b. Military commissions generally

''(a) PURPOSE.—This chapter establishes procedures governing the use of military

commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission.

''(b) AUTHORITY FOR MILITARY COMMISSIONS UNDER THIS CHAPTER.—The President is authorized to establish military commissions under this chapter for offenses triable by military commission as provided in this chapter.

''(c) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided in this chapter. The judicial construction and application of that chapter are not binding on military commissions established under this chapter.

''(d) INAPPLICABILITY OF CERTAIN PROVISIONS.—(1) The following provisions of this title shall not apply to trial by military commission under this chapter:

''(A) Section 810 (article 10 of the Uniform Code of Military Justice), relating to speedy trial, including any rule of courts-martial relating to speedy trial.

''(B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of the Uniform Code of Military Justice), relating to compulsory self-incrimination.

''(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

''(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by this chapter.

''(e) TREATMENT OF RULINGS AND PRECEDENTS.—The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial convened under chapter 47 of this title. The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not form the basis of any holding, decision, or other determination of a court-martial convened under that chapter.

''(f) STATUS OF COMMISSIONS UNDER COMMON ARTICLE 3.—A military commission established under this chapter is a regularly constituted court, affording all the necessary 'judicial guarantees which are recognized as indispensable by civilized peoples' for purposes of common Article 3 of the Geneva Conventions.

''(g) GENEVA CONVENTIONS NOT ESTABLISHING SOURCE OF RIGHTS.—No alien unlawful enemy combatant subject to trial by military commission under this chapter may invoke the Geneva Conventions as a source of rights.

''§ 948c. Persons subject to military commissions

''Any alien unlawful enemy combatant is subject to trial by military commission under this chapter.

''§ 948d. Jurisdiction of military commissions

''(a) JURISDICTION.—A military commission under this chapter shall have jurisdiction to try any offense made punishable by this chapter or the law of war when committed by an alien unlawful enemy combatant before, on, or after September 11, 2001.

''(b) LAWFUL ENEMY COMBATANTS.—Military commissions under this chapter shall not have jurisdiction over lawful enemy combatants. Lawful enemy combatants who violate the law of war are subject to chapter 47 of this title. Courts-martial established under that chapter shall have jurisdiction to try a lawful enemy combatant for any offense made punishable under this chapter.

''(c) DETERMINATION OF UNLAWFUL ENEMY COMBATANT STATUS DISPOSITIVE.—A finding, whether before, on, or after the date of the enactment of the Military Commissions Act of 2006, by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense that a person is an unlawful enemy combatant is dispositive for purposes of jurisdiction for trial by military commission under this chapter.

''(d) PUNISHMENTS.—A military commission under this chapter may, under such limitations as the Secretary of Defense may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter or the law of war.

''§ 948e. Annual report to congressional committees

''(a) ANNUAL REPORT REQUIRED.—Not later than December 31 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions under this chapter during such year.

''(b) FORM.—Each report under this section shall be submitted in unclassified form, but may include a classified annex.

''SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

''Sec.

''948h. Who may convene military commissions.
''948i. Who may serve on military commissions.
''948j. Military judge of a military commission.
''948k. Detail of trial counsel and defense counsel.
''948l. Detail or employment of reporters and interpreters.
''948m. Number of members; excuse of members; absent and additional members.

''§ 948h. Who may convene military commissions

''Military commissions under this chapter may be convened by the Secretary of Defense or by any officer or official of the United States designated by the Secretary for that purpose.

''§ 948i. Who may serve on military commissions

''(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter.

''(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members of the commission such members of the armed forces eligible under subsection (a), as in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

''(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

''§ 948j. Military judge of a military commission

''(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which he has been detailed.

''(b) QUALIFICATIONS.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

''(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person is eligible to act as military judge in a case of a military commission under this chapter if he is the accuser or a witness or has acted as investigator or a counsel in the same case.

''(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members of the commission except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may he vote with the members of the commission.

''(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to him by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

''(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter shall not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to his performance of duty as a military judge on the military commission.

''§ 948k. Detail of trial counsel and defense counsel

''(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

''(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

''(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable after the swearing of charges against the accused.

''(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such commissions.

''(b) TRIAL COUNSEL.—Subject to subsection (e), trial counsel detailed for a military commission under this chapter must be—

''(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice) who—

''(A) is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(B) is certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member; or

''(2) a civilian who—

''(A) is a member of the bar of a Federal court or of the highest court of a State; and

''(B) is otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

''(c) MILITARY DEFENSE COUNSEL.—Subject to subsection (e), military defense counsel detailed for a military commission under this chapter must be a judge advocate (as so defined) who is—

''(1) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(2) certified as competent to perform duties as defense counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member.

''(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).

''(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

''(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

''§ 948l. Detail or employment of reporters and interpreters

''(a) COURT REPORTERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter shall detail to or employ for the commission qualified court reporters, who shall make a verbatim recording of the proceedings of and testimony taken before the commission.

''(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the commission and, as necessary, for trial counsel and defense counsel and for the accused.

''(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the commission, who shall also be responsible for preparing the record of the proceedings.

''§ 948m. Number of members; excuse of members; absent and additional members

''(a) NUMBER OF MEMBERS.—(1) A military commission under this chapter shall, except as provided in paragraph (2), have at least five members.

''(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of members prescribed by section 949m(c) of this title.

''(b) EXCUSE OF MEMBERS.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

''(1) as a result of challenge;

''(2) by the military judge for physical disability or other good cause; or

''(3) by order of the convening authority for good cause.

''(c) ABSENT AND ADDITIONAL MEMBERS.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

''SUBCHAPTER III—PRE-TRIAL PROCEDURE

''Sec.
''948q. Charges and specifications.
''948r. Compulsory self-incrimination prohibited; treatment of statements obtained by torture and other statements.
''948s. Service of charges.

''§ 948q. Charges and specifications

''(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter shall be signed by a person subject to chapter 47 of this title under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

''(1) that the signer has personal knowledge of, or reason to believe, the matters set forth therein; and

''(2) that they are true in fact to the best of the signer's knowledge and belief.

''(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges against him as soon as practicable.

''§ 948r. Compulsory self-incrimination prohibited; treatment of statements obtained by torture and other statements

''(a) IN GENERAL.—No person shall be required to testify against himself at a proceeding of a military commission under this chapter.

''(b) EXCLUSION OF STATEMENTS OBTAINED BY TORTURE.—A statement obtained by use of torture shall not be admissible in a military commission under this chapter, except against a person accused of torture as evidence that the statement was made.

''(c) STATEMENTS OBTAINED BEFORE ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained before December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005) in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and

''(2) the interests of justice would best be served by admission of the statement into evidence.

''(d) STATEMENTS OBTAINED AFTER ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained on or after December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005) in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders the statement reliable and possessing sufficient probative value;

''(2) the interests of justice would best be served by admission of the statement into evidence; and

''(3) the interrogation methods used to obtain the statement do not amount to cruel, inhuman, or degrading treatment prohibited by section 1003 of the Detainee Treatment Act of 2005.

''§ 948s. Service of charges

''The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused and military defense counsel a copy of the charges upon which trial is to be had. Such charges shall be served in English and, if appropriate, in another language that the accused understands. Such service shall be made sufficiently in advance of trial to prepare a defense.

''SUBCHAPTER IV—TRIAL PROCEDURE

''Sec.
''949a. Rules.
''949b. Unlawfully influencing action of military commission.
''949c. Duties of trial counsel and defense counsel.
''949d. Sessions.
''949e. Continuances.
''949f. Challenges.
''949g. Oaths.
''949h. Former jeopardy.
''949i. Pleas of the accused.
''949j. Opportunity to obtain witnesses and other evidence.
''949k. Defense of lack of mental responsibility.
''949l. Voting and rulings.
''949m. Number of votes required.
''949n. Military commission to announce action.
''949o. Record of trial.

''§ 949a. Rules

''(a) PROCEDURES AND RULES OF EVIDENCE.—Pretrial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense, in consultation with the Attorney General. Such procedures shall, so far as the Secretary considers practicable or consistent with military or intelligence activities, apply the principles of law and the rules of evidence in trial by general courts-martial. Such procedures and rules of evidence may not be contrary to or inconsistent with this chapter.

''(b) RULES FOR MILITARY COMMISSION.—(1) Notwithstanding any departures from the law and the rules of evidence in trial by general courts-martial authorized by subsection (a), the procedures and rules of evidence in trials by military commission under this chapter shall include the following:

''(A) The accused shall be permitted to present evidence in his defense, to cross-examine the witnesses who testify against him, and to examine and respond to evidence admitted against him on the issue of guilt or innocence and for sentencing, as provided for by this chapter.

''(B) The accused shall be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

''(C) The accused shall receive the assistance of counsel as provided for by section 948k.

''(D) The accused shall be permitted to represent himself, as provided for by paragraph (3).

''(2) In establishing procedures and rules of evidence for military commission proceedings, the Secretary of Defense may prescribe the following provisions:

''(A) Evidence shall be admissible if the military judge determines that the evidence would have probative value to a reasonable person.

''(B) Evidence shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or other authorization.

''(C) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence

complies with the provisions of section 948r of this title.

''(D) Evidence shall be admitted as authentic so long as—

''(i) the military judge of the military commission determines that there is sufficient basis to find that the evidence is what it is claimed to be; and

''(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.

''(E)(i) Except as provided in clause (ii), hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission if the proponent of the evidence makes known to the adverse party, sufficiently in advance to provide the adverse party with a fair opportunity to meet the evidence, the intention of the proponent to offer the evidence, and the particulars of the evidence (including information on the general circumstances under which the evidence was obtained). The disclosure of evidence under the preceding sentence is subject to the requirements and limitations applicable to the disclosure of classified information in section 949j(c) of this title.

''(ii) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial shall not be admitted in a trial by military commission if the party opposing the admission of the evidence demonstrates that the evidence is unreliable or lacking in probative value.

''(F) The military judge shall exclude any evidence the probative value of which is substantially outweighed—

''(i) by the danger of unfair prejudice, confusion of the issues, or misleading the commission; or

''(ii) by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

''(3)(A) The accused in a military commission under this chapter who exercises the right to self-representation under paragraph (1)(D) shall conform his deportment and the conduct of the defense to the rules of evidence, procedure, and decorum applicable to trials by military commission.

''(B) Failure of the accused to conform to the rules described in subparagraph (A) may result in a partial or total revocation by the military judge of the right of self-representation under paragraph (1)(D). In such case, the detailed defense counsel of the accused or an appropriately authorized civilian counsel shall perform the functions necessary for the defense.

''(c) DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Defense may delegate the authority of the Secretary to prescribe regulations under this chapter.

''(d) NOTIFICATION TO CONGRESSIONAL COMMITTEES OF CHANGES TO PROCEDURES.—Not later than 60 days before the date on which any proposed modification of the procedures in effect for military commissions under this chapter goes into effect, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing the modification.

''§ 949b. Unlawfully influencing action of military commission

''(a) IN GENERAL.—(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or his functions in the conduct of the proceedings.

''(2) No person may attempt to coerce or, by any unauthorized means, influence—

''(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

''(B) the action of any convening, approving, or reviewing authority with respect to his judicial acts; or

''(C) the exercise of professional judgment by trial counsel or defense counsel.

''(3) Paragraphs (1) and (2) do not apply with respect to—

''(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

''(B) statements and instructions given in open proceedings by a military judge or counsel.

''(b) PROHIBITION ON CONSIDERATION OF ACTIONS ON COMMISSION IN EVALUATION OF FITNESS.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

''(1) consider or evaluate the performance of duty of any member of a military commission under this chapter; or

''(2) give a less favorable rating or evaluation to any commissioned officer because of the zeal with which such officer, in acting as counsel, represented any accused before a military commission under this chapter.

''§ 949c. Duties of trial counsel and defense counsel

''(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.

''(b) DEFENSE COUNSEL.—(1) The accused shall be represented in his defense before a military commission under this chapter as provided in this subsection.

''(2) The accused shall be represented by military counsel detailed under section 948k of this title.

''(3) The accused may be represented by civilian counsel if retained by the accused, but only if such civilian counsel—

''(A) is a United States citizen;

''(B) is admitted to the practice of law in a State, district, or possession of the United States or before a Federal court;

''(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

''(D) has been determined to be eligible for access to classified information that is classified at the level Secret or higher; and

''(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

''(4) Civilian defense counsel shall protect any classified information received during the course of representation of the accused in accordance with all applicable law governing the protection of classified information and may not divulge such information to any person not authorized to receive it.

''(5) If the accused is represented by civilian counsel, detailed military counsel shall act as associate counsel.

''(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in that person's sole discretion, may detail additional military counsel to represent the accused.

''(7) Defense counsel may cross-examine each witness for the prosecution who testifies before a military commission under this chapter.

''§ 949d. Sessions

''(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—(1) At any time after the service of charges which have been referred for trial by military commission under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

''(A) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

''(B) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

''(C) if permitted by regulations prescribed by the Secretary of Defense, receiving the pleas of the accused; and

''(D) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 949a of this title and which does not require the presence of the members.

''(2) Except as provided in subsections (c) and (e), any proceedings under paragraph (1) shall—

''(A) be conducted in the presence of the accused, defense counsel, and trial counsel; and

''(B) be made part of the record.

''(b) PROCEEDINGS IN PRESENCE OF ACCUSED.—Except as provided in subsections (c) and (e), all proceedings of a military commission under this chapter, including any consultation of the members with the military judge or counsel, shall—

''(1) be in the presence of the accused, defense counsel, and trial counsel; and

''(2) be made a part of the record.

''(c) DELIBERATION OR VOTE OF MEMBERS.—When the members of a military commission under this chapter deliberate or vote, only the members may be present.

''(d) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter, but only in accordance with this subsection.

''(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) only upon making a specific finding that such closure is necessary to—

''(A) protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

''(B) ensure the physical safety of individuals.

''(3) A finding under paragraph (2) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

''(e) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

''(1) to ensure the physical safety of individuals; or

''(2) to prevent disruption of the proceedings by the accused.

''(f) PROTECTION OF CLASSIFIED INFORMATION.—

''(1) NATIONAL SECURITY PRIVILEGE.—(A) Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. The rule in the preceding sentence applies to all stages of the proceedings of military commissions under this chapter.

''(B) The privilege referred to in subparagraph (A) may be claimed by the head of the executive or military department or government agency concerned based on a finding by the head of that department or agency that—

''(i) the information is properly classified; and

''(ii) disclosure of the information would be detrimental to the national security.

''(C) A person who may claim the privilege referred to in subparagraph (A) may authorize a representative, witness, or trial counsel to claim the privilege and make the finding described in subparagraph (B) on behalf of such person. The authority of the representative, witness, or trial counsel to do so is presumed in the absence of evidence to the contrary.

''(2) INTRODUCTION OF CLASSIFIED INFORMATION.—

''(A) ALTERNATIVES TO DISCLOSURE.—To protect classified information from disclosure, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(i) the deletion of specified items of classified information from documents to be introduced as evidence before the military commission;

''(ii) the substitution of a portion or summary of the information for such classified documents; or

''(iii) the substitution of a statement of relevant facts that the classified information would tend to prove.

''(B) PROTECTION OF SOURCES, METHODS, OR ACTIVITIES.—The military judge, upon motion of trial counsel, shall permit trial counsel to introduce otherwise admissible evidence before the military commission, while protecting from disclosure the sources, methods, or activities by which the United States acquired the evidence if the military judge finds that (i) the sources, methods, or activities by which the United States acquired the evidence are classified, and (ii) the evidence is reliable. The military judge may require trial counsel to present to the military commission and the defense, to the extent practicable and consistent with national security, an unclassified summary of the sources, methods, or activities by which the United States acquired the evidence.

''(C) ASSERTION OF NATIONAL SECURITY PRIVILEGE AT TRIAL.—During the examination of any witness, trial counsel may object to any question, line of inquiry, or motion to admit evidence that would require the disclosure of classified information. Following such an objection, the military judge shall take suitable action to safeguard such classified information. Such action may include the review of trial counsel's claim of privilege by the military judge in camera and on an ex parte basis, and the delay of proceedings to permit trial counsel to consult with the department or agency concerned as to whether the national security privilege should be asserted.

''(3) CONSIDERATION OF PRIVILEGE AND RELATED MATERIALS.—A claim of privilege under this subsection, and any materials submitted in support thereof, shall, upon request of the Government, be considered by the military judge in camera and shall not be disclosed to the accused.

''(4) ADDITIONAL REGULATIONS.—The Secretary of Defense may prescribe additional regulations, consistent with this subsection, for the use and protection of classified information during proceedings of military commissions under this chapter. A report on any regulations so prescribed, or modified, shall be submitted to the Committees on Armed Services of the Senate and the House of Representatives not later than 60 days before the date on which such regulations or modifications, as the case may be, go into effect.

''§ 949e. Continuances

''The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

''§ 949f. Challenges

''(a) CHALLENGES AUTHORIZED.—The military judge and members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the commission. The military judge shall determine the relevance and validity of challenges for cause. The military judge may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

''(b) PEREMPTORY CHALLENGES.—Each accused and the trial counsel are entitled to one peremptory challenge. The military judge may not be challenged except for cause.

''(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

''§ 949g. Oaths

''(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

''(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary of Defense. Those regulations may provide that—

''(A) an oath to perform faithfully duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty; and

''(B) if such an oath is taken, such oath need not again be taken at the time the judge advocate or other person is detailed to that duty.

''(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

''§ 949h. Former jeopardy

''(a) IN GENERAL.—No person may, without his consent, be tried by a military commission under this chapter a second time for the same offense.

''(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

''§ 949i. Pleas of the accused

''(a) ENTRY OF PLEA OF NOT GUILTY.—If an accused in a military commission under this chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

''(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without a vote. The finding shall constitute the finding of the commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

''§ 949j. Opportunity to obtain witnesses and other evidence

''(a) RIGHT OF DEFENSE COUNSEL.—Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense.

''(b) PROCESS FOR COMPULSION.—Process issued in a military commission under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

''(1) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

''(2) shall run to any place where the United States shall have jurisdiction thereof.

''(c) PROTECTION OF CLASSIFIED INFORMATION.—(1) With respect to the discovery obligations of trial counsel under this section, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(A) the deletion of specified items of classified information from documents to be made available to the accused;

''(B) the substitution of a portion or summary of the information for such classified documents; or

''(C) the substitution of a statement admitting relevant facts that the classified information would tend to prove.

''(2) The military judge, upon motion of trial counsel, shall authorize trial counsel, in the course of complying with discovery obligations under this section, to protect from disclosure the sources, methods, or activities by which the United States acquired evidence if the military judge finds that the sources, methods, or activities by which the United States acquired such evidence are classified. The military judge may require trial counsel to provide, to the extent practicable, an unclassified summary of the sources, methods, or activities by which the United States acquired such evidence.

''(d) EXCULPATORY EVIDENCE.—(1) As soon as practicable, trial counsel shall disclose to the defense the existence of any evidence known to trial counsel that reasonably tends to exculpate the accused. Where exculpatory evidence is classified, the accused shall be provided with an adequate substitute in accordance with the procedures under subsection (c).

''(2) In this subsection, the term 'evidence known to trial counsel', in the case of exculpatory evidence, means exculpatory evidence that the prosecution would be required to disclose in a trial by general court-martial under chapter 47 of this title.

''§ 949k. Defense of lack of mental responsibility

''(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter that, at the time

of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

''(b) BURDEN OF PROOF.—The accused in a military commission under this chapter has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

''(c) FINDINGS FOLLOWING ASSERTION OF DEFENSE.—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue in a military commission under this chapter, the military judge shall instruct the members of the commission as to the defense of lack of mental responsibility under this section and shall charge them to find the accused—

''(1) guilty;

''(2) not guilty; or

''(3) subject to subsection (d), not guilty by reason of lack of mental responsibility.

''(d) MAJORITY VOTE REQUIRED FOR FINDING.—The accused shall be found not guilty by reason of lack of mental responsibility under subsection (c)(3) only if a majority of the members present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

''§ 949l. Voting and rulings

''(a) VOTE BY SECRET WRITTEN BALLOT.—Voting by members of a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

''(b) RULINGS.—(1) The military judge in a military commission under this chapter shall rule upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.

''(2) Any ruling made by the military judge upon a question of law or an interlocutory question (other than the factual issue of mental responsibility of the accused) is conclusive and constitutes the ruling of the military commission. However, a military judge may change his ruling at any time during the trial.

''(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote is taken of the findings of a military commission under this chapter, the military judge shall, in the presence of the accused and counsel, instruct the members as to the elements of the offense and charge the members—

''(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

''(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

''(3) that, if there is reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

''(4) that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the United States.

''§ 949m. Number of votes required

''(a) CONVICTION.—No person may be convicted by a military commission under this chapter of any offense, except as provided in section 949i(b) of this title or by concurrence of two-thirds of the members present at the time the vote is taken.

''(b) SENTENCES.—(1) No person may be sentenced by a military commission to suffer death, except insofar as—

''(A) the penalty of death is expressly authorized under this chapter or the law of war for an offense of which the accused has been found guilty;

''(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

''(C) the accused is convicted of the offense by the concurrence of all the members present at the time the vote is taken; and

''(D) all the members present at the time the vote is taken concur in the sentence of death.

''(2) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the members present at the time the vote is taken.

''(3) All other sentences shall be determined by a military commission by the concurrence of two-thirds of the members present at the time the vote is taken.

''(c) NUMBER OF MEMBERS REQUIRED FOR PENALTY OF DEATH.—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of members of the military commission under this chapter shall be not less than 12.

''(2) In any case described in paragraph (1) in which 12 members are not reasonably available because of physical conditions or military exigencies, the convening authority shall specify a lesser number of members for the military commission (but not fewer than 9 members), and the military commission may be assembled, and the trial held, with not fewer than the number of members so specified. In such a case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

''§ 949n. Military commission to announce action

''A military commission under this chapter shall announce its findings and sentence to the parties as soon as determined.

''§ 949o. Record of trial

''(a) RECORD; AUTHENTICATION.—Each military commission under this chapter shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member of the commission if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. Where appropriate, and as provided in regulations prescribed by the Secretary of Defense, the record of a military commission under this chapter may contain a classified annex.

''(b) COMPLETE RECORD REQUIRED.—A complete record of the proceedings and testimony shall be prepared in every military commission under this chapter.

''(c) PROVISION OF COPY TO ACCUSED.—A copy of the record of the proceedings of the military commission under this chapter shall be given the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall be given a redacted version of the record consistent with the requirements of section 949d of this title. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

''SUBCHAPTER V—SENTENCES

''Sec.
''949s. Cruel or unusual punishments prohibited.
''949t. Maximum limits.
''949u. Execution of confinement.

''§ 949s. Cruel or unusual punishments prohibited

''Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

''§ 949t. Maximum limits

''The punishment which a military commission under this chapter may direct for an offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

''§ 949u. Execution of confinement

''(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

''(1) in any place of confinement under the control of any of the armed forces; or

''(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

''(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

''SUBCHAPTER VI—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

''Sec.
''950a. Error of law; lesser included offense.
''950b. Review by the convening authority.
''950c. Appellate referral; waiver or withdrawal of appeal.
''950d. Appeal by the United States.
''950e. Rehearings.
''950f. Review by Court of Military Commission Review.
''950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court.
''950h. Appellate counsel.
''950i. Execution of sentence; procedures for execution of sentence of death.
''950j. Finality or proceedings, findings, and sentences.

''§ 950a. Error of law; lesser included offense

''(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

''(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

''§ 950b. Review by the convening authority

''(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

''(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence

of the military commission under this chapter.

''(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after the accused has been given an authenticated record of trial under section 949o(c) of this title.

''(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

''(3) The accused may waive his right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

''(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

''(2)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

''(B) Subject to regulations prescribed by the Secretary of Defense, action on the sentence under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

''(C) In taking action under this paragraph, the convening authority may, in his sole discretion, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

''(3) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in his sole discretion, may—

''(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

''(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

''(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

''(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in his sole discretion, order a proceeding in revision or a rehearing.

''(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—

''(i) there is an apparent error or omission in the record; or

''(ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

''(B) In no case may a proceeding in revision—

''(i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;

''(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or

''(iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

''(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

''§ 950c. Appellate referral; waiver or withdrawal of appeal

''(a) AUTOMATIC REFERRAL FOR APPELLATE REVIEW.—Except as provided under subsection (b), in each case in which the final decision of a military commission (as approved by the convening authority) includes a finding of guilty, the convening authority shall refer the case to the Court of Military Commission Review. Any such referral shall be made in accordance with procedures prescribed under regulations of the Secretary.

''(b) WAIVER OF RIGHT OF REVIEW.—(1) In each case subject to appellate review under section 950f of this title, except a case in which the sentence as approved under section 950b of this title extends to death, the accused may file with the convening authority a statement expressly waiving the right of the accused to such review.

''(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

''(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice on the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

''(c) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

''(d) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

''§ 950d. Appeal by the United States

''(a) INTERLOCUTORY APPEAL.—(1) Except as provided in paragraph (2), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the Court of Military Commission Review of any order or ruling of the military judge that—

''(A) terminates proceedings of the military commission with respect to a charge or specification;

''(B) excludes evidence that is substantial proof of a fact material in the proceeding; or

''(C) relates to a matter under subsection (d), (e), or (f) of section 949d of this title or section 949j(c) of this title.

''(2) The United States may not appeal under paragraph (1) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

''(b) NOTICE OF APPEAL.—The United States shall take an appeal of an order or ruling under subsection (a) by filing a notice of appeal with the military judge within five days after the date of such order or ruling.

''(c) APPEAL.—An appeal under this section shall be forwarded, by means specified in regulations prescribed the Secretary of Defense, directly to the Court of Military Commission Review. In ruling on an appeal under this section, the Court may act only with respect to matters of law.

''(d) APPEAL FROM ADVERSE RULING.—The United States may appeal an adverse ruling on an appeal under subsection (c) to the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in the Court of Appeals within 10 days after the date of such ruling. Review under this subsection shall be at the discretion of the Court of Appeals.

''§ 950e. Rehearings

''(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

''(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

''(A) the accused may not be tried for any offense of which he was found not guilty by the first military commission; and

''(B) no sentence in excess of or more than the original sentence may be imposed unless—

''(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

''(ii) the sentence prescribed for the offense is mandatory.

''(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

''§ 950f. Review by Court of Military Commission Review

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Court of Military Commission Review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing military commission decisions under this chapter, the court may sit in panels or as a whole in accordance with rules prescribed by the Secretary.

''(b) APPELLATE MILITARY JUDGES.—The Secretary shall assign appellate military judges to a Court of Military Commission Review. Each appellate military judge shall meet the qualifications for military judges prescribed by section 948j(b) of this title or shall be a civilian with comparable qualifications. No person may be serve as an appellate military judge in any case in which that person acted as a military judge, counsel, or reviewing official.

''(c) CASES TO BE REVIEWED.—The Court of Military Commission Review, in accordance with procedures prescribed under regulations of the Secretary, shall review the record in each case that is referred to the Court by the convening authority under section 950c of this title with respect to any matter of law raised by the accused.

''(d) SCOPE OF REVIEW.—In a case reviewed by the Court of Military Commission Review under this section, the Court may act only with respect to matters of law.

''§ 950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court

''(a) EXCLUSIVE APPELLATE JURISDICTION.—(1)(A) Except as provided in subparagraph (B), the United States Court of Appeals for the District of Columbia Circuit shall have

exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission (as approved by the convening authority) under this chapter.

''(B) The Court of Appeals may not review the final judgment until all other appeals under this chapter have been waived or exhausted.

''(2) A petition for review must be filed by the accused in the Court of Appeals not later than 20 days after the date on which—

''(A) written notice of the final decision of the Court of Military Commission Review is served on the accused or on defense counsel; or

''(B) the accused submits, in the form prescribed by section 950c of this title, a written notice waiving the right of the accused to review by the Court of Military Commission Review under section 950f of this title.

''(b) STANDARD FOR REVIEW.—In a case reviewed by it under this section, the Court of Appeals may act only with respect to matters of law.

''(c) SCOPE OF REVIEW.—The jurisdiction of the Court of Appeals on an appeal under subsection (a) shall be limited to the consideration of—

''(1) whether the final decision was consistent with the standards and procedures specified in this chapter; and

''(2) to the extent applicable, the Constitution and the laws of the United States.

''(d) SUPREME COURT.—The Supreme Court may review by writ of certiorari the final judgment of the Court of Appeals pursuant to section 1257 of title 28.

''§ 950h. Appellate counsel

''(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications for counsel appearing before military commissions under this chapter.

''(b) REPRESENTATION OF UNITED STATES.—Appellate counsel appointed under subsection (a)—

''(1) shall represent the United States in any appeal or review proceeding under this chapter before the Court of Military Commission Review; and

''(2) may, when requested to do so by the Attorney General in a case arising under this chapter, represent the United States before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court.

''(c) REPRESENTATION OF ACCUSED.—The accused shall be represented by appellate counsel appointed under subsection (a) before the Court of Military Commission Review, the United States Court of Appeals for the District of Columbia Circuit, and the Supreme Court, and by civilian counsel if retained by the accused. Any such civilian counsel shall meet the qualifications under paragraph (3) of section 949c(b) of this title for civilian counsel appearing before military commissions under this chapter and shall be subject to the requirements of paragraph (4) of that section.

''§ 950i. Execution of sentence; procedures for execution of sentence of death

''(a) IN GENERAL.—The Secretary of Defense is authorized to carry out a sentence imposed by a military commission under this chapter in accordance with such procedures as the Secretary may prescribe.

''(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

''(c) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death, approval under subsection (b)).

''(2) A judgment as to legality of proceedings is final for purposes of paragraph (1) when—

''(A) the time for the accused to file a petition for review by the Court of Appeals for the District of Columbia Circuit has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court; or

''(B) review is completed in accordance with the judgment of the United States Court of Appeals for the District of Columbia Circuit and—

''(i) a petition for a writ of certiorari is not timely filed;

''(ii) such a petition is denied by the Supreme Court; or

''(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

''(d) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.

''§ 950j. Finality or proceedings, findings, and sentences

''(a) FINALITY.—The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, except as otherwise provided by the President.

''(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES AND ACTIONS.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of the enactment of the Military Commissions Act of 2006, relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.

''SUBCHAPTER VII—PUNITIVE MATTERS

''Sec.
''950p. Statement of substantive offenses.
''950q. Principals.
''950r. Accessory after the fact.
''950s. Conviction of lesser included offense.
''950t. Attempts.
''950u. Solicitation.
''950v. Crimes triable by military commissions.
''950w. Perjury and obstruction of justice; contempt.

''§ 950p. Statement of substantive offenses

''(a) PURPOSE.—The provisions of this subchapter codify offenses that have traditionally been triable by military commissions. This chapter does not establish new crimes that did not exist before its enactment, but rather codifies those crimes for trial by military commission.

''(b) EFFECT.—Because the provisions of this subchapter (including provisions that incorporate definitions in other provisions of law) are declarative of existing law, they do not preclude trial for crimes that occurred before the date of the enactment of this chapter.

''§ 950q. Principals

''Any person is punishable as a principal under this chapter who—

''(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission;

''(2) causes an act to be done which if directly performed by him would be punishable by this chapter; or

''(3) is a superior commander who, with regard to acts punishable under this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts or had done so and who failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

''§ 950r. Accessory after the fact

''Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.

''§ 950s. Conviction of lesser included offense

''An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

''§ 950t. Attempts

''(a) IN GENERAL.—Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military commission under this chapter may direct.

''(b) SCOPE OF OFFENSE.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

''(c) EFFECT OF CONSUMMATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

''§ 950u. Solicitation

''Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a military commission under this chapter may direct.

''§ 950v. Crimes triable by military commissions

''(a) DEFINITIONS AND CONSTRUCTION.—In this section:

''(1) MILITARY OBJECTIVE.—The term 'military objective' means—

''(A) combatants; and

''(B) those objects during an armed conflict—

''(i) which, by their nature, location, purpose, or use, effectively contribute to the opposing force's war-fighting or war-sustaining capability; and

''(ii) the total or partial destruction, capture, or neutralization of which would constitute a definite military advantage to the attacker under the circumstances at the time of the attack.

''(2) PROTECTED PERSON.—The term 'protected person' means any person entitled to

protection under one or more of the Geneva Conventions, including—

''(A) civilians not taking an active part in hostilities;

''(B) military personnel placed hors de combat by sickness, wounds, or detention; and

''(C) military medical or religious personnel.

''(3) PROTECTED PROPERTY.—The term 'protected property' means property specifically protected by the law of war (such as buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, or places where the sick and wounded are collected), if such property is not being used for military purposes or is not otherwise a military objective. Such term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

''(4) CONSTRUCTION.—The intent specified for an offense under paragraph (1), (2), (3), (4), or (12) of subsection (b) precludes the applicability of such offense with regard to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(b) OFFENSES.—The following offenses shall be triable by military commission under this chapter at any time without limitation:

''(1) MURDER OF PROTECTED PERSONS.—Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(2) ATTACKING CIVILIANS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(3) ATTACKING CIVILIAN OBJECTS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

''(4) ATTACKING PROTECTED PROPERTY.—Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

''(5) PILLAGING.—Any person subject to this chapter who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be punished as a military commission under this chapter may direct.

''(6) DENYING QUARTER.—Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

''(7) TAKING HOSTAGES.—Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(8) EMPLOYING POISON OR SIMILAR WEAPONS.—Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or toxic properties, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(9) USING PROTECTED PERSONS AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(10) USING PROTECTED PROPERTY AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

''(11) TORTURE.—

''(A) OFFENSE.—Any person subject to this chapter who commits an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) SEVERE MENTAL PAIN OR SUFFERING DEFINED.—In this section, the term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''(12) CRUEL OR INHUMAN TREATMENT.—

''(A) OFFENSE.—Any person subject to this chapter who commits an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control shall be punished, if death results to the victim, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) DEFINITIONS.—In this paragraph:

''(i) The term 'serious physical pain or suffering' means bodily injury that involves—

''(I) a substantial risk of death;

''(II) extreme physical pain;

''(III) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(IV) significant loss or impairment of the function of a bodily member, organ, or mental faculty.

''(ii) The term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''(iii) The term 'serious mental pain or suffering' has the meaning given the term 'severe mental pain or suffering' in section 2340(2) of title 18, except that—

''(I) the term 'serious' shall replace the term 'severe' where it appears; and

''(II) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''(13) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—

''(A) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) SERIOUS BODILY INJURY DEFINED.—In this paragraph, the term 'serious bodily injury' means bodily injury which involves—

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) protracted and obvious disfigurement; or

''(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

''(14) MUTILATING OR MAIMING.—Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(15) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(16) DESTRUCTION OF PROPERTY IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall punished as a military commission under this chapter may direct.

''(17) USING TREACHERY OR PERFIDY.—Any person subject to this chapter who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of

the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(18) IMPROPERLY USING A FLAG OF TRUCE.—Any person subject to this chapter who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

''(19) IMPROPERLY USING A DISTINCTIVE EMBLEM.—Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

''(20) INTENTIONALLY MISTREATING A DEAD BODY.—Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessity, shall be punished as a military commission under this chapter may direct.

''(21) RAPE.—Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

''(22) SEXUAL ASSAULT OR ABUSE.—Any person subject to this chapter who forcibly or with coercion or threat of force engages in sexual contact with one or more persons, or causes one or more persons to engage in sexual contact, shall be punished as a military commission under this chapter may direct.

''(23) HIJACKING OR HAZARDING A VESSEL OR AIRCRAFT.—Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(24) TERRORISM.—Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(25) PROVIDING MATERIAL SUPPORT FOR TERRORISM.—

''(A) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in paragraph (24)), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

''(B) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this paragraph, the term 'material support or resources' has the meaning given that term in section 2339A(b) of title 18.

''(26) WRONGFULLY AIDING THE ENEMY.—Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

''(27) SPYING.—Any person subject to this chapter who with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(28) CONSPIRACY.—Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this chapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950w. Perjury and obstruction of justice; contempt

''(a) PERJURY AND OBSTRUCTION OF JUSTICE.—A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to military commissions under this chapter.

''(b) CONTEMPT.—A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.''.

(2) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A, and at the beginning of part II of subtitle A, of title 10, United States Code, are each amended by inserting after the item relating to chapter 47 the following new item:

''47A. Military Commissions ..... 948a.''.

(b) SUBMITTAL OF PROCEDURES TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the procedures for military commissions prescribed under chapter 47A of title 10, United States Code (as added by subsection (a)).

SEC. 4. AMENDMENTS TO UNIFORM CODE OF MILITARY JUSTICE.

(a) CONFORMING AMENDMENTS.—Chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended as follows:

(1) APPLICABILITY TO LAWFUL ENEMY COMBATANTS.—Section 802(a) (article 2(a)) is amended by adding at the end the following new paragraph:

''(13) Lawful enemy combatants (as that term is defined in section 948a(2) of this title) who violate the law of war.''.

(2) EXCLUSION OF APPLICABILITY TO CHAPTER 47A COMMISSIONS.—Sections 821, 828, 848, 850(a), 904, and 906 (articles 21, 28, 48, 50(a), 104, and 106) are amended by adding at the end the following new sentence: ''This section does not apply to a military commission established under chapter 47A of this title.''.

(3) INAPPLICABILITY OF REQUIREMENTS RELATING TO REGULATIONS.—Section 836 (article 36) is amended—

(A) in subsection (a), by inserting '', except as provided in chapter 47A of this title,'' after ''but which may not''; and

(B) in subsection (b), by inserting before the period at the end '', except insofar as applicable to military commissions established under chapter 47A of this title''.

(b) PUNITIVE ARTICLE OF CONSPIRACY.—Section 881 of title 10, United States Code (article 81 of the Uniform Code of Military Justice), is amended—

(1) by inserting ''(a)'' before ''Any person''; and

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

''(b) Any person subject to this chapter who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.''.

SEC. 5. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.

(a) IN GENERAL.—No person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its States or territories.

(b) GENEVA CONVENTIONS DEFINED.—In this section, the term ''Geneva Conventions'' means—

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

SEC. 6. IMPLEMENTATION OF TREATY OBLIGATIONS.

(a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

(1) IN GENERAL.—The acts enumerated in subsection (d) of section 2441 of title 18, United States Code, as added by subsection (b) of this section, and in subsection (c) of this section, constitute violations of common Article 3 of the Geneva Conventions prohibited by United States law.

(2) PROHIBITION ON GRAVE BREACHES.—The provisions of section 2441 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 129 of the Third Geneva Convention for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of an armed conflict not of an international character. No foreign or international source of law shall supply a basis for a rule of decision in the courts of the United States in interpreting the prohibitions enumerated in subsection (d) of such section 2441.

(3) INTERPRETATION BY THE PRESIDENT.—

(A) As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.

(B) The President shall issue interpretations described by subparagraph (A) by Executive Order published in the Federal Register.

(C) Any Executive Order published under this paragraph shall be authoritative (except as to grave breaches of common Article 3) as a matter of United States law, in the same manner as other administrative regulations.

(D) Nothing in this section shall be construed to affect the constitutional functions and responsibilities of Congress and the judicial branch of the United States.

(4) DEFINITIONS.—In this subsection:

(A) GENEVA CONVENTIONS.—The term ''Geneva Conventions'' means—

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

(ii) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(B) THIRD GENEVA CONVENTION.—The term ''Third Geneva Convention'' means the international convention referred to in subparagraph (A)(iii).

(b) REVISION TO WAR CRIMES OFFENSE UNDER FEDERAL CRIMINAL CODE.—

(1) IN GENERAL.—Section 2441 of title 18, United States Code, is amended—

(A) in subsection (c), by striking paragraph (3) and inserting the following new paragraph (3):

''(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or''; and

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

''(d) COMMON ARTICLE 3 VIOLATIONS.—

''(1) PROHIBITED CONDUCT.—In subsection (c)(3), the term 'grave breach of common Article 3' means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

''(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

''(B) CRUEL OR INHUMAN TREATMENT.—The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

''(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

''(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

''(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

''(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

''(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

''(H) SEXUAL ASSAULT OR ABUSE.—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

''(I) TAKING HOSTAGES.—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

''(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

''(A) the term 'severe mental pain or suffering' shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340(2) of this title;

''(B) the term 'serious bodily injury' shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title;

''(C) the term 'sexual contact' shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title;

''(D) the term 'serious physical pain or suffering' shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and

''(E) the term 'serious mental pain or suffering' shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term 'severe mental pain or suffering' (as defined in section 2340(2) of this title), except that—

''(i) the term 'serious' shall replace the term 'severe' where it appears; and

''(ii) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''(3) INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(4) INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.

''(5) DEFINITION OF GRAVE BREACHES.—The definitions in this subsection are intended only to define the grave breaches of common article 3 and not the full scope of United States obligations under that Article.''.

(2) RETROACTIVE APPLICABILITY.—The amendments made by this subsection, except as specified in subsection (d)(2)(E) of section 2441 of title 18, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 (as amended by section 4002(e)(7) of Public Law 107–273).

(c) ADDITIONAL PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT.—

(1) IN GENERAL.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(2) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT DEFINED.—In this subsection, the term ''cruel, inhuman, or degrading treatment or punishment'' means cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(3) COMPLIANCE.—The President shall take action to ensure compliance with this subsection, including through the establishment of administrative rules and procedures.

SEC. 7. HABEAS CORPUS MATTERS.

(a) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by striking both the subsection (e) added by section 1005(e)(1) of Public Law 109–148 (119 Stat. 2742) and the subsection (e) added by added by section 1405(e)(1) of Public Law 109–163 (119 Stat. 3477) and inserting the following new subsection (e):

''(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

''(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee

Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.

SEC. 8. REVISIONS TO DETAINEE TREATMENT ACT OF 2005 RELATING TO PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.

(a) COUNSEL AND INVESTIGATIONS.—Section 1004(b) of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1(b)) is amended—

(1) by striking ''may provide'' and inserting ''shall provide'';

(2) by inserting ''or investigation'' after ''criminal prosecution''; and

(3) by inserting ''whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,'' after ''described in that subsection''.

(b) PROTECTION OF PERSONNEL.—Section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1) shall apply with respect to any criminal prosecution that—

(1) relates to the detention and interrogation of aliens described in such section;

(2) is grounded in section 2441(c)(3) of title 18, United States Code; and

(3) relates to actions occurring between September 11, 2001, and December 30, 2005.

SEC. 9. REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.

Section 1005(e)(3) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 10 U.S.C. 801 note) is amended—

(1) in subparagraph (A), by striking ''pursuant to Military Commission Order No. 1. dated August 31, 2005 (or any successor military order)'' and inserting ''by a military commission under chapter 47A of title 10, United States Code'';

(2) by striking subparagraph (B) and inserting the following new subparagraph (B):

''(B) GRANT OF REVIEW.—Review under this paragraph shall be as of right.'';

(3) in subparagraph (C)—

(A) in clause (i)—

(i) by striking ''pursuant to the military order'' and inserting ''by a military commission''; and

(ii) by striking ''at Guantanamo Bay, Cuba''; and

(B) in clause (ii), by striking ''pursuant to such military order'' and inserting ''by the military commission''; and

(4) in subparagraph (D)(i), by striking ''specified in the military order'' and inserting ''specified for a military commission''.

SEC. 10. DETENTION COVERED BY REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.

Section 1005(e)(2)(B)(i) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2742; 10 U.S.C. 801 note) is amended by striking ''the Department of Defense at Guantanamo Bay, Cuba'' and inserting ''the United States''.

The SPEAKER pro tempore. Debate shall not exceed 2 hours, with 80 minutes equally divided and controlled by the chairman and the ranking minority member of the Committee on Armed Services and 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

The gentleman from California (Mr. HUNTER) and the gentleman from Missouri (Mr. SKELTON) each will control 40 minutes, and the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. HUNTER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 6166.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HUNTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 6166, the Military Commissions Act of 2006. I can't think of a better way to honor the fifth anniversary of September 11 than by establishing a system to prosecute the terrorists who on that day murdered thousands of innocent civilians and who continue to seek to kill Americans, both on and off the battlefield.

Our most important consideration in writing this legislation is to protect American troops and American citizens from harm. The war against terror has produced a new type of battlefield and a new type of enemy. How is it different? We are fighting a ruthless enemy who doesn't wear a uniform, an enemy who kills civilians, women and children, and then boasts about it; a barbaric enemy who beheads innocent civilians by sawing their heads off; an uncivilized enemy who does not acknowledge or respect the laws of war.

Justice Thomas put it best in the Hamdan decision. He said, ''We are not engaged in a traditional battle with a nation state, but with a worldwide hydro-headed enemy who lurks in the shadows conspiring to reproduce the atrocities of September 11, 2001, and who has boasted of sending suicide bombers into civilian gatherings, has proudly distributed videotapes of the beheadings of civilian workers, and has tortured and dismembered captured American soldiers.

So how is the battlefield new? First, it will be a long war. We don't know if this enemy will be defeated this decade, the next decade or even longer than that. Second, in this new war, where intelligence is more vital than ever, we want to interrogate the enemy; not to degrade them, but to save the lives of American troops, American civilians and our allies. But it is not practical on the battlefield to read the enemy their Miranda warnings.

Finally, this is an ongoing conflict, and sharing sensitive intelligence sources, methods and other classified information with terrorist detainees could be highly dangerous to national security, and we are not prepared to take that risk.

So what have we done to develop a military commission process that will allow for the effective prosecution of enemy combatants during this ongoing conflict? Without this action, the United States has no effective means to try and punish the perpetrators of September 11, the attack on the USS *Cole* and the embassy bombings. We provide basic fairness in our prosecutions, but we also preserve the ability of our warfighters to operate effectively on the battlefield.

I think a fair process has two guiding principles, Mr. Speaker. First, the government must be able to present its case fully and without compromising its intelligence sources or compromising military necessity. Second, the prosecutorial process must be done fairly, swiftly, and conclusively.

Who are we dealing with in military commissions? I have shown the picture of Khalid Sheikh Mohammed, who is alleged to have designed the attack against the United States that was carried out on 9/11. We are dealing with the enemy in war, not defendants in our domestic criminal justice system. Some of them have returned to the battlefield after we let them out of Guantanamo.

Our primary purpose is to keep them off the battlefield. In doing so, we treat them humanely, and, if we choose to try them as war criminals, we will give them due process rights that the world will respect. But we have to remember that they are the enemy in an ongoing war.

In time of war, it is not practical to apply to rules of evidence the same rules of evidence that we do in civilian trials or court martials for our troops. Commanders and witnesses can't be called from the front line to testify in a military commission.

We need to accommodate rules of evidence, chain of custody and authentication to fit what we call the exigencies of the battlefield. It is clear, Mr. Speaker, that we don't have crime scenes that can be reproduced, that can be taped off, that can be attended to by dozens of people looking for forensic evidence. We have in this war against terror a battlefield situation.

□ 1330

If hearsay is reliable, we should use it. And I might add that hearsay is utilized and has been utilized in tribunals like the Rwanda tribunals and the Kosovo tribunals. If sworn affidavits are reliable, we should use them. And, Mr. Speaker, we have not expanded the use of hearsay beyond what is being used in those tribunals, Rwanda and Yugoslavia.

The Supreme Court has tasked us with an adjustment, but in doing so

let's not forget our purpose is to defend the Nation against the enemy. We won't lower our standards; we will always treat detainees humanely, but we can't be naive either.

This war started in 1996 with the al Qaeda declaration of jihad against our Nation. The Geneva Conventions were written in 1949, and the UCMJ was adopted in 1951. In that sense, what we are required to do after the Hamdan decision is broader than war crimes trials. It is the start of a new legal analysis for the long war. It is time for us to think about war crime trials and a process that provides due process and protects national security in this new war.

So what do we do with these new military commissions? We uphold basic human rights and state what our compliance with this standard means for the treatment of detainees. We do this in a way that is fair and in a way that the world will acknowledge is fair.

First, we provide accused war criminals at least 26 rights if they are tried by a commission for a war crime. While I will not read all of them, here are some of the essential rights we provide:

The right to counsel, provided by government at trial and throughout appellate proceedings. An impartial judge. A presumption of innocence. A standard of proof beyond a reasonable doubt. The right to be informed of the charges against him as soon as practicable. The right to service of charges sufficiently in advance of trial to prepare a defense.

And, Mr. Speaker, I am going to insert the balance of those 26 basic and fundamental rights in the RECORD, so I won't read them all at this point.

The right to reasonable continuances;

Right to peremptory challenge against members of the commission and challenges for cause against members of the commission and the military judge;

Witness must testify under oath; judges, counsel and members of military commission must take oath;

Right to enter a plea of not guilty;

The right to obtain witnesses and other evidence;

The right to exculpatory evidence as soon as practicable;

The right to be present at court with the exception of certain classified evidence involving national security, preservation of safety or preventing disruption of proceedings;

The right to a public trial except for national security issues or physical safety issues;

The right to have any findings or sentences announced as soon as determined;

Right against compulsory self-incrimination;

Right against double jeopardy;

The defense of lack of mental responsibility;

Voting by members of the military commission by secret written ballot;

Prohibitions against unlawful command influence toward members of the commission, counsel or military judges;

2/3 vote of members required for conviction; 3/4 vote required for sentences of life or over 10 years; unanimous verdict required for death penalty;

Verbatim authenticated record of trial;

Cruel or unusual punishments prohibited;

Treatment and discipline during confinement the same as afford to prisoners in U.S. domestic courts;

Right to review of full factual record by convening authority; and

Right to at least two appeals including to a Federal Article III appellate court.

We provide all these rights, and we give them an independent judge, and the right to at least two appeals, including the U.S. Court of Appeals for the District of Columbia and access to the Supreme Court. Nobody can say this is not a fair system.

I know some of my colleagues are concerned about the issue of reciprocity. Look at this list of rights. And we are going to put it up here, Mr. Speaker, so that all the Members can see this. And also keep in mind that these are the rights for terrorists. These are the rights for the people who struck us on 9/11 and killed thousands of Americans. If we are talking about true reciprocity, then we are only concerned about how the enemy will treat American terrorists. These are not our rules for POWs; these are how we treat terrorists. We treat the legitimate enemy differently, and expect them to treat our troops the same.

How do we try the enemy for war crimes? In this act, Congress authorizes the establishment of military commissions for alien unlawful enemy combatants, which is the legal term we use to define international terrorists and those who aid and support them, in a new separate chapter of title 10 of the U.S. Code, chapter 47A. While this new chapter is based upon the Uniform Code of Military Justice, it creates, Mr. Speaker, an entirely new structure for these trials.

In this bill we provide standards for the admission of evidence, including hearsay evidence and other statements, that are adapted to military exigencies and provide the military judge the necessary discretion to determine if the evidence is reliable and probative. And he must find that it is reliable and probative before he allows it to be admitted.

I want to talk a little bit about how we handle classified evidence. We had three hearings on this bill in addition to briefings and meetings with experts. I asked every witness the same question: If we have an informant, either a CIA informant or an undercover witness of some sort, are we going to tell Kalid Sheikh Mohammed who the informant is? The legislation does not allow KSM to learn the identity of the informant.

After several twists and turns in the road, after meeting with the Senate and the White House in marathon sessions over the weekend, we have crafted a solution that does not allow the alleged terrorists to learn the identity of the informant, yet provides a fair trial. And, Mr. Speaker, that is critically important to all of us in this Chamber, because that American agent or informant may have information that saves thousands of lives. He may be of enormous value added to the security of this country. We can't divulge his identity, and we can't divulge it to the alleged terrorist, and doing so would allow that information to go back quickly, as it has on two occasions: one coming out of the first bombing of the World Trade Center where we now have established that Osama bin Laden did come into possession of classified evidence that was moved up through those court proceedings, and once in Guantanamo. So it is very, very important that we protect classified evidence and that we protect the identity of our agents.

We address this in section 949d, subsection (f) of section 3. Classified evidence is protected and is privileged from disclosure to the jury and the accused if disclosure would be detrimental to national security. The accused is permitted to be present at all phases of the trial, and no evidence is presented to the jury that is not also provided to the accused. Section 949d(f) makes a clear statement that sources, methods, or activities will be protected and privileged and not shown to the accused.

However, and this is how you move the essence of an undisclosed agent's testimony to the jury without disclosing the identity of the agent, the substantive findings of the sources, methods, or activities will be admissible in an unclassified form. This allows the prosecution to present its best case while protecting classified information. In order to do this, the military judge questions the informant outside the presence of the jury and the defendant. In order to give the jury and the defendant a redacted version of the informant's statement, the judge must find, one, that the sources, methods, or activities by which the U.S. acquired the evidence are classified; and, two, that the evidence is reliable.

Once the judge stamps the informant as reliable, the informant's redacted statement is given to both the jury and the accused. It removes the confrontation issue. And this, again, to my friends who said we want to follow the UCMJ and we want to give these people all the rights that we give our uniformed servicemen, our analysis is that we would not be able to keep from disclosure the identity of our special agents if we followed the UCMJ. That is designed to protect American uniformed servicemen, and it is not something that we should apply in the case of alleged terrorists.

I think that these rules protect classified evidence and yet preserve a fair trial.

One other point I want to make for the record. As I mentioned earlier, we have modified the rules of evidence to adapt to the battlefield. One of the principles used by the judiciary in criminal prosecutions of our citizens is called the fruit of the poisonous tree

doctrine. This rule provides that evidence derived from information acquired by police officials or the government through unlawful means is not admissible in a criminal prosecution.

I want to make it clear that it is our intent with the legislation not to have this doctrine apply to evidence in military commissions. While evidence obtained improperly will not be used directly against the accused, we will not limit the use of any evidence derived from such evidence.

The deterrent effect of the exclusionary rule is not something that our soldiers consider when they are fighting a war. The theory of the exclusionary rule is that if the constable blunders, the accused will not suffer. However, we are not going to say that if the soldier blunders, we are not going to punish a terrorist. Some rights are reserved for our citizens; some rights are reserved for civilized people.

Mr. Speaker, this is a complicated piece of legislation. In addition to establishing an entire legal process from start to finish, we address the application of common article 3 of the Geneva Conventions to our current laws.

Section 5 clarifies that the Geneva Conventions are not an enforceable source of rights in any habeas corpus or other civil action or proceeding by an individual in U.S. courts. Mr. Speaker, this protects American troops.

Section 6 of the bill amends 18 U.S.C. section 2441, the War Crimes Act, to criminalize grave breaches of common article 3 of the Geneva Conventions. As amended, the War Crimes Act will fully satisfy our treaty obligations under common article 3. This amendment is necessary because section C(3) of the War Crimes Act defines a war crime as any conduct which constitutes a violation of common article 3. Common article 3 prohibits some actions that are universally condemned, such as murder and torture, but it also prohibits outrages upon personal dignity and what is called humiliating and degrading treatment, phrases which are vague and do not provide adequate guidance to our personnel.

Since violation of common article 3 is a felony under the War Crimes Act, it is necessary to amend it to provide clarity and certainty to the interpretation of this statute. The surest way to achieve that clarity and certainty is to define the list of specific offenses that constitute war crimes punishable as grave violations of common article 3.

And, Mr. Speaker, this is very important. This protects our troops, it gives them certainty, it gives them clarity. You don't want to have our troops so paralyzed by what they see as prosecutions arising out of common article 3 that you will have a situation where a female officer in the U.S. military will not interrogate a Muslim male on the basis that she is afraid that that action may be defined or projected as being a humiliation of that particular prisoner being interrogated and therefore subjecting that female American officer to a war crimes accusation.

So what we have done is we have taken the offenses that are considered to be grave offenses under article 3, and then I have enumerated several of those, and we define those as the offenses which will be applicable upon which prosecutions can be brought, and then we give to the President on what I would call infractions of Geneva article 3 or lesser violations of Geneva article 3, we give him the right to put together regulations that account for and treat actions that are defined under those minor offenses.

Section 6 of the bill also provides that any detainee under the custody or physical control of the United States will not be subject to cruel, inhumane, or degrading punishment provided by the fifth, eighth, and fourteenth amendments to the Constitution as defined by the U.S. Reservations to the U.N. Convention Against Torture. This defines our obligations under common article 3 by reference to the U.S. constitutional standard adopted by the Detainee Treatment Act that we passed in 2005. And, Mr. Speaker, all parties, both Houses, decided that it was appropriate that we define this type of treatment, degrading treatment, especially under the reservations to the convention that is mentioned, the U.N. Convention Against Torture. We decided that that was good enough for putting together the Detainee Treatment Act; it should be good enough for this particular body of law.

Section 7 of the bill addresses the question of judicial review of claims by detainees by amending 28 U.S.C. section 2241 to clarify the intent of the Detainee Treatment Act of 2005 to limit the right of detainees to challenge their detentions. The practical effect of this amendment will be to eliminate the hundreds of detainee lawsuits that are pending in courts throughout the country and to consolidate all detainee treatment cases in the D.C. Circuit Court.

However, I want to stress that under this provision detainees will retain their opportunity to file legitimate charges to their status and to challenge convictions by military commissions. Every detainee under confinement in Guantanamo Bay will have their detention reviewed by the U.S. Court of Appeals for the District of Columbia.

□ 1345

So what we are doing here is channeling the suits to a particular court which has great expertise in this area, rather than let them be put in rifle-shot fashion or form-shot fashion to other courts throughout the United States.

Mr. SENSENBRENNER and my other colleagues are going to speak on the rest of the bill. But, before I finish, I want to make one point very clear. This legislation does not condone or authorize torture in any way. In fact, we make it a war crime punishable by death for one of our interrogators to torture someone to death.

Let me emphasize that again. In section 6 of this bill, we amend 18 U.S.C. 2441, the War Crimes Act. In this amendment, we explicitly provide that torture inflicted upon a person in custody for the purpose of obtaining information is a war crime for which we may prosecute one of our own citizens. While most of this legislation deals with how we handle the enemy, I want to make it crystal clear that nothing in what we are doing condones or allows torture in any way.

Mr. Speaker, unfortunately, I heard at least one Member on the Democrat side say that this gives the President the right to define what torture is. That is not accurate. Torture is forbidden, and there are specific criminal penalties for torture.

In summary, I think this legislation is the best way to prosecute enemy terrorists and to protect U.S. Government personnel and service members who are fighting them.

Let me make one final statement with respect to the right to Miranda warnings and all of the evidentiary rulings that accompany an application utilizing the UCMJ, the Uniform Code of Military Justice, in battlefield situations if we had done that, which we did not.

In the hearings we had, we had at least one experienced officer in the Judge Advocate Corps state that it was his opinion, having tried hundreds of cases, that if you applied the UCMJ, as a number of Members on the Democrat side said they would like to do, to constitute the body of law under which we are prosecuting terrorists, in this officer's opinion once a corporal had captured a terrorist on the battlefield, maybe seconds after that terrorist had shot at him, and threw that terrorist over the hood of a Humvee, if you used the UCMJ, he would at that point have to give him the Miranda rights and then call up a lawyer and assign that lawyer to that alleged terrorist, and then all of the statements and all of the evidentiary rulings that could flow from that activity would then trigger.

Mr. Speaker, we can't have a battlefield where platoon leaders and company commanders are bringing up fire teams and with those fire teams they are bringing up teams of lawyers. That is why we needed a new type of structure for this new type of battlefield.

Mr. Speaker, I think we have responded to the mandate of the Supreme Court that Congress involve itself in producing this new structure to prosecute terrorists. I think we have done a good job. We have worked hard with the Senate and White House. We have made dozens and dozens and dozens of agreed provisions in here that have been carefully looked over by the Senate, the White House, and the House of Representatives. I think we have a package that will allow us to leave this

body in the next several days having put into place a system under which we can try individuals who are now waiting at Guantanamo, people who are alleged to have designed the attack against the United States on 9/11 and which we can now begin the prosecution of those individuals.

I want to thank everybody who has participated in this long and arduous procedure. We have had lots of hearings in the Senate and in the House. My good colleague, Mr. SKELTON, was involved himself in these hearings and on the original markup that we did on the bill.

We have differences of opinions. I think this is a time when we should come together and pass what is an excellent body of law that will be a very important part of fighting this new war against this new type of enemy.

Mr. Speaker, I reserve the balance of my time.

Mr. SKELTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we need to be tough on the terrorists, but we also need to be tough with certainty. I oppose this legislation because it lacks the certainty that we require.

As a former prosecuting attorney from yesteryear, Mr. Speaker, I remember the specter that hangs over every prosecutor's head after successfully prosecuting a criminal, and that specter is that the Supreme Court will reverse that hard-won conviction.

I am terribly concerned that this is not tough enough because it does not bring about the certainty of a conviction being upheld and standing the scrutiny of our Supreme Court.

This is a constitutional issue. The debate today will undoubtedly go down in the annals of our country as being one that stands out as a study in constitutional law and duty thereunder. Our duty as Members of Congress is to uphold the Constitution. That is what I intend to do in my speech and in my vote.

But also it is our duty to pass legislation that is constitutional. I have serious questions as to whether this is constitutional or not.

I received a letter from the Chief Counsel of the tribunals that exist, Colonel Dwight Sullivan, who said, ''If the new military commission system is constitutionally permissible, allow it to proceed with the judiciary's imprimatur. If, as I believe, it is constitutionally deficient, then allow the judiciary to quickly identify its faults so they can be corrected.''

I offered an amendment to the Rules Committee that would provide for expedited review by the court system, and it was turned down.

What is so bad is that a case goes cold, witnesses disappear, witnesses die. It would be an absolute injustice for a despicable terrorist, once convicted, to have that conviction overturned, and you can't try it again. Some of these people are absolutely the worst of the worst. That is why we need certainty in the law, and that is what we do not have here.

There are numerous constitutional challenges regarding this legislation. I will mention them:

The provisions that strip the Federal courts of jurisdiction over habeas corpus.

Second, article I of the Constitution prohibits ex post facto laws. That is what this creates.

Third, it is questionable as to whether under article III of the Constitution the Supreme Court would uphold a system that purports to make the President the final arbiter of the Geneva Convention.

Fourth, the provisions regarding coerced testimony may be challenged under three amendments to our Constitution.

Fifth, the right to confront witnesses and evidence. It also, among other things, has legislation containing the broadest of hearsay rules.

Sixth, the violation of the exceptions clause under article III.

Seventh, the challenges on equal protection and other constitutional grounds.

We want certainty, Mr. Speaker. We want these people, once tried, to be convicted and that conviction upheld. If we pass a law full well knowing that there are provisions in here that would allow them a get-out-of-jail-free card or to have a death sentence reversed, we are doing wrong. We are doing wrong according to our duty, and we are doing wrong in representing the people of our country.

We need certainty as well as toughness. Without certainty, we will not be tough on these terrorists.

Mr. Speaker, I reserve the balance of my time.

Mr. HUNTER. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. SAXTON), the chairman of the Subcommittee on Terrorism.

Mr. SAXTON. Mr. Speaker, I rise in strong support of H.R. 6166.

Ladies and gentleman, this is not an ordinary bill. This is an urgently needed measure to fill a gaping hole in our legal system, both in our ability to bring criminals of 9/11 to justice, the bombings of the USS *Cole* and the American embassies in Kenya and Tanzania to justice, and to protect our American troops and agents from frivolous prosecutions and lawsuits. It is no exaggeration to say that this is the most important measure to come before this body in this Congress.

Without this bill, the mastermind of 9/11, Khalid Sheik Mohammed, who deliberated and cold-bloodedly plotted the death of thousands of Americans, would go unpunished for his crimes upon humanity.

Yes, we are a nation of laws. The Supreme Court has called upon the Congress to act, and that is what we will do.

We have produced an extraordinarily fair criminal process here to adjudicate the fate of these terrorists. Those who would find the court procedures laid out in this bill wanting will never be satisfied until we are reading Miranda rights on the battlefield. We have carefully narrowed and crafted the provisions of this bill to enable the United States to prosecute the perpetrators of the 1998 bombings of the American embassies in Kenya and Tanzania, the 2000 attack on the USS *Cole*, and other crimes that have been committed.

Yes, these were suicide attacks and the men who delivered the explosives were killed, along with innocent victims, but the planner, logisticians, and financiers of those operations remain at large.

Importantly, this bill allows, as all Americans believe it should, the criminal prosecutions of those who purposefully and materially supported these criminal activities. And, of course, the measure covers those responsible for 9/11 as well.

Mr. Speaker, I can think of no reason that this measure should not pass unanimously. It outlaws torture.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair notes a disturbance in the gallery in violation of the Rules of the House and directs the Sergeant at Arms to restore order.

The gentleman may proceed.

Mr. SAXTON. Mr. Speaker, I can think of no reason that this measure should not pass unanimously. It outlaws torture, mandates decent treatment for unlawful enemy combatants who are in our custody, protects Americans from frivolous lawsuits and prosecutions, and, most critically, provides a fair, balanced and civilized process by which the international war criminals may be held accountable for their action.

The world has waited long enough to bring these men to justice. Vote ''yes'' on this measure.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. ORTIZ).

(Mr. ORTIZ asked and was given permission to revise and extend his remarks.)

Mr. ORTIZ. Mr. Speaker, each and every Member of this House is equally concerned with bringing terrorists to justice and punishing them for attacking the United States because they have committed horrible crimes.

But I have a lot of questions to ask. I want to be sure that I do the right thing. Why are we rushing into this? I know we have to comply with the law, but we should not be in a hurry. I think we need to do what is right.

□ 1400

You know, I have some questions. When the Geneva Conventions convened back in 1949, there were at least 200 countries who agreed in what came out of this convention. Are we prepared for other nations' leaders, such as Iran, Syria, and others, to selectively interpret the Conventions' article 3 in a way that we are comfortable with?

I am pretty sure that when they met in 1949, there were agreements and disagreements, but we came out with something that everybody accepted. Now there are going to be some changes into that. Have we in any way contacted those leaders of those countries to see what they think about the changes that are being formulated today?

I think that we are beginning to open up a can of worms. So we are going to have to be very careful of what we do. The Navy Judge Advocate General, the top lawyer for the Navy, reminded us recently that Geneva exists to protect American soldiers. Our protections are only as strong as the protections of the Geneva Conventions.

Mr. Speaker, each and every member of this House is equally concerned with bringing terrorists to justice and punishing them for attacking the United States.

Everything about this bill today begs questions.

Do we know what we are doing in putting our feet on an unsure path, one which will certainly change the face of our international responsibilities and our international obligations?

Why are we rushing this? We should not be in such a hurry to overhaul our international obligations.

Nearly 200 nations around the world are signatories to the Geneva Conventions. Are we prepared for other nations' leaders—such as Iran, Syria and others—to selectively interpret the Convention's Article 3 in a way that we are comfortable with?

What can of worms are we opening today?

The Navy Judge Advocate General, the top lawyer for the Navy, reminded us recently that Geneva exists to protect American soldiers. Our protections are only as strong as the protections Geneva offers.

Why are we taking away the Supreme Court's authority—in a historic grab of power—to consult international law in interpreting conduct associated with the War Crimes Act?

Are we taking away power from our other Federal courts?

Do we remember one of the more salient points raised by the 9–11 Commission that the United States was negligent in staying involved in matters around the world?

The 9–11 Commission encouraged the U.S. to get more involved with other nations, to find security in a global environment. Are we doing that today?

My grandson Oscar is almost 4 years old. He may be a soldier someday. While his grandfather is in Congress, I will raise my voice to keep our soldiers safe.

When Congress gives away power to the President, it is a permanent move. The question each of us must ask is: how wise will this policy seem 10 years from now? And when the Congress gives power to the President, we must understand that the President today will not be in office years down the road.

To my friends on the other side of the aisle: do you know the test to apply for this question? It is this: Think of the person you disagree with completely, imagine they are the President, and ask yourself: Do I really want that person to have this authority?

COMPARISON OF ALTERNATIVES RELATED TO MILITARY COMMISSIONS

Compromise bill (H.R. 6166)	McCain-Warner (S. 3901)
GENEVA CONVENTIONS, TREATY OBLIGATIONS AND INTERNATIONAL LAW	
Authorizes the President to interpret of meaning and application of the Geneva Conventions.	Defines grave breaches to Common Article 3 of the Geneva Conventions to include cruel, unusual, inhumane treatment or punishment with reference to the 5th, 8th and 14th Amendments.
Revises War Crimes Act to provide limited immunity for government officials from prosecution for past acts that degraded and humiliated detainees.	Does not retroactively apply the revisions to the War Crimes Act.
Asserts that the revised War Crimes Act fully satisfies the U.S. obligation under the Geneva Convention to provide penal sanctions for grave breaches of Common Article 3.	Does not create a three-tier system of enforcement, with Presidential discretion to define and enforce any offenses below grave breaches of Common Article 3.
Adds a ban on U.S. courts using any international law in interpreting conduct prohibited in the War Crimes Act.	
Makes the War Crimes Act changes retroactive to the amendments to the War Crimes Act in 1997.	
For lesser offenses below a grave breach, gives the President explicit authority to interpret the meaning and application of the Geneva Conventions Common Article 3.	
Requires that such interpretations be published, rather than described in secret to a restricted number of lawmakers.	
Affirms that Congress and the judiciary can play their customary roles in reviewing the interpretations.	
Prohibits cruel, inhuman, or degrading treatment or punishment and relies on the President to ensure compliance.	
DEFINITION OF ENEMY COMBATANT	
Expands the definition of an "unlawful enemy combatant" to include an individual who has "purposefully and materially" supported hostilities against the U.S. or its co-belligerents or a person who is or was determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal.	Defines "unlawful enemy combatant" as an individual engaged in hostilities against the United States who is not a lawful enemy combatant.
DETAINEE HABEAS CORPUS CLAIMS	
Identical to S. 3901	Extinguishes pending Habeas Corpus claims.
CLASSIFIED INFORMATION AND ACCESS OF THE ACCUSED TO EVIDENCE.	
Generally the same as S. 3901 with some additional clarifications to ensure the accused will not see classified information.	The accused may not be denied access to evidence against him that is presented to the panel or jury.
	The accused will not see classified information.
	Essentially follows the existing military rules of evidence requiring declassification, redaction and use of substitutes.
	The prosecution may decide to delete charges, withdraw the case, or defer prosecution.
EVIDENCE OBTAINED THROUGH COERCION/SELF-INCRIMINATION	
Allows statements, *obtained before passage of the DTA,* through cruel, inhuman and degrading treatment and lesser forms if coercion of the military judge finds it reliable and probative and in the interest of justice.	Prohibits use of statements obtained by cruel, inhuman, and degrading treatment not amounting to torture.
Allows statements, *obtained after passage of the DTA,* through coercion (but not through cruel, unusual, or inhumane treatment or punishment) if the judge finds it reliable and probative and in the interest of justice.	Statements obtained by lesser forms of coercion may be allowed if the military judge finds it reliable and probative, and in the interest of justice.
HEARSAY EVIDENCE	
Hearsay is more easily admissible.	Hearsay is admissible if the military judge finds the evidence more probative than other evidence the proponent can reasonably obtain.
Hearsay normally inadmissible can be used unless the party it is used against demonstrates it is unreliable or lacks probative value (burden of proof is on the accused).	
Emphasizes the importance of preventing disclosure of classified hearsay (no substantive addition).	
APPEALS	
Establishes a Court of Military Commission Review, with appeals to the D.C. Circuit, and by certiorari to the Supreme Court.	Appeals would be to the Court of Appeals for the Armed Forces, and by certiorari to the Supreme Court.

Mr. HUNTER. Mr. Speaker, I would like to yield 3 minutes now to the gentleman whose subcommittee oversees the policies for our 2.5 million folks in uniform, Mr. MCHUGH of New York.

(Mr. MCHUGH asked and was given permission to revise and extend his remarks.)

Mr. MCHUGH. Mr. Speaker, I thank the gentleman for yielding.

Let me just make a few comments based off that statement. This is a great country when we can have, as we had moments ago, an individual come into the people's House and express, perhaps out of order but very passionately, their concerns about how we are being unfair.

Let me be very clear. As someone who has for 14 years visited our troops in virtually every combat theater in which they have been located, if our troops were to be taken prisoner, they would be well served by the enemies of this Nation, such as Sudan, such as North Korea, and, as was mentioned, Iran and others, to be treated under the provisions of this act.

We are extending to these terrorists, and make no mistake about it that they are terrorists, unlawful combatants, the rights and protections that all of us as American citizens enjoy under the fifth, the eighth, and the fourteenth amendment.

I have heard my good colleagues, and they are good Americans, express concerns about somehow changing our obligations under the Geneva Conventions under common article 3. Make no mistake about this as well. The language that we are incorporating into our basic domestic criminal law uses the language of the commentaries on

common article 3 and the Geneva Conventions. We simply harmonize that common article 3 with our United States laws, requiring that only grave breaches of that common article, as provided in the Geneva Conventions' commentaries, are subject to criminal prosecution.

International law has traditionally provided, time and time again, that it is the signatory to an international convention that is responsible for making it clear what the violations of law may be, and that is what we are doing here today.

JOHN MCCAIN, LINDSEY GRAHAM, Members of the other body who have had experience in these matters, either as being prisoners of war or as having the opportunity to go through as a Judge Advocate General in prosecuting, understand our responsibility is to not throw away the conventions that we have committed ourselves to as Americans and to not abandon the leadership we have shown for more than 200 years in the question of human rights. This bill meets that standard.

It is not sufficient to say that convictions may be overturned if the answer is not to convict at all. We have to recognize that it is our responsibility to the American people and to the brave men and women that I have visited as a member of the Intelligence Committee who we ask to interrogate these people that we will do the right thing by them, respect international conventions and respect the basic tenets upon which this Nation was built, that of human rights. This bill does it, and I would hope all my colleagues would support it.

Mr. Speaker, I rise today in strong support of H.R. 6166. This bill is vitally important for securing America and ensuring that accused terrorists are tried for war crimes in an open and transparent court that will apply justice swiftly and fairly.

There is more to this bill than military commissions, however. H.R. 6166 addresses an issue that Supreme Court created in the Hamdan case. The Court in Hamdan decided that Common Article 3 of the Geneva Conventions—a article that many assumed only applied to regular armies—applies to terrorist organizations, like al Qaeda. As a result of this decision, our brave personnel in the military and other national security agencies are faced with' an unpredictable legal landscape because the meaning of certain elements of Common Article 3 are vague—the standard? An outrage against personal dignity.

The question, would a female interrogator of a male Muslim detainee be guilty of violating Common Article 3 because the mere scenario constitutes an outrage upon personal dignity? That kind of situation is untenable. It's unfair to our personnel out in the field trying to protect lives here at home. It is Congress' responsibility to draw the lines of what conduct will be judged criminal.

As a result, we need to amend the War Crimes Act to make clear that only grave breaches of Common Article 3 constitute a war crime under U.S. law. Let me be clear, under international law a party to the treaty is responsible for incorporating only grave breaches of Common Article 3 in its penal code. My point is simple: Today the Congress is complying with our treaty obligations under Geneva Conventions and today the Congress is following the guidance of the Supreme Correct in Hamdan (even though many believe that the Court's decision was ill construed).

Now, some have suggested that H.R. 6166 condones torture or that this bill implicitly permits ''enhanced torture techniques''. These suggestions are absolutely false and they fly in the face of the very words that appear on the pages of this bill.

First—it is illegal under U.S. law to torture. This was true before H.R. 6166 and it will remain true. Moreover, H.R. 6166 makes torture a war crime that can result in the death penalty. This means that under the War Crimes Act, any U.S. personnel that engages in torture will be subject to prosecution for committing a war crime. Additionally, in the context of military commissions, a statement obtained through torture is not admissible.

Second—this bill makes clear that the way we treat our detainees is guided by treatment standards set by the Congress—last year—in the Detainee Treatment Act, also know as the McCain amendment. This standard is based upon the familiar standards of the U.S. Constitution. Thus, ''cruel, inhuman, and degrading treatment or punishment'' under this section means the cruel, unusual, inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution, as defined by the U.S. reservations to the UN Convention Against Torture.

Don't we all agree that the Constitution, which provides the fundamental, underlying protections for the citizens of the United States, provides more than sufficient protections for unlawful enemy combatants? Why should an accused terrorist enjoy protections that exceed what the Constitution provides every to every one of us as United States citizens?

Let me close by saying that this is an important bill for the American people—we will bring the masterminds of 9/11 to justice, and this is an important bill for the brave men and women fighting this battle—they can do their job in theater without the fear of frivolous prosecution here at home.

Mr. SKELTON. Mr. Speaker, I yield 4 minutes to the distinguished gentlewoman from California (Ms. HARMAN), ranking member of the Intelligence Committee.

(Ms. HARMAN asked and was given permission to revise and extend her remarks.)

Ms. HARMAN. Mr. Speaker, I thank the gentleman for yielding and commend him for his very impressive service as ranking member of the Armed Services Committee.

Mr. Speaker, I take a back seat to no one in my effort to understand the threats against us, find those who would cause us harm, and prevent them from harming us. I also believe strongly that Congress must act under article I, section 8 of the Constitution to regulate ''captures on land and on water.''

Since this administration started new programs to detain and interrogate terror suspects after 9/11, I have offered to help craft a new legal framework around those policies. I have called on the Vice President, his chief of staff, the National Security Adviser, and the Attorney General to help Congress craft such a framework to eliminate the fog of law. And I have argued that this new framework would empower, not limit, those who must carry out those policies because they would know that they were acting legally.

Today's bill is far from the best we can do. The rule for debate is closed, which means that none of us can improve the bill. And as debate has made clear, this bill was written by the White House in consultation with a few Republican Members. There was no bipartisan consultation and possibly none with any of the Republican members of the Intelligence Committee.

Others will address issues with immunity, coerced confession, habeas corpus, and court review. I want to address the issue which relates to the Intelligence Committee and which I believe is the primary reason for rushing the legislation through. There is a carve-out for the CIA. The bill would permit the CIA to continue a separate program for interrogation that does not comply with the Army Field Manual. If such a program is needed, then Congress must impose strict limits and ensure that we have the tools to do strict oversight.

An amendment which Mr. SKELTON and I hoped to offer today would have required notification in advance to the intelligence committees of any alternative set of interrogation procedures; a legal opinion from the Attorney General that they comply with Federal and international law; assurances that they are applied only to those we believe possess reliable, high-value, actionable intelligence; that the Army Field Manual techniques would not work; and that the use of the techniques would not adversely affect our troops who may be captured. Our amendment was not made in order, and I remain very skeptical that Congress can assure that any CIA carve-out will be limited and carefully monitored.

Mr. Speaker, we can do better. The bill negotiated by Senators MCCAIN, GRAHAM, and WARNER was better. Let us wait for the lame duck session and do this right. Vote ''no.''

Mr. HUNTER. Mr. Speaker, at this time I would like to yield 2 minutes to the gentleman who sits on both the Armed Services Committee and the Intelligence Committee and has put enormous focus on this particular bill, the gentleman from Texas (Mr. THORNBERRY).

Mr. THORNBERRY. Mr. Speaker, I think it is important to start with some important truths to remind ourselves of: one, we are in a struggle against a vicious, determined enemy who is determined to kill as many of us in as spectacular and as brutal a fashion as possible. Secondly, this struggle stretches all around the world and will go on for a long time. And, third, the enemy lives in the shadows and does

not reveal when or where or how they are going to strike. Information is the key weapon we have to prevent them from killing us and to prevent them from attacking others in the future.

This debate, as you have heard, has been mostly about what rights those few who we are able to capture, what rights, legal rights, they have under our system. But I think it is important to also remind ourselves about the critical nature of information and in stopping future attacks. In the Cold War we worried about missiles and tanks, and we could use satellites to count on. Here we are worried about three guys in a cave or half a dozen in a compound or four in a flat in London. If we don't have credible, specific information to stop those individuals and what they plan, then we will not be able to do so.

I think this is a good bill, but I also believe that it is right up to the edge of tying our own hands or, to change my metaphor, of putting blinders on ourselves, to make it very, very difficult to stop future attacks. I think it is important to do this bill now so that there is the certainty that our folks in the field, in uniform and out of uniform, desperately need to have. But we need to be careful that those of us in this Congress do not take the extra step to make their job impossible and then point the fingers at them in the future.

I think Members should support this bill, and I also believe Members should be careful in the future.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the very distinguished gentleman from Texas (Mr. REYES).

Mr. REYES. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, as a member of the House Intelligence Committee and the House Armed Services Committee, I understand the critical need to have the best possible intelligence both to prevent terrorist attacks against our Nation and to protect our troops in the battlefield. But those who have tied passage of military commissions legislation to the collection of actionable intelligence are simply misleading the American people.

I am deeply disappointed that military commissions legislation crafted by the White House and the Republican congressional leadership does not create a system that will pass constitutional muster. Like my colleagues, I demand that our Nation prosecute those who commit terrorist acts against us, but if Congress and the White House create a system of military tribunals that will be struck down by the Supreme Court as unconstitutional, we will further delay justice for the victims of terrorism and for their families.

The Bush administration has determined that we can legally hold all enemy combatants until the end of hostilities in the global war on terrorism, and as the National Intelligence Estimate released yesterday indicated, we won't be able to declare victory in the fight against terror and extremism anytime in the foreseeable future. So I ask, why are we in such a hurry to pass legislation that may do more harm than good? Why are we putting politics above victims of terrorist acts? Why are we endangering our troops?

Protecting our Nation also includes protecting the men and women who are serving in uniform in battlefields around the world. I believe, along with other military and legal experts, that the Republican military commissions bill will be interpreted by the international community as redefining our obligations under the Geneva Conventions. Our Nation must act from a position of strength, and we must think first of protecting our citizens before weighing how the world will view our actions. However, it is very unrealistic to simply ignore the impact that the changes included in H.R. 6166 could have on members of our military.

For that reason, Mr. Speaker, in wrapping up, I cannot support H.R. 6166 as it is written. We can do much better for our troops, the victims of terrorism, and the American people.

Mr. HUNTER. Mr. Speaker, I would like to yield at this time 2 minutes to a gentleman who is himself a veteran and a former JAG officer and the chairman of the Veterans' Affairs Committee and a gentleman who has paid a lot of attention to this important subject, the gentleman from Indiana (Mr. BUYER).

Mr. BUYER. Mr. Speaker, I rise to enter into a colloquy with the distinguished chairman of the House Armed Services Committee, Mr. HUNTER.

Mr. HUNTER, as stated in section 948k of the legislation before us, military defense counsel shall be detailed to the accused as soon as practicable after the swearing of charges against the accused.

Section 949a of the legislation permits the accused to represent himself. That section also defines how the accused will conduct himself and when the military judge, in his discretion, may partially or totally revoke this right.

□ 1415

Of concern to me and some military lawyers is that, should this right be revoked, a delay of trial could occur while waiting for the detailed defense counsel of the accused or an appropriate authorized civilian counsel to get up to speed and to begin to perform the defense.

It is my understanding that the intent of the legislation allows the detailed military counsel to remain as an associate counsel should the accused exercise his right of self-representation. This ensures that even if the accused's right is revoked by the judge, the trial will continue in a timely and efficient manner.

Mr. HUNTER. Mr. BUYER, that is correct. It is the intent of the legislation that the detailed military counsel shall act as an associate counsel during the course of self-representation. As you stated, should this right be revoked, the military counsel will then proceed to represent the accused throughout the rest of the trial.

Mr. BUYER. Chairman HUNTER, I want to thank you for entering into this colloquy with me and for your work on this provision and the legislation as a whole. I would also like to thank the President. He said he would work with the House and the Senate. He has done that. Chairman, you have done that. I want to thank Senator LINDSEY GRAHAM for having done that.

Let me just share to all of my colleagues that I do believe this is a good product, Chairman HUNTER; and I want to let everybody know and understand that.

This Code of Military Commissions, it has a good balance. You have struck that.

Mr. HUNTER. Mr. Speaker, I thank the gentleman. I want to thank him for his valuable contribution.

Mr. ANDREWS. Mr. Speaker, I yield 2½ minutes to the gentleman from New York (Mr. ISRAEL), my very thoughtful friend.

Mr. ISRAEL. Mr. Speaker, I rise in opposition to this bill. The distinguished chairman of the committee, who I have a very strong respect for, opened this debate by saying that in the global war on terror we cannot read terrorists their Miranda rights. No one has said that. No one has proposed it. No one has suggested it. That is not what is being debated here. That is not what we should debate here. It is absurd.

When it comes to terrorists planning mass murder on the American people, I want to find them. I want to capture them. I want to kill them. I want to try them. If they are found guilty, I want to kill them. I believe in capital punishment for terrorists perpetrating genocide.

But because I think that we should fight and kill terrorists, I want there to be fewer of them to fight and kill. This bill says to potential terrorists, the U.S. is surrendering the moral high ground. It is unilaterally relaxing the Geneva Conventions, that we are willing to keep people locked up indefinitely without a trial.

And since I believe in executing people found guilty of perpetrating or planning a genocide on the American people, I want to make sure we are executing the right terrorists. Government is imperfect. We make mistakes. How do I know? Katrina. We lose records. How do I know? The long line of veterans at my district office who cannot get their back pay because we lost their records.

When it comes to capital punishment for terrorists, I want to make sure that we are giving them the proper trial, that we are getting the facts. If I am willing to execute them, I want to make sure it is based on fact.

And because I believe we should fight and kill terrorists, I also know that

Americans in that fight are going to be caught; and I want them treated by the same standards that we would treat our enemy's prisoners. I do not want any one of our military people to be subject to the whims and the arbitrariness of a current interpretation by a foreign enemy.

Mr. Speaker, I want to close by suggesting and telling my colleagues that I recently asked a service member, who received a Bronze Star for valor in Fallujah, what he thought about this. He said, Congressman, I do not think our enemies really care about the Geneva Conventions, but I am fighting for my country because I care about morality, because I care about strong values, because this is a good country that leads the way, and I want to continue leading the way.

If I am asking young men and women to die for what we stand for, I want to stand for something. If I am asking people to fight to kill terrorists, I want to be in the pursuit of our values, not the terrorist's values.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. Mr. Speaker, everyone who has spoken in this debate on both sides I think shares a deeply held conviction that they want terrorists who would threaten this country prosecuted, convicted and punished.

Because I believe the commencement of those prosecutions is imperative for the future of the country, I will support this bill. I will do so, however, with two severe reservations which I would hope would be dealt with by the other body and in conference.

The first has to do with the issue of habeas corpus, which is a complicated word, but in this context, here is what it means: As I read this bill there is a risk that a suspected terrorist could be held for an indefinite period of time without recourse to any decisionmaker outside of the executive branch.

The constitutionally of this is ambiguous. But the wisdom of it I think is clear. It is not very wise. I think revisiting this provision as the bill goes forward would assure the constitutionality of the bill and its compliance with the Geneva Conventions.

Secondly, I am concerned about the fact that there has been an insufficient procedure for us to consider this bill. There have been many good ideas dealing with habeas corpus, dealing with issues of retroactive immunity that I think deserve a full and fair airing and hearing on this floor. This is an unfortunate procedure in which we find ourselves.

My concern is it will be our sole opportunity, given the way things go around here, to voice our opinions on this. I do think that the underlying provisions of this bill are consistent with the spirit and letter of our obligations under the Geneva Conventions.

I have concluded that compliance with these conventions is essential so we can go forward in prosecuting and trying those who threaten our country. I believe this process needs great improvement. I think this bill needs one very specific improvement. But to move it forward, I will vote ''yes.''

Mr. SKELTON. Mr. Speaker, I yield 5 minutes to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. I thank the gentleman for yielding.

Mr. Speaker, I wanted nothing more than to come to this floor today and vote for a military commissions bill that comports with our American values, that the rest of the world would see as fair and humane, that honors our international commitments and protects our own troops who fall into enemy hands and, as the ranking member has pointed out, the Supreme Court would uphold.

I regret that the chairman and the ranking member are not shoulder to shoulder on this issue, as should be the case. Too often have we considered these weighty matters of defending our country, defeating terrorism, protecting Americans in a partisan fashion. I think that is regrettable. I think the American people think it is regrettable.

Make no mistake. Every single Member of this House wants our President to have the intelligence necessary to prevent future terrorist acts on our Nation and our allies. Every single one of us wants those responsible for 9/11 and other terrorist acts to be tried fairly and punished accordingly. And we want those convictions to be upheld by the courts, and we want to stop future attacks.

But, regrettably, the bill before us today, in my opinion, falls far short of the high standards that this Congress and the American people expect and demand and indeed that the world expects of America. This legislation at bottom is really more about who we are as a people than it is about those who seek to harm us.

That is true if it were domestic. It is true internationally. No one wants to defend murderers and rapists, those who would harm our people, whether they live here or they live abroad. However, defending America requires us to marshal the full range of our power, diplomatic and military, economic, and, yes, moral. And when our moral standing is eroded, our international credibility is diminished as well.

We must not lightly dismiss the somber warning of our former Secretary of State, the leader of our Armed Forces, Chairman of the Joint Chiefs of Staff, serving on the administrations of President Bush I, and serving as his Secretary of State.

He said this, and I quote Colin Powell: ''The world is beginning to doubt the moral basis of our fight against terrorism. I fear this legislation before us will further diminish that credibility.''

While this bill properly lists as punishable offenses certain grave breaches of article 3 of the Geneva Conventions, it leaves almost unfettered discretion to the administration to define anything less than such grave breaches.

Why should we be concerned about providing this administration with such discretion, one might ask? Because our President and our Attorney General have routinely flouted congressional authority with signing statements and legal interpretations, which give to them unfettered authority.

As the Washington Post has stated, and again I quote: ''The Bush administration's history is one of interpreting limitations on interrogation tactics, including Mr. MCCAIN's previous legislation, banning cruel, inhuman and degrading treatment, as permitting methods most people regard as torture.''

Furthermore, Mr. Speaker, this bill eliminates the fundamental legal right of habeas corpus. What is habeas corpus about? Why should we care for terrorists who attack our country? Because we might make a mistake. That is why we build in protections, to protect against mistakes because we are human.

The bill would greatly minimize judicial oversight by establishing a new appeals process and centralizing consideration of cases in the District of Columbia Court of Appeals, thus stripping other appellate courts from hearing cases currently pending before them.

Mr. Speaker, I am absolutely committed to winning the war on terrorism and bringing to justice any and all terrorists who would threaten us, harm us or cause harm to our country. However, I also believe we have an obligation to the Constitution and to our oath to do so in a manner that is consistent with our values, that makes us different than other nations in the world, that secures just convictions and that enhances our international credibility, thereby strengthening our national security.

I end as I started. I regret that I cannot support this legislation, and I are regret that it is not being offered in a bipartisan fashion. It would have been better for us, for the people, and for our country.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD). The Chair reminds all persons in the gallery that they are here as guests of the House and that any manifestation of approval or disapproval of proceedings or other audible conversation is in violation of the rules of the House.

Mr. HUNTER. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I want to set the gentleman straight who just spoke. Every single person held in Guantanamo has the right and will have the right under this legislation to contest whether or not they are, in fact, combatants and the status of their being swept up on the battlefield inadvertently or being, in fact, true enemy combatants. They will have that right.

That is, in my estimation, an important type of habeas corpus. That is preserved in this bill.

Mr. Speaker, I yield 1 minute to the gentleman from Louisiana (Mr. BOUSTANY).

Mr. BOUSTANY. Mr. Speaker, I rise in strong support of H.R. 6166. I want to compliment both Chairman HUNTER and Chairman SENSENBRENNER for bringing forth a very good bill and their prodigious work on this issue. I also want to commend Chairman STEVE BUYER for his fine leadership as well on this issue.

Mr. Speaker, it is time for the terrorists responsible for planning the most horrendous attack on U.S. soil and who continue to plan terrorist acts to be brought to justice. We have an obligation to the American people to deliver justice upon these criminals, as well as an obligation to the international community to uphold our treaty obligations.

I, too, had some concerns about this at the outset, but I think this bill addresses the concerns. I am pleased that this bill contains provisions that will maintain our commitment to common article 3 of the Geneva Conventions, while also providing the necessary protection to U.S. personnel. This bill sets forth a fair, effective process consistent with our values, our laws and our obligations.

Mr. Speaker, in closing, I urge swift passage of the Military Commission Act of 2006, so that we can continue to prosecute these terrorists intent on causing violence to innocent victims.

□ 1430

Mr. SKELTON. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New York (Mr. CROWLEY).

Mr. CROWLEY. Mr. Speaker, I believe it is my belief my colleagues on the other side of the aisle care more about giving the President what he wants rather than what is in the best interests of the American people, the people that we are sent here to represent.

I know that these terrorists are vicious murderers. I have experienced it firsthand. I always thought I was safe in my warm, little comfortable bed in Woodside, Queens, New York. I know it is no longer the case, but it is my values as an American and those values that I hold dear that keeps that hatred in check.

We must lead by example on these issues, not be evasive quasi-participant in the rule of law.

Our soldiers are abroad fighting a battle that I believe our President has not allowed them to win because of his continued mismanagement.

The National Intelligence Estimate says that the war in Iraq has actually invigorated the growth of terrorism and worsened its threat around the globe.

Today, we could have had an opportunity to fix one of those mistakes, but we are ignoring that opportunity and ignoring the respect for due process and denying habeas corpus to detainees.

I cannot and will not support this legislation.

Mr. SKELTON. Mr. Speaker, I yield 1 minute to the gentleman from Washington (Mr. INSLEE).

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Mr. Speaker, we ought to hold this truth to be self-evident, that no President should be given the ability to hold people in detention indefinitely without review by the judicial branch.

We should never yield to al Qaeda, not one inch, not one right, not one American principle; but, today, in this bill, we yield a fundamental American principle, the principle that no executive, no President, should have the untrammeled ability to be free of checks and balances that have kept our country so free in the last 230 years. That principle of writ of habeas corpus has been fundamental, and it is destroyed in this bill.

When we learn that George Bush's policy has kept a man in detention for years who was totally innocent without trial, it was not just he who suffered. It was we who had a wound as well.

We do not care about the terrorists' displeasure here, but we do care about the principled integrity of our country, about the light of liberty that so attracts the world. It is that light that will help us win the war on terrorism, not just the light of our bombs. This is the principal weapon in our arsenal. It is the light of liberty, may it ever shine.

Reject this bill. Go back to the drawing board.

Mr. SKELTON. Mr. Speaker, I yield 1½ minutes to the gentleman from New Jersey (Mr. HOLT).

(Mr. HOLT asked and was given permission to revise and extend his remarks.)

Mr. HOLT. Mr. Speaker, I rise in opposition to this measure which will not preserve principles of justice upon which this Nation was founded. How true we are to our ideals affects the clarity and decisiveness with which our soldiers can act, the safety of our troops, the motivation of our potential enemies, and the behavior of our actual enemies.

This bill provides protections that are vague, slippery and imprecise. It is subject to interpretation by the President, by the Secretary of Defense, by our commanders in the theaters of operation, by our troops in the field, by our friends and enemies around the world.

We need a bill that does at least two things. It should provide a clear set of guidelines consistent with American principles such as in our revised Army Field Manual; guidelines that apply to all U.S. Government personnel, on how to treat prisoners; guidelines that preserve our principles.

Second, it should include verification mechanisms to monitor how prisoners and detainees are treated. One of those mechanisms is already in use by police departments and prosecutors across the country: the videotaping of interrogations.

Videotaping has proven to be extremely effective at preventing not just abuse of detainees but also false allegations of abuse by detainees against their interrogators. The practice aids in interrogation, and it protects the enforcers, the prosecutors, the defendants and, hence, protects all of us. By not including such a provision in the bill, the drafters missed a real opportunity to ensure that we prevent serious problems in the future.

Last night in the Rules Committee, I offered an amendment that would have replaced a few critical provisions of H.R. 6166 with text that Senators WARNER, MCCAIN, and GRAHAM put forward two weeks ago emphatically supporting the principle that everyone, even detainees in Guantanamo, should be allowed to examine and respond to all evidence presented against them at trial. Of course, The Rules Committee denied Members the opportunity to vote on this and other amendments on the floor today.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentleman from Oregon (Mr. WU).

(Mr. WU asked and was given permission to revise and extend his remarks.)

Mr. WU. Mr. Speaker, I want to focus like a laser beam on the right of habeas corpus and the untoward effect of this legislation on habeas corpus. This is an ancient doctrine that has been with us since at least the days of Charles I. It has presented difficulties to many American Presidents from Jefferson to Lincoln to Grant to Roosevelt.

We have the power to do much in restricting habeas corpus; but we should do so very, very carefully because it is the protection from tyranny that our forebears sought in the Revolution.

Congress here is entering upon dangerous constitutional shoal waters, and it is, in my belief, unconstitutionally limiting access to habeas corpus. The courts have repeatedly ruled in a restricted fashion whenever Congress or the Presidency has restricted access to habeas corpus and each of us, not just the Supreme Court, but we in the Congress and those in the executive branch, we all take an oath to uphold the Constitution of the United States, and this act, by restricting habeas corpus, will not serve America well.

And by so restricting habeas corpus, this bill does not just apply to enemy aliens. It applies to all Americans because, while the provision on page 93 has the word ''alien'' in it, the provision on page 61 does not have the word ''alien'' in it.

Let us say that my wife, who is here in the gallery with us tonight, a sixth generation Oregonian, is walking by the friendly, local military base and is picked up as an unlawful enemy combatant. What is her recourse? She says,

I am a U.S. citizen. That is a jurisdictional fact under this statute, and she will not have recourse to the courts? She can take it to Donald Rumsfeld, but she cannot take it across the street to an article 3 court.

This bill applies to every American, regardless of citizenship status.

Mr. SKELTON. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Speaker, I want to thank the distinguished gentleman from Missouri, and let my colleagues know that I have read the bill and what I read here is pretty chilling. Matter of fact, I want to quote something from the bill that has not been discussed and ask that all of my friends read this bill so that we can see if this really reflects what we want to do and the implications this could have for Members of Congress because I have stood on this floor time and time again to protect this institution, and I want Members of Congress to think about this provision.

You know, we have heard the President make comments that people who oppose this bill are really hurting the United States. We have all heard him say this.

Section 26, wrongfully aiding the enemy. Any person subject to this chapter, by the way anybody is who in breach of an allegiance or duty to the United States knowingly and intentionally aids an enemy of the United States or any of the co-belligerents of the enemy shall be punished as a military commission under this chapter may direct.

I want to know, are Members of Congress who challenge this administration as to their taking us into illegal wars, is that somehow contrary to allegiance to the United States? I mean, we need to think about this. What are we doing to this institution here? Are we turning us all into mice here, running into a corner because we are afraid to challenge the President?

I mean, my friends who are Republicans, stand up for the Republic, to the Republic for which it stands. Stand up for the Republic. Read this provision in this bill.

There is another provision in the bill that I think deserves a careful look. Suppose a President sometime in the future declares that some country has weapons of mass destruction, and based on those claims, the Congress moves quickly to give the President the authority to wage war, and then war is waged and hundreds of thousands of civilians are killed as collateral damage, and then we find out later on they did not have weapons of mass destruction, and then you have all these dead people, but they were collateral damage. Under this bill, which I have read, collateral damage is precluded from applicability with respect to the enforcement of the rule of law, or if there is a lawful attack, collateral damage is precluded from being cited.

Now, suppose that happened in this country. That would be so awful that something like that happened, but essentially we are giving a get-out-of-jail free card to the very officials who could lead this country down a path to war and kill innocent people based on lies.

I do not see this as a Republican or a Democrat argument. I see this as a question of whether we stand up for what this country was founded upon. What are we about? What do we believe in? That is what we have to answer here, and this bill is everything we do not believe in.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD). The Chair notes a disturbance in the gallery in violation of the rules of the House and directs the Sergeant at Arms to restore order.

Mr. SKELTON. Mr. Speaker, I yield 3½ minutes to the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, it has taken over 5 years since September 11 for the administration to finally come to Congress and seek legislation establishing military tribunals to try terrorist suspects.

For over 4 years now, many of my Democratic colleagues and I have urged this Congress to act in this area. Four-and-a-half years ago I introduced legislation, other of my colleagues did the same, to establish military tribunals, and we introduced that legislation for two reasons: first, because we should detain people who mean to harm our country and mean to injure our citizens; and, second, because the administration's unilateral act in establishing these commissions was on the most dubious of constitutional grounds and we did not want to be where we are today, 5 years hence, with a system that was struck down by the Supreme Court, where people have not been brought to justice.

But here we are. It has taken the majority and the administration 5 years to get here, but here we are.

Terrorists who seek to harm this country must be captured. They must be tried, detained and punished to protect our country, and there is a way to detain them, to gather valuable intelligence from them, to try and convict them without sacrificing our ideals as a Nation.

We are at war with a vicious enemy who seeks to destroy our way of life. It is a military fight; but in a broader sense, it is also a war of ideas.

America has always been not only a Nation it has been an idea and when we sacrifice that idea, it is a setback in this war of ideas.

So we have to ask ourselves where does this position us? Where does this bill position us in the war of ideas? Are we advancing or are we retreating when we are perceived as abandoning the rule of law? When we are perceived as defining what it means to be cruel or inhuman or degrading?

□ 1445

When we wonder out loud in the legislative process whether a Nation so conceived as ours can long endure without cruel and inhuman treatment? When we show to the world that we are questioning the very idea of America, whether this Nation can long endure with a respect for the rule of law, with respect for the concept that people who are detained by America will not be mistreated, that people detained by America will have a right to confront evidence against them will have the sacred right of habeas corpus?

When we put forward legislation that says that an American can be plucked off the street, given a label unilaterally by any administration, by this President or the next, as an unlawful enemy combatant, and all their rights evaporate once they are given that label, that calls into question the very idea of America; and that, I believe, is a setback in the war of ideas.

We can do better than this bill. And, in fact, on Friday, we had better than this bill, when Senator WARNER and Senator MCCAIN came forward with what I thought was a sound compromise. We had a sound compromise on Friday, but during the weekend that unraveled. During the weekend, I think we took a step back in the war on ideas.

It was not an irrevocable step back. The majority and the administration has waited 5 years to bring us legislation on this subject. Let us take another 5 days, if it takes it, to get it right.

We shouldn't be retreating back to our districts just because of our election and leaving the work undone or done poorly. And I regret to say that this bill is done poorly, and it must be changed.

Mr. HUNTER. I want to take 30 seconds, Mr. Speaker, just to remind my friend who just spoke that this bill is largely the product of not only this body but Senator WARNER, Senator MCCAIN, and Senator GRAHAM. Shortly, they are going to be introducing the precise same bill in the other body.

And, Mr. Speaker, in this bill, military commissions, if you will check on page 7, to answer the gentleman who just spoke who thought his wife might in some wild circumstance be prosecuted under this bill, this bill gives jurisdiction and military commissions, on line 24, page 7, to alien unlawful enemy combatants. It does not take away the habeas rights of U.S. citizens.

Mr. Speaker, I reserve the balance of my time.

Mr. SKELTON. Mr. Speaker, at the request of the Democratic leader, I submit for the RECORD a letter from various religious organizations dated September 27.

SEPTEMBER 27, 2006.

DEAR REPRESENTATIVE: We are writing to strongly encourage you to reject the ''compromise'' Military Commissions Act of 2006 and to vote no on final passage of the bill. More than anything else, the bill compromises America's commitment to fairness and the rule of law.

For the last five years the United States has repeatedly operated in a manner that betrays our nation's commitment to law. The U.S. has held prisoners in secret prisons without any due process or even access to the Red Cross and has placed other prisoners in Guantanamo Bay in a transparent effort to avoid judicial oversight and the application of U.S. treaty obligations. The federal government has operated under legal theories which dozens of former senior officers have warned endanger U.S. personnel in the field and has produced legal interpretations of the meaning of ''torture'' and ''cruel, inhuman and degrading'' treatment which had to be abandoned when revealed to the public. Interrogation practices were approved by the Department of Defense which former Bush Administration appointee and General Counsel of the Navy Alberto Mora described as ''clearly abusive, and * * * clearly contrary to everything we were ever taught about American values.'' According to media reports the CIA has used a variety of interrogation techniques which the United States has previously prosecuted as war crimes and routinely denounces as torture when they are used by other governments.

Instead of finally coming to grips with this situation and creating a framework for detaining, interrogating and prosecuting alleged terrorists which comports with the best traditions of American justice, the proposed legislation will mostly perpetuate the current problems. Worse, it would seek to eliminate any accountability for violations of the law in the past and prevent future judicial oversight. While we appreciate the efforts various members of Congress have made to address these problems, the ''compromise'' falls far short of an acceptable outcome.

The serious problems with this legislation are many and this letter will not attempt to catalogue them all. Indeed, because the legislation has only just been made available, many of the serious flaws in this long, complex bill are only now coming to light. For instance, the bill contains a new, very expansive definition of enemy combatant. This definition violates traditional understandings of the laws of war and runs directly counter to Pres. Bush's pledge to develop a common understanding of such issues with U.S. allies. Because the proposed definition of combatant is so broad, the language may also have potential consequences for U.S. civilians. For instance, it may mean that adversaries of the United States will use the definition to define civilian employees and contractors providing support to U.S. combat forces, such as providing food, to be ''combatants'' and therefore legitimate subjects for attack. Yet, there has been no opportunity to consider and debate the implications of this definition, or other parts of the bill such as the definitions of rape and sexual abuse.

We strongly oppose the provisions in the bill that strip individuals who are detained by the United States of the ability to challenge the factual and legal basis of their detention. Habeas corpus is necessary to avoid wrongful deprivations of liberty and to ensure that executive detentions are not grounded in torture or other abuse.

We are deeply concerned that many provisions in the bill will cast serious doubt on the fairness of the military commission proceedings and undermine the credibility of the convictions as a result. For instance, we are deeply concerned about the provisions that permit the use of evidence obtained through coercion. Provisions in the bill which purport to permit a defendant to see all of the evidence against him also appear to contain serious flaws.

We believe that any good faith interpretation of the definitions of ''cruel, inhuman and degrading'' treatment in the bill would prohibit abusive interrogation techniques such as waterboarding, hypothermia, prolonged sleep deprivation, stress positions, assaults, threats and other similar techniques because they clearly cause serious mental and physical suffering. However, given the history of the last few years we also believe that the Congress must take additional steps to remove any chance that the provisions of the bill could be exploited to justify using these and similar techniques in the future.

Again, this letter is not an attempt to catalogue all of the flaws in the legislation. There is no reason why this legislation needs to be rushed to passage. In particular, there is no substantive reason why this legislation should be packaged together with legislation unrelated to military commissions or interrogation in an effort to rush the bill through the Congress. Trials of the alleged ''high value'' detainees are reportedly years away from beginning. We urge the Congress to take more time to consider the implications of this legislation for the safety of American personnel, for U.S. efforts to build strong alliances in the effort to defeat terrorists and for the traditional U.S. commitment to the rule of law. Unless these serious problems are corrected, we urge you to vote no.

Sincerely,

Physicians for Human Rights; Center for National Security Studies; Amnesty International U.S.A.; Human Rights Watch; Human Rights First; American Civil Liberties Union; Open Society Policy Center; Center for American Progress Action Fund; The Episcopal Church; Jewish Council for Public Affairs; Presbyterian Church (USA), Washington Office; Maine Council of Churches; Pennsylvania Council of Churches; Wisconsin Council of Churches; Brennan Center for Justice at NYU Law School; Robert F. Kennedy Memorial Center for Human Rights; Center for Constitutional Rights; The Bill of Rights Defense Committee; Unitarian Universalist Service Committee; Leadership Conference of Women Religious; Center for Human Rights and Global Justice, NYU School of Law; The Shalom Center; Washington Region Religious Campaign Against Torture; The Center for Justice and Accountability; Center of Concern; Justice, Peace & Integrity of Creation Missionary Oblates; Rabbis for Human Rights—North America; Humanist Chaplaincy at Harvard University; No2Torture.

Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Speaker, I want to thank the gentleman for yielding and for his leadership and his commitment to our young men and women in uniform throughout the world.

At a time when even the National Intelligence Estimate has concluded that the occupation in Iraq has spawned a new generation of terrorists and made us, quite frankly, less safe, this bill now will undermine the security of our brave troops and hand a victory to those who believe the rule of force should prevail over the rule of law.

I have to say once again, as the daughter of a 25-year military Lieutenant Colonel who served this country in many, many capacities through two wars, that this scares me. It scares me to death.

What century are we living in when we trust intelligence acquired through torture? Clearly, the President fails to realize that these techniques will destroy the credibility of any verdicts that use information derived from torture.

Insisting on fairness and just credibility is all we are asking for, credibility in the process. This isn't about protecting those who would harm us, as the Republicans would have you believe, it is about protecting our own troops and our Nation and not further alienating our country in the eyes of the world community.

When we turn away from the legal and the moral values that have guided our Nation, we give up the principles that differentiate us from the terrorists.

I quoted from a prayer given by Reverend Baxter at the National Cathedral during the memorial service for the victims and families of 9/11 5 years ago, and Reverend Baxter said, and I keep thinking about this prayer, he said, ''Let us not become the evil who we deplore.''

So I just want to urge a ''no'' vote on this bill; and I want to thank Mr. SKELTON for his leadership, for his support for the troops, for his steadfast work on behalf of our national security, and for making sure that this body continues to try to uphold the rule of law.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia . I thank my good friend, an inspirational leader on the Armed Services Committee.

I oppose this bill. It would send a message to the world that the United States can disregard international treaties and law and, instead, do as it pleases. For generations, we have been the beacon to guide the actions of other nations. If we descend from the high moral ground, we are, in effect, losing ground to the terrorists.

Secretary of State Colin Powell was so accurate when he said, part of this war on terrorism is an ideological and political struggle. Our moral posture is our best weapon to prevail in that struggle.

Mr. Speaker, this is not a good bill. Since the inception of the Geneva Conventions 60 years ago, no other country in the world has tried to undermine and negate its provisons its spirit as this bill would.

For enemy combatants, the bill eliminates the right of habeas corpus. This is a right enshrined in our Constitution that may be abandoned only, and I quote, ''when in cases of rebellion or invasion the public safety may require it.'' The elimination of habeas is not just illegal, it is flat out wrong.

The purpose of habeas corpus is simple. It is to avoid injustice, to avoid the detention by government of any individual that is erroneous, unwarranted, or in violation of law. This purpose and the values from which it stems do not distinguish among individuals or circumstances. They seek to avoid any injustice to any detained individuals.

All Americans want to hold terrorists accountable, but if we try to redefine the nature of torture, whisk people into secret detention facilities and use secret evidence to convict them in special courts, our actions do, in fact, embolden our enemies more than any extremist rhetoric could ever do.

This bill needs to be defeated.

Mr. HUNTER. Mr. Speaker, I yield 30 seconds to the gentleman from Indiana (Mr. BUYER).

Mr. BUYER. Mr. Speaker, I want to make sure the debate has clarity. To the gentleman, when you say this bill applies to everyone or all American citizens, that is completely false. I want the gentleman to know that.

I would like you to know that when you refer to page 61, at the top it says, provisions of this chapter. So an earlier speaker brought us this issue about, well, it doesn't say the word alien. In order to be tried under the Code of Military Commissions, you have to be an alien. So when you go to page 7, you look at line 17, section 948c, it says the persons who are subject to a military commission is any alien unlawful enemy combatant.

So this does not apply to American citizens.

Mr. SKELTON. Mr. Speaker, I yield 30 seconds to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. I thank the ranking member.

Mr. BUYER, I have been to Guantanamo, as I am sure you have been, and I was stunned at the fact that the vast majority of people detained at Guantanamo were not in fact caught on the battleground. Many of these people were put there by bounty hunters. They were in the wrong place at the wrong time.

After 5 years, they have very little information to provide us. Those 14 that we are now putting at Guantanamo should not redefine the vast majority of the prisoners at Guantanamo who do in fact deserve a fair trial.

Mr. SKELTON. Mr. Speaker, I yield an additional 30 seconds to the gentleman from Oregon (Mr. WU).

Mr. WU. Mr. Speaker, I would like to respond to the two chairmen's remarks that I was incorrect in my analysis of the law or of the proposed bill.

I stand by that analysis, and not only is that analysis correct, but this reference to the detention act as a cure for that is totally specious, because this detention act we passed as a rider to an appropriations bill. So any remedy provided by the detention act goes away in the year of appropriation.

If you read that language, that word alien does appear on page 93, but the determination of that jurisdictional fact will be done by a military tribunal, and that is not where American civilians should have their rights determined.

Mr. SKELTON. Mr. Speaker, may I inquire as to the amount of time remaining?

The SPEAKER pro tempore. The gentleman from Missouri has 1 minute remaining, and the gentleman from California has 3½ minutes remaining.

Mr. SKELTON. May I inquire, Mr. Speaker, does the gentleman choose to close?

Mr. HUNTER. We just have one other speaker, then I am going to reserve the balance.

Mr. SKELTON. Mr. Speaker, I reserve the balance of my time.

Mr. HUNTER. Mr. Speaker, I yield 30 seconds to the gentleman from Indiana (Mr. BUYER) for a response.

Mr. BUYER. I just want to share with the gentleman, I have to go back, you have to look at the four corners of the document. Please don't dive into rhetoric.

When you go to the four corners of the document, it is very clear who is subject to the Code of Military Commissions. So, in title 18, you will have the Federal Code that applies to U.S. citizens; you will have the UCMJ creating a third chapter that will apply to unlawful enemy combatants, the Code of Military Commissions. It will not apply to United States citizens.

It is very, very clear. If you think it applies to somebody else, sir, I cannot get into your mind, but I just want you to know that the world will be able to see what we have created here does not apply to American citizens.

Mr. HUNTER. Mr. Speaker, at this time, I would like to yield 1 minute to the gentlewoman from Texas (Ms. GRANGER).

Ms. GRANGER. Mr. Speaker, each Member in this House comes to Congress with his own agenda, his district's needs, and his committee requests, but the one thing that should surmount all those individual desires, needs, and energies is the commitment to keep our Nation safe.

Fourteen terrorists are now being held at Guantanamo Bay awaiting trial. Thousands of the family members of Americans killed on September 11 are awaiting justice, and our constituents are waiting for Congress to act. The bill we have before us helps make that possible. It sends a message to the extremists that if they plot to kill or harm our citizens, America will find them, get the information they have, and bring them to justice. And it sends a message to those who fight to protect our freedom that we will protect them, too.

I do not know of anything that this Congress can do that is more important than passing this bill today, a bill carefully crafted, protecting classified intelligence information, providing clear guidelines for our intelligence officers who are responsible for interrogating those terrorists, and keeping our promises to the American people to do everything we can to keep them safe.

Mr. Speaker, I am proud to support this bill, and I thank those responsible for bringing it to the floor.

Mr. SKELTON. Mr. Speaker, I yield 15 seconds to the gentleman from Oregon (Mr. WU).

Mr. WU. I stand by my analysis of the proposed bill. The two chairmen stand by theirs. This is the best reason why this bill should not be rushed through. The staff cannot be held responsible for drafting errors, and we should not be rushing this kind of legislation through without the careful consideration that it deserves.

Mr. SKELTON. Mr. Speaker, this is a day in constitutional history that will stand out like Mars at perihelion. We want tough, but we also want certainty in any conviction that comes from this tribunal; and I am fearful, Mr. Speaker, that this legislation is an invitation for reversal by the Supreme Court.

We want to be tough on those despicable people, but we also want a conviction to withstand the scrutiny of our Supreme Court and our judicial process.

Mr. Speaker, I yield back.

Mr. HUNTER. Mr. Speaker, at this time I reserve the balance of my time, which I believe is 2 minutes, and move to the Judiciary Committee.

□ 1500

The SPEAKER pro tempore. The gentleman from California (Mr. HUNTER) reserves the balance of his time, which is 2 minutes; and the gentleman from Wisconsin (Mr. SENSENBRENNER) is recognized.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 6166, the Military Commissions Act of 2006.

This legislation is critical to the national security interests of the United States. The bill creates a fair and orderly process to detain and prosecute al Qaeda members and other dangerous terrorists captured during the war on terror. It also sets clear ground rules pertaining to how we will treat these prisoners in our custody. The way we treat terrorist enemy combatants sends a strong signal to the rest of the world about our commitment to the rule of law.

This legislation says to the world that the U.S. rejects torture, rejects cruel and inhumane treatment and rejects other tactics commonly used by our terrorist enemies. It says that we will not subject enemy combatants in our custody, many of whom planned and supported the largest mass murder ever on American soil, to the cruel and brutal treatment they regularly utilize against our soldiers and our civilians.

At the same time, this bill also makes it clear to the terrorists and their lawyers that America will not allow them to subvert our judicial process or disrupt the war on terror with unnecessary or frivolous lawsuits. The bill strikes the right balance. It establishes a mechanism that is full and fair, but also orderly and efficient.

In the aftermath of the 9/11 attacks, the administration began detaining foreign terrorists as ''enemy combatants'' at Guantanamo Bay and instituted procedures to review their status

and to prosecute them for war crimes by military commissions authorized by the President. During this time, detainees filed suit in Federal Court to challenge the legality of their detention and of the commissions.

The Supreme Court then held in the Rasul case that the Federal habeas corpus statute protected Gitmo detainees. To address Rasul, Congress passed the Detainee Treatment Act of 2005, which barred habeas and other lawsuits by detainees in U.S. custody, but provided for limited judicial review of DOD detention decisions by the D.C. Circuit.

In June, the Supreme Court held in Hamdan that the DTA did not bar nearly 200 habeas corpus petitions and the other lawsuits by detainees pending on the date of enactment, despite clear statutory language and Supreme Court precedents to the contrary.

This bill clarifies congressional intent to prohibit any habeas corpus petitions or other lawsuits pending on or filed after enactment brought by any alien in U.S. custody detained as an enemy combatant or awaiting such a determination.

The Supreme Court has never, never held that the Constitution's protections, including habeas corpus, extend to non-citizens held outside the United States. In fact, the Supreme Court rejected such an argument in 1950 in the case of Johnson v. Eisentrager. Moreover, in the 1990 Verdugo case, the Court reiterated that aliens detained in the United States but with no substantial connection to our country cannot avail themselves of the Constitution's protections. As a result, any argument that this bill breaks new ground or improperly denies detainees certain constitutional rights is both groundless and misguided.

Despite the fact that detainees have very few rights under our Constitution, this bill reflects Congress's statutory determination that they are entitled to an orderly process and a full and fair review of the government's core decisions authorizing their detention by the D.C. Circuit, a respected article 3 court.

As we consider this legislation, it is important to remember first and foremost that this bill is about prosecuting the most dangerous terrorists America has ever confronted. Individuals like Khalid Sheik Mohammed, the mastermind of the 9/11 attacks, or Ahbd al-Nashiri, who planned the attack on the USS *Cole*. None of their victims was treated with the kind of respect for human life and the rule of law embodied in this legislation which will apply to them.

I urge my colleagues to support this vital legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a very important discussion today, and we have an opportunity to consider whether we are willing to respect the ideals of law and human dignity in actuality rather than just in rhetoric. This legislation goes to the core of who we are as a nation.

So I begin the Judiciary Committee's discussion of this matter on two points simply. The first is the point on habeas corpus. Because, you see, we have determined that detainees will not have the ability to challenge the conditions of their detention in court unless and until the administration decides to try them before a military commission. Those who are not tried will have no recourse to any independent court at any time.

So because people have been encouraging each other to read the bill, I want to turn to page 93, line 12, where the habeas corpus matters are included. Here is what it says: ''No court shall hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant.''

There is where 62 law professors from dozens of universities tell us that what we are doing is changing the hallowed writ of habeas corpus so that it will not apply by law. We are by law changing a constitutional provision.

The other important part of our discussion on the Judiciary Committee, and, by the way, I hope that the ranking member of the Armed Services Committee can serve on the Judiciary Committee, because he has made some excellent legal arguments today, the other point that I would bring to your attention is that the President will now, under these provisions in the bill, be allowed to interpret the Geneva Conventions, especially common article 3, the way that he wants and to exclude it from other review by the courts. By eliminating the judicial review of executive acts as significant as detention and domestic surveillance, this cannot be squared with the principles of transparency and the rule of law on which our constitutional democracy rests.

Congress would gravely disserve our global reputation as a law-abiding country by enacting bills that seek to combat terrorism by stripping judicial review. I refer my colleagues to page 83, section 6, relating to treaty obligations. Here it is. This is the bill:

''(3) Interpretation by the President. As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.

''The President shall issue interpretations that will be published in the Federal Register.''

So what we have done now is give to the President, and I think it is about time somewhere in the proceedings that this be made public knowledge, give the President exclusive power to interpret the common article 3 of the Geneva Conventions and that it would be unreviewable.

It is upon these two points that I would urge that the Members of the House of Representatives on this day go on record as refusing to accede to these onerous provisions of a bill that would change the course of America's relationship, historic relationship, with international treaties.

WRITTEN TESTIMONY OF JONATHAN HAFETZ BEFORE THE U.S. SENATE COMMITTEE ON THE JUDICIARY, SEPTEMBER 25, 2006

DEAR SENATOR SPECTER, SENATOR LEAHY, AND MEMBERS OF THE COMMITTEE: Thank you for the opportunity to submit this statement in connection with today's hearing. (''Examining Proposals to Limit Guantánamo Detainees Access to Habeas Corpus Review''). My comments focus on the historical foundations of habeas corpus that are relevant to the Committee's consideration of the proposed legislation, S. 3930. As the United States Supreme Court has repeatedly made clear, the Constitution, at a minimum, protects the writ of habeas corpus as it existed in 1789. Eliminating habeas corpus for prisoners held at Guantánamo Bay would be inconsistent with centuries of tradition and would fall below the review required by the Constitution.

I am currently Counsel at the Brennan Center for Justice at New York University School of Law. The Brennan Center is a nonpartisan institution dedicated to safeguarding access to justice and the rule of law through scholarship, public education, and legal action. One of the Brennan Center's primary goals is to ensure accountability, transparency, and checks and balances in the formulation and implementation of national security policy.

During the past decade, I have focused extensively on the history of habeas corpus. My scholarly articles and amicus curiae briefs on habeas have been cited by the Supreme Court and federal courts of appeals. I hold a J.D. from Yale Law School and a Masters Degree in History from Oxford University.

My comments are organized as follows. First, I describe the historical roots of habeas corpus as a check against unlawful executive detention and how those protections are guaranteed under the Constitution and laws of the United States. Second, I explain the writ's broad territorial scope and guarantee of a searching examination of the factual and legal basis for a prisoner's detention. Third, I show that habeas corpus secures another fundamental requirement of the common law and due process—the right to be free of detention based on evidence gained by torture. Finally, I explain why appellate review under the Detainee Treatment Act of 2005 of a Combatant Status Review Tribunal determination does not provide an adequate and effective substitute for constitutionally mandated habeas. To the contrary, such review would foreclose any meaningful inquiry into the factual and legal basis for a prisoner's detention and sanction evidence secured by torture and other coercion.

I. HABEAS CORPUS PROVIDES A CHECK AGAINST UNLAWFUL EXECUTIVE DETENTION

For centuries, the writ of habeas corpus has provided the most fundamental safeguard against unlawful executive detention in the Anglo-American legal system. William Blackstone praised habeas as the ''bulwark'' of individual liberty, while Alexander Hamilton called it among the ''greate[st] securities to liberty and republicanism.'' The writ

has since been described as ''the most important human right in the Constitution.

Today habeas is typically used by convicted prisoners to collaterally attack their criminal sentences. At its historical core, however, the writ provides a check against executive detention without trial, and it is in this context that its protections have always been strongest. Above all, habeas guarantees that no individual will be imprisoned without the most basic requirement of due process—a meaningful opportunity to demonstrate his innocence before a neutral decisionmaker.

Habeas corpus was part of colonial law from the establishment of the American colonies, and the common law writ operated in all thirteen British colonies that rebelled in 1776. The Framers enshrined habeas corpus in the Suspension Clause of the Constitution, which states that Congress ''shall not'' suspend the writ of habeas corpus ''unless when in Cases of Rebellion or Invasion the public Safety may require it.'' The First Congress codified this constitutional command in the Judiciary Act of 1789, making the writ available to any individual held by the United States who challenges the lawfulness of his detention. For the Framers of the Constitution, restricting Congress's power to suspend habeas corpus was never controversial: the only debate concerned what conditions, if any, could ever justify suspension of the Great Writ, and the Framers concluded that Congress could exercise its suspension power only under the most exceptional circumstances. The constitutional guarantee of habeas corpus stands apart and perpetually independent from the other guarantees of the Bill of Rights enacted two years later in 1791.

Under the influence, if not the command of the Suspension Clause, Congress has always felt itself obligated to provide for the writ in the most ample manner. Since the Nation's founding, the writ has been suspended on only four occasions: during the middle of the Civil War in the United States; during an armed rebellion in several southern States after the Civil War; during an armed rebellion in the Philippines in the early 1990s; and in Hawaii immediately after the attack on Pearl Harbor. Each suspension was not only a response to an ongoing, present emergency, but was limited in duration to the active rebellion or invasion that necessitated it.

II. HABEAS CORPUS EXTENDS TO ANY TERRITORY WITHIN THE GOVERNMENT'S EXCLUSIVE JURISDICTION AND CONTROL AND GUARANTEES A SEARCHING INQUIRY INTO THE FACTUAL AND LEGAL BASIS FOR A PRISONER'S DETENTION

As the Supreme Court has recognized, the writ of habeas corpus has an '''extraordinary territorial ambit.''' Habeas has always reached any territory over which the government exercised sufficient power and control to compel obedience to the writ's command. As Lord Mansfield wrote in 1759, ''even if a territory was 'no part of the realm [of England],' there was 'no doubt' as to the court's power to issue writs of habeas corpus if the territory was 'under the subjection of the Crown.''' At common law, therefore, habeas was available not only in territories beyond the borders of England, such as the mainland American colonies and West Indies, but also in territory over which England exercised exclusive control and jurisdiction but lacked sovereignty.

The right to habeas corpus has always extended to aliens as well as citizens. The writ has been available in time of peace as well as in time of war. Even alleged enemy aliens have had access to habeas to demonstrate their innocence, including by submitting evidence to a court. Indeed, in one case Chief Justice Marshall, on circuit, required an enemy alien to be produced in court and ordered his release. As the Supreme Court observed in Rasul v. Bush, detainees at Guantánamo have the right to habeas review because they are imprisoned in territory over which the United States has complete jurisdiction and control and because, unlike the World War II-era prisoners in Johnson v. Eisentrager, they have never been convicted of any crime and maintain their innocence.

Common law courts did not simply accept the government's factual response to a prisoner's habeas petition; instead, they routinely probed that response and examined additional evidence submitted by both sides to ensure the factual and legal sufficiency of a person's confinement. The writ's guarantee of a searching judicial inquiry crystallized in response to the Crown's efforts to detain individuals indefinitely without due process. In 1592, English judges protested that when they ordered the release of individuals unlawfully imprisoned by the Crown, executive officials transported them to ''secret [prisons]'' to place them beyond judicial review. As a result, the judges issued a resolution affirming their power to release prisoners if a response to the writ was not made.

The Crown, nevertheless, continued to avoid a judicial examination into a prisoner's detention by providing a general response (or return) that did not specify the cause of commitment. This issue came to a head in the seminal Darnel's Case. There, the Attorney General asserted that it was the king's prerogative to detain suspected enemies of State by his ''special command,'' without a judicial inquiry into the factual and legal basis for their detention. He emphasized the Crown's overriding interest in national security and insisted that judges defer to the king's judgment.

When the court upheld the Crown by finding its response sufficient, it sparked a constitutional crisis that led to the establishment of habeas corpus as the pre-eminent safeguard of common law due process and personal liberty. This was entrenched through the enactment of the Petition of Right or 1628, the Habeas Corpus Act of 1641, and the Habeas Corpus Act of 1679. By the late 1600s habeas corpus had become—and would remain—''the great and efficacious writ, in all manner of illegal confinement'' and the most ''effective remedy for executive detention.''

At common law, courts consistently engaged in searching review on habeas corpus to probe the factual and legal basis for a prisoners commitment, including by conducting hearings and taking evidence. In the United States, courts have exercised the same searching review of executive detention. Indeed, in one its first habeas cases, the Supreme Court affirmed the writ's historic function at common law; to determine whether there was an adequate factual and legal basis for the commitment,'' fully examining and considering the evidence and finding it insufficient to justify the prisoners' detention on allegations of treason.

Habeas also has always guaranteed review of the lawfulness of a newfangled tribunal established to try individuals before that trial takes place. This review has been exercised in time of war and in time of peace, and over all categories of alleged offenders. To deny that review would jeopardize a longstanding protection of habeas.

By contrast, habeas review has always been more limited in post-conviction cases—which today make up the bread and butter of a federal court's habeas docket. But that is precisely because the prisoner had already been convicted at a trial that provided fundamental due process, including the opportunity to see the government's evidence and to confront and cross-examine its witnesses, a right that Justice Scalia has said is ''founded on natural justice,'' Absent that process, a federal judge with jurisdiction over a habeas corpus petition has the power to examine the factual and legal basis for the prisoner's detention in the first instance, including the power to take evidence and conduct a hearing, where appropriate. At issue in the Guantanamo habeas cases is executive detention without any judicial process—precisely the situation that lies at the Great Writ's core and that mandates a searching examination of the government's allegations.

III. HABEAS CORPUS SERVES AS AN ESSENTIAL CHECK ON THE USE OF EVIDENCE GAINED BY TORTURE.

Habeas corpus also vindicates another core guarantee of the common law—the categorical prohibition on the use of evidence obtained by torture. During the sixteenth century, crown officials occasionally issued warrants authorizing the torture of prisoners. Pain was inflicted by a variety of ingenious devices, including thumbscrew, pincers, and the infamous rack. The use of torture declined after an investigation showed that a suspected traitor had been ''tortured upon the rack'' based upon false allegations. Shortly thereafter the king asked the common law judges whether another alleged traitor ''might not be racked'' to make him identify accomplices, and ''whether there were any law against it.'' The judges' answer was unanimous: the prisoner could not be tortured because ''no such punishment is known or allowed by our law.''

The Framers of the Constitution also abhorred torture, which they viewed as a mechanism of royal despotism. As the Supreme Court has repeatedly held, reliance on evidence obtained by torture is forbidden not merely because it is inherently unreliable but also because such ''interrogation techniques [are] offensive to a civilized system of justice.'' Without the availability of habeas corpus to provide a searching inquiry into the basis for a prisoner's detention, and to determine whether, in fact, evidence justifying that detention has been obtained by torture or other coercive methods, this fundamental common law protection would be jeopardized.

IV. THE PROPOSED LEGISLATION WOULD VIOLATE THE SUSPENSION CLAUSE

The proposed legislation would markedly depart from historical precedent and the Constitution's command that the writ be made available. This legislation, moreover, would sweep under the jurisdictional bar only non-citizens, raising serious questions under the Constitution's guarantee of equal protection as well.

The Committee may ask whether review by the District of Columbia Circuit established under the Detainee Treatment Act of 2005 (''DTA'') obviates any problem under the Constitution. It does not. Such review falls far short of the minimum review guaranteed under the Suspension Clause because it would deny prisoners any meaningful inquiry into the factual and legal basis for their detention and would sanction the use of evidence secured by torture and other coercion. Since others have explained the flaws of this review scheme in greater detail, I describe them below only briefly.

The Guantánamo detainees are all held pursuant to a finding by the Combatant Status Review Tribunal (''CSRT'') that they are ''enemy combatants.'' The CSRT was established by the President only nine days after the Supreme Court's ruling in Rasul that Guantánamo detainees have the right to challenge their executive detention in federal district court by habeas corpus. The order creating the CSRT pre-judged the detainees, declaring that they had already been

found to be enemy combatants based on multiple levels of internal review. Rather than affording the detainees a meaningful opportunity to prove their innocence, the CSRT denied them fundamental rights, including the right to counsel; the right to see the evidence against them; and the right to a neutral decisionmaker. Moreover, as the government itself acknowledges, the CSRT permits the use of evidence gained by torture. In short, as District Judge Joyce Hens Green found, the CSRT denies the core protections of elementary due process that habeas provides: a searching factual inquiry to determine whether a prisoner's detention is unlawful1, including whether it is based on evidence secured by torture.

Review of CSRT determinations under the DTA would not provide detainees with any opportunity to challenge the factual and legal basis for their detention. The DTA, on its face, limits review to whether the CSRT followed its own procedures. No detainee, as the government argues, can ever present evidence to a federal court even if that evidence shows he is innocent or that he was tortured. In short, DTA review of a CSRT finding would deny prisoners precisely the meaningful factual inquiry provided by habeas corpus and secured under the Suspension Clause.

V. CONCLUSION

Habeas corpus has aptly been described as ''the water of life to revive from the death of imprisonment.'' For centuries, the Great Writ has prevented the Executive from imprisoning individuals based upon mere suspicion and without a meaningful examination of its allegations. Habeas corpus demands that individuals have a fair opportunity to demonstrate their innocence before a neutral decisionmaker. Eliminating habeas at Guantanamo would flout this long tradition and would gut the core protections guaranteed under the Suspension Clause.

Thank you for the opportunity to provide this statement. My colleagues and I are happy to provide the Committee with any further information.

JONATHAN HAFETZ,
New York, NY, September 25, 2006

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, let me just point out what the people on the other side, if they have their way, are going to have as a result.

I just want to quote one of the coordinating counsels for the detainees, a gentleman named Michael Ratner, who boasted about what they are planning on doing in public. ''The litigation is brutal for the United States. It is huge. We have over 100 lawyers now from big and small firms working to represent the detainees. Every time an attorney goes down there, it makes it much harder for the U.S. military to do what they are doing. You can't run an interrogation with attorneys. What they are going to do now is that we are getting court orders to get more lawyers down there.''

Now, to put some order in this and to defeat what Mr. Ratner said, the legislation has got to pass.

Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN).

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, there has been some discussion by some on the other side to suggest that somehow this bill that we bring before us is unconstitutional, that it grants powers to the President that are somehow unconstitutional.

Let me just read from the concurring opinion of Justice Breyer in the Hamdan case when he basically said that their decision rested upon a single ground, that Congress had not issued the executive a blank check, that the President had to go back to us to get authority for this. Then they go ahead and say nothing prevents the President from returning to Congress to seek the authority he believes necessary.

The President believes this authority is necessary. We have worked with him in both the House and the Senate, two different committees on the House side, to try and give him the authority he believes necessary, in the words of Justice Breyer.

We need to be clear on some things concerning the language of section 7 of this bill. This action is necessary because, in Rasul, the United States Supreme Court interpreted the Federal habeas corpus statutory scheme as allowing those detained in Guantanamo Federal petitions for relief in the Federal courts. The decision was, to say at the least, a major departure from historical precedent. However, this is important. Since the decision was based solely on an interpretation of a statute, 28 U.S.C. 2241, it was easily correctable by congressional action.

That is exactly what we did with the Senate with the enactment last year of the Detainee Treatment Act. This statute replaced statutory habeas review with a process of administrative review in which it ultimately would be subject to review by the United States Circuit Court of Appeals for the District of Columbia Circuit.

□ 1515

So we are not changing the scheme, the statutory scheme of habeas corpus. This Congress already did it a year ago. What we are dealing with is the Hamdan case, another case of statutory interpretation in which the court failed to apply the Detainee Treatment Act to cases which were then pending as of the date of the enactment. Thus, we are here once again to clarify what we have already determined to be the law. In short, section 7 of our bill informs the court that this time we really mean it.

For us to do anything other than to affirm the Detainee Treatment Act would indeed be a dramatic departure from what has been deeply rooted in our Nation's legal tradition. Contrary to what has been said on the other side, the United States Supreme Court recognized the 1950 case of Johnson v. Eisenstrager that there is, and this is the Supreme Court speaking, ''no instance where a court in this or any other country where the writ is known issued it on behalf of an alien enemy.''

So we are not changing the law, we are not being inconsistent with the court, we are not being unconstitutional. What we are doing is precisely in the mainstream of what the Court has said.

Furthermore, this raises an additional question which must be clarified. The debate today relates to the interpretation of a statute and has absolutely nothing to do with what is referred to as the other writ. The other side keeps talking about this has been in our existence for hundreds of years. They speak of it as being part of the Constitution. Folks, that is the great writ, capital G, capital W. This is the statutory writ. Two different things. Two different things. We have to understand that. In both the Rasul and Hamdan, the question relating to the Detainee Treatment Act was one of statutory interpretation. The Supreme Court did not refer to the great writ; they referred to the statutes. The statutory habeas framework found in title 28 is a creature of Congress. In fact, in Ex Parte McCardle, the United States Supreme Court upheld congressional limitations on the scope of judicial review concerning the habeas statute.

What Congress creates, it can also limit. Even professor Erwin Chemerinsky, with whom I seldom agree, points out in his treatise on Federal Jurisdiction that, following the Civil War, congressional statutes rather than the constitutional provision are the source of rights relating to habeas corpus.

At the same time, as has been pointed out but needs to be pointed out again, this bill goes to great lengths to ensure detainees will receive full and fair consideration of their claims. The bill allows the respected article 3 court, the U.S. Court of Appeals for the D.C. Circuit, to review two key government decisions: one, a combatant status review tribunal's determination that a detainee is an enemy combatant; and, two, any final decisions by the military commissions authorized by this bill. This is ample protection when compared with the requirement of a review of status by a competent tribunal under article 5 of the Geneva Conventions.

In fact, this legislation before us would expand the eligibility of judicial review over that provided in current law. It would expand it, not contract it, not remain the same. It would actually expand it. I urge my colleagues to vote for this bill.

Mr. CONYERS. Mr. Speaker, before yielding to the gentlewoman from California, I would just like to respond to the comments that I have heard.

Never before has a President of the United States had the exclusive power to interpret the Geneva Conventions and publish what he has interpreted in the RECORD. And never before has a President had the power to eliminate judicial review of executive acts as significant as detention and domestic surveillance. And that can't be squared with the principles of transparency and the rule of law.

I would refer all of my colleagues to 62 professors of law, not lawyers, professors of law, who have explained why section 83 and section 6 are very problematic and are going to lead us right back into the court, because for 5 long years after the 9/11 tragedy, not a single detainee has been brought to justice because this administration insists on unilaterally pursuing secret, unconstitutional strategies that cannot pass judicial muster.

I yield 2 minutes to the gentlewoman from California (Ms. ZOE LOFGREN), member of the Judiciary Committee.

Ms. ZOE LOFGREN of California. Mr. Speaker, it was clear from the beginning that the executive branch lacked the authority to create courts without the Congress passing laws to provide for them, so it is important and proper that Congress create courts so that terrorist suspects can be swiftly tried, found guilty, and be punished. Unfortunately, this bill will not accomplish that.

Others have spoken well about the deficiencies in the definition of who may be incarcerated without charge forever, but I want to particularly object to the provisions suspending habeas corpus.

America is a proud free Nation because we are a Nation of laws, not men. Key to the rule of law is the brilliant system of checks and balances created by the Founding Fathers. This bill dumps the checks and balances by asserting that the courts cannot review the actions of the executive branch.

While poorly crafted rules are included in the bill, rules without remedies are not real rules. Not only is it unwise, it is mostly unconstitutional. And instead of allowing for swift prosecution and punishment, enactment of this bill into law will lead to years of further legal wrangling.

We all took an oath to defend and uphold the Constitution of the United States, and here is what article I, section 9 says: ''the privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it.''

Congress may not suspend the great writ of habeas corpus and limit the checks and balances whenever it wants to. Congress may do so only in cases of rebellion and invasion, neither of which is present today. Nine distinguished retired justices have written to bring this to our attention.

I include their letter for the RECORD.

TO MEMBERS OF CONGRESS: The undersigned retired federal judges write to express our deep concern about the lawfulness of Section 6 of the proposed Military Commissions Act of 2006 (''MCA''). The MCA threatens to strip the federal courts of jurisdiction to test the lawfulness of Executive detention at the Guantánamo Bay Naval Station and elsewhere outside the United States. Section 6 applies ''to all cases, without exception, pending on or after the date of the enactment of [the MCA] which relate to any aspect of the detention, treatment, or trial of an alien detained outside of the United States . . . since September 11, 2001.''

We applaud Congress for taking action establishing procedures to try individuals for war crimes and, in particular, Senator WARNER, Senator GRAHAM, and others for ensuring that those procedures prohibit the use of secret evidence and evidence gained by coercion. Revoking habeas corpus, however, creates the perverse incentive of allowing individuals to be detained indefinitely on that very basis by stripping the federal courts of their historic inquiry into the lawfulness of a prisoner's confinement.

More than two years ago, the United States Supreme Court ruled in Rasul v. Bush, 542 U.S. 466 (2004), that detainees at Guantánamo have the right to challenge their detention in federal court by habeas corpus. Last December, Congress passed the Detainee Treatment Act, eliminating jurisdiction over future habeas petitions filed by prisoners at Guantánamo, but expressly preserving existing jurisdiction over pending cases. In June, the Supreme Court affirmed in Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006), that the federal courts have the power to hear those pending cases. These cases should be heard by the federal courts for the reasons that follow.

The habeas petitions ask whether there is a sufficient factual and legal basis for a prisoner's detention. This inquiry is at once simple and momentous. Simple because it is an easy matter for judges to make this determination—federal judges have been doing this every day, in every courtroom in the country, since this Nation's founding. Momentous because it safeguards the most hallowed judicial role in our constitutional democracy—ensuring that no man is imprisoned unlawfully. Without habeas, federal courts will lose the power to conduct this inquiry.

We are told this legislation is important to the ineffable demands of national security, and that permitting the courts to play their traditional role will somehow undermine the military's effort in fighting terrorism. But this concern is simply misplaced. For decades, federal courts have successfully managed both civil and criminal cases involving classified and top secret information. Invariably, those cases were resolved fairly and expeditiously, without compromising the interests of this country. The habeas statute and rules provide federal judges ample tools for controlling and safeguarding the flow of information in court, and we are confident that Guantánamo detainee cases can be handled under existing procedures.

Furthermore, depriving the courts of habeas jurisdiction will jeopardize the Judiciary's ability to ensure that Executive detentions are not grounded on torture or other abuse. Senator John McCain and others have rightly insisted that the proposed military commissions established to try terror suspects of war crimes must not be permitted to rely on evidence secured by unlawful coercion. But stripping district courts of habeas jurisdiction would undermine this goal by permitting the Executive to detain without trial based on the same coerced evidence.

Finally, eliminating habeas jurisdiction would raise serious concerns under the Suspension Clause of the Constitution. The writ has been suspended only four times in our Nation's history, and never under circumstances like the present. Congress cannot suspend the writ at will, even during wartime, but only in ''Cases of Rebellion or Invasion [when] the public safety may require it.'' U.S. Const. art. I, §9, cl. 2. Congress would thus be skating on thin constitutional ice in depriving the federal courts of their power to hear the cases of Guantánamo detainees. At a minimum, Section 6 would guarantee that these cass would be mired in protracted litigation for years to come. If one goal of the provision is to bring these cases to a speedy conclusion, we can assure you from our considerable experience that eliminating habeas would be counterproductive.

For two hundred years, the federal judiciary has maintained Chief Justice Marshall's solemn admonition that ours is a government of laws, and not of men. The proposed legislation imperils this proud history by abandoning the Great Writ to the siren call of military necessity. We urge you to remove the provision stripping habeas jurisdiction from the proposed Military Commissions Act of 2006 and to reject any legislation that deprives the federal courts of habeas jurisdiction over pending Guantánamo detainee cases.

Respectfully,

Judge John J. Gibbons, U.S. Court of Appeals for the Third Circuit (1969–1987), Chief Judge of the U.S. Court of Appeals for the Third Circuit (1987–1990).

Judge Shirley M. Hufstedler, U.S. Court of Appeals for the Ninth Circuit (1968–1979).

Judge Nathaniel R. Jones, U.S. Court of Appeals for the Sixth Circuit (1979–2002).

Judge Timothy K. Lewis, U.S. District Court, Western District of Pennsylvania (1991–1992), U.S. Court of Appeals for the Third Circuit (1992–1999).

Judge William A. Norris, U.S. Court of Appeals for the Ninth Circuit (1980–1997).

Judge George C. Pratt, U.S. District Court, Eastern District of New York (1976–1982), U.S. Court of Appeals for the Second Circuit (1982–1995).

Judge H. Lee Sarokin, U.S. District Court for the District of New Jersey (1979–1994), U.S. Court of Appeals for the Third Circuit (1994–1996).

William S. Sessions, U.S. District Court, Western District of Texas (1974–1980), Chief Judge of the U.S. District Court, Western District of Texas (1980–1987).

Judge Patricia M. Wald, U.S. Court of Appeals for District of Columbia Circuit (1979–1999), Chief Judge of the U.S. Court of Appea]s for District of Columbia Circuit (1986–1991).

We should be pulling together as a country to track down these terrorists and bring them to justice instead of facing this unconstitutional and divisive measure that was brought before us as part of a political agenda with an eye on the midterm elections, instead of a bill that would unify us as part of an American agenda with an eye to the continued greatness and security of our country.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I am afraid that my friends on the other side of the aisle aren't listening. There are two types of habeas corpus: one is the constitutional great writ. We are not talking about that here. We can't suspend that. That is in the Constitution, and we can't suspend that by law.

The other is statutory habeas corpus, which has been redefined time and time again by the Congress. That is what we are talking about here, and we have the constitutional power to redefine it.

I yield 4 minutes to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Speaker, I thank the chairman for 6 powerful years leading the Judiciary Committee.

The Supreme Court created a mess and hurt the Global War on Terror with its unnecessary and unconstitutional opinion in the Hamdan case. The Supreme Court had no authority to hear the Hamdan case. The Detainee Treatment Act gave the Court of Appeals for the District of Columbia Circuit exclusive jurisdiction over the validity of any final decision of an enemy combatant status review tribunal. The Supreme Court in Hamdan v. Rumsfeld ignored the provision of the DTA and a longstanding line of its own precedents which stood for the principle that Congress can limit jurisdiction in pending as well as future cases.

The DTA provided that: no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay.

The plain language of this statute clearly applies to cases pending at the date of enactment. The Supreme Court should have reached this conclusion, relying on their own precedent, but they failed to do so. In response, this legislation, H.R. 6166, has been carefully drafted so that the Court can fully understand that it applies to both pending and later filed cases. It was not necessary for Congress to be so specific, but in order that the Court will not make the same mistake twice, Congress has carefully chosen the language ''pending on or filed after the date of enactment'' in section 5 of this legislation.

In his dissent in Hamdan v. Rumsfeld, Justice Scalia reminded the majority that they failed to cite a single case where such a jurisdiction limitation provision was denied immediate effect in pending cases. I agree with his opinion that the cases granting such immediate effect are legion.

The Court's opinion has had yet another fatal flaw. In order to apply the Geneva Conventions, the Court decided on its own that the Global War on Terror was not of international character. I cannot imagine that even the majority on the Court believed their own opinion. The Global War on Terror can in no way be characterized as a mere civil war. It is a war between Western Civilization and militant Islamic fascists from all around the world. It does not take place only in legislation.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON). The Chair notes a disturbance in the gallery in violation of the rules of the House and directs the Sergeant at Arms to restore order.

The Chair recognizes the gentleman from Iowa.

Mr. KING of Iowa. It is a war between Western Civilization and militant Islamic fascists from all around the Muslim world. It does not take place only in one nation. Global is international.

The Court decided the conclusion they desired and then shoehorned their decision to fit a preferred result, substituting their judgment for the constitutional judgment of Congress and of our Commander in Chief. And that was during a time of war. By doing this, the Supreme Court's majority in Hamdan further undermined our Constitution which relies on the separation of powers.

The unconstitutional intervention by the Supreme Court in Hamdan could have been handled by Congress and the President in another way. Under article III, section 2, Congress could have reasserted our clearly defined authority to limit the jurisdiction of the Supreme Court and to grant jurisdiction to any inferior court of our choosing, as expressed in the very plain language of the Detainee Treatment Act.

If we had not been a Nation at war, a Nation urgently concerned about protecting our citizens from attack, Congress may well have advised the Court of their unconstitutional intervention and the Court's obstruction of the ability of the Commander in Chief to protect America from our enemies and ignored the Court's decision. The necessities of war won out over the separation of powers, and for the first time the Supreme Court has engaged in setting parameters in war fighting beyond our national borders.

Because of our national security, Congress and the President jumped through a series of hoops set by the Court, rather than carry on a protracted power struggle over the Constitution with the Court. But, Mr. Speaker, Congress concedes no power to the Court not defined in the Constitution or specified by statute.

Mr. CONYERS. Mr. Speaker, I now yield 2½ minutes to the gentleman from Virginia, a member of the Judiciary Committee, Mr. SCOTT.

Mr. SCOTT of Virginia. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, while I support the efforts to establish a system of military commissions as required by the Supreme Court's decision in the Hamdan case, I am disappointed that a bill of this magnitude is being considered under a closed rule and without assurances that traditional notions of due process, judicial independence, and full compliance with the Geneva Conventions will be in the bill.

One of the most egregious problems of this bill is the creation of a presumption in favor of admitting coerced evidence, along with the continued insistence that a person can be fairly convicted using secret evidence. Another problem with the bill is it strips jurisdictions of civil courts from hearing cases involving plaintiffs who seek redress for violations of the torture provisions of the Geneva Conventions. This bill actually retroactively applies new standards. Now, whether this review of the habeas corpus as statutory or constitutional, it is a good idea; and it is the only way anybody can get a hearing on whether or not they have been tortured by the United States.

Moreover, the only automatic right of appeal would be to an entirely new appellate court of military commission review, with all of the judges appointed by and in the chain of command of the Secretary of Defense. In addition, the Secretary of Defense would be granted wide latitude to depart without judicial scrutiny from the rules and detainee protections the legislation purports to create. It would allow him to do so whenever he deems it practicable or consistent with military or intelligence activities. In an extraordinary move, the bill would retroactively limit the scope of U.S. obligations under common article 3 more than half a century after the United States ratified the Geneva Conventions, and it immunizes all previous violations of the War Crimes Act and other laws against torture and inhumane treatment of detainees in our custody.

This retroactive provision grants immunity to government officials and civilians, such as CIA operatives, interrogators, or those who may have authorized, ordered, or even participated in illegal acts of torture or abuse.

□ 1530

Mr. Speaker, this is a complex bill, and it is before us on a take-it-or-leave-it basis, with no amendments. We should take the time to consider all of these new provisions deliberately to ensure that the legislation does not undermine the United States' commitment to the rule of law, the success of its fight against terrorism, and, most of all, the safety of our United States' servicemen and women.

I urge my colleagues to defeat the passage of H.R. 6166.

Mr. CONYERS. Mr. Speaker, I am proud to yield to the gentleman from California (Mr. SCHIFF), who has worked diligently on this issue, 2 minutes.

Mr. SCHIFF. Mr. Speaker, I want to try to resolve an issue which has been debated here this afternoon about what the effect of this legislation is on American citizens.

Plainly, the legislation defines ''unlawful enemy combatant'' as any person who materially supports someone or is believed to support someone engaged in hostilities against the United States. That includes American citizens. And yet the majority says, but, under the legislation, only aliens can be brought up before the military tribunal. That is also correct. So how do you resolve this apparent difference?

The reality is there is no difference. Because what the bill contemplates is a two-part system of justice: one for those who are brought before tribunals, and one for those who may never be brought before tribunals but who are, nonetheless, detained as unlawful enemy combatants. Because this bill contemplates that people will be detained, whether it is in a secret CIA prison or elsewhere, and perhaps never brought before a tribunal; and there is nothing in this legislation that prohibits the detention of an American indefinitely, never brought before a tribunal.

Now the majority says, we don't do away with the habeas rights of Americans, writ large or writ small. If that is the case, why don't we say that in this legislation, that an American detained as an unlawful enemy combatant has the right of habeas corpus? The reason we don't say it in this bill is because the administration has consistently taken the position that those detained, including Americans, as unlawful enemy combatants do not have the right of habeas corpus to seek redress in courts and have fought that already in court.

So where does that leave us in the war of ideas? We have an enemy that has nothing to offer in the war of ideas. We have everything to offer. But when we undermine the idea of what it is to be an American, the idea of this country, by saying that we will water down the rule of law, that we will have a separate system of justice or no system of justice, for those who are declared unlawful combatants will have no right to court redress, that is a setback in the war of ideas.

Mr. CONYERS. Mr. Speaker, I am pleased to yield to the gentleman from New York (Mr. NADLER), a distinguished member of the Committee on the Judiciary, 2 minutes.

Mr. NADLER. Mr. Speaker, this is how a Nation loses its moral compass, its identity, its values and, ultimately, its freedom to fear.

It is ironic that the people who use the word ''freedom'' with reckless abandon, in everything from fries to a global vision, should come before the American people advocating the suspension of habeas corpus, secret star chamber tribunals, unlimited detention without review, and, yes, torture.

Yes, we must be vigilant to protect our safety. But we must not allow the honor and values of our Nation to be permanently stained by this detestable legislation. It is beneath us. It is not what we stand for.

There are many infamies in this bill, as others have pointed out. I will concentrate on just one.

This bill would allow the President, or any future President, to grab someone off a street corner in the United States, or anywhere else in the world, and hold them forever without any court review, without having to charge them, without ever having to justify their imprisonment to anyone.

This bill is flatly unconstitutional, for it repeals the great writ, habeas corpus; not, Mr. SENSENBRENNER, a statutory writ, the statutory great writ.

Turn to page 93, ''No court, justice, or judge shall have jurisdiction to hear or consider an application for writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.''

''Awaiting such determination''? That says it all. Nowhere in this new law is there any time limit for making this determination. In fact, it could be never.

We are told that these procedures are only for those the President has called ''the worst of the worst.'' How do we know they are the worst of the worst? Because the President says so. And the President and Federal bureaucrats, as we all know, never make mistakes.

Some people held as unlawful enemy combatants may be put before a military tribunal, but they need not be. They can be held forever without a hearing, without a military tribunal.

So let's review. The government can snatch anyone who is not a U.S. citizens anywhere in the world, including on the streets of this city, whether or not they are actually doing anything, and detain them in jail forever, out of reach of our Constitution, our laws or our courts.

We rebelled against King George, III, for far less infringements on liberty than this 200 years ago, but we seem to have forgotten. This bill makes the President a dictator for when someone can order people jailed forever without being subject to any judicial review. That is dictatorial power. The President wants to exist in a law-free zone. He does not want to be bound by the law of war or our treaty obligations. He does not want to answer to the Constitution, to the Congress or to the courts.

Mr. Speaker, rarely in the life of a Nation is the question so stark: Are we going to rush this complete repudiation of what we stand for through the Congress? I hope we are better than that.

Mr. CONYERS. Mr. Speaker, I yield to the gentleman from Maryland (Mr. VAN HOLLEN), an excellent member of the Committee on the Judiciary, 2 minutes.

Mr. VAN HOLLEN. Mr. Speaker, we now know what the administration wanted to hide from the American people: that the consensus view of all 16 intelligence agencies is that the Iraq war has made the overall terrorism problem worse, not better; that it has fueled the jihadist movement and made us less safe, and not more safe.

The Bush administration was wrong about weapons of mass destruction. They were wrong about alleged collaboration between al Qaeda and Saddam Hussein, and they are wrong about this bill.

This bill will weaken, not strengthen, our national security. They are wrong because this bill will place our troops in Iraq and elsewhere around the world in greater danger of torture, both today and in future conflicts. They are wrong because this bill will further erode our already tarnished credibility and moral standing around the world.

Let us always remember that our strength flows not only from the force of our military but from the power of our example. And they are wrong because we have learned the hard way that information extracted through torture and extreme coercion can be unreliable.

Remember when Secretary Powell at the United Nations told the world that Saddam Hussein had mobile bioweapons labs? That information came from a person that we turned over to Egypt who was tortured, and the CIA has since acknowledged that information was false, and yet that was important information that was used as part of our argument to go to war in Iraq.

This is a defining moment for our Congress and our country. It will define who we are as a people and what we stand for, and yet it gives the President too much of a blank check to unilaterally decide that answer for all of us. It gives the President the authority to unilaterally define what constitutes specific acts of torture. It gives the President the authority to unilaterally decide who can be detained as an enemy combatant, including American citizens, and, therefore, send them into a legal limbo.

Mr. Speaker, when we take very important decisions in the name of the American people, we better get it right. This bill gets it wrong.

Mr. CONYERS. Mr. Speaker, I include for the RECORD a letter dated September 27 from the American Civil Liberties Union and 41 other organizations.

SEPTEMBER 27, 2006.

DEAR REPRESENTATIVE: We are writing to strongly encourage you to reject the ''compromise'' Military Commissions Act of 2006 and to vote no on final passage of the bill. More than anything else, the bill compromises America's commitment to fairness and the rule of law.

For the last five years the United States has repeatedly operated in a manner that betrays our Nation's commitment to law. The U.S. has held prisoners in secret prisons without any due process or even access to the Red Cross and has placed other prisoners in Guantanamo Bay in a transparent effort to avoid judicial oversight and the application of U.S. treaty obligations. The Federal government has operated under legal theories which dozens of former senior officers have warned endanger U.S. personnel in the field and has produced legal interpretations of the meaning of ''torture'' and ''cruel, inhuman and degrading'' treatment which had to be abandoned when revealed to the public. Interrogation practices were approved by the Department of Defense which former Bush Administration appointee and General Counsel of the Navy Alberto Mora described as ''clearly abusive, and . . . clearly contrary to everything we were ever taught about American values.'' According to media reports the CIA has used a variety of interrogation techniques which the United States has previously prosecuted as war crimes and routinely denounces as torture when they are used by other governments.

Instead of finally coming to grips with this situation and creating a framework for detaining, interrogating and prosecuting alleged terrorists which comports with the best traditions of American justice, the proposed legislation will mostly perpetuate the current problems. Worse, it would seek to eliminate any accountability for violations of the law in the past and prevent future judicial oversight. While we appreciate the efforts various members of Congress have made to address these problems, the ''compromise'' falls far short of an acceptable outcome.

The serious problems with this legislation are many and this letter will not attempt to catalogue them all. Indeed, because the legislation has only just been made available, many of the serious flaws in this long, complex bill are only now coming to light. For instance, the bill contains a new, very expansive definition of enemy combatant. This definition violates traditional understandings of the laws of war and runs directly counter to President Bush's pledge to develop a common understanding of such issues with U.S. allies. Because the proposed definition of combatant is so broad, the language may also have potential consequences for U.S. civilians. For instance, it may mean that adversaries of the United States will use the definition to define civilian employees and contractors providing support to U.S. combat forces, such as providing food, to be ''combatants'' and therefore legitimate subjects for attack. Yet, there has been no opportunity to consider and debate the implications of this definition, or other parts of the bill such as the definitions of rape and sexual abuse.

We strongly oppose the provisions in the bill that strip individuals who are detained by the United States of the ability to challenge the factual and legal basis of their detention. Habeas corpus is necessary to avoid wrongful deprivations of liberty and to ensure that executive detentions are not grounded in torture or other abuse.

We are deeply concerned that many provisions in the bill will cast serious doubt on the fairness of the military commission proceedings and undermine the credibility of the convictions as a result. For instance, we are deeply concerned about the provisions that permit the use of evidence obtained through coercion. Provisions in the bill which purport to permit a defendant to see all of the evidence against him also appear to contain serious flaws.

We believe that any good faith interpretation of the definitions of ''cruel, inhuman and degrading'' treatment in the bill would prohibit abusive interrogation techniques such as waterboarding, hypothermia, prolonged sleep deprivation, stress positions, assaults, threats and other similar techniques because they clearly cause serious mental and physical suffering. However, given the history of the last few years we also believe that the Congress must take additional steps to remove any chance that the provisions of the bill could be exploited to justify using these and similar techniques in the future.

Again, this letter is not an attempt to catalogue all of the flaws in the legislation. There is no reason why this legislation needs to be rushed to passage. In particular, there is no substantive reason why this legislation should be packaged together with legislation unrelated to military commissions or interrogation in an effort to rush the bill through the Congress. Trials of the alleged ''high value'' detainees are reportedly years away from beginning. We urge the Congress to take more time to consider the implications of this legislation for the safety of American personnel, for U.S. efforts to build strong alliances in the effort to defeat terrorists and for the traditional U.S. commitment to the rule of law. Unless these serious problems are corrected, we urge you to vote no.

Sincerely,

Physicians for Human Rights.
Center for National Security Studies.
Amnesty International USA.
Human Rights Watch.
Human Rights First.
American Civil Liberties Union.
Open Society Policy Center.
Center for American Progress Action Fund.
The Episcopal Church.
Jewish Council for Public Affairs.
National Religious Campaign Against Torture.
Presbyterian Church (USA), Washington Office.
Friends Committee on Nat'l Legislation.
Maine Council of Churches.
Pennsylvania Council of Churches.
Wisconsin Council of Churches.
Brennan Center for Justice at NYU Law School.
Center for Constitutional Rights.
Robert F. Kennedy Memorial Center for Human Rights.
The Bill of Rights Defense Committee.
Unitarian Universalist Service Committee.
Leadership Conference of Women Religious.
Center for Human Rights and Global Justice, NYU School of Law.
The Shalom Center.
Washington Region Religious Campaign Against Torture.
The Center for Justice and Accountability.
Center of Concern.
Justice, Peace & Integrity of Creation Missionary Oblates.
Rabbis for Human Rights—North America.
Humanist Chaplaincy at Harvard University.
No2Torture.
Maryland Christians for Justice and Peace.
American Library Association.
Churches Center for Theology and Public Policy.
Disciples Justice Action Network (Disciples of Christ).
Equal Partners in Faith.
Christians for Justice Action (United Church of Christ).
Reclaiming the Prophetic Voice.
Baptist Peace Fellowship of North America.
Pax Christi USA: National Catholic Peace Movement.
Fellowship of Reconciliation.
Maryknoll Office for Global Concerns.

Mr. Speaker, I turn now to the gentleman from Massachusetts (Mr. FRANK), a former member of the committee, 1 minute.

Mr. FRANK of Massachusetts. Mr. Speaker, I understand the lack of compassion for terrorists. I share much of it. But this is not about terrorists. This is about people accused of terrorism. And there may be human realms where infallibility is a valid concept, not in the arresting of people and certainly not when this is done in the fog of war.

Have we not had enough examples of error, of people like the recent case, to our embarrassment, of a man sent to Syria to be tortured by the United States wrongly; of Captain Yee; of Mr. Mayfield in Oregon?

Have we not had enough examples of error to understand that you need to give people accused of this terrible crime a way to prove that the accusations were not true? That is what is at risk here.

I believe that the law enforcement people of America and the Armed Forces of America are the good guys. But they are not the perfect guys. They are not people who don't make mistakes, particularly acting as they do under stress.

It is a terrible thing to contemplate that this bill will allow people to be locked up indefinitely with no chance to prove that they were locked up in error. We should not do it.

Mr. CONYERS. Mr. Speaker, I yield myself the balance of my time.

The last reason for the many that have been brought forward as to why this legislation is dangerous and unwise is that it endangers our troops because it has the effect of lowering the standards set forth in the Geneva Conventions. By allowing the President to unilaterally interpret the Geneva Conventions and then exempting his interpretations from any scrutiny, we are creating a massive loophole to this time-honored treaty and endangering our own troops.

As the head of Army intelligence, Lieutenant General Kimmons warned us, no good intelligence is going to come from abusive practices. I think history tells us that. And if you don't believe him, just ask Maher Arar, an innocent Canadian national, who was sent by our Nation, I am sorry to report, to Syria where he was tortured.

This legislation decimates separation of powers by retroactively cutting off habeas corpus. Let us not approve this legislation in the House of Representatives this evening.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 3 minutes, and I would like to make a couple of points.

First of all, this legislation has to be read in conjunction with the Detainee Treatment Act which was signed into law last year. That law provides for a procedure to review whether or not someone is properly detained as an enemy combatant. So the business of indefinite detention is a red herring.

Secondly, this legislation itself creates a number of new rights for detainees and people who are tried before military commissions. Let me enumerate them. There are 26 new rights:

A right to counsel provided by the government at trial and throughout appellate proceedings; an impartial judge; the presumption of innocence; standard of proof is beyond a reasonable doubt.

The right to be informed of the charges against the defendant as soon as practicable.

The right to service of charges sufficiently in advance of trial to prepare a defense.

The right to reasonable continuances.

The right to peremptorily challenge members of the commission. That is something nobody has in the United States against a Federal judge.

Witnesses must testify under oath and counsel, and members of the military commission must take an oath.

The right to enter a plea of not guilty.

The right to obtain witnesses and other evidence.

The right to exculpatory evidence as soon as practicable.

The right to be present in court, with the exception of certain classified evidence involving national security, preservation of safety or preventing disruption of proceedings.

The right to a public trial, except for national security or physical safety issues.

The right to have any finding or sentences announced as soon as determined.

The right against compulsory self-incrimination.

The right against double jeopardy.

The defense of lack of mental responsibility.

Voting by members of the military commission by secret written ballot.

Prohibition against unlawful command influence towards members of the commission, counsel, and military judgments.

Two-thirds vote of members is required for conviction, three-quarters is required for sentence to life or over 10 years, and unanimous verdict is required for the death penalty.

Verbatim authenticated record of trial.

Cruel and unusual punishment is prohibited.

Treatment and discipline during confinement the same as afforded to prisoners in U.S. domestic courts.

The right to review the full factual record by the convening authority, and the right to at least two appeals, including two in article 3 in Federal appellate court. That is one more appeal than the Constitution gives United States citizens.

□ 1545

So what's the beef? There are 26 more rights that are created in this legislation. Vote down the legislation, you vote down all of these new rights.

Mr. Speaker, at this time I yield the balance of my time to the gentleman from California (Mr. HUNTER) and ask unanimous consent that he be permitted to yield portions of that time as he sees fit.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. The gentleman from California has 3½ minutes remaining.

Mr. HUNTER. Mr. Speaker, I yield myself 2½ minutes.

Mr. Speaker, I want to thank all my colleagues on both sides of this debate.

This great Nation, this shining city on a hill, was attacked on 9/11. We undertook aggressive action against the terrorists who attacked us. We killed a lot of them. We found them in places where they never thought we would find them, in caves at 10,000-foot elevation mountain ranges, in deserts, in cities, and we captured some of them. And some of those who designed the attack against the United States and New York and Pennsylvania and Washington have been captured. And they are now in Guantanamo or going to Guantanamo. And the Supreme Court of the United States has charged this body with building a system with which to prosecute these terrorists, and we are responding with that system.

Now, I would say to those who say that this is not fair, that we haven't given them enough rights, I think we have given them plenty. We have enumerated those. The chairman of the Judiciary Committee went over many basic rights. But the world is going to see these trials. And as I watch these defendants, these people, including those who designed the attack on 9/11, being presumed innocent; being given lawyers by the United States; being set against a standard of proof beyond a reasonable doubt; being protected against self-incrimination; being given the right to exculpatory evidence; being given the right to two appeals, not one appeal, as the minority had in the initial markup coming out of the Armed Services Committee, the American people will have an opportunity to see whether or not they think that the alleged terrorists have been given enough rights. So let's do what the Supreme Court asked us to do.

We have put together an excellent product. It is agreed on. It will be introduced shortly in the U.S. Senate. For those who say they want to see the product of Mr. WARNER and Mr. MCCAIN and Mr. GRAHAM, they have had a great deal of input into this, and they will be introducing this piece of legislation in the other body. So let's get on with this. It is our duty to pass this bill, to construct this system, construct this court, and bring justice before the eyes of the widows and orphans of 9/11, our fellow citizens, and the world. Let's do it.

Mr. Speaker, I yield the balance of my time to the majority leader, Mr. BOEHNER.

Mr. BOEHNER. Mr. Speaker, let me thank my colleague for yielding.

We all know that in the years since 9/11 we have been focused on one vital goal, and that is stopping terrorist attacks before they happen.

I want to commend Chairman HUNTER and Chairman SENSENBRENNER for their work on this piece of legislation. I think we all know that to stop terrorist attacks before they happen, we need to be able to interrogate terrorist suspects, find out what they know, and put them on trial.

After 9/11, President Bush vowed to devote his Presidency to protecting the American people, and he vowed to use every tool at his disposal under the law to fight the terrorists and attack them before they attack us.

If we are serious about stopping terrorist attacks before they happen, the ability to extract information from terrorist suspects and put them on trial is essential.

President Bush put together a system to accomplish these goals after 9/11. We have captured some of the world's most dangerous terrorists. But now our efforts are on hold because of a Supreme Court decision in June and that without congressional authorization, the Federal Government lacks the authority to use military tribunals for these suspected terrorists.

In the wake of this Court decision, Congress has a choice. We can do nothing and allow the terrorists in U.S. custody to go free or to go into a trial meant for American civilians; or we can authorize tribunals for terrorists, find out what they know, and bring them to justice.

This bill will allow us to continue to gather important intelligence information from foreign terrorists caught in battle or caught while plotting attacks on America. As President Bush has said, the information we have learned from captured terrorists ''has helped us to take potential mass murderers off the streets before they were able to kill us.''

We know these interrogations have provided invaluable intelligence information that has thwarted terrorist attacks and has saved American lives. This bill allows Congress to draw the parameters for detaining and bringing to justice terrorists like Khalid Sheikh Mohammed, the driving force behind the terrorist attacks of September 11. The bill will provide clear guidance for Americans who are interrogating the terrorist suspects on behalf of our country. It will preserve this crucial program while meeting our commitments and obligations under the Geneva Conventions. It will also help us meet a 9/11 Commission recommendation that America develop a common coalition approach toward the detention and humane treatment of captured terrorists.

We recognize military tribunals play a critical role in helping us fight the global war on terror, and we will give these tools to our President as he fights to help keep all of us safe.

But the real question today is, what will my colleagues, my Democrat colleagues, do when it comes to this vote today?

Virtually every time the President asks Congress for the tools he needs to stop terrorist attacks, a majority of my Democrat friends have said ''no.'' Democrats by and large voted ''no'' on establishing the Department of Homeland Security in July of 2002.

A majority of Democrats voted ''no'' on additional funds to respond to the attacks of September 11 and bolster homeland security efforts in May of 2002. The majority of the Democrats voted ''yes'' to deny funding for law enforcement to carry out provisions of the PATRIOT Act in July of 2004. And a majority of Democrats voted ''no'' on the REAL ID Act, which makes it difficult for terrorists to travel freely throughout the United States, in February of 2005. And Democrats voted ''no'' on reauthorizing the PATRIOT Act, and gloated about killing it, in December of 2005.

And more recently, many Democrats voted against a resolution condemning the illegal leaks of classified intelligence information that could impair our fight against terrorism. Democrats voted ''no'' in the Judiciary Committee against allowing the terrorist surveillance program to go forward. And the

Democrats in the Judiciary Committee voted ''no'' on this bill as well.

So the question is, will my Democrat friends work with Republicans to preserve this crucial program or oppose giving the President the tools that he needs to protect the American people? Will my Democrat friends work with Republicans to give the President the tools he needs to continue to stop terrorist attacks before they happen, or will they vote to force him to fight the terrorists with one arm tied behind his back?

Now, I do not, and will never, question the integrity or the patriotism of my colleagues on the other side of the aisle. This is about giving our President the tools he needs to wage war against terrorists who are trying to kill us. And I hope that we will stand together this week and vote to give our President the tools that we need to fight and win in our war against terrorists all over the world.

Mr. BLUMENAUER. Mr. Speaker, I am disappointed and perplexed that the administration and the Republican leadership refuse to provide meaningful legislation dealing with suspected terrorists and instead attempt to repeat the mistakes of the past. H.R. 6166, the Military Commissions Act, does nothing for our security and attempts to add legitimacy to the current improper actions of the Bush administration.

By not adhering to the strictest standards when putting suspected terrorists on trial, we run the risk of punishing innocent people who could simply have been in the wrong place at the wrong time. It is now widely known that potentially hundreds of inmates in Guantanamo Bay may in fact have had nothing to do with terrorism, If we accept this legislation to be the new law of the land, we will be skirting our moral responsibility to be vigorous in our pursuit of terrorists while remaining just in our cause,

This administration has repeatedly shown that it will make the wrong judgments and has repeatedly crossed the line while never acknowledging its own mistakes. Rather than stepping back to address the flaws that resulted in the Supreme Court's ''Hamdan vs, Rumsfeld'' decision, the administration and the Republican Majority continue to charge forward with more of the same. Congress can and must do better.

Mr. SHAYS. Mr. Speaker, although I have some reservations, I support this legislation and appreciate it being brought up for consideration.

On June 29, 2006, the Supreme Court ruled 5–3 in the case of Hamdan v. Rumsfeld that the Bush administration lacked the authority to take the ''extraordinary measure'' of scheduling special military trials for inmates, in which defendants have fewer legal protections than in civilian U.S. courts. Supreme Court Justice John Paul Stevens recommended Congress authorize a trial system closely based on our military's court-martial process. I am pleased that is what we are doing today.

It is a testament to our system of government that the highest court has given us guidance in properly administering justice to these terrorism suspects. We should bring detainees to trial with protections similar to military courts. This will guarantee the trials are honest, fair and impartial and that justice is done.

I recognize there are certain areas in which the tribunal system we are authorizing must deviate from a traditional court-martial and in my judgment this bill handles those differences in a fair and just manner.

On September 19, 2006, along with several of my Republican colleagues, I wrote to Majority Leader BOEHNER urging him to bring a bill to the floor that ensures the United States remains fully committed to the Geneva Convention. In our judgment, the bill considered by the Senate Armed Services Committee was a good bill, and I am grateful the bill before the House was modified to closely reflect the provisions in the Senate.

The legislation could have be more explicit in stating the so-called enhanced or harsh techniques that have been implemented in the past by the CIA may not be used under any U.S. law or order. The bill provides the President with some latitude to define what techniques may be used in accordance with the prohibition against cruel, inhuman and degrading treatment.

When I read the language in this bill—and specifically the definitions of cruel, inhumane and degrading treatment—I believe any reasonable person would conclude that all of those techniques would still be criminal offenses under the War Crimes Act because they clearly cause ''serious mental and physical suffering.''

I am also concerned about the bill's definition of rape, and of sexual assault or abuse under a section delineating what crimes may be prosecuted before military tribunals if committed by an enemy combatant or if committed by an American against a detainee. The narrow definition in this bill leaves out other acts, as well as the notion that sex without consent is also rape, as defined by numerous state laws and federal law.

For these reasons, I am voting for the Democrat Motion to Recommit the bill to require a reauthorization of this legislation and also to request expedited judicial review.

Mr. LEVIN. Mr. Speaker, I regret that once again the Republican Leadership has chosen to stampede far-reaching legislation through the House without adequate debate or any opportunity for Members to offer amendments. It has been 5 years since the 9/11 attacks, and it is only now that Congress is taking up legislation to try and punish terrorist suspects. The 96-page bill before the House was negotiated in secret last weekend and only introduced less than 48 hours ago. After waiting 5 years, can't we take even 5 days to consider a bill of this magnitude?

This Nation's security requires that terrorists must be caught, convicted and punished, and we need a process to do this. It is not clear to me how the proponents of this bill can claim that they are being tough on terrorists when it is almost certain that this legislation will not withstand constitutional scrutiny by the Supreme Court. The bill before the House bars detainees from filing habeas corpus suits challenging their detention. Under the bill, a person can be labeled an unlawful enemy combatant and detained indefinitely with no judicial view. This will not pass constitutional muster. Habeas corpus isn't about giving special rights to terrorists, as some have claimed; rather, it is about giving people who are accused of serious crimes an opportunity to disprove the charges against them.

I am also concerned that this legislation gives the President the authority to reinterpret the meaning and application of Common Article 3 of the Geneva Conventions. Especially given the well documented abuses of prisoners held at Abu Ghraib and Guantanamo Bay, we need to be clear that the United States will rigorously comply with its international obligations under the Geneva Conventions. This is important both to reinforce our Nation's moral standing in the world and to protect the men and women of our Armed Forces. If a U.S. soldier is held prisoner by another nation, we expect that they will enjoy the full protections of the Geneva Conventions, not some watered-down interpretation.

It is the job of Congress to pass legislation to try and punish terrorists. That legislation must protect our men and women in uniform from erosion of the Geneva Conventions, and the legislation must be tough, fair and able to withstand constitutional challenge. The bill before the House meets none of these standards, and I urge my colleagues to reject it. Rather than rush through such a fundamentally flawed bill, the House should remain in session and do the job right.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in strong opposition to H.R. 6166, the Military Commissions Act of 2006. I oppose the bill because it creates an unfair trial system for military detainees, and does almost nothing to curb the President's power to authorize interrogation tactics that are widely recognized as torture.

Mr. Speaker, this so-called compromise bill, is actually nearly identical to what the administration has sought all along. The bill continues to allow secret evidence in trials, prohibits detainees from challenging the merits of their detention in courts, and effectively allows the President to authorize the CIA to continue inhumane detention and interrogation.

The Supreme Court ruled in the Hamdan v. Rumsfeld case that the President's system to try terrorist suspects is unlawful. All of us here and Americans everywhere want to see al Qaeda fighters tried and convicted for their crimes. The measure the House is considering, however, does not go far enough to ensure that military trials will be conducted in a fair and open fashion. For instance, the bill still allows certain classified evidence to be kept secret from defendants, giving them access only to evidence with large redacted portions. And it still permits certain cases under which a military judge could allow a trial in absentia. Perhaps most egregiously, the measure actually blocks the ability of innocent detainees to challenge the validity of their detention in an independent judicial tribunal because the bill denies the right of detainees to bring a habeas corpus action.

Mr. Speaker, habeas corpus is not ''special treatment for terrorists,'' as proponents of the measure claim. Rather, it is a legal procedure that has the power to exonerate innocent detainees—not terrorists—who have been imprisoned and not brought to trial. Indeed, the writ of habeas corpus is the bedrock of the rule of law and traces its heritage back to the signing of the Magna Carta in 1215 A.D.

Denying habeas corpus review for detainees in U.S. custody is simply another unwarranted attempt by the Executive branch to arrogate powers vested by the Constitution in the Federal judiciary. If the bill before us becomes law, the administration could pick and choose not only who could be tried, but could hold them in prison indefinitely with no possibility of judicial review.

Although the bill does not technically redefine the Geneva Conventions, the measure does nothing to curb the power of an executive branch, like the current one, with a track record of abusing the human rights of secret military detainees. The bill states that the President has the " authority to interpret the meaning and application of the Geneva Conventions," and could do so through executive orders. There is no question that President Bush fully intends to authorize the CIA to continue what it euphemistically refers to as "alternative interrogation techniques."

We know now that most of these interrogations using "alternative techniques" have occurred in secret "black site" prisons in Eastern Europe and other foreign lands in clear and direct violation of Common Article 3, which prohibits signatories from inflicting "cruel treatment and torture" and "humiliating and degrading treatment" upon individuals who are not actively engaging in combat, including soldiers who have surrendered or been arrested and become prisoners of war.

The bill may technically skirt the issue of America's conduct under the Geneva Conventions. But if American personnel blithely toss aside our international treaty obligations to uphold standards in the detention and interrogation of wartime prisoners, America will alienate our long-time allies who are crucial partners in the fight against terrorism. If America whisks people from the streets into secret detention facilities, and then uses secret evidence to convict them in special courts, it will do more to embolden our enemies than any extremist jihad web site ever could.

Mr. Speaker, this is far too serious an issue to be used as a script for the mud-slinging commercials of campaign season. The very fact that the House is considering such legislation shows that Congress has not been exercising adequate authority over an arrogant and overbearing executive branch. There is a great need for a system to try suspected terrorists, both for the sake of the families of the victims of the September 11 attacks and for the sake of our American men and women fighting overseas. But the bill before the House—despite being labeled as a "compromise"—fails to provide truly open trials and does not even allow innocent detainees to challenge their imprisonment. It is just another opportunity to rubber-stamp the President's ill-advised plan, and should be defeated.

Mr. Speaker, in the final analysis, the debate today is not about the terrorists or America's enemies; it is about the character of our country. It is not about them; it is about us. It is not about the terrorists; it is about who we are. We are the United States of America. We fight hard but we fight fair. We fight to defend our families, our friends, the powerless and unprotected. We fight to preserve our way of life and the ideas we believe in. And here is what we believe:

We believe in equal justice under law.

We believe in the dignity of the human being.

We believe in fair play and square dealing.

We believe in opportunity for all, responsibility from all, and community of all.

We believe in personal liberty and the public interest.

We believe in freedom of conscience and worship.

Mr. Speaker, the Global War on Terror is not just a battle of arms, though arms we need. It is also a battle of ideas over how we should live. If we jettison the principles bequeathed us by our forebears to gain a temporary and fleeting advantage over our enemies, then we will succeed in doing something no adversary ever could do and that is to defeat ourselves.

Mr. Speaker, we do not need to surrender our cherished beliefs, values, and liberties to prevail against our enemies. We need only conduct our affairs by the principles of honor and freedom that have made this nation the strongest, most powerful, and most admired nation in the history of the world.

I urge my colleagues to reject this ill-conceived and unwise legislation.

Mr. PAUL. Mr. Speaker, I rise in strongest opposition to this ill-conceived legislation. Once again, the House of Representatives is abrogating its Constitutional obligations and relinquishing its authority to the executive branch of government.

Mr. Speaker, this legislation will fundamentally change our country. It will establish a system whereby the President of the United States can determine unilaterally that an individual is an "unlawful enemy combatant" and subject to detention without access to court appeal. What is most troubling is that nothing in the bill would prevent a United States citizen from being named an "enemy combatant" by the President and thus possibly subject to indefinite detention. Congress is making an enormous mistake in allowing such power to be concentrated in one person.

Additionally, the bill gives the President the exclusive authority to interpret parts of the Geneva Convention relating to treatment of detainees, to determine what does and does not constitute a violation of that Convention. The President's decision on this matter would not be reviewable by either the legislative or judicial branch of government. This provision has implications not only for the current administration, but especially for any administration, Republican or Democrat, that may come to power in the future.

This legislation eliminates habeas corpus for alien unlawful enemy combatants detained under this act. Those thus named by the President will have no access to the courts to dispute the determination and detention. We have already seen numerous examples of individuals detained by mistake, who were not involved in terrorism or anti-American activities. This legislation will deny such individuals the right to challenge their detention in the court. Certainly we need to prosecute those who have committed crimes against the United States, but we also need to be sure that those we detain are legitimately suspect.

I am also concerned that sections in this bill dealing with protection of U.S. personnel from prosecution for war crimes and detainee abuse offenses are retroactively applied to as far back as 1997.

Mr. Speaker, this bill will leave the men and women of our military and intelligence services much more vulnerable overseas, which is one reason many career military and intelligence personnel oppose it. We have agreed to recognize the Geneva Convention because it is a very good guarantee that our enemy will do likewise when U.S. soldiers are captured. It is in our own interest to adhere to these provisions. Unilaterally changing the terms of how we treat those captured in battle will signal to our enemies that they may do the same. Additionally, scores of Americans working overseas as aid workers or missionaries who may provide humanitarian assistance may well be vulnerable to being named "unlawful combatants" by foreign governments should those countries adopt the criteria we are adopting here. Should aid workers assist groups out of favor or struggling against repressive regimes overseas, those regimes could well deem our own citizens "unlawful combatants." It is a dangerous precedent we are setting.

Mr. Speaker, we must seek out, detain, try, and punish if found guilty anyone who seeks to attack the United States. We in Congress have an obligation to pass legislation that ensures that process will go forward. What Congress has done in this bill, though, is to tell the President "you take charge of this, we reject our Constitutional duties." I urge my colleagues to reject this ill-conceived piece of legislation.

Mr. CARDIN. Mr. Speaker, Congress has an obligation under the Constitution to enact legislation that creates fair trials for accused terrorists that will be upheld by the courts. We also have an obligation to protect our troops that fall into enemy hands, and to uphold American values and the rule of law. Finally, even during wartime, the President must work with Congress and the courts to uphold our Constitution. In June, the Supreme Court in Hamdan v. Rumsfeld struck down the President's military commissions, since they violated the Uniform Code of Military Justice and the Geneva Conventions. The Court noted that Congress, not the president, has the authority under Article I, Section 8 of the Constitution to "define and punish piracies and felonies committed on the high seas, and offenses against the law of nations."

I strongly support our government's efforts to isolate, track down, and ultimately kill or capture suspected terrorists who are planning terrorist attacks against the United States. We must bring these terrorists to justice swiftly. We must also strengthen our efforts to protect the homeland by providing additional resources to law enforcement and emergency services personnel who are charged with disrupting and responding to a terrorist attack in the United States. As a former member of the Homeland Security Committee, I have fought hard to implement the recommendations of the 9/11 Commission and to distribute our homeland security funds on the basis of actual threats and vulnerabilities.

I am therefore extremely disappointed, Mr. Speaker, that the House leadership failed to reach out to members on both sides of the aisle in crafting this legislation. We should heed the warning given by our former Chairman of the Joint Chiefs of Staff and former Secretary of State Colin Powell, who states that "the world is beginning to doubt the moral basis of our fight against terrorism."

The 9/11 Commission recommended that "the United States should engage its friends to develop a common coalition approach toward the detention and humane treatment of captured terrorists. New principles might draw upon Article 3 of the Geneva Conventions . . . Allegations that the United States abused prisoners in its custody make it harder to build the diplomatic, political, and military alliances the [U.S.] government will need." This legislation today undermines the protections of the Geneva Convention, and by weakening our moral authority makes it harder for us to work

with allies to win the war on terrorism and protect Americans.

I share the concerns of the many current and former military officers that testified to Congress that any weakening of these protections will place American soldiers at risk if they are captured overseas. I am pleased that last December Congress adopted Senator MCCAIN's legislation and outlawed the use of torture, and cruel, inhuman or degrading treatment by U.S. personnel, which would endanger the treatment of our American soldiers overseas. I am disappointed, therefore, that this legislation allows the use of statements obtained by some this prohibited behavior to be admissible in court.

Finally, this legislation eliminates the fundamental legal right of habeas corpus, which would permit our government to hold detainees indefinitely without charge, trial, or the right to an independent hearing to weigh the evidence against the accused terrorist.

We must join with our allies to win the war on terrorism and bring terrorists to justice. Our Constitution contains the very values we hold dear and that makes us proud to be Americans, and which motivate our soldiers to lay down their lives in defense of this country. I have sworn to uphold and defend our Constitution and to protect our democracy. This legislation takes a step backward, is inconsistent with the rule of law, and will make it harder to work with our allies to build an effective coalition to defeat terrorism. I therefore will vote against this legislation.

Five years after the 9/11 attacks, it is inexcusable that not a single one of the terrorists who planned the 9/11 attacks has been brought to trial. I am hopeful that the Senate will improve this legislation as Congress continues to discharge its constitutional duty to create military commissions that are consistent with the rule of law and that will result in convictions of terrorists that will be upheld by our courts.

Mr. LANTOS. Mr. Speaker, we are embarking on a debate of extraordinary importance to the Nation and to our success on the war on terrorism. It is centered on a fundamental issue of concern to anyone who cares about human rights—and there are still many of us, thankfully.

So this should be a debate about ideas, and there should be full and complete deliberation.

Unfortunately, because of an arrogant White House and a Republican Leadership in this House that has simply bowed to the Executive's will—as it has so many times before—we have once again made the consideration of a critical legislative initiative a charade, a debate being conducted with undue haste and without any serious consideration.

Mr. Speaker, since September 11, 2001, one of the most vexing problems that has faced our country in the struggle against the forces of nihilism and extremism is our approach to those who come into our custody because we believe they are a danger to the United States. We have seen unclear policy and muddy thinking leading to cruel treatment of those in U.S. custody, with some conduct even amounting, in the view of the former General Counsel to Department of the Navy under this Administration, to be torture. Finally, last June the Supreme Court ruled that the Administration's unilateral set of rules for trying terrorist suspects was unlawful.

Let us make no mistake about it—our treatment of detainees and our failure to come up with a joint approach with our allies has damaged our ability to prosecute successfully the war on terrorism. It has endangered our troops by setting standards for others that I believe we will deeply regret. It has impeded our ability to work with many of our allies who have a different view from this Administration on the obligations of the Geneva Convention, one that has since been adopted by our own Supreme Court. It has undermined our legitimacy worldwide and been a recruiting tool for our enemies.

The legislation before us should be an effort to address these problems, and in some ways it has. It establishes a better framework for trying detainees than the one established by the Administration. And by keeping it a crime to engage in serious physical abuse against detainees, it prohibits the worst of the abuses that we have seen, including those that are also banned by the Army's new Field Manual on interrogation, including forcing the detainee to be naked, perform sexual acts, or pose in a sexual manner; placing hoods or sacks over the head of a detainee or using duct tape over the eyes; applying beatings, electric shock, burns, or other forms of physical pain; waterboarding; using working dogs during an interrogation; inducing hypothermia or heat injury; conducting mock executions; depriving the detainee of necessary food, water, sleep or medical care.

Unfortunately, Mr. Speaker, the legislation remains deeply flawed in more ways than I have time to describe here. It prohibits any detainee from ever raising the Geneva Conventions in any case before any court or military commission, a provision that I fear will be used against our own troops if they are ever captured by the enemy. It takes actions against existing lawsuits and establishes a whole new system for military appeals that is constitutionally suspect, will lead to even more court cases, and could leave us five years from now with exactly the same number of convictions we have under the existing military tribunal system: zero. We should be trying to expedite trials of terrorist suspects, not providing the basis for more delays. And, acting directly against the recommendations of the bilateral 9–11 Commission, this legislation does not represent a joint approach with our allies.

Mr. Speaker, nearly 60 years ago, I fled from a continent in ruins from a war conducted without rules, marked by atrocities on a scale that the world had never seen. Much of that continent was under a dictatorship in Moscow that was bent on oppressing its citizens and those under its dominance everywhere. So the issues presented by this bill are more than a policy debate to me.

I am profoundly disappointed by what we are doing today. It does not represent progress in protecting our troops and civilians who are caught up in armed conflict. It represents a retreat.

The Geneva Conventions were meant to protect people like me and our country's troops from the worst abuses of war. This country has always stood for the upholding and supporting those protections and expanding them whenever we could, in our national interest.

We should not be rushing legislation through now, just before an election, when we know it won't be needed for many months. We should not be considering a bill that is substantially different from the one that has been already put through our Committees. And we should not be debating legislation without any chance of presenting our individual ideas for improving it.

But here we are. Under these circumstances, I oppose this legislation and fully expect to be back debating these issues when the Supreme Court overturns this ill-advised legislation.

Mr. NADLER. Mr. Speaker, this is how a nation that has become fearful loses its moral compass, its identity, its values, and, ultimately, its freedom.

It is ironic that the people who use the word freedom with reckless abandon, in everything from fries to a global vision, should come before the American people today advocating for the suspension of habeas corpus, secret Star Chamber tribunals, unlimited detention without review and, yes, torture.

I know, we've been told it's not really torture, but I am sickened by the quibbling, legalistic hair splitting on something so basic to our nation's fundamental values.

Have you forgotten? We are America.

Let me say that again: we are the United States of America.

We have stood as a beacon to the world. People have aspired to our way of life, our values, our example, our leadership.

We are told that our enemies do not respect the rules of war or the rights of their captives, but do you really believe that ''somewhat better than al Qaeda'' is how we should measure our conduct? I don't.

And now, with scant deliberation, in an election eve stampede, we are urged to throwaway our values, our honor, our constitution, and our standing in the world as if it were yesterday's newspaper.

Yes, we must be vigilant to keep our nation safe, but we must not stand by while the honor and values of our nation are permanently stained by this detestable legislation. It is beneath us. It is not what we stand for.

Benjamin Franklin once said ''they that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.'' He was right.

Perhaps if this administration had the minimal competence necessary to make us safe, we might have a debate about the wisdom of Franklin's and the Founders' commitment to liberty. But this administration has demonstrated beyond any doubt that it is not our values that place us at risk, but its own incompetence, and the willingness of a rubber-stamp Republican Congress to follow the President over any cliff.

What are we being asked to do here, and why are we being asked to rush to judgement?

There are many infamies in this bill, as others have pointed out. I will concentrate on just one.

This bill would allow the President, or any future President, to grab someone off a street corner in the United States, or anywhere else in the world, and hold them forever, without any court review, without having to charge them, without ever having to justify their imprisonment to anyone.

This bill is flatly unconstitutional, for it repeals the Great Writ—Habeas Corpus. Not a statutory writ, but the Constitutional Great Writ.

Read the bill. I know we're not supposed to do that in the Republican Congress, but, just

this once, for the sake of our nation, please read the bill.

Turn to page 93.

No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

''Awaiting such determination?'' That says it all. Nowhere in this new law is there any time limit for making this determination. In fact, it could be never.

We are told that these procedures are only for those who the President has called ''the worst of the worst.''

How do we know they are the worst of the worst? Because the President says so, and the President, and federal bureaucrats, as we know, are never wrong.

Some people held as ''unlawful enemy combatants'' may be put before a military tribunal, but they need not be. They can be held forever without any hearing.

A person designated as an ''unlawful enemy combatant'' can challenge his detention only if he is brought before a military commission, or a Combat Status Review Tribunal, and only after the military commission and all the appellate procedures are finished. Then he can appeal to the D.C. Circuit, but only to review the legal procedures. The court can never look at the facts. That's on page 56.

So, let's review:

The government can snatch anyone who is not a U.S. citizen, anywhere in the world, including on the streets of this city, whether or not they are in a combat situation, whether or not they are actually doing anything, and detain them forever, out of reach of our constitution, our laws, and our courts.

It also says that a court can never review the conditions of detention, which is an elegant way of saying no court can hear a claim that the detainee was tortured. Ever.

Who is subject to these rules? Well the President wants you to think this is only about Khalid Sheikh Mohammed. Bad guy. Dangerous guy. Deserves to be locked up. We all agree on that one.

But it could also mean a lawful permanent resident. Someone like my grandmother while she was waiting to become a loyal American citizen, which she did, and which is why I am fortunate enough to have been born in this great country. It would apply to the relatives of anyone in this room who is not a Native American.

We rebelled against King George III for far lesser infringements of our liberties than this. This bill makes the President a dictator—for the power to order people jailed forever without being subject to any judicial review is the very definition of dictatorial power.

The President wants to live in a law-free zone. He does not want to be bound by the law of war or by our treaty obligations. He does not want to be answer to our Constitution, to the Congress or to the Courts.

If someone is in this country and he commits a crime, we have laws to stop him and lock him up. If those laws, including the Classified Information Procedures Act, don't work, we can improve them. That's how we put Zacarias Moussaoui in jail. Anyone remember the 11th hijacker? We caught him, tried him in a regular court, and now he's in jail.

Perhaps if this administration hadn't been asleep at the switch, we might have caught him before September 11th, and saved our nation from that terrible crime.

We could also hold people as prisoners of war if we catch them on the battlefield. That's worked pretty well in all our wars.

We can set up new rules that actually sort out the bad guys from the people we just grabbed, or who were sold to us by a rival group, as happened in Afghanistan. We already know that some of the people in Guantanamo have been there for years for nothing. Some of them have been released and some of them are still there. How does that make us safer?

And then there's torture. When is torture not torture? Apparently whenever the President and his team of legal scholars says it isn't.

This bill would write that dangerous practice into law.

It would also allow statements extracted under torture to be used as evidence. See page 17 of the bill.

Is it really hard, as the President and some members of Congress say, to understand the difference between legal interrogation and illegal torture? The people who wrote the Army Field Manual, and the people who train our troops, have never thought so. It only became a question when this President decided he was above the law.

Now the President wants to have us grant him immunity, in advance, for whatever he might have ordered. That's a neat trick, and it's in this bill.

Mr. Speaker, rarely in the life of a nation is the question so stark. Are we going to rush this complete repudiation of all we stand for through the Congress to give the Republicans an election issue? I hope we are not as cynical as some here seem to think we are.

There is nothing we are doing today that we can't do properly with some care and deliberation. There is no danger that someone is going to be released from custody. This administration has certainly fiddled for the last few years without accomplishing anything.

Perhaps, just perhaps, this time we can do it right. Let's try. That's the oath we took when we became members of this House. That's the responsibility we have today.

Mr. GEORGE MILLER of California. Mr. Speaker, all Members of Congress support the effort to thwart international terrorism and make Americans safe. But there are right ways and wrong ways to carry out that critical effort. The military commissions bill before us today is the wrong way, and I urge my colleagues to vote against it.

The Geneva Convention protects Americans everywhere. Congress should not alter our international obligations in an election-year rush ordered by Karl Rove's partisan strategy shop.

We cannot use international law to justify America's actions when it suits our purposes and ignore it when it does not.

America has given its word to the rest of the world that we win abide by the Geneva Conventions.

Redefining our interpretation of the Geneva Convention is a slippery slope. Consider the words of the Navy's own Judge Advocate General, who testified to Congress on the possible implications of altering America's commitment to the Geneva conventions:

''I would be very concerned about other nations looking in on the United States and making a determination that, if it's good enough for the United States, it's good enough for us, and perhaps doing a lot of damage and harm internationally if one of our servicemen or servicewomen were taken and held as a detainee.''

Beyond military personnel, the Geneva Conventions also protect those not in uniform—special forces personnel, diplomatic personnel, CIA agents, contractors, journalists, missionaries, relief workers and all other civilians. Changing our commitment to this treaty could endanger them, as well.

In addition to my concerns about our commitment to the Geneva Conventions, there is a real possibility that this bill will not stand up to judicial scrutiny. The Supreme Court in ''Rasul v. Bush'' decided that detainees have habeas corpus rights. And well established case law lays out that legislation depriving federal courts of jurisdiction does not effect currently pending cases. And nine former federal judges recently wrote:

''Congress would thus be skating on thin constitutional ice in depriving the federal courts of their power to hear the cases of Guantanamo detainees. . . . If one goal of the provision is to bring these cases to a speedy conclusion, we can assure you from our considerable experience that eliminating habeas would be counterproductive.''

Sacrificing our principles makes us neither safe nor free. In fact, there is some evidence that sacrificing our principles in this bill may make us less safe.

Just yesterday, the President declassified portions of a National Intelligence Estimate—or NTE—which, news accounts say, details that U.S. foreign policy in Iraq and elsewhere has increased the spread of terrorism, making America less safe.

One of the key reasons outlined in the NTE for this conclusion was that, entrenched grievances of injustice help create an anti-U.S. sentiment among Muslims that terrorist groups exploit to recruit new members and grow the jihadist movement—the images of and stories about detainee abuse at Abu Ghraib; the unexplained death of prisoners at the Bagram Collection Point in Afghanistan; the denial of habeas corpus rights to detainees at Guantanamo bay; the use of extraordinary rendition to kidnap suspected enemies of the state anywhere in the world; and secret CIA prisons.

These incidents have all helped spread anti-U.S. sentient around the world. This has alienated us from friends and allies and added to the list of grievances terrorist groups like al Qaeda use to recruit new jihadists.

The President should have the best possible intelligence to prevent future terrorist attacks on the United States and our allies. And those responsible for 9/11 and other terrorist acts should be brought to justice, tried, and punished accordingly, and their convictions should be upheld by our courts.

Sadly, this legislation does not accomplish any of those things. For that reason, I encourage my colleague to vote against its passage.

Mr. CROWLEY. Mr. Speaker, I have lost faith in this Republican controlled Congress. The Congress is no longer about doing what is right for out country.

My colleagues on the other side of the aisle care more about giving the President what he wants then what is in the best interests of the people we are here to represent.

And in case my friends don't read, the country does not have a very high opinion of this Congress and the rest of our government.

This Congress granted an excessive amount of executive power to the President to wage his war on terror with no oversight.

That excessive power brought us to our present day problems and this President is unwilling to fix these problems or even admit they exist.

We must reclaim our Constitutional authority and bring America back to the moral high ground.

Regardless of how we feel about detainees, we must treat them humanely and in accordance with our rule of law and the Geneva Conventions.

The example set by the United States is the example given to our own soldiers in the field.

These terrorists are vicious murderers, I know firsthand because they killed my cousin on 9/11, but my values as an American are what keeps those hatreds in check.

I find it amazing that the man who campaigned on bringing values back to the Oval office has lead the perception of our nation to an all time low.

Torture and harsh interrogation techniques are not my values and are not those of the American people.

We must lead by example on these issues, not be an evasive quasi participant.

Our soldiers are abroad fighting a battle our President has not allowed them to win because of his continued mismanagement of all aspects of the war.

The National Intelligence Estimate done by our 16 intelligence agencies flat out says that the war in Iraq has actually invigorated the growth of terrorism and worsened the threat around the globe.

We diverted all our attention from Afghanistan where the terrorists actually are and invaded Iraq on false statements and scare tactics.

This Administration with the help of the Republican controlled Congress has continued to stay on the wrong course.

Today, we could have had an opportunity to fix ones of those mistakes, but we are ignoring the respect for due process and denying Habeas Corpus to detainees.

This bill disregards the Hamdan decision, which stated that it should be a requirement of a ''regularly recognized constituted court affording all the judicial guarantees which are recognized as indispensable by civilized people.''

As civilized people we must respect our laws, without the rule of law we would have chaos.

The Bush Administration still refuses to explain why we even need a different judicial system for accused terrorists.

We must take the back the moral high ground in Congress just like many of our military leaders on the ground threw out the Department of Defenses recommendations on interrogation and instead decided to strictly follow the Geneva Conventions.

We should be following the advice of our military who truly understand what the Geneva Conventions mean, not the civilian leadership who stay out of harms way.

The President wants this Congress to bend the rules of our laws and the Geneva Conventions, a document that has protected our soldiers abroad since its inception.

I ask my colleagues, are you prepared to bend those laws that have governed us so successfully so the President can have the power to allow the harsh interrogations tactics and detention of detainees who mayor may not be terrorists.

We need to regain our stature as a world leader.

I hate these terrorists and I believe they should be punished, punished for the murder of my cousin on 9/11.

But they should be punished under the rule of law.

I pray this Congress will lead by example and not follow the example of the terrorists.

Mr. STARK. Mr. Speaker, I rise to defend American values.

The Military Commissions Act—H.R. 6166—continues Republicans' despotic assault on the Constitution. It denies detainees held abroad the fundamental right of habeas corpus, which has for centuries protected against unjust government imprisonment. It limits protections against detainee mistreatment, sanctioning ''alternative procedures'' of interrogation that amount to cruel and unusual punishment. It denies people the opportunity to confront the evidence used against them—even if that evidence is obtained through coercive and inhumane practices. It strips our courts of the jurisdiction to review cases—including those already pending—concerning detainee abuse.

Some call this legislation a ''compromise.'' I call it a capitulation. No sooner had the ink dried on this deal than the Bush administration declared that the CIA's program of secret detention and interrogation could and would continue. That should come as no surprise. Though this bill does not explicitly redefine our obligations under the Geneva Conventions, it permits the President to ''interpret the meaning and application'' of our historic commitment to the international community—and theirs to us.

Make no mistake, our disregard for international law imperils the safety and security of our men and women in uniform. Our denial of due process to detainees invites foreign states and organizations to indefinitely imprison and interrogate our soldiers. Our insistence on defining detainees as ''enemy combatants'' undeserving of legal protections encourages our adversaries to deny these very same protections to American prisoners. Provided, of course, we haven't already done so ourselves: This legislation allows the Government to declare not only foreigners, but also U.S. citizens, ''enemy combatants'' and arrest and hold them indefinitely.

This legislation further confirms that Republicans in Congress are no more interested in fundamental human rights than is President Bush and his administration. I urge my colleagues to vote ''no.''

Mr. CLEAVER. Mr. Speaker, I was unable to personally cast votes today because I was attending a memorial service for SFC Michael Fuga. Sergeant Fuga was killed September 9, 2006 in Kandahar, Afghanistan. Sgt. Fuga was assigned to the Missouri National Guard's 35th Special Troops Battalion based in St. Joseph, MO. He and his family made Independence, in the district I am proud to serve, their home. Sgt. Fuga was 47 and had spent 28 years of his life in the Army. At the time of his death, he was training Afghan armed forces to help bring peace and stability to a nation that has known neither for decades.

SGM James Schulte, who was in charge of Sergeant Fuga's deployment said, ''He was a true patriot and a great family man. I am truly honored to have known and served with him.'' We should all be so lucky to have something like that be said of us when we are gone.

Sergeant Fuga volunteered to extend his time in Afghanistan because, his family says, he was committed to defeating those who attacked our Nation 5 years ago this week. Each day we are blessed to live under the freedoms which Sergeant Fuga and his colleagues in the Armed Forces so bravely serve to protect and ensure.

Sergeant Fuga leaves behind his wife and 12-year-old daughter.

I do not take the decision to miss votes lightly, but hope I can provide Sergeant Fuga's family some comfort on what will be a difficult night.

Today, the House of Representatives debated and voted on H.R. 6166—Military Commissions Act.

Republicans tried to paint those who were not in favor of the bill as being soft on bringing terrorists to justice and meting out just punishment. They implied that those who were not in favor of the measure were trivializing the heinous crimes perpetrated against American citizens and service members.

They refused to allow an open debate by suppressing thoughtful and germane amendments designed to strengthen the intent of the legislation. Once again they rushed through a piece of bad legislation written to appease an administration stubbornly determined on doling out justice as it sees fit. I am disheartened by the lack of importance this administration places on human rights, on due process, and on upholding the Constitution of these United States.

Mr. LANGEVIN. Mr. Speaker, I rise in opposition to H.R. 6166 and am deeply disappointed that Congress has missed an opportunity to act in a bipartisan manner to prosecute those who would do harm to Americans, while ensuring that such efforts would withstand legal scrutiny.

In June, the Supreme Court ruled in Hamdan v. Rumsfeld that President Bush exceeded his authority by establishing military commissions to try detainees in the global war on terrorism without explicit congressional approval. That decision presented Congress with an important opportunity to develop a proposal to try some of the world's most dangerous people and to provide swift justice to those who engaged in horrendous acts against our Nation. Unfortunately, instead of proceeding in a bipartisan manner to craft legislation that enjoys the full confidence of this body, Congress is faced with a proposal negotiated exclusively by Republicans and whose actual effectiveness in prosecuting terrorists remains in question.

After the Hamdan decision, the House Armed Services Committee held numerous hearings on how Congress should respond, and I commend the chairman for his efforts to ensure that committee members learned the complexities of this topic.

One constant theme we heard from the witnesses testifying was that Congress should ensure that any system established to try military detainees followed existing legal procedures to the greatest extent practicable.

On that point, let us be clear. Despite the mischaracterizations of some Members on the floor today, no one has recommended giving terrorists the same rights as criminals or members of our Armed Forces. Everyone recognizes that many of these detainees are dangerous people, and we agree that the judicial

system used to try them must reflect the complexities of prosecuting enemy combatants in the midst of an ongoing war. What the legal experts did counsel, though, was that if military commissions did not include basic, broadly accepted principles of jurisprudence, the commissions could be subject to legal challenge.

Unfortunately, we have no idea if the legislation before us will withstand such scrutiny because the commissions it would establish vary significantly from other accepted forms of tribunals that have been used to prosecute crimes in times of war.

I hope that this legislation does ultimately pass constitutional muster, because it would be a devastating blow to our efforts to combat global terrorism if the conviction of a terrorist were overturned on a legal challenge. However, because I am not confident that the legislation will be upheld, I must oppose it.

The other overarching concern I have with this measure is the impact it will have on the United States' obligations under the Geneva Conventions. The legislation would give the President broad authority to interpret U.S. compliance with the Geneva Conventions and would create confusion about which practices would be prohibited. The Supreme Court specifically stated in Hamdan that basic protections of the Geneva Conventions' Common Article 3 apply to detainees, but the legislation actually complicates compliance with Common Article 3 by creating new definitions of offenses that do not comport with international law. Unfortunately, this change could endanger our own men and women in uniform by encouraging other nations to redefine how they treat captured prisoners. We would not want other nations to offer anything other than full Geneva protections to our own troops, and we must therefore respect the concept of reciprocity on which the Conventions were established.

As Colin Powell noted, respecting the Geneva Conventions not only protects our own servicemembers, but it affirms our commitment to international standards of law and justice at a time when our moral authority in the global war on terrorism is increasingly being questioned.

I am deeply disappointed that, on a matter of such importance to the American people, Congress did not act in a careful and bipartisan fashion to establish a system of military commissions that can protect the American people and withstand legal scrutiny. Instead, the leadership is forcing this measure through the House while ignoring some very valid concerns. I simply ask where their sense of urgency was nearly 5 years ago when the President established military tribunals without congressional input.

Some of my Democratic colleagues have argued for years that we need greater congressional involvement in the justice system for military detainees, but those appeals were ignored. Once again, Congress has abdicated its constitutional oversight responsibility for too long and, when finally forced to act, has chosen partisanship over sound policy.

I urge my colleagues to oppose this measure so that we can craft an alternative that is tough on terrorists while meeting our legal and international obligations.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 1042, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. SKELTON

Mr. SKELTON. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. SKELTON. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Skelton moves to recommit the bill H.R. 6166 to the Committee on Armed Services with instructions to report the same back to the House forthwith with the following amendment:

At the end of the bill, add the following new sections:

SEC. 11. EXPEDITED JUDICIAL REVIEW.

Notwithstanding any other provision of law, the following rules shall apply to any civil action, including an action for declaratory judgment, that challenges any provision of this Act, or any amendment made by this Act, on the ground that such provision or amendment violates the Constitution or the laws of the United States:

(1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard in that Court by a court of three judges convened pursuant to section 2284 of title 28, United States Code.

(2) An interlocutory or final judgment, decree, or order of the United States District Court for the District of Columbia in an action under paragraph (1) shall be reviewable as a matter of right by direct appeal to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after the date on which such judgment, decree, or order is entered. The jurisdictional statement with respect to any such appeal shall be filed within 30 days after the date on which such judgment, decree, or order is entered.

(3) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any action or appeal, respectively, brought under this section.

SEC. 12. REAUTHORIZATION REQUIRED.

(a) MILITARY COMMISSIONS.—No military commission may be convened under chapter 47A of title 10, United States Code, as added by this Act, after December 31, 2009, except for trial for an offense with respect to which charges and specifications against the accused are sworn under section 948q(a) of that title before that date.

(b) TREATY OBLIGATIONS.—Effective on December 31, 2009—

(1) sections 5, 6(a), and 6(c) of this Act shall cease to be in effect; and

(2) section 2441 of title 18, United States Code, is amended—

(A) in subsection (c), by striking the text of paragraph (3) and inserting the text of that paragraph as in effect on the day before the date of the enactment of this Act; and

(B) by striking subsection (d) (as added by section 6(b)(1)).

Mr. SKELTON (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Missouri is recognized for 5 minutes in support of his motion.

Mr. SKELTON. Mr. Speaker, it is our obligation in this body to fix the deficiencies in this system in order to bring terrorists to justice. My motion to recommit with instructions would add two important elements to the bill that address this basic concern. First, it would require an expedited constitutional review of the entire matter. That is what we need. Second, it would require reauthorization of these military commissions after 3 years.

Expedited judicial review is a well-known way to improve legislation for which legal challenges can be anticipated, and we can be sure that the military commissions system created by this bill will be subject to change. We can provide for expedited review of civil actions challenging the legality of this act by creating a three-judge panel of the D.C. District Court that would hear the actions. The U.S. Supreme Court would then review a judgment or review an order of the panel on an expedited basis.

This type of provision is routinely placed in novel legislation. It was part of the McCain-Feingold campaign finance bill, part of the Voting Rights Act, and part of the Communications Decency Act.

The motion to recommit would also require that Congress reauthorize these military commissions after 3 years and would allow any action before a military commission begun before 2010 to go forward, but it would require an educated debate on reauthorizing this system after we have had some real-world experience with this new judicial process.

There is ample precedent for requiring reauthorization for controversial measures passed in a hurry in times of conflict. Most recently, Mr. Speaker, the PATRIOT Act contained reauthorization, or sunset, provisions. And taken together, Mr. Speaker, these two provisions will significantly improve the flawed legislation that we have before us today.

We need not only to be tough. We need to be certain. And my motion to recommit would make this more certain that those despicable terrorists would be brought to justice.

The SPEAKER pro tempore. Does the gentleman from California claim time in opposition to the motion to recommit?

Mr. HUNTER. Yes, Mr. Speaker.

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes.

Mr. HUNTER. Mr. Speaker, I do rise to oppose this motion.

First, let me thank my colleague, Mr. SKELTON, an outstanding gentleman and friend and a guy who cares about our country, and all the folks

who have really worked this issue and participated in the hearings and the briefings that we have had and the discussions with military experts.

Let me tell you why I oppose this. First, Mr. Speaker, the Supreme Court not only gave permission but invited the Congress to put together this new system to try terrorists. And I want to direct my colleagues to the opinion of Justice Breyer, where he said: ''Nothing prevents the President from returning to Congress to seek the authority he believes necessary.''

So the point is the Supreme Court has not only given us permission. They have given us the obligation of putting this together. The American people have given us the obligation of putting this together.

The idea that we are going to pass this legislation with an uncertainty, with a lack of confidence, sending a message that somehow we need two permissions, is, I think, exactly the wrong message to send to the world.

And I just remind my colleague Mr. SKELTON that when we had our initial hearings and our initial markup, Mr. SKELTON, you held up Senator GRAHAM in the Senate and Senator MCCAIN as having the gold standard with respect to this legislation and you offered their legislation. Let me tell you that this legislation will be introduced by them. The gentlemen that you said had the gold standard and judgment on what is fair, they will be introducing this in the other body very shortly.

So, my colleagues, this is not a time to seek a second permission before we have passed the first legislation that actually sets into force and effect this important structure with which to try terrorists.

□ 1600

Let me just go to the second problem with what Mr. SKELTON has. Mr. SKELTON has a sunset provision. This sunsets a very important part of the bill. It sunsets the commission. So it says we have to go back and redo it, that we don't have confidence in what we have done, and we have to redo it after 3 years.

The other bad part about this motion to recommit is it sunsets section 5 and section 6 which protect American troops. They say that you cannot sue American troops under Geneva article 3. You can't sue them civilly. Now that is a bad thing. That means that you would have, if this sunset goes into place that Mr. Skeleton is asking for, that you will have American troops exposed to civil suit by terrorists in American courts for alleged violations of Geneva article 3.

It also does away with this distinction that we have made between grave offenses under Geneva article 3. The real grave offenses, the murder, the torture, all of those things, goes away with the cleavage between that. And maybe an American female colonel interrogating a male Muslim, and therefore being construed as having degraded him and his culture by having an American female interrogate him, that distinction between that and a bad offense would now be erased and American troops would be exposed to civil liability and civil suits under Geneva article 3.

I would just ask my colleagues, if you have confidence in what we have done, and this has been a product of this body, of the other body, and of the administration working night and day to put together a solid package, if you have confidence in that, and you have confidence in this list of rights that we have enumerated, that we give to the defendants, that we give to the people who designed the attack on 9/11: the right to counsel, the right to proof beyond a reasonable doubt, the right to a secret vote in the jury so that a colonel cannot lean on a lieutenant to get a guilty verdict, the right against self-incrimination, all of the basic rights. If you look at that package of rights and you think that is enough for the terrorists, then vote ''yes'' on this bill, vote ''no'' on this motion to recommit.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in strong support of the Skelton motion to recommit with instructions to the Armed Services Committee the bill H.R. 6166, the Military Commissions Act of 2006. I support the Skelton motion because it provides for expedited judicial review of the bill's constitutionality.

The need for expedited judicial review of the constitutionality of this proposed law is clear. Already, the Administration's military commissions plan has already been found fatally defective by the Supreme Court. That the majority has worked closely with the Administration to produce the bill before us provides little comfort or confidence that this bill will pass constitutional muster. It would be a shame to go prosecute detainees under the regime established in this bill only to have any convictions set aside because the procedures are later found to be constitutionally infirm.

Mr. Speaker, Congress should pass legislation that will provide the President with a tough and fair system of military commissions that will ensure swift convictions for terrorists and protect our men and women in uniform. But the legislation must also respond to the United States Supreme Court's ruling in the Hamdan case and withstand judicial scrutiny, or it may not serve its other purposes.

Many legal experts have raised serious questions about this bill's constitutionality. That is why it is critically important to quickly determine whether the statute will survive judicial scrutiny. Just think. If this bill is tied up in years of litigation and eventually struck down by the Supreme Court as unconstitutional, this could have disastrous implications: Convictions would be overturned; terrorists would have a "get-out-of-jail-free" card; and the United States would once again be left without a working military commissions system.

Mr. Speaker, there is a right way to remedy this situation and it is simple. Under the Skelton provision, the judicial review would occur early on and quickly—before there are trials and convictions. And it would help provide stability and sure-footing for novel legislation that sets up a military commissions system unlike anything in American history.

Such an approach provides no additional rights to alleged terrorists. All it does is give the Supreme Court of the United States the ability to decide whether the military commissions system under this act is legal or not. It simply guarantees rapid judicial review.

For this reason, I support the Motion to Recommit.

Mr. HUNTER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. SKELTON. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—ayes 195, noes 228, not voting 9, as follows:

[Roll No. 490]

AYES—195

Abercrombie	Eshoo	McIntyre
Ackerman	Etheridge	McKinney
Allen	Evans	McNulty
Andrews	Farr	Meek (FL)
Baca	Fattah	Meeks (NY)
Baird	Filner	Melancon
Baldwin	Ford	Michaud
Bean	Frank (MA)	Miller (NC)
Becerra	Gonzalez	Miller, George
Berkley	Gordon	Mollohan
Berman	Green, Al	Moore (KS)
Berry	Green, Gene	Moore (WI)
Bishop (GA)	Grijalva	Moran (VA)
Bishop (NY)	Gutierrez	Nadler
Blumenauer	Harman	Napolitano
Boren	Hastings (FL)	Neal (MA)
Boswell	Herseth	Oberstar
Boucher	Higgins	Obey
Boyd	Hinchey	Olver
Brady (PA)	Hinojosa	Ortiz
Brown (OH)	Holt	Otter
Brown, Corrine	Honda	Owens
Butterfield	Hooley	Pallone
Capps	Hoyer	Pascrell
Capuano	Inslee	Pastor
Cardin	Israel	Paul
Cardoza	Jackson (IL)	Payne
Carnahan	Jefferson	Pelosi
Carson	Johnson, E. B.	Peterson (MN)
Case	Jones (NC)	Pomeroy
Chandler	Jones (OH)	Price (NC)
Clay	Kanjorski	Rahall
Clyburn	Kaptur	Rangel
Conyers	Kennedy (RI)	Reyes
Cooper	Kildee	Ross
Costa	Kilpatrick (MI)	Rothman
Costello	Kind	Roybal-Allard
Cramer	Kucinich	Ruppersberger
Crowley	Langevin	Rush
Cuellar	Lantos	Ryan (OH)
Cummings	Larsen (WA)	Sabo
Davis (AL)	Larson (CT)	Salazar
Davis (CA)	Leach	Sánchez, Linda T.
Davis (IL)	Lee	
Davis (TN)	Levin	Sanchez, Loretta
DeFazio	Lipinski	Sanders
DeGette	Lofgren, Zoe	Schakowsky
Delahunt	Lowey	Schiff
DeLauro	Lynch	Schwartz (PA)
Dicks	Maloney	Scott (GA)
Dingell	Markey	Scott (VA)
Doggett	Matsui	Serrano
Doyle	McCarthy	Shays
Edwards	McCollum (MN)	Sherman
Emanuel	McDermott	Skelton
Engel	McGovern	Slaughter

Smith (WA)
Snyder
Solis
Spratt
Stark
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—228

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Chabot
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Culberson
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Neugebauer
Northup
Norwood
Nunes
Nussle
Osborne
Oxley
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—9

Castle
Cleaver
Davis (FL)
Jackson-Lee (TX)
Lewis (GA)
Meehan
Millender-McDonald
Ney
Strickland

□ 1628

Messrs. GALLEGLY, KENNEDY of Minnesota and MURTHA changed their vote from ''aye'' to ''no.''

Ms. ZOE LOFGREN of California, Messrs. GORDON, OTTER, BRADY of Pennsylvania, STUPAK, MOLLOHAN and KANJORSKI changed their vote from ''no'' to ''aye.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. BASS). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. HUNTER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 253, noes 168, not voting 12, as follows:

[Roll No. 491]

AYES—253

Aderholt
Akin
Alexander
Andrews
Bachus
Baker
Barrett (SC)
Barrow
Barton (TX)
Bass
Bean
Beauprez
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boustany
Boyd
Bradley (NH)
Brady (TX)
Brown (OH)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Chabot
Chandler
Chocola
Coble
Cole (OK)
Conaway
Cramer
Crenshaw
Cubin
Cuellar
Culberson
Davis (AL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Edwards
Ehlers
Emerson
English (PA)
Etheridge
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris Rodgers
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller, Gary
Moore (KS)
Murphy
Musgrave
Myrick
Neugebauer
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Pryce (OH)
Putnam
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryan (WI)
Ryun (KS)
Salazar
Saxton
Schmidt
Schwarz (MI)
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Spratt
Stearns
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—168

Abercrombie
Ackerman
Allen
Baca
Baird
Baldwin
Bartlett (MD)
Becerra
Berkley
Berman
Berry
Bishop (NY)
Blumenauer
Boucher
Brady (PA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Clay
Clyburn
Conyers
Cooper
Costa
Costello
Crowley
Cummings
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Emanuel
Engel
Eshoo
Evans
Farr
Fattah
Filner
Frank (MA)
Gilchrest
Gonzalez
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Hinchey
Hinojosa
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jefferson
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
LaTourette
Leach
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McKinney
McNulty
Meek (FL)
Meeks (NY)
Miller (NC)
Miller, George
Mollohan
Moore (WI)
Moran (KS)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Price (NC)
Rahall
Rangel
Reyes
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Stark
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—12

Castle
Cleaver
Davis (FL)
Davis, Tom
Jackson-Lee (TX)
Keller
Lewis (GA)
Meehan
Millender-McDonald
Ney
Radanovich
Strickland

□ 1645

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. KELLER. Mr. Speaker, on rollcall No. 491, I voted "aye" and I was here. Apparently, there was a card malfunction and it did not record my vote. Had I been present, I would have voted "aye".

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 6166, MILITARY COMMISSIONS ACT OF 2006

Mr. CONAWAY. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 6166, the Clerk be authorized to correct section numbers, punctuation, cross-references, and the table of contents, and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending the bill, and that the Clerk be authorized to make additional technical corrections.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

RECORD votes on postponed questions will be taken later today.

NONADMITTED AND REINSURANCE REFORM ACT OF 2006

Mr. OXLEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5637) to streamline the regulation of nonadmitted insurance and reinsurance, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5637

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Nonadmitted and Reinsurance Reform Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Effective date.

TITLE I—NONADMITTED INSURANCE

Sec. 101. Reporting, payment, and allocation of premium taxes.
Sec. 102. Regulation of nonadmitted insurance by insured's home State.
Sec. 103. Participation in national producer database.
Sec. 104. Uniform standards for surplus lines eligibility.
Sec. 105. Streamlined application for commercial purchasers.
Sec. 106. GAO study of nonadmitted insurance market.
Sec. 107. Definitions.

TITLE II—REINSURANCE

Sec. 201. Regulation of credit for reinsurance and reinsurance agreements.
Sec. 202. Regulation of reinsurer solvency.
Sec. 203. Definitions.

TITLE III—RULE OF CONSTRUCTION

Sec. 301. Rule of Construction.

SEC. 2. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act, this Act shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this Act.

TITLE I—NONADMITTED INSURANCE

SEC. 101. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.

(a) HOME STATE'S EXCLUSIVE AUTHORITY.—No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) ALLOCATION OF NONADMITTED PREMIUM TAXES.—

(1) IN GENERAL.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's home State described in subsection (a).

(2) EFFECTIVE DATE.—Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this Act, shall apply to any premium taxes that, on or after such date of enactment, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) REPORT.—Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) NATIONWIDE SYSTEM.—The Congress intends that each State adopt a nationwide or uniform procedure, such as an interstate compact, that provides for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

(c) ALLOCATION BASED ON TAX ALLOCATION REPORT.—To facilitate the payment of premium taxes among the States, an insured's home State may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured's home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

SEC. 102. REGULATION OF NONADMITTED INSURANCE BY INSURED'S HOME STATE.

(a) HOME STATE AUTHORITY.—Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State.

(b) BROKER LICENSING.—No State other than an insured's home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) ENFORCEMENT PROVISION.—Any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) WORKERS' COMPENSATION EXCEPTION.—This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

SEC. 103. PARTICIPATION IN NATIONAL PRODUCER DATABASE.

After the expiration of the 2-year period beginning on the date of the enactment of this Act, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

SEC. 104. UNIFORM STANDARDS FOR SURPLUS LINES ELIGIBILITY.

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with section 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act; and

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

SEC. 105. STREAMLINED APPLICATION FOR COMMERCIAL PURCHASERS.

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

SEC. 106. GAO STUDY OF NONADMITTED INSURANCE MARKET.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the nonadmitted insurance market to determine the effect of the enactment of this title on the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

(b) CONTENTS.—The study shall determine and analyze—

(1) the change in the size and market share of the nonadmitted insurance market and in

the number of insurance companies and insurance holding companies providing such business in the 18-month period that begins upon the effective date of this Act;

(2) the extent to which insurance coverage typically provided by the admitted insurance market has shifted to the nonadmitted insurance market;

(3) the consequences of any change in the size and market share of the nonadmitted insurance market, including differences in the price and availability of coverage available in both the admitted and nonadmitted insurance markets;

(4) the extent to which insurance companies and insurance holding companies that provide both admitted and nonadmitted insurance have experienced shifts in the volume of business between admitted and nonadmitted insurance; and

(5) the extent to which there has been a change in the number of individuals who have nonadmitted insurance policies, the type of coverage provided under such policies, and whether such coverage is available in the admitted insurance market.

(c) CONSULTATION WITH NAIC.—In conducting the study under this section, the Comptroller General shall consult with the NAIC.

(d) REPORT.—The Comptroller General shall complete the study under this section and submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate regarding the findings of the study not later than 30 months after the effective date of this Act.

SEC. 107. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) ADMITTED INSURER.—The term ''admitted insurer'' means, with respect to a State, an insurer licensed to engage in the business of insurance in such State.

(2) EXEMPT COMMERCIAL PURCHASER.—The term ''exempt commercial purchaser'' means any person purchasing commercial insurance that meets the following requirements:

(A) The person employs or retains a qualified risk manager to negotiate insurance coverage.

(B) The person has paid aggregate nationwide commercial property and casualty insurance premiums in excess of $100,000 in the immediately preceding 12 months.

(C) The person meets at least one of the following criteria:

(i) The person possesses a net worth in excess of $20,000,000.

(ii) The person generates annual revenues in excess of $50,000,000.

(iii) The person employs more than 500 full time or full time equivalent employees per individual insured or is a member of affiliated group employing more than 1,000 employees in the aggregate.

(iv) The person is a not-for-profit organization or public entity generating annual budgeted expenditures of at least $30,000,000.

(v) The person is a municipality with a population in excess of 50,000 persons.

(3) HOME STATE.—The term ''home State'' means the State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence.

(4) INDEPENDENTLY PROCURED INSURANCE.—The term ''independently procured insurance'' means insurance procured directly by an insured from a nonadmitted insurer.

(5) NAIC.—The term ''NAIC'' means the National Association of Insurance Commissioners or any successor entity.

(6) NONADMITTED INSURANCE.—The term ''nonadmitted insurance'' means any property and casualty insurance permitted to be placed directly or through a surplus lines broker with a nonadmitted insurer eligible to accept such insurance.

(7) NON-ADMITTED INSURANCE MODEL ACT.—The term ''Non-Admitted Insurance Model Act'' means the provisions of the Non-Admitted Insurance Model Act, as adopted by the NAIC on August 3, 1994, and amended on September 30, 1996, December 6, 1997, October 2, 1999, and June 8, 2002.

(8) NONADMITTED INSURER.—The term ''nonadmitted insurer'' means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State.

(9) QUALIFIED RISK MANAGER.—The term ''qualified risk manager'' means, with respect to a policyholder of commercial insurance, a person who meets all of the following requirements:

(A) The person is an employee of, or third party consultant retained by, the commercial policyholder.

(B) The person provides skilled services in loss prevention, loss reduction, or risk and insurance coverage analysis, and purchase of insurance.

(C) The person possesses at least two of the following credentials:

(i) An advanced degree in risk management issued by an accredited college or university.

(ii) At least 5 years of experience in one or more of the following areas of commercial property insurance or commercial casualty insurance:

(I) Risk financing.

(II) Claims administration.

(III) Loss prevention.

(IV) Risk and insurance coverage analysis.

(iii) At least one of the following designations:

(I) A designation as a Chartered Property and Casualty Underwriter (in this clause referred to as ''CPCU'') issued by the American Institute for CPCU/Insurance Institute of America.

(II) A designation as an Associate in Risk Management (ARM) issued by American Institute for CPCU/Insurance Institute of America.

(III) A designation as a Certified Risk Manager (CRM) issued by the National Alliance for Insurance Education & Research.

(IV) A designation as a RIMS Fellow (RF) issued by the Global Risk Management Institute.

(V) Any other designation, certification, or license determined by a State insurance commissioner or other State insurance regulatory official or entity to demonstrate minimum competency in risk management.

(10) PREMIUM TAX.—The term ''premium tax'' means, with respect to surplus lines or independently procured insurance coverage, any tax, fee, assessment, or other charge imposed by a State on an insured based on any payment made as consideration for an insurance contract for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

(11) SURPLUS LINES BROKER.—The term ''surplus lines broker'' means an individual, firm, or corporation which is licensed in a State to sell, solicit, or negotiate insurance on properties, risks, or exposures located or to be performed in a State with nonadmitted insurers.

(12) STATE.—The term ''State'' includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

TITLE II—REINSURANCE

SEC. 201. REGULATION OF CREDIT FOR REINSURANCE AND REINSURANCE AGREEMENTS.

(a) CREDIT FOR REINSURANCE.—If the State of domicile of a ceding insurer is an NAIC-accredited State, or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, and recognizes credit for reinsurance for the insurer's ceded risk, then no other State may deny such credit for reinsurance.

(b) ADDITIONAL PREEMPTION OF EXTRATERRITORIAL APPLICATION OF STATE LAW.—In addition to the application of subsection (a), all laws, regulations, provisions, or other actions of a State other than those of the State of domicile of the ceding insurer are preempted to the extent that they—

(1) restrict or eliminate the rights of the ceding insurer or the assuming insurer to resolve disputes pursuant to contractual arbitration to the extent such contractual provision is not inconsistent with the provisions of title 9, United States Code;

(2) require that a certain State's law shall govern the reinsurance contract, disputes arising from the reinsurance contract, or requirements of the reinsurance contract;

(3) attempt to enforce a reinsurance contract on terms different than those set forth in the reinsurance contract, to the extent that the terms are not inconsistent with this title; or

(4) otherwise apply the laws of the State to reinsurance agreements of ceding insurers not domiciled in that State.

SEC. 202. REGULATION OF REINSURER SOLVENCY.

(a) DOMICILIARY STATE REGULATION.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, such State shall be solely responsible for regulating the financial solvency of the reinsurer.

(b) NONDOMICILIARY STATES.—

(1) LIMITATION ON FINANCIAL INFORMATION REQUIREMENTS.—If the State of domicile of a reinsurer is an NAIC-accredited State or has financial solvency requirements substantially similar to the requirements necessary for NAIC accreditation, no other State may require the reinsurer to provide any additional financial information other than the information the reinsurer is required to file with its domiciliary State.

(2) RECEIPT OF INFORMATION.—No provision of this section shall be construed as preventing or prohibiting a State that is not the State of domicile of a reinsurer from receiving a copy of any financial statement filed with its domiciliary State.

SEC. 203. DEFINITIONS.

For purposes of this title, the following definitions shall apply:

(1) CEDING INSURER.—The term ''ceding insurer'' means an insurer that purchases reinsurance.

(2) DOMICILIARY STATE.—The terms ''State of domicile'' and ''domiciliary State'' means, with respect to an insurer or reinsurer, the State in which the insurer or reinsurer is incorporated or entered through, and licensed.

(3) REINSURANCE.—The term ''reinsurance'' means the assumption by an insurer of all or part of a risk undertaken originally by another insurer.

(4) REINSURER.—

(A) IN GENERAL.—The term ''reinsurer'' means an insurer to the extent that the insurer—

(i) is principally engaged in the business of reinsurance;

(ii) does not conduct significant amounts of direct insurance as a percentage of its net premiums; and

(iii) is not engaged in an ongoing basis in the business of soliciting direct insurance.

(B) DETERMINATION.—A determination of whether an insurer is a reinsurer shall be made under the laws of the State of domicile in accordance with this paragraph.

(5) STATE.—The term ''State'' includes any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

TITLE III—RULE OF CONSTRUCTION

SEC. 301. RULE OF CONSTRUCTION.

Nothing in this Act or amendments to this Act shall be construed to modify, impair, or supersede the application of the antitrust laws. Any implied or actual conflict between this Act and any amendments to this Act and the antitrust laws shall be resolved in favor of the operation of the antitrust laws.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Ohio (Mr. OXLEY) and the gentleman from Kansas (Mr. MOORE) each will control 20 minutes.

The Chair recognizes the gentleman from Ohio.

GENERAL LEAVE

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on this legislation and to insert extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. OXLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today is a historic moment in the evolution of our insurance marketplace. The Nonadmitted and Reinsurance Reform Act is an important reform for consumers, helping American homeowners and businesses to obtain more available and more affordable insurance coverage. It will especially help consumers in high-cost areas, such as coastal regions and urban cities vulnerable to terrorist risk. But equally important, this bill is the next critical step in a long journey towards comprehensive reform of how insurance is regulated at the State and Federal levels.

In 1995, I chaired some of the first hearings in the new Republican Congress on insurance reform and helped shape the largest financial services modernization bill of the last decade, the Gramm-Leach-Bliley Act. We finally got GLBA enacted in the waning days of 1999, but it wasn't easy. The Congress had been working on regulatory reform for some 66 years, enough time for three generations of lobbyists to put their children through college.

The debate on GLBA underscored the importance of the financial services industry to our country and the critical need for additional reform. To facilitate further legislative reforms and continue building on our hard-fought success, the House leadership created the Committee on Financial Services, which I have had the privilege of chairing for nearly its 6 years in existence.

Since then, we have had dozens of hearings with hundreds of witnesses on insurance regulation. We have heard that, starting back in 1871, the State insurance regulators committed to modernizing their regulations to provide for more uniformity and coordination and that they continue to hope to some day reach that goal. We have sorted through numerous State and Federal proposals to address the problems of a sluggish insurance marketplace beset by inefficient regulation and the threats of terrorism and other catastrophic disasters. And we have completed numerous investigations of how insurance providers and regulators have lived up to their promises to consumers and the marketplace.

After Gramm-Leach-Bliley, the heads of the State insurance regulators approached our committee to work together in forging several formal policy papers making a commitment towards uniformity and reform, culminating in an agreement to pursue Federal legislation to help the States achieve their own modernization goals.

These policy discussions culminated in the State Modernization and Regulatory Transparency Act, or SMART, as a template for further reform. Two of the SMART titles that appeared to have the greatest bipartisan consensus now form the basis of the legislation before us being moved forward by the leadership of Representative GINNY BROWN-WAITE, Representative MOORE, Capital Market Subcommittee Chairman BAKER, Representative WASSERMAN SCHULTZ, and several others.

Insurance reform is never easy and never quick. Believe me, it is never quick. Each success that we have had has been the result of strong bipartisan cooperation in working together to overcome the turf and vested interests that will always cling to the status quo.

I am proud though to have had the opportunity to work with my colleagues to finish one stage of modernization and help launch the next, and I wish my colleagues well as they continue down this long journey towards modernization of insurance regulation.

I again compliment the bill cosponsors, subcommittee Chairman BAKER and Ranking Members FRANK and KANJORSKI for their help and leadership. I look forward to passing this measure to improve the availability and affordability of insurance and taking another giant leap forward in this historical step towards insurance reform.

Mr. Speaker, I reserve the balance of my time.

Mr. MOORE of Kansas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to thank Congresswoman GINNY BROWN-WAITE for introducing H.R. 5637, the Nonadmitted and Reinsurance Reform Act, and for working with me on it as it has moved through the legislative process. I would also like to thank Chairman MIKE OXLEY and RICHARD BAKER and Ranking Members BARNEY FRANK and PAUL KANJORSKI for their support of this measure. The bipartisan support for this bill is a good example of how both sides can come together to introduce and pass legislation that is not and should not be about Democrats and Republicans.

Congresswoman GINNY BROWN-WAITE and I introduced H.R. 5637 three months ago on June 19 with strong bipartisan support and strong support on the Financial Services Committee. Since the bill's introduction, the Capital Market Subcommittee has held a useful and informative hearing on the issue, followed by a markup in which the bill received unanimous support. The full Financial Services Committee followed the successful subcommittee markup with a voice vote just one week later, and I look forward to strong support on the House floor today.

In short, H.R. 5637 would improve the regulation of two specific areas in the commercial insurance marketplace, namely, surplus lines and reinsurance transactions. This legislation would prohibit the extraterritorial application of State laws and allow ceding insurers and reinsurers to resolve disputes pursuant to contractual arbitration clauses. This reform, Mr. Speaker, is long overdue and necessary to restore regulatory certainty to the reinsurance market.

Finally, I would like to note that while many legislative attempts to reform the insurance industry encounter at least some industry opposition, H.R. 5637 is supported by the insurers, the reinsurers, the agents and brokers, as well as by many State regulators.

Mr. Speaker, I look forward to passage of this legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. OXLEY. Mr. Speaker, I am pleased to yield such time as she may consume to the gentlewoman from Florida (Ms. GINNY BROWN-WAITE), one of the leaders and the lead sponsor of this legislation.

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, I thank the chairman.

Mr. Speaker, today the regulation of the surplus lines market is fragmented and very cumbersome. Insurers and brokers who want to provide insurance across State lines are subject to a myriad of different State tax and licensing requirements. Oftentimes these regulations will conflict, making it virtually impossible for one company to comply with all of them. This situation leaves policyholders underinsured and with little choice in providers.

Moreover, most of the policyholders who have purchased insurance in the nonadmitted market do so every day. These very sophisticated commercial entities have educated risk advisers on staff with a thorough understanding of the market and their risk exposure.

Yet most States require that these experts be denied coverage from multiple providers before they are allowed to purchase insurance in the nonadmitted market.

The reinsurance market faces additional obstacles because some State regulators are taking it upon themselves to throw out arbitration agreements between reinsurance providers and primary carriers. These are contractual agreements decided upon by sophisticated parties on both sides of the transaction to settle disputes without tying up the courts.

Accordingly, the bill that we have before us today, H.R. 5637, specifies that only the tax policies and licensing regulations of the State in which the policy holder is domiciled will govern the transaction. It also requires States within 2 years of the bill's passage to participate in the National Association of Insurance Commissioners National Insurance Producer Database and to adopt regulations under NAIC's Nonadmitted Insurance Model Act.

The bill allows sophisticated commercial entities direct access to the surplus lines market without going through the multiple denial process. It also prohibits States from voiding established contractual arbitration agreements between reinsurers and primary companies.

Policyholders in a number of States are facing skyrocketing rates. With these obstacles already impeding affordability, adding a quagmire of inefficient State rules certainly does not help. Additionally, with reinsurance rates rising at an alarming rate, companies should be encouraged to stay out of the courts and to follow their own voluntarily entered into arbitration agreements. This bill provides commonsense solutions to the nonadmitted and reinsurance market.

I want to thank certainly Chairman OXLEY, who will be very much missed, not only by the committee, but by this entire body, certainly Representative MOORE and the other Members who signed onto this very bipartisan bill, as well as Mr. BAKER, for their leadership on this very important issue.

I urge members to vote in favor of H.R. 5637.

Mr. MOORE of Kansas. Mr. Speaker, I yield 1 minute to the gentlewoman from Florida (Ms. WASSERMAN SCHULTZ).

Ms. WASSERMAN SCHULTZ. Mr. Speaker, as an original cosponsor of this bill, I commend the Financial Services and Judiciary Committees for working together in a bipartisan spirit to move it forward. I especially want to thank Ranking Member CONYERS and Ranking Member FRANK and you, Chairman OXLEY, for your support and leadership.

This bill provides much needed relief to Florida's commercial firms, which are experiencing severe increases, and I mean thousands of percent increases in insurance premiums.

This is not endemic to Florida. It is really happening across the Nation. Surplus lines are a safety valve on traditional insurance markets. In some cases, they are the only way firms can get insurance when regulated lines fail.

Market perception of unsustainable increases in catastrophic risk has resulted in the precipitous decline of insurance coverage availability at astronomical cost to consumers.

This bill expands market capacity to provide surplus lines coverage. It eliminates hundreds of billions of dollars in administrative costs and duplicative filing fees, which are passed on to consumers. Maintaining the status quo means higher costs for commercial firms, consumers, and ultimately our economy.

I encourage my colleagues to support this bill because it ensures that companies are able to obtain insurance, meaning they can stay in our communities, provide much needed jobs and keep our economies strong. Companies in my home State are literally closing their doors or leaving Florida altogether because they cannot get insurance.

I urge my colleagues to support this bill.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Bucks County, Pennsylvania (Mr. FITZPATRICK).

Mr. FITZPATRICK of Pennsylvania. Mr. Speaker, the surplus lines and reinsurance marketplace is subject to regulatory problems that hamper efficiency and pass on higher costs to policyholders.

I find it extremely troubling that surplus lines policyholders in a number of States are facing skyrocketing rates due to an unnecessary, inefficient and burdensome regulatory maze for compliance. In addition, I find it problematic that reinsurance rates are rising because some State regulators are taking it upon themselves to throw out arbitration agreements between reinsurance providers and primary carriers. For this reason, I am an original cosponsor of this bipartisan and broadly endorsed legislation.

This commonsense bill fixes the problems created by the multitude of conflicting State laws and regulations and by some state-by-state regulators that are taking it upon themselves to throw out the agreements between the reinsurance providers and primary carriers to settle disputes without tying up the courts.

Congress must correct flaws in the current regulatory regime of commercial insurance. These policyholders cannot continue to be picking up the tab because of the basic problems in the current insurance regulatory system.

I commend Congresswoman GINNY BROWN-WAITE and Congressman DENNIS MOORE for introducing this legislation. I strongly urge the Members to vote for H.R. 5637.

Mr. MOORE of Kansas. Mr. Speaker, I yield such time as he may consume to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Speaker, just as the ranking member, I want to say that the leadership shown both by the gentleman from Kansas and the gentlewoman from Florida on this has been very important. Particularly I would say the gentleman from Kansas has been a very steady contributor to our deliberations regarding the importance of balance; and given the physical conditions that have occurred in Florida and the reaction thereto, the gentlewoman from Florida (Ms. WASSERMAN SCHULTZ) has been a real leader in trying to get an appropriate Federal response to the insurance crisis, and I am glad we were able to take this step today.

□ 1700

Mr. OXLEY. Mr. Speaker, I am pleased now to recognize the chairman of the Capital Markets Subcommittee, Mr. BAKER, for 2 minutes.

Mr. BAKER. Mr. Speaker, I certainly want to start by acknowledging the focused work of our chairman who has worked diligently on many aspects of reform, and the bill now pending is one small piece of a larger puzzle which has been constructed by the committee in an effort to facilitate provision of insurance of all sorts, but particularly focusing on the needs of homeowners. And a word of special appreciation from those of us in Louisiana as a result of the debacles of Katrina and Rita. We are experiencing a similar circumstance to that of our colleagues in the State of Florida.

The remedy posed under the pending bill is an important one. In one small area, it enables someone to have direct access to surplus lines policies which currently is not facilitated. Current rules require you to apply to at least three separate companies and be denied coverage before you can approach a surplus lines company to acquire the needed insurance. The proposed reform would enable certain qualifying purchasers of product, whether it be business owners or individuals, to have direct access. And in the case of the Katrina-Rita impact areas, this is of extreme importance in facilitating access to insurance which otherwise would not be made available.

I also want to speak to those members of the committee who worked diligently on this subject matter. As the ranking member indicated, this has been a bipartisan effort, and certainly Mr. MOORE and Ms. WASSERMAN SCHULTZ on their side are to be commended for their contributions. Ms. BROWN-WAITE and Mr. FITZPATRICK and others on our side have worked diligently as well.

I think the product we now have pending before the House is a very important step, but should be viewed only as that, a first step. There is much work yet to be done to facilitate regulatory commonsense oversight of the insurance industry, and hopefully provide for enhanced product development and competitiveness in markets where

we find in many States people are better served where markets are open, products are available, and prices are competitive.

I believe this surplus lines reform proposal will demonstrate that as an effective remedy to the problems we now face in a very expensive insurance market, and, in some cases, a market where a product is not available at all.

Mr. MOORE of Kansas. Mr. Speaker, I thank Mr. BAKER and the other speakers and the ranking member all for their comments. I hope we pass this.

I yield back the balance of my time.

Mr. OXLEY. Mr. Speaker, this was, again, in the great tradition of our committee, a good bipartisan effort by a lot of members that have been mentioned heretofore, and it is really what makes our committee very special. I am very proud of the work product that was put out. It is a somewhat controversial subject, the overall issue; but to be able to take a chunk of this, a very important chunk, and move it separately I think was a wise decision that our staff participated in as well as the members.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. BRADLEY of New Hampshire). The question is on the motion offered by the gentleman from Ohio (Mr. OXLEY) that the House suspend the rules and pass the bill, H.R. 5637, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. OXLEY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

CREDIT RATING AGENCY REFORM ACT OF 2006

Mr. OXLEY. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 3850) to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating agency industry.

The Clerk read as follows:

S. 3850

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Credit Rating Agency Reform Act of 2006''.

SEC. 2. FINDINGS.

Upon the basis of facts disclosed by the record and report of the Securities and Exchange Commission made pursuant to section 702 of the Sarbanes-Oxley Act of 2002 (116 Stat. 797), hearings before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives during the 108th and 109th Congresses, comment letters to the concept releases and proposed rules of the Commission, and facts otherwise disclosed and ascertained, Congress finds that credit rating agencies are of national importance, in that, among other things—

(1) their ratings, publications, writings, analyses, and reports are furnished and distributed, and their contracts, subscription agreements, and other arrangements with clients are negotiated and performed, by the use of the mails and other means and instrumentalities of interstate commerce;

(2) their ratings, publications, writings, analyses, and reports customarily relate to the purchase and sale of securities traded on securities exchanges and in interstate over-the-counter markets, securities issued by companies engaged in business in interstate commerce, and securities issued by national banks and member banks of the Federal Reserve System;

(3) the foregoing transactions occur in such volume as substantially to affect interstate commerce, the securities markets, the national banking system, and the national economy;

(4) the oversight of such credit rating agencies serves the compelling interest of investor protection;

(5) the 2 largest credit rating agencies serve the vast majority of the market, and additional competition is in the public interest; and

(6) the Commission has indicated that it needs statutory authority to oversee the credit rating industry.

SEC. 3. DEFINITIONS.

(a) SECURITIES EXCHANGE ACT OF 1934.—Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding at the end the following new paragraphs:

''(60) CREDIT RATING.—The term 'credit rating' means an assessment of the creditworthiness of an obligor as an entity or with respect to specific securities or money market instruments.

''(61) CREDIT RATING AGENCY.—The term 'credit rating agency' means any person—

''(A) engaged in the business of issuing credit ratings on the Internet or through another readily accessible means, for free or for a reasonable fee, but does not include a commercial credit reporting company;

''(B) employing either a quantitative or qualitative model, or both, to determine credit ratings; and

''(C) receiving fees from either issuers, investors, or other market participants, or a combination thereof.

''(62) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term 'nationally recognized statistical rating organization' means a credit rating agency that—

''(A) has been in business as a credit rating agency for at least the 3 consecutive years immediately preceding the date of its application for registration under section 15E;

''(B) issues credit ratings certified by qualified institutional buyers, in accordance with section 15E(a)(1)(B)(ix), with respect to—

''(i) financial institutions, brokers, or dealers;

''(ii) insurance companies;

''(iii) corporate issuers;

''(iv) issuers of asset-backed securities (as that term is defined in section 1101(c) of part 229 of title 17, Code of Federal Regulations, as in effect on the date of enactment of this paragraph);

''(v) issuers of government securities, municipal securities, or securities issued by a foreign government; or

''(vi) a combination of one or more categories of obligors described in any of clauses (i) through (v); and

''(C) is registered under section 15E.

''(63) PERSON ASSOCIATED WITH A NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION.—The term 'person associated with' a nationally recognized statistical rating organization means any partner, officer, director, or branch manager of a nationally recognized statistical rating organization (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a nationally recognized statistical rating organization, or any employee of a nationally recognized statistical rating organization.

''(64) QUALIFIED INSTITUTIONAL BUYER.—The term 'qualified institutional buyer' has the meaning given such term in section 230.144A(a) of title 17, Code of Federal Regulations, or any successor thereto.''.

(b) APPLICABLE DEFINITIONS.—As used in this Act—

(1) the term ''Commission'' means the Securities and Exchange Commission; and

(2) the term ''nationally recognized statistical rating organization'' has the same meaning as in section 3(a)(62) of the Securities Exchange Act of 1934, as added by this Act.

SEC. 4. REGISTRATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

(a) AMENDMENT.—The Securities Exchange Act of 1934 is amended by inserting after section 15D (15 U.S.C. 78o–6) the following new section:

''SEC. 15E. REGISTRATION OF NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

''(a) REGISTRATION PROCEDURES.—

''(1) APPLICATION FOR REGISTRATION.—

''(A) IN GENERAL.—A credit rating agency that elects to be treated as a nationally recognized statistical rating organization for purposes of this title (in this section referred to as the 'applicant'), shall furnish to the Commission an application for registration, in such form as the Commission shall require, by rule or regulation issued in accordance with subsection (n), and containing the information described in subparagraph (B).

''(B) REQUIRED INFORMATION.—An application for registration under this section shall contain information regarding—

''(i) credit ratings performance measurement statistics over short-term, mid-term, and long-term periods (as applicable) of the applicant;

''(ii) the procedures and methodologies that the applicant uses in determining credit ratings;

''(iii) policies or procedures adopted and implemented by the applicant to prevent the misuse, in violation of this title (or the rules and regulations hereunder), of material, nonpublic information;

''(iv) the organizational structure of the applicant;

''(v) whether or not the applicant has in effect a code of ethics, and if not, the reasons therefor;

''(vi) any conflict of interest relating to the issuance of credit ratings by the applicant;

''(vii) the categories described in any of clauses (i) through (v) of section 3(a)(62)(B) with respect to which the applicant intends to apply for registration under this section;

''(viii) on a confidential basis, a list of the 20 largest issuers and subscribers that use the credit rating services of the applicant, by amount of net revenues received therefrom in the fiscal year immediately preceding the date of submission of the application;

''(ix) on a confidential basis, as to each applicable category of obligor described in any of clauses (i) through (v) of section 3(a)(62)(B), written certifications described in subparagraph (C), except as provided in subparagraph (D); and

''(x) any other information and documents concerning the applicant and any person associated with such applicant as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

''(C) WRITTEN CERTIFICATIONS.—Written certifications required by subparagraph (B)(ix)—

''(i) shall be provided from not fewer than 10 qualified institutional buyers, none of which is affiliated with the applicant;

''(ii) may address more than one category of obligors described in any of clauses (i) through (v) of section 3(a)(62)(B);

''(iii) shall include not fewer than 2 certifications for each such category of obligor; and

''(iv) shall state that the qualified institutional buyer—

''(I) meets the definition of a qualified institutional buyer under section 3(a)(64); and

''(II) has used the credit ratings of the applicant for at least the 3 years immediately preceding the date of the certification in the subject category or categories of obligors.

''(D) EXEMPTION FROM CERTIFICATION REQUIREMENT.—A written certification under subparagraph (B)(ix) is not required with respect to any credit rating agency which has received, or been the subject of, a no-action letter from the staff of the Commission prior to August 2, 2006, stating that such staff would not recommend enforcement action against any broker or dealer that considers credit ratings issued by such credit rating agency to be ratings from a nationally recognized statistical rating organization.

''(E) LIMITATION ON LIABILITY OF QUALIFIED INSTITUTIONAL BUYERS.—No qualified institutional buyer shall be liable in any private right of action for any opinion or statement expressed in a certification made pursuant to subparagraph (B)(ix).

''(2) REVIEW OF APPLICATION.—

''(A) INITIAL DETERMINATION.—Not later than 90 days after the date on which the application for registration is furnished to the Commission under paragraph (1) (or within such longer period as to which the applicant consents) the Commission shall—

''(i) by order, grant such registration for ratings in the subject category or categories of obligors, as described in clauses (i) through (v) of section 3(a)(62)(B); or

''(ii) institute proceedings to determine whether registration should be denied.

''(B) CONDUCT OF PROCEEDINGS.—

''(i) CONTENT.—Proceedings referred to in subparagraph (A)(ii) shall—

''(I) include notice of the grounds for denial under consideration and an opportunity for hearing; and

''(II) be concluded not later than 120 days after the date on which the application for registration is furnished to the Commission under paragraph (1).

''(ii) DETERMINATION.—At the conclusion of such proceedings, the Commission, by order, shall grant or deny such application for registration.

''(iii) EXTENSION AUTHORIZED.—The Commission may extend the time for conclusion of such proceedings for not longer than 90 days, if it finds good cause for such extension and publishes its reasons for so finding, or for such longer period as to which the applicant consents.

''(C) GROUNDS FOR DECISION.—The Commission shall grant registration under this subsection—

''(i) if the Commission finds that the requirements of this section are satisfied; and

''(ii) unless the Commission finds (in which case the Commission shall deny such registration) that—

''(I) the applicant does not have adequate financial and managerial resources to consistently produce credit ratings with integrity and to materially comply with the procedures and methodologies disclosed under paragraph (1)(B) and with subsections (g), (h), (i), and (j); or

''(II) if the applicant were so registered, its registration would be subject to suspension or revocation under subsection (d).

''(3) PUBLIC AVAILABILITY OF INFORMATION.—Subject to section 24, the Commission shall, by rule, require a nationally recognized statistical rating organization, upon the granting of registration under this section, to make the information and documents submitted to the Commission in its completed application for registration, or in any amendment submitted under paragraph (1) or (2) of subsection (b), publicly available on its website, or through another comparable, readily accessible means, except as provided in clauses (viii) and (ix) of paragraph (1)(B).

''(b) UPDATE OF REGISTRATION.—

''(1) UPDATE.—Each nationally recognized statistical rating organization shall promptly amend its application for registration under this section if any information or document provided therein becomes materially inaccurate, except that a nationally recognized statistical rating organization is not required to amend—

''(A) the information required to be furnished under subsection (a)(1)(B)(i) by furnishing information under this paragraph, but shall amend such information in the annual submission of the organization under paragraph (2) of this subsection; or

''(B) the certifications required to be provided under subsection (a)(1)(B)(ix) by furnishing information under this paragraph.

''(2) CERTIFICATION.—Not later than 90 days after the end of each calendar year, each nationally recognized statistical rating organization shall furnish to the Commission an amendment to its registration, in such form as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors—

''(A) certifying that the information and documents in the application for registration of such nationally recognized statistical rating organization (other than the certifications required under subsection (a)(1)(B)(ix)) continue to be accurate; and

''(B) listing any material change that occurred to such information or documents during the previous calendar year.

''(c) ACCOUNTABILITY FOR RATINGS PROCEDURES.—

''(1) AUTHORITY.—The Commission shall have exclusive authority to enforce the provisions of this section in accordance with this title with respect to any nationally recognized statistical rating organization, if such nationally recognized statistical rating organization issues credit ratings in material contravention of those procedures relating to such nationally recognized statistical rating organization, including procedures relating to the prevention of misuse of nonpublic information and conflicts of interest, that such nationally recognized statistical rating organization—

''(A) includes in its application for registration under subsection (a)(1)(B)(ii); or

''(B) makes and disseminates in reports pursuant to section 17(a) or the rules and regulations thereunder.

''(2) LIMITATION.—The rules and regulations that the Commission may prescribe pursuant to this title, as they apply to nationally recognized statistical rating organizations, shall be narrowly tailored to meet the requirements of this title applicable to nationally recognized statistical rating organizations. Notwithstanding any other provision of law, neither the Commission nor any State (or political subdivision thereof) may regulate the substance of credit ratings or the procedures and methodologies by which any nationally recognized statistical rating organization determines credit ratings.

''(d) CENSURE, DENIAL, OR SUSPENSION OF REGISTRATION; NOTICE AND HEARING.—The Commission, by order, shall censure, place limitations on the activities, functions, or operations of, suspend for a period not exceeding 12 months, or revoke the registration of any nationally recognized statistical rating organization if the Commission finds, on the record after notice and opportunity for hearing, that such censure, placing of limitations, suspension, or revocation is necessary for the protection of investors and in the public interest and that such nationally recognized statistical rating organization, or any person associated with such an organization, whether prior to or subsequent to becoming so associated—

''(1) has committed or omitted any act, or is subject to an order or finding, enumerated in subparagraph (A), (D), (E), (H), or (G) of section 15(b)(4), has been convicted of any offense specified in section 15(b)(4)(B), or is enjoined from any action, conduct, or practice specified in subparagraph (C) of section 15(b)(4), during the 10-year period preceding the date of commencement of the proceedings under this subsection, or at any time thereafter;

''(2) has been convicted during the 10-year period preceding the date on which an application for registration is furnished to the Commission under this section, or at any time thereafter, of—

''(A) any crime that is punishable by imprisonment for 1 or more years, and that is not described in section 15(b)(4)(B); or

''(B) a substantially equivalent crime by a foreign court of competent jurisdiction;

''(3) is subject to any order of the Commission barring or suspending the right of the person to be associated with a nationally recognized statistical rating organization;

''(4) fails to furnish the certifications required under subsection (b)(2); or

''(5) fails to maintain adequate financial and managerial resources to consistently produce credit ratings with integrity.

''(e) TERMINATION OF REGISTRATION.—

''(1) VOLUNTARY WITHDRAWAL.—A nationally recognized statistical rating organization may, upon such terms and conditions as the Commission may establish as necessary in the public interest or for the protection of investors, withdraw from registration by furnishing a written notice of withdrawal to the Commission.

''(2) COMMISSION AUTHORITY.—In addition to any other authority of the Commission under this title, if the Commission finds that a nationally recognized statistical rating organization is no longer in existence or has ceased to do business as a credit rating agency, the Commission, by order, shall cancel the registration under this section of such nationally recognized statistical rating organization.

''(f) REPRESENTATIONS.—

''(1) BAN ON REPRESENTATIONS OF SPONSORSHIP BY UNITED STATES OR AGENCY THEREOF.—It shall be unlawful for any nationally recognized statistical rating organization to represent or imply in any manner whatsoever that such nationally recognized statistical rating organization has been designated, sponsored, recommended, or approved, or that the abilities or qualifications thereof have in any respect been passed upon, by the

United States or any agency, officer, or employee thereof.

''(2) BAN ON REPRESENTATION AS NRSRO OF UNREGISTERED CREDIT RATING AGENCIES.—It shall be unlawful for any credit rating agency that is not registered under this section as a nationally recognized statistical rating organization to state that such credit rating agency is a nationally recognized statistical rating organization registered under this title.

''(3) STATEMENT OF REGISTRATION UNDER SECURITIES EXCHANGE ACT OF 1934 PROVISIONS.—No provision of paragraph (1) shall be construed to prohibit a statement that a nationally recognized statistical rating organization is a nationally recognized statistical rating organization under this title, if such statement is true in fact and if the effect of such registration is not misrepresented.

''(g) PREVENTION OF MISUSE OF NONPUBLIC INFORMATION.—

''(1) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization, to prevent the misuse in violation of this title, or the rules or regulations hereunder, of material, nonpublic information by such nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization.

''(2) COMMISSION AUTHORITY.—The Commission shall issue final rules in accordance with subsection (n) to require specific policies or procedures that are reasonably designed to prevent misuse in violation of this title (or the rules or regulations hereunder) of material, nonpublic information.

''(h) MANAGEMENT OF CONFLICTS OF INTEREST.—

''(1) ORGANIZATION POLICIES AND PROCEDURES.—Each nationally recognized statistical rating organization shall establish, maintain, and enforce written policies and procedures reasonably designed, taking into consideration the nature of the business of such nationally recognized statistical rating organization and affiliated persons and affiliated companies thereof, to address and manage any conflicts of interest that can arise from such business.

''(2) COMMISSION AUTHORITY.—The Commission shall issue final rules in accordance with subsection (n) to prohibit, or require the management and disclosure of, any conflicts of interest relating to the issuance of credit ratings by a nationally recognized statistical rating organization, including, without limitation, conflicts of interest relating to—

''(A) the manner in which a nationally recognized statistical rating organization is compensated by the obligor, or any affiliate of the obligor, for issuing credit ratings or providing related services;

''(B) the provision of consulting, advisory, or other services by a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, to the obligor, or any affiliate of the obligor;

''(C) business relationships, ownership interests, or any other financial or personal interests between a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, and the obligor, or any affiliate of the obligor;

''(D) any affiliation of a nationally recognized statistical rating organization, or any person associated with such nationally recognized statistical rating organization, with any person that underwrites the securities or money market instruments that are the subject of a credit rating; and

''(E) any other potential conflict of interest, as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

''(i) PROHIBITED CONDUCT.—

''(1) PROHIBITED ACTS AND PRACTICES.—The Commission shall issue final rules in accordance with subsection (n) to prohibit any act or practice relating to the issuance of credit ratings by a nationally recognized statistical rating organization that the Commission determines to be unfair, coercive, or abusive, including any act or practice relating to—

''(A) conditioning or threatening to condition the issuance of a credit rating on the purchase by the obligor or an affiliate thereof of other services or products, including pre-credit rating assessment products, of the nationally recognized statistical rating organization or any person associated with such nationally recognized statistical rating organization;

''(B) lowering or threatening to lower a credit rating on, or refusing to rate, securities or money market instruments issued by an asset pool or as part of any asset-backed or mortgage-backed securities transaction, unless a portion of the assets within such pool or part of such transaction, as applicable, also is rated by the nationally recognized statistical rating organization; or

''(C) modifying or threatening to modify a credit rating or otherwise departing from its adopted systematic procedures and methodologies in determining credit ratings, based on whether the obligor, or an affiliate of the obligor, purchases or will purchase the credit rating or any other service or product of the nationally recognized statistical rating organization or any person associated with such organization.

''(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1), or in any rules or regulations adopted thereunder, may be construed to modify, impair, or supersede the operation of any of the antitrust laws (as defined in the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act, to the extent that such section 5 applies to unfair methods of competition).

''(j) DESIGNATION OF COMPLIANCE OFFICER.—Each nationally recognized statistical rating organization shall designate an individual responsible for administering the policies and procedures that are required to be established pursuant to subsections (g) and (h), and for ensuring compliance with the securities laws and the rules and regulations thereunder, including those promulgated by the Commission pursuant to this section.

''(k) STATEMENTS OF FINANCIAL CONDITION.—Each nationally recognized statistical rating organization shall, on a confidential basis, furnish to the Commission, at intervals determined by the Commission, such financial statements, certified (if required by the rules or regulations of the Commission) by an independent public accountant, and information concerning its financial condition, as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors.

''(l) SOLE METHOD OF REGISTRATION.—

''(1) IN GENERAL.—On and after the effective date of this section, a credit rating agency may only be registered as a nationally recognized statistical rating organization for any purpose in accordance with this section.

''(2) PROHIBITION ON RELIANCE ON NO-ACTION RELIEF.—On and after the effective date of this section—

''(A) an entity that, before that date, received advice, approval, or a no-action letter from the Commission or staff thereof to be treated as a nationally recognized statistical rating organization pursuant to the Commission rule at section 240.15c3–1 of title 17, Code of Federal Regulations, may represent itself or act as a nationally recognized statistical rating organization only—

''(i) during Commission consideration of the application, if such entity has furnished an application for registration under this section; and

''(ii) on and after the date of approval of its application for registration under this section; and

''(B) the advice, approval, or no-action letter described in subparagraph (A) shall be void.

''(3) NOTICE TO OTHER AGENCIES.—Not later than 30 days after the date of enactment of this section, the Commission shall give notice of the actions undertaken pursuant to this section to each Federal agency which employs in its rules and regulations the term 'nationally recognized statistical rating organization' (as that term is used under Commission rule 15c3–1 (17 C.F.R. 240.15c3–1), as in effect on the date of enactment of this section).

''(m) RULES OF CONSTRUCTION.—

''(1) NO WAIVER OF RIGHTS, PRIVILEGES, OR DEFENSES.—Registration under and compliance with this section does not constitute a waiver of, or otherwise diminish, any right, privilege, or defense that a nationally recognized statistical rating organization may otherwise have under any provision of State or Federal law, including any rule, regulation, or order thereunder.

''(2) NO PRIVATE RIGHT OF ACTION.—Nothing in this section may be construed as creating any private right of action, and no report furnished by a nationally recognized statistical rating organization in accordance with this section or section 17 shall create a private right of action under section 18 or any other provision of law.

''(n) REGULATIONS.—

''(1) NEW PROVISIONS.—Such rules and regulations as are required by this section or are otherwise necessary to carry out this section, including the application form required under subsection (a)—

''(A) shall be issued by the Commission in final form, not later than 270 days after the date of enactment of this section; and

''(B) shall become effective not later than 270 days after the date of enactment of this section.

''(2) REVIEW OF EXISTING REGULATIONS.—Not later than 270 days after the date of enactment of this section, the Commission shall—

''(A) review its existing rules and regulations which employ the term 'nationally recognized statistical rating organization' or 'NRSRO'; and

''(B) amend or revise such rules and regulations in accordance with the purposes of this section, as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.

''(o) NRSROs SUBJECT TO COMMISSION AUTHORITY.—

''(1) IN GENERAL.—No provision of the laws of any State or political subdivision thereof requiring the registration, licensing, or qualification as a credit rating agency or a nationally recognized statistical rating organization shall apply to any nationally recognized statistical rating organization or person employed by or working under the control of a nationally recognized statistical rating organization.

''(2) LIMITATION.—Nothing in this subsection prohibits the securities commission (or any agency or office performing like functions) of any State from investigating

and bringing an enforcement action with respect to fraud or deceit against any nationally recognized statistical rating organization or person associated with a nationally recognized statistical rating organization.

''(p) APPLICABILITY.—This section, other than subsection (n), which shall apply on the date of enactment of this section, shall apply on the earlier of—

''(1) the date on which regulations are issued in final form under subsection (n)(1); or

''(2) 270 days after the date of enactment of this section.''.

(b) CONFORMING AMENDMENTS.—

(1) SECURITIES EXCHANGE ACT OF 1934.—The Securities Exchange Act of 1934 (15 U.S.C. 78 et seq.) is amended—

(A) in section 15(b)(4) (15 U.S.C. 78o(b)(4))—

(i) in subparagraph (B)(ii), by inserting ''nationally recognized statistical rating organization,'' after ''transfer agent,''; and

(ii) in subparagraph (C), by inserting ''nationally recognized statistical rating organization,'' after ''transfer agent,''; and

(B) in section 21B(a) (15 U.S.C. 78u–2(a)), by inserting ''15E,'' after ''15C,''.

(2) INVESTMENT COMPANY ACT OF 1940.—The Investment Company Act of 1940 (15 U.S.C. 80a et seq.) is amended—

(A) in section 2(a) (15 U.S.C. 80a–2(a)), by adding at the end the following new paragraph:

''(53) The term 'credit rating agency' has the same meaning as in section 3 of the Securities Exchange Act of 1934.''; and

(B) in section 9(a) (15 U.S.C. 80a–9(a))—

(i) in paragraph (1), by inserting ''credit rating agency,'' after ''transfer agent,''; and

(ii) in paragraph (2), by inserting ''credit rating agency,'' after ''transfer agent,''.

(3) INVESTMENT ADVISERS ACT OF 1940.—The Investment Advisers Act of 1940 (15 U.S.C. 80b et seq.) is amended—

(A) in section 202(a) (15 U.S.C. 80b–2(a)), by adding at the end the following new paragraph:

''(28) The term 'credit rating agency' has the same meaning as in section 3 of the Securities Exchange Act of 1934.'';

(B) in section 202(a)(11) (15 U.S.C. 80b–2(a)(11)), by striking ''or (F)'' and inserting the following: ''(F) any nationally recognized statistical rating organization, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934, unless such organization engages in issuing recommendations as to purchasing, selling, or holding securities or in managing assets, consisting in whole or in part of securities, on behalf of others; or (G)''; and

(C) in section 203(e) (15 U.S.C. 80b–3(e))—

(i) in paragraph (2)(B), by inserting ''credit rating agency,'' after ''transfer agent,''; and

(ii) in paragraph (4), by inserting ''credit rating agency,'' after ''transfer agent,''.

(4) HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1992.—Section 1319 of the Housing and Community Development Act of 1992 (12 U.S.C. 4519) is amended by striking ''effectively'' and all that follows through ''broker-dealers'' and inserting ''that is a nationally recognized statistical rating organization, as such term is defined in section 3(a) of the Securities Exchange Act of 1934''.

(5) HIGHER EDUCATION ACT OF 1965.—Section 439(r)(15)(A) of the Higher Education Act of 1965 (20 U.S.C. 1087–2(r)(15)(A)) is amended by striking ''means any entity recognized as such by the Securities and Exchange Commission'' and inserting ''means any nationally recognized statistical rating organization, as that term is defined in section 3(a) of the Securities Exchange Act of 1934''.

(6) TITLE 23.—Section 181(11) of title 23, United States Code, is amended by striking ''identified by the Securities and Exchange Commission as a nationally recognized statistical rating organization'' and inserting ''registered with the Securities and Exchange Commission as a nationally recognized statistical rating organization, as that term is defined in section 3(a) of the Securities Exchange Act of 1934''.

SEC. 5. ANNUAL AND OTHER REPORTS.

Section 17(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)(1)) is amended—

(1) by inserting ''nationally recognized statistical rating organization,'' after ''registered transfer agent,''; and

(2) by adding at the end the following: ''Any report that a nationally recognized statistical rating organization is required by Commission rules under this paragraph to make and disseminate to the Commission shall be deemed furnished to the Commission.''.

SEC. 6. COMMISSION ANNUAL REPORT.

The Commission shall submit an annual report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that, with respect to the year to which the report relates—

(1) identifies applicants for registration under section 15E of the Securities Exchange Act of 1934, as added by this Act;

(2) specifies the number of and actions taken on such applications; and

(3) specifies the views of the Commission on the state of competition, transparency, and conflicts of interest among nationally recognized statistical rating organizations.

SEC. 7. GAO STUDY AND REPORT REGARDING NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATIONS.

(a) STUDY REQUIRED.—The Comptroller General of the United States shall conduct a study—

(1) to determine the impact of this Act and the amendments made by this Act on—

(A) the quality of credit ratings issued by nationally recognized statistical ratings organizations;

(B) the financial markets;

(C) competition among credit rating agencies;

(D) the incidence of inappropriate conflicts of interest and sales practices by nationally recognized statistical rating organizations;

(E) the process for registering as a nationally recognized statistical rating organization; and

(F) such other matters relevant to the implementation of this Act and the amendments made by this Act, as the Comptroller General deems necessary to bring to the attention of the Congress;

(2) to identify problems, if any, that have resulted from the implementation of this Act and the amendments made by this Act; and

(3) to recommend solutions, including any legislative or regulatory solutions, to any problems identified under paragraphs (1) and (2).

(b) REPORT REQUIRED.—Not earlier than 3 years nor later than 4 years after the date of enactment of this Act, the Comptroller General shall submit a report on the results of the study required by this section to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Ohio (Mr. OXLEY) and the gentleman from Pennsylvania (Mr. KANJORSKI) each will control 20 minutes.

The Chair recognizes the gentleman from Ohio.

GENERAL LEAVE

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on this legislation and to insert extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. OXLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, 4 years ago Congress passed the Sarbanes-Oxley Act to rectify the troubling accounting and reporting issue exposed by the largest corporate scandals in U.S. history. This landmark legislation strengthened the role of auditors, boards of directors, and audit committees, and in doing so stabilized America's capital markets. By enhancing the transparency and accountability of our public companies, Sarbanes-Oxley sought to fortify the pillars upon which our securities laws stand.

Within the many sweeping reforms implemented by the act was a provision, little noticed at the time, which required the SEC to examine credit rating agencies. Four years, one SEC report, over seven House and Senate hearings, and countless committee hours later, I stand before my colleagues in support of final action to bring much needed competition to the credit rating agencies.

S. 3850, the Credit Rating Agency Reform Act, closely follows and makes minor additions to H.R. 2990, the Credit Rating Agency Duopoly Relief Act, which was introduced by Congressman MICHAEL FITZPATRICK in June 2005, and passed the House on July 12 of this year. Like Mr. FITZPATRICK's bill, S. 3850 levels the playing field in the ratings industry by replacing an SEC designation process that benefits a privileged few with a voluntary registration system available to all.

Credit ratings are vital to our capital markets, providing investors with an evaluation of the creditworthiness of the debt issued by America's corporations and municipalities. High-profile mistakes made by prominent rating agencies, including missteps in the rating of Enron and WorldCom, highlight an industry in drastic need of increased competition and improved transparency.

As it now stands, the SEC designates rating agencies as nationally recognized statistical ratings organizations, or NRSROs, through an opaque process that provides applicants little guidance on the substance and procedure by which they will be evaluated. Currently, only five rating agencies are designated as NRSROs by the SEC. Understandably, many more aspire to attain that designation, as NRSRO status confers a significant competitive advantage. However, new applicants languish for years without an up-or-down vote in admission into this elite club. In fact, the Department of Justice commented upon the SEC designation process in 1998, calling it a ''nearly insurmountable barrier to entry.''

The SEC's opaque designation process has created an artificial government-sponsored barrier to entry that has stifled competition and helped the top two rating agencies, Moody's and Standard & Poor's, garner an 80 percent market share, clearly a duopoly. Without true competition in this industry, fees have skyrocketed and ratings quality has deteriorated. Ultimately, individual investors will benefit from a voluntary registration system that produces cheaper, more accurate ratings.

In the many years that I, Capital Markets Subcommittee Chairman RICHARD BAKER, and the rest of the Financial Services Committee have studied and deliberated over credit ratings, we have heard from countless parties, including the SEC, industry, academia, and the rating agencies themselves about the conflicts of interest that pervade the industry. Ratings firms have expanded into new areas which, many commentators have suggested, further compromise their objectivity. In addition, it has been alleged that leading rating agencies engage in certain abusive practices, to the detriment of smaller market players. S. 3850 closes the door on this behavior by requiring disclosure of conflict of interest and prohibiting abusive practices.

I want to commend the leading credit rating agencies, Moody's and Standard & Poor's, for lending support for this measure despite their initial opposition. Taking the handoff from Congressman FITZPATRICK and H.R. 2990, S. 3850 provides a strong framework for advancing the credit rating industry for the 21st century.

As for Senator SARBANES and me, the bill provides a logical follow-up to the Sarbanes-Oxley Act and our efforts to restore integrity to the capital markets.

I reserve the balance of my time.

Mr. KANJORSKI. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of S. 3850, the Credit Rating Agency Reform Act. This investor protection bill will create a new regulatory system for identifying and overseeing the nationally recognized agencies that issue credit ratings.

A robust free market for trading debt securities relies on an independent assessment of financial strength provided by credit rating agencies like Moody's, Fitch, and Standard & Poor's. Sound financial regulation also depends on the work of these raters.

Since the Securities and Exchange Commission created the concept of nationally recognized statistical rating organizations in 1970, the term, with its inference to credible and reliable ratings, has become embedded in nearly 10 Federal statutes, about 100 Federal regulations, approximately 200 State laws, and around 50 State rules. Many private parties have also included references to national recognized agencies in the terms of their contracts, corporate bylaws, and pension trust agreements. Foreign governments and international bodies have used the concept in their accords and codes, too.

In considering any bill to modify the process for identifying and overseeing nationally recognized agencies, we must therefore keep in mind the need to maintain the integrity of ratings. It is this credible and reliable standard on which investors and regulators rely. We should not lightly abandon this benchmark.

The critics of the present designation system have also long raised legitimate concerns about competition. In any legislative effort to increase the quantity of raters, I have long advocated that we should refrain from sacrificing the quality of their ratings. Unlike the bill the House considered earlier this year, S. 3850 has found the right equilibrium on these matters. It balances the desire to increase the quantity of approved agencies with the need to ensure quality ratings.

S. 3850 is a considerably better legislative product than H.R. 2990 in several significant ways:

First, unlike H.R. 2990, the bill before us would allow the commission to reject an application for registration as a nationally recognized agency if the entity lacks sufficient financial and managerial resources. This major improvement helps to ensure consistent high quality ratings.

Second, unlike H.R. 2990, the bill before us would require applicants for national recognition to provide to the commission written certifications from at least 10 of their institutional customers and a list of their 20 largest issuers and subscribers by the amount of net revenues received in the previous year. These important adjustments help guarantee that ratings used for regulatory purposes are accepted and used in the market.

Finally, unlike H.R. 2990, the bill before us would instruct the commission to issue rules on conflicts of interest and the misuse of nonpublic information. This helpful change advances investor protection.

Now that we are nearing the end of the legislative process, I want to clarify the legislative record on two specific provisions contained in S. 3850.

First, in the manager's amendment to S. 3850, the Senate added a preemption that gives exclusive oversight authority to the Securities and Exchange Commission to register, license, or qualify as a nationally recognized agency except in cases of fraud.

This preemption, based on existing language in the Investment Advisers Act, should be viewed narrowly as limiting a State's authority to regulate the day-to-day activities of credit rating agencies. It should not be taken to apply to typical State governmental functions in which States, their localities, and their agencies are users of credit ratings. Accordingly, States will continue to have the ability to continue to oversee their departments, programs, and political subdivisions with respect to debt issuance conditions, contract specifications, and investment standards for governmental funds, such as pension portfolios and financial reserves.

The preemption also should not be taken to apply to the regulation of insurers and bank solvency standards and generic business licensing requirements normally applied to entities performing business within a State.

□ 1715

Finally, while many States often currently use the ''nationally recognized'' designation as their standard for defining rating agencies, this legislation should not be read as compelling them to do so for all purposes going forward.

Second, S. 3850 gives clear authority to the Commission to reject those applicants for national recognition who lack adequate financial and managerial resources to produce credit ratings with consistent integrity. The bill also explicitly details a number of requirements for an application and authorizes the Commission to add additional conditions via the rulemaking process. Accordingly, it is my expectation that the Commission will expeditiously complete a rulemaking to require the production of documents related to the financial and managerial resources for any and all applications.

In conclusion, Mr. Speaker, Congress wisely adopted standards in the Sarbanes-Oxley Act to strengthen financial reporting and assure the integrity of our capital markets in the wake of the bankruptcies of Enron and WorldCom. Although many observers criticized the ''nationally recognized'' agencies for their failure to identify these insolvencies more expeditiously, we could not decide at that time how best to proceed on improving the oversight of the credit rating agencies. Four years later, however, we have reached a consensus and determined the best way to address these prior shortcomings. Because this consensus will protect the quality of credit ratings, I encourage my colleagues to support S. 3850.

Mr. Speaker, I reserve the balance of my time.

Mr. OXLEY. Mr. Speaker, I recognize the gentleman from Pennsylvania (Mr. FITZPATRICK), the author of the legislation, for 4 minutes.

Mr. FITZPATRICK of Pennsylvania. Mr. Speaker, in the wake of the Enron and WorldCom scandals, it is vital that Congress bring competition, transparency and accountability to the credit rating industry. Thanks to the leadership of House Financial Services Committee Chairman MIKE OXLEY and Capital Markets Subcommittee Chairman RICHARD BAKER, our quest to reform the credit rating industry is becoming a reality.

It is extremely disturbing that the two largest NRSROs, S&P and Moody's, rated Enron at investment grade just prior to its bankruptcy filing. Essentially, S&P and Moody's told

the market that Enron was a safe investment; and Enron was not their only blunder. S&P and Moody's also rated WorldCom and Orange County at investment grade just prior to their bankruptcy filings. But what other options were out there?

There are over 130 credit ratings agencies in the financial market. However, only five are currently designated as NRSROs by the Securities and Exchange Commission. This label is the root of the problem. To receive the elusive SEC distinction, companies must be ''nationally recognized'' or, that is, their ratings must be widely used and generally accepted in the financial markets.

This artificial barrier to entry has created a chicken-and-the-egg situation for non-NRSRO credit rating agencies trying to enter this industry, thus fostering a duopoly. S&P and Moody's have over 80 percent of the market share, and they rate more than 99 percent of the debt and preferred stock issues in the United States. As a result, they are raking in record fees.

This lack of competition in the credit rating industry has lowered the quality of ratings, inflated prices, stifled innovation, and allowed anti-competitive industry practices and conflicts of interest to go unchecked.

On June 20, 2005, I introduced the Credit Rating Agency Duopoly Relief Act. On July 12, 2006, the House passed H.R. 2990 with a bipartisan vote. Last Friday, the Senate passed bipartisan and broadly endorsed legislation, the Credit Rating Agency Reform Act, S. 3850, by unanimous consent.

I am extremely pleased that S. 3850 took the legislation, H.R. 2990, as its base text. Like H.R. 2990, Senate bill S. 3850 would eliminate the SEC staff's anti-competitive NRSRO process.

Mr. Speaker, in the wake of a seminal failure by S&P and Moody's in the Enron and WorldCom scandals, we must ensure integrity in the credit ratings process. This bill will reduce prices and anti-competitive practices. It will improve credit ratings quality and spur innovation. This view is broadly endorsed by the Investment Company Institute, Association for Financial Professionals, the Bond Market Association, the Financial Executives International, Financial Services Roundtable, Standards & Poor's, Moody's Corporation, Fitch Ratings, Fidelity Investments, and Consumer Federation of America.

Today's passage of this important reform legislation demonstrates Congress' commitment to protecting the individual investor by creating a more accountable, transparent and competitive market in our financial services industry.

This would not have been possible without the exemplary work by the staff of the Financial Services Committee, especially Bob Foster, Kristen Jaconi, Frank Tillotson, Josh Wilsusen, Alex Urrea, Marisol Garibay, and Tom Duncan, and the staff in the Senate Banking Committee, especially Justin Daly. Thanks for your diligence.

Again, I thank Chairman OXLEY and Chairman BAKER for their leadership. This artificial barrier of entry that fostered the duopoly and allowed the warning signs of Enron and WorldCom to go unnoticed had to be broken. Thank you for supporting our legislative efforts.

Chairman OXLEY, it has been a pleasure to work with you. Your bipartisanship and knowledge of the issues are envied, admired, and they need to be replicated. I wish you and your wife, Pat, many future successes and endeavors. You will be greatly missed.

Mr. Speaker, I strongly urge a ''yes'' vote on S. 3850 to kill the duopoly and ensure integrity in the credit rating industry.

Mr. KANJORSKI. Mr. Speaker, I reserve the balance of my time.

Mr. OXLEY. Mr. Speaker, I am pleased to recognize the gentlewoman from Florida (Ms. GINNY BROWN-WAITE) for 1 minute.

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, when companies like WorldCom and Enron continued to enjoy high-rated bonds just days before they declared bankruptcy, something was wrong with the system. Congress has taken great strides in ensuring that the corporate scandals these companies precipitated will not happen again, and improving the agencies that rate them is yet another important step.

I was not in Congress when the Enron and WorldCom scandals erupted, but I still regularly hear from constituents who lost a great deal of their retirement packages because of these criminals.

Listen up America. If Congress cannot improve investor confidence in other corporations, many more constituents will have difficulty planning for their retirement as well. Let's kill the duopoly, and that is what this bill does.

I thank Mr. FITZPATRICK for his leadership on credit rating agency reform. Without his hard work, we could not go home to our districts with the confidence that we are doing what we can to protect our constituents' hard-earned savings.

I urge members to support S. 3850 to help ensure that the credit rating agencies are working as they should, providing reliable evaluations of corporations on which so many retirees rely.

Mr. KANJORSKI. Mr. Speaker, I reserve the balance of my time.

Mr. OXLEY. Mr. Speaker, I recognize the gentleman from Georgia (Mr. PRICE) for 2 minutes.

Mr. PRICE of Georgia. Mr. Speaker, I want to congratulate the chairman and Mr. BAKER for their work on this and appreciate their leadership; and I thank the gentleman from Pennsylvania (Mr. FITZPATRICK) for his leadership on this issue. I truly tell our colleagues and folks all across this Nation that the State of Pennsylvania and the citizens all across this Nation are fortunate to have your leadership.

This bill addresses credit ratings or judging the financial worthiness of companies, and credit ratings play a real and significant role in our economy. Investors rely on these ratings to determine risks of default of companies, both large and small, as well as governmental entities. Currently, these ratings are often the determining factor as to whether companies and, hence, jobs will expand, or whether local governments are able to finance major municipal improvement projects.

The current process fails to provide a reasonably clear path for potential new rating agencies; and this bill addresses the fundamental, long-standing and widely recognized problems related to the operation and function of credit rating agencies.

Applicants seeking to become rating agencies will be required to make disclosures on rating performance, how they assist folks that they come in contact with; procedures and methodologies used to determine ratings, that is transparency; policies and procedures to prevent the misuse of nonpublic information, security; organizational structure; a code of ethics; a long list of subscribers and issuers; conflicts of interest; and the type of ratings that the applicant intends to use. In other words, accountability.

This reforms the current opaque process of the SEC approval of certain rating agencies as ''nationally recognized'' rating organizations. It doesn't favor a particular credit rating agency business model and thus encourages quantitative firms and subscriber-based models to compete with the qualitative issuer-paid structures of the current dominant firms.

Mr. Speaker, these are all extremely important advances and improvements for our entire economy, and I encourage the adoption of S. 3850.

Mr. OXLEY. Mr. Speaker, I recognize the chairman of the Capital Markets Insurance Subcommittee, the gentleman from Louisiana (Mr. BAKER), for 2 minutes.

Mr. BAKER. Mr. Speaker, I congratulate the chairman on his good work on what is truly an important piece of reform legislation in the world of finance. This has immeasurable impact on any number of businesses and individuals' financial interests.

I certainly want to continue to compliment Mr. FITZPATRICK on his good work with H.R. 2990, a previously passed House bill, which in essence is incorporated into the version sent back to us from the Senate with the good additions provided by Senator SARBANES. So this has been a bipartisan and bicameral effort which I think presents itself before the House today and also provides for exemplary reforms.

Credit rating agencies are unique entities. Currently, there is no mechanism by which a corporation may become a credit rating agency. There is

little oversight once one is designated; and if they fail to meet their fiduciary duties, there is not clear methodology by which one would be decommissioned.

The underlying bill makes strategic and important changes with regard to these provisions establishing a registration process through the SEC. The additions which Mr. SARBANES suggested be included in the legislation are important, providing additional accounting and financial screens through which a corporation must pass in order to achieve this designation.

There is also another important reform not yet mentioned in the debate, and that goes to the previous practice of rating agencies engaging in unsolicited ratings. It is not a bad business model: You simply pick out the company you wish to charge, you rate them, and send them the bill for services later. It presents a corporation with a very difficult dilemma in that, under our securities law, if a corporation chooses to enter the public markets and issue debt, you must have two favorable ratings from credit rating agencies.

For these reasons, this bill eliminates those unsolicited ratings, provides stability in the overall rating process, and I believe will serve our capital markets well in good fashion going forward.

I again compliment Chairman OXLEY and Mr. FITZPATRICK for their leadership and good work.

Mr. KANJORSKI. Mr. Speaker, I have no other requests for time, and I yield back the balance of my time.

Mr. OXLEY. Mr. Speaker, in closing, I want to pay special tribute to our friend from Pennsylvania (Mr. FITZPATRICK). It is rare in this House that a freshman has been able to pass major legislation as we have before us today, and it is a real tribute to his leadership and hard work and the cooperation on both sides of the aisle that we were able to get this bipartisan and bicameral bill finished.

We had a most impressive and informative field hearing in the City of Brotherly Love last November, and it really did set the template and the opportunity for the committee to move forward with this legislation.

It is particularly poignant because it is a natural after passage of Sarbanes-Oxley, and I know Senator SARBANES and I both appreciate the work and the leadership that Mr. FITZPATRICK has provided for us and for Chairman BAKER to move that legislation through his subcommittee.

I want to thank all involved, including the staffers that Mr. FITZPATRICK mentioned. This has been a labor of love, and it will be one that will have enormous implications for our capital markets down the road.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. OXLEY) that the House suspend the rules and pass the Senate bill, S. 3850.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

□ 1730

MARK-TO-MARKET EXTENSION ACT OF 2006

Mr. OXLEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6115) to extend the authority of the Secretary of Housing and Urban Development to restructure mortgages and rental assistance for certain assisted multifamily housing.

The Clerk read as follows:

H.R. 6115

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Mark-to-Market Extension Act of 2006''.

SEC. 2. REAUTHORIZATION.

Section 579 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended—

(1) in subsection (a)(1), by striking ''October 1, 2006'' and inserting ''October 1, 2011''; and

(2) in subsection (b), by striking ''October 1, 2006'' and inserting ''October 1, 2011''.

SEC. 3. EXCEPTION RENTS.

Section 514(g)(2)(A) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by striking ''five percent'' and inserting ''nine percent''.

SEC. 4. PERIOD OF ELIGIBILITY FOR NONPROFIT DEBT RELIEF.

Section 517(a)(5) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by inserting before the period at the end the following: ''*: Provided*, That if such purchaser acquires such project subsequent to the date of recordation of the affordability agreement described in section 514(e)(6), (A) such purchaser must acquire such project on or before the later of (i) five years after the date of recordation of the affordability agreement and (ii) two years after the date of enactment of this title; and (B) the Secretary must have received, and determined acceptable, such purchaser's application for modification, assignment or forgiveness prior to such purchaser's acquisition of the project''.

SEC. 5. DEFINITIONS.

Section 512 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by adding at the end the following new paragraph:

''(20) DISASTER-DAMAGED ELIGIBLE PROJECT.—The term 'disaster-damaged eligible project' means an eligible multifamily housing project—

''(A) that is located in a county that was declared a major disaster area on or after January 1, 2005, by the President pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq);

''(B) whose owner carried casualty and liability insurance covering such project in amounts required by the Secretary;

''(C) that suffered damages not covered by such insurance that the Secretary determines are likely to exceed $5,000 per unit in connection with the natural disaster that was the subject of such designation; and

''(D) whose owner requests restructuring within two years following the date that such damages were incurred.

Disaster-damaged eligible projects shall be eligible without regard to the relationship between rent level for the assisted units and comparable market rents.''.

SEC. 6. DISASTER-DAMAGED ELIGIBLE PROJECTS.

(a) MARKET RENT DETERMINATIONS.—Subparagraph (B) of section 514(g)(1) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended to read as follows:

''(B) if those rents cannot be determined—

''(i) with respect to a disaster-damaged eligible project, are equal to 100 percent of the fair market rents for the relevant market area (in effect at the time of such disaster); and

''(ii) with respect to other eligible multifamily housing projects, are equal to 90 percent of the fair market rents for the relevant market area.''.

(b) OWNER INVESTMENT.—Section 517(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f note) is amended by adding at the end the following new paragraph:

''(3) PROPERTIES DAMAGED BY NATURAL DISASTERS.—With respect to a disaster-damaged eligible project, the owner contribution toward rehabilitation needs shall be determined in accordance with paragraph (2)(C).''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Ohio (Mr. OXLEY) and the gentlewoman from California (Ms. WATERS) each will control 20 minutes.

The Chair recognizes the gentleman from Ohio.

GENERAL LEAVE

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on this legislation and to insert extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. OXLEY. Mr. Speaker, I yield myself such time as I may consume.

I rise in strong support of H.R. 6115, the Mark-to-Market Extension Act of 2006, legislation introduced by my friend and colleague from Ohio, Congresswoman DEBORAH PRYCE. This legislation extends the Multifamily Assisted Housing Restructuring and Affordability Act of 1997 for 5 years beyond its current expiration date of September 30, 2006.

Legislation creating the Mark-to-Market program was enacted in 1997 to reduce the cost to the Federal Government of renewing section 8 contracts. At that time, 4,000 multifamily projects with FHA-insured mortgages were receiving project-based rent subsidies under section 8 of the U.S. Housing Act of 1937. The original Housing Assistance Payment contracts attached to these projects were written for periods ranging from 15 to 40 years. The majority of these projects had units with rents that exceeded those for comparable unassisted units; however, HUD did not have the authority

to renew the contract at above-market rents.

Consequently, few of these projects would have remained financially viable when their rental income was reduced to market rates, as owners would not have been able to cover their costs. With the reduced rents, such projects would most likely have gone into default on their mortgages, generating losses to the FHA insurance fund and possibly displacing many tenants in those projects.

Under the current law, if the Mark-to-Market program expires, HUD will be required to renew Housing Assistance Payment Contracts at market levels, but the authority to restructure mortgage debt will no longer be available for projects that have yet to enter the Mark-to-Market program. Without that authority, many projects would not generate sufficient cash flow to support their mortgage after rents are reduced to market levels.

CBO estimates that the cost of restructuring is less expensive than the cost of default by about $500,000 per project, on average. Consequently, CBO estimates that enacting H.R. 6115 will reduce direct spending by $188 million over 5 years principally by avoiding defaults on FHA-insured multifamily mortgages that otherwise would occur under current law.

H.R. 6115 will ensure that HUD continues to have the tools necessary to restructure mortgages and lower rents, thereby reducing the Fed's cost of oversubsidized section 8 properties.

I want to commend Congresswoman PRYCE for her work on this important legislation. And I urge the adoption of H.R. 6115, the Mark-to-Market Extension Act of 2006.

Mr. Speaker, I reserve the balance of my time.

Ms. WATERS. Mr. Speaker, I yield myself such time as I may consume.

(Ms. WATERS asked and was given permission to revise and extend her remarks.)

Ms. WATERS. Mr. Speaker, I rise in support of H.R. 6115, the Mark-to-Market Extension Act of 2006.

I want to thank the gentlewoman from Ohio, DEBORAH PRYCE, for sponsoring this bill, along with other cosponsors of the bill, including Mr. GERLACH of Pennsylvania; Mr. TIBERI of Ohio; and, of course, Ranking Member FRANK. The distinguished chairman of the Committee on Financial Services, Mr. OXLEY, must also be commended for moving this important bill to the floor. As the ranking member of the Subcommittee on Housing and Community Affairs, I am pleased to be an original cosponsor of this bill, and I would like to thank all of the members of the subcommittee who supported it.

H.R. 6115, the Mark-to-Market Extension Act of 2006, will reauthorize the Mark-to-Market program. The program is set to expire on September 30, 2006. Of course, we can ill afford to have any housing program eliminated by our failure to act, particularly since the Mark-to-Market program ensures that our multifamily rental housing stock remains on the market.

When Congress enacted the Multifamily Assisted Housing Reform and Affordability Act of 1997, it was designed to, number one, eliminate above-market rents at low- and moderate-income multifamily properties with FHA-insured mortgages and project-based section 8 assistance; and, number two, preserve affordable rental housing in markets where it is needed.

The Mark-to-Market program was created to address these program goals, and it relies basically on several tools: debt restructuring, full or partial payment of claims, deferment of mortgage payments, credit enhancements, and increased FHA mortgage insurance.

There is ample evidence that the Mark-to-Market program is critical to preserving multifamily housing and to cost savings. According to HUD, as of March 2006, the Mark-to-Market program has been used to preserve approximately 220,000 affordable rental apartments at savings of $1.9 billion. And, in fact, the Congressional Budget Office concluded 5 years ago that the cost of restructuring debt for many multifamily housing projects is less expensive that the cost of default by an estimated $1 million per project.

Because more than 1,000 projects could be assisted under the Mark-to-Market program, we will save many multifamily affordable housing units over the next 5 years. I am certainly not interested in seeing any of the multifamily rental units that are located in my district or in the State of California, projects that are in the pipeline in California, go into default because the Mark-to-Market program is allowed to expire. This tool is too valuable to preserving the affordable housing stock across the country to allow it to expire. When I think about it, we were very close to losing several major housing programs had our Subcommittee on Housing and the full committee not taken action on this and other programs.

Again, this bill not only demonstrates just how serious many members of the Committee on Financial Services have been on reaching consensus on programs that are important to fighting the affordable housing crisis in this country, but the bill recognizes low- and moderate-income housing needs in many of our communities.

Yes, H.R. 6115 is being considered by this House at a critical juncture because the Mark-to-Market program takes into account the serious shortage of the affordable multifamily rental housing in America. The Mark-to-Market program applies to FHA-insured multifamily projects with project-based assistance under the section 8 program. Rents for these projects are in excess of the rents for comparable rental units in the area. While many of these projects had been developed with rents which were above market, when the 20-year section 8 contracts began to expire back in the 1990s, the contracts were not renewed at above-market rents. This forced many projects into default because the owners of the projects could not operate or meet mortgage payments at market rents.

Restructuring the FHA-insured mortgage, which lowers debt service to a level that is sustainable at market rent, as well as mechanisms to rehabilitate and to replenish reserves, are what makes the Mark-to-Market program worthy of extension. Under the Mark-to-Market program, owners of multifamily projects that have been restructured are required to accept section 8 renewal offers and to keep rents affordable regardless of whether section 8 assistance is available. The critical requirement must be met for the next 30 years.

In addition, the committee included new provisions to the Mark-to-Market program that will enable Mark-to-Market mechanisms to be extended to damaged properties in disaster areas. The committee concluded that by including these properties, many of which are located in the gulf region where 170,000 units in New Orleans were lost, that the question of eligibility would be eliminated, making M–M tools quickly available to the rebuilding efforts. The bill also allows for continued debt relief upon the transfer of a Mark-to-Market project to any qualified nonprofit purchasers.

With regard to the use of exception rent, the committee recognized that the existing 5 percent cap on rents greater than 100 percent of the median is projected to be reached this year, requiring the committee to raise the rent ceiling to 9 percent of the Mark-to-Market portfolio.

For all of the above reasons, this is one of the most constructive housing bills reported by the Committee on Financial Services this year.

Mr. Speaker, we cannot let the Mark-to-Market program expire, and I certainly urge my colleagues to support the bill.

Mr. FRANK of Massachusetts. Mr. Speaker, will the gentlewoman yield?

Ms. WATERS. I yield to the gentleman from Massachusetts.

Mr. FRANK of Massachusetts. Mr. Speaker, I thank the gentlewoman for yielding.

I just wanted to note the good work that we have been able to do in our Subcommittee on Housing. There are some differences between the parties, and I have to say that we on our side regret that we were not able to get into the increased production, but that disagreement, and it is an important one, being what it is, hasn't kept us from working together in a number of other areas, including some efforts to preserve.

And the leadership that the gentlewoman has shown, and the chairman of the full committee has worked there, and I must say the former chairman, the gentleman from Ohio, who is not with us now but good work should be

recognized no matter what circumstance has followed, in working together, we have managed to do, I think, a good job in the housing area. And the gentlewoman from California has been an excellent ranking member. This is another good piece of it, and I am very glad that we were able to do this today.

Ms. WATERS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. OXLEY. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, just in closing, let me salute our good friend from California, who has had a passionate interest in housing ever since she got here and has worked extremely well as the ranking member of the subcommittee with the chairman and with both the full committee chairmen, myself and the gentleman from Ohio. We have surprised a lot of people with what we have been able to produce.

They say politics is the art of the possible, and I think we have proven it time and time again. This is commonsense legislation that is good for all concerned, and I just want to salute her dedication to that effort.

Ms. PRYCE of Ohio. Mr. Speaker, I would first like to thank Chairman OXLEY, for this effort and for his great leadership of our Committee for the last 6 years. Six very challenging years in which fiscal policy really mattered. A time when security, reliability, transparency, made a difference. Ms. WATERS, and Ranking Member FRANK and their staffs for their hard work on this legislation. Clinton Jones, Cindy Chetti, and Tallman Johnson on the Majority staff have been invaluable.

We are here today to extend a program that works: A program that saves taxpayers money, reduces rents on tenants, and ensures the long-term viability of affordable housing properties.

The numbers speak louder than words—In just 7 years, Mark-to-Market has resulted in nearly $2 billion in net savings to taxpayers, reduced rent costs at over 2,700 properties by an estimated $216 million per year, and completed debt-restructuring on over 1,400 properties.

Central Ohio has been the beneficiary of many of these projects, including the Ohio Capital Corporation for Housing's purchase of 12 HUD-insured properties in urban Columbus, and the continued development of a home for disabled individuals near the Ohio State University, the Center for Creative Living.

This bill also includes an amendment I drafted in Committee, which provides relief for properties in rural and dense urban areas and non-profit purchasers, and erases any question of the eligibility of properties damaged by Hurricanes Katrina, Rita, Wilma or other natural disasters.

Our action today shows our commitment to acting before this program sunsets.

Mr. OXLEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. OXLEY) that the House suspend the rules and pass the bill, H.R. 6115.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. OXLEY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

FINANCIAL SERVICES REGULATORY RELIEF ACT OF 2006

Mr. OXLEY. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 2856) to provide regulatory relief and improve productivity for insured depository institutions, and for other purposes, as amended.

The Clerk read as follows:

S. 2856

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Financial Services Regulatory Relief Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—BROKER RELIEF

Sec. 101. [Rulemaking] *Joint rulemaking* required for revised definition of broker in the Securities Exchange Act of 1934.

TITLE II—MONETARY POLICY PROVISIONS

Sec. 201. Authorization for the Federal reserve to pay interest on reserves.

Sec. 202. Increased flexibility for the Federal Reserve Board to establish reserve requirements.

Sec. 203. Effective date.

TITLE III—NATIONAL BANK PROVISIONS

Sec. 301. Voting in shareholder elections.

Sec. 302. Simplifying dividend calculations for national banks.

Sec. 303. Repeal of obsolete limitation on removal authority of the Comptroller of the Currency.

Sec. 304. Repeal of obsolete provision in the Revised Statutes.

Sec. 305. Enhancing the authority for banks to make community development investments.

TITLE IV—SAVINGS ASSOCIATION PROVISIONS

Sec. 401. Parity for savings associations under the Securities Exchange Act of 1934 and the Investment Advisers Act of 1940.

Sec. 402. Repeal of overlapping rules governing purchased mortgage servicing rights.

Sec. 403. Clarifying citizenship of Federal savings associations for Federal court jurisdiction.

Sec. 404. Repeal of limitation on loans to one borrower.

TITLE V—CREDIT UNION PROVISIONS

Sec. 501. Leases of land on Federal facilities for credit unions.

Sec. 502. Increase in general 12-year limitation of term of Federal credit union loans to 15 years.

Sec. 503. Check cashing and money transfer services offered within the field of membership.

Sec. 504. Clarification of definition of net worth under certain circumstances for purposes of prompt corrective action.

Sec. 505. Amendments relating to nonfederally insured credit unions.

TITLE VI—DEPOSITORY INSTITUTION PROVISIONS

Sec. 601. Reporting requirements relating to insider lending.

Sec. 602. Investments by insured savings associations in bank service companies authorized.

Sec. 603. Authorization for member bank to use pass-through reserve accounts.

Sec. 604. Streamlining reports of condition.

Sec. 605. Expansion of eligibility for 18-month examination schedule for community banks.

Sec. 606. Streamlining depository institution merger application requirements.

Sec. 607. Nonwaiver of privileges.

Sec. 608. Clarification of application requirements for optional conversion for Federal savings associations.

Sec. 609. Exemption from disclosure of privacy policy for accounting firms.

Sec. 610. Inflation adjustment for the small depository institution exception under the Depository Institution Management Interlocks Act.

Sec. 611. Modification to cross marketing restrictions.

TITLE VII—BANKING AGENCY PROVISIONS

Sec. 701. Statute of limitations for judicial review of appointment of a receiver for depository institutions.

Sec. 702. Enhancing the safety and soundness of insured depository institutions.

Sec. 703. Cross guarantee authority.

Sec. 704. Golden parachute authority and nonbank holding companies.

Sec. 705. Amendments relating to change in bank control.

Sec. 706. Amendment to provide the Federal Reserve Board with discretion concerning the imputation of control of shares of a company by trustees.

Sec. 707. Interagency data sharing.

Sec. 708. Clarification of extent of suspension, removal, and prohibition authority of Federal banking agencies in cases of certain crimes by institution-affiliated parties.

Sec. 709. Protection of confidential information received by Federal banking regulators from foreign banking supervisors.

Sec. 710. Prohibition on participation by convicted individuals.

Sec. 711. Coordination of State examination authority.

Sec. 712. Deputy Director; succession authority for Director of the Office of Thrift Supervision.

Sec. 713. Office of Thrift Supervision representation on Basel Committee on Banking Supervision.

Sec. 714. Federal Financial Institutions Examination Council.

Sec. 715. Technical amendments relating to insured institutions.

Sec. 716. Clarification of enforcement authority.

Sec. 717. Federal banking agency authority to enforce deposit insurance conditions.
Sec. 718. Receiver or conservator consent requirement.
Sec. 719. Acquisition of FICO scores.
Sec. 720. Elimination of criminal indictments against receiverships.
Sec. 721. Resolution of deposit insurance disputes.
Sec. 722. Recordkeeping.
Sec. 723. Preservation of records.
Sec. 724. Technical amendments to information sharing provision in the Federal Deposit Insurance Act.
Sec. 725. Technical and conforming amendments relating to banks operating under the Code of Law for the District of Columbia.
Sec. 726. Technical corrections to the Federal Credit Union Act.
Sec. 727. Repeal of obsolete provisions of the Bank Holding Company Act of 1956.
Sec. 728. Development of model privacy forms.

TITLE VIII—FAIR DEBT COLLECTION PRACTICES ACT AMENDMENTS

Sec. 801. Exception for certain bad check enforcement programs.
Sec. 802. Other amendments.

TITLE IX—CASH MANAGEMENT MODERNIZATION

Sec. 901. Collateral modernization.

TITLE X—STUDIES AND REPORTS

Sec. 1001. Study and report by the Comptroller General on the currency transaction report filing system.
Sec. 1002. Study and report on institution diversity and consolidation.

TITLE I—BROKER RELIEF

SEC. 101. *JOINT* RULEMAKING REQUIRED FOR REVISED DEFINITION OF BROKER IN THE SECURITIES EXCHANGE ACT OF 1934.

(a) FINAL RULES REQUIRED.—

(1) AMENDMENT TO SECURITIES EXCHANGE ACT.—Section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4)) is amended by adding at the end the following:

''(F) [RULEMAKING] *JOINT RULEMAKING* REQUIRED.—The Commission *and the Board of Governors of the Federal Reserve System shall* [, by rule,] *jointly adopt a single set of rules or regulations to* implement the exceptions in subparagraph (B).''.

(2) TIMING.—Not later than 180 days after the date of *the* enactment of this Act, the Securities and Exchange Commission (in this section referred to as the ''Commission'') [shall issue proposed rules] *and the Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ''Board'') shall jointly issue a proposed single set of rules or regulations* to define the term ''broker'' in accordance with section 3(a)(4) of the Securities Exchange Act of 1934, as amended by this subsection.

(3) RULEMAKING SUPERSEDES PREVIOUS RULEMAKING.—A final [rule issued] *single set of rules or regulations jointly adopted* in accordance with this section shall supersede any other proposed or final rule issued by the Commission *on or after the date of enactment of section 201 of the Gramm-Leach-Bliley Act* with regard to the exceptions to the definition of a broker under section 3(a)(4)(B) of the Securities Exchange Act of 1934 [, on or after the date of enactment of section 201 of the Gramm-Leach-Bliley Act]. No such other rule, whether or not issued in final form, shall have any force or effect on or after that date of enactment.

(b) CONSULTATION.—Prior to [issuing the final rule] *jointly adopting the single set of final rules or regulations* required by this section, the Commission *and the Board* shall consult with and seek the concurrence of the Federal banking agencies concerning the content of such rulemaking in implementing section 3(a)(4)(B) of the Securities Exchange Act of 1934, as amended by this section and section 201 of the Gramm-Leach-Bliley Act.

[(c) AGENCY OBJECTIONS TO COMMISSION RULE.—

(1) FILING OF PETITION FOR REVIEW.—

(A) IN GENERAL.—Any Federal banking agency may obtain review of any final rule issued under this section in the United States Court of Appeals for the District of Columbia Circuit by filing in such court, not later than 60 days after the date of publication of the final rule, a written petition requesting that the rule be set aside.

(B) EXPEDITED PROCESS.—Any proceeding to challenge such a rule commenced under subparagraph (A) shall be expedited by the Court of Appeals.

(2) TRANSMITTAL OF PETITION AND RECORD.—

(A) SUBMISSION TO CLERK.—A copy of a petition described in paragraph (1) shall be transmitted as soon as possible by the Clerk of the Court to an officer or employee of the Commission designated for that purpose.

(B) FILING OF PETITION.—Upon receipt of a petition under subparagraph (A), the Commission shall file with the court the rule under review and any documents referred to therein, and any other relevant materials prescribed by the court.

(3) EXCLUSIVE JURISDICTION.—On the date of the filing of a petition under paragraph (1), the court has jurisdiction, which becomes exclusive on the filing of the materials set forth in paragraph (2), to affirm and enforce or to set aside the rule at issue.

(4) STANDARD OF REVIEW.—The court shall determine to affirm and enforce or set aside a rule of the Commission under this subsection, based on the determination of the court as to whether the rule is consistent with the purposes and language of section 3(a)(4)(B) of the Securities Exchange Act of 1934, as amended by section 201 of the Gramm-Leach-Bliley Act, and appropriate in light of the history, purpose, and extent of the rule under the Federal securities laws and the Federal banking laws, giving deference neither to the views of the Commission nor of the Federal banking agencies.

(5) JUDICIAL STAY.—The filing of a petition by a Federal banking agency under paragraph (1) shall operate as a judicial stay, until the date on which the determination of the court is final (including any appeal of such determination).]

[d] *(c)* DEFINITION.—For purposes of this section, the term ''Federal banking agencies'' means [the Board of Governors of the Federal Reserve System,] the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the Federal Deposit Insurance Corporation.

TITLE II—MONETARY POLICY PROVISIONS

SEC. 201. AUTHORIZATION FOR THE FEDERAL RESERVE TO PAY INTEREST ON RESERVES.

(a) IN GENERAL.—Section 19(b) of the Federal Reserve Act (12 U.S.C. 461(b)) is amended by adding at the end the following:

''(12) EARNINGS ON BALANCES.—

''(A) IN GENERAL.—Balances maintained at a Federal Reserve bank by or on behalf of a depository institution may receive earnings to be paid by the Federal Reserve bank at least once each calendar quarter, at a rate or rates not to exceed the general level of short-term interest rates.

''(B) REGULATIONS RELATING TO PAYMENTS AND DISTRIBUTIONS.—The Board may prescribe regulations concerning—

''(i) the payment of earnings in accordance with this paragraph;

''(ii) the distribution of such earnings to the depository institutions which maintain balances at such banks, or on whose behalf such balances are maintained; and

''(iii) the responsibilities of depository institutions, Federal Home Loan Banks, and the National Credit Union Administration Central Liquidity Facility with respect to the crediting and distribution of earnings attributable to balances maintained, in accordance with subsection (c)(1)(A), in a Federal Reserve bank by any such entity on behalf of depository institutions.

''(C) DEPOSITORY INSTITUTIONS DEFINED.—For purposes of this paragraph, the term 'depository institution', in addition to the institutions described in paragraph (1)(A), includes any trust company, corporation organized under section 25A or having an agreement with the Board under section 25, or any branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978).''.

(b) CONFORMING AMENDMENT.—Section 19 of the Federal Reserve Act (12 U.S.C. 461) is amended—

(1) in subsection (b)(4)—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraphs (D) and (E) as subparagraphs (C) and (D), respectively; and

(2) in subsection (c)(1)(A), by striking ''subsection (b)(4)(C)'' and inserting ''subsection (b)''.

SEC. 202. INCREASED FLEXIBILITY FOR THE FEDERAL RESERVE BOARD TO ESTABLISH RESERVE REQUIREMENTS.

Section 19(b)(2)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(2)(A)) is amended—

(1) in clause (i), by striking ''the ratio of 3 per centum'' and inserting ''a ratio of not greater than 3 percent (and which may be zero)''; and

(2) in clause (ii), by striking ''and not less than 8 per centum,'' and inserting ''(and which may be zero)''.

SEC. 203. EFFECTIVE DATE.

The amendments made by this title shall take effect October 1, 2011.

TITLE III—NATIONAL BANK PROVISIONS

SEC. 301. VOTING IN SHAREHOLDER ELECTIONS.

Section 5144 of the Revised Statutes of the United States (12 U.S.C. 61) is amended—

(1) by striking ''or to cumulate'' and inserting ''or, if so provided by the articles of association of the national bank, to cumulate''; and

(2) by striking the comma after ''his shares shall equal''.

SEC. 302. SIMPLIFYING DIVIDEND CALCULATIONS FOR NATIONAL BANKS.

(a) IN GENERAL.—Section 5199 of the Revised Statutes of the United States (12 U.S.C. 60) is amended to read as follows:

''SEC. 5199. NATIONAL BANK DIVIDENDS.

''(a) IN GENERAL.—Subject to subsection (b), the directors of any national bank may declare a dividend of so much of the undivided profits of the bank as the directors judge to be expedient.

''(b) APPROVAL REQUIRED UNDER CERTAIN CIRCUMSTANCES.—A national bank may not declare and pay dividends in any year in excess of an amount equal to the sum of the total of the net income of the bank for that year and the retained net income of the bank for the preceding 2 years, minus the sum of any transfers required by the Comptroller of the Currency and any transfers required to be made to a fund for the retirement of any preferred stock, unless the Comptroller of the Currency approves the declaration and payment of dividends in excess of such amount.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter three of title LXII of the

Revised Statutes of the United States is amended by striking the item relating to section 5199 and inserting the following:

''5199. National bank dividends.''.

SEC. 303. REPEAL OF OBSOLETE LIMITATION ON REMOVAL AUTHORITY OF THE COMPTROLLER OF THE CURRENCY.

Section 8(e)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(4)) is amended by striking the 5th sentence.

SEC. 304. REPEAL OF OBSOLETE PROVISION IN THE REVISED STATUTES.

Section 5143 of the Revised Statutes of the United States (12 U.S.C. 59) is amended to read as follows:

''SEC. 5143. REDUCTION OF CAPITAL.

''(a) IN GENERAL.—Subject to the approval of the Comptroller of the Currency, a national banking association may, by a vote of shareholders owning, in the aggregate, two-thirds of its capital stock, reduce its capital.

''(b) SHAREHOLDER DISTRIBUTIONS AUTHORIZED.—As part of its capital reduction plan approved in accordance with subsection (a), and with the affirmative vote of shareholders owning at least two thirds of the shares of each class of its stock outstanding (each voting as a class), a national banking association may distribute cash or other assets to its shareholders.''.

SEC. 305. ENHANCING THE AUTHORITY FOR BANKS TO MAKE COMMUNITY DEVELOPMENT INVESTMENTS.

(a) NATIONAL BANKS.—The paragraph designated as the ''Eleventh.'' of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended to read as follows:

''Eleventh. To make investments directly or indirectly, each of which promotes the public welfare by benefiting primarily low- and moderate-income communities or families (such as by providing housing, services, or jobs). An association shall not make any such investment if the investment would expose the association to unlimited liability. The Comptroller of the Currency shall limit an association's investments in any 1 project and an association's aggregate investments under this paragraph. An association's aggregate investments under this paragraph shall not exceed an amount equal to the sum of 5 percent of the association's capital stock actually paid in and unimpaired and 5 percent of the association's unimpaired surplus fund, unless the Comptroller determines by order that the higher amount will pose no significant risk to the affected deposit insurance fund, and the association is adequately capitalized. In no case shall an association's aggregate investments under this paragraph exceed an amount equal to the sum of 15 percent of the association's capital stock actually paid in and unimpaired and 15 percent of the association's unimpaired surplus fund. The foregoing standards and limitations apply to investments under this paragraph made by a national bank directly and by its subsidiaries.''.

(b) CONFORMING AMENDMENTS FOR STATE MEMBER BANKS.—The 23rd undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 338a) is amended to read as follows:

''(23) A State member bank may make investments directly or indirectly, each of which promotes the public welfare by benefiting primarily low- and moderate-income communities or families (such as by providing housing, services, or jobs), to the extent permissible under State law. A State member bank shall not make any such investment if the investment would expose the State member bank to unlimited liability. The Board shall limit a State member bank's investment in any 1 project and a State member bank's aggregate investments under this paragraph. The aggregate amount of investments of any State member bank under this paragraph may not exceed an amount equal to the sum of 5 percent of the State member bank's capital stock actually paid in and unimpaired and 5 percent of the State member bank's unimpaired surplus, unless the Board determines, by order, that a higher amount will pose no significant risk to the affected deposit insurance fund; and the State member bank is adequately capitalized. In no case shall the aggregate amount of investments of any State member bank under this paragraph exceed an amount equal to the sum of 15 percent of the State member bank's capital stock actually paid in and unimpaired and 15 percent of the State member bank's unimpaired surplus. The foregoing standards and limitations apply to investments under this paragraph made by a State member bank directly and by its subsidiaries.''.

TITLE IV—SAVINGS ASSOCIATION PROVISIONS

SEC. 401. PARITY FOR SAVINGS ASSOCIATIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934 AND THE INVESTMENT ADVISERS ACT OF 1940.

(a) SECURITIES EXCHANGE ACT OF 1934.—

(1) DEFINITION OF BANK.—Section 3(a)(6) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(6)) is amended—

(A) in subparagraph (A), by inserting ''or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act'' after ''a banking institution organized under the laws of the United States''; and

(B) in subparagraph (C)—

(i) by inserting ''or savings association, as defined in section 2(4) of the Home Owners' Loan Act'' after ''banking institution''; and

(ii) by inserting ''or savings associations'' after ''having supervision over banks''.

(2) INCLUSION OF OTS UNDER THE DEFINITION OF APPROPRIATE REGULATORY AGENCY FOR CERTAIN PURPOSES.—Section 3(a)(34) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(34)) is amended—

(A) in subparagraph (A)—

(i) in clause (ii), by striking ''(i) or (iii)'' and inserting ''(i), (iii), or (iv)'';

(ii) in clause (iii), by striking ''and'' at the end;

(iii) by redesignating clause (iv) as clause (v); and

(iv) by inserting after clause (iii) the following:

''(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a subsidiary or a department or division of any such savings association, or a savings and loan holding company; and'';

(B) in subparagraph (B)—

(i) in clause (ii), by striking ''(i) or (iii)'' and inserting ''(i), (iii), or (iv)'';

(ii) in clause (iii), by striking ''and'' at the end;

(iii) by redesignating clause (iv) as clause (v); and

(iv) by inserting after clause (iii) the following:

''(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, or a subsidiary of any such savings association, or a savings and loan holding company; and'';

(C) in subparagraph (C)—

(i) in clause (ii), by striking ''(i) or (iii)'' and inserting ''(i), (iii), or (iv)'';

(ii) in clause (iii), by striking ''and'' at the end;

(iii) by redesignating clause (iv) as clause (v); and

(iv) by inserting after clause (iii) the following:

''(iv) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation, a savings and loan holding company, or a subsidiary of a savings and loan holding company when the appropriate regulatory agency for such clearing agency is not the Commission; and'';

(D) in subparagraph (D)—

(i) in clause (ii), by striking ''and'' at the end;

(ii) by redesignating clause (iii) as clause (iv); and

(iii) by inserting after clause (ii) the following:

''(iii) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))) the deposits of which are insured by the Federal Deposit Insurance Corporation; and'';

(E) in subparagraph (F)—

(i) by redesignating clauses (ii), (iii), and (iv) as clauses (iii), (iv), and (v), respectively; and

(ii) by inserting after clause (i) the following:

''(ii) the Director of the Office of Thrift Supervision, in the case of a savings association (as defined in section 3(b) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b))), the deposits of which are insured by the Federal Deposit Insurance Corporation; and'';

(F) by moving subparagraph (H) and inserting such subparagraph immediately after subparagraph (G); and

(G) by adding at the end of the undesignated matter at the end the following: ''As used in this paragraph, the term 'savings and loan holding company' has the same meaning as in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)).''.

(3) CONFORMING EXEMPTION TO REPORTING REQUIREMENT.—Section 23(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78w(b)(1)) is amended by inserting ''other than the Office of Thrift Supervision,'' before ''shall each''.

(b) INVESTMENT ADVISERS ACT OF 1940.—

(1) DEFINITION OF BANK.—Section 202(a)(2) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(2)) is amended—

(A) in subparagraph (A), by inserting ''or a Federal savings association, as defined in section 2(5) of the Home Owners' Loan Act'' after ''a banking institution organized under the laws of the United States''; and

(B) in subparagraph (C)—

(i) by inserting '', savings association, as defined in section 2(4) of the Home Owners' Loan Act,'' after ''banking institution''; and

(ii) by inserting ''or savings associations'' after ''having supervision over banks''.

(2) CONFORMING AMENDMENTS.—Section 210A of the Investment Advisers Act of 1940 (15 U.S.C. 80b–10a) is amended in each of subsections (a)(1)(A)(i), (a)(1)(B), (a)(2), and (b), by striking ''bank holding company'' each place that term appears and inserting ''bank holding company or savings and loan holding company''.

(c) CONFORMING AMENDMENT TO THE INVESTMENT COMPANY ACT OF 1940.—Section 10(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–10(c)) is amended by inserting after ''1956)'' the following: ''or any one savings and loan holding company, together with its affiliates and subsidiaries (as such terms are defined in section 10 of the Home Owners' Loan Act),''.

SEC. 402. REPEAL OF OVERLAPPING RULES GOVERNING PURCHASED MORTGAGE SERVICING RIGHTS.

Section 5(t) of the Home Owners' Loan Act (12 U.S.C. 1464(t)) is amended—

(1) by striking paragraph (4) and inserting the following:

''(4) [Repealed].''; and

(2) in paragraph (9)(A), by striking ''intangible assets, plus'' and all that follows through the period at the end and inserting ''intangible assets.''.

SEC. 403. CLARIFYING CITIZENSHIP OF FEDERAL SAVINGS ASSOCIATIONS FOR FEDERAL COURT JURISDICTION.

Section 5 of the Home Owners' Loan Act (12 U.S.C. 1464) is amended by adding at the end the following:

''(x) HOME STATE CITIZENSHIP.—In determining whether a Federal court has diversity jurisdiction over a case in which a Federal savings association is a party, the Federal savings association shall be considered to be a citizen only of the State in which such savings association has its home office.''.

SEC. 404. REPEAL OF LIMITATION ON LOANS TO ONE BORROWER.

Section 5(u)(2)(A) of the Home Owners' Loan Act (12 U.S.C. 1464(u)(2)(A)) is amended—

(1) in clause (i)—

(A) by striking ''for any'' and inserting ''For any''; and

(B) by striking ''; or'' and inserting a period; and

(2) in clause (ii)—

(A) by striking ''to develop domestic'' and inserting ''To develop domestic'';

(B) by striking subclause (I); and

(C) by redesignating subclauses (II) through (V) as subclauses (I) through (IV), respectively.

TITLE V—CREDIT UNION PROVISIONS

SEC. 501. LEASES OF LAND ON FEDERAL FACILITIES FOR CREDIT UNIONS.

(a) IN GENERAL.—Section 124 of the Federal Credit Union Act (12 U.S.C. 1770) is amended—

(1) by striking ''Upon application by any credit union'' and inserting ''Notwithstanding any other provision of law, upon application by any credit union'';

(2) by inserting ''on lands reserved for the use of, and under the exclusive or concurrent jurisdiction of, the United States or'' after ''officer or agency of the United States charged with the allotment of space'';

(3) by inserting ''lease land or'' after ''such officer or agency may in his or its discretion''; and

(4) by inserting ''or the facility built on the lease land'' after ''credit union to be served by the allotment of space''.

(b) CLERICAL AMENDMENT.—The section heading for section 124 of the Federal Credit Union Act (12 U.S.C. 1770) is amended by inserting ''**OR FEDERAL LAND**'' after ''**BUILDINGS**''.

SEC. 502. INCREASE IN GENERAL 12-YEAR LIMITATION OF TERM OF FEDERAL CREDIT UNION LOANS TO 15 YEARS.

Section 107(5) of the Federal Credit Union Act (12 U.S.C. 1757(5)) is amended in the matter preceding subparagraph (A), by striking ''to make loans, the maturities of which shall not exceed twelve years'' and inserting ''to make loans, the maturities of which shall not exceed 15 years,''.

SEC. 503. CHECK CASHING AND MONEY TRANSFER SERVICES OFFERED WITHIN THE FIELD OF MEMBERSHIP.

Section 107(12) of the Federal Credit Union Act (12 U.S.C. 1757(12)) is amended to read as follows:

''(12) in accordance with regulations prescribed by the Board—

''(A) to sell, to persons in the field of membership, negotiable checks (including travelers checks), money orders, and other similar money transfer instruments (including international and domestic electronic fund transfers); and

''(B) to cash checks and money orders and receive international and domestic electronic fund transfers for persons in the field of membership for a fee;''.

SEC. 504. CLARIFICATION OF DEFINITION OF NET WORTH UNDER CERTAIN CIRCUMSTANCES FOR PURPOSES OF PROMPT CORRECTIVE ACTION.

Section 216(o)(2)(A) of the Federal Credit Union Act (12 U.S.C. 1790d(o)(2)(A)) is amended—

(1) by inserting ''the'' before ''retained earnings balance''; and

(2) by inserting '', together with any amounts that were previously retained earnings of any other credit union with which the credit union has combined'' before the semicolon at the end.

SEC. 505. AMENDMENTS RELATING TO NONFEDERALLY INSURED CREDIT UNIONS.

(a) IN GENERAL.—Subsection (a) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(a)) is amended by adding at the end the following new paragraph:

''(3) ENFORCEMENT BY APPROPRIATE STATE SUPERVISOR.—Any appropriate State supervisor of a private deposit insurer, and any appropriate State supervisor of a depository institution which receives deposits that are insured by a private deposit insurer, may examine and enforce compliance with this subsection under the applicable regulatory authority of such supervisor.''.

(b) AMENDMENT RELATING TO DISCLOSURES REQUIRED, PERIODIC STATEMENTS, AND ACCOUNT RECORDS.—Section 43(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(b)(1)) is amended by striking ''or similar instrument evidencing a deposit'' and inserting ''or share certificate.''.

(c) AMENDMENTS RELATING TO DISCLOSURES REQUIRED, ADVERTISING, PREMISES.—Section 43(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(b)(2)) is amended to read as follows:

''(2) ADVERTISING; PREMISES.—

''(A) IN GENERAL.—Include clearly and conspicuously in all advertising, except as provided in subparagraph (B); and at each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page, a notice that the institution is not federally insured.

''(B) EXCEPTIONS.—The following need not include a notice that the institution is not federally insured:

''(i) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution.

''(ii) Small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.''.

(d) AMENDMENTS RELATING TO ACKNOWLEDGMENT OF DISCLOSURE.—Section 43(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(b)(3)) is amended to read as follows:

''(3) ACKNOWLEDGMENT OF DISCLOSURE.—

''(A) NEW DEPOSITORS OBTAINED OTHER THAN THROUGH A CONVERSION OR MERGER.—With respect to any depositor who was not a depositor at the depository institution before the effective date of the Financial Services Regulatory Relief Act of 2006, and who is not a depositor as described in subparagraph (B), receive any deposit for the account of such depositor only if the depositor has signed a written acknowledgement that—

''(i) the institution is not federally insured; and

''(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

''(B) NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking federal insurance after the effective date of the Financial Services Regulatory Relief Act of 2006, receive any deposit for the account of such depositor only if—

''(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

''(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment.

''(C) CURRENT DEPOSITORS.—Receive any deposit after the effective date of the Financial Services Regulatory Relief Act of 2006 for the account of any depositor who was a depositor on that date only if—

''(i) the depositor has signed a written acknowledgement described in subparagraph (A); or

''(ii) the institution has complied with the provisions of subparagraph (E) which are applicable as of the date of the deposit.

''(D) ALTERNATIVE PROVISION OF NOTICE TO NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—

''(i) IN GENERAL.—Transmit to each depositor who has not signed a written acknowledgement described in subparagraph (A)—

''(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

''(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

''(E) ALTERNATIVE PROVISION OF NOTICE TO CURRENT DEPOSITORS.—

''(i) IN GENERAL.—Transmit to each depositor who was a depositor before the effective date of the Financial Services Regulatory Relief Act of 2006, and has not signed a written acknowledgement described in subparagraph (A)—

''(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

''(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.

''(ii) MANNER AND TIMING OF NOTICE.—

''(I) FIRST NOTICE.—Make the transmission described in clause (i) via mail not later than three months after the effective date of the Financial Services Regulatory Relief Act of 2006.

''(II) SECOND NOTICE.—Make a second transmission described in clause (i) via mail not less than 30 days and not more than three months after a transmission to the depositor in accordance with subclause (I), if the institution has not, by the date of such mailing, received from the depositor a card referred to in clause (i) which has been signed by the depositor.''.

(e) AMENDMENTS RELATING TO MANNER AND CONTENT OF DISCLOSURE.—Section 43(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(c)) is amended to read as follows:

''(c) MANNER AND CONTENT OF DISCLOSURE.—To ensure that current and prospective customers understand the risks involved in foregoing Federal deposit insurance, the Federal Trade Commission, by regulation or order, shall prescribe the manner and content of disclosure required under this section, which shall be presented in such format and in such type size and manner as to be simple and easy to understand.''.

(f) REPEAL OF PROVISION PROHIBITING NONDEPOSITORY INSTITUTIONS FROM ACCEPTING DEPOSITS.—Section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended—

(1) by striking subsection (e); and

(2) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(g) REPEAL OF FTC AUTHORITY TO ENFORCE INDEPENDENT AUDIT REQUIREMENT; CONCURRENT STATE ENFORCEMENT.—Subsection (f) (as

so redesignated by subsection (e) of this section) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended to read as follows:

''(f) ENFORCEMENT.—

''(1) LIMITED FTC ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b), (c) and (e), and any regulation prescribed or order issued under any such subsection, shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission.

''(2) BROAD STATE ENFORCEMENT AUTHORITY.—

''(A) IN GENERAL.—Subject to subparagraph (C), an appropriate State supervisor of a depository institution lacking Federal deposit insurance may examine and enforce compliance with the requirements of this section, and any regulation prescribed under this section.

''(B) STATE POWERS.—For purposes of bringing any action to enforce compliance with this section, no provision of this section shall be construed as preventing an appropriate State supervisor of a depository institution lacking Federal deposit insurance from exercising any powers conferred on such official by the laws of such State.

''(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisor may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this section that is alleged in that complaint.''.

TITLE VI—DEPOSITORY INSTITUTION PROVISIONS

SEC. 601. REPORTING REQUIREMENTS RELATING TO INSIDER LENDING.

(a) REPORTING REQUIREMENTS REGARDING LOANS TO EXECUTIVE OFFICERS OF MEMBER BANKS.—Section 22(g) of the Federal Reserve Act (12 U.S.C. 375a) is amended—

(1) by striking paragraphs (6) and (9); and

(2) by redesignating paragraphs (7), (8), and (10) as paragraphs (6), (7), and (8), respectively.

(b) REPORTING REQUIREMENTS REGARDING LOANS FROM CORRESPONDENT BANKS TO EXECUTIVE OFFICERS AND SHAREHOLDERS OF INSURED BANKS.—Section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972(2)) is amended—

(1) by striking subparagraph (G); and

(2) by redesignating subparagraphs (H) and (I) as subparagraphs (G) and (H), respectively.

SEC. 602. INVESTMENTS BY INSURED SAVINGS ASSOCIATIONS IN BANK SERVICE COMPANIES AUTHORIZED.

(a) IN GENERAL.—Sections 2 and 3 of the Bank Service Company Act (12 U.S.C. 1862, 1863) are each amended by striking ''insured bank'' each place that term appears and inserting ''insured depository institution''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) BANK SERVICE COMPANY ACT DEFINITIONS.—Section 1(b) of the Bank Service Company Act (12 U.S.C. 1861(b)) is amended—

(A) in paragraph (4)—

(i) by inserting '', except when such term appears in connection with the term 'insured depository institution','' after ''means''; and

(ii) by striking ''Federal Home Loan Bank Board'' and inserting ''Director of the Office of Thrift Supervision'';

(B) by striking paragraph (5) and inserting the following:

''(5) INSURED DEPOSITORY INSTITUTION.—The term 'insured depository institution' has the same meaning as in section 3(c) of the Federal Deposit Insurance Act;'';

(C) by striking ''and'' at the end of paragraph (7);

(D) by striking the period at the end of paragraph (8) and inserting ''; and'';

(E) by adding at the end the following:

''(9) the terms 'State depository institution', 'Federal depository institution', 'State savings association' and 'Federal savings association' have the same meanings as in section 3 of the Federal Deposit Insurance Act.'';

(F) in paragraph (2), in subparagraphs (A)(ii) and (B)(ii), by striking ''insured banks'' each place that term appears and inserting ''insured depository institutions''; and

(G) in paragraph (8)—

(i) by striking ''insured bank'' and inserting ''insured depository institution'';

(ii) by striking ''insured banks'' each place that term appears and inserting ''insured depository institutions''; and

(iii) by striking ''the bank's'' and inserting ''the depository institution's''.

(2) AMOUNT OF INVESTMENT.—Section 2 of the Bank Service Company Act (12 U.S.C. 1862) is amended by inserting ''or savings associations, other than the limitation on the amount of investment by a Federal savings association contained in section 5(c)(4)(B) of the Home Owners' Loan Act'' after ''relating to banks''.

(3) LOCATION OF SERVICES.—Section 4 of the Bank Service Company Act (12 U.S.C. 1864) is amended—

(A) in subsection (b), by inserting ''as permissible under subsection (c), (d), or (e) or'' after ''Except'';

(B) in subsection (c), by inserting ''or State savings association'' after ''State bank'' each place that term appears;

(C) in subsection (d), by inserting ''or Federal savings association'' after ''national bank'' each place that term appears;

(D) by striking subsection (e) and inserting the following:

''(e) PERFORMANCE WHERE STATE BANK AND NATIONAL BANK ARE SHAREHOLDERS OR MEMBERS.—A bank service company may perform—

''(1) only those services that each depository institution shareholder or member is otherwise authorized to perform under any applicable Federal or State law; and

''(2) such services only at locations in a State in which each such shareholder or member is authorized to perform such services.''; and

(E) in subsection (f), by inserting ''or savings associations'' after ''location of banks''.

(4) PRIOR APPROVAL OF INVESTMENTS.—Section 5 of the Bank Service Company Act (12 U.S.C. 1865) is amended—

(A) in subsection (a)—

(i) by striking ''insured bank'' and inserting ''insured depository institution''; and

(ii) by striking ''bank's''; and

(iii) by inserting before the period ''for the insured depository institution'';

(B) in subsection (b)—

(i) by striking ''insured bank'' and inserting ''insured depository institution'';

(ii) by inserting ''authorized only'' after ''performs any service''; and

(iii) by inserting ''authorized only'' after ''perform any activity''; and

(C) in subsection (c)—

(i) by striking ''the bank or banks'' and inserting ''any insured depository institution''; and

(ii) by striking ''capability of the bank'' and inserting ''capability of the insured depository institution''.

(5) REGULATION AND EXAMINATION.—Section 7 of the Bank Service Company Act (12 U.S.C. 1867) is amended—

(A) in subsection (b), by striking ''insured bank'' and inserting ''insured depository institution''; and

(B) in subsection (c)—

(i) by striking ''a bank'' each place that term appears and inserting ''a depository institution''; and

(ii) by striking ''the bank'' each place that term appears and inserting ''the depository institution''.

SEC. 603. AUTHORIZATION FOR MEMBER BANK TO USE PASS-THROUGH RESERVE ACCOUNTS.

Section 19(c)(1)(B) of the Federal Reserve Act (12 U.S.C. 461(c)(1)(B)) is amended by striking ''which is not a member bank''.

SEC. 604. STREAMLINING REPORTS OF CONDITION.

Section 7(a) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)) is amended by adding at the end the following:

''(11) STREAMLINING REPORTS OF CONDITION.—

''(A) REVIEW OF INFORMATION AND SCHEDULES.—Before the end of the 1-year period beginning on the date of enactment of the Financial Services Regulatory Relief Act of 2006 and before the end of each 5-year period thereafter, each Federal banking agency shall, in conjunction with the other relevant Federal banking agencies, review the information and schedules that are required to be filed by an insured depository institution in a report of condition required under paragraph (3).

''(B) REDUCTION OR ELIMINATION OF INFORMATION FOUND TO BE UNNECESSARY.—After completing the review required by subparagraph (A), a Federal banking agency, in conjunction with the other relevant Federal banking agencies, shall reduce or eliminate any requirement to file information or schedules under paragraph (3) (other than information or schedules that are otherwise required by law) if the agency determines that the continued collection of such information or schedules is no longer necessary or appropriate.''.

SEC. 605. EXPANSION OF ELIGIBILITY FOR 18-MONTH EXAMINATION SCHEDULE FOR COMMUNITY BANKS.

Section 10(d)(4)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1820(d)(4)(A)) is amended by striking ''$250,000,000'' and inserting ''$500,000,000''.

SEC. 606. STREAMLINING DEPOSITORY INSTITUTION MERGER APPLICATION REQUIREMENTS.

(a) IN GENERAL.—Section 18(c)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(4)) is amended to read as follows:

''(4) REPORTS ON COMPETITIVE FACTORS.—

''(A) REQUEST FOR REPORT.—In the interests of uniform standards and subject to subparagraph (B), before acting on any application for approval of a merger transaction, the responsible agency shall—

''(i) request a report on the competitive factors involved from the Attorney General of the United States; and

''(ii) provide a copy of the request to the Corporation (when the Corporation is not the responsible agency).

''(B) FURNISHING OF REPORT.—The report requested under subparagraph (A) shall be furnished by the Attorney General to the responsible agency—

''(i) not later than 30 calendar days after the date on which the Attorney General received the request; or

''(ii) not later than 10 calendar days after such date, if the requesting agency advises the Attorney General that an emergency exists requiring expeditious action.

''(C) EXCEPTIONS.—A responsible agency may not be required to request a report under subparagraph (A) if—

''(i) the responsible agency finds that it must act immediately in order to prevent the probable failure of 1 of the insured depository institutions involved in the merger transaction; or

''(ii) the merger transaction involves solely an insured depository institution and 1 or more of the affiliates of such depository institution.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 18(c)(6) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)(6)) is amended—

(1) in the second sentence, by striking ''banks or savings associations involved and reports on the competitive factors have'' and inserting ''insured depository institutions involved, or if the proposed merger transaction is solely between an insured depository institution and 1 or more of its affiliates, and the report on the competitive factors has''; and

(2) by striking the penultimate sentence and inserting the following: ''If the agency has advised the Attorney General under paragraph (4)(B)(ii) of the existence of an emergency requiring expeditious action and has requested a report on the competitive factors within 10 days, the transaction may not be consummated before the fifth calendar day after the date of approval by the agency.''.

SEC. 607. NONWAIVER OF PRIVILEGES.

(a) INSURED DEPOSITORY INSTITUTIONS.—Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following:

''(x) PRIVILEGES NOT AFFECTED BY DISCLOSURE TO BANKING AGENCY OR SUPERVISOR.—

''(1) IN GENERAL.—The submission by any person of any information to any Federal banking agency, State bank supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such agency, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such agency, supervisor, or authority.

''(2) RULE OF CONSTRUCTION.—No provision of paragraph (1) may be construed as implying or establishing that—

''(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

''(B) any person would waive any privilege applicable to any information by submitting the information to any Federal banking agency, State bank supervisor, or foreign banking authority, but for this subsection.''

(b) INSURED CREDIT UNIONS.—Section 205 of the Federal Credit Union Act (12 U.S.C.1785) is amended by adding at the end the following:

''(j) PRIVILEGES NOT AFFECTED BY DISCLOSURE TO BANKING AGENCY OR SUPERVISOR.—

''(1) IN GENERAL.—The submission by any person of any information to the Administration, any State credit union supervisor, or foreign banking authority for any purpose in the course of any supervisory or regulatory process of such Board, supervisor, or authority shall not be construed as waiving, destroying, or otherwise affecting any privilege such person may claim with respect to such information under Federal or State law as to any person or entity other than such Board, supervisor, or authority.

''(2) RULE OF CONSTRUCTION.—No provision of paragraph (1) may be construed as implying or establishing that—

''(A) any person waives any privilege applicable to information that is submitted or transferred under any circumstance to which paragraph (1) does not apply; or

''(B) any person would waive any privilege applicable to any information by submitting the information to the Administration, any State credit union supervisor, or foreign banking authority, but for this subsection.''.

SEC. 608. CLARIFICATION OF APPLICATION REQUIREMENTS FOR OPTIONAL CONVERSION FOR FEDERAL SAVINGS ASSOCIATIONS.

(a) HOME OWNERS' LOAN ACT.—Section 5(i)(5) of the Home Owners' Loan Act (12 U.S.C. 1464(i)(5)) is amended to read as follows:

''(5) CONVERSION TO NATIONAL OR STATE BANK.—

''(A) IN GENERAL.—Any Federal savings association chartered and in operation before the date of enactment of the Gramm-Leach-Bliley Act, with branches in operation before such date of enactment in 1 or more States, may convert, at its option, with the approval of the Comptroller of the Currency for each national bank, and with the approval of the appropriate State bank supervisor and the appropriate Federal banking agency for each State bank, into 1 or more national or State banks, each of which may encompass 1 or more of the branches of the Federal savings association in operation before such date of enactment in 1 or more States subject to subparagraph (B).

''(B) CONDITIONS OF CONVERSION.—The authority in subparagraph (A) shall apply only if each resulting national or State bank—

''(i) will meet all financial, management, and capital requirements applicable to the resulting national or State bank; and

''(ii) if more than 1 national or State bank results from a conversion under this subparagraph, has received approval from the Federal Deposit Insurance Corporation under section 5(a) of the Federal Deposit Insurance Act.

''(C) NO MERGER APPLICATION UNDER FDIA REQUIRED.—No application under section 18(c) of the Federal Deposit Insurance Act shall be required for a conversion under this paragraph.

''(D) DEFINITIONS.—For purposes of this paragraph, the terms 'State bank' and 'State bank supervisor' have the same meanings as in section 3 of the Federal Deposit Insurance Act.''.

(b) FEDERAL DEPOSIT INSURANCE ACT.—Section 4(c) of the Federal Deposit Insurance Act (12 U.S.C. 1814(c)) is amended—

(1) by inserting ''of this Act and section 5(i)(5) of the Home Owners' Loan Act'' after ''Subject to section 5(d)''; and

(2) in paragraph (2), after ''insured State,'' by inserting ''or Federal''.

SEC. 609. EXEMPTION FROM DISCLOSURE OF PRIVACY POLICY FOR ACCOUNTANTS.

(a) IN GENERAL.—Section 503 of the Gramm-Leach-Bliley Act (15 U.S.C. 6803) is amended by adding at the end the following:

''(d) EXEMPTION FOR CERTIFIED PUBLIC ACCOUNTANTS.—

''(1) IN GENERAL.—The disclosure requirements of subsection (a) do not apply to any person, to the extent that the person is—

''(A) a certified public accountant;

''(B) certified or licensed for such purpose by a State; and

''(C) subject to any provision of law, rule, or regulation issued by a legislative or regulatory body of the State, including rules of professional conduct or ethics, that prohibits disclosure of nonpublic personal information without the knowing and expressed consent of the consumer.

''(2) LIMITATION.—Nothing in this subsection shall be construed to exempt or otherwise exclude any financial institution that is affiliated or becomes affiliated with a certified public accountant described in paragraph (1) from any provision of this section.

''(3) DEFINITIONS.—For purposes of this subsection, the term 'State' means any State or territory of the United States, the District of Columbia, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, or the Northern Mariana Islands.''.

(b) CLERICAL AMENDMENTS.—Section 503 of the Gramm-Leach-Bliley Act (15 U.S.C. 6803) is amended—

(1) by redesignating subsection (b) as subsection (c); and

(2) in subsection (a), by striking ''Such disclosures'' and inserting the following:

''(b) REGULATIONS.—Disclosures required by subsection (a)''.

SEC. 610. INFLATION ADJUSTMENT FOR THE SMALL DEPOSITORY INSTITUTION EXCEPTION UNDER THE DEPOSITORY INSTITUTION MANAGEMENT INTERLOCKS ACT.

Section 203(1) of the Depository Institution Management Interlocks Act (12 U.S.C. 3202(1)) is amended by striking ''$20,000,000'' and inserting ''$50,000,000''.

SEC. 611. MODIFICATION TO CROSS MARKETING RESTRICTIONS.

Section 4(n)(5)(B) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(n)(5)(B)) is amended by striking ''subsection (k)(4)(I)'' and inserting ''subparagraph (H) or (I) of subsection (k)(4)''.

TITLE VII—BANKING AGENCY PROVISIONS

SEC. 701. STATUTE OF LIMITATIONS FOR JUDICIAL REVIEW OF APPOINTMENT OF A RECEIVER FOR DEPOSITORY INSTITUTIONS.

(a) NATIONAL BANKS.—Section 2 of the National Bank Receivership Act (12 U.S.C. 191) is amended—

(1) by amending the section heading to read as follows:

''SEC. 2. APPOINTMENT OF RECEIVER FOR A NATIONAL BANK.

''(a) IN GENERAL.—The Comptroller of the Currency''; and

(2) by adding at the end the following:

''(b) JUDICIAL REVIEW.—If the Comptroller of the Currency appoints a receiver under subsection (a), the national bank may, within 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such bank is located, or in the United States District Court for the District of Columbia, for an order requiring the Comptroller of the Currency to remove the receiver, and the court shall, upon the merits, dismiss such action or direct the Comptroller of the Currency to remove the receiver.''.

(b) INSURED DEPOSITORY INSTITUTIONS.—Section 11(c)(7) of the Federal Deposit Insurance Act (12 U.S.C. 1821(c)(7)) is amended to read as follows:

''(7) JUDICIAL REVIEW.—If the Corporation is appointed (including the appointment of the Corporation as receiver by the Board of Directors) as conservator or receiver of a depository institution under paragraph (4), (9), or (10), the depository institution may, not later than 30 days thereafter, bring an action in the United States district court for the judicial district in which the home office of such depository institution is located, or in the United States District Court for the District of Columbia, for an order requiring the Corporation to be removed as the conservator or receiver (regardless of how such appointment was made), and the court shall, upon the merits, dismiss such action or direct the Corporation to be removed as the conservator or receiver.''.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply with respect to conservators or receivers appointed on or after the date of enactment of this Act.

SEC. 702. ENHANCING THE SAFETY AND SOUNDNESS OF INSURED DEPOSITORY INSTITUTIONS.

(a) CLARIFICATION RELATING TO THE ENFORCEABILITY OF AGREEMENTS AND CONDITIONS.—The Federal Deposit Insurance Act

(12 U.S.C. 1811 et seq.) is amended by adding at the end the following:

"SEC. [49] *50*. ENFORCEMENT OF AGREEMENTS.

''(a) IN GENERAL.—Notwithstanding clause (i) or (ii) of section 8(b)(6)(A) or section 38(e)(2)(E)(i), the appropriate Federal banking agency for a depository institution may enforce, under section 8, the terms of—

''(1) any condition imposed in writing by the agency on the depository institution or an institution-affiliated party in connection with any action on any application, notice, or other request concerning the depository institution; or

''(2) any written agreement entered into between the agency and the depository institution or an institution-affiliated party.

''(b) RECEIVERSHIPS AND CONSERVATORSHIPS.—After the appointment of the Corporation as the receiver or conservator for a depository institution, the Corporation may enforce any condition or agreement described in paragraph (1) or (2) of subsection (a) imposed on or entered into with such institution or institution-affiliated party through an action brought in an appropriate United States district court.''.

(b) PROTECTION OF CAPITAL OF INSURED DEPOSITORY INSTITUTIONS.—Section 18(u)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(u)(1)) is amended—

(1) by striking subparagraph (B);

(2) by redesignating subparagraph (C) as subparagraph (B); and

(3) in subparagraph (A), by adding ''and'' at the end.

(c) CONFORMING AMENDMENTS.—Section 8(b) of the Federal Deposit Insurance Act (12 U.S.C. 1818(b)) is amended—

(1) in paragraph (3), by striking ''This subsection and subsections (c) through (s) and subsection (u) of this section'' and inserting ''This subsection, subsections (c) through (s) and subsection (u) of this section, and section [49] *50* of this Act''; and

(2) in paragraph (4), by striking ''This subsection and subsections (c) through (s) and subsection (u) of this section'' and inserting ''This subsection, subsections (c) through (s) and subsection (u) of this section, and section [49] *50* of this Act''.

SEC. 703. CROSS GUARANTEE AUTHORITY.

Section 5(e)(9)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1815(e)(9)(A)) is amended to read as follows:

''(A) such institutions are controlled by the same company; or''.

SEC. 704. GOLDEN PARACHUTE AUTHORITY AND NONBANK HOLDING COMPANIES.

Section 18(k) of the Federal Deposit Insurance Act (12 U.S.C. 1828(k)) is amended—

(1) in paragraph (2)(A), by striking ''or depository institution holding company'' and inserting ''or covered company'';

(2) in paragraph (2), by striking subparagraph (B), and inserting the following:

''(B) Whether there is a reasonable basis to believe that the institution-affiliated party is substantially responsible for—

''(i) the insolvency of the depository institution or covered company;

''(ii) the appointment of a conservator or receiver for the depository institution; or

''(iii) the troubled condition of the depository institution (as defined in the regulations prescribed pursuant to section 32(f)).'';

(3) in paragraph (2)(F), by striking ''depository institution holding company'' and inserting ''covered company,'';

(4) in paragraph (3) in the matter preceding subparagraph (A), by striking ''depository institution holding company'' and inserting ''covered company'';

(5) in paragraph (3)(A), by striking ''holding company'' and inserting ''covered company'';

(6) in paragraph (4)(A)—

(A) by striking ''depository institution holding company'' each place that term appears and inserting ''covered company''; and

(B) by striking ''holding company'' each place that term appears (other than in connection with the term referred to in subparagraph (A)) and inserting ''covered company'';

(7) in paragraph (5)(A), by striking ''depository institution holding company'' and inserting ''covered company'';

(8) in paragraph (5), by adding at the end the following:

''(D) COVERED COMPANY.—The term 'covered company' means any depository institution holding company (including any company required to file a report under section 4(f)(6) of the Bank Holding Company Act of 1956), or any other company that controls an insured depository institution.''; and

(9) in paragraph (6)—

(A) by striking ''depository institution holding company'' and inserting ''covered company,''; and

(B) by striking ''or holding company'' and inserting ''or covered company''.

SEC. 705. AMENDMENTS RELATING TO CHANGE IN BANK CONTROL.

Section 7(j) of the Federal Deposit Insurance Act (12 U.S.C. 1817(j)) is amended—

(1) in paragraph (1)(D)—

(A) by striking ''is needed to investigate'' and inserting ''is needed—

''(i) to investigate'';

(B) by striking ''United States Code.'' and inserting ''United States Code; or''; and

(C) by adding at the end the following:

''(ii) to analyze the safety and soundness of any plans or proposals described in paragraph (6)(E) or the future prospects of the institution.''; and

(2) in paragraph (7)(C), by striking ''the financial condition of any acquiring person'' and inserting ''either the financial condition of any acquiring person or the future prospects of the institution''.

SEC. 706. AMENDMENT TO PROVIDE THE FEDERAL RESERVE BOARD WITH DISCRETION CONCERNING THE IMPUTATION OF CONTROL OF SHARES OF A COMPANY BY TRUSTEES.

Section 2(g)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1841(g)(2)) is amended by inserting before the period at the end '', unless the Board determines that such treatment is not appropriate in light of the facts and circumstances of the case and the purposes of this Act''.

SEC. 707. INTERAGENCY DATA SHARING.

(a) FEDERAL BANKING AGENCIES.—Section 7(a)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1817(a)(2)) is amended by adding at the end the following:

''(C) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Corporation (with respect to all insured depository institutions, including a depository institution for which the Corporation has been appointed conservator or receiver) or an appropriate State bank supervisor (with respect to a State depository institution) under subparagraph (A) or (B), a Federal banking agency may, in the discretion of the agency, furnish any report of examination or other confidential supervisory information concerning any depository institution or other entity examined by such agency under authority of any Federal law, to—

''(i) any other Federal or State agency or authority with supervisory or regulatory authority over the depository institution or other entity;

''(ii) any officer, director, or receiver of such depository institution or entity; and

''(iii) any other person that the Federal banking agency determines to be appropriate.''.

(b) NATIONAL CREDIT UNION ADMINISTRATION.—Section 202(a) of the Federal Credit Union Act (12 U.S.C. 1782(a)) is amended by adding at the end the following:

''(8) DATA SHARING WITH OTHER AGENCIES AND PERSONS.—In addition to reports of examination, reports of condition, and other reports required to be regularly provided to the Board (with respect to all insured credit unions, including a credit union for which the Corporation has been appointed conservator or liquidating agent) or an appropriate State commission, board, or authority having supervision of a State-chartered credit union, the Board may, in the discretion of the Board, furnish any report of examination or other confidential supervisory information concerning any credit union or other entity examined by the Board under authority of any Federal law, to—

''(A) any other Federal or State agency or authority with supervisory or regulatory authority over the credit union or other entity;

''(B) any officer, director, or receiver of such credit union or entity; and

''(C) any other person that the Board determines to be appropriate.''.

SEC. 708. CLARIFICATION OF EXTENT OF SUSPENSION, REMOVAL, AND PROHIBITION AUTHORITY OF FEDERAL BANKING AGENCIES IN CASES OF CERTAIN CRIMES BY INSTITUTION-AFFILIATED PARTIES.

(a) INSURED DEPOSITORY INSTITUTIONS.—

(1) IN GENERAL.—Section 8(g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)(1)) is amended—

(A) in subparagraph (A)—

(i) by striking ''is charged in any information, indictment, or complaint, with the commission of or participation in'' and inserting ''is the subject of any information, indictment, or complaint, involving the commission of or participation in'';

(ii) by striking ''may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution,'' and insert ''posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)),''; and

(iii) by striking ''affairs of the depository institution'' and inserting ''affairs of any depository institution'';

(B) in subparagraph (B)(i), by striking ''the depository institution'' and inserting ''any depository institution that the subject of the notice is affiliated with at the time the notice is issued'';

(C) in subparagraph (C)(i)—

(i) by striking ''may pose a threat to the interests of the depository institution's depositors or may threaten to impair public confidence in the depository institution,'' and insert ''posed, poses, or may pose a threat to the interests of the depositors of, or threatened, threatens, or may threaten to impair public confidence in, any relevant depository institution (as defined in subparagraph (E)),''; and

(ii) by striking ''affairs of the depository institution'' and inserting ''affairs of any depository institution'';

(D) in subparagraph (C)(ii), by striking ''affairs of the depository institution'' and inserting ''affairs of any depository institution'';

(E) in subparagraph (D)(i), by striking ''the depository institution'' and inserting ''any depository institution that the subject of the order is affiliated with at the time the order is issued''; and

(F) by adding at the end the following:

''(E) RELEVANT DEPOSITORY INSTITUTION.—For purposes of this subsection, the term

'relevant depository institution' means any depository institution of which the party is or was an institution-affiliated party at the time at which—

''(i) the information, indictment, or complaint described in subparagraph (A) was issued; or

''(ii) the notice is issued under subparagraph (A) or the order is issued under subparagraph (C)(i).''.

(2) CLERICAL AMENDMENT.—The subsection heading for section 8(g) of the Federal Deposit Insurance Act (12 U.S.C. 1818(g)) is amended to read as follows:

''(g) SUSPENSION, REMOVAL, AND PROHIBITION FROM PARTICIPATION ORDERS IN THE CASE OF CERTAIN CRIMINAL OFFENSES.—''.

(b) INSURED CREDIT UNIONS.—

(1) IN GENERAL.—Section 206(i)(1) of the Federal Credit Union Act (12 U.S.C. 1786(i)(1)) is amended—

(A) in subparagraph (A), by striking ''the credit union'' each place that term appears and inserting ''any credit union'';

(B) in subparagraph (B)(i), by inserting ''of which the subject of the order is, or most recently was, an institution-affiliated party'' before the period at the end;

(C) in subparagraph (C)—

(i) by striking ''the credit union'' each place such term appears and inserting ''any credit union''; and

(ii) by striking ''the credit union's'' and inserting ''any credit union's'';

(D) in subparagraph (D)(i), by striking ''upon such credit union'' and inserting ''upon the credit union of which the subject of the order is, or most recently was, an institution-affiliated party''; and

(E) by adding at the end the following:

''(E) CONTINUATION OF AUTHORITY.—The Board may issue an order under this paragraph with respect to an individual who is an institution-affiliated party at a credit union at the time of an offense described in subparagraph (A) without regard to—

''(i) whether such individual is an institution-affiliated party at any credit union at the time the order is considered or issued by the Board; or

''(ii) whether the credit union at which the individual was an institution-affiliated party at the time of the offense remains in existence at the time the order is considered or issued by the Board.''.

(2) CLERICAL AMENDMENT.—Section 206(i) of the Federal Credit Union Act (12 U.S.C. 1786(i)) is amended by striking ''(i)'' at the beginning and inserting the following:

''(i) SUSPENSION, REMOVAL, AND PROHIBITION FROM PARTICIPATION ORDERS IN THE CASE OF CERTAIN CRIMINAL OFFENSES.—''.

SEC. 709. PROTECTION OF CONFIDENTIAL INFORMATION RECEIVED BY FEDERAL BANKING REGULATORS FROM FOREIGN BANKING SUPERVISORS.

Section 15 of the International Banking Act of 1978 (12 U.S.C. 3109) is amended by adding at the end the following:

''(c) CONFIDENTIAL INFORMATION RECEIVED FROM FOREIGN SUPERVISORS.—

''(1) IN GENERAL.—Except as provided in paragraph (3), a Federal banking agency may not be compelled to disclose information received from aforeign regulatory or supervisory authority if—

''(A) the Federal banking agency determines that the foreign regulatory or supervisory authority has, in good faith, determined and represented in writing to such Federal banking agency that public disclosure of the information would violate the laws applicable to that foreign regulatory or supervisory authority; and

''(B) the relevant Federal banking agency obtained such information pursuant to—

''(i) such procedures as the Federal banking agency may establish for use in connection with the administration and enforcement of Federal banking laws; or

''(ii) a memorandum of understanding or other similar arrangement between the Federal banking agency and the foreign regulatory or supervisory authority.

''(2) TREATMENT UNDER TITLE 5, UNITED STATES CODE.—For purposes of section 552 of title 5, United States Code, this subsection shall be treated as a statute described in subsection (b)(3)(B) of such section.

''(3) SAVINGS PROVISION.—No provision of this section shall be construed as—

''(A) authorizing any Federal banking agency to withhold any information from any duly authorized committee of the House of Representatives or the Senate; or

''(B) preventing any Federal banking agency from complying with an order of a court of the United States in an action commenced by the United States or such agency.

''(4) FEDERAL BANKING AGENCY DEFINED.—For purposes of this subsection, the term 'Federal banking agency' means the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision.''.

[SEC. 710. PROHIBITION ON PARTICIPATION BY CONVICTED INDIVIDUALS.

[(a) EXTENSION OF AUTOMATIC PROHIBITION.—Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) is amended by adding at the end the following:

[''(d) BANK HOLDING COMPANIES.—Subsections (a) and (b) shall apply to any company (other than a foreign bank) that is a bank holding company and any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act, as if such bank holding company or organization were an insured depository institution, except that such subsections shall be applied for purposes of this subsection by substituting 'Board of Governors of the Federal Reserve System' for 'Corporation' each place that term appears in such subsections.

[''(e) SAVINGS AND LOAN HOLDING COMPANIES.—Subsections (a) and (b) shall apply to any savings and loan holding company and any subsidiary (other than a savings association) of a savings and loan holding company as if such savings and loan holding company or subsidiary were an insured depository institution, except that subsections shall be applied for purposes of this subsection by substituting 'Director of the Office of Thrift Supervision' for 'Corporation' each place that term appears in such subsections.''.

[(b) ENHANCED DISCRETION TO REMOVE CONVICTED INDIVIDUALS.—Section 8(e)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(2)(A)) is amended—

[(1) by striking ''or'' at the end of clause (ii);

[(2) by striking the comma at the end of clause (iii) and inserting ''; or''; and

[(3) by adding at the end the following:

[''(iv) an institution-affiliated party of a subsidiary (other than a bank) of a bank holding company has been convicted of any criminal offense involving dishonesty or a breach of trust, or a criminal violation of section 1956, 1957, or 1960 of title 18 United States Code, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense,''.]

SEC. 710. PROHIBITION ON PARTICIPATION BY CONVICTED INDIVIDUALS.

(a) EXTENSION OF AUTOMATIC PROHIBITION.—Section 19 of the Federal Deposit Insurance Act (12 U.S.C. 1829) is amended by adding at the end the following new subsections:

''(d) BANK HOLDING COMPANIES.—

''(1) IN GENERAL.—Subsections (a) and (b) shall apply to any company (other than a foreign bank) that is a bank holding company and any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act, as if such bank holding company or organization were an insured depository institution, except that such subsections shall be applied for purposes of this subsection by substituting 'Board of Governors of the Federal Reserve System' for 'Corporation' each place that term appears in such subsections.

''(2) AUTHORITY OF BOARD.—The Board of Governors of the Federal Reserve System may provide exemptions, by regulation or order, from the application of paragraph (1) if the exemption is consistent with the purposes of this subsection.

''(e) SAVINGS AND LOAN HOLDING COMPANIES.—

''(1) IN GENERAL.—Subsections (a) and (b) shall apply to any savings and loan holding company as if such savings and loan holding company were an insured depository institution, except that such subsections shall be applied for purposes of this subsection by substituting 'Director of the Office of Thrift Supervision' for 'Corporation' each place that term appears in such subsections.

''(2) AUTHORITY OF DIRECTOR.—The Director of the Office of Thrift Supervision may provide exemptions, by regulation or order, from the application of paragraph (1) if the exemption is consistent with the purposes of this subsection.''.

(b) ENHANCED DISCRETION TO REMOVE CONVICTED INDIVIDUALS.—Section 8(e)(2)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(2)(A)) is amended—

(1) by striking ''or'' at the end of clause (ii);

(2) by striking the comma at the end of clause (iii) and inserting ''; or''; and

''(3) by adding at the end the following new clause:

''(iv) an institution-affiliated party of a subsidiary (other than a bank) of a bank holding company or of a subsidiary (other than a savings association) of a savings and loan holding company has been convicted of any criminal offense involving dishonesty or a breach of trust or a criminal offense under section 1956, 1957, or 1960 of title 18, United States Code, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense,''.

SEC. 711. COORDINATION OF STATE EXAMINATION AUTHORITY.

Section 10(h) of the Federal Deposit Insurance Act (12 U.S.C. 1820(h)) is amended to read as follows:

''(h) COORDINATION OF EXAMINATION AUTHORITY.—

''(1) STATE BANK SUPERVISORS OF HOME AND HOST STATES.—

''(A) HOME STATE OF BANK.—The appropriate State bank supervisor of the home State of an insured State bank has authority to examine and supervise the bank.

''(B) HOST STATE BRANCHES.—The State bank supervisor of the home State of an insured State bank and any State bank supervisor of an appropriate host State shall exercise its respective authority to supervise and examine the branches of the bank in a host State in accordance with the terms of any applicable cooperative agreement between the home State bank supervisor and the State bank supervisor of the relevant host State.

''(C) SUPERVISORY FEES.—Except as expressly provided in a cooperative agreement between the State bank supervisors of the home State and any host State of an insured State bank, only the State bank supervisor of the home State of an insured State bank may levy or charge State supervisory fees on the bank.

''(2) HOST STATE EXAMINATION.—

''(A) IN GENERAL.—With respect to a branch operated in a host State by an out-of-State

insured State bank that resulted from an interstate merger transaction approved under section 44, or that was established in such State pursuant to section 5155(g) of the Revised Statutes of the United States, the third undesignated paragraph of section 9 of the Federal Reserve Act or section 18(d)(4) of this Act, the appropriate State bank supervisor of such host State may—

''(i) with written notice to the State bank supervisor of the bank's home State and subject to the terms of any applicable cooperative agreement with the State bank supervisor of such home State, examine such branch for the purpose of determining compliance with host State laws that are applicable pursuant to section 24(j), including those that govern community reinvestment, fair lending, and consumer protection; and

''(ii) if expressly permitted under and subject to the terms of a cooperative agreement with the State bank supervisor of the bank's home State or if such out-of-State insured State bank has been determined to be in a troubled condition by either the State bank supervisor of the bank's home State or the bank's appropriate Federal banking agency, participate in the examination of the bank by the State bank supervisor of the bank's home State to ascertain that the activities of the branch in such host State are not conducted in an unsafe or unsound manner.

''(B) NOTICE OF DETERMINATION.—

''(i) IN GENERAL.—The State bank supervisor of the home State of an insured State bank shall notify the State bank supervisor of each host State of the bank if there has been a final determination that the bank is in a troubled condition.

''(ii) TIMING OF NOTICE.—The State bank supervisor of the home State of an insured State bank shall provide notice under clause (i) as soon as is reasonably possible, but in all cases not later than 15 business days after the date on which the State bank supervisor has made such final determination or has received written notification of such final determination.

''(3) HOST STATE ENFORCEMENT.—If the State bank supervisor of a host State determines that a branch of an out-of-State insured State bank is violating any law of the host State that is applicable to such branch pursuant to section 24(j), including a law that governs community reinvestment, fair lending, or consumer protection, the State bank supervisor of the host State or, to the extent authorized by the law of the host State, a host State law enforcement officer may, with written notice to the State bank supervisor of the bank's home State and subject to the terms of any applicable cooperative agreement with the State bank supervisor of the bank's home State, undertake such enforcement actions and proceedings as would be permitted under the law of the host State as if the branch were a bank chartered by that host State.

''(4) COOPERATIVE AGREEMENT.—

''(A) IN GENERAL.—The State bank supervisors from 2 or more States may enter into cooperative agreements to facilitate State regulatory supervision of State banks, including cooperative agreements relating to the coordination of examinations and joint participation in examinations.

''(B) DEFINITION.—For purposes of this subsection, the term 'cooperative agreement' means a written agreement that is signed by the home State bank supervisor and the host State bank supervisor to facilitate State regulatory supervision of State banks, and includes nationwide or multi-State cooperative agreements and cooperative agreements solely between the home State and host State.

''(C) RULE OF CONSTRUCTION.—Except for State bank supervisors, no provision of this subsection relating to such cooperative agreements shall be construed as limiting in any way the authority of home State and host State law enforcement officers, regulatory supervisors, or other officials that have not signed such cooperative agreements to enforce host State laws that are applicable to a branch of an out-of-State insured State bank located in the host State pursuant to section 24(j).

''(5) FEDERAL REGULATORY AUTHORITY.—No provision of this subsection shall be construed as limiting in any way the authority of any Federal banking agency.

''(6) STATE TAXATION AUTHORITY NOT AFFECTED.—No provision of this subsection shall be construed as affecting the authority of any State or political subdivision of any State to adopt, apply, or administer any tax or method of taxation to any bank, bank holding company, or foreign bank, or any affiliate of any bank, bank holding company, or foreign bank, to the extent that such tax or tax method is otherwise permissible by or under the Constitution of the United States or other Federal law.

''(7) DEFINITIONS.—For purpose of this section, the following definitions shall apply:

''(A) HOST STATE, HOME STATE, OUT-OF-STATE BANK.—The terms 'host State', 'home State', and 'out-of-State bank' have the same meanings as in section 44(g).

''(B) STATE SUPERVISORY FEES.—The term 'State supervisory fees' means assessments, examination fees, branch fees, license fees, and all other fees that are levied or charged by a State bank supervisor directly upon an insured State bank or upon branches of an insured State bank.

''(C) TROUBLED CONDITION.—Solely for purposes of paragraph (2)(B), an insured State bank has been determined to be in 'troubled condition' if the bank—

''(i) has a composite rating, as determined in its most recent report of examination, of 4 or 5 under the Uniform Financial Institutions Ratings System;

''(ii) is subject to a proceeding initiated by the Corporation for termination or suspension of deposit insurance; or

''(iii) is subject to a proceeding initiated by the State bank supervisor of the bank's home State to vacate, revoke, or terminate the charter of the bank, or to liquidate the bank, or to appoint a receiver for the bank.

''(D) FINAL DETERMINATION.—For purposes of paragraph (2)(B), the term 'final determination' means the transmittal of a report of examination to the bank or transmittal of official notice of proceedings to the bank.''.

SEC. 712. DEPUTY DIRECTOR; SUCCESSION AUTHORITY FOR DIRECTOR OF THE OFFICE OF THRIFT SUPERVISION.

(a) ESTABLISHMENT OF POSITION OF DEPUTY DIRECTOR.—Section 3(c)(5) of the Home Owners' Loan Act (12 U.S.C. 1462a(c)(5)) is amended to read as follows:

''(5) DEPUTY DIRECTOR.—

''(A) IN GENERAL.—The Secretary of the Treasury shall appoint a Deputy Director, and may appoint not more than 3 additional Deputy Directors of the Office.

''(B) FIRST DEPUTY DIRECTOR.—If the Secretary of the Treasury appoints more than 1 Deputy Director of the Office, the Secretary shall designate one such appointee as the First Deputy Director.

''(C) DUTIES.—Each Deputy Director appointed under this paragraph shall take an oath of office and perform such duties as the Director shall direct.

''(D) COMPENSATION AND BENEFITS.—The Director shall fix the compensation and benefits for each Deputy Director in accordance with this Act.''.

(b) SERVICE OF DEPUTY DIRECTOR AS ACTING DIRECTOR.—Section 3(c)(3) of the Home Owners' Loan Act (12 U.S.C. 1462a(c)(3)) is amended—

(1) by striking ''**VACANCY**.—A vacancy in the position of Director'' and inserting ''**VACANCY**.—

''(A) IN GENERAL.—A vacancy in the position of Director''; and

(2) by adding at the end the following:

''(B) ACTING DIRECTOR.—

''(i) IN GENERAL.—In the event of a vacancy in the position of Director or during the absence or disability of the Director, the Deputy Director shall serve as Acting Director.

''(ii) SUCCESSION IN CASE OF 2 OR MORE DEPUTY DIRECTORS.—If there are 2 or more Deputy Directors serving at the time a vacancy in the position of Director occurs or the absence or disability of the Director commences, the First Deputy Director shall serve as Acting Director under clause (i) followed by such other Deputy Directors under any order of succession the Director may establish.

''(iii) AUTHORITY OF ACTING DIRECTOR.—Any Deputy Director, while serving as Acting Director under this subparagraph, shall be vested with all authority, duties, and privileges of the Director under this Act and any other provision of Federal law.''.

SEC. 713. OFFICE OF THRIFT SUPERVISION REPRESENTATION ON BASEL COMMITTEE ON BANKING SUPERVISION.

(a) IN GENERAL.—Section 912 of the International Lending Supervision Act of 1983 (12 U.S.C. 3911) is amended—

(1) in the section heading, by inserting at the end the following: ''**AND THE OFFICE OF THRIFT SUPERVISION**'';

(2) by striking ''As one of the three'' and inserting the following:

''(a) IN GENERAL.—As one of the 4''; and

(3) by adding at the end the following:

''(b) As one of the 4 Federal bank regulatory and supervisory agencies, the Office of Thrift Supervision shall be given equal representation with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation on the Committee on Banking Regulations and Supervisory Practices of the Group of Ten Countries and Switzerland.''.

(b) CONFORMING AMENDMENTS.—Section 910(a) of the International Lending Supervision Act of 1983 (12 U.S.C. 3909(a)) is amended—

(1) in paragraph (2), by striking ''insured bank'' and inserting ''insured depository institution''; and

(2) in paragraph (3), by striking ''an 'insured bank', as such term is used in section 3(h)'' and inserting ''an 'insured depository institution', as such term is defined in section 3(c)(2)''.

SEC. 714. FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL.

(a) COUNCIL MEMBERSHIP.—Section 1004(a) of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3303(a)) is amended—

(1) in paragraph (4), by striking ''Thrift'' and all that follows through the end of the paragraph and inserting ''Thrift Supervision,'';

(2) in paragraph (5) by striking the period at the end and inserting '', and''; and

(3) by adding at the end the following:

''(6) the Chairman of the State Liaison Committee.''.

(b) CHAIRPERSON OF LIAISON COMMITTEE.—Section 1007 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3306) is amended by adding at the end the following: ''Members of the Liaison Committee shall elect a chairperson from among the members serving on the committee.''.

SEC. 715. TECHNICAL AMENDMENTS RELATING TO INSURED INSTITUTIONS.

(a) TECHNICAL AMENDMENT TO THE FEDERAL DEPOSIT INSURANCE ACT.—Section 8(i)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1818(i)(3)) is amended by inserting ''or order'' after ''notice'' each place that term appears.

(b) TECHNICAL AMENDMENT TO THE FEDERAL CREDIT UNION ACT.—Section 206(k)(3) of the Federal Credit Union Act (12 U.S.C. 1786(k)(3)) is amended by inserting ''or order'' after ''notice'' each place that term appears.

SEC. 716. CLARIFICATION OF ENFORCEMENT AUTHORITY.

(a) ACTIONS ON APPLICATIONS, NOTICES, AND OTHER REQUESTS; CLARIFICATION THAT CHANGE IN CONTROL CONDITIONS ARE ENFORCEABLE.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—

(1) in subsection (b)(1), in the first sentence, by striking ''the granting of any application or other request by the depository institution'' and inserting ''any action on any application, notice, or other request by the depository institution or institution-affiliated party,'';

(2) in subsection (e)(1)(A)(i)(III), by striking ''the grant of any application or other request by such depository institution'' and inserting ''any action on any application, notice, or request by such depository institution or institution-affiliated party''; and

(3) in subsection (i)(2)(A)(iii), by striking ''the grant of any application or other request by such depository institution'' and inserting ''any action on any application, notice, or other request by the depository institution or institution-affiliated party''.

(b) CLARIFICATION THAT CHANGE IN CONTROL CONDITIONS ARE ENFORCEABLE.—Section 206 of the Federal Credit Union Act (12 U.S.C. 1786) is amended—

(1) in subsection (b)(1), in the first sentence, by striking ''the granting of any application or other request by the credit union'' and inserting ''any action on any application, notice, or other request by the credit union or institution-affiliated party,'';

(2) in subsection (g)(1)(A)(i)(III), by striking ''the grant of any application or other request by such credit union'' and inserting ''any action on any application, notice, or request by such credit union or institution-affiliated party''; and

(3) in subsection (k)(2)(A)(iii), by striking ''the grant of any application or other request by such credit union'' and inserting ''any action on any application, notice, or other request by the credit union or institution-affiliated party''.

SEC. 717. FEDERAL BANKING AGENCY AUTHORITY TO ENFORCE DEPOSIT INSURANCE CONDITIONS.

Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended—

(1) in subsection (b)(1), in the 1st sentence—

(A) by striking ''in writing by the agency'' and inserting ''in writing by a Federal banking agency''; and

(B) by striking ''the agency may issue and serve'' and inserting ''the appropriate Federal banking agency for the depository institution may issue and serve'';

(2) in subsection (e)(1)—

(A) in subparagraph (A)(i)(III), by striking ''in writing by the appropriate Federal banking agency'' and inserting ''in writing by a Federal banking agency''; and

(B) in the undesignated matter at the end, by striking ''the agency may serve upon such party'' and inserting ''the appropriate Federal banking agency for the depository institution may serve upon such party''; and

(3) in subsection (i)(2)(A)(iii), by striking ''in writing by the appropriate Federal banking agency'' and inserting ''in writing by a Federal banking agency''.

SEC. 718. RECEIVER OR CONSERVATOR CONSENT REQUIREMENT.

(a) INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(13) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(13)) is amended by adding at the end the following:

''(C) CONSENT REQUIREMENT.—

''(i) IN GENERAL.—Except as otherwise provided by this section or section 15, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the depository institution is a party, or to obtain possession of or exercise control over any property of the institution or affect any contractual rights of the institution, without the consent of the conservator or receiver, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator, or during the 90-day period beginning on the date of the appointment of the receiver, as applicable.

''(ii) CERTAIN EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a depository institution bond, to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or to the rights of parties to netting contracts pursuant to subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.), or shall be construed as permitting the conservator or receiver to fail to comply with otherwise enforceable provisions of such contract.

''(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to limit or otherwise affect the applicability of title 11, United States Code.''.

(b) INSURED CREDIT UNIONS.—Section 207(c)(12) of the Federal Credit Union Act (12 U.S.C. 1787(c)(12)) is amended by adding the following:

''(C) CONSENT REQUIREMENT.—

''(i) IN GENERAL.—Except as otherwise provided by this section, no person may exercise any right or power to terminate, accelerate, or declare a default under any contract to which the credit union is a party, or to obtain possession of or exercise control over any property of the credit union or affect any contractual rights of the credit union, without the consent of the conservator or liquidating agent, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator, or during the 90-day period beginning on the date of the appointment of the liquidating agent, as applicable.

''(ii) CERTAIN EXCEPTIONS.—No provision of this subparagraph shall apply to a director or officer liability insurance contract or a credit union bond, or to the rights of parties to certain qualified financial contracts pursuant to paragraph (8), or shall be construed as permitting the conservator or liquidating agent to fail to comply with otherwise enforceable provisions of such contract.

''(iii) RULE OF CONSTRUCTION.—Nothing in this subparagraph shall be construed to limit or otherwise affect the applicability of title 11, United States Code.''.

SEC. 719. ACQUISITION OF FICO SCORES.

Section 604(a) of the Fair Credit Reporting Act (15 U.S.C. 1681b(a)) is amended by adding at the end the following:

''(6) To the Federal Deposit Insurance Corporation or the National Credit Union Administration as part of its preparation for its appointment or as part of its exercise of powers, as conservator, receiver, or liquidating agent for an insured depository institution or insured credit union under the Federal Deposit Insurance Act or the Federal Credit Union Act, or other applicable Federal or State law, or in connection with the resolution or liquidation of a failed or failing insured depository institution or insured credit union, as applicable.''.

SEC. 720. ELIMINATION OF CRIMINAL INDICTMENTS AGAINST RECEIVERSHIPS.

(a) INSURED DEPOSITORY INSTITUTIONS.—Section 15(b) of the Federal Deposit Insurance Act (12 U.S.C. 1825(b)) is amended by inserting immediately after paragraph (3) the following:

''(4) EXEMPTION FROM CRIMINAL PROSECUTION.—The Corporation shall be exempt from all prosecution by the United States or any State, county, municipality, or local authority for any criminal offense arising under Federal, State, county, municipal, or local law, which was allegedly committed by the institution, or persons acting on behalf of the institution, prior to the appointment of the Corporation as receiver.''.

(b) INSURED CREDIT UNIONS.—Section 207(b)(2) of the Federal Credit Union Act (12 U.S.C. 1787(b)(2)) is amended by adding at the end the following:

''(K) EXEMPTION FROM CRIMINAL PROSECUTION.—The Administration shall be exempt from all prosecution by the United States or any State, county, municipality, or local authority for any criminal offense arising under Federal, State, county, municipal, or local law, which was allegedly committed by a credit union, or persons acting on behalf of a credit union, prior to the appointment of the Administration as liquidating agent.''.

SEC. 721. RESOLUTION OF DEPOSIT INSURANCE DISPUTES.

(a) INSURED DEPOSITORY INSTITUTIONS.—Section 11(f) of the Federal Deposit Insurance Act (12 U.S.C. 1821(f)) is amended by striking paragraphs (3) through (5) and inserting the following:

''(3) RESOLUTION OF DISPUTES.—A determination by the Corporation regarding any claim for insurance coverage shall be treated as a final determination for purposes of this section. In its discretion, the Corporation may promulgate regulations prescribing procedures for resolving any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit.

''(4) REVIEW OF CORPORATION DETERMINATION.—A final determination made by the Corporation regarding any claim for insurance coverage shall be a final agency action reviewable in accordance with chapter 7 of title 5, United States Code, by the United States district court for the Federal judicial district where the principal place of business of the depository institution is located.

''(5) STATUTE OF LIMITATIONS.—Any request for review of a final determination by the Corporation regarding any claim for insurance coverage shall be filed with the appropriate United States district court not later than 60 days after the date on which such determination is issued.''.

(b) INSURED CREDIT UNIONS.—Section 207(d) of the Federal Credit Union Act (12 U.S.C. 1787(d)) is amended by striking paragraphs (3) through (5) and inserting the following:

''(3) RESOLUTION OF DISPUTES.—A determination by the Administration regarding any claim for insurance coverage shall be treated as a final determination for purposes of this section. In its discretion, the Board may promulgate regulations prescribing procedures for resolving any disputed claim relating to any insured deposit or any determination of insurance coverage with respect to any deposit. A final determination made by the Board regarding any claim for insurance coverage shall be a final agency action reviewable in accordance with chapter 7 of title 5, United States Code, by the United States district court for the Federal judicial district where the principal place of business of the credit union is located.

''(4) STATUTE OF LIMITATIONS.—Any request for review of a final determination by the Board regarding any claim for insurance coverage shall be filed with the appropriate United States district court not later than 60 days after the date on which such determination is issued.''.

SEC. 722. RECORDKEEPING.

(a) INSURED DEPOSITORY INSTITUTIONS.—Section 11(d)(15)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(d)(15)(D)) is amended—

(1) by striking ''After the end of the 6-year period'' and inserting the following:

''(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period''; and

(2) by adding at the end the following:

''(ii) OLD RECORDS.—Notwithstanding clause (i), the Corporation may destroy records of an insured depository institution which are at least 10 years old as of the date on which the Corporation is appointed as the receiver of such depository institution in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).''.

(b) INSURED CREDIT UNIONS.—Section 207(b)(15)(D) of the Federal Credit Union Act (12 U.S.C. 1787(b)(15)(D)) is amended—

(1) by striking ''After the end of the 6-year period'' and inserting the following:

''(i) IN GENERAL.—Except as provided in clause (ii), after the end of the 6-year period''; and

(2) by adding at the end the following:

''(ii) OLD RECORDS.—Notwithstanding clause (i) the Board may destroy records of an insured credit union which are at least 10 years old as of the date on which the Board is appointed as liquidating agent of such credit union in accordance with clause (i) at any time after such appointment is final, without regard to the 6-year period of limitation contained in clause (i).''.

SEC. 723. PRESERVATION OF RECORDS.

(a) INSURED DEPOSITORY INSTITUTIONS.—Section 10(f) of the Federal Deposit Insurance Act (12 U.S.C. 1820(f)) is amended to read as follows:

''(f) PRESERVATION OF AGENCY RECORDS.—

''(1) IN GENERAL.—A Federal banking agency may cause any and all records, papers, or documents kept by the agency or in the possession or custody of the agency to be—

''(A) photographed or microphotographed or otherwise reproduced upon film; or

''(B) preserved in any electronic medium or format which is capable of—

''(i) being read or scanned by computer; and

''(ii) being reproduced from such electronic medium or format by printing any other form of reproduction of electronically stored data.

''(2) TREATMENT AS ORIGINAL RECORDS.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies, and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

''(3) AUTHORITY OF THE FEDERAL BANKING AGENCIES.—Any photographs, microphotographs, or photographic film or copies thereof described in paragraph (1)(A) or reproduction of electronically stored data described in paragraph (1)(B) shall be preserved in such manner as the Federal banking agency shall prescribe, and the original records, papers, or documents may be destroyed or otherwise disposed of as the Federal banking agency may direct.''.

(b) INSURED CREDIT UNIONS.—Section 206(s) of the Federal Credit Union Act (12 U.S.C. 1786(s)) is amended by adding at the end the following:

''(9) PRESERVATION OF RECORDS.—

''(A) IN GENERAL.—The Board may cause any and all records, papers, or documents kept by the Administration or in the possession or custody of the Administration to be—

''(i) photographed or microphotographed or otherwise reproduced upon film; or

''(ii) preserved in any electronic medium or format which is capable of—

''(I) being read or scanned by computer; and

''(II) being reproduced from such electronic medium or format by printing or any other form of reproduction of electronically stored data.

''(B) TREATMENT AS ORIGINAL RECORDS.—Any photographs, micrographs, or photographic film or copies thereof described in subparagraph (A)(i) or reproduction of electronically stored data described in subparagraph (A)(ii) shall be deemed to be an original record for all purposes, including introduction in evidence in all State and Federal courts or administrative agencies, and shall be admissible to prove any act, transaction, occurrence, or event therein recorded.

''(C) AUTHORITY OF THE ADMINISTRATION.—Any photographs, microphotographs, or photographic film or copies thereof described in subparagraph (A)(i) or reproduction of electronically stored data described in subparagraph (A)(ii) shall be preserved in such manner as the Administration shall prescribe, and the original records, papers, or documents may be destroyed or otherwise disposed of as the Administration may direct.''.

SEC. 724. TECHNICAL AMENDMENTS TO INFORMATION SHARING PROVISION IN THE FEDERAL DEPOSIT INSURANCE ACT.

Section 11(t) of the Federal Deposit Insurance Act (12 U.S.C. 1821(t)) is amended—

(1) in paragraph (1), by inserting '', in any capacity,'' after ''A covered agency''; and

(2) in paragraph (2)(A)—

(A) in clause (i), by striking ''appropriate'';

(B) by striking clause (ii); and

(C) by redesignating clauses (iii) through (vi) as clauses (ii) through (v), respectively.

SEC. 725. TECHNICAL AND CONFORMING AMENDMENTS RELATING TO BANKS OPERATING UNDER THE CODE OF LAW FOR THE DISTRICT OF COLUMBIA.

(a) FEDERAL RESERVE ACT.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended—

(1) in the second undesignated paragraph of the first section (12 U.S.C. 221), by adding at the end the following: ''For purposes of this Act, a State bank includes any bank which is operating under the Code of Law for the District of Columbia.''; and

(2) in the first sentence of the first undesignated paragraph of section 9 (12 U.S.C. 321), by striking ''incorporated by special law of any State, or'' and inserting ''incorporated by special law of any State, operating under the Code of Law for the District of Columbia, or''.

(b) BANK CONSERVATION ACT.—Section 202 of the Bank Conservation Act (12 U.S.C. 202) is amended—

(1) by striking ''means (1) any national'' and inserting ''means any national''; and

(2) by striking '', and (2) any bank or trust company located in the District of Columbia and operating under the supervision of the Comptroller of the Currency''.

(c) DEPOSITORY INSTITUTION DEREGULATION AND MONETARY CONTROL ACT OF 1980.—Part C of title VII of the Depository Institution Deregulation and Monetary Control Act of 1980 (12 U.S.C. 216 et seq.) is amended—

(1) in paragraph (1) of section 731 (12 U.S.C. 216(1)), by striking ''and closed banks in the District of Columbia''; and

(2) in paragraph (2) of section 732 (12 U.S.C. 216a(2)), by striking ''or closed banks in the District of Columbia''.

(d) FEDERAL DEPOSIT INSURANCE ACT.—Section 3(a)(2)(B) of the Federal Deposit Insurance Act (12 U.S.C. 1813(a)(2)(B)) is amended by striking ''(except a national bank)''.

(e) NATIONAL BANK CONSOLIDATION AND MERGER ACT.—Section 7(1) of the National Bank Consolidation and Merger Act (12 U.S.C. 215b(1)) is amended by striking ''(except a national banking association located in the District of Columbia)''.

(f) ACT OF AUGUST 17, 1950.—Section 1(a) of the Act entitled ''An Act to provide for the conversion of national banking associations into and their merger or consolidation with State banks, and for other purposes'' and approved August 17, 1950 (12 U.S.C. 214(a)) is amended by striking ''(except a national banking association)''.

(g) FEDERAL TRADE COMMISSION ACT.—Section 18(f)(2) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(2)) is amended—

(1) in subparagraph (A), by striking '', banks operating under the code of law for the District of Columbia,''; and

(2) in subparagraph (B), by striking ''and banks operating under the code of law for the District of Columbia''.

SEC. 726. TECHNICAL CORRECTIONS TO THE FEDERAL CREDIT UNION ACT.

The Federal Credit Union Act (12 U.S.C. 1751 et seq.) is amended as follows:

(1) In section 101(3), strike ''and'' after the semicolon.

(2) In section 101(5), strike the terms ''account account'' and ''account accounts'' each place any such term appears and insert ''account''.

(3) In section 107(5)(E), strike the period at the end and insert a semicolon.

(4) In each of paragraphs (6) and (7) of section 107, strike the period at the end and insert a semicolon.

(5) In section 107(7)(D), strike ''the Federal Savings and Loan Insurance Corporation or''.

(6) In section 107(7)(E), strike ''the Federal Home Loan Bank Board,'' and insert ''the Federal Housing Finance Board,''.

(7) In section 107(9), strike ''subchapter III'' and insert ''title III''.

(8) In section 107(13), strike ''and'' after the semicolon at the end.

(9) In section 109(c)(2)(A)(i), strike ''(12 U.S.C. 4703(16))''.

(10) In section 120(h), strike ''the Act approved July 30, 1947 (6 U.S.C., secs. 6–13),'' and insert ''chapter 93 of title 31, United States Code,''.

(11) In section 201(b)(5), strike ''section 116 of''.

(12) In section 202(h)(3), strike ''section 207(c)(1)'' and insert ''section 207(k)(1)''.

(13) In section 204(b), strike ''such others powers'' and insert ''such other powers''.

(14) In section 206(e)(3)(D), strike ''and'' after the semicolon at the end.

(15) In section 206(f)(1), strike ''subsection (e)(3)(B)'' and insert ''subsection (e)(3)''.

(16) In section 206(g)(7)(D), strike ''and subsection (1)''.

(17) In section 206(t)(2)(B), insert ''regulations'' after ''as defined in''.

(18) In section 206(t)(2)(C), strike ''material affect'' and insert ''material effect''.

(19) In section 206(t)(4)(A)(ii)(II), strike ''or'' after the semicolon at the end.

(20) In section 206A(a)(2)(A), strike ''regulator agency'' and insert ''regulatory agency''.

(21) In section 207(c)(5)(B)(i)(I), insert ''and'' after the semicolon at the end.

(22) In the heading for subparagraph (A) of section 207(d)(3), strike ''TO'' and insert ''WITH''.

(23) In section 207(f)(3)(A), strike ''category or claimants'' and insert ''category of claimants''.

(24) In section 209(a)(8), strike the period at the end and insert a semicolon.

(25) In section 216(n), insert ''any action'' before ''that is required''.

(26) In section 304(b)(3), strike ''the affairs or such credit union'' and insert ''the affairs of such credit union''.

(27) In section 310, strike ''section 102(e)'' and insert ''section 102(d)''.

SEC. 727. REPEAL OF OBSOLETE PROVISIONS OF THE BANK HOLDING COMPANY ACT OF 1956.

(a) IN GENERAL.—Section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841) is amended—

(1) in subsection (c)(2), by striking subparagraphs (I) and (J); and

(2) by striking subsection (m) and inserting the following:

''(m) [Repealed]''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Paragraphs (1) and (2) of section 4(h) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(h)) are each amended by striking ''(G), (H), (I), or (J) of section 2(c)(2)'' and inserting ''(G), or (H) of section 2(c)(2)''.

SEC. 728. DEVELOPMENT OF MODEL PRIVACY FORM.

Section 503 of the Gramm-Leach-Bliley Act (15 U.S.C. 6803), as amended by section 609, is amended by adding at the end the following:

''(e) MODEL FORMS.—

''(1) IN GENERAL.—The agencies referred to in section 504(a)(1) shall jointly develop a model form which may be used, at the option of the financial institution, for the provision of disclosures under this section.

''(2) FORMAT.—A model form developed under paragraph (1) shall—

''(A) be comprehensible to consumers, with a clear format and design;

''(B) provide for clear and conspicuous disclosures;

''(C) enable consumers easily to identify the sharing practices of a financial institution and to compare privacy practices among financial institutions; and

''(D) be succinct, and use an easily readable type font.

''(3) TIMING.—A model form required to be developed by this subsection shall be issued in proposed form for public comment not later than 180 days after the date of enactment of this subsection.

''(4) SAFE HARBOR.—Any financial institution that elects to provide the model form developed by the agencies under this subsection shall be deemed to be in compliance with the disclosures required under this section.''.

TITLE VIII—FAIR DEBT COLLECTION PRACTICES ACT AMENDMENTS

SEC. 801. EXCEPTION FOR CERTAIN BAD CHECK ENFORCEMENT PROGRAMS.

(a) IN GENERAL.—The Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(1) by redesignating section 818 as section 819; and

(2) by inserting after section 817 the following:

''§ 818. Exception for certain bad check enforcement programs operated by private entities

''(a) IN GENERAL.—

''(1) TREATMENT OF CERTAIN PRIVATE ENTITIES.—Subject to paragraph (2), a private entity shall be excluded from the definition of a debt collector, pursuant to the exception provided in section 803(6), with respect to the operation by the entity of a program described in paragraph (2)(A) under a contract described in paragraph (2)(B).

''(2) CONDITIONS OF APPLICABILITY.—Paragraph (1) shall apply if—

''(A) a State or district attorney establishes, within the jurisdiction of such State or district attorney and with respect to alleged bad check violations that do not involve a check described in subsection (b), a pretrial diversion program for alleged bad check offenders who agree to participate voluntarily in such program to avoid criminal prosecution;

''(B) a private entity, that is subject to an administrative support services contract with a State or district attorney and operates under the direction, supervision, and control of such State or district attorney, operates the pretrial diversion program described in subparagraph (A); and

''(C) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in subparagraph (B)—

''(i) complies with the penal laws of the State;

''(ii) conforms with the terms of the contract and directives of the State or district attorney;

''(iii) does not exercise independent prosecutorial discretion;

''(iv) contacts any alleged offender referred to in subparagraph (A) for purposes of participating in a program referred to in such paragraph—

''(I) only as a result of any determination by the State or district attorney that probable cause of a bad check violation under State penal law exists, and that contact with the alleged offender for purposes of participation in the program is appropriate; and

''(II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to State law, is made for payment of the check amount;

''(v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—

''(I) the alleged offender may dispute the validity of any alleged bad check violation;

''(II) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report with the appropriate law enforcement agency; and

''(III) if the alleged offender notifies the private entity or the district attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the district attorney or an employee of the district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and

''(vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.

''(b) CERTAIN CHECKS EXCLUDED.—A check is described in this subsection if the check involves, or is subsequently found to involve—

''(1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;

''(2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

''(3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;

''(4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;

''(5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or

''(6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.

''(c) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

''(1) STATE OR DISTRICT ATTORNEY.—The term 'State or district attorney' means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1, United States Code), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth's attorneys, solicitors, county attorneys, and state's attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

''(2) CHECK.—The term 'check' has the same meaning as in section 3(6) of the Check Clearing for the 21st Century Act.

''(3) BAD CHECK VIOLATION.—The term 'bad check violation' means a violation of the applicable State criminal law relating to the writing of dishonored checks.''.

(b) CLERICAL AMENDMENT.—The table of sections for the Fair Debt Collection Practices Act (15 U.S.C. 1692 et seq.) is amended—

(1) by redesignating the item relating to section 818 as section 819; and

(2) by inserting after the item relating to section 817 the following new item:

''818. Exception for certain bad check enforcement programs operated by private entities.''.

SEC. 802. OTHER AMENDMENTS.

(a) LEGAL PLEADINGS.—Section 809 of the Fair Debt Collection Practices Act (15 U.S.C. 1692g) is amended by adding at the end the following new subsection:

''(d) LEGAL PLEADINGS.—A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a).''.

(b) NOTICE PROVISIONS.—Section 809 of the Fair Debt Collection Practices Act (15 U.S.C. 1692g) is amended by adding after subsection (d) (as added by subsection (a) of this section) the following new subsection:

''(e) NOTICE PROVISIONS.—The sending or delivery of any form or notice which does not relate to the collection of a debt and is expressly required by the Internal Revenue Code of 1986, title V of Gramm-Leach-Bliley Act, or any provision of Federal or State law relating to notice of data security breach or privacy, or any regulation prescribed under any such provision of law, shall not be treated as an initial communication in connection with debt collection for purposes of this section.''.

(c) ESTABLISHMENT OF RIGHT TO COLLECT WITHIN THE FIRST 30 DAYS.—Section 809(b) of the Fair Debt Collection Practices Act (15 U.S.C. 1692g(b)) is amended by adding at the end the following new sentences: ''Collection activities and communications that do not otherwise violate this title may continue during the 30-day

period referred to in subsection (a) unless the consumer has notified the debt collector in writing that the debt, or any portion of the debt, is disputed or that the consumer requests the name and address of the original creditor. Any collection activities and communication during the 30-day period may not overshadow or be inconsistent with the disclosure of the consumer's right to dispute the debt or request the name and address of the original creditor.''.

TITLE IX—CASH MANAGEMENT MODERNIZATION

SEC. 901. COLLATERAL MODERNIZATION.

(a) IN GENERAL.—Section 9301(2) of title 31, United States Code, is amended to read as follows:

''(2) 'eligible obligation' means any security designated as acceptable in lieu of a surety bond by the Secretary of the Treasury.''.

(b) USE OF ELIGIBLE OBLIGATIONS INSTEAD OF SURETY BONDS.—Section 9303(a)(2) of title 31, United States Code, is amended to read as follows:

''(2) as determined by the Secretary of the Treasury, have a market value that is equal to or greater than the amount of the required surety bond; and''.

(c) TECHNICAL AMENDMENTS.—Section 9303 of title 31, United States Code, is amended—

(1) in the section heading, by striking **"Government obligations"** and inserting **"eligible obligations"**;

(2) in subsection (f), by striking ''Government obligations'' and inserting ''eligible obligations'';

(3) by striking ''a Government obligation'' each place that term appears and inserting ''an eligible obligation''; and

(4) by striking ''Government obligation'' each place that term appears and inserting ''eligible obligation''.

TITLE X—STUDIES AND REPORTS

SEC. 1001. STUDY AND REPORT BY THE COMPTROLLER GENERAL ON THE CURRENCY TRANSACTION REPORT FILING SYSTEM.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the volume of currency transaction reports filed with the Secretary of the Treasury under section 5313(a) of title 31, United States Code.

(b) PURPOSE.—The purpose of the study required under subsection (a) shall be—

(1) to evaluate, on the basis of actual filing data, patterns of currency transaction reports filed by depository institutions of all sizes and locations; and

(2) to identify whether and the extent to which the filing rules for currency transaction reports described in section 5313(a) of title 31, United States Code—

(A) are burdensome; and

(B) can or should be modified to reduce such burdens without harming the usefulness of such filing rules to Federal, State, and local anti-terrorism, law enforcement, and regulatory operations.

(c) PERIOD COVERED.—The study required under subsection (a) shall cover the period beginning at least 3 calendar years prior to the date of enactment of this section.

(d) CONTENT.—The study required under subsection (a) shall include a detailed evaluation of—

(1) the extent to which depository institutions are availing themselves of the exemption system for the filing of currency transaction reports set forth in section 103.22(d) of title 31, Code of Federal Regulations, as in effect during the study period (in this section referred to as the ''exemption system''), including specifically, for the study period—

(A) the number of currency transaction reports filed (out of the total annual numbers) involving companies that are listed on the New York Stock Exchange or the NASDAQ National Market;

(B) the number of currency transaction reports filed by the 100 largest depository institutions in the United States by asset size, and thereafter in tiers of 100, by asset size;

(C) the number of currency transaction reports filed by the 200 smallest depository institutions in the United States, including the number of such currency transaction reports involving companies listed on the New York Stock Exchange or the NASDAQ National Market; and

(D) the number of currency transaction reports that would have been filed during the filing period if the exemption system had been used by all depository institutions in the United States;

(2) what types of depository institutions are using the exemption system, and the extent to which such exemption system is used;

(3) difficulties that limit the willingness or ability of depository institutions to reduce their currency transaction reports reporting burden by making use of the exemption system, including considerations of cost, especially in the case of small depository institutions;

(4) the extent to which bank examination difficulties have limited the use of the exemption system, especially with respect to—

(A) the exemption of privately-held companies permitted under such exemption system; and

(B) whether, on a sample basis, the reaction of bank examiners to implementation of such exemption system is justified or inhibits use of such exemption system without an offsetting compliance benefit;

(5) ways to improve the use of the exemption system by depository institutions, including making such exemption system mandatory in order to reduce the volume of currency transaction reports unnecessarily filed; and

(6) the usefulness of currency transaction reports filed to law enforcement agencies, taking into account—

(A) advances in information technology;

(B) the impact, including possible loss of investigative data, that various changes in the exemption system would have on the usefulness of such currency transaction reports; and

(C) changes that could be made to the exemption system without affecting the usefulness of currency transaction reports.

(e) ASSISTANCE.—The Secretary of the Treasury shall provide such information processing and other assistance, including from the Commissioner of the Internal Revenue Service and the Director of the Financial Crimes Enforcement Network, to the Comptroller General in analyzing currency transaction report filings for the study period described in subsection (c), as is necessary to provide the information required by subsection (a).

(f) VIEWS.—The study required under subsection (a) shall, if appropriate, include a discussion of the views of a representative sample of Federal, State, and local law enforcement and regulatory officials and officials of depository institutions of all sizes.

(g) RECOMMENDATIONS.—The study required under subsection (a) shall, if appropriate, include recommendations for changes to the exemption system that would reflect a reduction in unnecessary cost to depository institutions, assuming reasonably full implementation of such exemption system, without reducing the usefulness of the currency transaction report filing system to anti-terrorism, law enforcement, and regulatory operations.

(h) REPORT.—Not later than 15 months after the date of enactment of this section, the Comptroller General shall submit a report on the study required under subsection (a) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 1002. STUDY AND REPORT ON INSTITUTION DIVERSITY AND CONSOLIDATION.

(a) STUDY.—The Comptroller General of the United States shall conduct a study regarding—

(1) the vast diversity in the size and complexity of institutions in the banking and financial services sector, including the differences in capital, market share, geographical limitations, product offerings, and general activities;

(2) the differences in powers among the depository institution charters, including—

(A) identification of the historical trends in the evolution of depository institution charters;

(B) an analysis of the impact of charter differences to the overall safety and soundness of the banking industry, and the effectiveness of the applicable depository institution regulator; and

(C) an analysis of the impact that the availability of options for depository institution charters on the development of the banking industry;

(3) the impact that differences of size and overall complexity among financial institutions makes with respect to regulatory oversight, efficiency, safety and soundness, and charter options for financial institutions; and

(4) the aggregate cost and breakdown associated with regulatory compliance for banks, savings associations, credit unions, or any other financial institution, including potential disproportionate impact that the cost of compliance may pose on smaller institutions, given the percentage of personnel that the institution must dedicate solely to compliance.

(b) CONSIDERATIONS.—In conducting the study under subsection (a), the Comptroller General shall consider the efficacy and efficiency of the consolidation of financial regulators, as well as charter simplification and homogenization.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives on the results of the study required by this section.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Ohio (Mr. OXLEY) and the gentleman from Massachusetts (Mr. FRANK) each will control 20 minutes.

The Chair recognizes the gentleman from Ohio.

GENERAL LEAVE

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on this legislation and to insert extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. OXLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today the House will consider regulatory relief legislation for the financial services industry and its regulatory agencies.

The Financial Services Committee has been working on this legislation

for 5 years now, and I am pleased to announce that we have reached agreement with the Senate on this important legislation. The bill before us today should be taken up by the Senate later this week and on the President's desk shortly thereafter.

On March 8, 2006, the House began the effort in this Congress by passing H.R. 3505, the Financial Services Regulatory Relief Act of 2005, by a vote of 415–2. On May 25, 2006, the Senate passed its version of this legislation, S. 2856, by voice vote.

S. 2856 includes only about one-half of H.R. 3505's provisions and five sections that were not part of the bill coming from the House. Two of the five provisions added by the Senate were contained in H.R. 1224, which passed the House on May 24, 2005, by a 424–1 vote. These provisions authorize the Fed to pay interest on reserve balances and giving the Fed greater flexibility to set the ratio of reserve deposits a depository institution must maintain against transaction accounts.

The other provision added by the Senate in S. 2856, one, allows the Treasury Department to determine the types of securities that may be pledged in lieu of security bonds; two, requires the Government Accountability Office to study and report to Congress on currency transaction reports filed with the Treasury Department and on the costs of regulatory compliance.

□ 1745

And, three, direct the SEC and banking agencies to jointly issue regulations implementing a section of the Graham-Leach-Bliley Act.

Today, I am recommending that the House accept the Senate version of this legislation with six amendments that have been agreed to by the minority in this Chamber and by both sides of the aisle in the Senate.

Two amendments make acceptable changes to sections concerning a prohibition on employment of convicted individuals in banking organizations and regarding consumer notices under the Fair Debt Collection Practices Act.

A third amendment mandates that the SEC and the Fed jointly adopt rules concerning banks' brokerage activities exempt from SEC oversight in accordance with the intent of the Graham-Leach-Bliley Act and deletes the provision in the Senate bill which would have permitted the Federal banking regulators to seek an expedited judicial review of any SEC rule making in this area.

The fourth amendment concerns a budget offset related to the payment of interest on Fed reserve balances.

The fifth increases the amount of unimpaired capital and surplus that a national bank may invest to promote the public welfare.

Finally, the sixth amendment updates the Federal Deposit Insurance Act to provide clarity and certainty for depository institutions lacking Federal deposit insurance as it relates to disclosure and advertising.

Mr. Speaker, the financial services industry is laboring under an enormous regulatory burden. While many of the regulations are necessary to protect consumers and meet other worthy public policy objectives, a number are clearly burdensome. For this reason, shortly after I assumed the chairmanship of the committee, I asked the financial regulators and industry trade groups to give us their best advice on how we could ease regulatory requirements faced by insurer depositors. The goal was to free depository institutions from such regulations so they can better serve their customers and communities.

It was clear then, as it is now, that there also needs to be a counterbalance to the significant compliance responsibilities placed on depository institutions by the USA PATRIOT Act, as well as other Government efforts to counter terrorist financing.

Excessive regulation affects all sectors of the financial services industry but presents the greatest burden for smaller institutions. For small banks that continue to serve their historic role as a financial lifeline for local communities, they must be free to operate in a regulatory environment that does not unduly constrain them.

The bill contains a broad range of constructive provisions that, taken as a whole, will allow banks, thrifts and credit unions to devote more resources to the business of providing financial services and less to compliance with outdated and unneeded regulations.

I want to congratulate Mr. HENSARLING and Mr. MOORE, who introduced the bill last year, and Mr. BACHUS, the chairman of the Financial Institutions Subcommittee, which held numerous hearings on this important issue.

Mrs. CAPITO also deserves recognition for her longstanding support of regulatory relief legislation and actually sponsoring the first legislation in the last Congress before she moved to the Rules Committee.

Mr. Speaker, the financial services industry spends a great deal of money every year complying with outdated and ineffective regulation. That is money that could instead be loaned for new homes, new cars, and new projects, fueling job growth in local communities. The sooner we enact this legislation, the sooner we will provide needed relief to depository institutions and increased financial opportunities for both consumers and businesses.

Mr. Speaker, I urge Members to support passage of S. 2856, as amended.

Mr. Speaker, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I concur with the description given by my colleague from Ohio.

I am a liberal. I believe that regulation is important if we are going to have the kind of society that preserves the quality of life. And, as a believer in regulation, I feel obligated to make sure that we do not have more regulation than is required and that we should not have inefficient regulation.

I was very pleased to participate in this bipartisan effort to strip away unneeded regulation and to reform regulation that has a role to make sure that it does the job right.

I regret the fact that our colleagues in the Senate did not fully accept what we offered, but this is a compromise. We want to get something done. This represents our best effort to send them something that they will accept, and I am glad to do that.

Mr. Speaker, at this point, I would like to engage the Chairman in a colloquy or two.

Mr. Chairman, in this bill, the amendment to section 305 seems to change the community development investment standard for banks. Will this invalidate or otherwise affect any investments or written commitments that banks may have made under the law that is now in effect?

Mr. OXLEY. Mr. Speaker, will the gentleman yield?

Mr. FRANK of Massachusetts. I yield to the gentleman from Ohio.

Mr. OXLEY. Mr. Speaker, I appreciate the ranking member's concern. I want to assure you that this amendment is prospective only and applies only to new investments made by banks and not to investments or written commitments already in place.

There is nothing in this amendment that is intended to require banks that have made investments that comply with the law that was in effect prior to the enactment of the Financial Services Regulatory Relief Act of 2006 to undo or divest themselves of these investments or renege on their written commitments to invest in community development.

Mr. FRANK of Massachusetts. Thank you.

I would point out that here we are working closely with those who are in the business of making loans for affordable housing. Those are the ones who have particularly been interested in these kind of changes. We were glad to do it.

Let me also note, Mr. Chairman, that section 405 of the original bill, which is now section 702, which leads me to wonder why we ever mentioned section 405 in the first place, but we are now talking about section 702. It was included at the request of the regulatory agencies to clarify that written conditions and applications and written agreements with institution-affiliated parties are enforceable in order to protect the safety and soundness of insured depository institutions.

Institution-affiliated parties, a wonderful phrase that trips off the tongue, institution-affiliated parties can include bank directors, officers and principal shareholders. Some concerns have been expressed that the regulatory agencies may use this language inappropriately to require personal guarantees from bank directors and officers.

Mr. Chairman, would you clarify what section 702 is intended to do?

Mr. OXLEY. Mr. Speaker, before I do, I want to make clear that we, and it is pretty obvious that we have not rehearsed this in advance.

Mr. FRANK of Massachusetts. My spontaneity is always rehearsed, Mr. Chairman.

Mr. OXLEY. Yes. I thank the gentleman for giving me an opportunity to do so.

In adopting this provision, it is our intention that the regulatory agencies utilize section 702 with care and precision. Specifically, it is not intended to be used routinely in corporate applications, notices or requests to impose financial or other conditions on bank directors or officers that contain a personal guarantee against loss by the institution.

For example, it is not intended to be used by the regulatory agencies to routinely require directors or officers of insured depository institutions to enter into capital maintenance agreements with the agencies as a condition of granting a charter or providing deposit insurance.

It is also not intended to be used by the regulators to routinely require bank directors or officers to maintain the capital of a troubled insured depository institution without the directors or officers agreement.

While we believe it is important that banking agencies are able to enforce agreements that protect the deposit insurance fund, we also believe that our national banking policies should encourage the participation of highly qualified people on the boards of those institutions.

It would be counterproductive to create an environment where the threat of personal liability may cause bank directors to resign or keep well-qualified people from becoming directors in the first place. We will continue to monitor closely how this provision is applied by the regulatory agencies to ensure that this does not happen.

Mr. FRANK of Massachusetts. Mr. Speaker, I thank the chairman. He is the chairman. That is why he has to say more than me.

But I would like to add that it is my understanding that the regulatory agencies, specifically the Officer in Control of the Currency, the Federal Deposit Insurance Corporation and the Office of Thrift Supervision, agree with the interpretation the gentleman has just given, as does the Senate.

Mr. OXLEY. Yes, that is my understanding as well.

I will insert into the RECORD a letter dated August 5, 2006, from the OCC, FDIC, the Fed, and OTS. This letter clarifies the regulators' intentions for the provision. It also reaffirms their intent to enforce the language precisely and to not routinely impose financial or other conditions on bank directors or officers that contain a personal guarantee against loss by the institution seeking to change a charter or providing deposit insurance.

I believe this addresses concerns raised by the gentleman from Massachusetts, and the committee will continue our oversight role in implementation of this provision.

OFFICE OF THE COMPTROLLER
OF THE CURRENCY,
August 7, 2006.

Hon. MIKE CRAPO,
U.S. Senate,
Washington, DC.

DEAR SENATOR CRAPO: This responds to your letter dated July 28, 2006, concerning section 102 of S. 2856, ''The Financial Services Regulatory Relief Act of 2006.''

We agree completely that banking policies should welcome the participation of qualified individuals on the boards of directors of insured depository institutions. We believe that enactment of this section would be fully consistent with that goal and that the provision should be implemented in that spirit, if enacted.

Section 102 is intended to enable the appropriate Federal banking agency to enforce conditions imposed in writing in connection with any action on an application, notice or other request, and written agreements between a Federal banking agency and a depository institution or an institution-affiliated party, in accordance with the terms of the condition or agreement, without the necessity of showing unjust enrichment or reckless disregard for the law, applicable regulations, or prior order of the appropriate Federal banking agency. The language is intended to address the effect of court decisions in a few cases that questioned the authority of the banking agencies to enforce such conditions or agreements without first establishing that the institution-affiliated party was unjustly enriched or engaged in reckless disregard for the law or previous agency orders.

It is our intention to utilize this provision with care and precision. Specifically, we do not intend to use it routinely in connection with corporate applications, notices or requests to impose financial or other conditions on bank directors or officers that contain a personal guarantee against loss by the institution. In particular, it is not our intention to use it routinely to require directors or officers of insured depository institutions to enter into capital maintenance agreements with the agencies as a condition of granting a charter or providing deposit insurance. Nor is it our intention to use it routinely to require bank directors or officers to maintain the capital of a troubled insured depository institution without the director's or officer's agreement.

We hope this addresses your concerns.

Sincerely,

John C. Dugan, Comptroller of the Currency; John M. Reich, Director, Office of Thrift Supervision; Ben S. Bernanke, Chairman Board of Governors of the Federal Reserve System; Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield back the balance of my time.

Mr. OXLEY. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. HENSARLING).

(Mr. HENSARLING asked and was given permission to revise and extend his remarks.)

Mr. HENSARLING. Mr. Speaker, I have had many opportunities to speak extensively in subcommittee, committee, and on this House floor for the need that we have for regulatory relief for financial institutions, so I will refrain from doing that today.

Prior to coming to Congress, I was in private business. They teach you in private business that once you conclude a deal, quit talking.

We seem to have finally concluded a deal with the other body. However, I am no longer in business, I am in Congress, so I cannot quite take the whole of the advice. So, instead of quitting talking, I will at least attempt to be brief.

As the chairman noted, people long before me have worked on this piece of legislation; and it appears that it will soon culminate in success.

I certainly want to thank Chairman OXLEY for his leadership on the committee. I want to thank his trusting need to carry this legislation. I want to thank him for creating a place in Congress where good things can be done for America on a bipartisan basis; and, unfortunately, Mr. Speaker, there are not that many places where that is done.

I want to thank Subcommittee Chairman BACHUS, the gentleman from Alabama, for his counsel and help in moving this important piece of legislation through his subcommittee.

I want to thank the gentleman from Massachusetts, the ranking member, for his help, his counsel, his reaching out to work on a bipartisan basis; and, finally, the gentleman from Kansas (Mr. MOORE). We worked together to bring this to the floor.

Mr. Speaker, I also want to thank several members of my own legislative staff. I am now, unfortunately, on my third legislative assistant working on this staff. Two of them prefer the rigors of graduate school to trying to see this particular piece of legislation to fruition. But I do want to thank Gerry O'Shea, Jamie Notman, and now Steven Sepp for their invaluable work, as well as the full committee staff of the Financial Services Committee for all they have done.

Mr. Speaker, it has been noted, not only is this an important piece of legislation, I do want to celebrate it, but I first want to get out of the way some of my disappointments. I am disappointed that the other body did not see the wisdom in BSA relief that was included in our version of this bill. Hopefully, one day they will see the overlapping problems we have with the suspicious activity reports, the cash transaction reports, know your customer. Vital programs, but one that creates a large burden for our financial institutions.

I am sorry that the other body did not see the wisdom in doing something about the Graham-Leach-Bliley privacy notifications, where financial institutions have already notified their customers and do not change their policy.

Finally, regardless of the merits as a stand-alone issue on the stale reserves at the Fed, I am also disappointed that the other body has really created a challenge on the budgetary side in including that provision in the title.

Notwithstanding that, I feel a little bit like somebody who helped bring a child into the world, raised the child, sent them to the big city, and I am having trouble recognizing them, but, at the end of the day, Mr. Speaker, I know that that is still my child. And so I enthusiastically urge the adoption of S. 2856 by this body.

We must from time to time weed the garden. We have an obligation to make sure that every regulation does not exist in perpetuity. Markets change, people change, conditions change.

We are one of the richest, freest nations on the face of the planet, and part of the reason is because of capitalism. You cannot have capitalism without capital. One of the main responsibilities our committee has is to ensure that we have a vibrant capital market; and certainly our credit unions, our community banks that serve our smaller institutions, inner city, play a very vital role in those capital markets. They have been burdened.

For example, over the last decade, we have lost almost a third of our community banks. And when you speak to people at these financial institutions, there are a number of reasons for the mergers, for the consolidations, but many of them will tell you that the cost of the Federal regulatory burden is the number one reason why so many of them have gone out of business.

□ 1800

They play such a vital role in our rural communities.

So, Mr. Speaker, it is just incumbent upon us because excessive regulation, redundant regulation, costly regulation, not only does it harm these financial institutions, but at the end of the day, it makes the accessibility and the cost of credit more difficult. It means that average Americans, maybe they will not have that opportunity to buy that first home, to make that first down payment; maybe they will not have the opportunity to buy that second car that is necessary for a spouse to take a second job; maybe they will not have that opportunity to send a child to the college they want to send them to; maybe they will not have that opportunity to start a new small business, to create jobs and hope and opportunity.

But, Mr. Speaker, we are making great strides today, and because of that, I know that we will help these American families help realize their version of the American Dream with a little bit of reason in weeding this regulatory garden and making sure that they can have better lives.

So, again, I appreciate the opportunity that the chairman has given me and certainly his leadership will be severely missed but never forgotten.

Mr. OXLEY. Mr. Speaker, I am pleased to yield 1 minute to the gentleman from New Jersey (Mr. GARRETT).

Mr. GARRETT of New Jersey. Mr. Speaker, I come to the floor tonight just to be brief on two points: first to thank the chairman for his outstanding leadership in the Financial Services Committee over the years in general and specifically tonight with regard to your work on regulatory relief; and also to the gentleman from Texas who just spoke for all of his work to bring this to fruition as we have tonight.

The underlying bill here goes, as has been pointed out, to reduce the overall burden on financial institutions in general and make some technical corrections that need to be made. One of the points I want to touch upon is how it impacts on the Federal Debt Collectors Practices Act. In the underlying bill, there were two provisions that I had back in the 108th Congress that I am pleased have been included in the legislation here today.

The first of these provisions clarifies that a formal pleading in any civil action will not be considered communications now as defined by the FDCPA, and the second provision now clarifies the right of a collector to pursue an account during the first 30 days, so long as the debt collector's pursuits do not overshadow or otherwise confuse the consumer debtors.

By doing these two things, what we are doing is removing ambiguities in the FDCPA, and that increases compliance with the act and improves protections and overall helps consumers.

Additionally, the debt collection industry will be helped as well. It does that by improving guidance to them as an industry so that they can better conform to business practices to the letter of the law, additionally by curbing waste and time and money in the system, and finally, by avoiding litigation, all in the end good to the consumer, good to the industry, good for the American public.

I thank the gentleman from Texas and the chairman as well for getting it all done.

Mr. OXLEY. Mr. Speaker, I have no further speakers, just to wrap up and say this has been a concerted effort. It has taken 5 years. While I guess all of us are frustrated in one way or another with the other body at times and this bill particularly, at the end of the day we did a good job and got what we could, and we will save some other things for a later day.

But JEB HENSARLING and all of the folks who worked on this legislation, I want to thank them for their cooperation.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. POE). The question is on the motion offered by the gentleman from Ohio (Mr. OXLEY) that the House suspend the rules and pass the Senate bill, S. 2856, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. OXLEY. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

HOPE VI REAUTHORIZATION ACT OF 2006

Mr. OXLEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5347) to reauthorize the HOPE VI program for revitalization of public housing projects, as amended.

The Clerk read as follows:

H.R. 5347

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''HOPE VI Reauthorization Act of 2006''.

SEC. 2. EXTENSION OF PROGRAM.

Section 24 of the United States Housing Act of 1937 (42 U.S.C. 1437v) is amended—

(1) in paragraph (1) of subsection (m), by striking the matter that follows ''section'' and inserting the following: ''such sums as may be necessary for fiscal year 2007.''; and

(2) in subsection (o), by striking ''September 30, 2006'' and inserting ''September 30, 2007''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Ohio (Mr. OXLEY) and the gentlewoman from California (Ms. WATERS) each will control 20 minutes.

The Chair recognizes the gentleman from Ohio.

GENERAL LEAVE

Mr. OXLEY. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on this legislation and to insert extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. OXLEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today I rise in support of H.R. 5347, the HOPE VI Reauthorization Act of 2006, introduced by the gentleman from Connecticut (Mr. SHAYS). This important piece of legislation would simply reauthorize the HOPE VI program for one more year and would continue to provide a resource to revitalize severely distressed public housing units.

Since 1993, this program has been an important part of the transformation of public housing by encouraging public housing authorities to seek new partnerships with private entities to create mixed-finance and mixed-income affordable housing that is developed and operated very differently from traditional public housing.

HOPE VI epitomizes public-private partnerships for funding redevelopment projects. Mixed-finance development projects have allowed the government

to raise millions of dollars from the private sector for redevelopment projects using Federal funds as bait. For every governmental dollar, these partnerships can yield $3 or $4 additional in private investment.

Despite the obvious advantages of HOPE VI, the program has needed improvement. In 2003, in a previous reauthorization of HOPE VI, the Financial Services Committee added reforms by requiring the HUD to select grantees, among other criteria, on their capacity to bring planning and ultimately development to fruition within a more expedited time frame.

In addition, the committee was concerned that the HOPE VI program was biased toward larger urban areas. Thus, the committee required that at least 5 percent of the HOPE VI funds be awarded to smaller communities, particularly rural areas, where public housing authorities are not present, to assist in the redevelopment of town areas for affordable housing. Now known as the Main Street Project, many rural communities are able to access these vital redevelopment funds.

The HOPE VI program has been a valuable program in addressing many of this country's housing needs by revitalizing communities rather than simply building public housing. This House has repeatedly spoken on this program by continuing to fund HOPE VI in the relevant appropriations bills year after year.

I would like to thank good friend CHRIS SHAYS for his leadership on this important affordable housing program. By reauthorizing HOPE VI, this bill will continue the reforms established in 2003 to ensure that smaller communities have access to important revitalization dollars and will continue to make HOPE VI a cost-effective and efficient program for the American taxpayer.

Mr. Speaker, I reserve the balance of my time.

Ms. WATERS. Mr. Speaker, I yield to myself such time as I may consume.

(Ms. WATERS asked and was given permission to revise and extend her remarks and include extraneous material.)

Ms. WATERS. Mr. Speaker, I rise in support of H.R. 5347, the HOPE VI Reauthorization Act of 2006. I am one of the original cosponsors of the legislation, and I want to take time to congratulate the distinguished chairman, Mr. OXLEY; Ranking Member FRANK; Mr. WATT; and Mr. SHAYS for sponsoring this important legislation.

The members of the Subcommittee on Housing and Community Affairs, of which I am ranking member, have worked tirelessly to overcome obstacles to extend HOPE VI. Indeed, there is a strong possibility that the HOPE VI program would have expired at the end of this fiscal year without the strong leadership displayed on this bill.

HOPE VI is a valuable program, but not a perfect program. Some of the criticisms include displacement of tenants, delays in development of projects, and a built-in bias toward large urban areas. As with any major Federal program, there are lessons to be learned, and in the case of HOPE VI, many of the challenges that have been identified were addressed in prior reauthorization bills. We also must understand that these concerns must be understood within the context of the different communities that have utilized the HOPE VI program. This might explain why HUD has evaluated HOPE VI grantees on a case-by-case basis, rather than on the basis of formal program requirements.

One major issue compounding HOPE VI is the fact that in many communities the supply of available and affordable housing is not adequate to accommodate those who become displaced. Secondly, the development process related to HOPE VI is far more complicated than what was envisioned by the architects of the program, and many delays are attributed to the needs of the many stakeholders in the community, including tenants.

According to the 2003 GAO report entitled ''HOPE VI Resident Issues and Changes in Neighborhoods Surrounding Grant Sites,'' the Tucson, Arizona, Housing Authority submitted a revitalization plan for a site to the Tucson City Council for approval only after the residents had voted to approve it. This type of deliberative democratic process adds time to the development approval process, whether it is a HOPE VI project or not.

Thirdly, some fear that there is a bias to urban areas under the HOPE VI program requirements. In my view, that is not really a fair criticism because this is merely a program outcome. I see no reason why we would not want to make sure that HUD targets nonurban areas as we move forward to determine HOPE VI works. I have said on numerous occasions that the housing needs of the urban communities are not drastically different than the housing needs of nonurban communities.

Both GAO and CRS provide important findings on the HOPE VI program.

As of June 2004, 56,221 households had been relocated by HOPE VI revitalization grantees. Of these households, 48 percent were moved to public housing, 32 percent were given section 8 vouchers, 6 percent evicted, 19 percent moved to revitalized units, and 13 percent made other housing choices.

The neighborhoods in which 1996 HOPE VI sites are located generally have experienced improvements in indicators such as education, income and housing.

And mortgage lending activity increased in HOPE VI neighborhoods compared to other neighborhoods.

These strong findings are, in part, why I support the HOPE VI reauthorization bill. The bill has strong bipartisan support, and HOPE VI would be reauthorized through 2007, although we had originally intended for the bill to be extended through 2011. Importantly, the factors used to assess grant applications for the programs include need, capacity, quality and leveraging. So perhaps as we move forward, it is more appropriate for the detractors of the program to measure the track record of the HOPE VI program's use of these new criteria and not base the success of the program on individual project outcomes.

By some estimates, HOPE VI has leveraged between $5 billion and $8 billion of private investment in communities across the Nation. The demand for HOPE VI grants in communities throughout the country continues to exceed the available resources. HUD receives three applications for every HOPE VI award made.

The need to revitalize distressed public housing is precisely the reason that HOPE VI was conceived. Communities throughout this country with old, decaying and abandoned public housing stock often located on prime land needed to seek ways to improve the quality of life in their communities. HOPE VI provided one answer to addressing these conditions in its early stages; and with improvement in the way the program will be operated in the future, even greater progress will be made in meeting needs.

Absent the bipartisan support that HOPE VI enjoys today, the elimination of the program was a near certainty. By changing the criteria to evaluate grantee applications, including evaluation of the capacity of the grantees to undertake HOPE VI projects, support for the program should broaden. HOPE VI is an extremely competitive program that reflects success. Communities should be able to include this Federal resource in their revitalization planning efforts immediately and in the future.

I would urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. OXLEY. Mr. Speaker, I am pleased to yield such time as he may consume to the able gentleman from Connecticut (Mr. SHAYS), the author of this legislation.

Mr. SHAYS. Mr. Speaker, I thank the gentleman very much.

Mr. Speaker, this is a bipartisan bill that, as amended, reauthorizes the HOPE VI program through 2007. Reauthorizing the HOPE VI for an additional year will have an important impact on the lives of low-income people and will also pay tremendous dividends in towns and cities across America.

I am grateful to have worked on this legislation with my colleagues JIM LEACH, MAXINE WATERS, ARTUR DAVIS who has worked very hard on this, MEL WATT as well, CHARLIE DENT, and appreciate the assistance and guidance they have provided.

□ 1815

I also appreciate the support of Chairman OXLEY and Ranking Member FRANK in moving this bill forward. I

have tremendous admiration for my chairman and ranking member and the work that they have done throughout a number of years. With their assistance, this legislation passed the Financial Services Committee by voice vote.

HOPE VI epitomizes public-private partnerships for funding redevelopment projects. Mixed-finance agreements have allowed the government to raise millions of dollars from the private sector for redevelopment properties using Federal funds as leverage. For every government dollar granted, these partnerships can yield an additional $3 or $4.

Let me give an example of an incredible HOPE VI project that has been completed in Stamford, Connecticut. A $26 million HOPE VI grant leveraged an additional $80 million in State, local, and private funds. The HOPE VI transformed Southfield Village, a dim, crime-ridden, and dilapidated housing project into Southwood Square, a beautiful place to live and raise your children.

It is also a mixed-income community, where low-income families and those paying market rent live side-by-side. I am talking about people who make more than $100,000. Their children play together, and they have the opportunity to grow and learn from one another.

As a result of this Federal assistance, Southwood Square is now a safe place for children to play. Its residents receive job training on site. Others are going to work, and working parents have access to child care facilities. Instead of the BMW belonging to drug dealers, they belong to employees who work for the many businesses in the community. Just as importantly, residents are involved in their community.

I wish Members could see the transformation that has taken place there. Another HOPE VI project at Fairfield Court in Stamford is now beginning and promises to be just as successful as Southwood Square.

The lesson here is, when the Federal Government demonstrates its interest in improving the housing needs of low-income families, the community responds in a big way.

I urge all my colleagues to support this legislation and again thank Chairman OXLEY and Ranking Member FRANK for their cooperation in bringing this legislation before us, as well as the lead cosponsors on both sides of the aisle for their support. This was a team effort, and that is why passage tonight is so satisfying.

Ms. WATERS. Mr. Speaker, I yield 5 minutes to the gentleman from Alabama (Mr. DAVIS).

Mr. DAVIS of Alabama. I thank the gentlewoman for yielding.

Let me say just one thing at the outset, Mr. Speaker. Prior to the conception of the HOPE VI program, we tended to believe that public housing was a condition that was not alterable, it was not changeable; and, similarly, we believed that it would look pretty much as it did when a public housing unit was conceived.

The signal event that happened when this program was passed in the late 1980s was that, all of a sudden, we recognized that a public housing unit, like any other piece of property in America, can be transformed. It can be made esthetically attractive. It can be made a unit that will attract residents from different income levels. It can be made a place that is not just a shelter, that is not just four walls, but that is a home.

I have to think that that recognition about the capacity to physically change communities has had a carry-over impact on the lives of the people who live there.

So put aside all the statistics that we have talked about, put aside the information that we have discussed today about the leveraging of investments and the leveraging of dollars in the communities. This is ultimately about a new stake and a new confidence in places in America that have historically been neglected.

Let me thank a few people. I certainly want to thank the outstanding Chair of this committee, as he leaves the House and moves into the private sector, for being such a consistent voice in support not just of this program but all kinds of other good housing programs for the United States.

Obviously, I want to thank the ranking member for being so diligent on this issue. I want to thank two of my colleagues who are here, Mr. WATT of North Carolina and Ms. WATERS of California, who yielded time.

A lot of us support HOPE VI, but what has distinguished MAXINE WATERS and MEL WATT is that for a period of their whole 14 years in the House they have constantly said, yes, we can make it better, yes, we can fix it, but let us not do away with it. And when the critics and the detractors have questioned this program, the two of them have been enormously vigilant.

Let me certainly thank Mr. SHAYS for his work, and let me recognize someone whose name has not been called, who is also departing the House, Ms. HARRIS of Florida.

Twice we have had to bring amendments to the floor of the House to sustain funding for this program. Twice we have had to ask the House to second-guess the administration, to make a dollar commitment to this program. Two years ago, we got 59 Republicans to cross party lines. This year we topped that. We got 64 Republicans to cross party lines. And a lot of that was a function of Ms. HARRIS' work.

So I want to end on this note. We all agree, or so many of us in this Chamber agree about the value of this program. I hope there are two people in the United States who will take heed of that, the President of the United States and the Secretary of Housing and Urban Development. Because for 4 years now they have given us budgets that would do away with HOPE VI. For 2 years, this House has accurately and correctly second-guessed them and put the money back in. And today this House will make another statement by reauthorizing this program.

This works when the two branches of government that the people select, the executive and the legislative, actually listen to each other. This business works better when the executive branch every now and then takes heed of what we do here.

There are two more budgets, Ms. WATERS, that will be issued from the Bush administration before the President takes leave to Crawford. I hope that both of those budgets are much more reflective of MIKE OXLEY and CHRIS SHAYS and KATHERINE HARRIS, as well as the numerous people on this side of the aisle who believe in the utility of this program.

So this is an important statement for families who live in these units, and it is a statement of our values as well.

Mr. OXLEY. Mr. Speaker, I now yield 2 minutes to the gentleman from Pennsylvania (Mr. DENT).

Mr. DENT. Mr. Speaker, I rise today to speak in strong support of the HOPE VI Reauthorization Act of 2006, H.R. 5347.

This program does play a vital role in the redevelopment of severely dilapidated public housing units and promotes self-sufficiency among the residents of the community. HOPE VI projects forge new relationships and partnerships between local businesses and development agencies, garnering growth and investment in poverty stricken neighborhoods.

In May, 2005, the Allentown Housing Authority, located in my district, received $20 million from this program for the redevelopment and revitalization of the Hanover Acres and Riverview Terrace public housing facilities. Once complete, the project will provide 322 new housing units and a community center for families, as well as adult education services, youth programs, child care, and homeownership and money management education programs for residents.

Because of this investment, families will have increased opportunities for education, job skills, training, and job placement. This HOPE VI project is not only crucial to Hanover Acres but ultimately a catalyst for the revitalization of the entire community and neighborhood.

The HOPE VI program has already facilitated the redevelopment of 80,000 housing units across the Nation. However, there are approximately 60,000 units still in desperate need of revitalization. Each revitalization project we undertake across the country will undoubtedly provide crucial economic stability for countless children and families through housing, community centers, and educational services.

I believe it is crucial that we continue to provide the means for revitalization of our most distressed neighborhoods and the opportunity for families and children to prosper in secure

surroundings. I ask that my colleagues vote in favor of the HOPE VI Reauthorization Act.

Ms. WATERS. Mr. Speaker, I yield 5 minutes to the Chair of the Congressional Black Caucus, the gentleman from North Carolina (Mr. WATT).

Mr. WATT. Mr. Speaker, I thank the gentlewoman from California for yielding time.

I rise in support of H.R. 5347. It is necessary to extend this program, and we are extending it for 1 year, the reauthorization, and that is the best we can do. You may sense frustration in that statement, because there is a sense of frustration. I have been at this HOPE VI for a long time now, and I think we need to go back and trace a little bit of the history of how we got here.

HOPE VI is not a Democratic program. It was introduced under a Republican administration. It was the brainchild of Jack Kemp when he was Secretary of Housing and Urban Development. And the idea was that we were not going to make any progress on dealing with community issues as long as we had these tremendous numbers, thousands of people in dense public housing communities in various places throughout the country, and that the only way we could approach the problem effectively was to disperse poverty and create communities with mixed incomes, low-income people, middle-income people, and high- income people. And so HOPE VI was about community revitalization.

All of the complaints I have heard about it over the years make it sound like people don't understand how difficult it is to do community revitalization. Because every time somebody says, well, they didn't finish a project in a year, I say to them, you can do construction in a year, you cannot do community revitalization in a year. It takes time to revitalize a community.

Now, why am I so passionate about this? We have seen five communities in the city of Charlotte, North Carolina, completely transformed as a result of HOPE VI. We have seen one community in Greensboro, North Carolina, in my congressional district, completely transformed as a result of HOPE VI. We have seen two communities completely transformed in the Winston Salem part of my congressional district as a result of HOPE VI. We bring a little bit of Federal money, private people come to the table, and you end up with a mixed community in terms of income, racially and otherwise.

And I can tell you, if you come into downtown Charlotte now, you will see a completely different story than you saw 10, 12, 15 years ago. You will see a beautiful community where a concentration of low-income public housing used to be. Now if anybody tells me that is not success, I say I do not know what success is. That was exactly what the program was designed to do.

And I don't understand how this President, on so many issues, including this one, will take a successful program and all of a sudden say this program doesn't work.

Now, coincidentally, most of the money is going into Democratic districts. That is really what the debate, the subtext of a lot of this debate, has been about. We knew where the public housing projects were. They were in most of our congressional districts. We set out to try to do something about those, and we have done something about those using HOPE VI. It has been the single most successful community revitalization and housing program probably that our Nation has ever seen, contrasted with the whole idea of warehousing poor people in concentrations of low-income communities.

So I am passionate about this. I am delighted we are extending this program for a year. But, at the same time, we need to recognize there is not but $99 million even in the appropriations bill that hasn't been passed and finalized. And every time we have had to fight this battle to reauthorize the program we have lost funding for the program, so it gets less and less and less effective at accomplishing its mission.

So I congratulate my friends for extending the program, and I ask for their support, all of our support, for extending a program that is a no-brainer. We ought to all be supporting this program.

Mr. MEEK of Florida. Mr. Speaker, I rise in strong support of H.R. 5347 the HOPE VI Reauthorization Act of 2006.

Public housing is a necessity in communities throughout this country. With the stock of affordable housing declining nationwide because of the rising cost of land, materials and labor, many families cannot afford to buy or even rent homes.

A study in Broward County alone showed the county needs 15,000 new affordable units a year to keep pace with demand. A Miami-Dade study, based on the 2000 U.S. Census, found the county needs to construct an additional 81,400 housing units for very low- and middle-income residents between 2000 and 2015.

At the same time, the number of Americans living in poverty has risen for 4 straight years in a row. Today, about 37 million Americans live at or below the poverty level. The hardest hit are women and children, over 12 million children live in poverty.

For many of these people, public housing is often the only option available to them. We know this is true because the sad truth is that public housing stocks are often in terrible condition. I have visited public housing units in my district with peeling paint, broken floor boards and windows, dilapidated appliances and defective wiring. This kind of neglect is not unique; the are many such housing units.

Mr. Speaker, that is why the HOPE VI program is so important. H.R. 5347, the HOPE VI Reauthorization Act of 2006, will continue for an additional 5 years the program begun in 1990 to demolish run-down housing projects and to replace them with attractive, safe, fully functioning and affordable housing in mixed income communities.

Even as we reauthorize the HOPE VI program and recognize its potential to revitalize neighborhoods and communities and provide quality housing to people who need it, we must also acknowledge the need to make sure that HOPE VI does not destroy neighborhoods in the name of revitalizing them and that we extract from HOPE VI dollars the maximum amount of housing for local residents.

Because successful HOPE VI grants require such a high percentage of local funding, they are a good way to stretch scarce Federal housing dollars. I urge my colleagues to support this bill.

Ms. LEE. Mr. Speaker, I rise in strong support of H.R. 5347, the Hope VI Reauthorization Act of 2006.

Congress created the bipartisan HOPE VI program in 1992 to restore distressed housing and build new, safe, and cohesive communities. To date HOPE VI has awarded over $5 billion to revitalize 193 public housing developments.

In my district alone, we have three HOPE VI projects: Mandela Gateway, Lions Creek Crossing, and Chestnut Linden Court.

The HOPE VI program works because its requirement for community buy-in is a responsive, flexible, and accessible redevelopment tool that effectively addresses the multi-billion dollar backlog in public housing capital needs.

But despite the accomplishments of HOPE VI, the administration continues to try and kill it. That just doesn't make any sense.

In passing H.R. 5347 today, we send a message to the administration, to housing authorities, and to the business community that HOPE VI is here to stay.

But we can't stop with Hope VI re-authorization.

We must also fully fund our housing authority's capital and operating needs, Section 8 vouchers, and special-needs tenants like the elderly, the handicapped, and those living with HIV/AIDS.

Together these initiatives can help re-focus our attention on those who are most in need.

□ 1830

Ms. WATERS. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. OXLEY. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. OXLEY) that the House suspend the rules and pass the bill, H.R. 5347, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules previously postponed.

Votes will be taken in the following order:

H.R. 5637, by the yeas and nays;

H.R. 6115, by the yeas and nays;

S. 2856, by the yeas and nays.

The first electronic vote will be conducted as a 15-minute vote. Remaining electronic votes will be conducted as 5-minute votes.

NONADMITTED AND REINSURANCE REFORM ACT OF 2006

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 5637, as amended.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. OXLEY) that the House suspend the rules and pass the bill, H.R. 5637, as amended, on which the yeas and nays are ordered.

The vote was taken by electronic device, and there were—yeas 417, nays 0, not voting 15, as follows:

[Roll No. 492]

YEAS—417

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris Rodgers
McNulty
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schmidt
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—15

Boehlert
Case
Castle
Cleaver
Davis (FL)
Davis, Tom
Evans
Israel
Kolbe
Lewis (CA)
Lewis (GA)
Meehan
Ney
Sabo
Strickland

□ 1857

Mr. WILSON of South Carolina, Ms. WOOLSEY, Mr. KUCINICH and Mr. BECERRA changed their vote from ''nay'' to ''yea.''

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

MARK-TO-MARKET EXTENSION ACT OF 2006

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 6115.

The Clerk read the title of the bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. OXLEY) that the House suspend the rules and pass the bill, H.R. 6115, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 416, nays 1, not voting 15, as follows:

[Roll No. 493]

YEAS—416

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo

Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McMorris Rodgers
McNulty
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schmidt
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NAYS—1

Weller

NOT VOTING—15

Case
Castle
Cleaver
Davis (FL)
Davis, Tom
Evans
Kolbe
Lewis (CA)
Lewis (GA)
McKinney
Meehan
Murtha
Ney
Sabo
Strickland

□ 1906

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

FINANCIAL SERVICES REGULATORY RELIEF ACT OF 2006

The SPEAKER pro tempore. The pending business is the question of suspending the rules and passing the Senate bill, S. 2856, as amended.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. OXLEY) that the House suspend the rules and pass the Senate bill, S. 2856, as amended, on which the yeas and nays are ordered.

This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 417, nays 0, not voting 15, as follows:

[Roll No. 494]

YEAS—417

Abercrombie
Ackerman
Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baird
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berman
Berry
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Chabot
Chandler
Chocola
Clay
Clyburn
Coble
Cole (OK)
Conaway
Conyers
Cooper
Costa
Costello
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Deal (GA)
DeFazio
DeGette
Delahunt
DeLauro
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Eshoo
Etheridge
Everett
Farr
Fattah
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Frank (MA)
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Grijalva
Gutierrez
Gutknecht
Hall
Harman
Harris
Hart
Hastings (FL)
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinchey
Hinojosa
Hobson
Hoekstra
Holden
Holt
Honda
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kucinich
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Lee
Levin
Lewis (KY)
Linder
Lipinski
LoBiondo
Lofgren, Zoe
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
Matsui
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McDermott
McGovern
McHenry
McHugh
McIntyre
McKeon
McMorris Rodgers
McNulty
Meek (FL)
Meeks (NY)
Melancon
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy
Musgrave
Myrick
Nadler
Napolitano
Neal (MA)
Neugebauer
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Owens
Oxley
Pallone
Pascrell
Pastor
Paul
Payne
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Reichert
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Saxton
Schakowsky
Schiff
Schmidt
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Scott (VA)
Sensenbrenner
Serrano
Sessions
Shadegg
Shaw
Shays
Sherman
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stark
Stearns
Stupak
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Velázquez
Visclosky
Walden (OR)
Walsh
Wamp
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Woolsey
Wu
Wynn
Young (AK)
Young (FL)

NOT VOTING—15

Case
Castle
Cleaver
Davis (FL)
Davis, Tom
Evans
Kolbe
Lewis (CA)
Lewis (GA)
McKinney
Meehan
Murtha
Ney
Sabo
Strickland

□ 1915

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the Senate bill, as amended, was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. CLEAVER. Mr. Speaker, I was unable to personally cast votes today because I was attending a memorial service for Sergeant First Class (SFC) Michael Fuga.

Had I been present for rollcall vote 487, a motion to adjourn, I would have voted "nay";

For rollcall 488, a motion ordering the Previous Question on the Rule for consideration of H.R. 6166, the Military Commissions Act, I would have voted "nay".

For rollcall 489, on agreeing to the H. Res. 1042, the Rule for consideration of H.R. 6166, I would have voted "nay";

For rollcall 490, the Skelton motion to recommit H.R. 6166 to establish a process for

expedited judicial review and require a reauthorization of the Act after December 31, 2009 or three year sunset, I would have voted yea;

For rollcall 491, on passage of H.R. 6166, the Military Commissions Act, I would have voted nay;

For rollcall 492, on passage of H.R. 5637, the Nonadmitted and Reinsurance Reform Act of 2006, I would have voted yea;

For rollcall 493, on passage of H.R. 6115, the Mark-to-Market Extension Act of 2006, I would have voted yea;

For rollcall 494, on passage of S. 2856, the Financial Services Regulatory Relief Act of 2006, I would have voted yea.

PERSONAL EXPLANATION

Ms. JACKSON-LEE of Texas. Mr. Speaker, because of my attending the funeral of Officer Rodney Joseph Johnson, a Houston Police Department officer who lost his life in the line of duty, I missed the following votes:

Adjournment resolution, rollcall vote 487, if I had been present, I would have voted ''no''; the previous question, rollcall vote No. 488, if I had been present, I would have voted ''no''; H. Res. 1042, the rule regarding the military commissions resolution, rollcall vote 489, if I had been present, I would have voted ''no''; on the motion to recommit, the Skelton motion that would establish a process for expedited judicial review and require reauthorization of the act after December 31, 2009, rollcall vote 490, I would have voted ''aye''; rollcall vote 491, final passage of H.R. 6166, the Military Commissions Act, I would have voted ''no.''

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken tomorrow.

FHA MULTIFAMILY LOAN LIMIT ADJUSTMENT ACT OF 2006

Mr. GARY G. MILLER of California. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5503) to amend the National Housing Act to increase the mortgage amount limits applicable to FHA mortgage insurance for multifamily housing located in high-cost areas.

The Clerk read as follows:

H.R. 5503

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''FHA Multifamily Loan Limit Adjustment Act of 2006''.

SEC. 2. MULTIFAMILY HOUSING MORTGAGE LIMITS IN HIGH COST AREAS.

The National Housing Act is amended—

(1) in sections 207(c)(3), 213(b)(2)(B)(i), 221(d)(3)(ii)(II), 221(d)(4)(ii)(II), 231(c)(2)(B), and 234(e)(3)(B) (12 U.S.C. 1713(c)(3), 1715e(b)(2)(B)(i), 1715l(d)(3)(ii)(II), 1715l(d)(4)(ii)(II), 1715v(c)(2)(B), and 1715y(e)(3)(B))—

(A) by striking ''140 percent'' each place such term appears and inserting ''170 percent''; and

(B) by striking ''170 percent in high cost areas'' each time place such term appears and inserting ''215 percent in high cost areas''; and

(2) in section 220(d)(3)(B)(iii)(III) (12 U.S.C. 1715k(d)(3)(B)(iii)(III)) by striking ''206A'' and all that follows through ''project-by-project basis'' and inserting the following: ''206A of this Act) by not to exceed 170 percent in any geographical area where the Secretary finds that cost levels so require and by not to exceed 170 percent, or 215 percent in high cost areas, where the Secretary determines it necessary on a project-by-project basis''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. GARY G. MILLER) and the gentlewoman from California (Ms. WATERS) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. GARY G. MILLER of California. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on this legislation and to insert extraneous material thereon.

The SPEAKER pro tempore (Mrs. MCMORRIS RODGERS). Is there objection to the request of the gentleman from California?

There was no objection.

Mr. GARY G. MILLER of California. Madam Speaker, I yield myself such time as I may consume.

This legislation is critical to increasing the availability of affordable rental housing in this country.

I would like to thank my good friend BARNEY FRANK. He has worked with me to introduce this important bill. And I really want to thank the Financial Services Committee chairman, MIKE OXLEY. He has worked diligently through this process to get the process completed in committee so that the bill could be heard tonight.

When it comes to high-cost markets where land and construction costs are significantly higher than other areas of the country, there is no question that the FHA multifamily mortgage insurance limits are not keeping pace. The slowdown in affordable rental housing production has resulted in a significant gap between the demand and supply of affordable rental housing. This is a problem we have come together to solve tonight.

Through its numerous multifamily housing programs, HUD is a primary partner in the development of affordable rental housing. FHA provides mortgage insurance to HUD-approved lenders to facilitate the construction, substantial rehabilitation, purchase, and refinancing of multifamily housing projects and health care facilities. Mortgage insurance covers a lender if a borrower defaults on the insured loan. The FHA multifamily program is particularly important in serving the housing needs of low- and moderate-income families.

In our most expensive cities, it is very difficult for these families to find affordable rental housing in the communities where they work. Today, many public servants throughout this country, police officers, firefighters, and teachers, are not able to live in the communities in which they serve. Some commute an hour or more to get to work every day. What happens if there is a natural disaster? How will the first responders get to those in need in time if they live an hour or more away from where they work?

If Congress does not act to promote the development of affordable rental units, the housing situation in high-cost areas will continue to worsen and the housing needs for those who serve our communities and keep them safe will continue to be overlooked. Developers are simply unable to provide affordable housing units in high-cost areas because the current statutory limits for FHA mortgage insurance are unrealistically low. While Congress increased the limits of 2003, construction costs have accelerated to such heights in high-cost areas that the limits need to be increased again in order to allow affordable, low- and moderate-income rental units to be built in places like California and New York and cities such as Boston.

While FHA multifamily loan limits were increased in 2003, there were only a total of six FHA-insured multifamily loans for new construction or substantial rehabilitation approved in California in fiscal years 2004 and 2005 because of the loan limit. For the same time frame in the State of New York, only eight multifamily projects were approved by FHA. In Massachusetts only five projects were approved, and in New Jersey not a single new construction or rehabilitation project was approved through FHA.

This bill establishes a mechanism for addressing the need for new construction or substantial rehabilitation of rental units in extremely high-cost areas throughout this country. Under this bill, the multifamily loan limits in high-cost areas would increase to 170 percent above the base limit. The Secretary of HUD would have the discretion to increase the limits to 215 percent on a case-by-case or project-by-project basis.

It is important to point out that there is no private sector alternative to this program. The market served by FHA multifamily insurance does not overlap the competitive private interests. The FHA multifamily mortgage insurance program has worked with private sector partners to expand the supply of rental housing for over 65 years. This public/private partnership has leveraged more than $100 billion of private sector investment to provide rental housing for working families and elderly throughout this country.

In addition, the FHA program and this increase pays for itself. In fact, the program actually has a positive budgetary impact. That means this project actually makes money for the Federal Government.

For example, according to CBO, in 2002 FHA insured about $5 billion in loans for multifamily projects. The budgetary impact of these guarantees was accorded as discretionary savings of about $20 million. That means that the Federal Government made $20 million just by insuring these loans. CBO estimates that this bill would bring in $15 million in 2007 and $75 million between the 2007–2011 period. That means in those years alone, the Federal Government will make $75 million just by working on these programs.

Further, let me point out that if we do not pass legislation to promote the availability of affordable rental housing, our waiting lists for public housing will continue to grow. Despite drastic funding increases in section 8, waiting lists continue to grow across this Nation. In some cities, such as those in Southern California, families who sign up on a waiting list today will not receive an apartment for another 10 years.

This bill is a step in the direction of reducing dependency on government programs by providing a move-up market for affordable rental units.

In closing, it is important to note that we are not giving grants. We are not doing something that is going to lose money for any congressional district, because this bill does not take away money from low-cost areas. This bill, basically with the FHA mortgage insurance program, provides a critically needed financing source for affordable rental housing. It is important that this program be usable in areas that are experiencing a severe shortage of affordable units and rising development costs.

I want to conclude by saying this is not a giveaway program. This is a program that is an assistance to the private sector and a program that actually makes money for the private sector and through the government.

Madam Speaker, I reserve the balance of my time.

Ms. WATERS. Madam Speaker, I yield myself such time as I may consume.

(Ms. WATERS asked and was given permission to revise and extend her remarks and include extraneous material.)

Ms. WATERS. Madam Speaker, I rise in support of H.R. 5503, the FHA Multifamily Loan Limit Adjustment Act. And I want to thank the sponsor of the bill, the gentleman from California (Mr. GARY G. MILLER). I also want to thank the ranking member of the Committee on Financial Services, Mr. FRANK, a sponsor of the bill; and our distinguished chairman, Mr. OXLEY, for moving this legislation to the floor.

This is yet another example of the progress that we as members of the Committee on Financial Services have made on housing matters. In committee we have passed many housing bills that are waiting consideration by the House, and I am privileged to have supported this bill and other legislation because it begins to address the affordable housing crisis that we confront in America.

This bill is important to maintaining, as well as to increasing, the Nation's rental and affordable housing stock. FHA multifamily insurance products will remain available to assist projects for families with incomes from 80 percent to 150 percent of the median income. These are the people who really need our help. The bill will increase the loan limits for FHA-insured multifamily products in high-cost areas, where the FHA loan limits are no longer relevant in places like my district of Los Angeles, California. It is estimated to cost $146,240 per unit to build a 42-unit two-bedroom development in Los Angeles or approximately $6,142,069. In New York City and San Francisco, these projects are even more expensive, anywhere from $167,000 to $180,000 per unit.

This has had devastating effects on the construction of affordable housing projects in my district and elsewhere in the country, particularly as land and construction costs skyrocketed over the past few years.

In 2005 FHA insured a total of six multifamily projects in California. New York fared no better, as only eight projects were built in the same year. Of course, I am not surprised by this trend. But it must be reversed because of the large numbers of persons seeking affordable rental housing in this country, many of whom are working families with children, the elderly, and the disabled.

We all know that the affordable housing crisis has been exacerbated nationally since nearly 170,000 units of housing were lost last year in New Orleans alone as a result of the hurricanes that struck the gulf region. People of New Orleans and elsewhere in the gulf region are desperate for housing, which makes this legislation even more important. Very little, if any, multifamily rental housing has been constructed since the storms. Madam Speaker, I hope this bill reverses this situation.

H.R. 5503 will allow HUD to increase multifamily loan limits in expensive areas to 170 percent above the base limit, while giving the Secretary of HUD the discretion to increase the limit to 215 percent on a case-by-case basis. Because there are approximately 100 areas in the country that would be characterized as high-cost areas, this bill recognizes the reality of multifamily housing construction in this country. It just disappeared. Without these changes to the loan limits, it will remain impossible for developers, both for-profit and nonprofit, to develop any affordable housing units. The current loan limits can actually be attributed in part to the shortage of affordable housing units, particularly in high-cost areas of the country.

Now, as most of you know, there are no real alternatives in the private market to FHA mortgage insurance that assist families at 80 to 150 percent of the area median income. This is compounded by the fact that section 8 units are not available in these markets. The waiting lists for section 8 have not disappeared, and in Los Angeles there are more than 100,000 persons waiting for section 8 assistance. Other areas of the country, such as New York, Seattle and Philadelphia, are in the same predicament as Los Angeles.

Of course, this phenomenon is not limited to large urban areas. It is already affecting other areas of the country as populations grow and residents seek housing outside of the cities. Nearly 3.7 million people live in the City of Los Angeles, but 9.5 million live in the Los Angeles County area. From my vantage point, there is a real housing crisis across America.

On its face, this does not appear to be as important a measure as some other housing bills that this House has considered to date. But I contend that this is one of the most important housing bills that we will consider before the end of this session.

I, therefore, urge my colleagues to support this bill. It is a foolproof means of averting a national crisis in affordable housing.

Madam Speaker, I reserve the balance of my time.

Mr. GARY G. MILLER of California. Madam Speaker, I have no further requests for time, and I reserve the balance of my time.

Ms. WATERS. Madam Speaker, I yield 1 minute to the gentlewoman from California (Ms. ZOE LOFGREN).

Ms. ZOE LOFGREN of California. Madam Speaker, this is a day I have waited for for a long time, and I really want to commend the author, the ranking member, Ms. WATERS, and all of the committee for bringing this bill before us.

I come from a county where the median price of a single-family home is almost $800,000, where 800-foot condos sell for about $500,000. As you might imagine, the FHA program simply does not work and hasn't for a long time.

Recently, there was an analysis done in California. Factoring in housing costs, California has one of the poorest populations of the 50 States, and this measure is going to help tremendously for normal working families to have an opportunity to get that piece of the American Dream. And I really am very pleased that it is here today. I think I have asked Mr. FRANK on a weekly basis when this is going to be done, and I really commend you for moving this forward and I understand there is a significant chance the Senate will do so as well. It is very important.

I thank the gentlewoman for yielding.

□ 1930

Ms. WATERS. Madam Speaker, I will insert in the RECORD a letter in support of H.R. 5503 sent to Members of the House by five housing and real estate associations.

Madam Speaker, in closing, and before I yield back my time, I would just like to say I do not know if I will have the opportunity to be on the floor with many of my colleagues from our committee before the close of the session.

But I first want to say how appreciative I am to the chairman of our committee, Mr. OXLEY, for the leadership that he has provided, for his sense of fairness, and for his sense of what it takes to get both sides of the aisle working together. He has done a magnificent and tremendous job.

Madam Speaker, I also want to thank someone who is not here. It is unfortunate, because I have worked closely with Mr. NEY, and he has done a wonderful job in helping to move these housing bills to the point that we see them today.

I would like to thank all of the other members of the committee just in case we do not have an opportunity to be on the floor again on any more of those bills.

JULY 25, 2006.

DEAR REPRESENTATIVE: On behalf of the membership of our associations who represent the home buying, home building, and home financing industries, we are writing in support of H.R. 5503, FHA Multifamily Loan Limit Adjustment Act of 2006, legislation to increase the Federal Housing Administration (FHA) multifamily loan limits in high-cost areas. Over the past several years, Congress and the Administration have taken steps to update the FHA multifamily loan limits. However, despite these efforts, the current maximum FHA multifamily mortgage limits are inadequate and continue to constrain new construction and rehabilitation in many urban and suburban areas, where construction costs are significantly higher than in the rest of the country.

The FHA's multifamily mortgage insurance programs enable qualified borrowers to obtain long-term, fixed-rate financing for a variety of multifamily properties that are affordable to low- and moderate-income families. This public/private partnership has resulted in a successful program providing housing for a portion of the population not usually served by private industry alone. In addition to serving a valuable purpose, recent analysis by HUD and OMB indicate that virtually all of the FHA multifamily insurance programs operate on a break-even basis or raise revenue for the government.

Without higher FHA multifamily loan limits in high-cost markets, critical housing needs will go unmet. Those who will be most affected will include low- and moderate-income families, including important community service providers such as teachers, firefighters, and police officers. By increasing the maximum loan limit for FHA's multifamily programs, these programs can help provide the housing opportunities necessary for the economic and social well being of our nation. We applaud efforts to increase the availability of affordable housing in our nation's high-cost areas.

Institute of Real Estate Management.
Mortgage Bankers Association.
National Association of Home Builders.
National Association of Mortgage Brokers.
National Association of Realtors.

Madam Speaker, I yield back the balance of my time.

Mr. GARY G. MILLER of California. Madam Speaker, I yield myself the balance of our time.

Madam Speaker, I want to once again thank my good friend, BARNEY FRANK. He worked with me in introducing this legislation. We worked it through the system. It is before us today.

I would also like to thank a very good chairman of the Financial Services Committee, MIKE OXLEY. He had a vision when he took over the committee. He worked diligently to accomplish that vision. I wish him the best in his retirement. I know we are going to miss him next year when the committee starts again.

Ms. LEE. Madam Speaker, I rise in strong support of H.R. 5503, the FHA Multifamily Loan Limit Adjustment Act of 2006.

This bipartisan bill will allow the FHA program to keep up with the skyrocketing boom in housing prices—particularly in areas like my district in California, where the average price of a home is nearly $600,000.

The FHA program has provided homeownership opportunities to millions of Americans who have been deemed high-risk or struggled to save down payment costs.

Many residents in high-cost states like California are unable to tap into FHA's homeownership programs.

In 2005, FHA only insured 5,000 loans in California because housing cost were too high for the FHA's low loan limit.

Madam Speaker, there are hundreds, if not thousands, of eligible renters ho want to be homeowners. We must work with HUD to ensure that they are not locked out of the housing market.

I applaud Congressman MILLER, Congresswoman WATERS, Ranking Member FRANK and all the members who have worked together to make this bill and the dream of homeownership a reality.

I ask my colleagues to support H.R. 5503.

Mr. GARY G. MILLER of California. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. GARY G. MILLER) that the House suspend the rules and pass the bill, H.R. 5503.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

HEDGE FUND STUDY ACT

Mr. GARRETT of New Jersey. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 6079) to require the President's Working Group on Financial Markets to conduct a study on the hedge fund industry, as amended.

The Clerk read as follows:

H.R. 6079

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Hedge Fund Study Act''.

SEC. 2. STUDY AND REPORT ON HEDGE FUND INDUSTRY.

(a) STUDY.—The President's Working Group on Financial Markets shall conduct a study of the hedge fund industry. The study shall include an analysis of—

(1) the changing nature of hedge funds and what characteristics define a hedge fund;

(2) the growth of hedge funds within financial markets;

(3) the growth of pension funds investing in hedge funds;

(4) whether hedge fund investors are able to protect themselves adequately from the risk associated with their investments;

(5) whether hedge fund leverage is effectively constrained;

(6) the potential risks hedge fund pose to financial markets or to investors;

(7) various international approaches to the regulation of hedge funds; and

(8) the benefits of the hedge fund industry to the economy and the markets.

(b) REPORT AND RECOMMENDATIONS.—Not later than 180 days after the date of enactment of this Act, the President's Working Group on Financial Markets shall submit a report on its findings to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate. The report shall include recommendations, including—

(1) any proposed legislation relating to appropriate disclosure requirements for hedge funds;

(2) the type of information hedge funds should disclose to regulators and to the public;

(3) any efforts the hedge fund industry or regulators of financial institutions should undertake to improve practices or provide examples of successful industry initiatives; and

(4) any oversight responsibilities that members of the President's Working Group should have over the hedge fund industry, and the degree and scope of such oversight.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Jersey (Mr. GARRETT) and the gentleman from Massachusetts (Mr. FRANK) each will control 20 minutes.

The Chair recognizes the gentleman from New Jersey.

GENERAL LEAVE

Mr. GARRETT of New Jersey. Madam Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks on this legislation and to insert extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

Mr. GARRETT of New Jersey. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, before I begin, I would first like to wish my friend and colleague and the chief sponsor of this legislation, Congressman MIKE CASTLE, a very speedy recovery. Our thoughts and prayers are with him and his family, and we hope to see him back here on the floor soon.

I also, Madam Speaker, wish to take this time to thank both Chairman

OXLEY and Chairman BAKER for their support of this study and the ongoing efforts to address the evolving hedge fund industry.

Madam Speaker, I come to the floor tonight to support H.R. 6079, the Hedge Fund Study Act, introduced by my colleague, MIKE CASTLE. This legislation will better enable this House to examine the role of hedge funds in our economy through a thoughtful study and report by the President's Working Group on Financial Markets, the PWG.

The hedge fund industry represents a vital sector of the American economy, as evidenced by its market growth and capital development. Hedge funds are now a $1.2 trillion industry; and they can be a high-risk, high-stake investment. While they are usually targeted to wealthy investors, hedge funds are increasingly tied to pension plans and, consequently, to the financial earnings of millions of middle-class Americans. For that reason, I think it is necessary that we further explore hedge funds and the potential impact and benefits that they offer to the financial markets and investors as well.

Specifically, H.R. 6079 will help Congress learn more about this vibrant industry. The study will examine hedge fund growth and the potential risks as well as the benefits of the hedge fund industry to the economy and the markets.

The hedge fund industry has such a significant impact on the markets and was last reviewed by the PWG study on this topic way back in 1999. But the growth of the hedge fund industry over the past 7 years makes this legislation timely. I would call your attention to the improvements of the hedge fund industry risk management function, improvements that were recommended in that study in 1999.

Counterparties and financial institutions have taken affirmative steps over the past 6 years now to mitigate exposures to risk through innovative financial products and the allocation of greater resources toward a dedicated risk management role.

Additionally, the hedge fund industry has in the past demonstrated its willingness on its own to resolve market challenges. For example, through a self-imposed obligation, derivative market participants, including hedge funds, directed their efforts toward eliminating a credit derivatives paperwork backlog that in past years was caused by explosive growth within those markets. The industry has now successfully reported that it has made substantial progress in increasing operational efficiencies and operational risks.

Again, at this time, I support this legislation; and I also should point out that I would like to thank Congressman CHRIS SHAYS from Connecticut for his expertise in this area, as many of the hedge funds that we speak of here tonight are near in his district. I compliment the Congressman and his efforts to getting this bill through this House.

Madam Speaker, I reserve the balance of my time.

Mr. FRANK of Massachusetts. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I am in substantial agreement with my colleague from New Jersey, but, first, and most of all, in expressing our best wishes to our colleague, the gentleman from Delaware, who has been such a constructive Member and whom we hope to see back with us very soon.

Secondly, I think the gentleman has accurately portrayed the situation. About a month or so ago, the Circuit Court of Appeals ruled that the SEC had twisted a statute further out of shape than is permissible to get some jurisdiction over hedge funds.

I think the Circuit Court made the correct legal interpretation. The SEC had been reaching, and I think the decision was a correct one. I then, however, filed a bill to change the statute, not because I or I think anyone else is able to be sure right now exactly what we should do about hedge funds, but because I would agree with the gentleman from New Jersey, this is an important, relatively new phenomenon. It has a major impact in our economy.

At the rate at which they are growing, it may be we will reach the point in which there is more money in hedge funds than there is money; and that at least ought to call up some attention. I simply did not think we should adjourn for the year with some people thinking that we have now decided that the appropriate action is nothing at all. That may in the end be a decision, but I do not think it is one that we have yet had a chance to look at.

So there were various ways that we were looking at this. I had a bill, the gentleman from Louisiana, the chairman of the subcommittee, had a bill. The gentleman from Delaware, a very thoughtful Member, suggested this as an approach. It has the advantage, I think of saying, look, we believe there is something that has to be looked at.

The gentleman from New Jersey correctly mentioned one of the things that has a number of people particularly concerned, which is the increasing interface between hedge funds and pension funds. That is something that we want to look at. So I think that we have an appropriate vehicle today, legislatively, to say this is something we want to look at. We will come back next year and deal with it further. I think this is the appropriate way to do it.

Madam Speaker, I yield back the balance of my time.

Mr. GARRETT of New Jersey. Madam Speaker, I would just point out with regard to that court case, an interesting thing with regard to that court case was the fact that the court, in part, reached a decision as it did because it said, I am not quoting it, but, in essence, that they could not define exactly what a hedge fund was.

So perhaps with the benefit of this study that we can be able to rein that in and to address that issue as well.

Mr. FRANK of Massachusetts. Madam Speaker, will the gentleman yield?

Mr. GARRETT of New Jersey. I yield to the gentleman from Massachusetts.

Mr. FRANK of New Jersey. Madam Speaker, I would say yes to the gentleman, that this is a case when we could all agree, apparently, that a little judicial activism was a good thing.

Mr. GARRETT of New Jersey. Madam Speaker, reclaiming my time. I would like to make one final point on this. I mentioned during my earlier remarks the improvements that the industry has made on its own in this year.

And I should also point out, I think Mr. CASTLE would appreciate the fact, that the Managed Funds Association, which is the funds of the association of the hedge funds, in essence, are in support of this legislation as well. They have indicated the hedge funds are currently subject to numerous regulations already relating to advertising and broad reporting requirements, ERISA and other securities. But they do as well see the benefit to look at both sides of the equation from a balanced approach, both the risk and the potential difficulties as well.

So I just wanted to add that to the Record as well.

Mr. SHAYS. Mr. Speaker, I rise in support of the Hedge Fund Study Act and appreciate the work of our colleague, MIKE CASTLE, to craft this legislation and bring it to the floor.

Mr. Speaker, the hedge fund industry plays a critical and special role in our capital markets and is enormously important to helping institutional investors diversify their investment portfolios and meet their future funding needs.

While the numbers fluctuate some, there are believed to be close to 8,000 hedge funds that manage approximately $1 trillion in assets. Connecticut's Fourth Congressional District, which I'm grateful to represent, is home to several hundred of the most successful hedge funds.

Over the past few years, the industry has received increasing attention from the media, Congress and the Securities and Exchange Commission (SEC). I happen to believe that strong oversight of our financial markets is critical to our Nation's economic well-being. While hedge funds, which have knowledgeable and sophisticated investors, do not require the same level of scrutiny as is paid to the mutual fund industry, it seems to me more transparency and better government and regulator understanding of the industry will ultimately benefit investors and managers alike.

In my judgment, this act is a sensible approach to the issues raised by the growth and importance of hedge funds to the capital markets. We should require the Presidential Working Group on Financial Markets to study and make recommendations in a final report regarding efforts of both the industry and its regulators to improve practices.

Again, I appreciate this legislation coming to the House floor and urge its passage.

Mr. GARRETT of New Jersey. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Jersey (Mr. GARRETT) that the House suspend the rules and pass the bill, H.R. 6079, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF MOTIONS TO SUSPEND THE RULES

Mr. BISHOP of Utah (during consideration of H.R. 6079), from the Committee on Rules, submitted a privileged report (Rept. No. 109–690) on the resolution (H. Res. 1045) providing for consideration of motions to suspend the rules, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. BISHOP of Utah (during consideration of H.R. 6079), from the Committee on Rules, submitted a privileged report (Rept. No. 109–691) on the resolution (H. Res. 1046) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 4772, PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT OF 2006

Mr. BISHOP of Utah (during consideration of H.R. 6079), from the Committee on Rules, submitted a privileged report (Rept. No. 109–692) on the resolution (H. Res. 1047) providing for consideration of the bill (H.R. 4772) providing for consideration of the bill (H.R. 4772) to simplify and expedite access to the Federal courts for injured parties whose rights and privileges under the United States Constitution have been deprived by final actions of Federal agencies or other government officials or entities acting under color of State law, and for other purposes, which was referred to the House Calendar and ordered to be printed.

FINANCIAL NETTING IMPROVEMENTS ACT OF 2006

Mr. MCHENRY. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 5585) to improve the netting process for financial contracts, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5585

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Financial Netting Improvements Act of 2006''.

SEC. 2. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF DEPOSITORY INSTITUTIONS.

(a) DEFINITION OF SECURITIES CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended—

(A) in subclause (I)—

(i) by striking ''mortgage loan, or'' and inserting ''mortgage loan,''; and

(ii) by inserting before the semicolon ''(whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in clause (v))'';

(B) in subclause (IV)—

(i) by inserting ''(including by novation)'' after ''the guarantee''; and

(ii) by inserting before the semicolon ''(whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II))'';

(C) in subclause (IX), by striking ''or (VIII)'' each place such term appears and inserting ''(VIII), (IX), or (X)'';

(D) by redesignating subclauses (VI), (VII), (VIII), (IX), and (X) as subclauses (VIII), (IX), (X), (XI), and (XII), respectively; and

(E) by inserting after subclause (V) the following new subparagraphs:

''(VI) means any extension of credit for the clearance or settlement of securities transactions;

''(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(ii) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(ii)) is amended—

(A) in subclause (I)—

(i) by striking ''mortgage loan, or'' and inserting ''mortgage loan,''; and

(ii) by inserting before the semicolon ''(whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in clause (v))'';

(B) in subclause (IV)—

(i) by inserting ''(including by novation)'' after ''the guarantee''; and

(ii) by inserting before the semicolon ''(whether or not such settlement is in connection with any agreement or transaction referred to in subclauses (I) through (XII) (other than subclause (II))'';

(C) in subclause (IX), by striking ''or (VIII)'' each place such term appears and inserting ''(VIII), (IX), or (X)'';

(D) by redesignating subclauses (VI), (VII), (VIII), (IX), and (X) as subclauses (VIII), (IX), (X), (XI), and (XII), respectively; and

(E) by inserting after subclause (V) the following new subparagraphs:

''(VI) means any extension of credit for the clearance or settlement of securities transactions;

''(VII) means any loan transaction coupled with a securities collar transaction, any prepaid securities forward transaction, or any total return swap transaction coupled with a securities sale transaction;''.

(b) DEFINITION OF FORWARD CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(iv)(I) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)(I)) is amended by striking ''transaction, reverse repurchase transaction'' and inserting ''or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in clause (v))''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(iv)(I) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(iv)(I)) is amended by striking ''transaction, reverse repurchase transaction'' and inserting ''or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in clause (v))''.

(c) DEFINITION OF SWAP AGREEMENT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended—

(A) in subclause (I)—

(i) by striking ''or precious metals'' and inserting '', precious metals, or other commodity''; and

(ii) by striking ''or a weather swap, weather derivative, or weather option'' and inserting ''weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement'';

(B) in subclause (II)—

(i) by inserting ''or other derivatives'' after ''dealings in the swap''; and

(ii) by striking ''future, or option'' and inserting ''future, option, or spot transaction''; and

(C) by striking ''the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000'' and inserting ''the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(vi) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(vi)) is amended—

(A) in subclause (I)—

(i) by striking ''or precious metals'' and inserting '', precious metals, or other commodity''; and

(ii) by striking ''or a weather swap, weather derivative, or weather option'' and inserting ''weather swap, option, future, or forward agreement; an emissions swap, option, future, or forward agreement; or an inflation swap, option, future, or forward agreement'';

(B) in subclause (II)—

(i) by inserting ''or other derivatives'' after ''dealings in the swap''; and

(ii) by striking ''future, or option'' and inserting ''future, option, or spot transaction''; and

(C) by striking ''the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000'' and inserting ''the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act''.

SEC. 3. CLARIFYING AMENDMENTS RELATING TO DEFINITION OF PERSON.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS DEFINITION OF PERSON.—Section 11(e)(8)(D) of the Federal Deposit Insurance

Act (12 U.S.C. 1821(e)(8)(D)) is amended by adding at the end the following:

''(ix) PERSON.—The term 'person' includes any governmental entity in addition to any entity included in the definition of such term in section 1 of title 1, United States Code.''.

(b) INSURED CREDIT UNIONS DEFINITION OF PERSON.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended by adding at the end the following:

''(ix) PERSON.—The term 'person' includes any governmental entity in addition to any entity included in the definition of such term in section 1 of title 1, United States Code.''.

SEC. 4. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.

(a) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) in each of subsections (a) and (f), by striking ''paragraphs (8)(E), (8)(F), and (10)(B) of'' each place such term appears; and

(2) in subsection (a), by inserting ''terminated, liquidated, accelerated, and'' after ''institutions shall be''.

(b) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) in each of subsections (a) and (h), by striking ''paragraphs (8)(E), (8)(F), and (10)(B) of'' each place such term appears; and

(2) in subsection (a), by inserting ''terminated, liquidated, accelerated, and'' after ''organization shall be''.

SEC. 5. CONFORMING AMENDMENTS.

(a) CLARIFYING DEFINITIONS.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (22)(A)—

(i) by striking ''(domestic or foreign)'' after ''an entity''; and

(ii) by inserting ''(whether or not a 'customer', as defined in section 741)'' after ''custodian for a customer'';

(B) in paragraph (22A)—

(i) by striking ''on any day during the previous 15-month period'' each place it appears and inserting ''at such time or on any day during the 15-month period preceding the date of the filing of the petition''; and

(ii) by inserting ''(aggregated across counterparties)'' after ''principal amount outstanding'';

(C) in paragraph (25)(A)—

(i) by inserting '', as defined in section 761'' after ''commodity contract''; and

(ii) by striking ''repurchase transaction, reverse repurchase transaction,'' and inserting ''repurchase or reverse repurchase transaction (whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in this section)'';

(D) in paragraph (53B)(A)—

(i) in clause (i)—

(I) in subclause (II), by striking ''or precious metals'' and inserting '', precious metals, or other commodity'';

(II) in subclause (VII), by striking ''or'' at the end;

(III) in subclause (VIII), by striking ''weather derivative, or weather option'' and inserting ''option, future, or forward agreement''; and

(IV) by adding at the end the following:

''(IX) an emissions swap, option, future, or forward agreement; or

''(X) an inflation swap, option, future, or forward agreement;''; and

(ii) in clause (ii)—

(I) in subclause (I), by inserting ''or other derivatives'' after ''dealings in the swap''; and

(II) in subclause (II), by striking ''future, or option'' and inserting ''future, option, or spot transaction''; and

(E) in paragraph (53B)(B), by striking ''the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000'' and inserting ''the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) and the Commodity Exchange Act'';

(2) in section 362(b)—

(A) by striking paragraphs (6) and (7) and inserting the following:

''(6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;

''(7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;'';

(B) by striking paragraph (17) and inserting the following:

''(17) under subsection (a) of this section, of the exercise by a swap participant or financial participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;''; and

(C) by striking paragraph (27) and inserting the following:

''(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and''; and

(3) in section 741(7)(A)—

(A) in clause (i)—

(i) by striking ''mortgage loan or'' and inserting ''mortgage loan,''; and

(ii) by inserting before the semicolon ''(whether or not such repurchase or reverse repurchase transaction is a 'repurchase agreement', as defined in section 101)'';

(B) in clause (iii)—

(i) by inserting ''(including by novation)'' after ''the guarantee''; and

(ii) by inserting before the semicolon ''(whether or not such settlement is in connection with any agreement or transaction referred to in clauses (i) through (xi))'';

(C) in clause (viii), by striking ''or (vii)'' each place it appears and inserting ''(vii), (viii), or (ix)'';

(D) by redesignating clauses (v) through (ix) as clauses (vii) through (xi), respectively; and

(E) by inserting after clause (iv) the following:

''(v) any extension of credit for the clearance or settlement of securities transactions;

''(vi) any loan transaction coupled with a securities collar transaction, any prepaid forward securities transaction, or any total return swap transaction coupled with a securities sale transaction;''.

(b) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, is amended—

(1) in subsection (e)—

(A) by inserting ''(or for the benefit of)'' before ''a commodity broker''; and

(B) by inserting ''or that is a transfer made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, in connection with a securities contract, as defined in section 741(7), commodity contract, as defined in section 761(4), or forward contract,'' after ''securities clearing agency,'';

(2) in subsection (f)—

(A) by striking ''that is a margin payment, as defined in section 741 or 761 of this title, or settlement payment, as defined in section 741 of this title,''; and

(B) by inserting ''(or for the benefit of)'' before ''a repo participant'';

(3) in subsection (g), by inserting ''(or for the benefit of)'' before ''a swap participant''; and

(4) in subsection (j), by inserting ''(or for the benefit of)'' after ''made by or to''.

(c) SIPC STAY.—Section 5(b)(2)(C)(iii) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)(C)(iii)) is amended—

(1) by inserting ''a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991),'' after ''rule or bylaw of''; and

(2) by striking ''or a securities clearance agency, a right set forth in a bylaw of a clearing organization or contract market'' and inserting ''a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act),''.

(d) SAVINGS CLAUSE.—Title IX of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109–8, 119 Stat. 146) is amended by adding at the end the following:

''SEC. 912. SAVINGS CLAUSE.

''The meanings of terms used in this title are applicable for the purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar

terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as such term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.''.

SEC. 6. WALKAWAY CLAUSES.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(G) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(G)) is amended by striking clause (ii) and inserting the following new clauses:

''(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the receiver is appointed until the earlier of—

''(I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or

''(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver.

''(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party's status as a nondefaulting party in connection with the insolvency of an insured depository institution that is a party to the contract or the appointment of or the exercise of rights or powers by a conservator or receiver of such depository institution, and not as a result of a party's exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.''.

(b) INSURED CREDIT UNIONS.—Section 207(c)(8)(G) of the Federal Credit Union Act 12 U.S.C. 1787(c)(8)(G)) is amended by striking clause (ii) and inserting the following new clauses:

''(ii) LIMITED SUSPENSION OF CERTAIN OBLIGATIONS.—In the case of a qualified financial contract referred to in clause (i), any payment or delivery obligations otherwise due from a party pursuant to the qualified financial contract shall be suspended from the time the liquidating agent is appointed until the earlier of—

''(I) the time such party receives notice that such contract has been transferred pursuant to subparagraph (A); or

''(II) 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent.

''(iii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means any provision in a qualified financial contract that suspends, conditions, or extinguishes a payment obligation of a party, in whole or in part, or does not create a payment obligation of a party that would otherwise exist, solely because of such party's status as a nondefaulting party in connection with the insolvency of an insured credit union or the appointment of or the exercise of rights or powers by a conservator or liquidating agent of such credit union, and not as a result of a party's exercise of any right to offset, setoff, or net obligations that exist under the contract, any other contract between those parties, or applicable law.''.

SEC. 7. COMPENSATION OF CHAPTER 7 TRUSTEES; CHAPTER 7 FILING FEES.

(a) AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE.—

(1) COMPENSATION OF CHAPTER 7 TRUSTEES.—Section 330(b)(1) of title 11, United States Code, is amended—

(A) by striking ''$45'' and inserting ''$100'', and

(B) by inserting before the period at the end the following:

'', except that such amount shall be adjusted by the amount (if any) of such filing fee waived under the 2d sentence of section 1930(f)(1) of title 28''.

(2) RELATED AMENDMENTS.—Section 330(b) of title 11, United States Code, is amended—

(A) by striking ''(1)'', and

(B) by striking paragraph (2).

(b) AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE.—

(1) CHAPTER 7 FILING FEE.—Section 1930 of title 28 of the United States Code, as amended by section 10101 of Public Law 109–171, is amended—

(A) in subsection (a)(1)(A) by striking ''$245'' and inserting ''$300'', and

(B) in subsection (f)(1) by inserting after the 1st sentence the following:

''Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court shall waive $40 of the filing fee required by subsection (a) in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income not less than 150 percent, and not more than 175 percent, of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.''.

(2) UNITED STATES TRUSTEE FUND.—Section 589a(b)(1)(A) of title 28, United States Code, is amended by striking ''40.46 percent of the fees collected under section 1930(a)(1)(A)'' and inserting ''29.67 percent of the sum of the amount of fees collected under section 1930(a)(1)(A) and the amount of fees waived under the 2d sentence of section 1930(f)(1)''.

(c) RELATED AMENDMENT REGARDING COLLECTIONS AND DEPOSITS OF MISCELLANEOUS BANKRUPTCY FEES.—Section 406(b) of the Judiciary Appropriations Act, 1990 (28 U.S.C. 1931 note) is amended by striking ''28.87 percent of the fees collected under section 1930(a)(1)(A) of that title'' and inserting ''21.17 percent of the sum of the amount of fees collected under section 1930(a)(1)(A) of that title and the amount of fees waived under the 2d sentence of section 1930(f)(1) of that title''.

(d) CONFORMING AMENDMENT.—Section 10101(a) of Public Law 109–171 is amended by striking paragraph (2).

(e) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—The amendments made by this section shall take effect 120 days after the date of the enactment of this Act and shall not apply with respect to cases commenced under title 11 of the United States Code before the date such amendments take effect.

SEC. 8. SCOPE OF APPLICATION.

Subject to section 7(e), the amendments made by this Act shall not apply to any cases commenced under title 11, United States Code, or appointments made under any Federal or State law, before the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina (Mr. MCHENRY) and the gentlewoman from Florida (Ms. WASSERMAN SCHULTZ) each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina.

Mr. MCHENRY. Madam Speaker, I certainly appreciate the opportunity to speak about the Financial Netting Improvement Act of 2006, a piece of legislation that I, along with my colleague from Florida, DEBBIE WASSERMAN SCHULTZ, have sponsored and have brought through the committee process to the floor here today.

I first want to commend both the chairman of the Financial Services Committee, MIKE OXLEY, for his leadership on this important issue, as well as the ranking Democrat, BARNEY FRANK of Massachusetts, for his leadership and support on this issue as well.

It is certainly an interesting opportunity, Madam Speaker, for a freshman Member of the House to be on this floor and sponsoring a piece of legislation with a colleague from across the aisle who is also a freshman.

And it is also personally interesting to me because, on the opening day of Congress, we were described as the Yin and the Yang of the 109th Congress. At that point, I thought it would be an interesting opportunity to sponsor legislation with what USA Today deemed my polar opposite.

While we may be opposites on a number of issues, we do have similar values, and that is the value of good government. We do serve on the Financial Services Committee together as well. And she, as well as I, had the conversation earlier on that it would be exciting for us to sponsor legislation together. This is a wonderful opportunity. I want to thank her for her friendship and help.

Having said those things about her, some of her liberal colleagues may find her suspect. But I would say that she has been a fantastic leader for the other party and a strong legislator here in the House as well as her previous experience in Florida.

The Financial Netting Improvement Act of 2006 makes technical changes to the netting and financial contracts safe harbor provisions of the Federal Deposit Insurance Act, the Federal Credit Union Act, the Federal Deposit Insurance Corporation Improvement Act, and the Bankruptcy Code.

Broadly speaking, these safe harbor provisions allow certain types of creditors to exercise their self-help rights to terminate defined financial market contracts like swap agreements and exercise their offset rights and choose on how to deal with the foreclosure on collateral free from the power of a receiver or bankruptcy trustee that would otherwise impair the exercise of those rights.

Certainly after explaining the bill, it is a technical bill; and, broadly speaking, this is a necessarily technical correction that the other side of the aisle, as well as our side of the aisle, the President's Working Group on Financial Markets and all of the stakeholders have come to agreement on. I look very much forward to the House approving this measure tonight.

□ 1945

Madam Speaker, I reserve the balance of my time.

Ms. WASSERMAN SCHULTZ. Madam Speaker, I yield myself as much time as I may consume, and first, let me thank Chairman OXLEY and Ranking Member FRANK for their stalwart leadership on this and many other issues that have come before the Financial Services Committee in the 109th Congress. Chairman OXLEY has heard us say many times, but we will truly miss him after he retires. I believe that the combined leadership that he and my good friend, Ranking Member FRANK, have displayed have set the tone for the rest of us on the Financial Services Committee, as well as the staff.

I, too, am pleased to stand here with my good friend and fellow freshman colleague, the gentleman from North Carolina (Mr. MCHENRY). I made the mistake of telling him that I was going to try to have a little bit of fun in the back and forth here, and I think I could best characterize our professional relationship as being the odd couple. So it is a great day that we have the opportunity to come together on this netting legislation.

I can tell you that we want to make sure on our side that Ranking Member FRANK has suggested that we make sure the people understand that even though we have the next generation of Members managing the time on this bill, people should understand we are not high school kids. We are actually real live Members of Congress, you and I, and came here like everybody else.

I am pleased to join Mr. MCHENRY as an original cosponsor of H.R. 5585, and I am very pleased that we were able to come together on legislation because we have talked about that for a long time.

We could not have brought this bill to the floor without the support of the House Judiciary Committee on which I also sit, and I want to especially thank Subcommittee Ranking Member MEL WATT for working with us, also a gentleman from North Carolina, and for agreeing to help us move this bill forward.

As you know, as the gentleman from North Carolina has said, netting is simply the manner in which debts and credits are calculated between parties, and it is a critically important tool to unravel complex financial transactions which have, until now, been denied to our Nation's financial institutions.

This is in spite of broad-based, bipartisan support. In fact, the origin of this legislation is grounded in the collapse of the infamous hedge fund, Long Term Capital Management, after which former Federal Reserve Board Chairman Alan Greenspan implored Congress to pass the netting provision. Netting was also supported by the former Clinton and the current Bush administrations.

The primary goal of our legislation is to minimize systemic risks in situations when the procedure for resolving a single insolvency could trigger other failures elsewhere in the market.

H.R. 5585 protects the rights of market participants to terminate complex financial agreements. It also ensures that the Federal Government, like private entity creditors, will be able to enforce and net out qualified contracts with financial institutions during insolvency proceedings.

Additionally, this bill includes a fee increase provision in order to pay bankruptcy trustees.

I want to thank my good friend and colleague Congressman WATT for working us with. At his request, this bill was modified in two respects, and as a result of those modifications, Madam Speaker, more debtors will be eligible for the fee waiver.

However, the fundamental issue before to us today is support for netting provisions in the bankruptcy settlement of major market participants.

I encourage my colleagues to support this bill, and I ask our colleagues in the Senate to act on this before the end of the 109th Congress. This bill would codify commonsense business practices. These provisions have a long bipartisan legislative history in Congress, which continues today.

It is a privilege to work with Mr. MCHENRY, and there is no reason for us to stall any further. I know you join me in urging the Senate to take action on this bill after we do.

Madam Speaker, I reserve the balance of my time.

GENERAL LEAVE

Mr. MCHENRY. Madam Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks on this legislation and to insert extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. MCHENRY. Madam Speaker, I am prepared to yield back. I have no further speakers on this side, but before I close, I simply want to commend my colleague from Florida. It has been a delight working with her and resolving some of the more technical issues in this piece of legislation that popped up late in the committee process, but she was very adept at handling those issues, and I want to thank her for her leadership.

Ms. WASSERMAN SCHULTZ. Madam Speaker, I, too, have no further requests for time, and I want to reiterate the comments of my colleague from North Carolina. It has been a pleasure to work with him, and I look forward to this being the first of many opportunities to do that.

Mr. CANNON. Mr. Speaker, the Committee on the Judiciary recognizes that the courts, United States Trustees, and chapter 7 trustees have responsibilities in all chapter 7 cases, including cases where the filing fees are waived under 28 U.S.C. section 1930(f). The bill before the House would amend the act to permit a court to waive an additional $40 of the filing fee designated for payment to the trustee, under specified circumstances. This would be in addition to provisions under current law that permit a court to waive the entire filing fee for qualified low income debtors under specified circumstances. The committee is aware that such waivers could have an impact on the courts, the United States Trustees, and chapter 7 trustees. Accordingly, the courts and U.S. Trustees should closely monitor the impact of such waivers on those entities dependent on fee income and should report to the Congress.

Ms. WASSERMAN SCHULTZ. Madam Speaker, I yield back the balance of my time.

Mr. MCHENRY. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina (Mr. MCHENRY) that the House suspend the rules and pass the bill, H.R. 5585, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

COMMUNITY DEVELOPMENT INVESTMENT ENHANCEMENTS ACT OF 2006

Mr. MCHENRY. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 6062) to enhance community development investments by financial institutions, and for other purposes.

The Clerk read as follows:

H.R. 6062

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Community Development Investment Enhancements Act of 2006''.

SEC. 2. ENHANCING THE AUTHORITY FOR NATIONAL BANKS TO MAKE COMMUNITY DEVELOPMENT INVESTMENTS.

(a) NATIONAL BANKS.—The last sentence in the paragraph designated as the ''Eleventh.'' of section 5136 of the Revised Statutes of the United States (12 U.S.C. 24) is amended—

(1) by striking ''10 percent'' each place such term appears and inserting ''15 percent''; and

(2) by adding at the end the following new sentence: ''The preceding standards and limitations apply to each investment under this paragraph made by a national bank directly and by its subsidiaries.''.

(b) STATE MEMBER BANKS.—The last sentence of the 23rd undesignated paragraph of section 9 of the Federal Reserve Act (12 U.S.C. 338a) is amended—

(1) by striking ''10 percent'' each place such term appears and inserting ''15 percent''; and

(2) by adding at the end the following new sentence: ''The preceding standards and limitations apply to each investment under this paragraph made by a State member bank directly and by its subsidiaries.''.

SEC. 3. INVESTMENTS BY FEDERAL SAVINGS ASSOCIATIONS AUTHORIZED TO PROMOTE THE PUBLIC WELFARE.

(a) IN GENERAL.—Section 5(c)(3) of the Home Owners' Loan Act (12 U.S.C. 1464(c)) is amended by adding at the end the following new subparagraph:

''(D) DIRECT INVESTMENTS TO PROMOTE THE PUBLIC WELFARE.—

''(i) IN GENERAL.—A Federal savings association may make investments designed primarily to promote the public welfare, including the welfare of low- and moderate-income communities or families through the provision of housing, services, and jobs.

''(ii) DIRECT INVESTMENTS OR ACQUISITION OF INTEREST IN OTHER COMPANIES.—Investments under clause (i) may be made directly or by purchasing interests in an entity primarily engaged in making such investments.

''(iii) PROHIBITION ON UNLIMITED LIABILITY.—No investment may be made under this subparagraph which would subject a Federal savings association to unlimited liability to any person.

''(iv) SINGLE INVESTMENT LIMITATION TO BE ESTABLISHED BY DIRECTOR.—Subject to clauses (v) and (vi), the Director shall establish, by order or regulation, limits on—

''(I) the amount any savings association may invest in any 1 project; and

''(II) the aggregate amount of investment of any savings association under this subparagraph.

''(v) FLEXIBLE AGGREGATE INVESTMENT LIMITATION.—The aggregate amount of investments of any savings association under this subparagraph may not exceed an amount equal to the sum of 5 percent of the savings association's capital stock actually paid in and unimpaired and 5 percent of the savings association's unimpaired surplus, unless—

''(I) the Director determines that the savings association is adequately capitalized; and

''(II) the Director determines, by order, that the aggregate amount of investments in a higher amount than the limit under this clause will pose no significant risk to the affected deposit insurance fund.

''(vi) MAXIMUM AGGREGATE INVESTMENT LIMITATION.—Notwithstanding clause (v), the aggregate amount of investments of any savings association under this subparagraph may not exceed an amount equal to the sum of 15 percent of the savings association's capital stock actually paid in and unimpaired and 15 percent of the savings association's unimpaired surplus.

''(vii) INVESTMENTS NOT SUBJECT TO OTHER LIMITATION ON QUALITY OF INVESTMENTS.—No obligation a Federal savings association acquires or retains under this subparagraph shall be taken into account for purposes of the limitation contained in section 28(d) of the Federal Deposit Insurance Act on the acquisition and retention of any corporate debt security not of investment grade.

''(viii) APPLICABILITY OF STANDARDS TO EACH INVESTMENT.—The standards and limitations of this subparagraph shall apply to each investment under this subparagraph made by a savings association directly and by its subsidiaries.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—Section 5(c)(3)(A) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(3)(A)) is amended to read as follows:

''(A) [Repealed]''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina (Mr. MCHENRY) and the gentleman from Massachusetts (Mr. FRANK) each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina.

GENERAL LEAVE

Mr. MCHENRY. Madam Speaker, I ask unanimous consent that all Members have 5 legislative days within which to revise and extend their remarks on this legislation and to insert extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. MCHENRY. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, today the House will consider H.R. 6062, the Community Development Investment Enhancements Act of 2006.

I first want to commend Chairman OXLEY and Ranking Member FRANK for their leadership on the Financial Services Committee for introducing this legislation.

It is comprised of two major provisions from H.R. 3505, the Financial Services Regulatory Relief Act of 2005, which the House passed last March by a vote of 415–2. H.R. 3505 provides comprehensive regulatory relief to the financial services industry and its regulators. Those two sections were not included in the Senate-passed regulatory relief bill, S. 2856.

H.R. 6062 increases the authority of banks and, for the first time, gives authority to thrifts to invest in projects that benefit low- and moderate-income communities throughout the Nation. Existing authority for banks has already resulted in banks making more than $16 billion worth of investments since the law was enacted in 1992. Those investments provide housing, community services, as well as jobs, and many of them help banks meet their obligations under the Community Reinvestment Act.

The amount of investments that any one bank can make is limited to 5 percent of its capital and surplus, unless the Comptroller of the Currency determines that a higher amount will pose no significant risk to the deposit insurance fund and the bank is adequately capitalized.

However, in no case may OCC permit a bank's aggregate investments to exceed 10 percent. Some banks are approaching the limit. This bill raises the ceiling to 15 percent for banks. Currently, Federal thrift institutions have no such authority, but H.R. 6062 grants thrifts, overseen by the Office of Thrift Supervision, the same authority as banks.

Madam Speaker, I urge my colleagues to support passage of 6062.

Madam Speaker, I retain the balance of my time.

Mr. FRANK of Massachusetts. Madam Speaker, I yield myself 2 minutes.

The gentleman from North Carolina has more than adequately explained it. I do just want to comment on the procedure.

A version of this is included in the earlier bill we passed today providing regulatory relief. We have two versions. This is the way it should be. What we did earlier is what the Senate will accept. So it was important for us to show what it should be. The Senate will go apparently part of the way. There have been negotiations and conversations. There were things in there, like including thrifts, that the Senate was not willing to accept; but there will be another legislative session.

It seems to me the better part of wisdom and better part of public policy is to take what we can now, and that is what we have done. I think this will prove to be a good thing and that it will help us make the case for, in fact, doing everything that we wanted to do.

I just at this point, Madam Speaker, include into the RECORD letters in support of the original bill, but also obviously in favor of the other version that we did because that is all we could get through on the other side from the Office of Thrift Supervision and the Comptroller of the Currency.

OFFICE OF THRIFT SUPERVISION,
DEPARTMENT OF THE TREASURY,
Washington, DC, September 25, 2006.

Hon. BARNEY FRANK
Ranking Member, Committee on Financial Services, House of Representatives, Washington, DC.

DEAR CONGRESSMAN FRANK: I want to thank you for your work on H.R. 6062, the ''Community Development Investment Enhancements Act of 2006,'' and offer my support for your bill. Originally included as Sections 202 and 112 of H.R. 3505, the ''Financial Services Regulatory Relief Act of 2005,'' which passed the full House of Representatives, this legislation is especially important to supporting important community development programs.

In particular, your bill increases the ability of federal thrifts to make investments primarily designed to promote the public welfare of low- and moderate-income communities and families through the provision of housing, services, and jobs. H.R. 6062 accomplishes this by raising the limits on the ability of federal thrifts to invest in entities primarily engaged in making these public welfare investments.

While we are encouraged that the original Regulatory Relief Act, H.R. 3505, may be enacted in the next few weeks, we strongly support passage of H.R. 6062 as a freestanding bill if it is not included in the broader package. Just as it is important to reduce burdens on financial institutions in order to remove unnecessary regulatory obstacles that hinder profitability, innovation, and competition in our financial services industry, it is equally important to remove barriers to the growth and stability of low- and moderate-income communities.

Thank you for your leadership and continued interest is this issue. We applaud your efforts and urge swift action on H.R. 6062. If you have any questions, please do not hesitate to contact me or Kevin Petrasic, Managing Director of External Affairs, at 202–906–6452.

Respectfully yours,

JOHN M. REICH,
Director.

ADMINISTRATOR OF NATIONAL BANKS,
Washington, DC, September 18, 2006.

Hon. BARNEY FRANK,
Ranking Member, Committee on Financial Services, House of Representatives, Washington, DC.

DEAR CONGRESSMAN FRANK: Thank you for joining with Financial Services Committee Chairman MICHAEL G. OXLEY to introduce H.R. 6062, which would increase the authority of banks and thrifts of all charter types to invest in projects which benefit low- and moderate-income communities. I have previously indicated my strong support for provisions like those in H.R. 6062, and I strongly support this legislation as well.

Changes in national bank investment authority provided by H.R. 6062 have the potential to support as much as $30 billion in aggregate private investment to help revitalize local communities across the nation. The legislation offers a unique opportunity to boost community redevelopment through private sector investments. Commitments by national banks under existing authority have a proven track record of success with over $16 billion of investments in community development in every state in the nation—without the use of *any* taxpayer funds. A list of examples of such investments by national banks is enclosed.

Increasing allowable investments by banks and thrifts from 10% of capital and surplus to 15% will enhance the flow of funds for critically needed community development initiatives that benefit our nation's economically disadvantaged communities and families. I urge prompt passage of H.R. 6062.

Sincerely,

JOHN C. DUGAN,
Comptroller of the Currency.

Enclosure.

EXAMPLES OF BANK INVESTMENTS MADE UNDER THE NATIONAL BANK PUBLIC WELFARE INVESTMENT AUTHORITY (12 USC 24 (ELEVENTH))

Birmingham Community Development Corporation (Birmingham, Alabama) is a certified Community Development Financial Institution that makes loans to and investments in disadvantaged businesses.

Loussac-Sogn Apartments (Anchorage, Alaska) are operated by the Anchorage Neighborhood Housing Services (a member of NeighborWorks® America) and provide single-room occupancy (SRO) housing and support services for low-income individuals.

Arizona MultiBank Community Development Corporation (Phoenix, Arizona) provides financial and technical assistance for affordable housing, small business development, and economic development in Arizona.

Little Rock Housing Redevelopment built Madison Heights III in Little Rock, Arkansas—a 60 unit mixed income affordable housing project using Low Income Housing Tax Credits. The National Equity Fund, an affiliate of Local Initiatives Support Corporation, syndicated the tax credits through the National Equity Fund 2003.

Bay Area Smart Growth Fund (San Francisco, California) is a commercial real estate equity fund created to invest in 46 low- and moderate-income neighborhoods in the greater San Francisco Bay Area. The fund invests in retail, commercial, and industrial development as well as multi- and single-family housing.

Funding Partners for Housing Solutions (Denver, Colorado) is a certified Community Development Financial Institution which helps to provide gap financing for affordable housing development projects serving low- and moderate-income individuals in Colorado.

Community Development Trust financed the Park City Residential Care Home which provides affordable assisted living to 50 low- to moderate-income senior citizens. Development of the facility involved the rehabilitation of an historic building located on the west side of Bridgeport, Connecticut.

Delaware Community Investment Corporation (DCIC) is a multibank community development corporation that provides permanent financing and investment equity for affordable rental housing and commercial facilities. In addition, DCIC provides bridge loans and site acquisition loans for enterprises that provide services to underserved communities.

CF New Markets Advisors (Washington, DC) is a commercial real estate investment fund using New Markets Tax Credits that will provide debt and equity financing to support the development of urban retail, office, industrial, mixed-use, for-sale housing, and community facility projects.

Black Business Investment Fund is a nonprofit CDFI operating in eight Florida cities that specializes in aiding minority business owners in building their management capacity and in accessing capital.

Omni Community Development Corporation (Atlanta, GA) acquires and rehabilitates residential properties in low- and moderate-income areas.

Hale Makana o' Waiale Apartments (Maui, Hawaii)—CRA Fund Advisors purchased municipal bonds financing this rental property that will serve families earning less than 50 percent of area median income.

Tri-County Community Development Corporation (Beardstown, Illinois) is a multibank community development corporation that provides equity and debt financing to small businesses.

Great Lakes Capital Fund invests in Low Income Housing Tax Credit funded affordable housing projects in Indiana, Michigan, and Wisconsin. Building upon its initial support from the Enterprise Foundation and the Enterprise Social Investment Corporation, the Capital Fund has developed a wide array of technical and financial services including: community and project planning, predevelopment financing, construction and permanent loans, youth leadership programs, and equity investments.

Floyd County Progressive Growth Limited Partnership (Charles City, Iowa) developed a commercial industrial park in a state-sponsored Enterprise Zone to attract manufacturing facilities to this rural community.

Goodland Energy Center (Goodland, Kansas) consists of ethanol and biodiesel refineries located in a declining population area that has been plagued by drought and suffered the loss of railroad service and the closing of a sugar beet processing plant. These refineries will employ 65 people and create an additional 35 transportation and service-related jobs. The projects have the added benefit of increasing demand for locally grown corn, milo, and canola.

Houma-Terrebonne Community Development Corporation (Louisiana) is a multibank CDC formed to build or rehabilitate homes that will be sold to low- and moderate-income families.

Coastal Ventures (Wiscasset, Maine) is a financing arm of Coastal Enterprises—a CDFI that provides support in the development of job-creating small businesses, natural resource industries, community facilities, and affordable housing.

Lexington Terrace Townhomes (Baltimore, Maryland) were built on the site of a 670-unit public housing project These 203 affordable rental townhomes utilize Low Income Housing Tax Credits and are helping to revitalize this West Baltimore community.

Parren J. Mitchell Business Center (Baltimore, Maryland) is a commercial office facility in a low-income community co-owned and co-developed by a neighborhood-based community development corporation (CDC) and a national bank-owned CDC.

Massachusetts Housing Investment Corporation (Boston, Massachusetts) provides a broad array of debt and equity financing products to nonprofit and for-profit sponsors of affordable housing and commercial real estate developments located in low-income communities.

Minnesota Investment Network Corporation is a Community Development Financial Institution organized as a community development venture capital fund to provide equity capital and expertise to companies located in Minnesota.

Southeast Mississippi Community Investment Corporation is a nonprofit organization dedicated to job creation, business creation, and expansion and support of non-traditional business loan seekers, as well as the expansion of job opportunities for low- and moderate- income individuals.

Nevada Business League Community Development Corporation (Vernon County, Missouri) invested in the renovation of a commercial building in an industrial park as part of a government sponsored economic development initiative.

Equity Fund of Nebraska provides equity for affordable housing projects located in the State of Nebraska using the Low Income Housing Tax Credit. The fund is a subsidiary of the Midwest Housing Equity Group—nonprofit corporation which raises money to invest in affordable housing throughout the states of Nebraska, Iowa, Oklahoma, and Kansas.

Community Loan Fund of New Jersey provides financing for community services and businesses, including child care, health care, educational facilities, and social enterprises.

Ammonoosuc Green Limited Partnership (Littleton, New Hampshire) is an affordable housing project using Low Income Housing Tax Credits. This project was sponsored by the nonprofit group, Affordable Housing Education and Development (a member of NeighborWorks® America) and is part of this rural community's downtown revitalization initiative.

ACCION New Mexico is a small business micro-loan program which provides financing to small businesses, particularly minority-owned small businesses and businesses located in economically disadvantaged areas.

Rural Housing Action Corporation built Stanton Meadows Townhomes—a 24-unit affordable housing development in Seneca Falls, New York. The project utilized Low Income Housing Tax Credits which were syndicated by the National Equity Fund, an affiliate of Local Initiatives Support Corporation.

Community Affordable Housing Equity Corporation finances the development of affordable multifamily rental housing using Low-Income Housing Tax Credits in the states of North Carolina, South Carolina, West Virginia, Tennessee, Kentucky, Maryland, and Virginia.

Raymond James Native American Tax Credit Fund invests in Low Income Housing Tax Credit-funded affordable housing projects located on or near Native American reservations, sponsored by Native American tribes or their affiliates. (Lapwai, Idaho (Nez Perce); Browning, Montana (Blackfeet Nation); Belcourt, North Dakota (Turtle Mountain); Wagner, South Dakota (Yankton-Sioux Tribe); Keshena, Wisconsin (Menominee Indian Tribe of Wisconsin); Riverton, Wyoming (Northern Arapaho Tribe of the Wind River Indian Reservation); Bellingham, Washington (Lummi Nation); various locations in Oklahoma (Cherokee Nation)).

Longwood Plaza Shopping Center (Cleveland, Ohio) is in a low-income community and was renovated by a nonprofit community development corporation using New Markets Tax Credits.

Oregon Equity Fund provides equity for affordable housing projects located in the State of Oregon using the Low Income Housing Tax Credit.

The Reinvestment Fund (Philadelphia, Pennsylvania) provides financing primarily to community organizations for affordable housing development, community facilities, and working capital.

Omni Development Corporation built Waterview Apartments—a 100-unit affordable housing project for senior citizens in Woonsocket, Rhode Island. The project utilized Low Income Housing Tax Credits which

were syndicated by the National Equity Fund, an affiliate of Local Initiatives Support Corporation.

The Texas Mezzanine Fund is a statewide community development financial institution that provides financing for businesses located in distressed areas, minority-owned businesses, and small businesses that create jobs for low and moderate-income people.

Utah Microenterprise Loan Fund is a nonprofit, multibank community development financial institution which provides financing and management support to entrepreneurs in start-up and existing firms that do not have access to traditional funding sources—in particular, those who are socially and economically disadvantaged.

Depot Square Revitalization (Barre, Vermont) used Historic Rehabilitation Tax Credits to renovate a commercial facility on the historic town square in Barre, Vermont. This investment was part of a city-driven initiative to rejuvenate its downtown area.

Madam Speaker, I yield back the balance of my time.

Mr. MCHENRY. Madam Speaker, I urge my colleagues to support this important piece of legislation, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from North Carolina (Mr. MCHENRY) that the House suspend the rules and pass the bill, H.R. 6062.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

FINANCIAL SERVICES REGULATORY RELIEF AMENDMENTS ACT OF 2006

Mr. MCHENRY. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 6072) to amend the Federal Deposit Insurance Act to provide further regulatory relief for depository institutions and clarify certain provisions of law applicable to such institutions, and for other purposes.

The Clerk read as follows

H.R. 6072

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Financial Services Regulatory Relief Amendments Act of 2006'' .

SEC. 2. AMENDMENTS RELATING TO NONFEDERALLY INSURED CREDIT UNIONS.

(a) IN GENERAL.—Subsection (a) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t(a)) is amended by adding at the end the following new paragraph:

''(3) ENFORCEMENT BY APPROPRIATE STATE SUPERVISOR.—Any appropriate State supervisor of a private deposit insurer, and any appropriate State supervisor of a depository institution which receives deposits that are insured by a private deposit insurer, may examine and enforce compliance with this subsection under the applicable regulatory authority of such supervisor.''.

(b) AMENDMENT RELATING TO DISCLOSURES REQUIRED, PERIODIC STATEMENTS AND ACCOUNT RECORDS.—Section 43(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(b)(1)) is amended by striking ''or similar instrument evidencing a deposit'' and inserting ''or share certificate''.

(c) AMENDMENTS RELATING TO DISCLOSURES REQUIRED, ADVERTISING, PREMISES.—Section 43(b)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(b)(2)) is amended to read as follows:

''(2) ADVERTISING; PREMISES.—

''(A) IN GENERAL.—Include clearly and conspicuously in all advertising, except as provided in subparagraph (B); and at each station or window where deposits are normally received, its principal place of business and all its branches where it accepts deposits or opens accounts (excluding automated teller machines or point of sale terminals), and on its main Internet page, a notice that the institution is not federally insured.

''(B) EXCEPTIONS.—The following need not include a notice that the institution is not federally insured:

''(i) Statements or reports of financial condition of the depository institution that are required to be published or posted by State or Federal law or regulation.

''(ii) Any sign, document, or other item that contains the name of the depository institution, its logo, or its contact information, but only if the sign, document, or item does not include any information about the institution's products or services or information otherwise promoting the institution.

''(iii) Small utilitarian items that do not mention deposit products or insurance if inclusion of the notice would be impractical.''.

(d) AMENDMENTS RELATING TO ACKNOWLEDGMENT OF DISCLOSURE.—Section 43(b)(3) of the Federal Deposit Insurance Act (12 U.S.C. 1831t(b)(3)) is amended to read as follows:

''(3) ACKNOWLEDGMENT OF DISCLOSURE.—

''(A) NEW DEPOSITORS OBTAINED OTHER THAN THROUGH A CONVERSION OR MERGER.—With respect to any depositor who was not a depositor at the depository institution before the effective date of the Financial Services Regulatory Relief Amendments Act of 2006, and who is not a depositor as described in subparagraph (B), receive any deposit for the account of such depositor only if the depositor has signed a written acknowledgment that—

''(i) the institution is not federally insured; and

''(ii) if the institution fails, the Federal Government does not guarantee that the depositor will get back the depositor's money.

''(B) NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—With respect to a depositor at a federally insured depository institution that converts to, or merges into, a depository institution lacking Federal insurance after the effective date of the Financial Services Regulatory Relief Amendments Act of 2006, receive any deposit for the account of such depositor only if—

''(i) the depositor has signed a written acknowledgment described in subparagraph (A); or

''(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the conversion or merger, to obtain the acknowledgment.

''(C) CURRENT DEPOSITORS.—Receive any deposit after the effective date of the Financial Services Regulatory Relief Amendments Act of 2006 for the account of any depositor who was a depositor on that date only if—

''(i) the depositor has signed a written acknowledgment described in subparagraph (A); or

''(ii) the institution makes an attempt, as described in subparagraph (D) and sent by mail no later than 45 days after the effective date of the Financial Services Regulatory Relief Amendments Act of 2006, to obtain the acknowledgment.

''(D) ALTERNATIVE PROVISION OF NOTICE TO CURRENT DEPOSITORS AND NEW DEPOSITORS OBTAINED THROUGH A CONVERSION OR MERGER.—

''(i) IN GENERAL.—Transmit to each depositor who has not signed a written acknowledgment described in subparagraph (A)—

''(I) a conspicuous card containing the information described in clauses (i) and (ii) of subparagraph (A), and a line for the signature of the depositor; and

''(II) accompanying materials requesting the depositor to sign the card, and return the signed card to the institution.''.

(e) REPEAL OF PROVISION PROHIBITING NONDEPOSITORY INSTITUTIONS FROM ACCEPTING DEPOSITS.—Section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended—

(1) by striking subsection (e); and

(2) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

(f) REPEAL OF PROVISION CONCERNING NONDEPOSITORY INSTITUTIONS MASQUERADING AS DEPOSITORY INSTITUTIONS AND CLARIFICATION OF DEPOSITORY INSTITUTIONS COVERED BY THE STATUTE.—Subsection (e)(2) (as so redesignated by subsection (e) of this section) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended to read as follows:

''(2) DEPOSITORY INSTITUTION.—The term 'depository institution'—

''(A) includes any entity described in section 19(b)(1)(A)(iv) of the Federal Reserve Act; and

''(B) does not include any national bank, State member bank, or Federal branch.''.

(g) REPEAL OF FTC AUTHORITY TO ENFORCE INDEPENDENT AUDIT REQUIREMENT; CONCURRENT STATE ENFORCEMENT.—Subsection (f) (as so redesignated by subsection (e) of this section) of section 43 of the Federal Deposit Insurance Act (12 U.S.C. 1831t) is amended to read as follows:

''(f) ENFORCEMENT.—

''(1) LIMITED FTC ENFORCEMENT AUTHORITY.—Compliance with the requirements of subsections (b) and (c), and any regulation prescribed or order issued under any such subsection, shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission.

''(2) BROAD STATE ENFORCEMENT AUTHORITY.—

''(A) IN GENERAL.—Subject to subparagraph (C), an appropriate State supervisor of a depository institution lacking Federal deposit insurance may examine and enforce compliance with the requirements of this section, and any regulation prescribed under this section.

''(B) STATE POWERS.—For purposes of bringing any action to enforce compliance with this section, no provision of this section shall be construed as preventing an appropriate State supervisor of a depository institution lacking Federal deposit insurance from exercising any powers conferred on such official by the laws of such State.

''(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION PENDING.—If the Federal Trade Commission has instituted an enforcement action for a violation of this section, no appropriate State supervisor may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission for any violation of this section that is alleged in that complaint.''.

SEC. 3. CLARIFICATION OF SCOPE OF APPLICABLE RATE PROVISION.

Section 44(f) of the Federal Deposit Insurance Act (12 U.S.C. 1831u(f)) is amended by adding at the end the following new paragraphs:

''(3) OTHER LENDERS.—In the case of any other lender doing business in the State described in paragraph (1), the maximum interest rate or amount of interest, discount

points, finance charges, or other similar charges that may be charged, taken, received, or reserved from time to time in any loan, discount, or credit sale made, or upon any note, bill of exchange, financing transaction, or other evidence of debt issued to or acquired by any other lender shall be equal to not more than the greater of the rates described in subparagraph (A) or (B) of paragraph (1).

''(4) OTHER LENDER DEFINED.—For purposes of paragraph (3), the term 'other lender' means any person engaged in the business of selling or financing the sale of personal property (and any services incidental to the sale of personal property) in such State, except that, with regard to any person or entity described in such paragraph, such term does not include—

''(A) an insured depository institution; or

''(B) any person or entity engaged in the business of providing a short-term cash advance to any consumer in exchange for—

''(i) a consumer's personal check or share draft, in the amount of the advance plus a fee, where presentment or negotiation of such check or share draft is deferred by agreement of the parties until a designated future date; or

''(ii) a consumer authorization to debit the consumer's transaction account, in the amount of the advance plus a fee, where such account will be debited on or after a designated future date.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from North Carolina (Mr. MCHENRY) and the gentleman from Massachusetts (Mr. FRANK) each will control 20 minutes.

The Chair recognizes the gentleman from North Carolina.

GENERAL LEAVE

Mr. MCHENRY. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on this legislation and to insert extraneous material thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from North Carolina?

There was no objection.

Mr. MCHENRY. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H.R. 6072, the Financial Services Regulatory Relief Amendments Act of 2006, is similar to the previous legislation passed here in the House by a voice vote.

I want to start by commending Chairman OXLEY and Mr. ROSS, a former member of the Financial Services Committee, for introducing this legislation.

Like our previous legislation we considered a few moments ago here on the House floor, this is one of two provisions from H.R. 3505, the Financial Services Regulatory Relief Act of 2005, which passed this House last March by a 415–2 vote. This, too, makes minor changes to the underlying legislation that we passed previously, I should say.

H.R. 6072 would make minor changes to section 43 of the Federal Deposit Insurance Act. In 1991, Congress directed the Federal Trade Commission to regulate private deposit insurance for credit unions. Federal law allows State-chartered credit unions to have private insurance, if the State legislature has sanctioned the use of private insurance. Eight States currently allow private insurance for credit unions, including the chairman of the Financial Services Committee, his home State of Ohio. For several years, the Appropriations Committee has barred the FTC from enforcing this law. That has changed now, and the FTC is moving forward with regulations. The agency has requested, however, that we make certain changes to the statute to make their enforcement more efficient. Credit unions support this as well because it would end years of uncertainty and lack of guidance from the Federal Government.

I could go on in further description of the bill, but at this time I would be happy to hear from the ranking member of the Financial Services Committee.

Mr. Speaker, I retain the balance of my time.

Mr. FRANK of Massachusetts. Mr. Speaker, I yield myself such time as I may consume.

The gentleman from North Carolina has explained one of the provisions. There is another provision, and it deals with the preemption of a provision in the article of the Constitution.

Mr. Speaker, if we were talking about a provision that was statutory in the State of Arkansas or elsewhere, I would not be supportive of preemption. I do not think we should do what legislatures can do, but things have found their way into State Constitutions which it can be difficult to deal with it, and it does seem to me that this particular preemption that I understand is fairly widely supported in Arkansas, which would modify but not completely repeal restrictions on interest that can be charged, is a reasonable one. I think it would be allowed for reasonable transactions.

It would not, and is so worded, is not to allow things that are now abusive like payday loans, and this will now go to the other body and the Senators from Arkansas who decided this.

But it does seem to me that responding to this request from our colleagues to deal with something that is inappropriately, in my judgment, wedged in a Constitution because it is something that should be a matter of legislative policy, not constitutional, that it is okay.

Let me say this: if after we were to do this, if the people of that State or any other State wanted to reassert a certain limitation by legislation, I would agree that would be their right. So I do agree that we should not deal with this constitutional problem, but if they were to decide they wanted to do it legislatively, I would then be prepared to modify this.

□ 2000

Mr. Speaker, I yield back the balance of my time.

Mr. MCHENRY. Mr. Speaker, before I close, I want to thank the FTC and the work of the Financial Services Committee on these provisions within this legislation. I urge my colleagues to support this bill, H.R. 6072

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. BURGESS). The question is on the motion offered by the gentleman from North Carolina (Mr. MCHENRY) that the House suspend the rules and pass the bill, H.R. 6072.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

THIRD HIGHER EDUCATION EXTENSION ACT OF 2006

Mr. KELLER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6138) to temporarily extend the programs under the Higher Education Act of 1965, and for other purposes, as amended.

The Clerk read as follows

H.R. 6138

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Third Higher Education Extension Act of 2006''.

SEC. 2. EXTENSION OF PROGRAMS.

Section 2(a) of the Higher Education Extension Act of 2005 (P.L. 109–81; 20 U.S.C. 1001 note) is amended by striking ''September 30, 2006'' and inserting ''June 30, 2007''.

SEC. 3. ELIGIBLE LENDER TRUSTEE RELATIONSHIPS WITH ELIGIBLE INSTITUTIONS.

(a) AMENDMENT.—Section 435(d) of the Higher Education Act of 1965 (20 U.S.C. 1085(d)) is amended by adding at the end the following new paragraph:

''(7) ELIGIBLE LENDER TRUSTEES.—Notwithstanding any other provision of this subsection, an eligible lender may not make or hold a loan under this part as trustee for an institution of higher education, or for an organization affiliated with an institution of higher education, unless—

''(A) the eligible lender is serving as trustee for that institution or organization as of the date of enactment of the Third Higher Education Extension Act of 2006 under a contract that was originally entered into before the date of enactment of such Act and that continues in effect or is renewed after such date; and

''(B) the institution or organization, and the eligible lender, with respect to its duties as trustee, each comply on and after January 1, 2007, with the requirements of paragraph (2), except that—

''(i) the requirements of clauses (i), (ii), (vi), and (viii) of paragraph (2)(A) shall, subject to clause (ii) of this subparagraph, only apply to the institution (including both an institution for which the lender serves as trustee and an institution affiliated with an organization for which the lender serves as trustee);

''(ii) in the case of an organization affiliated with an institution—

''(I) the requirements of clauses (iii) and (v) of paragraph (2)(A) shall apply to the organization; and

''(II) the requirements of clause (viii) of paragraph (2)(A) shall apply to the institution or the organization (or both), if the institution or organization receives (directly

or indirectly) the proceeds described in such clause;

''(iii) the requirements of clauses (iv) and (ix) of paragraph (2)(A) shall not apply to the eligible lender, institution, or organization; and

''(iv) the eligible lender, institution, and organization shall ensure that the loans made or held by the eligible lender as trustee for the institution or organization, as the case may be, are included in a compliance audit in accordance with clause (vii) of paragraph (2)(A).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall not apply with respect to any loan under part B of title IV of the Higher Education Act of 1965 (20 U.S.C. 1071 et seq.) disbursed before January 1, 2007.

SEC. 4. HISPANIC-SERVING INSTITUTIONS.

(a) DEFINITION CHANGES.—Section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)) is amended —

(1) in paragraph (5)—

(A) by inserting ''and'' after the semicolon at the end of subparagraph (A);

(B) in subparagraph (B) —

(i) by striking ''at the time of application,''; and

(ii) by inserting ''at the end of the award year immediately preceding the date of application'' after ''Hispanic students'';

(C) by striking ''; and'' at the end of subparagraph (B) and inserting a period; and

(D) by striking subparagraph (C); and

(2) by striking paragraph (7).

(b) WAIT-OUT PERIOD ELIMINATED.—Section 504(a) of such Act (20 U.S.C. 1101c(a)) is amended to read as follows:

''(a) AWARD PERIOD.—The Secretary may award a grant to a Hispanic-serving institution under this title for 5 years.''.

SEC. 5. GUARANTY AGENCY ACCOUNT MAINTENANCE FEES.

Section 458(b) of the Higher Education Act of 1965 (20 U.S.C. 1087h(b)) is amended by striking ''shall not exceed'' and inserting ''shall be calculated on''.

SEC. 6. CANCELLATION OF STUDENT LOAN INDEBTEDNESS FOR SURVIVORS OF VICTIMS OF THE SEPTEMBER 11, 2001, ATTACKS.

(a) DEFINITIONS.—For purposes of this section:

(1) ELIGIBLE PUBLIC SERVANT.—The term ''eligible public servant'' means an individual who, as determined in accordance with regulations of the Secretary—

(A) served as a police officer, firefighter, other safety or rescue personnel, or as a member of the Armed Forces; and

(B) died (or dies) or became (or becomes) permanently and totally disabled due to injuries suffered in the terrorist attack on September 11, 2001.

(2) ELIGIBLE VICTIM.—The term ''eligible victim'' means an individual who, as determined in accordance with regulations of the Secretary, died (or dies) or became (or becomes) permanently and totally disabled due to injuries suffered in the terrorist attack on September 11, 2001.

(3) ELIGIBLE PARENT.—The term ''eligible parent'' means the parent of an eligible victim if—

(A) the parent owes a Federal student loan that is a consolidation loan that was used to repay a PLUS loan incurred on behalf of such eligible victim; or

(B) the parent owes a Federal student loan that is a PLUS loan incurred on behalf of an eligible victim.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(5) FEDERAL STUDENT LOAN.—The term ''Federal student loan'' means any loan made, insured, or guaranteed under part B, D, or E of title IV of the Higher Education Act of 1965.

(b) RELIEF FROM INDEBTEDNESS.—

(1) IN GENERAL.—The Secretary shall provide for the discharge or cancellation of—

(A) the Federal student loan indebtedness of the spouse of an eligible public servant, as determined in accordance with regulations of the Secretary, including any consolidation loan that was used jointly by the eligible public servant and his or her spouse to repay the Federal student loans of the spouse and the eligible public servant;

(B) the portion incurred on behalf of the eligible victim (other than an eligible public servant), of a Federal student loan that is a consolidation loan that was used jointly by the eligible victim and his or her spouse, as determined in accordance with regulations of the Secretary, to repay the Federal student loans of the eligible victim and his or her spouse;

(C) the portion of the consolidation loan indebtedness of an eligible parent that was incurred on behalf of an eligible victim; and

(D) the PLUS loan indebtedness of an eligible parent that was incurred on behalf of an eligible victim.

(2) METHOD OF DISCHARGE OR CANCELLATION.—A loan required to be discharged or canceled under paragraph (1) shall be discharged or canceled by the method used under section 437(a), 455(a)(1), or 464(c)(1)(F) of the Higher Education Act of 1965 (20 U.S.C. 1087(a), 1087e(a)(1), 1087dd(c)(1)(F)), whichever is applicable to such loan.

(c) FACILITATION OF CLAIMS.—The Secretary shall—

(1) establish procedures for the filing of applications for discharge or cancellation under this section by regulations that shall be prescribed and published within 90 days after the date of enactment of this Act and without regard to the requirements of section 553 of title 5, United States Code, and section 437 of the General Education Provisions Act (20 U.S.C. 1232); and

(2) take such actions as may be necessary to publicize the availability of discharge or cancellation of Federal student loan indebtedness under this section.

(d) AVAILABILITY OF FUNDS FOR PAYMENTS.—Funds available for the purposes of making payments to lenders in accordance with section 437(a) for the discharge of indebtedness of deceased or disabled individuals shall be available for making payments under section 437(a) to lenders of loans as required by this section.

(e) APPLICABLE TO OUTSTANDING DEBT.—The provisions of this section shall be applied to discharge or cancel only Federal student loans (including consolidation loans) on which amounts were owed on September 11, 2001, except that nothing in this section shall be construed to authorize any refunding of any repayment of a loan.

(f) DEADLINES AND PROCEDURES.—Sections 482(c) and 492 of the Higher Education Act of 1965 (20 U.S.C. 1089(c), 1098(a)) shall not apply to any regulations required by this section.

SEC. 7. RULE OF CONSTRUCTION.

Nothing in this Act, or in the Higher Education Extension Act of 2005 as amended by this Act, shall be construed to limit or otherwise alter the authorizations of appropriations for, or the durations of, programs contained in the amendments made by the Higher Education Reconciliation Act of 2005 (P.L. 109–171) to the provisions of the Higher Education Act of 1965 and the Taxpayer-Teacher Protection Act of 2004.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Florida (Mr. KELLER) and the gentleman from Michigan (Mr. KILDEE) each will control 20 minutes.

The Chair recognizes the gentleman from Florida.

GENERAL LEAVE

Mr. KELLER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 6138.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. KELLER. Mr. Speaker, I yield myself such time as I may consume, and I rise in support of H.R. 6138, the Third Higher Education Extension Act of 2006.

Some of the most important programs in the Higher Education Act, such as Pell Grants and Perkins student loans, are set to expire on September 30, 2006. Pell Grants and Perkins loans are the passports out of poverty for millions of worthy young people, and they deserve to be reauthorized. H.R. 6138 ensures that these provisions will not expire at the end of this fiscal year by extending them for another 9 months, through June 30, 2007.

While the House acted on permanent reauthorization of the Higher Education Act by passing H.R. 609, the College Access and Opportunity Act, in March of this year, the Senate has not yet acted. The Senate should soon act to pass their reauthorization bill so we can negotiate a final bill and have these important higher education reforms signed into law. In the meantime, Mr. Speaker, this extension will allow the important programs of the Higher Education Act to continue past their current September 30, 2006, expiration date.

In addition to extending the programs under the Higher Education Act, H.R. 6138 includes additional provisions to benefit students and institutions. Specifically, it reduces red tape for Hispanic-serving institutions by eliminating the 2-year wait-out period between grant applications. The extension repeals an outdated and burdensome requirement that Hispanic-serving institutions document the percentage of low-income students enrolled at the institution.

H.R. 6138 also eliminates the ability of schools to circumvent the new school-as-lender restrictions by forming an eligible lender-trustee relationship. And, finally, it provides loan forgiveness to spouses and parents of those who died or became disabled in the terrorist attacks of September 11, 2001.

Mr. Speaker, I urge my colleagues to vote ''yes'' on H.R. 6138 because we must not break our commitment to America's students.

Mr. Speaker, I reserve the balance of my time

Mr. KILDEE. Mr. Speaker, I yield myself such time as I may consume, and I rise today in support of the Higher Education Extension Act.

First, I would like to recognize that there are items in here that we all agree are important and that will help students, including changes to the Hispanic-serving institutions program and

loan forgiveness for 9/11 survivors and their families. These changes will ensure that Hispanic-serving institutions can continue to serve their important role in educating minority students and that families who fell victim to the terrible attacks of September 11 will have welcome financial relief.

Unfortunately, however, this extension is a reminder that we have failed to reauthorize the Higher Education Act, and H.R. 609, passed earlier this year, was only another missed opportunity to help students and families. H.R. 609 failed to restore the $12 billion raid on student aid that was included in the Budget Reconciliation Act.

These cuts come at a time when college costs are on the rise. At 4-year public colleges and universities, tuition has skyrocketed by 40 percent between 2001 and 2005. Additionally, this is really the first time that we have asked an entire generation to go deeply into debt in order to get a higher education. The typical student leaves college today with $17,500 in Federal loan debt.

Democrats would also boost the Pell Grant scholarships for students most in need. The value of Pell Grant scholarships are now worth nearly $1,000 less in inflation-adjusted terms than they were 30 years ago. My friends on the other side of the aisle may say that they have increased Pell Grants, but the only reason there is more appropriated for Pell Grants is because there are more and more students that qualify for those grants.

The only way to ensure that students receive meaningful aid through the Pell Grant program is to restore the purchasing power of the Pell Grant and significantly increase the maximum award.

Mr. Speaker, oftentimes I believe we have lost sight of what the Federal role is for higher education. It is to provide access to any and all qualified students to ensure they can get into higher education if they want to. I urge that we work together to provide real relief to students and families and reverse the raid on student aid.

Mr. Speaker, I reserve the balance of my time.

Mr. KELLER. Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. MCKEON), the chairman of the full Education and Workforce Committee and author of the higher education reauthorization bill.

Mr. MCKEON. I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of H.R. 6138, a measure to extend the programs under the Higher Education Act that are set to expire at the end of this month.

I thank the chairman of the 21st Century Competitiveness Subcommittee, Mr. KELLER, for his work on this bill as well as his consistent efforts on behalf of our Nation's college students and their families. I also thank Ranking Member KILDEE for his help on this effort of getting this bill reauthorized.

Earlier this year, when the Deficit Reduction Act was signed into law, we authorized the Act's mandatory spending programs. In this process, we reduced lender subsidies, increased loan limits for students, simplified the financial aid process, and provided additional resources for needy students studying math, science, and critical foreign languages in college. And we managed to achieve all that while making certain that student aid programs operate more efficiently, saving U.S. taxpayers billions of dollars.

The House followed in March by passing the College Access and Opportunity Act. This bill would reauthorize the remaining program under the Act. Unfortunately, the Senate has not yet acted on reauthorization legislation of its own. Therefore, the measure before us simply extends these remaining Higher Education Act programs until June 30, 2007, which will give us time to finish up the bill in the next Congress.

Additionally, H.R. 6138 includes benefits for college students and institutions of higher education. For example, this legislation reduces red tape for Hispanic-serving institutions by eliminating the 2-year wait-out period between grant applications. It repeals an outdated and burdensome requirement that Hispanic-serving institutions document the percentage of low-income students enrolled at the institution.

It continues current law with respect to payments made to Guaranty Agencies so that those agencies can continue working to help students avoid defaulting on their loans.

It eliminates the ability of schools to circumvent the Deficit Reduction Act's new school-as-lender restrictions by forming an eligible lender-trustee relationship.

And it provides loan forgiveness to spouses and parents of those who died or became disabled in the September 11, 2001, attacks on our Nation.

These student benefits, coupled with H.R. 6138's extension of vital higher education programs, are worthy of our strong, bipartisan support. At the same time, I am hopeful that our friends on the other side of the Capitol will renew their commitment to a reauthorization of the Higher Education Act. These extensions, and we are now on the fifth in this Congress alone, ought to become a thing of the past.

Mr. Speaker, yesterday, Secretary of Education Spellings outlined her vision for the future of higher education, following the release of a report from the Commission she formed a year ago to recommend ways to ensure our colleges and universities meet the challenges of the 21st century. As we extend these programs today, we should also commit ourselves to review the recommendations of the Commission and work with Secretary Spellings to expand college access and strengthen the quality of higher education in this country.

As I noted, in March, the House passed a reauthorization that I believe would go a long way toward doing that, even before the report was issued. Our bill would strengthen the Pell Grant program, empower parents and students through sunshine and transparency in college costs and accreditation, improve college access programs, and much more. Now, with the new report in the mix, we have a chance to do so again in the next Congress, potentially with important improvements incorporated between now and then.

I look forward to working with my colleagues on both sides of the aisle and on both sides of the Capitol in completing our work early on in the 110th Congress. In the meantime, however, I urge my colleagues to join me in supporting this extension.

Mr. KILDEE. Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. BISHOP).

Mr. BISHOP of New York. Mr. Speaker, almost 3 months ago to the day, I stood in this exact spot and spoke on the extension to the Higher Education Act, as I have done for each of the past four extensions, each time hoping it would be the last short-term measure we needed to pass before we finally produce an improved, bipartisan, and long-overdue reauthorization bill that reflects the best interests of America's college students and the families who support them.

I now rise with a different hope, and an even stronger conviction. It is now my hope that the current flawed version of the Higher Education Act reauthorization passed by the House never takes on the force of law and that during the next session of Congress, under a new majority, we can again address the Higher Ed Act and truly make it about increasing access and affordability.

Recently, Secretary Spellings' Commission on the Future of Higher Education released its final report on the status of postsecondary education. That report highlighted the dire need for increased Federal aid in the form of Pell Grants. It is puzzling that the Commission would release its findings on increasing access and affordability after the House has addressed its version of the Higher Ed Act and at the end of this budget cycle when it is too late this year to help students afford a college education.

I can only hope that the Secretary is planning on briefing the Congress on the Commission's findings and that she would respect this body enough to push for legislative remedies, rather than implementing the Commission's recommendations through negotiated rulemaking. Certainly a comprehensive strategy for postsecondary education that will meet the needs of America's future deserves congressional consideration. Otherwise, it would be an abrogation of our oversight responsibility.

Mr. Speaker, I will vote for the extension that we are considering here today, but I do not support the direction and actions of this Congress as it relates to higher education. We must

do more to ensure that every qualified student has the chance to go to college. Our future depends on nothing less.

Mr. KELLER. Mr. Speaker, I will continue to reserve the balance of my time.

Mr. KILDEE. Mr. Speaker, I yield 3 minutes to the gentlewoman from New York (Mrs. MCCARTHY).

Mrs. MCCARTHY. Mr. Speaker, I rise in strong support of the Higher Education extension.

I am pleased to see that it includes bipartisan language that provides student loan forgiveness to the spouses of first responders lost or disabled in the terrorist attacks on September 11, 2001.

This year marks the fifth anniversary of 9/11. I first introduced this bill in October, 2001; and I am pleased to see that we have worked together to finally pass this provision. This is long overdue and will provide welcome financial relief to families most affected by 9/11.

Many of the heroes of 9/11 left behind families who had to contend with the loss of a loved one and tremendous financial obligations.

□ 2015

The victims who died or were disabled on 9/11 had their loans forgiven, but that is not the case for their spouses. Anyone who loses a spouse faces severe financial challenges. This bill will help those who relied on their spouse's income to pay off students loans. This bill also works with parents who took out loans for their children's education.

Mr. Speaker, I really would like to say thank you to Ranking Member MILLER and his staff for the work they have done, as well as Chairman MCKEON and his staff for the hard work they have done. I truly appreciate working with them and look forward to next year when we work together to pass the higher education bill. I also thank Mr. KILDEE for helping me out on this.

Mr. Speaker, I urge my colleagues to support this important piece of legislation. Again, working on the Education Committee, we have a lot of challenges. We always face a lot of challenges. But in the end I think we will hopefully work together again when we come back in January and pass some good legislation. I think everybody cares about the children of this Nation, and together we will make it even better.

Mr. KELLER. Mr. Speaker, I continue to reserve the balance of my time.

Mr. KILDEE. Mr. Speaker, I yield 5 minutes to the gentlewoman from Florida (Ms. WASSERMAN SCHULTZ).

Ms. WASSERMAN SCHULTZ. Mr. Speaker, while I intend to cast my vote in support of the Higher Education Act extension, I am extremely concerned about the unintended consequences on students at Nova Southeastern University in my congressional district and many other degree-seeking students that rely on financial assistance.

Nova Southeastern University is the largest independent institution of higher learning in Florida, offering the benefits of education to 25,000 students. Nova Southeastern's student body is unique. Eighty percent are evening and part-time graduate degree-seeking students who participate in the workforce while they are seeking their degree.

Nova ranks first in the Nation in awarding postgraduate degrees to Hispanic students and is among the leaders in awarding advanced degrees to African American students and disadvantaged students who depend on financial assistance to further their education.

Until earlier this year, Nova was also one of the Nation's leading participants in the School as Lenders program. This program allowed Nova to provide hundreds of millions of dollars in low-cost loans to students. Premiums from the sale of these loans provided the university with millions of dollars annually which it used to educate its students. School officials estimate that this year's premiums issued through an Eligible Lender Trustee may be worth as much as $10 million for the school.

But this is not just about one institution in south Florida. The version of H.R. 6138 that the House will vote on and ultimately pass today threatens to eliminate the ability of every school issuing loans through an Eligible Lender Trustee to control these premiums. Ultimately, the students seeking to improve their lives through higher education will bear the brunt of this change.

H.R. 6138 also eliminates the ability of school lenders and Eligible Lender Trustees to issue low-cost PLUS loans to graduate students. The expensive cost of graduate and professional school programs often requires students to withdraw multiple loans. Eliminating an important source of these loans will drive graduate students to seek more expensive loans, with greater fees and risks to the students.

While the overall goals of this legislation are noble and I support the programs that benefit so many, I encourage Members to carefully review the legislation because some of the provisions will hurt students more than help them and in some cases destroy a young person's dream of a higher education and a better future.

I understand and support this legislation but believe that not every aspect of it includes the rosy picture that has been painted here today.

Mr. KILDEE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time. I thank Mr. KELLER for his fine work working with us on this extension and look forward to continuing to work with him.

Mr. KELLER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, let me address a couple of things. First let me address some of the comments by the gentlewoman from Florida, my friend and colleague, Ms. WASSERMAN SCHULTZ. I appreciate the fact that she is going to vote for the ultimate bill here. Just to address some of the School as Lender issues.

All schools in the School as Lender program may continue to operate as they have been. All schools that have an Eligible Lender Trustee agreement in place may continue to operate, but they must comply with the School as Lender program requirements. It is only fair that schools that make loans to their students under the Federal student loan programs comply with the same rules, whether they provide the loans directly or through a trustee.

No student's loan is in jeopardy, every eligible student will get a loan, and it will now be a low-cost loan because of the fierce competition in the student loan market. In fact, because all schools must use the funds earned on these loans for need-based grants, students are the big winners under these rules. Indeed, Senator TED KENNEDY has written a letter to Secretary Spellings on August 1 demanding that this loophole under the School as Lender provision for those Eligible Lender Trustee agreements be eliminated.

Shame on those schools who don't want to use these funds for need-based grants for their students, but instead on their inflated administrative budgets.

Finally, let me just comment on the work that we have done on Pell Grants. Since I was elected in 2000, I can tell you, I am pretty proud of the record of this Congress, Republicans and Democrats, in terms of increasing Pell Grant funding.

Since 2000, we have increased Pell Grants by 71 percent, from $7.6 billion a year to $13 billion a year. The maximum award since 2000 has gone up from $3,300 per student to $4,050 per student. Since 2000, we have had an increase in enrollment of 36 percent, from 3.9 million students to 5.3 million students. And under the underlying Higher Education Act, we have even strengthened the Pell Grant program further. We have provided for year-round Pell Grants for the first time. We increased the authorization level to $6,000, the highest amount in history. We have also had Pell-Plus initiatives, to say if you are a high achieving low-income student, you will get an extra $1,000 your first 2 years; and in your third and fourth year, if you are a high achieving student who is Pell-eligible and you have a 3.0 GPA and you agree to major in math, science or foreign languages, you will get an additional $4,000 per year. So we have the strongest, most vibrant Pell Grant program in history. It is one that we can all be proud of.

I urge all of my colleagues to vote for this extension because truly Pell Grants and Perkins loans are the passport out of poverty for young people.

Mr. HINOJOSA. Mr. Speaker, I rise to support H.R. 6138, the third extension of the Higher Education Act. Although I would prefer that we would consider a conference report to

complete the reauthorozation of the Higher Education Act. I would like to thank the chairman and ranking member for working with me and the Congerssional Hispanic Caucus to include two amendents of critical importance to Hispanic-serving institutions.

One amendment would eliminated the 2-year wait out period that interrupts HSI's ability to benefit from the title V Developing Institutions grants. The second amendment will finally put an end to the so-called ''50 Percent Rule'' that became an intrusive requirement mandating that Hispanic-serving institutions collect and report to the Department of Education individual information on family income and family size for every Hispanic student on campus in order to demonstrate that 50 percent of the Hispanic student enrollment meets the definiation of low income.

HSIs already are required to demonstrate that they have a high population of needy students as measured by eligibility for need-based student aid. The 50 percent rule added nothing to the targeting of funds to those with greatest need and only created an administrative nightmare that was a disincentive to participation in the title V program.

The 2-year wait out period and the 50 percent rule have been barriers that have been harmful to the HSI program to the detriment of the institutions and the students they serve. It is high time that we remove these barriers and I am pleased that we will not make our community wait until reatuhorization is complete to move forward.

I, along with my colleagues in the Congressional Hispanic Caucus, have been working for over 4 years to remove these barriers.

At the beginnin of this Congress, we introducated H.R. 761, the Next Generation Hispanic Serving Institutions Act. This legislation included both of these amendments for HSIs. Our bill also included provisions to establish a long overdue graduate program for HSIs. With the passage of H.R. 6138, we will be two thirds of the way toward our goal. It is my hope that we can complete the job before the 109th Congess adjourns.

Again, I would like to thank the chairman and ranking member as well as my good friend from New Mexico in the other body for working with us to improve the HSI program. These are very important amendments.

I urge my colleagues to support H.R. 6138.

Mr. WELDON of Pennsylvania. Mr. Speaker, I am concerned by the inclusion of provisions in this bill related to eligible trustee relationships with eligible institutions and the negative implications that these provisions will have on the availability of low-cost Federal loans and need-based grants in Pennsylvania and across the Nation.

I am also concerned that this legislation was not discussed with the affected institutions and is being brought to the floor for a vote less than a week after it was introduced.

Nearly 150 institutions of higher education participate as Federal Family Education Loan—FFEL—program lenders to their graduate and professional students, including many of the leading medical and law schools in the country. The financial benefits offered to students who borrow through their institution are better than what was available to students at the institution prior to the school becoming a lender. These institutions are required to pay the loan origination fees or reduce the interest rates that their borrowers are charged, and many institutions choose to do both.

Over the past 8 years, Widener University in my district has been able to provide nearly $8 million more in grant aid to needy students as a result of its activity as a school lender. Over 90 percent of the students at Widener require financial aid to pursue their studies. In addition, Widener also provided loans at lower costs than Sallie Mae and the big banks and has charged no up-front fees to students borrowing their loans from the university.

The provisions in H.R. 6138 would not allow school lenders to make Graduate PLUS loans to their students after December 31, 2006. The Graduate PLUS loan program has only been available since July 1, 2006, and was designed to replace graduate students' need to borrow higher-cost private loans to cover their remaining need. A number of institutions have sought to meet their borrowers' financing needs though eligible lender trustee arrangements under which a bank originates and holds loans on behalf of a trust established by the institution. The proceeds from the sale and repayment of these loans are used to help students. By continuing to deny school lenders the ability to make Graduate PLUS loans directly and stopping them from making them under trustee arrangements, the bill shifts millions of dollars from funds to help needy students to the profits of the big corporate lenders.

The inability to make Graduate PLUS will result in a loss of over $50 million need based grant aid for students at the 14 school lenders in Pennsylvania. In addition to Widener University in my district, the University of Pennsylvania, University of Scranton, Drexel, Duquesne, Carnegie Mellon, Temple, University of Pittsburgh, and seven other medical and professional schools in Pennsylvania also participate as school lenders.

In addition, the provisions also impact existing structures that have been in place for many years. A 2005 U.S. Government Accountability Office—GAO—study found a wide diversity in how these institutions finance, administer, and structure their FFEL lending programs. For example, some have used affiliated foundations as the lender because of State laws prohibiting institutions from incurring debt directly or because they have chosen to issue taxable bonds to finance their loans. Some of these arrangements involve eligible lender trustee relationships as well as affiliate organizations. The bill would not allow institutions to use or modify these types of structures after date of enactment.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in support of H.R. 6138, a bill intended to extend the programs under the Higher Education Act of 1965. The Higher Education Act—HEA—authorizes the major Federal student aid programs that are responsible for the majority of financial assistance to postsecondary students.

The provisions in this bill will ensure that the HEA will not expire at the end of this fiscal year by extending its provisions another 9 months through June 30, 2007.

In 1965, the Higher Education Act was established to help low- and middle-income students pursue higher education. Today, the Federal Government invests more than $70 billion in direct financial aid to students and families, and hundreds of millions of dollars are provided to colleges and universities so that they may better serve their students.

However, it seems as though every time we extend this crucial legislation, the provisions it contains divert the resources further and further away from where they are most needed. Eighty-six percent of high school graduates from families with incomes over $80,750 go on to college while only 57 percent of graduates from families earning less than $33,000 do so. Pell grants and student loans are supposed to help narrow this gap. And yet, when dollar amounts are scoffed at as expenses rather than investments, it is our next generation of doctors, lawyers, teachers, civil servants, and other professionals who suffer.

This will be the fifth time this Congress that we have extended the Higher Education Act. Although I am disappointed that we have not been able to reauthorize this crucial bill, I am pleased that we can manage to keep these programs active for the time being.

In addition to the existing provisions for Pell grants, teacher training, student loans, and distance education, H.R. 6138 contributes further language to increase the accessibility of higher education by: reducing red tape for Hispanic-serving institutions by eliminating the 2-year wait-out period between grant applications; continues funding payments made to guaranty agencies so that those agencies can continue working to help students avoid defaulting on their loans; provides loan forgiveness to spouses and parents of those who died or became disabled in the terrorist attacks of September 11, 2001.

I encourage my colleagues to support this bill.

Mr. KELLER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida (Mr. KELLER) that the House suspend the rules and pass the bill, H.R. 6138, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

ESTHER MARTINEZ NATIVE AMERICAN LANGUAGES PRESERVATION ACT OF 2006

Mr. MCKEON. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4766) to amend the Native American Languages Act to provide for the support of Native American language survival schools, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4766

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Esther Martinez Native American Languages Preservation Act of 2006''.

SEC. 2. EXPANSION OF PROGRAM TO ENSURE THE SURVIVAL AND CONTINUING VITALITY OF NATIVE AMERICAN LANGUAGES.

Section 803C of the Native American Programs Act of 1974 (42 U.S.C. 2991b-3) is amended—

(1) in subsection (b)—

(A) in paragraph (5) by striking ''and'' at the end,

(B) in paragraph (6) by striking the period at the end and inserting ''; and'', and

(C) by adding at the end the following:

''(7)(A) Native American language nests, which are site-based educational programs that—

''(i) provide instruction and child care through the use of a Native American language for at least 10 children under the age of 7 for an average of at least 500 hours per year per student;

''(ii) provide classes in a Native American language for parents (or legal guardians) of students enrolled in a Native American language nest (including Native American language-speaking parents); and

''(iii) ensure that a Native American language is the dominant medium of instruction in the Native American language nest;

''(B) Native American language survival schools, which are site-based educational programs for school-age students that—

''(i) provide an average of at least 500 hours of instruction through the use of 1 or more Native American languages for at least 15 students for whom a Native American language survival school is their principal place of instruction;

''(ii) develop instructional courses and materials for learning Native American languages and for instruction through the use of Native American languages;

''(iii) provide for teacher training;

''(iv) work toward a goal of all students achieving—

''(I) fluency in a Native American language; and

''(II) academic proficiency in mathematics, reading (or language arts), and science; and

''(v) are located in areas that have high numbers or percentages of Native American students; and

''(C) Native American language restoration programs, which are educational programs that—

''(i) operate at least 1 Native American language program for the community in which it serves;

''(ii) provide training programs for teachers of Native American languages;

''(iii) develop instructional materials for the programs;

''(iv) work toward a goal of increasing proficiency and fluency in at least 1 Native American language;

''(v) provide instruction in at least 1 Native American language; and

''(vi) may use funds received under this section for—

''(I) Native American language programs, such as Native American language immersion programs, Native American language and culture camps, Native American language programs provided in coordination and cooperation with educational entities, Native American language programs provided in coordination and cooperation with local universities and colleges, Native American language programs that use a master-apprentice model of learning languages, and Native American language programs provided through a regional program to better serve geographically dispersed students;

''(II) Native American language teacher training programs, such as training programs in Native American language translation for fluent speakers, training programs for Native American language teachers, training programs for teachers in schools to utilize Native American language materials, tools, and interactive media to teach Native American language; and

''(III) the development of Native American language materials, such as books, audio and visual tools, and interactive media programs.'',

(2) in subsection (c)—

(A) in paragraph (5) by striking ''and'' at the end,

(B) in paragraph (6) by striking the period at the end and inserting ''; and'', and

(C) by adding at the end the following:

''(7) in the case of an application for a grant to carry out any purpose specified in subsection (b)(7)(B), a certification by the applicant that the applicant has not less than 3 years of experience in operating and administering a Native American language survival school, a Native American language nest, or any other educational program in which instruction is conducted in a Native American language.'', and

(3) in subsection (e)(2) by inserting before the period the following: '', except that grants made under such subsection for any purpose specified in subsection (b)(7) may be made only on a 3-year basis''.

SEC. 3. DEFINITION.

Section 815 of the Native American Programs Act of 1974 (42 U.S.C. 2992c) is amended—

(1) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively, and

(2) by inserting before paragraph (2), as so redesignated, the following:

''(1) 'average' means the aggregate number of hours of instruction through the use of a Native American language to all students enrolled in a native language immersion program during a school year divided by the total number of students enrolled in the immersion program;''.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS FOR PROGRAM TO ENSURE THE SURVIVAL AND CONTINUING VITALITY OF NATIVE AMERICAN LANGUAGES.

Section 816(e) of the Native American Programs Act of 1974 (42 U.S.C. 2992d(e)) is amended by striking ''1999, 2000, 2001, and 2002'' and inserting ''2008, 2009, 2010, 2011, and 2012''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. MCKEON) and the gentleman from Michigan (Mr. KILDEE) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. MCKEON. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 4766.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MCKEON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.R. 4766, the Esther Martinez Native American Languages Preservation Act of 2006. Within the confines of existing programs under the Department of Health and Human Services' Administration for Native Americans, this measure will empower Native American tribes, organizations, colleges and governing bodies as they seek to preserve Native languages and cultures.

I would like to commend my colleague, Congresswoman HEATHER WILSON, for leading the charge on this issue. Native American tribes nationwide are struggling with the loss of their languages, and, indeed, to lose even one Native language is to lose a piece of our Nation's history.

Mrs. WILSON, along with her colleague Mr. TOM UDALL, has really done a great service to us, as she invited me to her district last month. I will mention a little bit more about that later, but I want to thank her for doing that. I also want to commend Ranking Member KILDEE, who has been a strong supporter of Native American programs forever since I came here, and I am sure much longer than that.

H.R. 4766 is being considered in the same spirit as a previous version of the legislation which was examined by our Education and Workforce Committee last month in a field hearing held in Representative WILSON's district in Albuquerque. That hearing provided us an opportunity to learn firsthand about the extent and impact of Native American language loss in New Mexico, throughout the Southwest, and across the Nation. We heard from Native American advocates, academics and students about the need to preserve their languages in the face of a dramatic decline, and today I am proud we are responding.

In that hearing we began with an invocation by a Native American Governor in his language and ended with a benediction in his language by the same Native American Governor. There was a great feeling in the room, and some people commented that they hoped this wasn't just a shot and they would never see us again and never hear from us. We are back, and we are passing the bill.

In many Native American communities, Native languages are disappearing at an alarming rate. As a matter of fact, it is estimated that only 20 indigenous languages will remain viable by the year 2050.

The link between education, language, and culture is considered by many as paramount to preserving the very identity of Native Americans. By encouraging a greater focus on Native language programs, we are not only striving to preserve that identity, but we are encouraging greater academic performance among Native American students as well. The fact that this bill does so within the confines of existing programs makes it worthy of even stronger support from this body.

Mr. Speaker, when we discuss Native American language preservation, we are not just simply talking about a method of communication within tribes. This issue is far deeper than that. It represents the preservation of an important part of our Nation's history, culture, and legacy.

By providing grants to Native American language programs consisting of language nests, survival schools and restoration programs, we are bolstering that preservation effort. This measure will empower Native Americans to take the steps they deem necessary to preserve their indigenous languages and thus their cultures.

After visiting with them last month in New Mexico, I am convinced that we not only are doing right by giving them the opportunity to preserve their languages in this way, but we are also right for working in a creative, fiscally responsible manner to preserve critical elements of our national heritage.

I urge my colleagues to join me in supporting this worthwhile legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. KILDEE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 4766, the Esther Martinez Native American Languages Preservation Act of 2006, introduced by my colleague from New Mexico, Mrs. HEATHER WILSON.

Language scholars estimate that there were approximately 300 languages spoken in North America prior to the arrival of Columbus. Some project that without intervention, only 20 indigenous languages will remain viable by the year 2050. This bill will help save Native languages, whose very survival depends upon our intervention.

Native languages are one of the treasures of this country's heritage, history, and diversity. The names of many States, cities, towns, streets, rivers and other geographical names in our country are derived from Native words. It would be a dishonor to continue to lose the languages to which we owe their origin.

Native languages have played a vital role in protecting our country in times of war, Mr. Speaker. In World War I and World War II, many brave Native Americans performed the role of ''code talkers'' to help protect this great country.

□ 2030

We owe much of this language preservation assistance to the legacy of our heroic code talkers. The key to stemming the loss of our Native American languages is by significantly increasing support for Native American language immersion programs. In addition to developing fluent speakers, language immersion programs have other remarkable benefits. Studies are showing that native language immersion programs decrease native dropout rates and increase educational attainment compared to their counterparts without such opportunities.

Mr. Speaker, these programs are valuable in fostering self-awareness, self-esteem, social growth, and problem-solving skills which are crucial in developing confident individuals who can tackle life's challenges in developing the next generation of Native American leaders.

H.R. 4766 allows the commissioner of the Administration for Native Americans Department of Health and Human Services to award grants to support and strengthen Native American language immersion programs, including language and language restoration programs. H.R. 4766 takes an important step forward in recognizing that vital importance of the Federal Government proactively working to save an important part of our heritage.

I would be remiss if I did not point out that the allowance for this grant program is just a promise, and this promise cannot be realized without a real increase in funding from the Administration for Native Americans which has been level funded at $44 million for the last 3 years. I pledge today that if this bill should become law, I shall send a letter to the Appropriations Committee supporting the increased funding necessary to support this program. I invite Chairman MCKEON to join me in this effort. And I know that Mrs. WILSON is also concerned with this.

I urge my colleagues to support H.R. 4766. And if this bill should become law, I invite all Members to join me in supporting appropriations necessary to fulfill our promise made today.

Mr. Speaker, I reserve the balance of my time.

Mr. MCKEON. Mr. Speaker, I would state that I would be happy to join with the gentleman on that letter.

I am happy now to yield whatever time she may consume to the gentlewoman from New Mexico (Mrs. WILSON), the author of this bill.

Mrs. WILSON of New Mexico. At a government-run boarding school for American Indians in the 1920s, Esther Martinez was not allowed to speak Tewa, her native language. Nor could she listen to the kinds of stories that her grandfather would tell her at her native San Juan Pueblo, now known as Owingeh. The goal of the school was to assimilate American Indians, and that meant leaving the past, the stories, and the language behind. But Mrs. Martinez never did.

After graduating from high school, Mrs. Martinez raised 10 children on an income earned from working as a janitor and in other service industry jobs, and she taught her children Tewa.

Esther took linguistics classes, and in her 50s she became a teacher. She taught Tewa in the local public schools. In 1983, her dictionary of San Juan Tewa was published, and just a little more than 2 weeks ago on September 14, Esther Martinez was honored as one of 12 2006 National Heritage fellows by the National Endowment of the Arts, the highest recognition in the folk and traditional arts in America.

Two days later, as she returned to San Juan Pueblo, Esther Martinez was killed in a car accident in Espanola, New Mexico, caused by a suspected drunken driver. She was 94 years young. With the permission of her family and particularly of her grandson, Matthew, and the support of Governor Joe Garcia, I would like to honor Esther's efforts to preserve native languages by naming this bill for her.

Our native languages are dying. Only about 20 of over 300 precolonial indigenous languages will be left by the year 2050. And I wanted to thank my colleagues TOM UDALL, RICK RENZI from Arizona, and particularly Chairman MCKEON and Mr. PETRI, for taking a personal interest in this, and of course Ranking Member KILDEE for his long-time leadership on Native American education.

This bill will increase the support for Native American language so that we can create and recreate fluent speakers of native languages. It doesn't create a new program, but rather incorporates Native American needs for language nests and survivor schools and restoration programs into current authorized funds.

Mr. Speaker, not too far from this House down at the foot of Capitol Hill, we have the newest building in the Smithsonian Institution. It is a beautiful building. It is the Museum of the American Indian, and inside it we are preserving Navajo rugs and bead work and beautiful pieces of art and kachinas and fetishes. We spend millions of dollars to preserve objects from the past. This bill I ask my colleagues to support tonight preserves a living culture through the preservation of language.

Mr. Speaker, I thank the gentleman from California (Mr. MCKEON) for his support. I ask my colleagues to vote in favor of this bill.

Mr. KILDEE. Mr. Speaker, I yield 3 minutes to the gentleman from New Mexico (Mr. UDALL).

(Mr. UDALL of New Mexico asked and was given permission to revise and extend his remarks.)

Mr. UDALL of New Mexico. Mr. Speaker, I rise today in support of H.R. 4766, the Esther Martinez Native American Language Preservation Act of 2006; and I would like to thank my colleague from New Mexico (Mrs. WILSON) for introducing this important piece of legislation. It is an honor to be a cosponsor of it. I would also like to thank the gentleman from Michigan (Mr. KILDEE) for his hard work on this issue, as well as many other Members who have taken an interest in this very important issue, and also thank Chairman MCKEON who brought the committee to New Mexico.

I remember, Mr. Chairman, we were in that room and it was standing room only. I think we could have gotten a much bigger room and even a bigger crowd. But it was an enormous crowd, and I think we were all impressed, and you could see and feel the real interest in this issue in terms of native communities caring about preserving their language. So it was wonderful to have you in New Mexico and have the committee out there and TOM PETRI, the gentleman from Wisconsin, who was also there.

Mr. Speaker, we pass this legislation today with the great hope for the future, but with great sorrow for the recent past. As has been mentioned, Ms. Esther Martinez, a master storyteller from Ohkay Owingeh, a pueblo located in my district, was tragically killed on September 17, 2006. Esther was returning home from the airport on the heels of a trip to Washington, D.C. to be honored as a 2006 National Heritage Fellow by the National Endowment for the Arts. Esther was 94 years old.

She had dedicated her life to maintaining and preserving the various forms of the Tewa language. Among her Pueblo people, Esther, or Aunt Esther, as many called her, is best known for her storytelling, but also recognized for her linguistic and educational

contributions. Esther taught Tewa at the San Juan Day School and for more than 20 years served as the school's director of bilingual education. She also published her stories and used them as learning tools in the classroom.

As a master of the Tewa language, she compiled Tewa dictionaries in various dialects for the Northern New Mexico Pueblos, and also translated the New Testament into Tewa.

Considering Esther's dedication to preserving her native language, it is a fitting tribute that this legislation be named after her. The importance of language and its ability to enhance the rich dynamics of our Nation's history is often overlooked. From learning the ancestry of those who came before us to passing stories down through the generations to maintaining religious, cultural, and social ties, language is fundamental. Passing this legislation today is an indication that the importance of cultivating and passing languages down to younger generations is now being recognized.

I have had the great honor of visiting the Pueblos, the Navajos and the Apaches, and others, in my district during my four terms in the Congress and learning the traditions and characteristics unique to each individual tribe. One similarity, however, is that native languages are being lost. Tribal elders are often the only ones fluent in the language as an increasing number of children are growing up in homes that speak only English.

The urgent need to protect and preserve Native American languages is clear. We must invest in their preservation by implementing immersion programs. Passage of this legislation today is an important step toward reversing that trend. I urge my colleagues to support this legislation.

Mr. KILDEE. Mr. Speaker, I yield 2 minutes to the gentleman from North Dakota (Mr. POMEROY).

Mr. POMEROY. I thank the gentleman for yielding, and I thank my colleagues for what has been a very interesting, indeed moving, debate. Esther Martinez is someone I wish I had met. You have certainly done her great credit in your stirring words on the floor this evening.

It was only a couple of years ago we had a procession of horses, Native Americans dressed in their traditional clothing as we came down the Mall, part of the ceremonies attendant to the opening of the newest Smithsonian just down 100 yards from where we speak. It is and stands as ongoing testament to the rich history and culture of the native peoples of our land. But in a much broader way we need to make certain that these cultures continue to live and thrive and are passed on within the generations.

I so wish that all of my colleagues had the opportunity to attend some of the events I attend in North Dakota. We are proud to host four reservations, four tribes, each with their own distinct cultures and ceremonies, but typically begin with the flag song, an honor song, a prayer delivered by an elder and so often in the native tongue. I have often thought, what will happen when these elders are no longer with us? Will we still have the native tongue?

This legislation is a wonderful commitment of this Congress to the legitimacy of the actions to preserve native languages, and commits, in my opinion, very strategic ways to continue to advance these native languages. In listening, young children, we know just by how the brain develops, language can be so effectively taught, and then continuing that trend right through junior high and high school grounding these emerging young men and women in solid notions of their culture and their history and their native pride. It can only be as important a part of their upbringing as our own respective cultural traditions have been with ours.

So I am very proud to join the discussion tonight and urge that we pass this bill and then work, as my friend, the gentleman from Michigan (Mr. KILDEE), has mentioned to get the appropriations support behind to get the funding.

Mr. KILDEE. Mr. Speaker, I yield back the balance of my time.

□ 2045

Mr. MCKEON. Mr. Speaker, I would like to say, seeing Mr. POMEROY from North Dakota get up and speak about this, and we have talked about this before, I had a younger brother that served a mission for our church in the Dakotas with the Indian people. He would have loved what we are doing here tonight.

Ms. BORDALLO. Mr. Speaker, I rise in support of H.R. 4766, the Esther Martinez Native American Languages Preservation Act of 2006. This is important legislation which seeks to protect, preserve, and promote indigenous languages across the United States. Among the estimated 175 indigenous languages spoken by citizens of the United States today is the Chamorro language, the indigenous language of the Chamorro people of Guam.

Ethnographers and linguists recognize the Chamorro language as belonging to the western group of the Austronesian language family. The Chamorro language has been spoken by the Chamorro people for more than 5000 years. It is a beautiful language that has survived outside influences and westernization.

Chamorro and English are the official languages of Guam. I am proud to support H.R. 4766 because it proposes to increase federal resources for Native American language immersion programs. The version of H.R. 4766 that has been brought to the House floor this evening also would amend the Native American Programs Act to authorize the Administration for Native Americans (ANA) in the Department of Health and Human Services to award grants to organizations and colleges dedicated to Native American language preservation. The bill specifically authorizes grants to establish site-based educational programs for children and their families, "survivor schools," and restoration programs.

The preservation of the Chamorro language and culture is within the current authorized mission of the ANA-administered grant programs that H.R. 4766 seeks to expand and for which it seeks to reauthorize funding. The Native American Programs Act, which H.R. 4766 seeks to amend, contains a definition for "Native American Pacific Islander" that includes the Chamorro people and our indigenous language. This definition is codified in 42 U.S.C. 2992c and should guide the ANA in administering future grant programs in accordance with this legislation should it be enacted.

Mr. Speaker, I also note for the record that H.R. 4766 has received the support of the 28th Guam Legislature. The inclusion of the Chamorro language as among the Native American languages sought to be preserved by this legislation is an important element. I urge support for H.R. 4766. I thank the sponsor of this bill, my colleague from New Mexico, Mrs. WILSON, and the Chairmen and Ranking Members of the Education and Workforce Committee, for advancing this legislation and for ensuring Guam and the Pacific Territories were included in the legislation.

Mr. BACA. Mr. Speaker, I rise today in support of H.R. 4766, the Esther Martinez Native American Languages Preservation Act of 2006.

Language is an important part of one's culture and heritage. Unfortunately, many languages are dying off at a tremendous rate. Native American languages are especially vulnerable and might soon become extinct if we do not take action to preserve them. It is predicted that by 2050, only 20 indigenous languages will remain viable in the United States.

Serving as a member of the Native American Caucus and having worked closely with the Native American communities of Southern California as a Congressman (and previously in the California State Assembly and State Senate), I am committed to helping preserve Native American language and culture.

In fact, I think Congress should take additional steps to help educate all Americans about Native American culture and traditions—and to honor the contributions that the "first Americans" have made to the larger American culture.

That's why I introduced a resolution a couple of years ago to encourage schools across the country to honor Native Americans for their contributions to American history, culture and education. The House passed this resolution, H.R. 168, during the 107th Congress.

And that's why I have been working to establish a Native American holiday. I believe that a national holiday would help raise awareness about American Indians. When I served in the California Legislature, the San Manuel Band asked me to introduce a bill calling for such a holiday. We passed it in California, and now I have introduced similar legislation, H. Res. 76, in the House of Representatives.

So I understand what is at stake today: We have a chance to prevent Native languages from disappearing forever. This is why we must pass this legislation.

Native American languages can be revitalized through language immersion programs. Language immersion programs have the ability to create fluency among students. In addition, students who participate in such programs often have higher rates of academic success then their peers who do not. This legislation therefore would be one way to raise

the academic achievement of Native American students.

The Native American Language Preservation Act would contribute to an already existing Native language grant program within the Department of Health and Human Services by allocating grants for language immersion programs which would not only help keep the language alive, but also help ensure that Native languages are accessible for the next seven generations to come.

I ask my colleagues to join me in supporting H.R. 4766. Let's preserve and honor Native American heritage and save our Native languages.

Mr. PEARCE. Mr. Speaker, I rise in support of the Esther Martinez Native American Languages Preservation Act of 2006 (H.R. 4766). I would like to congratulate my colleague from New Mexico, Mrs. WILSON, for bringing this issue forward.

This is important legislation to preserve the culture and increase fluency in Native American society. Sadly, all across America, Native American languages are in rapid decline; estimates are that there may be only 20 Native American languages remaining by the year 2050. These languages are unique to our country and unique to our history. If we do not preserve them, they will disappear forever.

This bill will establish a series of grants to help preserve the language and culture of our Native American people. This will help create programs that will teach our young people of the importance of learning the language of their ancestors and continuing to preserve the history and culture of their people.

Finally, the language programs created in this bill are locally based educational programs that will help both children learn and preserve languages in households all across America.

My constituent Dr. Christine Sims, a professor of language at the University of New Mexico, and Pueblo of Acoma tribal member says, "The future of America's first languages, those that are indigenous to this country hang in the balance of what we do as a Nation to help tribal communities preserve them. Much has been given up by countless generations of Native people in the wake of this country's expansion and growth into the great nation that it is today. It is only right and just that Congress consider the tremendous price that America's first people paid in terms of losing so much throughout the course of this nation's history, including the loss of native languages. Among America's Native language communities remaining today, the hopes and the dreams that Native elders, parents and tribes hold for their children are those which include the maintenance and revitalization of tribal heritage languages. We can do no less in this country, therefore, than to ensure that tribal communities have the opportunity and the funding resources that will help make these hopes and dreams for their children a reality.

"Today's education for the American Indian student must open the doors for youngsters to have more opportunities to learn their own languages as provided in the provisions of H.R. 4766. This bill, so aptly named for one of New Mexico's tribal elders, Mrs. Esther Martinez from San Juan Pueblo (who tragically died in a car accident this past week), would not only honor the memory of this renowned Native language advocate and leader, but as well, demonstrate the commitment that Congress is willing to make in support of the intent and purpose of the Native Languages Preservation Act.".

Again, I want to thank my New Mexico colleague, Mrs. WILSON, for bringing this bill forward, her hard work and dedication are a credit to her and she is a credit to our State.

Mr. PETRI. Mr. Speaker, throughout the country, Native American languages are experiencing a rapid decline. Of the nearly 300 native languages of the United States, only 210 are still spoken, and all too often these languages are spoken only among the elderly. This is a particularly troubling development, given the importance of Native American languages to tribal identity and culture. As such, I was pleased that Congresswoman HEATHER WILSON introduced H.R. 4766, the Native American Languages Preservation Act, which would provide federal support for programs that provide language training for young children and their families. I would also like to recognize Chairman BUCK MCKEON for the expedited manner in which he has moved this legislation.

On August 31st, I had the opportunity to travel to Albuquerque, New Mexico, to participate in a hearing held by the Education and the Workforce Committee on the "Recovery and Preservation of Native American Languages". We heard from representatives of several tribes regarding their experiences with this problem and ways in which they have attempted to preserve their native languages. Fortunately, efforts are underway to save these languages and to encourage a new generation of Native Americans to keep their languages alive as an integral part of Native American culture and identity.

I was particularly pleased that a representative from the Oneida Nation of my home state of Wisconsin was able to testify at this hearing. The Oneida have made language preservation a priority by pairing Elder native speakers with younger English-speakers to train a new generation to appreciate and preserve the traditional language. Since 1996, the Oneida have developed a Language Revitalization Program to connect their fluent Elders with trainees in a semi-immersion process that would produce speakers, and most importantly, teachers of the Oneida language.

Although tribes like the Oneida have already begun to develop programs to preserve their own languages, Congress can help other tribes create programs of their own. H.R. 4766 will provide more options for revitalization programs and take advantage of existing grants within the Administration for Native Americans Office. Mr. Speaker, I urge support for this bill and for the revitalization of native languages.

Mr. MCKEON. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. MCKEON) that the House suspend the rules and pass the bill, H.R. 4766, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: "A bill to amend the Native American Programs Act of 1974 to provide for the revitalization of Native American languages through Native American language immersion programs; and for other purposes.''.

A motion to reconsider was laid on the table.

EXTENDING SECRETARY OF EDUCATION WAIVER AUTHORITY

Mr. JINDAL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6106) to extend the waiver authority for the Secretary of Education under title IV, section 105, of Public Law 109–148.

The Clerk read as follows:

H.R. 6106

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

SECTION 1. EXTENSION OF AUTHORITY.

Section 105 of title IV of division B of Public Law 109–148 (119 Stat. 2797) is amended—

(1) in subsection (b), by inserting "and, at the discretion of the Secretary, for fiscal year 2007" after "2006"; and

(2) in subsection (c)(2)—

(A) by inserting "or 2007" after "fiscal year 2006"; and

(B) by striking "fiscal year 2007" and inserting "for the respective succeeding fiscal year".

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Louisiana (Mr. JINDAL) and the gentleman from Virginia (Mr. SCOTT) each will control 20 minutes.

The Chair recognizes the gentleman from Louisiana.

GENERAL LEAVE

Mr. JINDAL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 6106.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. JINDAL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of this important legislation. It is in response to the devastating Hurricanes Katrina and Rita and the impact they had on the schools of Louisiana.

More than 1,100 public and private schools were forced to close in the wake of those hurricanes. Approximately 158,000 students were displaced as a direct result of the hurricanes. Restoration efforts are under way, but there is still much work that needs to be done.

As a result of the storms and the flooding, the local tax base in several gulf coast communities was decimated. The loss of business and government infrastructure, jobs and housing deprived school districts of local property taxes that normally fund school operations.

In Louisiana, Orleans and St. Bernard Parishes were the most severely impacted by Hurricane Katrina. Currently, approximately 23,000 students are enrolled in the Orleans Parish School System and Recovery School

District. That is compared to an original enrollment of 62,000 students prior to the hurricanes.

In St. Bernard Parish, only 3,300 students have returned out of a total of 8,400 before the hurricane.

The Hurricane Education Recovery Act, included in the Defense Appropriations Act of 2006, granted the U.S. Secretary of Education the authority to waive, in many of the programs falling under her jurisdiction, select provisions having to do with the State or school district's financial commitment.

Under ordinary times, these provisions require States and local districts to contribute sufficient local and State funding to receive Federal aid. However, when communities have decimated and local funding is unavailable, these provisions can place much-needed Federal aid in jeopardy.

The Secretary's authority to grant this waiver was critical to ease the burdens on State and local educational agencies in the gulf coast region. Through this language, the Secretary granted waivers for fiscal year 2006 that provided Louisiana school districts the flexibility they needed to begin the recovery process.

These waivers have proven critical to the recovery of our schools in several parishes and counties in the impacted areas. Unfortunately, the waiver authority is set to expire on September 30 of this year, even though families continue to return to the area and there are schools in need of rebuilding.

This bill will extend this critical waiver authority for one more year through fiscal year 2007. By extending this authority, it will provide districts the flexibility they need to continue moving students and teachers back into classrooms.

Under the Hurricane Education Recovery Act, the Orleans Parish schools received $132 million in restart funding, and St. Bernard Parish has received $21 million. Without this waiver, the schools would not have the flexibility they need to use these funds.

These districts are facing the tremendous challenge of rebuilding a school district while continuing to operate at the same time, akin to changing a tire on your car while driving it. Without this waiver authority, these districts will not receive the resources to replace textbooks, library books, computers, instructional materials, and other supplies lost during the storm.

I urge swift passage of this legislation to grant an additional year of flexibility and the use of Federal dollars to rebuild schools for Louisiana and gulf coast children.

Mr. Speaker, I reserve the balance of my time.

Mr. SCOTT of Virginia. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 6106.

As the gentleman from Louisiana just mentioned, over a year ago our Nation experienced one of the worst natural disasters in our history when Hurricanes Katrina and Rita devastated southeast Louisiana and parts of Mississippi. He mentioned that public and private schools were forced to close, and over 150,000 students were displaced as a direct result of those hurricanes.

Last year, the Hurricane Education Recovery Act was enacted. It authorized the U.S. Secretary of Education to waive selected portions of general education law having to do with State or school district use of Federal funds.

Unfortunately, the waiver is set to expire on September 30, even though the families continue to return to the area and their schools are in need of rebuilding. The waiver is critical because it allows school systems the flexibility to use available Federal funds for the most critical needs. Without the waiver, they would have funding for just about everything they need except those critical immediate needs required to reopen the schools. Without the waiver, they won't be able to spend the money for those critical needs. This waiver has worked well and just needs to be extended.

On September 19, just a few days ago, H.R. 6106 to extend the waiver authority for the Secretary of Education was introduced by the gentleman from Louisiana (Mr. JINDAL). This legislation is a straightforward extension of the Secretary of Education's waiver authority for an additional fiscal year through 2007.

This bill would not have been possible without the hard work of not only the gentleman from Louisiana (Mr. JINDAL) but his Louisiana colleagues, Mr. MELANCON and Mr. JEFFERSON on this side, and I am sure there are others he might want to mention.

Mr. Speaker, I urge my colleagues to help Louisiana continue their recovery effort by supporting the passage of H.R. 6106.

Mr. Speaker, I yield back the balance of my time.

Mr. JINDAL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I first want to thank the gentleman from Virginia (Mr. SCOTT) not only for his support of our legislation but for taking the time personally to visit my State after it was devastated by these storms, to visit personally with our teachers, principals and students and see for himself the needs of our State, and for his continuing hard work to try to address those needs through our committee. I appreciate his commitment to helping my State recover and our students return to school.

Mr. Speaker, Mr. SCOTT is correct. There are several Members from Louisiana, indeed the entire delegation, that supports this legislation. I especially want to mention in addition, to Mr. MELANCON and Mr. JEFFERSON, Mr. BOUSTANY, who has several schools in his district that were also impacted by Hurricane Rita in particular. I urge swift passage of this bill.

Mr. MELANCON. Mr. Speaker, I am here today to urge Congress to pass H.R. 6106. This waiver authority has been a key component in the success of rebuilding schools in the areas devastated by Hurricanes Katrina and Rita and it is critical that we act immediately to extend the duration of this authority in order to allow these schools to continue their rebuilding efforts.

A real success story born from this waiver is the St. Bernard Unified School Group. Led by the efforts of Superintendent Doris Voitier and others committed in St. Bernard, this combined school was able to quickly start back up to provide a place for children whose parents were committed to coming home and rebuilding.

St. Bernard Parish was one of the most devastated regions affected by Hurricane Katrina. Without local revenue, the schools had to look elsewhere to meet the 10 percent match required by FEMA.

This waiver has allowed the school district to use State funds for the 10 percent match and use federal restart funds to pay teacher's salaries and benefits. By allowing this flexibility, Superintendent Voitier was able to secure teacher's employment and open up the St. Bernard Unified School 11 weeks after the storm.

Today, there is no longer need for the St. Bernard Unified School. Chalmett High is back up and running full capacity with 1700 students to date; Andrew Jackson Elementary, with 1800 students, has also opened its doors, and Tryst Elementary is next in line.

However, we can't stop here. There are many more schools that are still being rebuilt and we need this legislation to ensure that these schools continue to reopen.

This waiver has proven critical to the recovery of schools in the Gulf Coast region, and has enabled them to access much needed reconstruction funds. Without this extension, these school systems will not have the financial resources to operate nor rebuild.

This waiver authority has already been authorized by Congress in the Hurricane Education Recovery Act. Unfortunately it is set to expire this Saturday. It is imperative that we reauthorize this waiver. Hurricane recovery has reached a critical stage, and it needs our continued support in the Gulf Coast.

Families are continuing every day to return home to these areas and there are still schools that are in need of rebuilding and repair. Therefore, I urge the members of Congress to support this bi-partisan legislation and give these schools the flexibility that Superintendent Voitier and others need to continue their dedicated efforts in rebuilding and to make sure that students and teachers can return to the classroom.

Brief Summary of what waiver does:

FEMA requires that each local community put up a 10 percent match in order to get 90 percent reimbursed for replacing all items lost in the storm.

Two Problems; (1) 10 percent of the total damage is tens of millions of dollars and (2) St. Bernard schools can't raise this money from the local community because their sales and property tax base has been decimated.

So, they initially wanted to use federal restart monies to put up the 10 percent match. However this is prohibited in the Stafford Act because you can't use federal restart monies to supplant money from FEMA.

Then they wanted to use State money to put up the 10 percent match, but this was also prohibited. However, in the Hurricane Education Recovery Act, the waiver authority needed to waiver this requirement was granted to Secretary Spellings.

She waived this requirement and St. Bernard schools were able to put up state money for the 10 percent matching requirement and then use federal restart monies to pay teacher's salaries and benefits (i.e. what state money would have been used for).

This waiver allows schools to:

Waive the requirement (found in the Hurricane Education Recovery Act, Section 105 of Public Law 109–148) that federal funds must be used to supplement and not supplant nonfederal funds and thus allows schools to:

Use state money for the 10 percent match required by FEMA for the 90 percent reimbursement and

Use Restart money to pay for things the State money would have been used for:

For example: teacher's salaries, benefits etc.

Mr. JINDAL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. CONAWAY). The question is on the motion offered by the gentleman from Louisiana (Mr. JINDAL) that the House suspend the rules and pass the bill, H.R. 6106.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

SUPPORTING ESTABLISHMENT OF SEPTEMBER AS CAMPUS FIRE SAFETY MONTH

Mr. JINDAL. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 295) expressing the sense of the House of Representatives supporting the establishment of September as Campus Fire Safety Month, and for other purposes.

The Clerk read as follows:

H. RES. 295

Whereas recent student housing fires in Ohio, Pennsylvania, Tennessee, and Maryland have tragically cut short the lives of some of the youth of our Nation;

Whereas since January 2000, at least 75 people, including students, parents, and children have died in student housing fires;

Whereas over three-fourths of these deaths have occurred in off-campus occupancies;

Whereas a majority of the students across the Nation live in off-campus occupancies;

Whereas a number of fatal fires have occurred in buildings where the fire safety systems have been compromised or disabled by the occupants;

Whereas it is recognized that automatic fire alarm systems provide the necessary early warning to occupants and the fire department of a fire so that appropriate action can be taken;

Whereas it is recognized that automatic fire sprinkler systems are a highly effective method of controlling or extinguishing a fire in its early stages, protecting the lives of the building's occupants;

Whereas many students are living in off-campus occupancies, Greek housing, and residence halls that are not adequately protected with automatic fire sprinkler systems and automatic fire alarm systems;

Whereas it is recognized that fire safety education is an effective method of reducing the occurrence of fires and reducing the resulting loss of life and property damage;

Whereas students are not routinely receiving effective fire safety education throughout their entire college career;

Whereas it is vital to educate the future generation of our Nation about the importance of fire safety behavior so that these behaviors can help to ensure their safety during their college years and beyond; and

Whereas by developing a generation of fire-safe adults, future loss of life from fires can be significantly reduced: Now, therefore, be it

Resolved, That the House of Representatives—

(1) supports the establishment of September as Campus Fire Safety Month;

(2) encourages administrators and municipalities across the country to provide educational programs to all students during September and throughout the school year; and

(3) encourages administrators and municipalities to evaluate the level of fire safety being provided in both on- and off-campus student housing and take the necessary steps to ensure fire-safe living environments through fire safety education, installation of fire suppression and detection systems and the development and enforcement of applicable codes relating to fire safety.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Louisiana (Mr. JINDAL) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from Louisiana.

GENERAL LEAVE

Mr. JINDAL. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H. Res. 295.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Louisiana?

There was no objection.

Mr. JINDAL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of House Resolution 295, a measure to support establishment of September as Campus Fire Safety Month. So often in this Chamber we consider legislation to expand access to college and strengthen our Federal higher education programs. Today, we have an opportunity to discuss the need to bolster safety on college campuses, specifically fire safety; and we are right to do so. Our Nation's college students should be able to live on campus with the confidence that they will be safe in their dorms, apartments or other housing. This measure will take a key step toward ensuring greater awareness of this issue.

I thank my colleagues, the gentlewoman from Ohio (Mrs. JONES) and the gentleman from Pennsylvania (Mr. WELDON), for taking the lead and offering this legislation.

This is not the first time this year that campus fire safety has been a priority for the House. In March, when we passed the College Access and Opportunity Act, we also endorsed an effort to ask colleges and universities to report annually on fire safety efforts. The report would include such information as a list of all student housing facilities and whether or not they were equipped with a sprinkler system or other fire safety program, as well as statistics on occurrences of fires, false alarms, information on various fire safety rules and regulations, and other measures as well.

Mr. Speaker, although that measure has not advanced with our friends on the other side of the Capitol, today we have the opportunity to demonstrate our continued commitment to the safety of college students.

I urge my colleagues to join me in supporting this resolution, and I thank the primary authors of this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H. Res. 295, a bill to establish September as Campus Fire Safety Month.

As students get back into the full swing of the school year, we all know that the need to be prepared for campus fire is the last thing perhaps on their mind.

Since January of 2000, the Center for Campus Fire Safety has identified 89 fire fatalities in student housing. Almost 80 percent of these deaths have occurred in off-campus housing such as rented houses and apartments.

Last year, a number of States across the Nation issued proclamations for September, and many schools held events on campus to educate their students about fire safety. This summer, the Center for Campus Safety convened a summer conference of college administrators, fire organizations and legislators to further the work and progress of many of the stakeholders. We hope through education and attention to the dangers on and off campus we can reduce the numbers of fires.

H. Res. 295 is the first step in recognizing September as Campus Fire Safety Month on a national level, which is being done in conjunction with many States and colleges and universities across the country.

Mr. Speaker, I yield the balance of my time to the gentlewoman from Ohio (Mrs. JONES), the sponsor of this legislation, and I ask unanimous consent that she be permitted to manage the remainder of our time on this side for H. Res. 295.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mrs. JONES of Ohio. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first of all, I want to thank my colleagues for support of H. Res. 295. I rise in support of this bipartisan resolution introduced to establish

September as Campus Fire Safety Month.

I want to commend my colleague, my cosponsor, the gentleman from Pennsylvania (Mr. WELDON), for all of the work he has been doing in this area. Many of you recognize that Mr. WELDON has long been involved in fire safety law enforcement and with firefighter issues during his career.

This legislation encourages administrators and municipalities across the country to provide educational programs to all students during September and throughout the school year.

Additionally, the resolution calls for evaluation of the level of fire safety being provided in both on- and off-campus student housing and taking the necessary steps to ensure fire-safe living environments through fire safety education.

It encourages installation of fire suppression and detection systems and the development and enforcement of applicable codes relating to fire safety.

My colleague in the Senate, Mr. MIKE DEWINE, introduced companion legislation to this resolution in the Senate.

My colleagues have already talked about 89 people having been killed in student housing since January of 2000. Almost 80 percent of the fire fatalities have occurred in off-campus occupancies such as rented houses and apartments. Common factors in a number of these fires include lack of automatic sprinklers, disabled smoke alarms, careless disposal of smoking materials and alcohol consumption.

According to the Center for Campus Fire Safety, April and May, followed by August and September, are the two most dangerous periods of time for student housing fire fatalities. Last year, September was designated as National Campus Fire Safety Month. Currently, 27 States have issued proclamations declaring September as Campus Fire Safety Month.

H. Res. 295 is supported by the Center for Campus Fire Safety, the National Electrical Manufacturers Association, the Congressional Fire Services Institute, the National Fire Protection Association, the International Association of Fire Chiefs, the International Association of Firefighters, the National Fire Sprinkler Association, the International Code Council, Society of Fire Protection Engineers and the International Fire Marshals.

It is also supported by many colleges fraternities and sororities across this country, and they have been advocates on our behalf.

For the past few Congresses, I have introduced H. Res. 128, known as the College Fire and Prevention Act.

□ 2100

This legislation would establish a demonstration incentive program within the Department of Education to promote installation of fire sprinkler systems, or other fire suppression or prevention technologies, in qualified student housing or dormitories, and for other purposes. The Congressional Fire Services Institute and others have endorsed this fire prevention legislation.

Fire safety and prevention is an issue that needs to be addressed across the country. Over these few years we have seen many tragedies involving fires at colleges, places of business, entertainment venues, and places of residence. We must begin to put in place our fire suppression measures against fires and increase support and resources for our firefighters to ensure that no more lives are lost to fires that could have been prevented.

I thank all of my colleagues for supporting this resolution, and I know that students across this country, and particularly their parents, will be very happy that we have begun the process of instituting this legislation.

I encourage all of my colleagues to pass this legislation so that we can increase awareness about this problem that affects us all.

And besides that I want to thank my staff, one of them on the floor tonight, Steve Abbott, and others who have worked so very hard with me in order to get this legislation passed.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. JINDAL. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just want to close by praising my colleagues on the other side of the aisle but also praising Mr. WELDON, who I know wanted to be here to speak on this. My colleague is correct: I think he is the only former fire chief to be serving in the United States Congress. He has been a vocal leader on the need for fire safety and a strong supporter of our first responders, and I know he feels very strongly about the legislation in front of us.

Mr. Speaker, I urge quick passage of the resolution.

Mr. PASCRELL. Mr. Speaker, I rise today in support of H. Res. 295, which establishes September as Campus Fire Safety Month.

I applaud the efforts of my distinguished colleague, Congresswoman STEPHANIE TUBBS JONES, in bringing this matter to the floor today.

The statistics relating to fire safety on college campuses are startling. Since January 2000, 89 campus-related fire fatalities have been reported in the United States. Three of these were in my home state of New Jersey alone. So far in 2006, we have already lost 11 students to fires on college campuses.

What these tragedies mean is that too many families have had to suffer the unbearable horror of losing a loved one right at the beginning of a promising life.

Despite these fires, many campus communities have taken far too long to act. Indeed, only 35 percent of dormitories and fraternity/sorority houses that suffer fires are equipped with life-saving sprinkler systems.

It is clear that the campus community is falling far behind in fire safety standards and we must do more to urge them to take the steps needed to curb this disturbing trend.

SETON HALL

I became deeply involved in the issue of campus fire safety after experiencing the terrible aftermath of a catastrophic fire at Seton Hall University in New Jersey in 2000.

That fire killed three young freshmen and wounded 58 other students in a dorm on campus.

CAMPUS FIRE SAFETY RIGHT TO KNOW ACT

In response to the devastating fire, I introduced the "Campus Fire Safety Right to Know Act," which passed the House as part of the "College Access and Opportunity Act" in March 2006.

This bipartisan legislation required colleges and universities to provide prospective and current students and parents with a report of the school's campus fire safety policies and records.

CAMPUS FIRE SAFETY MONTH LEGISLATION

Now, we're talking about designating September as National Campus Fire Safety Month.

Currently, 27 states have issued proclamations declaring September as Campus Fire Safety Month. Historically, September is one of the most fatal months for campus fires.

In recognizing this tragic trend on America's campuses, H. Res. 295 will provide a platform to alert students, their parents, and school administrators to the dangers of campus fires.

H. Res. 295 encourages colleges and universities across the country to provide educational programs to all students in September and throughout the school year.

It urges administrators and municipalities to evaluate the level of fire safety being provided in both on and off campus housing.

They can then take the necessary steps to ensure fire-safe living conditions through fire safety education; the installation of fire suppression and detection systems; and the development and enforcement of applicable codes relating to fire safety.

Mrs. TUBBS JONES' legislation will help to publicize common sense measures that can be taken to prevent the senseless death, injury, and loss of property that result from these tragedies.

H. Res. 295 is supported by the Center for Campus Fire Safety, the National Fire Protection Association, the International Association of Fire Chiefs, the International Association of Fire Fighters, the National Association of State Fire Marshals, and many others.

CONCLUSION

Educating students about fire safety during their time in school will have a strong impact on the choices they make in the future. If we can influence what they learn, we can create a more fire-safe generation for tomorrow and potentially save thousands, of lives.

This is the least we can do for our students. When we entrust our young people to any institution, we expect that they will be in a safe environment. And we have the right to expect that much.

Mr. JINDAL. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Louisiana (Mr. JINDAL) that the House suspend the rules and agree to the resolution, H. Res. 295.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

SUPPORTING EFFORTS PROMOTING GREATER PUBLIC AWARENESS OF EFFECTIVE RUNAWAY YOUTH PREVENTION PROGRAMS

Mr. OSBORNE. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 1009) supporting efforts to promote greater public awareness of effective runaway youth prevention programs and the need for safe and productive alternatives, resources, and supports for homeless youth and youth in other high-risk situations.

The Clerk read as follows:

H. RES. 1009

Whereas preventing young people from running away and supporting homeless youth and youth in other high-risk situations is a family, community, and national concern;

Whereas the prevalence of runaway and homeless youth in the Nation is staggering, with studies suggesting that between 1,600,000 and 2,800,000 young people live on the streets of the United States each year;

Whereas running away from home is widespread, with 1 out of every 7 children in the United States running away before the age of 18;

Whereas youth that end up on the streets or in emergency shelters are often those who have been thrown out of their homes by their families; who have been physically, sexually, or emotionally abused at home; who have been discharged by State custodial systems without adequate transition plans; who have lost their parents through death or divorce; and who are too poor to secure their own basic needs;

Whereas the commemoration of National Runaway Prevention Month will encourage all sectors of society to develop community-based solutions to prevent runaway and homeless episodes among the Nation's youth;

Whereas effective programs that support runaway and homeless youth and assist young people in remaining at home succeed because of partnerships created among families, community-based human service agencies, law enforcement agencies, schools, faith-based organizations, and businesses;

Whereas the future well-being of the Nation is dependent on the value placed on young people and the opportunities provided for youth to acquire the knowledge, skills, and abilities necessary to develop into safe, healthy, and productive adults;

Whereas Congress supports an array of community-based support services that address the critical needs of runaway and homeless youth, including family strengthening, street outreach, emergency shelter, and transitional living programs;

Whereas Congress supports programs that provide crisis intervention and referrals to reconnect runaway and homeless youth to their families and to link young people to local resources that provide positive alternatives to running away; and

Whereas the purpose of National Runaway Prevention Month in November 2006 is to increase public awareness of the life circumstances of youth in high-risk situations and the need for safe and productive alternatives, resources, and supports for youth, their families, and their communities: Now, therefore, be it

Resolved, That the House of Representatives supports efforts to promote greater public awareness of effective runaway youth prevention programs and the need for safe and productive alternatives, resources, and supports for homeless youth and youth in other high-risk situations.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Nebraska (Mr. OSBORNE) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from Nebraska.

GENERAL LEAVE

Mr. OSBORNE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on House Resolution 1009.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Nebraska?

There was no objection.

Mr. OSBORNE. Mr. Speaker, I yield myself such time as I may consume.

I rise today in support of H. Res. 1009, which seeks to promote greater public awareness of effective runaway youth prevention programs and the need for safe and productive alternatives, resources, and supports for youth in high-risk situations. I would like to thank the leadership for allowing this resolution to come to the House floor, as it highlights a very tragic and important issue.

Runaway episodes among our Nation's youth are serious and widespread, with one of every seven children and youth in the United States running away or being turned out of the home before the age of 18. That constitutes roughly 15 to 17 percent of our young people. A recent study by the Federal Office of Juvenile Justice and Delinquency Prevention estimates that nearly 1.7 million youth experienced a runaway or thrown-away episode in a single year. The prevalence of runaway and homeless youth in the Nation is astounding, with studies suggesting that between 1.6 million and 2.8 million young people live on the streets of the United States each year.

The primary factors of running away or being turned out of a home are severe family conflict, abuse and neglect, and parental abuse of alcohol and drugs.

And parenthetically I might add, Mr. Speaker, that I coached some young men, one of whom I remember very vividly who was turned out of his home at age 11 because the boyfriend who was living with that young man's mother and the young guy couldn't get along; so the young guy went and spent 2 or 3 years living on the streets. And that certainly left an impression and scarring on that young man that I do not think he ever completely overcame.

Many of the conditions that lead young people to leave or be turned out of their homes are preventable through interventions that can strengthen families and support youth in high-risk situations. Successful interventions are grounded in partnerships among families, community-based human service agencies, law enforcement agencies, schools, faith-based organizations, and even businesses.

The National Network for Youth and the National Runaway Switchboard have collaborated since 2002 in cosponsoring the National Runaway Prevention Month during the month of November. National Runaway Prevention Month is a public education initiative aimed at increasing the awareness of issues facing runaways as well as making the public aware of the role they play in preventing youth from running away. As a result of this collaboration, communities across the country have undertaken a range of activities to commemorate National Runaway Prevention Month.

Preventing young people from running away and supporting youth in high-risk situations is a family, community, and national concern. Please join us in encouraging all Americans to play a role in supporting the millions of young people who have run away and who are at risk of doing so each year. H. Res. 1009 supports efforts to promote greater public awareness of effective runaway youth prevention programs and the need for safe and productive alternatives, resources, and supports for youth in high-risk situations.

Mr. Speaker, I urge my colleagues to support this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I am pleased to join with my colleague from Nebraska, one of the most effective, if I might say, advocates for young people that I know anywhere in this country.

Mr. Speaker, I want to thank my colleague Mr. OSBORNE for bringing H. Res. 1009 to the floor today, and I join him in support of this resolution that promotes the need for greater public awareness of effective runaway youth prevention programs and the increasing need for safe and productive alternatives, resources, and supports for youth in high-risk situations.

Mr. Speaker, this resolution points to an issue that is of great concern to me: young people who have been pushed aside and thrown away, oftentimes by their parents and sometimes by all of society.

The youth who come to these programs represent what some call a lost generation, a generation that holds so much promise and yet sees so few opportunities. When a young person comes to these programs, they often do so out of a need for security, shelter, and comfort that they cannot find at home. And these programs provide that comfort. They provide basic life skills training, job preparation and placement, health referrals and services.

Unfortunately, Mr. Speaker, each year the need for these programs grows. The basic housing needs of our Nation's most vulnerable youth, those experiencing homelessness, are not being met. And continued shortfalls in funding for the Runaway and Homeless Youth Act have increased this need.

Nearly 150,000 young people are served at basic centers and through

transitional living programs. Yet as this resolution points out, many more runaways and homeless youth find themselves without these critical community services. It is appropriate that today we take time out to promote greater public awareness of the needs of these young people and the services that are available to them in the community.

In particular, I want to applaud the hard work of the front line workers who are on the ground working with runaway and homeless youth every day. For many young people, these workers represent the only responsible and caring adults they will have contact with during their time on the streets. Many of these workers are volunteers who make themselves available 24 hours a day. They venture into dangerous situations, providing a lifeline to these young people, and they should be acknowledged for their efforts.

I am mindful of one organization in my neighborhood, the Night Ministry, that has developed probably one of the most effective programs of this type in the country, where not only have they provided a program with adequate shelter, but they have what I call state-of-the-art housing. You can see them at night during the cold winter, driving along the streets, getting out, oftentimes interceding and picking up young people, questioning them about why they are there. And those who know Chicago know that it gets awfully cold during the winter months. So I applaud the Night Ministry.

I thank Mr. PORTER for introducing this resolution, and certainly I commend Mr. OSBORNE for his tremendous work on behalf of young people.

Mr. Speaker, I reserve the balance of my time.

Mr. OSBORNE. Mr. Speaker, at this time I yield 3 minutes to the gentleman from Maryland (Mr. GILCHREST).

Mr. GILCHREST. Mr. Speaker, I thank the gentleman for yielding. I want to thank Mr. PORTER for the legislation; Mr. OSBORNE, Mr. DAVIS, and the staff for bringing this to the floor and for bringing it to the attention of the Members; and, Mr. Speaker, to the general public at large.

The community service for youth across this great Nation is, I think, for the most part, doing one of the best jobs it can for the youth of America who are homeless, who each day, instead of a bright, sunlit opportunity, they find despair, and they do not know what hope is. They do not know what joy is. But they probably know what a prison cell looks like at a very young age.

What this legislation does, and what we all should continue to pursue, is dedicate our words to the front line of service that Mr. DAVIS was talking about and Mr. OSBORNE has mentioned, those people who are mostly volunteers that provide the shelter, provide the hope, provide the work for these people who are homeless.

And what we hope this resolution will do, and what we should continue to work towards, is to create a better framework for homeless youth, that more people will get involved. The community service, the front line service, can be expanded to an immense pool of people that will spend just a very small amount of their time on a weekly or monthly basis if they go out into their community and find out where a homeless shelter is and then visit that homeless shelter and talk to those youth and give them hope and give them opportunity and let them know that someone cares about them. Create a Boy Scout troop for juvenile delinquents. Create a Boy Scout troop or a Girl Scout troop for people who are homeless, who are living in homeless shelters.

Almost 40 years ago, my brothers and a couple other people who had not gone to college, we all got out of the service. We had just gotten out of Vietnam, and we got involved with a minister and a lawyer that created a Boy Scout troop for people who committed felonies. We created a Boy Scout troop for juvenile delinquents. And the way to get in that Boy Scout troop was that you had to have committed a felony or you had to be homeless or one of those categories. And it transformed their lives.

This Sunday in my district, we are going to have a picnic for 30 homeless children and, if they come, their parents. And what we are going to do is we are going to walk through the woods, we are going to feel the cool shade of the forest, and we are going to identify trees and we are going to talk about nature's design. Then we are going to take them on a short canoe ride and walk them on the beaches of the Sassafras River. But we are going to show them that in their dreary, hopeless life, there are magnificent opportunities.

The people on the front line need help. There is a massive amount of opportunity out there for people to see something that they don't see every day, to find out where a homeless shelter is in your community, and then go and talk to the people who service those homeless shelters, talk to the people who fund those homeless shelters, and talk to the people who are in those homeless shelters and provide them with dignity, respect, hope, and opportunity. It is a matter of initiative, ingenuity, courage, and compassion. And it can all be done.

And I want to thank Mr. OSBORNE, Mr. DAVIS, and Mr. PORTER and his staff for this great resolution.

□ 2115

Mr. DAVIS of Illinois. Mr. Speaker, I yield 5 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, what an honor to be able to join my colleagues this evening and to again thank the distinguished gentleman from Illinois for using the terminology: There are no throwaways.

Let me thank the manager Member, Mr. OSBORNE, for his leadership; Mr. GILCHREST, delighted to have a good Speaker in the Chair from Texas.

I rise today because I believe that this is an important statement that is being made today on the floor of the House. I do want to capture those words again that our young people are not throw, there are no throwaways. I say it very often as I go to schools or interact with young people that we meet in our congressional districts and really around the Nation.

I spent some time with Covenant House and spent some time on the streets as they invited me in one of their night outs to be able to interact with homeless youth, to hear their stories, to hear their feeling about, in essence, being thrown away or thrown out.

I do not think most Americans dwell on the fact that there are some 1.6 million to 2.8 million homeless young people. That means that they have barely a place to be more than one night. And there are these good Samaritans, these people who hold vigils on the streets of America, trying to protect our young people.

It was a shocking experience as I stood on a cold night in Houston, Texas, gets a little cold there sometimes in the wintertime, as we gathered under a streetlight. The word had gone out that Covenant House was out and about, that you could come and hear a little music, get a little food and talk, to hear some of the stories of these young people who had either been sexually abused or who had been emotionally abused or had been physically abused, to hear them tell stories of guardians or parents who themselves were addicted and other problems that were associated with the household, and there was no comfort.

So I find that this resolution should do a number of things. As my colleagues have said, it should reemphasize and thank those who are out with our young people, the various ministries, the Boys and Girls Club, the Boy Scouts, Girl Scouts, but, as well, the agencies that go out during the night to find these young people.

But, again, it should say that we are not doing enough. And we should also say that there are role models, that there is something to live for, and that we should not be ashamed of trying to enhance the funding to provide transitional pathways for young people to transition into adulthood, provide them with interim housing as they move from 17, 18, 19, which causes them to be homeless.

Because one of the major problems is what we call ''aging out'' in foster care, where you have gotten to a certain age at 18, 17, 18 in some States. And many of us who have young people in our homes, we raised our children, they are in their 20s, and you are taking care of them. So you age out in a foster care system, and you have no place to go, and you have been in foster care for 10, 15 years, or 10 years or 5 years.

We see this as a prevalent situation that leads to disaster. This may be indirect, but I want young people to understand that they are important.

I raise this picture of this beautiful young lady on the front page of the Washington Post today by the name of Emily J.T. Perez. The headline reads, West Point Mourns a Font of Energy, Laid to Rest By War.

The story is about a young woman who, unfortunately, lost her life on the front lines of Iraq. But the story describes an outstanding, energetic, committed patriot and the first African American woman sergeant at West Point. She was a young person. She lost her life. But she certainly represents the best of our youth.

In the midst of homeless youth, there are those who are the best. And this resolution, I think, focuses our attention on providing more resources so that we can ensure that the young people, homeless that they may be, will not have despair but will have a future and will be affirmed by this Nation that they can contribute.

I rise in support of this legislation, but I ask my colleagues as this session wanes down, let us commit ourselves, if we are fortunate enough to be reelected by our constituents, to come back and fund opportunities for providing for homeless youth, to give them a future.

Mr. OSBORNE. Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, in closing, I want to thank the gentlewoman from Texas for her statement and for the energy that she puts into everything that she does.

I also want to again commend Mr. PORTER for introducing this resolution and thank Mr. OSBORNE and say that, when he is not here, I am going to miss him tremendously, because he is a real advocate for young people, and I have never seen anyone do it more effectively or do it better.

Mr. Speaker, I yield back the balance of my time.

Mr. OSBORNE. I thank the gentleman. We share a strong interest in young people, and we are often together on bills. And I would like to thank Mr. DAVIS for all that he does. I would also like to thank Mr. PORTER for authoring this resolution.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise today in support of H. Res. 1009, a bill supporting efforts to promote greater public awareness of effective runaway youth prevention programs and the need for safe and productive alternatives, resources, and support for homeless youth and youth in other high-risk situations.

As the Chairwoman of the Congressional Children's Caucus, I am integrally involved in the efforts of Congress to help protect and look after the children of this Nation, and to ensure that they have an equal opportunity to learn, to grow, to achieve, and most importantly, to dream.

Youth that end up on the streets or in emergency shelters are often those who have been thrown out of their homes by their families. These youth are also, tragically, more likely to have been physically, sexually, or emotionally abused at home. It is also common for these youth to have been discharged by State custodial systems without adequate transition plans. Many have lost their parents through death or divorce, and many are too poor to secure their own basic needs. It is clear that this situation is a family, community, and national concern.

The prevalence of runaway and homeless youth in the Nation is an epidemic. Studies suggest that between 1,600,000 and 2,800,000 young people live on the streets of the United States each year. Running away from home occurs across the country. A staggering 1 out of every 7 children in the United States running away before the age of 18.

The future well-being of the Nation is dependent upon how we value our young people. The opportunities we provide for our youth to attain the ability and the knowledge needed to develop into safe, healthy, and productive adults.

When it comes to our young people—all of our young people—including our runaway, throwaway and homeless youth—we must always be willing to stand up, to speak up, and to never give up.

I encourage my colleagues to support this bill.

Ms. BORDALLO. Mr. Speaker, I rise today in strong support of H. Res. 1009, a resolution to promote greater awareness of effective runaway youth prevention programs. This legislation, introduced by my friend from Nevada, Mr. PORTER, is a step in the right direction towards reducing the number of our youth that separate from their families in times of distress and discouragement. Raising awareness of concerns of the disadvantaged in our communities and bringing issues to the attention of lawmakers and the general public is often the catalyst for action.

The number of young people who currently live on the streets is alarming. Without any family or community support, these youth fall through the cracks of society. It is critical for our young people, who are the future of our country, to be afforded the best possible opportunities in order to succeed and become balanced, well-informed citizens.

On Guam, there are a number of community-based youth organizations that provide structured counseling for at-risk youth and their loved ones. One such program under the Department of Youth Affairs (DYA), Jumpstart, works to strengthen family ties with the goal of integrating troubled teens back into their homes. Sanctuary is another longstanding and effective nonprofit organization dedicated to addressing Guam's at-risk youth. In addition to counseling, these organizations work preventatively, targeting and providing education about drug-use, physical and mental abuse, and violence. Another program, the Youth At-Risk Life Skills Training Program, is affiliated with the 4–H Club and the University of Guam's College of Natural and Applied Sciences (CNAS). This program focuses on education paired with life skills such as peer mentorship and environmental sciences.

I take this opportunity today to commend the efforts of organizations such as these that take action in their communities, often working from the grassroots. The success of these organizations depends on the dedication of the people who run the programs and, as a result of their conviction and hard work, troubled teens and their families have a network of support and hope for a better future.

These are the individuals and organizations for which H. Res. 1009 seeks to bring recognition upon, and it is their work this resolution seeks to support. I urge all of my colleagues to support H. Res. 1009.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today in strong support of runaway youth prevention programs.

Children are our greatest resource, and positive investment in our children is essential for America's future.

We are facing a potential crisis in America. There are nearly 20 million American teenagers that are at serious risk of not achieving a positive adulthood.

For our Nation's homeless youth, this path towards positive adulthood is even more challenging.

It is estimated that each year there are 1.5 million runaway and homeless youth in the United States. Last year, in Dallas County we saw about 9 thousand children ran away from home.

We cannot simply forget these children. They need a life-line, a place to stay, and the tools to have a bright future.

The Promise House Emergency Shelter and Street Outreach Programs are exceptional programs that are vital to Dallas.

Promise House offers invaluable services for runaway and homeless youth.

I have seen first-hand the outstanding contributions Promise House has made to the Dallas Community.

Promise House not only gives these young people a safe place to stay, but it gives them a life-line, and a chance to change their outlook and situation.

I would like to commend the staff of Promise House, Dr. Harriet Boorhem, and the many volunteers for the extraordinary service they provide to the Dallas community.

I would also like to thank Mr. PORTER for offering this Resolution.

Mr. PORTER. Mr. Speaker, I rise today in support of H. Res. 1009 which seeks to promote greater public awareness of effective runaway youth prevention programs and the need for safe and productive alternatives, resources and supports for youth in high-risk situations. I would like to thank the leadership for allowing this resolution to come to the House floor as it highlights a very tragic and important issue.

Runaway episodes among our Nation's youth are serious and widespread, with one out of every seven children and youth in the United States running away or being turned out of the home before the age of 18. A recent study by the Federal Office of Juvenile Justice and Delinquency Prevention estimates that nearly 1.7 million youth experienced a runaway or thrown away episode in a single year. The prevalence of runaway and homeless youth in the Nation is astounding; with studies suggesting that between 1.6 million and 2.8 million young people live on the streets of the United States each year. The primary factors of running away or being turned out of a home are severe family conflict, abuse and neglect, and parental abuse of alcohol and drugs.

In the district that I represent in southern Nevada, the statistics are similar. In the year 2003, the Las Vegas Metropolitan Police Department reported 4,527 runaways. There were approximately 3,500 children who required emergency shelter. Eighteen hundred of these children were placed in foster care. In

addition to that, the Clark County School District estimates that 3,500 of our students were homeless. These astonishing statistics highlight the need for our support of those important programs that seek to prevent these types of incidents.

Many of the conditions that lead young people to leave or be turned out of their homes are preventable through interventions that can strengthen families and support youth in high-risk situations. Successful interventions are grounded in partnerships among families, community-based human service agencies, law enforcement agencies, schools, faith-based organizations and businesses.

The National Network for Youth and the National Runaway Switchboard have collaborated since 2002 in cosponsoring National Runaway Prevention Month during the month of November. National Runaway Prevention Month is a public education initiative aimed at increasing the awareness of issues facing runaways as well as making the public aware of the role they play in preventing youth from running away. As a result of this collaboration, communities across the country have undertaken a range of activities to commemorate National Runaway Prevention Month.

Preventing young people from running away and supporting youth in high-risk situations is a family, community and national concern. Please join us in encouraging all Americans to play a role in supporting the millions of young people who have run away and who are at risk of doing so each year. H. Res. 1009 supports efforts to promote greater public awareness of effective runaway youth prevention programs and the need for safe and productive alternatives, resources and supports for youth in high-risk situations.

Mr. Speaker, I urge my colleagues to support this resolution.

Mr. HINOJOSA. Mr. Speaker, I rise in strong support of H. Res. 1009, a resolution to support greater public awareness of effective runaway youth prevention programs. I would like to thank the gentleman from Nevada, Mr. PORTER, for bringing this forward. I am proud to be a cosponsor.

November is National Runaway Prevention Month.

I am proud that this body, in a bipartisan manner, comes together each year to commemorate this month and to urge our communities to get involved in runaway prevention activities.

Runaway Prevention Month is a public education campaign spearheaded by the National Runaway Switchboard (NRS) and the National Network for Youth (NNY) to increase the awareness of the issues facing runaways, and educate the public about the solutions and the role they can play in preventing youth from running away.

It is a national tragedy that an estimated 1.6 to 2.8 million young people live on the street each year. One out of seven children in the United States runs away from home before the age of 18. The dangers these young people face on the streets cannot be overstated.

In my home State of Texas, our runaway and youth crisis hotlines offer crisis intervention, telephone counseling, and referrals to troubled youth and families. A volunteer workforce of about 60 people answer the phones.

Many callers face a variety of problems including family conflict, delinquency, truancy, and abuse and neglect issues.

The program increases public awareness through television, radio, billboards and other media efforts. Hotline telephone counselors respond to about 40,000 calls annually.

These people are true heroes because they save lives.

The Runaway and Homeless Youth Act represents our national commitment to protecting and improving the lives of our most at risk youth. Sadly, funding for these programs has been eroded with the across-the-board cuts we have been seeing in our appropriations bills over the past few years.

I hope that this year, this Congress will commemorate Runaway Prevention Month by increasing the resources available to keep our young people safe, healthy, and off the streets.

I urge my colleagues to support this resolution.

Mr. OSBORNE. Mr. Speaker, I have no further requests for time, and yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Nebraska (Mr. OSBORNE) that the House suspend the rules and agree to the resolution, H. Res. 1009.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

A motion to reconsider was laid on the table.

SUPPORTING THE GOALS AND IDEALS OF ''LIGHTS ON AFTERSCHOOL!''

Mr. KUHL of New York. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 478) supporting the goals and ideals of ''Lights On Afterschool!'', a national celebration of after-school programs.

The Clerk read as follows:

H. CON. RES. 478

Whereas high-quality after-school programs provide safe, challenging, engaging, and fun learning experiences to help children and youth develop their social, emotional, physical, cultural, and academic skills;

Whereas high-quality after-school programs support working families by ensuring that their children are safe and productive after the regular school day ends;

Whereas high-quality after-school programs build stronger communities by involving the Nation's students, parents, business leaders, and adult volunteers in the lives of the Nation's young people, thereby promoting positive relationships among children, youth, families, and adults;

Whereas high-quality after-school programs engage families, schools, and diverse community partners in advancing the well-being of the Nation's children;

Whereas ''Lights On Afterschool!'', a national celebration of after-school programs on October 12, 2006, promotes the critical importance of high-quality after-school programs in the lives of children, their families, and their communities;

Whereas more than 28,000,000 children in the United States have parents who work outside the home, and 14,300,000 children have no place to go after school; and

Whereas many after-school programs across the Nation are struggling to keep their doors open and their lights on: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress supports the goals and ideals of ''Lights On Afterschool!'', a national celebration of after-school programs.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New York (Mr. KUHL) and the gentleman from Illinois (Mr. DAVIS) each will control 20 minutes.

The Chair recognizes the gentleman from New York.

GENERAL LEAVE

Mr. KUHL of New York. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H. Con. Res. 478.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New York?

There was no objection.

Mr. KUHL of New York. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H. Con. Res. 478, offered by my colleague, the gentlewoman from New York (Mrs. LOWEY). This resolution seeks to support the goals and the ideals of Lights on Afterschool!, a national celebration of after-school programs. This year's Lights on Afterschool! rally, which takes place on October 12, 2006, is expected to include more than 7,000 events in the United States and at military bases around the world. This event is aimed at bringing attention to the need for high-quality after-school programs that keep kids safe, help working families, and improve academic achievement.

I support this resolution because after-school programs are an important part of many American's student lives. High-quality after-school programs provide safe, challenging and fun learning experiences that help children and youth develop their social, emotional, physical, cultural and academic skills.

I am pleased that we are able to bring attention to the critical importance of after-school programs. I commend the communities across the Nation that engage in innovative after-school programs and activities and ensure that the doors stay open and the lights stay on for all children after school.

This resolution is simple and straight forward. It supports the goals and ideals of Lights on Afterschool!, a nationwide celebration of after-school programs.

I commend my colleague, Mrs. LOWEY, for her leadership in authoring H. Con. Res. 478. I urge my colleagues to support it.

Mr. Speaker, I reserve the balance of my time

Mr. DAVIS of Illinois. Mr. Speaker, I yield such time as she may consume to the gentlewoman from New York (Mrs. LOWEY), who is the sponsor of this resolution.

Mrs. LOWEY. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise in strong support of H. Con. Res. 478 to highlight the goals of the seventh annual Lights on Afterschool! celebration. This event organized by the Afterschool Alliance is the only national celebration of after-school programs and the important role they play in the lives of children, families and communities.

On October 12, more than 1 million Americans, representing thousands of after-school initiatives across the country, including more than 100 programs in my home State of New York, are expected to open their doors to parents, neighbors, business leaders and elected officials to showcase their accomplishments.

In my own district, events will take place in Tarrytown, White Plains, and Yonkers, and more programs are registering each day.

While there is growing enthusiasm for this year's Lights On celebration, we need more than just one day a year to highlight the importance of after-school programs. That is why I joined with Representatives ROS-LEHTINEN and KILDEE to form the bipartisan Congressional Afterschool Caucus last year. Our mission is simple: to build support for these programs within Congress and to translate that support into sufficient funding to meet the growing demand for after-school initiatives.

For years, we have known that what our kids do after school can have as great an impact as what they do in school.

In 1996, from my seat on the Appropriations Committee, I helped create the 21st Century Community Learning Centers, the first-ever Federal after-school initiative.

Since then, I have watched it grow from a million dollar demonstration project to a billion dollar permanent program today, because there is astonishing demand and tremendous unmet need for it.

According to a study conducted by the Afterschool Alliance, 40 percent of middle school children, the age when kids are most vulnerable to engaging in dangerous activities, are unsupervised for a good portion of the day. Parents are crying out for safe, structured environments where their kids can learn and play, make friends and develop new interests. Yet Congress is not doing what it should to ensure that our kids are safe and engaged while their parents are at work.

The Congressional Afterschool Caucus and the Lights On celebration will focus on changing that. We will share the lessens we have learned to make sure after-school does not become an afterthought in our Federal education priorities.

Mr. Speaker, I urge my colleagues to support this resolution, to join the Caucus, to fight tooth and nail for every dollar available so that kids and their parents have access to these desperately needed programs.

I thank you, I thank my colleague from New York.

Mr. KUHL of New York. Mr. Speaker, I reserve the balance of my time.

Mr. DAVIS of Illinois. Mr. Speaker, I yield myself such time as I might consume to close for our side.

Again, I want to commend the gentlewoman from New York for her introduction of this resolution. I rise in support of H. Con. Res. 478, a resolution supporting the goals and ideals of Lights on Afterschool!, a national celebration of after-school programs.

Lights on Afterschool! is a project of the Afterschool Alliance. As many of you may know, the Afterschool Alliance is a nonprofit organization dedicated to raising awareness of the importance of after-school programs for all children. The Alliance was created to conduct this public awareness and advocacy work and to serve as a national voice for after-school programs.

Consistent with the work of the Alliance, they have created the Lights on Afterschool! projects that will host nationwide celebrations this October. These celebrations are a way of highlighting and bringing attention to the importance of after-school programs.

I think every single Member of Congress here can speak to the importance of these programs. I myself have seen the important and necessary role that after-school plays, especially in the everyday lives of working families. Nationwide, 14.3 million children take care of themselves after the school day ends. Of these, 6.5 million children are in after-school programs.

We all know that these programs provide not only a place for young people to be after school but also provide a tremendous benefit. Some of us have probably even visited after-school programs in our district. We appreciate the role that they have played and will continue to play in providing a safe place for our youth to be after school and provide them with the opportunity to grow and to learn.

□ 2130

Every statistic that you can look at and find generally depicts the fact that when young people get in trouble the most it is when they are without supervision, have nothing meaningful to do and are left to their own environs.

As a matter of fact, my parents used to say it differently. They used to say that an idle mind is the devil's workshop. I guess what they really meant was that if young people did not have something created for them to do, that we would create our own things, and oftentimes those things would not be in the best interests not only of our individual development but not in the best interests of the communities where we were.

So when the gentlewoman from New York introduces such a resolution, she is really doing all of America a great favor by helping us to remember that if we do not provide positive things for young people to do, oftentimes they will create the negative. So I thank Mrs. LOWEY for her introduction of this resolution and strongly support it.

Mr. Speaker, I yield back the balance of my time.

Mr. KUHL of New York. Mr. Speaker, I have no further requests for time at this moment. Once again, I would like to commend my colleague Mrs. LOWEY for bringing this important resolution to the floor, and I thank my colleague Mr. DAVIS for expounding upon the very need for it, and with that, Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. KUHL) that the House suspend the rules and agree to the concurrent resolution, H. Con. Res. 478.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

RAILROAD RETIREMENT DISABILITY EARNINGS ACT

Mr. LATOURETTE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5483) to increase the disability earning limitation under the Railroad Retirement Act and to index the amount of allowable earnings consistent with increases in the substantial gainful activity dollar amount under the Social Security Act.

The Clerk read as follows:

H.R. 5483

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Railroad Retirement Disability Earnings Act''.

SEC. 2. REFORM OF DISABILITY EARNINGS LIMITATION PROVISIONS.

(a) IN GENERAL.—Section 2(e)(4) of the Railroad Retirement Act of 1974 is amended—

(1) by striking ''$400 in earnings'' in the first sentence and inserting ''the monthly allowable earnings as defined in the section'';

(2) by striking ''$4,800'' in the fourth sentence and inserting ''the amount of earnings computed by totaling the monthly allowable earnings as determined under this section for each month in the year''; and

(3) by striking the fifth sentence and inserting ''If the total amount of such individual's earnings during such year (exclusive of earnings for services as described in subdivision (3) and after deduction of disability related work expenses) is in excess of the annual allowable earnings amount, the number of months in such year with respect to which an annuity is not payable by reason of the first and third sentences shall not exceed the number of months derived by dividing the amount by which such annual earnings exceed the annual allowable earnings amount by the monthly allowable earning amount determined under this section. If the computation under the preceding sentence results in a remainder greater than or equal to one-half, the number of months for which an annuity is not payable as determined under the preceding sentence shall be increased by one. The annual allowable earnings amount shall be computed by totaling the amount of monthly allowable earnings as determined under the first sentence of this subdivision

for each month in the calender year. If the amount of the individual's annuity has changed during the calendar year, any payment of annuities which become payable solely by reason of the limitations in the preceding three sentences shall be made first with respect to the month or months for which the annuity is larger. For purposes of this subdivision, 'the monthly allowable earnings' shall be $700, except that for each year after 2007, 'the monthly allowable earnings' amount shall be the larger of the amount for the previous year or the amount calculated by multiplying $700 by the ratio of the national average wage index for the year 2 calender years before the year for which the amount is being calculated to the national average wage index for the year 2005. The amount so computed will be rounded to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.''.

(b) EFFECTIVE DATE.—The amendments made by this section take effect January 1, 2007.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Ohio (Mr. LATOURETTE) and the gentlewoman from Florida (Ms. CORRINE BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Ohio.

GENERAL LEAVE

Mr. LATOURETTE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on H.R. 5483.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Ohio?

There was no objection.

Mr. LATOURETTE. Mr. Speaker, I yield myself such time as I may consume. I strongly support this bipartisan legislation.

H.R. 5483 is a bill to help disabled railroad employees. Under our current system, a permanently disabled railroad worker is given a monthly stipend by the Railroad Retirement Board. The average stipend is about $1,911 a month, which is often too little to support a family. This has led disabled workers to seek a supplemental source of income.

If a disabled railroad worker is well enough to work at another job, current law limits his or her earnings to only $400 a month, a limit which has remained unchanged for years.

Mr. Speaker, in my own district, the mayor of Mentor, Ohio, is a disabled railroad worker, and he can only accept $400 as his monthly pay for being the mayor of Mentor.

This legislation that we are considering today, H.R. 5483, the Railroad Retirement Disability Earnings Act, will increase that amount to only $700 per month, with no decrease in retirement benefits. The $700 figure will also be indexed to inflation.

The cost of this legislation is estimated to be at less than $500,000 a year. To put things in perspective, the National Railroad Retirement Trust is currently valued at over $29 billion and has been so well managed that railroad payroll taxes are actually going down.

H.R. 5483, the Railroad Retirement Disability Earnings Act, is important to disabled railroad employees and their families and is one of the most important pieces of railroad legislation that we will consider this year.

I urge your support for this bill and wish to commend our committee chairman, Mr. YOUNG of Alaska; the ranking minority member, Mr. OBERSTAR; and the subcommittee's ranking minority member, Ms. BROWN, for her outstanding leadership on this issue.

Mr. Speaker, I reserve the balance of my time.

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield myself such time as I may consume.

I want to thank Chairman YOUNG and Chairman LATOURETTE and Ranking Member OBERSTAR for their work in bringing this important bill to the House floor for a vote.

It has been nearly 20 years since we have passed a bill to help out our Nation's rail workers who were injured on the job and unable to continue working in the railroad industry. I am pleased to see that everyone has agreed to support an increase in their allowed monthly earnings limit so that these hardworking men and women can work freely in jobs that are not as physically demanding as those in the railroad industry.

H.R. 5483 will increase the outside earnings limits for disabled workers from $400 to $700 per month, which will then increase yearly based on the Social Security index.

We all know that the cost of living in this country is skyrocketing. Whether it is the cost of needed medicines, increased insurance premiums, or the high price of gasoline, this small increase will make a major impact on the ability of these individuals to provide for their families.

I stand in strong support of this legislation, and I am happy to see everyone has come together today and that the views of all interested groups, not just a select few, were included in this legislation.

I encourage all of my colleagues to support this important legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. LATOURETTE. Mr. Speaker, I yield myself such time as I may consume. Very shortly, I would advise my distinguished ranking member that I have no additional speakers, but I do want to make this comment.

This is my first session of Congress to serve as the chairman of the Railroad Subcommittee, and it has been my distinct pleasure to serve with the gentlewoman from Florida, and I want to thank her for the kind and bipartisan way in which she has treated all of the issues that have come before the subcommittee these last 2 years.

I do not know where our forces are going to take us in the next couple of years, but I very much look forward to working with you, and with that, when the gentlewoman yields back, I will do the same.

Mr. OBERSTAR. Mr. Speaker, I rise in strong support of H.R. 5483. This bill increases the outside earnings limit for disabled workers from $400 to $700 per month, and indexes their outside earnings annually after 2007 to increases in the national average wage index—consistent with the indexing mechanism for determining substantial gainful employment under the Social Security Act.

Currently, the Railroad Retirement Act withholds monthly annuities for disabled workers who earn more than $400 in outside income. At the end of each year, the withheld annuities are reimbursed to disabled workers whose total annual earnings are less than $5,000. Otherwise, the annuity is subject to a deduction of 1 month's benefit for each multiple of $400 earned over $5,000. H.R. 5483 increases that threshold to $8,750.

With ever-increasing costs for health care and prescription drugs, an extra $300 in earnings per month could make a real difference for disabled persons, who are all too often denied affordable, comprehensive healthcare, and guaranteed coverage of prescription drugs.

The Railroad Retirement Board's chief actuary estimates that these increases would not have a substantial impact on the Railroad Retirement Trust Fund. According to the actuary, the cost of raising the disability work deduction limit would be less than $1 million per year. That is a small price to pay for helping meet the needs of many disabled persons and their families.

I urge my colleagues to join me in supporting H.R. 5483.

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield back the balance of my time.

Mr. LATOURETTE. Mr. Speaker, I urge passage of the bill, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Ohio (Mr. LATOURETTE) that the House suspend the rules and pass the bill, H.R. 5483.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

DAM SAFETY ACT OF 2006

Mr. KUHL of New York. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4981) to amend the National Dam Safety Program Act, as amended.

The Clerk read as follows:

H.R. 4981

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Dam Safety Act of 2006''.

SEC. 2. NATIONAL DAM INVENTORY.

Section 6 of the National Dam Safety Program Act (33 U.S.C. 467d) is amended to read as follows:

"SEC. 6. NATIONAL DAM INVENTORY.

''The Secretary of the Army, acting through the Chief of Engineers, shall maintain and update information on the inventory of dams in the United States. Such inventory of dams shall include an assessment of each dam based on inspections completed by either a Federal agency or a State dam safety agency.''.

SEC. 3. NATIONAL DAM SAFETY PROGRAM.

Section 8(b)(1) of the National Dam Safety Program Act (33 U.S.C. 467f(b)(1)) is amended by striking ''and target dates to'' and inserting ''performance measures, and target dates toward effectively administering this Act in order to''.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

Section 13 of the National Dam Safety Program Act (33 U.S.C. 467j) is amended to read as follows:

"SEC. 13. AUTHORIZATION OF APPROPRIATIONS.

''(a) NATIONAL DAM SAFETY PROGRAM.—

''(1) ANNUAL AMOUNTS.—There are authorized to be appropriated to FEMA to carry out sections 7, 8, and 11 (in addition to any amounts made available for similar purposes included in any other Act and amounts made available under subsections (b) through (e)) $6,500,000 for fiscal year 2007, $7,100,000 for fiscal year 2008, $7,600,000 for fiscal year 2009, $8,300,000 for fiscal year 2010, and $9,200,000 for fiscal year 2011. Such sums shall remain available until expended.

''(2) ALLOCATION.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), for each fiscal year, amounts made available under this subsection to carry out section 8 shall be allocated among the States as follows:

''(i) One-third among States that qualify for assistance under section 8(e).

''(ii) Two-thirds among States that qualify for assistance under section 8(e), to each State in proportion to—

''(I) the number of dams in the State that are listed as State-regulated dams on the inventory of dams maintained under section 6; as compared to

''(II) the number of dams in all States that are listed as State-regulated dams on the inventory of dams maintained under section 6.

''(B) MAXIMUM AMOUNT OF ALLOCATION.—The amount of funds allocated to a State under this paragraph may not exceed 50 percent of the reasonable cost of implementing the State dam safety program.

''(C) DETERMINATION.—The Director and the Board shall determine the amount allocated to States.

''(b) NATIONAL DAM INVENTORY.—There is authorized to be appropriated to carry out section 6 $650,000 for fiscal year 2007, $700,000 for fiscal year 2008, $750,000 for fiscal year 2009, $800,000 for fiscal year 2010, and $850,000 for fiscal year 2011.

''(c) RESEARCH.—There is authorized to be appropriated to carry out section 9 $1,600,000 for fiscal year 2007, $1,700,000 for fiscal year 2008, $1,800,000 for fiscal year 2009, $1,900,000 for fiscal year 2010, and $2,000,000 for fiscal year 2011. Such sums shall remain available until expended.

''(d) DAM SAFETY TRAINING.—There is authorized to be appropriated to carry out section 10 $550,000 for fiscal year 2007, $600,000 for fiscal year 2008, $650,000 for fiscal year 2009, $700,000 for fiscal year 2010, and $750,000 for fiscal year 2011.

''(e) STAFF.—There is authorized to be appropriated to FEMA for the employment of such additional staff personnel as are necessary to carry out sections 8 through 10 $700,000 for fiscal year 2007, $800,000 for fiscal year 2008, $900,000 for fiscal year 2009, $1,000,000 for fiscal year 2010, and $1,100,000 for fiscal year 2011.

''(f) LIMITATION ON USE OF AMOUNTS.—Amounts made available under this Act may not be used to construct or repair any Federal or non-Federal dam.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New York (Mr. KUHL) and the gentlewoman from Florida (Ms. CORRINE BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from New York.

Mr. KUHL of New York. Mr. Speaker, I yield myself such time as I may consume.

H.R. 4981, as amended, reauthorizes the National Dam Safety Program for 5 years through fiscal year 2011. It makes minor improvements to the national inventory of dams. The existing program authorization expires in just 3 days at the end of September.

The National Dam Safety Program is administered by the Federal Emergency Management Agency, commonly known as FEMA, and was established to improve safety and security around dams. The program provides assistance grants to State dam safety agencies to assist them in improving their regulatory programs, training and research, and to create a national inventory of dams.

According to the U.S. Army Corps of Engineers' National Inventory of Dams, there are nearly 2,000 dams in New York State, of which 133 are in my congressional district alone. Some of these high-hazard dams include the Almond Dam in Steuben County; the Canadice Lake Dam in Ontario County; the Cuba Lake Dam in Allegany County; and the Keuka Lake Outlet Dam in Yates County.

Of those 133 dams, 30 of them are considered to be high hazard and 41 are significant hazard. That means if there is a failure, and I underline, there is a high risk of death and destruction, high risk of death and destruction, according to the American Society of Civil Engineers.

Reauthorization of this program is necessary to continue the program and benefit the research, development of information technology, and the training of State dam safety officials who are considered the Nation's first line of defense from dam failures.

I support this bill and encourage my colleagues to do the same.

Mr. Speaker, I reserve the balance of my time.

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, I rise in support of H.R. 4981, the Dam Safety Act of 2006, which reauthorizes and amends the National Dam Safety program. The program's goal is to reduce the risks to life and property by establishing an effective national dam safety maintenance program that utilizes the resources and expertise of the Federal and non-Federal communities to achieve the reduction of dam safety hazards. In other words, one of the primary purposes of the National Dam Safety program is to provide financial assistance to the States for strengthening their dam safety program.

Since the passage of the National Dam Safety Program Act in 1996, the program has improved the Nation's dam safety. Dam safety inspections have increased; State training programs have been enhanced; and research in the area of improving dam safety has increased.

Additionally, in light of our Nation's need to protect our infrastructure from possible terrorist attacks, the National Dam Safety Review Board has established the Dam Safety Security Task Force to facilitate dialogue and offer technical assistance and support on security-related policy and guidance, and there has been an increase in the development of dam safety and security emergency action plans.

H.R. 4981, the Dam Safety Act of 2006, seeks to build upon these achievements made over the past several years and enhance them. The bill strengthens the act by improving the national dam inventory, and encourages States to improve State dam safety programs and increase reauthorization levels of the various components of the act.

Mr. Speaker, many people are not aware that there are approximately 80,000 dams in the United States. Of these, approximately 10,000 dams are considered to have high hazard potential, meaning their failure could result in loss of life or severe property damage. It is critical that we help to ensure the safety and security of these dams.

H.R. 4981, the Dam Safety Act of 2006, is a good bill, has bipartisan support, and I urge its passage.

Mr. OBERSTAR. Mr. Speaker, I rise in strong support of H.R. 4981, the Dam Safety Act of 2006, as amended, which reauthorizes and amends the National Dam Safety Program. The National Dam Safety Program is a partnership of the States, Federal agencies, and other stakeholders to encourage individual and community responsibility for dam safety.

The purpose of the National Dam Safety Program is to "reduce the risks to life and property from dam failure in the United States through the establishment and maintenance of an effective national dam safety program to bring together the expertise and resources of the federal and non-federal communities in achieving national dam safety hazard reduction.''

H.R. 4981 reauthorizes the National Dam Safety Program through fiscal year 2011. The dam safety program, administered by the Federal Emergency Management Agency—FEMA—provides grants to State regulatory agencies, funds research projects aimed at improving dam safety, and trains safety officials and dam operators.

Of the 79,777 public and private dams in the United States, there are currently 11,811 high hazard dams across the country. If one of these dams fails, it could cost lives and damage the economy and the environment. From 2000 to 2006, the number of high hazard dams increased by almost 20 percent.

These dams can pose a significant threat. Between 1999 and 2004, States reported 1,090 dam safety incidents, including 125 failures. Deficient or unsafe dams mean that these dams have been identified as having hydrologic or structural deficiencies that make

them susceptible to a failure triggered by a large storm event, an earthquake, progressive deterioration, or inadequate maintenance. Currently, States have identified approximately 3,400 dams as being deficient or unsafe—an increase of 33 percent since 1998.

Since the creation of the National Dam Safety Program in 1996, dam safety inspections have increased significantly. In addition, the program has provided funding to increase the amount and the quality of dam safety research and has increased the amount of direct assistance for training State officials and providing technical seminars and workshops.

Presently, many States lack the financial resources to effectively carry out the program and many State regulatory programs lack the support they require at a time when these critical program funds are truly needed. Clearly, there is a need for this program, the funds it provides, and the technical support it offers States.

Mr. Speaker, I support the bill and urge its approval.

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield back the balance of my time.

Mr. KUHL of New York. Mr. Speaker, I have no other requests for time. I would just like to thank my colleague from the other side of the aisle, Ms. BROWN, for her support of this bill and certainly to my colleagues Mr. MATHESON and Mr. ABERCROMBIE for their cosponsorship of this bill; and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New York (Mr. KUHL) that the House suspend the rules and pass the bill, H.R. 4981, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

CARROLL A. CAMPBELL, JR. FEDERAL COURTHOUSE

Mr. SHUSTER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5546) to designate the Federal courthouse to be constructed in Greenville, South Carolina, as the ''Carroll A. Campbell, Jr. Federal Courthouse,'' as amended.

The Clerk read as follows:

H.R. 5546

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

SECTION 1. DESIGNATION.

The United States courthouse to be constructed in Greenville, South Carolina, building number SC0017ZZ, shall be known and designated as the ''Carroll A. Campbell, Jr. United States Courthouse''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the United States courthouse referred to in section 1 shall be deemed to be a reference to the ''Carroll A. Campbell, Jr. United States Courthouse''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Pennsylvania (Mr. SHUSTER) and the gentlewoman from Florida (Ms. CORRINE BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Speaker, I yield myself such time as I may consume.

H.R. 5546, introduced by Representative BOB INGLIS of South Carolina, designates the United States Courthouse to be constructed in Greenville, South Carolina, as the Carroll A. Campbell, Jr. Federal Courthouse. The bill honors former South Carolina Governor and U.S. Congressman Carroll A. Campbell, Jr.

In 1970, Governor Campbell's political career began with his election to the South Carolina House of Representatives, and later served in the South Carolina Senate. He served in the U.S. House of Representatives from 1979 until his election as Governor in 1986.

As Governor of South Carolina, Campbell coordinated his State's response to Hurricane Hugo and lured large industry to the State. After two terms in office, Governor Campbell was prevented from seeking a third term by term limits.

In 2001, at the relatively young age of 61, Governor Campbell was diagnosed with Alzheimer's disease. Governor Campbell passed away after a severe heart attack on December 7, 2005.

This is a fitting tribute to a dedicated public servant and a former Member of this Chamber. I support this legislation and encourage all my colleagues to do the same.

Mr. Speaker, I reserve the balance of my time.

□ 2145

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield myself such time as I may consume.

H.R. 5546, as amended, is a bill to designate the United States courthouse located in Greenville, South Carolina, as the Carroll A. Campbell, Jr., United States Courthouse. This bill, introduced by Mr. INGLIS, has bipartisan support from the South Carolina delegation.

Mr. Campbell was born in 1940 in Greenville, South Carolina. He attended public school in Greenville and graduated from the University of South Carolina. From 1970 to 1974, he served in the South Carolina House of Representatives. In 1975, he was appointed as Executive Assistant to Governor Jim Edwards. In 1976, he was elected to the State Senate; and in 1978 he was elected to the 96th Congress as a Republican from South Carolina. He served for three terms in Congress, and in 1987 he ran for Governor of South Carolina and served from 1987 to 1995. Carroll Campbell died in December, 2005, from the effects of Alzheimer's disease.

Mr. Campbell was known as the man who built the Republican Party in South Carolina to a dominant political force. In 1978, when Mr. Campbell headed to Congress, he won assignment on the Appropriations Committee and the Ways and Means Committee. In 1980, he joined forces with Lee Atwater to engineer the primary victory of Ronald Reagan in South Carolina.

As Governor, Mr. Campbell realized that South Carolina had to become a modern State to compete in the world economy; and he revamped the State's tax code to make it more business friendly, which resulted in record economic growth. He was personally involved in bringing the BMW plant to upstate South Carolina. Campbell was continually active in the international arena trying to bring business to South Carolina.

Campbell's greatest challenge was dealing with Hurricane Hugo in 1989. He joined forces with South Carolina Mayor Joe Riley and planned how to deal with the storm. He was a decision leader, and his decisions to prepare and evacuate saved many lives.

Congressman Campbell served the citizens of South Carolina with devotion and energy. It is fitting and proper to honor his civic contributions with this designation.

Mr. OBERSTAR. Mr. Speaker, I rise in support of H.R. 5546, as amended, a bill to designate the United States Courthouse located in Greenville, South Carolina, as the Carroll A. Campbell, Jr. United States Courthouse. This bill, introduced by the gentleman from South Carolina (Mr. INGLIS), has the bipartisan support of the South Carolina delegation.

Carroll Campbell was born in 1940 in Greenville, South Carolina. He attended public schools in Greenville, and graduated from the University of South Carolina. From 1970 to 1974, he served in the South Carolina House of Representatives. In 1976, Governor Campbell was elected to the State Senate and, in 1978, he was elected to the 96th Congress, as a Republican from South Carolina. He served for three succeeding Congresses. In 1987, he ran for Governor of South Carolina and served as Governor from 1987 to 1995. As Governor, Campbell was personally involved in bringing a BMW plant to upstate South Carolina. Carroll Campbell passed away in December 2005.

Perhaps Campbell's greatest challenge as Governor was dealing with Hurricane Hugo in 1989. He joined forces with Charleston Mayor Joe Riley and methodically planned how to deal with the storm. He was a decision leader and his decisions to prepare and evacuate doubtlessly saved lives.

Governor Campbell served the citizens of South Carolina with devotion and boundless energy. It is fitting and proper to honor his civic contributions with this designation.

I urge my colleagues to join me in supporting H.R. 5546, as amended.

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield back the balance of my time.

Mr. SHUSTER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. SHUSTER) that the House suspend the rules and pass the bill, H.R. 5546, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: ''A bill to designate the United States courthouse to be constructed in Greenville, South Carolina, as the 'Carroll A. Campbell, Jr. United States Courthouse'.''.

A motion to reconsider was laid on the table.

WILLIAM M. STEGER FEDERAL BUILDING AND UNITED STATES COURTHOUSE

Mr. SHUSTER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5606) to designate the Federal building and United States courthouse located at 221 and 211 West Ferguson Street in Tyler, Texas, as the ''William M. Steger Federal Building and United States Courthouse''.

The Clerk read as follows:

H.R. 5606

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

SECTION 1. DESIGNATION.

The Federal building and United States courthouse located at 221 and 211 West Ferguson Street in Tyler, Texas, shall be known and designated as the ''William M. Steger Federal Building and United States Courthouse''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building and United States courthouse referred to in section 1 shall be deemed to be a reference to the ''William M. Steger Federal Building and United States Courthouse''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Pennsylvania (Mr. SHUSTER) and the gentlewoman from Florida (Ms. CORRINE BROWN) will each control 20 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Speaker, I yield myself such time as I may consume.

H.R. 5606, introduced by my good friends RALPH HALL and LOUIE GOHMERT of Texas, designates the Federal building and United States courthouse located at 221 and 211 West Ferguson Street in Tyler, Texas, as the William M. Steger Federal Building and United States Courthouse. This bill honors William Steger, who dedicated most of his life to Federal service.

Judge Steger's service began in 1941 when he joined the Army Air Corps the day after the attack on Pearl Harbor. By 1952, Judge Steger was a seasoned attorney and appointed to serve as the United States Attorney for the Eastern District of Texas by President Eisenhower.

Judge Steger's career as a judge began in 1970 with an appointment to the Federal bench by President Nixon. During his tenure, he closed more than 6,500 cases, issued several landmark decisions and was rarely reversed on an appeal. Judge Steger passed away June 4, 2006.

Mr. Speaker, I support this legislation and encourage my colleagues to do the same.

Mr. Speaker, I reserve the balance of my time.

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield myself such time as I may consume.

H.R. 5606 is a bill to designate the Federal building and United States courthouse located at 221 West Ferguson Street in Tyler, Texas, as the William M. Steger Federal Building and United States Courthouse.

Judge William Steger was born on August 22, 1920, in Dallas, Texas. He attended local schools and Baylor University. In 1941, the war interrupted his studies; and in 1942 he enlisted in the United States Army. After training as a pilot, he served in North Africa and flew 56 missions over North Africa and Italy in Spitfires, the famous British fighter plane.

Upon his return to Texas, he enrolled in South Methodist University as a pre-law student. In 1950, he graduated with honors from law school. Shortly after Eisenhower was elected, he appointed him to serve as the United States Attorney for the Eastern District of Texas. He served until 1959 and then entered private practice. He was the Republican nominee in the Texas Governor's race in 1960. President Nixon appointed him to the Federal bench in 1970, beginning his long and distinguished Federal judicial career.

He died in June of this year at age 85 and was known for his effective and judicial integrity and carried a heavy caseload even when he entered senior status. He was routinely described as an honest, ethical man and was a role model to teachers, his law clerks, lawyers, and fellow judges. It is both fitting and proper to honor the long public service of Judge Steger with this designation.

Mr. Speaker, I reserve the balance of my time.

Mr. SHUSTER. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. GOHMERT), my good friend.

Mr. GOHMERT. Mr. Speaker, I appreciate my good friend, Mr. SHUSTER, yielding. I do rise today to speak in support of H.R. 5606, to designate the Federal building and United States courthouse located at 221 and 211 West Ferguson Street in Tyler as the William M. Steger Federal Building and U.S. Courthouse.

Immediately after Judge Steger's death, my good and long-time friend, Congressman RALPH HALL, had spoken to me about what I also had in my heart, and that is paying a tribute to Judge Steger by naming this Federal building for Judge Steger. I appreciate my friend, Mr. HALL, and his commitment to his old friend and also the respect we both had for Judge Steger.

Judge Steger was a heroic patriot, he was a caring father, he was a loving husband, an evenhanded, clear-thinking, constitutionally understanding judge, and he was a personal mentor. He was a cherished friend.

After I finished the 4 years I owed the United States Army from a scholarship at A&M and my wife and I considered coming back to Tyler, Judge Steger was one of the first people I talked to about it. Judge Steger was the father of Reed Steger and husband of Ann Steger, and their son Reed was one of my little brother's very best friends.

I learned a great deal from Judge Steger. Most people never did really come to know all that he had done and what he was, but he was a Dallas native originally. He always wanted the opportunity to become a pilot; and when the Nation entered World War II, he took the chance. On November 9, 1942, he got his wings; and, after training, he was sent to Casablanca and flew 56 combat missions, for which he received an Air Medal and four oak leaf clusters. While later training other pilots, Captain Steger also tested the first U.S. jet airplanes. If judged only by his service here, he would be counted as a hero, but he was much more than that.

Once his Nation was secure, Bill Steger went back to school, received his law degree from Southern Methodist University Law School, and then he engaged in private practice in Longview and Tyler and headed up numerous east Texas campaign clubs for a gentleman named Dwight D. Eisenhower, who was running for president. After the election, President Eisenhower appointed Judge Steger in 1953 to the position of U.S. Attorney for east Texas at the very young age of 32.

Judge Steger was up to the task. He became a Federal District Judge for the Eastern District of Texas in December, 1970, after President Richard Nixon nominated him.

He did truly love being a jurist. He was a hardworking, dedicated, cerebral, no-nonsense constitutional constructionist judge, whose discerning intellect could always cut straight to the heart of any issue. I know. I tried cases in front of this great judge.

In 1987, Judge Steger assumed senior active status duty, but since there still needed cases to be handled, Judge Steger stepped in and stood in the gap. December 1, 2005, marked 35 years on the Federal bench for Judge Steger. Since his appointment in 1970, he had handled more than 15,000 cases.

Judge Steger not only made his home in Tyler, Texas, a better place, but he changed Texas politics. In 1960, he and a good friend debated as to which one should run for Governor and which one should run for Senator. Their goal was to bring the Republican Party into popularity in the State of Texas. Because Texas was conservative, it seemed to Judge Steger that it would be a good fit, but he was blazing a trail.

He ended up being the one to run for Governor against a very popular John Connolly. Judge Steger's good friend,

named John Tower, ran for Senator. The Republican Party had never received enough votes to hold a primary, and even though Judge Steger knew he couldn't win the race, he hoped he would get the requisite 200,000 votes so the Republican Party could hold a primary in the next election. Judge Steger actually received more than 600,000 votes that year. Texas then became eligible to begin having Republican primaries because of Judge Steger.

Always having the courage of his convictions, despite the odds against him, Judge Steger was a profile in courage whose memory will continue to inspire me for the rest of my life. At the 2004 Tyler Law Day, Judge Steger received the Justinian award for his community service, his legal ethics, and professionalism.

He was a Baptist, a Baptist's Baptist. He was a charter member and deacon at Green Acres Baptist Church, helping to nurse it through its early days of growing from nonexistence to its current 12,000 members. He was a confidant to me, he was a friend, and he was a wise sounding board.

He and Ann endured the worst heartache a couple can face in the loss of their only child, Reed, in a tragic scuba diving accident. But the manner in which Judge Steger dealt with such devastation and allowed his faith, God's help and Ann's companionship to help overcome this horrendous blow has always and will always be an inspiration to me.

It is an honor to be a part of this bill that will create a lasting tribute to such a deserving man. I thank my friend, Mr. HALL, and I urge my colleagues to vote ''yes'' on H.R. 5606 in order to commemorate the life of an ideal American.

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield back the balance of my time.

Mr. SHUSTER. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from Texas (Mr. HALL).

Mr. HALL. Mr. Speaker, I thank the gentleman for yielding to me, and I thank my colleague LOUIE GOHMERT. It is an honor to join LOUIE in sponsoring H.R. 5606, a bill to designate the Federal building and courthouse in Tyler, Texas.

Judge Steger passed away on June 4, having served on the bench with great distinction for, I guess 35, 36, 37 years. I appeared before him. I was in law school with him at SMU. He was a great American. He was just really a wonderful guy, just a super friend.

□ 2200

He was a great jurist. Judge was successful in everything he did in life, including the marrying of his wife Ann, to serving his country in World War II, to being in public service.

I had known Bill Steger when we were fellow law students at Southern Methodist University following World War II and had the utmost respect and admiration for him. I did not like him too much because he was very brilliant and he ruined the curve for a lot of us ordinary lawyers there and law students, but we had a lot of laughs about that.

He was appointed by Richard Nixon. He began a long and distinguished service as U.S. District Judge in December of 1970. He served in Beaumont until 1977 and then returned to Tyler, where he built upon a reputation for efficiency and integrity. He closed more than 6,500 cases, issued several landmark decisions and was rarely reversed on appeal.

Judge was a constitutionally reverent jurist, upheld the highest ideals of our judicial system and earned the respect of fellow jurists, attorneys and their clients.

As a testament to his contributions on the Federal bench, Judge was honored in 2005 by current and former law clerks, attorneys, fellow jurists, local officials, friends and admirers at a attribute dinner in Tyler.

Prior to his appointment to the Federal bench, he was appointed by President Eisenhower as U.S. District Attorney in East Texas, a position he held from 1952 to 1969. Judge had been Eisenhower's East Texas campaign manager and was the founding father of East Texas Republican politics.

He also distinguished himself in service to his country by answering his call to duty and enlisting in the U.S. Army Air Corps shortly after the bombing of Pearl Harbor. He was studying pre-law at Baylor University at the time but did not hesitate to enlist.

He flew 56 combat missions as a fighter pilot in Tunisia, Sicily and Italy, received the Air Medal and four Oak Leaf Clusters and obtained the rank of Captain. While later training other pilots, Captain Steger also tested the very first U.S. jet airplanes.

Upon completion of his military service in 1947, Judge returned to Dallas and enrolled in SMU. He also made one of the best decisions in his life in his marriage to Ann Hollandsworth Steger. Judge and Ann were inseparable and contributed so much to their community, both separately and as a couple.

Shortly before his death, when it was mentioned to Judge that his law clerks, friends and family were hoping that the Federal Building would be named after him, he quipped, ''and maybe we could also have an Ann-ex.'' Such was his love and respect for his wife of some 58 years.

Judge and Ann, as Congressman GOHMERT stated, had a wonderful son named Reed, who died tragically in a scuba diving accident several years ago. It was just a hard time for them to go through. But his faith in God and with God's help and Ann's companionship helped him through that very difficult time.

In closing, Judge Steger just really was one of the great judges of the Eastern District. Naming the Federal building for him would be a living tribute and would remain long after we are all gone, while others will see his name and know it stood for justice. Judge Steger leaves a powerful legacy of ethical conduct, judicial prudence and distinguished service that will long be remembered.

I urge my colleagues to support me today in support of H.R. 5606 in honor of this great jurist and great American, the late Judge William M. Steger.

Mr. OBERSTAR. Mr. Speaker, H.R. 5606 is a bill to designate the Federal building and U.S. courthouse located at 221 West Ferguson St. in Tyler, TX as the William M. Steger Federal Building and United States Courthouse.

Judge William Steger was born in 1920 in Dallas, TX. He attended local schools and Baylor University. He enlisted in the U.S. Army in 1942. After training as a pilot, he served in Northern Africa and flew 56 missions over North Africa and Italy in Spitfires, the famous British fighter plane.

In the 1950s, President Eisenhower appointed him to serve as the United States Attorney for the Eastern District of Texas. In 1960, Judge Steger was the Republican nominee in the Texas governor race in 1960. In 1970, President Nixon appointed him to the Federal bench, beginning his long and distinguished Federal judicial career. Judge Steger passed away this past June.

I urge my colleagues to support H.R. 5606.

Mr. SHUSTER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. SHUSTER) that the House suspend the rules and pass the bill, H.R. 5606.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

ANDRES TORO BUILDING

Mr. SHUSTER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5026) to designate the Investigations Building of the Food and Drug Administration located at 466 Fernandez Juncos Avenue in San Juan, Puerto Rico, as the ''Andres Toro Building''.

The Clerk read as follows:

H.R. 5026

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

SECTION 1. DESIGNATION.

The Investigations Building of the Food and Drug Administration located at 466 Fernandez Juncos Avenue in San Juan, Puerto Rico, shall be known and designated as the ''Andrés Toro Building''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in section 1 shall be deemed to be a reference to the ''Andrés Toro Building''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from

Pennsylvania (Mr. SHUSTER) and the gentlewoman from Florida (Ms. CORRINE BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5026, introduced by Representative LUIS FORTUÑO of Puerto Rico, designates the Investigations Building of the Food and Drug Administration located in San Juan, Puerto Rico, as the Andres Toro Building.

Andres Toro was the Director of the Compliance Division of the FDA San Juan district office. He joined the FDA in 1977 as an investigator in the San Juan district office and worked his way up through the ranks to Director of the Compliance Division. He is the first and only Puerto Rican to have risen to this high government rank in the FDA without taking a position off the island, and received many awards along the way.

Mr. Toro played a major role in some of the most unprecedented regulatory cases the FDA has initiated against the food and drug industry. He was known for his dedication and commitment in preserving and protecting public health.

Mr. Toro's life of public service came to an end when a sudden heart attack claimed his life June 24, 2005. This bill is a fitting tribute to a dedicated public servant.

I support the legislation, and encourage my colleagues to do the same.

Mr. Speaker, I reserve the balance of my time.

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield myself such time as may consume.

Mr. Speaker, H.R. 5026 is a bill to designate the Food and Drug Building located in San Juan, Puerto Rico, as the Andres Toro Building.

Andres Toro was an extremely knowledgeable public servant. As a Federal employee highly regarded by both his coworkers and members of the pharmaceutical industry in Puerto Rico, he directed the Office of Investigations for the Food and Drug Administration in the Puerto Rico district.

Working with local government agencies, he demonstrated his commitment to preserving and enhancing public health by playing a major role in FDA actions in regulatory matters. He was widely regarded as one of the most knowledgeable members in the regulatory environment and made valuable and significant contributions to the FDA office in San Juan.

During his Federal career, he received numerous awards and honors, including the Commissioner's Special Citation for the Tylenol tampering case, the FDA Commendable Service Award for outstanding performance and dedication during Hurricane David, and in 1993 for his participation in the criminal investigation called ''operation golden pill.''

Mr. Toro was a veteran of the Vietnam War and was awarded the National Defense Service Medal and the Vietnam Service Medal.

After attending Catholic University in Puerto Rico, he joined the FDA in San Juan in 1977. Over the course of his Federal a career he rose to the rank of Director of Investigations for the Puerto Rico district of the Food and Drug Administration. He was beloved by his fellow workers, who relied on his expertise, knowledge and guidance.

It is both fitting and proper to honor this extraordinary public servant with this designation. I support H.R. 5026, and urge my colleagues to join me in supporting this bill.

Mr. OBERSTAR. Mr. Speaker, I rise in support of H.R. 5026, a bill to designate the Food and Drug Administration, FDA, Building located at 466 Fernandez Juncos Avenue in San Juan, Puerto Rico as the Andres Toro Building.

Andres Toro, a Federal employee who recently passed away, was highly regarded by his co-workers and members of the pharmaceutical industry in Puerto Rico. He was the Director of the Office of Investigations for the Food and Drug Administration in the Puerto Rico District.

Andres Toro was a veteran of the Vietnam war and was awarded the National Defense Service Medal, and the Vietnam Service Medal. After attending Catholic University in Puerto Rico he joined the FDA in San Juan in 1977. He was the recipient of the Secretary's award for Distinguished Service and the Outstanding Service Award.

It is both fitting and proper to honor Andres Toro and his extraordinary public career with this designation.

I support H.R. 5026 and urge my colleagues to join me in support of this bill.

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield back the balance of my time.

Mr. SHUSTER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. SHUSTER) that the House suspend the rules and pass the bill, H.R. 5026.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

JOHN F. SEIBERLING FEDERAL BUILDING

Mr. SHUSTER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6051) to designate the Federal building located at 2 South Main Street in Akron, Ohio, as the ''John F. Seiberling Federal Building,'' as amended.

The Clerk read as follows:

H.R. 6051

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

SECTION 1. DESIGNATION.

The Federal building and United States courthouse located at 2 South Main Street in Akron, Ohio, shall be known and designated as the ''John F. Seiberling Federal Building and United States Courthouse''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building and United States courthouse referred to in section 1 shall be deemed to be a reference to the ''John F. Seiberling Federal Building and United States Courthouse''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Pennsylvania (Mr. SHUSTER) and the gentlewoman from Florida (Ms. CORRINE BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 6051, introduced by my good friend, Representative TIM RYAN of Ohio, designates the Federal Building and Courthouse located in Akron, Ohio, as the John F. Seiberling Federal Building and United States Courthouse.

John Seiberling was born in 1918 in Akron, Ohio. He received his degree from Harvard University and his law degree from Columbia School of Law. After 4 years of duty with the Army during World War II, Seiberling began a career in private practice.

After more than 20 years as an attorney, Seiberling was elected to the 92nd Congress and served in the U.S. House of Representatives for 16 years as a representative of the 14th District of Ohio. During his eight terms in the U.S. Congress, Representative Seiberling led the fight to establish some of our country's most important urban parks, and has received the title of ''patron saint'' of many of today's national parks.

In 1992, Representative Seiberling joined the faculty of the University of Akron's School of Law in Akron, Ohio. He currently resides in Akron, Ohio.

I support this legislation, and encourage my colleagues to do the same.

I reserve the balance of my time.

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 6051, as amended, is a bill to designate the Federal building located at 2 South Main Street in Akron, Ohio, as the John F. Seiberling Federal Building and United States Courthouse.

Congressman Seiberling was born in Akron, Ohio, in 1918. He attended public school in Akron and Staunton Military Academy in Virginia. After graduating from military academy, he attended Harvard and received his law degree from Columbia Law School, New York, in 1949.

Serving in the United States Army from 1942 to 1946, he was admitted to the New York bar in 1950 and engaged in private practice from 1949 to 1954. During this time, he volunteered with the New York Legal Aid Society.

He was elected to the 92nd Congress and served for seven consecutive Congresses, from January, 1971, through January, 1987.

He had a deep and weighty impact on the course of conservation in our Nation's history. Although he was raised in a family of committed conservationists, it was through his public service as a Congressman from the 14th District of Ohio that he made his most significant contributions to conservation.

Congressman Seiberling authored legislation to establish the American Conservation Corps. Although the legislation was vetoed by President Reagan, the ideals and concepts outlined in the bill were later adopted in legislation signed by President Clinton to establish the AmeriCorps.

Also, under his leadership, more than 100 million acres of public land in Alaska were designated in 1980 as national parks, forests, wildlife refuges and wilderness areas. He led the effort on over 33 bills to create 250 wildlife areas or refuges. He was also an expert on historical preservation and authored legislation that created the Historic Preservation Fund.

He was recognized by his colleagues as a gentleman and a man of honor who worked diligently and tirelessly for his constituents. We all benefited from his boundless energy and determination. It is certainly fitting and proper that we take this opportunity to honor his civic career with this designation.

I thank Congressman TIM RYAN for introducing this bill, and urge its passage.

Mr. SHUSTER. Mr. Speaker, I continue to reserve the balance of my time.

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. RYAN).

Mr. RYAN of Ohio. Mr. Speaker, I would like to thank the gentlelady from Florida and my good friend, the chairman from Pennsylvania, for all of his leadership on this committee and many other issues in Congress.

I am honored today, Mr. Speaker, to sponsor H.R. 6051 to name the Federal building and courthouse in Akron, Ohio, after Congressman John Seiberling, who served in the House from 1970 to 1987. I am also humbled that over the last 5 years I have come to know Mr. Seiberling as a friend, as a mentor and as a role model for I think what it truly means to be a dedicated and distinguished public official.

In Ohio, and in particular in my congressional district, Mr. Seiberling is among the most respected and loved leaders of the last century, and it is a distinction that is well-deserved. During his 16 years of service in the House, he has an endless list of legislative achievements, as you heard here earlier tonight, including the bill that constructed this Akron Federal building. He also was a champion of civil rights and workers' rights.

□ 2215

Most notably, he successfully sponsored and passed dozens of bills addressing conservation and environmental protection which continue to benefit our Nation here today.

From protecting wilderness areas to authorizing the legislation of the American Conservation Corps, to establishing the only national park in the State of Ohio and the Cuyahoga Valley, which actually kept Akron and Cleveland from growing together, he demonstrated a long-term vision which is seldom seen in politics today and leadership and ability.

Even after leaving Congress, he remained one of our Nation's advocates for conservation and environmental protection. So it is no surprise that he was nominated for the Presidential Medal of Freedom in 2000 and in January 2001 received the Presidential Citizens Medal.

But as important, John Seiberling distinguished himself in his community, Ohio, and this body through civility, kindness, and a genuine respect for all people.

And it was interesting, as I was beginning to offer this piece of legislation, to talk to several current Members of Congress who were staffers when Mr. Seiberling was a Member of Congress, and each of them said that he treated the staffers as he treated the Members of Congress, which I think is a sign of class and kindness that is to be respected here today.

Since introducing this bill, not only did I hear these stories, but I also heard many other stories from staffers and colleagues and others, and there is yet to be a conversation with any of these Members where Mr. Seiberling didn't end his conversation with a ''thank you'' or a ''please'' or ''thank you for your assistance,'' going above and beyond the kind of respect that most people offer.

In 2001, when Mr. Seiberling received the Presidential Citizens Medal, he called many of his former staffers, one of whom is my chief of staff now, Mary Anne Walsh, to ask them to join him at the White House ceremony because he said: ''I am receiving this award because of your hard work, your talents, your dedication. And that made it all possible for us to make a difference during my congressional career.'' That statement represents the essence of the man John Seiberling is.

When John first ran for Congress in 1970, he had a slogan that said: The guts to do what is right. And for those of us who know John Seiberling, I am certain we will all agree that John never needed the guts to do what is right; it is just who the man is.

And so, Mr. Speaker, I want to thank Chairman YOUNG, Ranking Member OBERSTAR, Chairman SHUSTER, Ranking Member NORTON, Ms. BROWN for handling the time here tonight and helping me with this legislation to help move this bill through the committee and to the floor so quickly.

President Kennedy said in the great speech he gave at Amherst College that this Nation reveals itself not only by the men it produces but by the men it honors. And I think this is a very appropriate response to honor Mr. Seiberling to reflect the importance and the greatness of this Nation.

Ms. CORRINE BROWN of Florida. Once again, I want to thank Congressman RYAN for bringing this bill to the floor, and I want to thank the chairman.

Mr. OBERSTAR. Mr. Speaker, I rise in support of H.R. 6051, as amended, a bill to designate the federal building located at 2 South Main St. in Akron, OH, as the John F. Seiberling Federal Building and United States Courthouse.

Congressman John Seiberling was born in 1918. He attended public school in Akron and Staunton Military Academy in Virginia. After graduating from the military academy, he attended Harvard and received his law degree from Columbia Law School.

In the 1950s, Congressman Seiberling engaged in private practice and also volunteered with the New York Legal Aid Society. He was elected to the 92nd Congress and served for seven succeeding Congresses from 1971 to 1987.

He was an ardent environmentalist long before it was a trendy word. He comes from a long line of conservationists. His grandfather donated land in Akron for the city's first metropolitan park. As a junior Member of Congress, Seiberling authored legislation to establish the Cuyahoga Valley National Recreation Area. He then went on to shepherd through Congress an additional 62 park related bills, including legislation that tripled the size of the Land and Water Conservation Fund.

Congressman Seiberling also sponsored legislation to establish an American Conservation Corps. Although the legislation was vetoed by President Reagan, the ideals and concepts outlined in the bill were later adopted as part of the AmeriCorps authorization legislation signed by President Clinton.

I urge my colleagues to join me in supporting H.R. 6051.

Mr. Speaker, I yield back the balance of my time.

Mr. SHUSTER. Mr. Speaker, I yield the balance of my time.

The SPEAKER pro tempore (Mr. MARCHANT). The question is on the motion offered by the gentleman from Pennsylvania (Mr. SHUSTER) that the House suspend the rules and pass the bill, H.R. 6051, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: ''A bill to designate the Federal building and United States courthouse located at 2 South Main Street in Akron, Ohio, as the 'John F. Seiberling Federal Building and United States Courthouse'.''

A motion to reconsider was laid on the table.

CLYDE S. CAHILL MEMORIAL PARK

Mr. SHUSTER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1556) to designate a parcel of land located on the site of the Thomas F.

Eagleton United States Courthouse in St. Louis, Missouri, as the ''Clyde S. Cahill Memorial Park''.

The Clerk read as follows:

H.R. 1556

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

SECTION 1. DESIGNATION.

The parcel of land described in section 3, and located on the site of the Thomas F. Eagleton United States Courthouse in St. Louis, Missouri, shall be known and designated as the ''Clyde S. Cahill Memorial Park''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the parcel of land described in section 3 shall be deemed to be a reference to the ''Clyde S. Cahill Memorial Park''.

SEC. 3. PROPERTY DESCRIPTION.

The parcel of land designated under section 1 is the parcel bounded by South 10th Street, Clark Avenue, South 9th Street, and Walnut Street in St. Louis, Missouri.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Pennsylvania (Mr. SHUSTER) and the gentlewoman from Florida (Ms. CORRINE BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Speaker, I yield myself such time as I may consume.

H.R. 1556, introduced by Representative LACY CLAY, designates a parcel of land located on the site of the Thomas F. Eagleton United States Courthouse in St. Louis, Missouri as the Clyde S. Cahill Memorial Park. The bill honors Judge Clyde S. Cahill, who was the first African American to be appointed to the U.S. District Court of the Eastern District of Missouri.

After serving in the U.S. Air Force during World War II and acquiring a law degree from St. Louis University Law School, Judge Clyde S. Cahill engaged in the private practice of law in 1951. From 1958 through 1968, he served as chief legal adviser to the Missouri NAACP. While with the NAACP, he filed the first lawsuit in Missouri to implement the Supreme Court's decision in Brown v. Board of Education, helping to end school segregation in Missouri.

Judge Cahill was appointed to the U.S. District Court for the Eastern District of Missouri in 1980. Judge Cahill had a reputation for being courteous and compassionate. He passed away on August 18, 2004, at age 81.

I support this legislation and encourage my colleagues to do the same.

Mr. Speaker, I reserve the balance of my time.

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield myself such time as I may consume.

H.R. 1556 is a bill to designate the land located in the site of the Thomas F. Eagleton United States Courthouse in St. Louis, Missouri as the Clyde S. Cahill Memorial Park. This parcel of land is bounded by South Tenth St., Clark Avenue, South Ninth Street, and Walnut Avenue in St. Louis.

Judge Cahill was the first African American Federal district judge to serve in the eighth circuit. A native Missourian, he was born in 1923. He attended local elementary and high schools. After graduating from high school, he joined the U.S. Air Force and served in World War II from 1942 until 1946.

When he returned from the war, he continued his education at the University of St. Louis. He graduated from St. Louis University Law School in 1951 and began private practice. In 1954 he joined the Office of the Circuit Attorney for the City of St. Louis. In 1972, he became the executive director and general counsel for the Legal Aid Society of St. Louis. From 1975 until 1980, he served as circuit court judge of the Twenty-Second Judicial Circuit of the State of Missouri in St. Louis.

He was appointed by President Carter on May 23, 1980 to the Federal court. Judge Cahill became the first African American to be appointed to the United States District Court for the Eastern District of Missouri.

He was known for being both compassionate and courteous. However, he frequently challenged the flaws in the judiciary system and was critical of Federal sentencing guidelines which he believed were sometimes inappropriately severe. He served as a role model for many young lawyers and civil servants.

Judge Cahill died in 2004. Due to his lifetime of judicial excellence, it is both fitting and just that the park area located in the Thomas Eagleton U.S. Courthouse be designated in his honor.

I reserve the balance of my time.

Mr. SHUSTER. Mr. Speaker, I continue to reserve the balance of my time.

Ms. CORRINE BROWN of Florida. I yield such time as he may consume to the sponsor of the bill, Mr. CLAY.

Mr. CLAY. Mr. Speaker, I thank the gentlewoman from Florida, as well as my friend and chairman, Chairman SHUSTER of Pennsylvania. I thank them both for their support of this bill.

I rise in support of H.R. 1556, a bill to designate a park in the City of St. Louis in honor of the late Judge Clyde S. Cahill.

Judge Cahill served on the U.S. District Court for the Eastern District of Missouri for more than two decades, appointed by President Jimmy Carter in 1980. Judge Cahill was the first African American to serve in the eighth circuit court.

The Honorable Clyde S. Cahill, Jr., was a native St. Louisian. He graduated from Vashon High School and served in the U.S. Air Force during World War II. He went on to graduate from St. Louis University and St. Louis University School of Law.

Early in his legal career, Mr. Cahill served as chief legal adviser to the Missouri office of the NAACP and filed the first lawsuit in the State of Missouri calling for enforcement of the landmark Supreme Court ruling in Brown v. The Board of Education.

Throughout his career, Clyde Cahill demonstrated a deep commitment to improving the quality of life in the African American community. He was a leader in the struggle for civil rights, and he was active in many domestic programs to help the poor and disadvantaged.

In 1966, he joined the U.S. Office of Economic Opportunity, and later he went to work for the St. Louis Human Development Corporation. He also served as executive director and general counsel for the Legal Society of St. Louis, where he played a pivotal role in expanding legal aid services throughout eastern Missouri. Judge Cahill was truly a dedicated public servant who spent his life pursuing justice and equality for others.

Today, throughout St. Louis, Judge Cahill is fondly remembered for his courteous style and his compassionate heart. He was a hardworking man with a generous spirit who helped to improve the lives of countless citizens, some who knew him well and others who never even met him. Judge Cahill's contributions will benefit generations, and St. Louisians will forever cherish his memory.

I also want to add, Mr. Speaker, that I grew up knowing Judge Cahill going to school with his children. We are friends to this day. I ask my colleagues to support H.R. 1556, a bill to designate a site at the Thomas F. Eagleton United States Courthouse as the Clyde S. Cahill Memorial Park.

Mr. OBERSTAR. Mr. Speaker, I rise in support of H.R. 1556, a bill to designate the land located on the site of the Thomas F. Eagleton United States Courthouse in St. Louis, MO, as the Clyde S. Cahill Memorial Park. This parcel of land is bounded by South 10th Street, Clark Avenue, South 9th Street, and Walnut Avenue in St. Louis.

Judge Cahill, a native Missourian, was born in St. Louis in April 1923. He attended local elementary schools and Vashon High School. After graduating from high school, he joined the U.S. Army Air Corps and served in World War II from 1942 until 1946.

When he returned from the war he continued his education at the University of St. Louis. He graduated from St. Louis University Law School in 1951. After graduation, Judge Cahill engaged in private practice until 1954 when he joined the staff of the circuit attorney of the city of St. Louis. From 1958 to 1965, he served as the chief legal advisor to the Missouri NAACP and filed the first lawsuit in Missouri to implement the Supreme Court's decision in Brown v. Board of Education.

From 1975 until 1980, Judge Cahill served as a circuit judge on the 22nd Judicial Circuit of the State of Missouri in St. Louis. With his appointment to the Federal court by President Carter on May 23, 1980, Judge Cahill became the first African-American to be appointed to the United States District Court for the Eastern District of Missouri.

Judge Cahill was known for being both compassionate and courteous. However, he frequently challenged the flaws in the judicial system and was critical of Federal sentencing guidelines, which he believed were sometimes inappropriately severe. He served as a role

model for many young lawyers and civil servants.

Judge Cahill died peacefully in 2004. Due to his lifetime of judicial excellence, it is both fitting and just that the park area located at the Thomas Eagleton U.S. Courthouse be designated in his honor.

I urge my colleagues to join me in supporting H.R. 1556.

Ms. CORRINE BROWN of Florida. I yield back the balance of my time, Mr. Speaker.

Mr. SHUSTER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. SHUSTER) that the House suspend the rules and pass the bill, H.R. 1556.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

KIKA DE LA GARZA FEDERAL BUILDING

Mr. SHUSTER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2322) to designate the Federal building located at 320 North Main Street in McAllen, Texas, as the ''Kika de la Garza Federal Building''.

The Clerk read as follows:

H.R. 2322

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

SECTION 1. DESIGNATION.

The Federal building located at 320 North Main Street in McAllen, Texas, shall be known and designated as the ''Kika de la Garza Federal Building''.

SEC. 2. REFERENCES.

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building referred to in section 1 shall be deemed to be a reference to the ''Kika de la Garza Federal Building''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Pennsylvania (Mr. SHUSTER) and the gentlewoman from Florida (Ms. CORRINE BROWN) each will control 20 minutes.

The Chair recognizes the gentleman from Pennsylvania.

Mr. SHUSTER. Mr. Speaker, I yield myself such time as I may consume.

H.R. 2322, introduced by Representative LLOYD DOGGETT, designates the Federal building located in McAllen, Texas, as the Kika de la Garza Federal Building. The bill honors former Congressman Kika de la Garza from Texas, who served in the U.S. House of Representatives for 32 years.

Congressman de la Garza started his career of civil service early when he enlisted in the U.S. Navy at age 17. After his military service, he earned a law degree from St. Mary's University in San Antonio. Following law school, he was elected to the Texas House of Representatives, where he served for six consecutive terms. Representative de la Garza was elected in 1964 to the U.S. House of Representatives.

During his 32 years of service in Washington, de la Garza accomplished countless goals and participated in a number of historic events, including the creation of the Congressional Hispanic Caucus.

This bill is a fitting tribute to former Representative de la Garza. I support this legislation, and encourage my colleagues to do the same.

Mr. Speaker, I reserve the balance of my time.

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield myself such time as I may consume.

H.R. 2322 is a bill to designate the Federal building located at 320 North Main Street in McAllen, Texas as the Kika de la Garza Federal Building. This bill has bipartisan support, and I commend Mr. DOGGETT for his constant and dogged support of this bill.

Kika, as he is known by everyone, came to the United States Congress in 1964 and served the people of Texas for over 30 years. He was the first Hispanic American to become chairman of a standing committee and served as chairman of the Agricultural Committee from 1981 to 1994. He was an outspoken advocate for U.S. agriculture and for programs to protect and improve the farm and rural economy.

Chairman de la Garza led the effort to enact landmark legislation such as the Federal Crop Insurance Reform and the Department of Agriculture Reorganization Act of 1994, which established a federally fund catastrophic risk coverage policy for crop losses.

In 1990, he helped pass the Food, Agriculture, Conservation and Trade Act of 1990, which reformed export assistance programs and established new initiatives to strengthen environmental protection of agricultural lands.

□ 2230

He is a World War II veteran and received his law degree from St. Mary's University in San Antonio, Texas.

It is fitting and proper to honor the long and distinguished career of Congressman de la Garza by designating the Federal building located in McAllen, Texas, in his honor. I support H.R. 2322, and urge my colleagues to support this bill.

Mr. Speaker, I yield such time as he may consume to the gentleman from Texas (Mr. DOGGETT), the bill's sponsor.

Mr. DOGGETT. Mr. Speaker, I thank both of my colleagues for their leadership on this matter, and I am pleased to honor Congressman Kika de la Garza as he has honored south Texas and America by his extended public service.

This particular building is located around the corner from where Kika de la Garza began his career practicing law in McAllen and also around the corner from the district office that I have had the honor to maintain this past 2 years in the city of McAllen.

Kika began humbly and poorly, poor in economic terms but rich in talent. His first job was shining shoes, and he rose from that to making laws in the State House and later here in the United States Congress. But as far as he traveled and as important a position as he held here in Washington, he never stopped treating all of his constituents as if each one were the most important.

Kika still remembers an episode from his early days as a lawyer when he loaned one of his clients a shirt to keep warm in a cold courthouse. Throughout his tenure in Congress, Congressman de la Garza never forgot where he came from. It was my pleasure to share one term with him when I was first elected to my term that began in 1995.

At a time when many this year look at the Rio Grande Valley and talk about building walls, Congressman de la Garza believed in building bridges, literally and figuratively. He worked to improve relations and trade between the United States and Mexico throughout his career. He promoted dialogue between Members of Congress and our counterparts in Mexico. He led efforts to create modern border crossings across the Texas-Mexico border and bridges that are now vital links in commerce throughout this hemisphere.

His hard work earned him many honors here, many things named for him in the Rio Grande Valley, but also the Order of Aztec Eagle, the highest honor that the country of Mexico can bestow on a noncitizen.

Kika de la Garza is best known for his work here on agriculture, particularly his extended service as Chair of the House Agriculture Committee. He was the first Hispanic since 1917 to chair a standing committee in the United States House of Representatives; and no other chairman has ever done so much to advance the concerns of the small farmer, the family farmer, as Chairman de la Garza.

When you ask him of his proudest accomplishments, he points to the farm bills that he shepherded through this Congress. He particularly remembers his first farm bill as chairman. He gave a speech in this very room that won him a standing ovation, but it was his last-minute persuasion of a colleague from the other side of the aisle that passed the bill by a single vote. Chairman de la Garza knew for the farmer in the field results count far more than rhetoric.

Even though he has retired from this Congress, Kika de la Garza has not retired from public life. In fact, we still call him ''Mr. Chairman'' in the valley because he is the Democratic precinct chairman of Precinct 62 in McAllen. Although he has moved along in years, he has maintained the same interest in service that he always has had from his origin in the valley.

When you ask him about his most recent political office, he quotes back Tip O'Neill's famous axiom that ''all politics is local.'' From humble beginnings in the local community, Kika de

la Garza has returned home but maintains a legacy that is international in scope.

I want also to commend Lucille de la Garza, who clearly has been his partner and continues to be his partner. She served with him through the legislature, the Congress and now in McAllen. Kika and Lucille have devoted their lives together to enhance the quality of life for all citizens of the valley.

That devotion is also reflected in a great family. George is a cardiovascular surgeon who still practices in the valley. Michael is a retired Lieutenant Commander in the Navy who defended our country on the high seas from the Pacific to the Persian Gulf. Angela is a special education teacher at Tobias Elementary School in Kyle, working to pass along the world of opportunities that come with a strong public education.

Kika de la Garza is an example to all of us of a true gentleman and public servant who brought honor to this Congress through civility, respect and commitment to doing what is right. He will serve as an appropriate role model for the lawyers and public servants who enter into that courthouse, that Federal building named after him in McAllen, Texas.

His lifetime dedication to public service has been a gift to our community. Today's tribute is richly deserved, and I thank my colleagues for helping to secure the approval of this legislation.

Mr. OBERSTAR. Mr. Speaker, I rise in support of H.R. 2322, a bill to designate the Federal building located at 320 North Main Street in McAllen, Texas, as the E. ''Kika'' de la Garza Federal Building.

E. Kika de la Garza's long and productive career spanned 30 years of public service to his constituents in Texas. He was elected to the Texas House of Representatives in 1953. In 1964, Kika was elected to Congress and served 16 years.

Congressman de la Garza was the first Hispanic American to become Chairman of a standing committee, the Committee on Agriculture. In the 103rd Congress, Kika led the initiative to enact legislation to revamp and streamline the U.S. Department of Agriculture.

He also became one of the founding Members of the Congressional Hispanic Caucus, which he chaired from 1989–1991. His numerous legislative accomplishments included creating the Texas Water Commission and the Reagan/de la Garza coastal wetlands. He was also a driving force behind legislation creating the Nation's first state-run system of English language instruction for pre-school age children.

Kika de la Garza was one of Congress' leading experts on U.S.-Mexican relations and worked to improve relations between the two countries. He served as Chairman of the Mexican-U.S. Interparliamentary Group, which promotes dialogue between the two countries.

In Congress, Kika was known, on both sides of the aisle, as a gentleman who fostered cooperation and bipartisanship. He was devoted to his constituents and their needs.

Mr. Speaker, I urge my colleagues to join me in supporting H.R. 2322.

Ms. JACKSON-LEE of Texas. I appreciate this opportunity to express my strong support for H.R. 2322, which designates the Federal building located at 320 North Main Street in McAllen, Texas, as the ''Kika de la Garza Federal Building.'' This honor is well-deserved recognition to the former Chairman of the House Agriculture Committee, co-founder of the Congressional Hispanic Caucus, and one of the most beloved members to have served in this House with distinction for more than thirty years.

Elected in 1964 to the U.S. House of Representatives from Texas' 15th District, Kika de la Garza served the people of the Rio Grande Valley and the nation for 16 terms before retiring in 1996. He was one of the first Hispanics elected to Congress and the first to chair the Committee on Agriculture.

Born Eligio de la Garza in Mercedes, Hidalgo County, Texas on September 22, 1927, ''Kika'' de la Garza grew up in Mission where he attended Our Lady of Guadalupe Catholic School and Mission High School. At age 17, he enlisted in the U.S. Navy and served until 1946. He continued his education at Edinburg Junior College and the U.S. Army Artillery School at Fort Sill, Oklahoma. De la Garza served in the Korean conflict as a second lieutenant with the Army's Thirty-seventh Division Artillery. In 1952, he earned a law degree from St. Mary's University in San Antonio (where he was later awarded an honorary Doctor of Laws degree). That same year he was elected to the Texas House of Representatives, where he served for 12 years until his election in 1964 to the U.S. House of Representatives.

As a member of the Texas House of Representatives, Kika de la Garza had numerous legislative accomplishments, including the absorption of Pan American University into the University of Texas system, the creation of the Texas Water Commission, and the establishment of the Reagan/de la Garza coastal wetlands. He was the driving force behind legislation creating the nation's first state-run system of English language instruction for pre-school age children. He also sponsored a bill allowing Texas' border cities and counties to build their own international bridges.

Because he hailed from a district with a large agricultural base, de la Garza joined the House Committee on Agriculture. In 1967 he served as Chairman of the Subcommittee on Department Operations and Foreign Agriculture. From 1981 to 1994, he chaired the Committee on Agriculture, becoming the first Hispanic since 191 7 (when Ladislas Lazaro chaired the Enrolled Bills Committee) to chair a standing committee in the U.S. House of Representatives.

During his tenure as Agriculture Chairman, Representative de la Garza successfully led the way for the House to pass three omnibus farm bills (1981, 1985, and 1990), a major overhaul of the agricultural lending system, federal crop insurance reform, a major reorganization of the USDA, reforms in federal pesticide laws, and numerous other measures relating to agriculture, rural economic development, and nutrition.

During Kika de la Garza's 13 years of leadership as Chairman of the Agriculture Committee, major agricultural legislation was enacted, including the Agriculture and Food Act of 1981; the Temporary Emergency Food Assistance Act of 1983, which authorized distribution of government- owned surplus commodities to indigent persons; and the Food Security Act, which included provisions to shift the direction of farm programs to more market-oriented levels, strengthened export programs, and created a conservation reserve targeted at highly erosive croplands. His Agricultural Credit Act of 1987 revised credit assistance programs, restructured the Farm Credit System, and facilitated creation of a secondary market for agricultural loans. In 1988 and 1989, he managed to passage the Disaster Assistance Acts to provide assistance to farmers and ranchers who lost crop production due to drought and other natural disasters that occurred during this period.

A strong supporter of civil rights safeguard for minorities, de la Garza has successfully fought for improved access to health care for the elderly and veterans, better living conditions for low-income individuals and the impoverished, and access to educational opportunities for all Americans.

An influential proponent of free trade, de la Garza also was instrumental in the passage of both the North American Free Trade Agreement (NAFTA) and the expansion of the General Agreement on Tariffs and Trade (GATT).

One of Congress' leading experts on U.S.-Mexican relations, de la Garza worked to improve relations and trade between the two countries throughout his congressional career. In 1966, he became the first congressman from the Texas-Mexico border area to serve on the Mexico-United States Inter-Parliamentary Group, which promotes dialogue between legislators from the two countries.

All in all, Kika de la Garza gave remarkable service to the people of Texas, the United States, and this chamber. He was a great congressmen and great American.

For these reasons, I strongly support H.R. 2322, which gives well-deserved and long overdue recognition to this great American and former member of this House.

Mr. HINOJOSA. Mr. Speaker, I rise today in support of H.R. 2322 which would designate the Federal building at 320 North Main Street in McAllen, Texas as the ''Kika de la Garza Federal Building.'' I want to thank my colleague, Congressman LLOYD DOGGETT for his efforts in bringing this measure forward.

I am proud to represent the district that was held for over 32 years by my friend Kika de la Garza. Congressman de la Garza had a distinguished career in public service first as a state legislator then as a Member of Congress.

As a state legislator, he created the Nation's first state-run system of English language instruction for pre-school children. As a Member of Congress, he was instrumental in protecting rural and agriculture communities through his work as Chairman of the House Agriculture Committee. Kika was also a founding member of the Congressional Hispanic Caucus and worked to improve the quality of life for Hispanic Americans. As an expert on U.S.-Mexican relations he worked to build bridges between Mexico and the U.S., not walls.

After such a lifetime of service, it is very fitting that the Federal building in McAllen is being named after such great Texan and a great American. I urge my colleague to support this resolution.

Ms. CORRINE BROWN of Florida. Mr. Speaker, I yield back the balance of my time.

Mr. SHUSTER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania (Mr. SHUSTER) that the House suspend the rules and pass the bill, H.R. 2322.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SHUSTER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous materials on H.R. 4981, as amended; H.R. 6051, as amended, H.R. 1556; H.R. 5546, as amended; H.R. 5606; H.R. 5026; and H.R. 2322.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

MARINE DEBRIS RESEARCH, PREVENTION, AND REDUCTION ACT

Mr. GILCHREST. Mr. Speaker, I move to suspend the rules and pass the Senate bill (S. 362) to establish a program within the National Oceanic and Atmospheric Administration and the United States Coast Guard to help identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on marine environment and navigation safety, in coordination with non-Federal entities, and for other purposes, as amended.

The Clerk read as follows:

S. 362

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Marine Debris Research, Prevention, and Reduction Act''.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to help identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety;

(2) to reactivate the Interagency Marine Debris Coordinating Committee; and

(3) to develop a Federal marine debris information clearinghouse.

SEC. 3. NOAA MARINE DEBRIS PREVENTION AND REMOVAL PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—There is established, within the National Oceanic and Atmospheric Administration, a Marine Debris Prevention and Removal Program to reduce and prevent the occurrence and adverse impacts of marine debris on the marine environment and navigation safety.

(b) PROGRAM COMPONENTS.—The Administrator, acting through the Program and subject to the availability of appropriations, shall carry out the following activities:

(1) MAPPING, IDENTIFICATION, IMPACT ASSESSMENT, REMOVAL, AND PREVENTION.—The Administrator shall, in consultation with relevant Federal agencies, undertake marine debris mapping, identification, impact assessment, prevention, and removal efforts, with a focus on marine debris posing a threat to living marine resources and navigation safety, including—

(A) the establishment of a process, building on existing information sources maintained by Federal agencies such as the Environmental Protection Agency and the Coast Guard, for cataloguing and maintaining an inventory of marine debris and its impacts found in the navigable waters of the United States and the United States exclusive economic zone, including location, material, size, age, and origin, and impacts on habitat, living marine resources, human health, and navigation safety;

(B) measures to identify the origin, location, and projected movement of marine debris within United States navigable waters, the United States exclusive economic zone, and the high seas, including the use of oceanographic, atmospheric, satellite, and remote sensing data; and

(C) development and implementation of strategies, methods, priorities, and a plan for preventing and removing marine debris from United States navigable waters and within the United States exclusive economic zone, including development of local or regional protocols for removal of derelict fishing gear and other marine debris.

(2) REDUCING AND PREVENTING LOSS OF GEAR.—The Administrator shall improve efforts to reduce adverse impacts of lost and discarded fishing gear on living marine resources and navigation safety, including—

(A) research and development of alternatives to gear posing threats to the marine environment, and methods for marking gear used in specific fisheries to enhance the tracking, recovery, and identification of lost and discarded gear; and

(B) development of effective nonregulatory measures and incentives to cooperatively reduce the volume of lost and discarded fishing gear and to aid in its recovery.

(3) OUTREACH.—The Administrator shall undertake outreach and education of the public and other stakeholders, such as the fishing industry, fishing gear manufacturers, and other marine-dependent industries, and the plastic and waste management industries, on sources of marine debris, threats associated with marine debris and approaches to identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigational safety, including outreach and education activities through public-private initiatives. The Administrator shall coordinate outreach and education activities under this paragraph with any outreach programs conducted under section 2204 of the Marine Plastic Pollution Research and Control Act of 1987 (33 U.S.C. 1915).

(c) GRANTS, COOPERATIVE AGREEMENTS, AND CONTRACTS.—

(1) IN GENERAL.—The Administrator, acting through the Program, shall enter into cooperative agreements and contracts and provide financial assistance in the form of grants for projects to accomplish the purpose set forth in section 2(1).

(2) GRANT COST SHARING REQUIREMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), Federal funds for any grant under this section may not exceed 50 percent of the total cost of such project. For purposes of this subparagraph, the non-Federal share of project costs may be provided by in-kind contributions and other noncash support.

(B) WAIVER.—The Administrator may waive all or part of the matching requirement under subparagraph (A) if the Administrator determines that no reasonable means are available through which applicants can meet the matching requirement and the probable benefit of such project outweighs the public interest in such matching requirement.

(3) AMOUNTS PAID AND SERVICES RENDERED UNDER CONSENT.—

(A) CONSENT DECREES AND ORDERS.—If authorized by the Administrator or the Attorney General, as appropriate, the non-Federal share of the cost of a project carried out under this Act may include money paid pursuant to, or the value of any in-kind service performed under, an administrative order on consent or judicial consent decree that will remove or prevent marine debris.

(B) OTHER DECREES AND ORDERS.—The non-Federal share of the cost of a project carried out under this Act may not include any money paid pursuant to, or the value of any in-kind service performed under, any other administrative order or court order.

(4) ELIGIBILITY.—Any State, local, or tribal government whose activities affect research or regulation of marine debris, and any institution of higher education, nonprofit organization, or commercial organization with expertise in a field related to marine debris, is eligible to submit to the Administrator a marine debris proposal under the grant program.

(5) GRANT CRITERIA AND GUIDELINES.—Within 180 days after the date of the enactment of this Act, the Administrator shall promulgate necessary guidelines for implementation of the grant program, including development of criteria and priorities for grants. In developing those guidelines, the Administrator shall consult with—

(A) the Interagency Committee;

(B) regional fishery management councils established under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(C) State, regional, and local governmental entities with marine debris experience;

(D) marine-dependent industries; and

(E) nongovernmental organizations involved in marine debris research, prevention, or removal activities.

(6) PROJECT REVIEW AND APPROVAL.—The Administrator shall—

(A) review each marine debris project proposal to determine if it meets the grant criteria and supports the goals of this Act;

(B) after considering any written comments and recommendations based on the review, approve or disapprove the proposal; and

(C) provide notification of that approval or disapproval to the person who submitted the proposal.

(7) PROJECT REPORTING.—Each grantee under this section shall provide periodic reports as required by the Administrator. Each report shall include all information required by the Administrator for evaluating the progress and success in meeting its stated goals, and impact of the grant activities on the marine debris problem.

SEC. 4. COAST GUARD PROGRAM.

(a) STRATEGY.—The Commandant of the Coast Guard, in consultation with the Interagency Committee, shall—

(1) take actions to reduce violations of and improve implementation of MARPOL Annex V and the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.) with respect to the discard of plastics and other garbage from vessels;

(2) take actions to cost-effectively monitor and enforce compliance with MARPOL Annex V and the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.), including through cooperation and coordination with other Federal and State enforcement programs;

(3) take actions to improve compliance with requirements under MARPOL Annex V and section 6 of the Act to Prevent Pollution

from Ships (33 U.S.C. 1905) that all United States ports and terminals maintain and monitor the adequacy of receptacles for the disposal of plastics and other garbage, including through promoting voluntary government-industry partnerships;

(4) develop and implement a plan, in coordination with industry and recreational boaters, to improve ship-board waste management, including recordkeeping, and access to waste reception facilities for ship-board waste;

(5) take actions to improve international cooperation to reduce marine debris; and

(6) establish a voluntary reporting program for commercial vessel operators and recreational boaters to report incidents of damage to vessels and disruption of navigation caused by marine debris, and observed violations of laws and regulations relating to the disposal of plastics and other marine debris.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Commandant of the Coast Guard shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report evaluating the Coast Guard's progress in implementing subsection (a).

(c) EXTERNAL EVALUATION AND RECOMMENDATIONS ON ANNEX V.—

(1) IN GENERAL.—The Commandant of the Coast Guard shall enter into an arrangement with the National Research Council under which the National Research Council shall submit, by not later than 18 months after the date of the enactment of this Act and in consultation with the Commandant and the Interagency Committee, to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a comprehensive report on the effectiveness of international and national measures to prevent and reduce marine debris and its impact.

(2) CONTENTS.—The report required under paragraph (1) shall include—

(A) an evaluation of international and domestic implementation of MARPOL Annex V and the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.) and recommendations of cost-effective actions to improve implementation and compliance with such measures to reduce impacts of marine debris;

(B) recommendation of additional Federal or international actions, including changes to international and domestic law or regulations, needed to further reduce the impacts of marine debris; and

(C) evaluation of the role of floating fish aggregation devices in the generation of marine debris and existing legal mechanisms to reduce impacts of such debris, focusing on impacts in the Western Pacific and Central Pacific regions.

SEC. 5. INTERAGENCY COORDINATION.

(a) INTERAGENCY MARINE DEBRIS COORDINATING COMMITTEE.—Section 2203 of the Marine Plastic Pollution Research and Control Act of 1987 (33 U.S.C. 1914) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) ESTABLISHMENT OF INTERAGENCY MARINE DEBRIS COORDINATING COMMITTEE.—There is established an Interagency Marine Debris Coordinating Committee to coordinate a comprehensive program of marine debris research and activities among Federal agencies, in cooperation and coordination with non-governmental organizations, industry, universities, and research institutions, States, Indian tribes, and other nations, as appropriate.''; and

(2) in subsection (c), by inserting ''public, interagency'' before ''forum''.

(b) DEFINITION OF MARINE DEBRIS.—The Administrator and the Commandant of the Coast Guard, in consultation with the Interagency Committee established under subsection (a), shall jointly develop and promulgate through regulations a definition of the term ''marine debris'' for purposes of this Act.

(c) REPORTS.—

(1) INTERAGENCY REPORT ON MARINE DEBRIS IMPACTS AND STRATEGIES.—

(A) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Interagency Committee, through the chairperson, shall complete and submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure and the Committee on Resources of the House of Representatives a report that—

(i) identifies sources of marine debris;

(ii) the ecological and economic impact of marine debris;

(iii) alternatives for reducing, mitigating, preventing, and controlling the harmful affects of marine debris;

(iv) the social and economic costs and benefits of such alternatives; and

(v) recommendations to reduce marine debris both domestically and internationally.

(B) RECOMMENDATIONS.—The report shall provide strategies and recommendations on—

(i) establishing priority areas for action to address leading problems relating to marine debris;

(ii) developing strategies and approaches to prevent, reduce, remove, and dispose of marine debris, including through private-public partnerships;

(iii) establishing effective and coordinated education and outreach activities; and

(iv) ensuring Federal cooperation with, and assistance to, the coastal States (as that term is defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)), Indian tribes, and local governments in the identification, determination of sources, prevention, reduction, management, mitigation, and control of marine debris and its adverse impacts.

(2) ANNUAL PROGRESS REPORTS.—Not later than 3 years after the date of the enactment of this Act, and biennially thereafter, the Interagency Committee, through the chairperson, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure and the Committee on Resources of the House of Representatives a report that evaluates United States and international progress in meeting the purpose of this Act. The report shall include—

(A) the status of implementation of any recommendations and strategies of the Interagency Committee and analysis of their effectiveness;

(B) a summary of the marine debris inventory to be maintained by the National Oceanic and Atmospheric Administration;

(C) a review of the National Oceanic and Atmospheric Administration program authorized by section 3, including projects funded and accomplishments relating to reduction and prevention of marine debris;

(D) a review of Coast Guard programs and accomplishments relating to marine debris removal, including enforcement and compliance with MARPOL requirements; and

(E) estimated Federal and non-Federal funding provided for marine debris and recommendations for priority funding needs.

SEC. 6. FEDERAL INFORMATION CLEARINGHOUSE.

The Administrator, in coordination with the Interagency Committee, shall—

(1) maintain a Federal information clearinghouse on marine debris that will be available to researchers and other interested persons to improve marine debris source identification, data sharing, and monitoring efforts through collaborative research and open sharing of data; and

(2) take the necessary steps to ensure the confidentiality of such information (especially proprietary information), for any information required by the Administrator to be submitted by the fishing industry under this section.

SEC. 7. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the National Oceanic and Atmospheric Administration.

(2) INTERAGENCY COMMITTEE.—The term ''Interagency Committee'' means the Interagency Marine Debris Coordinating Committee established under section 2203 of the Marine Plastic Pollution Research and Control Act of 1987 (33 U.S.C. 1914).

(3) UNITED STATES EXCLUSIVE ECONOMIC ZONE.—The term ''United States exclusive economic zone'' means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as ''eastern special areas'' in article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990.

(4) MARPOL; ANNEX V; CONVENTION.—The terms ''MARPOL'', ''Annex V'', and ''Convention'' have the meaning given those terms under section 2(a) of the Act to Prevent Pollution from Ships (33 U.S.C. 1901(a)).

(5) NAVIGABLE WATERS.—The term ''navigable waters'' means waters of the United States, including the territorial sea.

(6) TERRITORIAL SEA.—The term ''territorial sea'' means the waters of the United States referred to in Presidential Proclamation No. 5928, dated December 27, 1988.

(7) PROGRAM.—The term ''Program'' means the Marine Debris Prevention and Removal Program established under section 3.

(8) STATE.—The term ''State'' means—

(A) any State of the United States that is impacted by marine debris within its seaward or Great Lakes boundaries;

(B) the District of Columbia;

(C) American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands; and

(D) any other territory or possession of the United States, or separate sovereign in free association with the United States, that is impacted by marine debris within its seaward boundaries.

SEC. 8. RELATIONSHIP TO OUTER CONTINENTAL SHELF LANDS ACT.

Nothing in this Act supersedes, or limits the authority of the Secretary of the Interior under, the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.).

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each fiscal year 2006 through 2010—

(1) to the Administrator for carrying out sections 3 and 6, $10,000,000, of which no more than 10 percent may be for administrative costs; and

(2) to the Secretary of the Department in which the Coast Guard is operating, for the use of the Commandant of the Coast Guard in carrying out section 4, $2,000,000, of which no more than 10 percent may be used for administrative costs.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Maryland (Mr. GILCHREST) and the gentleman from California (Mr. FILNER) each will control 20 minutes.

The Chair recognizes the gentleman from Maryland.

GENERAL LEAVE

Mr. GILCHREST. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material on S. 362.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Maryland?

There was no objection.

Mr. GILCHREST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, S. 362, the Marine Debris Research, Prevention and Reduction Act, was introduced by Senator INOUYE of Hawaii and was passed by unanimous consent in the Senate in July last year.

The bill would enhance the Federal Government's capabilities to remove and prevent the creation of marine debris that is derived from ocean-based activities. Marine debris degrades very slowly, is highly buoyant and can be carried thousands of miles by ocean currents. Marine debris poses significant entanglement threats to many marine organisms, including fish, crabs, birds and marine mammals and can have serious consequences on human health.

The bill would require the establishment of a Marine Debris Prevention and Removal Program with the National Oceanic and Atmospheric Administration to coordinate that agency's existing activities and requirements to reduce the impact of marine debris on the environment and navigation safety.

The bill also would require the Coast Guard to implement measures to improve compliance and enforcement of laws and international agreements regarding the discard of plastics and garbage from vessels.

The bill also amends current law to reactivate the Interagency Marine Debris Coordinating Committee, rather than establish a new interagency forum, as was proposed in the Senate-passed bill.

The bill before us today is the result of extensive consultation between the Committee on Transportation and Infrastructure and the Committee on Resources. The bill has strong bipartisan support, and I expect the Senate to act quickly to send this legislation to the President.

S. 362 will significantly improve the Federal Government's programs to prevent and remove marine debris without creating unnecessary, duplicative programs.

I urge my colleagues to support the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. FILNER. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from New Jersey (Mr. PALLONE), the great defender of our Nation's coastlines.

Mr. PALLONE. Mr. Speaker, I thank my colleague from California for those very nice remarks.

Mr. Speaker, I rise in support of S. 362, legislation that will address the serious and overlooked problem of marine debris along our Nation's shores and beaches.

Marine debris remains a huge issue in my home State of New Jersey. It was not too long ago that the New York Bight, a 19,000-square-mile area off the coast of New Jersey and New York, was known infamously as the ''ocean dumping capital of the world.''

It has taken years of work to clean up our oceans and our beaches, and S. 362 will help ensure that we never go back to where we were.

I applaud my colleagues on the Transportation and Infrastructure Committee, especially the chairman, DON YOUNG, and the ranking member, JIM OBERSTAR, and Resources Committee chairman, RICHARD POMBO, and the ranking member, NICK RAHALL, for their support in clearing this important legislation for the floor. And I also thank my colleague from San Diego and my colleague, the chairman of our Subcommittee on Resources from Maryland, for helping clear this important legislation.

Mr. Speaker, I introduced the House companion version of this bill, H.R. 3692, not only because marine debris is bad for human health and the environment but also because it can be incredibly harmful to our tourism economy in New Jersey and across the country.

By building on the recommendations of the U.S. Commission on Ocean Policy, S. 362 will provide additional coordination to prevent and reduce marine debris through the establishment of an interagency coordinating committee. The bill will also strengthen and enhance specific program activities carried out by NOAA and the U.S. Coast Guard.

This legislation will provide additional grant resources to reduce the volume of marine debris, track the origination and subsequent dispersal of this trash, and stimulate new education strategies to build public awareness of the problem. Marine debris is an issue that we ignore at our own peril, and I urge adoption of this legislation to finally establish an effective and coordinated Federal response to the problem.

Mr. FILNER. Mr. Speaker, I think everything has been said, and I urge support for the bill.

Mr. Speaker, I rise today in strong support of S. 362, the Marine Debris Research, Prevention, and Reduction Act.

America's beaches are littered with garbage washed ashore. At a time when more and more people are enjoying being outdoors, we're finding more debris on our coasts that can pose a serious threat to beachgoers, boaters, and divers.

Congress has already passed many laws that attempt to address this issue including the Clean Water Act, the Act to Prevent Pollution from Ships, the Ocean Dumping Act, the Driftnet Impact Monitoring, Assessment, and Control Act, and the Marine Plastic Pollution Research and Control Act. Yet the problem persists.

S. 362 attempts to address these issues by having the National Oceanic and Atmospheric Administration (NOAA) undertake various initiatives to reduce and prevent the use and adverse impact of debris on the marine environment including—

Assessing the impact of marine debris found in the navigable waters of the United States and our 200-mile Exclusive Economic Zone.

Mapping and removing marine debris from our coastal waters.

Requiring measures to prevent the loss of fishing gear that can kill fish and marine mammals for years after they are lost from a ship.

Establishing outreach and education programs to help those that live on and along our waters to understand the impact of marine debris on our environment.

Under this legislation, the Coast Guard is required to enforce existing laws and treaties related to marine pollution and to develop new regulations on the disposal of plastics and fishing gear.

Plastic and other materials that are not biodegradable threaten the health of our oceans. Therefore, we must find a way to make sure they don't get into the water in the first place. As someone who represents a coastal district, I look forward to the day when I can walk down the beach without seeing it polluted by marine debris that has washed ashore.

Mr. Speaker, I would like to thank Chairman YOUNG, Chairman LOBIONDO and Ranking Member OBERSTAR for the bipartisan approach that they took to develop this legislation. This legislation is another step forward in protecting the world's oceans from marine debris.

Mr. Speaker, I yield back the balance of my time.

Mr. GILCHREST. Mr. Speaker, I want to thank my colleagues on the other side of the aisle, especially the gentleman from New Jersey (Mr. PALLONE) for his work on this issue.

To use another term, marine debris is trash and garbage which is massively discharged into our oceans. Some of it is degraded within a few days, others will last for hundreds if not thousands of years.

As Mr. PALLONE mentioned, the Ocean Commission dedicates an entire chapter to the problems of marine debris. This legislation, with the help of the staff on the Transportation Committee and the Resources Committee, will go a long way to solve this problem.

Mr. Speaker, I urge an ''aye'' vote on the legislation.

Mr. OBERSTAR. Mr. Speaker, I rise today in strong support of S. 362, the Marine Debris Research, Prevention, and Reduction Act. This bill has been developed in a very bipartisan manner.

The purpose of this legislation is to help fill in the gaps between existing maritime pollution laws such as the Act to Prevent Pollution from Ships. Our oceans are becoming the garbage pit for the world. Each year, tons of marine debris, such as plastics and garbage from vessels, is discarded into the oceans. It's killing the animals in our oceans and with it the oceans themselves.

The coastlines of islands in the middle of the Pacific Ocean are littered with debris that washes up including massive fishing nets that are lost each year.

S. 362, introduced by Senator INOUYE, will help address these problems. This legislation requires the Administrator of the National Oceanic and Atmospheric Administration to map debris fields, to assess the impact of this debris on the living marine resources and navigational safety, and to develop strategies to prevent and remove marine debris from the navigable waters of the United States and our 200-mile exclusive economic zone.

S. 362 also requires the Commandant of the Coast Guard to take actions to reduce violations of and improve implementation of MARPOL Annex V and the Act to Prevent Pollution from Ships. Under the bill, the Coast Guard will also have to develop and implement a plan to improve ship-board waste management and to make sure that U.S. ports and terminals maintain and monitor the adequacy of receptacles for the disposal of plastics and other garbage that are brought into our ports each year on ships.

The oceans are our lifelines. We cannot let human activity kill them. S. 362 will help to prevent thousands of tons of debris from entering the ocean each year from vessels.

I urge my colleagues to join me in supporting S. 362, the Marine Debris Research, Prevention, and Reduction Act.

Mr. POMBO. Mr. Speaker, I rise in support of S. 362, the Marine Debris Research, Prevention and Reduction Act.

S. 362 is an important piece of environmental legislation. People in the U.S. and world-wide generate a lot of trash. While every effort is made to ensure the trash is sent to the appropriate place, improperly used trash receptacles, storm runoff, and outright littering send trash into rivers and oceans daily. All of this loose trash becomes marine debris. In return this marine debris has become a pervasive threat in our world's oceans adversely harming marine animals and their habitat.

S. 362 follows up on recommendations made by the U.S. Commission on Ocean Policy which called for action to reduce marine debris. Most importantly it would help identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety. It would re-establish the Interagency Marine Debris Coordinating Committee to help ensure a coordinated government response across Federal agencies. In addition, it would also develop a Federal information clearing house to enable researchers to study the sources, scale and impact of marine debris more efficiently.

S. 362 is an important step in reducing, and hopefully some day eliminating, marine debris from our ocean environment. S. 362 is a good bill and should receive the support of Members and pass the House today.

Mr. GILCHREST. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Maryland (Mr. GILCHREST) that the House suspend the rules and pass the Senate bill, S. 362, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

STEVENS-INOUYE INTERNATIONAL FISHERIES MONITORING AND COMPLIANCE LEGACY ACT OF 2006

Mr. PEARCE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5946) to amend Magnuson-Stevens Fishery Conservation and Management Act to authorize activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5946

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Stevens-Inouye International Fisheries Monitoring and Compliance Legacy Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Amendment of Magnuson-Stevens Fishery Conservation and Management Act.

TITLE I—INTERNATIONAL FISHERIES MONITORING AND COMPLIANCE

Sec. 101. International fisheries monitoring and compliance.
Sec. 102. Finding with respect to illegal, unreported, and unregulated fishing.
Sec. 103. Action to end illegal, unreported, or unregulated fishing and reduce bycatch of protected marine species.
Sec. 104. Monitoring of Pacific Insular Area fisheries.
Sec. 105. Reauthorization of Atlantic Tunas Convention Act.
Sec. 106. International overfishing and domestic equity.
Sec. 107. United States catch history.
Sec. 108. Secretarial representative for international fisheries.

TITLE II—IMPLEMENTATION OF WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION

Sec. 201. Short title.
Sec. 202. Definitions.
Sec. 203. Appointment of United States Commissioners.
Sec. 204. Authority and responsibility of the Secretary of State.
Sec. 205. Rulemaking authority of the Secretary of Commerce.
Sec. 206. Enforcement.
Sec. 207. Prohibited acts.
Sec. 208. Cooperation in carrying out Convention.
Sec. 209. Territorial participation.
Sec. 210. Exclusive Economic Zone notification.
Sec. 211. Authorization of appropriations.

TITLE III—PACIFIC WHITING

Sec. 301. Short title.
Sec. 302. Definitions.
Sec. 303. United States representation on joint management committee.
Sec. 304. United States representation on the scientific review group.
Sec. 305. United States representation on joint technical committee.
Sec. 306. United States representation on advisory Panel.
Sec. 307. Responsibilities of the Secretary.
Sec. 308. Rulemaking.
Sec. 309. Administrative matters.
Sec. 310. Enforcement.
Sec. 311. Authorization of appropriations.

SEC. 2. AMENDMENT OF MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

TITLE I—INTERNATIONAL FISHERIES MONITORING AND COMPLIANCE

SEC. 101. INTERNATIONAL FISHERIES MONITORING AND COMPLIANCE.

(a) IN GENERAL.—Title II (16 U.S.C. 1821 et seq.) is amended by adding at the end the following:

''SEC. 207. INTERNATIONAL FISHERIES MONITORING AND COMPLIANCE.

''(a) IN GENERAL.—The Secretary may undertake activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and to implement the requirements of this title.

''(b) SPECIFIC AUTHORITIES.—In carrying out subsection (a), the Secretary may—

''(1) share information on harvesting and processing capacity and illegal, unreported and unregulated fishing on the high seas, in areas covered by international fishery management agreements, and by vessels of other nations within the United States exclusive economic zone, with relevant law enforcement organizations of foreign nations and relevant international organizations;

''(2) further develop real time information sharing capabilities, particularly on harvesting and processing capacity and illegal, unreported and unregulated fishing;

''(3) participate in global and regional efforts to build an international network for monitoring, control, and surveillance of high seas fishing and fishing under regional or global agreements;

''(4) support efforts to create an international registry or database of fishing vessels, including by building on or enhancing registries developed by international fishery management organizations;

''(5) enhance enforcement capabilities through the application of commercial or governmental remote sensing technology to locate or identify vessels engaged in illegal, unreported, or unregulated fishing on the high seas, including encroachments into the exclusive economic zone by fishing vessels of other nations;

''(6) provide technical or other assistance to developing countries to improve their monitoring, control, and surveillance capabilities; and

''(7) support coordinated international efforts to ensure that all large-scale fishing vessels operating on the high seas are required by their flag State to be fitted with vessel monitoring systems no later than December 31, 2008, or earlier if so decided by the relevant flag State or any relevant international fishery management organization.''.

(b) CLERICAL AMENDMENT.—The table of contents in the first section is amended by inserting after the item relating to section 206 the following:

''Sec. 207. International fisheries monitoring and compliance.''.

SEC. 102. FINDING WITH RESPECT TO ILLEGAL, UNREPORTED, AND UNREGULATED FISHING.

Section 2(a) (16 U.S.C. 1801(a)) is further amended by adding at the end the following:

''(11) International cooperation is necessary to address illegal, unreported, and unregulated fishing and other fishing practices

which may harm the sustainability of living marine resources and disadvantage the United States fishing industry.''.

SEC. 103. ACTION TO END ILLEGAL, UNREPORTED, OR UNREGULATED FISHING AND REDUCE BYCATCH OF PROTECTED MARINE SPECIES.

(a) IN GENERAL.—Title VI of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826d et seq.), is amended by adding at the end the following:

''SEC. 607. BIENNIAL REPORT ON INTERNATIONAL COMPLIANCE.

''The Secretary, in consultation with the Secretary of State, shall provide to Congress, by not later than 2 years after the date of enactment of the Stevens-Inouye International Fisheries Monitoring and Compliance Legacy Act of 2006, and every 2 years thereafter, a report that includes—

''(1) the state of knowledge on the status of international living marine resources shared by the United States or subject to treaties or agreements to which the United States is a party, including a list of all such fish stocks classified as overfished, overexploited, depleted, endangered, or threatened with extinction by any international or other authority charged with management or conservation of living marine resources;

''(2) a list of nations whose vessels have been identified under sections 609(a) or 610(a), including the specific offending activities and any subsequent actions taken pursuant to section 609 or 610;

''(3) a description of efforts taken by nations on those lists to take appropriate corrective action consistent with sections 609 and 610, and an evaluation of the progress of those efforts, including steps taken by the United States to implement those sections and to improve international compliance;

''(4) progress at the international level, consistent with section 608, to strengthen the efforts of international fishery management organizations to end illegal, unreported, or unregulated fishing; and

''(5) steps taken by the Secretary at the international level to seek adoption of international measures comparable to those of the United States to reduce impacts of fishing and other practices on protected living marine resources, if no international agreement to achieve such goal exists, or if the relevant international fishery or conservation organization has failed to implement effective measures to end or reduce the adverse impacts of fishing practices on such species.

''SEC. 608. ACTION TO STRENGTHEN INTERNATIONAL FISHERY MANAGEMENT ORGANIZATIONS.

''The Secretary, in consultation with the Secretary of State, and in cooperation with relevant fishery management councils and any relevant advisory committees, shall take actions to improve the effectiveness of international fishery management organizations in conserving and managing fish stocks under their jurisdiction. These actions shall include—

''(1) urging international fishery management organizations to which the United States is a member—

''(A) to incorporate multilateral market-related measures against member or non-member governments whose vessels engage in illegal, unreported, or unregulated fishing;

''(B) to seek adoption of lists that identify fishing vessels and vessel owners engaged in illegal, unreported, or unregulated fishing that can be shared among all members and other international fishery management organizations;

''(C) to seek international adoption of a centralized vessel monitoring system in order to monitor and document capacity in fleets of all nations involved in fishing in areas under the an international fishery management organization's jurisdiction;

''(D) to increase use of observers and technologies needed to monitor compliance with conservation and management measures established by the organization, including vessel monitoring systems and automatic identification systems; and

''(E) to seek adoption of stronger port state controls in all nations, particularly those nations in whose ports vessels engaged in illegal, unreported, or unregulated fishing land or transship fish;

''(2) urging international fishery management organizations to which the United States is a member, as well as all members of those organizations, to adopt and expand the use of market-related measures to combat illegal, unreported, or unregulated fishing, including—

''(A) import prohibitions, landing restrictions, or other market-based measures needed to enforce compliance with international fishery management organization measures, such as quotas and catch limits;

''(B) import restrictions or other market-based measures to prevent the trade or importation of fish caught by vessels identified multilaterally as engaging in illegal, unreported, or unregulated fishing; and

''(C) catch documentation and certification schemes to improve tracking and identification of catch of vessels engaged in illegal, unreported, or unregulated fishing, including advance transmission of catch documents to ports of entry; and

''(3) urging other nations at the appropriate bilateral, regional, and international levels to take all steps necessary, consistent with international law, to adopt measures and policies that will prevent fish or other living marine resources harvested by vessels engaged in illegal, unreported, or unregulated fishing from being traded or imported into their nation or territories.

''SEC. 609. ILLEGAL, UNREPORTED, OR UNREGULATED FISHING.

''(a) IDENTIFICATION.—The Secretary shall identify, and list in the report under section 607, a nation if fishing vessels of that nation are engaged, or have been engaged at any point during the preceding two years in illegal, unreported, or unregulated fishing; and—

''(1) the relevant international fishery management organization has failed to implement effective measures to end the illegal unreported, or unregulated fishing activity by vessels of that nation or the nation is not a party to, or does not maintain cooperating status with, such organization; or

''(2) where no international fishery management organization exists with a mandate to regulate the fishing activity in question.

''(b) NOTIFICATION.—An identification under subsection (a) or section 610(a) is deemed to be an identification under section 101(b)(1)(A) of the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826a(b)(1)(A)), and the Secretary shall notify the President and that nation of such identification.

''(c) CONSULTATION.—No later than 60 days after submitting a report to Congress under section 607, the Secretary, acting through the Secretary of State, shall—

''(1) notify nations listed in the report of the requirements of this section;

''(2) initiate consultations for the purpose of encouraging such nations to take the appropriate corrective action with respect to the offending activities of their fishing vessels identified in the report; and

''(3) notify any relevant international fishery management organization of the actions taken by the United States under this section.

''(d) IUU CERTIFICATION PROCEDURE.—

''(1) CERTIFICATION.—The Secretary shall establish a procedure, consistent with the provisions of subchapter II of chapter 5 of title 5, United States Code, and including notice and an opportunity for comment by the governments of any nation listed by the Secretary under subsection (a), for determining if that government has taken appropriate corrective action with respect to the offending activities of its fishing vessels identified in the report under section 607. The Secretary shall determine, on the basis of the procedure, and certify to the Congress no later than 90 days after the date on which the Secretary promulgates a final rule containing the procedure, and biennially thereafter in the report under section 607—

''(A) whether the government of each nation identified under subsection (b) has provided documentary evidence that it has taken corrective action with respect to the offending activities of its fishing vessels identified in the report; or

''(B) whether the relevant international fishery management organization has implemented measures that are effective in ending the illegal, unreported, or unregulated fishing activity by vessels of that nation.

''(2) ALTERNATIVE PROCEDURE.—The Secretary may establish a procedure for certification, on a shipment-by-shipment, shipper-by-shipper, or other basis of fish or fish products from a vessel of a harvesting nation not certified under paragraph (1) if the Secretary determines that—

''(A) the vessel has not engaged in illegal, unreported, or unregulated fishing under an international fishery management agreement to which the United States is a party; or

''(B) the vessel is not identified by an international fishery management organization as participating in illegal, unreported, or unregulated fishing activities.

''(3) EFFECT OF CERTIFICATION.—The provisions of section 101(a) and section 101(b)(3) and (4) of this Act (16 U.S.C. 1826a(a), (b)(3), and (b)(4)) (except to the extent that such provisions apply to sport fishing equipment or fish or products thereof not managed under the relevant international fishery agreement (or, where there is no such agreement, not caught by the vessels engaged in illegal, unreported, or unregulated fishing)) shall apply to any nation identified under subsection (a) that has not been certified by the Secretary under this subsection, or for which the Secretary has issued a negative certification under this subsection, but shall not apply to any nation identified under subsection (a) for which the Secretary has issued a positive certification under this subsection.

''(e) ILLEGAL, UNREPORTED, OR UNREGULATED FISHING DEFINED.—

''(1) IN GENERAL.—In this Act the term 'illegal, unreported, or unregulated fishing' has the meaning established under paragraph (2).

''(2) SECRETARY TO DEFINE TERM WITHIN LEGISLATIVE GUIDELINES.—Within 3 months after the date of enactment of the Stevens-Inouye International Fisheries Monitoring and Compliance Legacy Act of 2006, the Secretary shall publish a definition of the term 'illegal, unreported, or unregulated fishing' for purposes of this Act.

''(3) GUIDELINES.—The Secretary shall include in the definition, at a minimum—

''(A) fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements;

''(B) overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; and

''(C) fishing activity that has adverse impacts on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.

''SEC. 610. EQUIVALENT CONSERVATION MEASURES.

''(a) IDENTIFICATION.—The Secretary shall identify, and list in the report under section 607, a nation if—

''(1) fishing vessels of that nation are engaged, or have been engaged during the preceding calendar year, in fishing activities or practices—

''(A) beyond the exclusive economic zone of any nation that result in bycatch of a protected living marine resource; or

''(B) beyond the exclusive economic zone of the United States that result in bycatch of a protected living marine resource shared by the United States;

''(2) the relevant international organization for the conservation and protection of such resources or the relevant international or regional fishery organization has failed to implement effective measures to end or reduce such bycatch, or the nation is not a party to, or does not maintain cooperating status with, such organization; and

''(3) the nation has not adopted a regulatory program governing such fishing practices designed to end or reduce such bycatch that is comparable to that of the United States, taking into account different conditions.

''(b) CONSULTATION AND NEGOTIATION.—The Secretary, acting through the Secretary of State, shall—

''(1) notify, as soon as possible, other nations whose vessels engage in fishing activities or practices described in subsection (a), about the provisions of this section and this Act;

''(2) initiate discussions as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, fishing activities or practices described in subsection (a), for the purpose of entering into bilateral and multilateral treaties with such countries to protect such species;

''(3) seek agreements calling for international restrictions on fishing activities or practices described in subsection (a) through the United Nations, the Food and Agriculture Organization's Committee on Fisheries, and appropriate international fishery management bodies; and

''(4) initiate the amendment of any existing international treaty for the protection and conservation of such species to which the United States is a party in order to make such treaty consistent with the purposes and policies of this section.

''(c) CONSERVATION CERTIFICATION PROCEDURE.—

''(1) CERTIFICATION.—The Secretary shall determine, on the basis of a procedure consistent with the provisions of subchapter II of chapter 5 of title 5, United States Code, and including notice and an opportunity for comment by the governments of any nation identified by the Secretary under subsection (a). The Secretary shall certify to the Congress by January 31, 2007, and biennially thereafter whether the government of each harvesting nation—

''(A) has provided documentary evidence of the adoption of a regulatory program governing the conservation of the protected living marine resource that is comparable to that of the United States, taking into account different conditions, and which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and

''(B) has established a management plan containing requirements that will assist in gathering species-specific data to support international stock assessments and conservation enforcement efforts for protected living marine resources.

''(2) ALTERNATIVE PROCEDURE.—The Secretary shall establish a procedure for certification, on a shipment-by-shipment, shipper-by-shipper, or other basis of fish or fish products from a vessel of a harvesting nation not certified under paragraph (1) if the Secretary determines that such imports were harvested by practices that do not result in bycatch of a protected marine species, or were harvested by practices that—

''(A) are comparable to those of the United States, taking into account different conditions, and which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and

''(B) include the gathering of species specific data that can be used to support international and regional stock assessments and conservation efforts for protected living marine resources.

''(3) EFFECT OF CERTIFICATION.—The provisions of section 101(a) and section 101(b)(3) and (4) of this Act (16 U.S.C. 1826a(a), (b)(3), and (b)(4)) (except to the extent that such provisions apply to sport fishing equipment or fish or fish products not caught by the vessels engaged in illegal, unreported, or unregulated fishing) shall apply to any nation identified under subsection (a) that has not been certified by the Secretary under this subsection, or for which the Secretary has issued a negative certification under this subsection, but shall not apply to any nation identified under subsection (a) for which the Secretary has issued a positive certification under this subsection.

''(d) INTERNATIONAL COOPERATION AND ASSISTANCE.—To the greatest extent possible consistent with existing authority and the availability of funds, the Secretary shall—

''(1) provide appropriate assistance to nations identified by the Secretary under subsection (a) and international organizations of which those nations are members to assist those nations in qualifying for certification under subsection (c);

''(2) undertake, where appropriate, cooperative research activities on species statistics and improved harvesting techniques, with those nations or organizations;

''(3) encourage and facilitate the transfer of appropriate technology to those nations or organizations to assist those nations in qualifying for certification under subsection (c); and

''(4) provide assistance to those nations or organizations in designing and implementing appropriate fish harvesting plans.

''(e) PROTECTED LIVING MARINE RESOURCE DEFINED.—In this section the term 'protected living marine resource'—

''(1) means non-target fish, sea turtles, or marine mammals, that are protected under United States law or international agreement, including the Marine Mammal Protection Act of 1972, the Endangered Species Act of 1973, provisions enacted by the Shark Finning Prohibition Act, and the Convention on International Trade in Endangered Species of Wild Flora and Fauna; but

''(2) does not include species, except sharks, managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or any international fishery management agreement.''.

(b) CONFORMING AMENDMENTS.—

(1) DENIAL OF PORT PRIVILEGES.—Section 101(b) of the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826a(b)) is amended by inserting ''or illegal, unreported, or unregulated fishing'' after ''fishing'' in paragraph (1)(A)(i), paragraph (1)(B), paragraph (2), and paragraph (4)(A)(i).

(2) DURATION OF DENIAL.—Section 102 of the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826b) is amended by inserting ''or illegal, unreported, or unregulated fishing'' after ''fishing''.

SEC. 104. MONITORING OF PACIFIC INSULAR AREA FISHERIES.

(a) WAIVER AUTHORITY.—Section 201(h)(2)(B) (16 U.S.C. 1821(h)(2)(B)) is amended by striking ''that is at least equal in effectiveness to the program established by the Secretary;'' and inserting ''or other monitoring program that the Secretary, in consultation with the Western Pacific Management Council, determines is adequate to monitor harvest, bycatch, and compliance with the laws of the United States by vessels fishing under the agreement;''.

(b) MARINE CONSERVATION PLANS.—Section 204(e)(4)(A)(i) (16 U.S.C. 1824(e)(4)(A)(i)) is amended to read as follows:

''(i) Pacific Insular Area observer programs, or other monitoring programs, that the Secretary determines are adequate to monitor the harvest, bycatch, and compliance with the laws of the United States by foreign fishing vessels that fish under Pacific Insular Area fishing agreements;''.

SEC. 105. REAUTHORIZATION OF ATLANTIC TUNAS CONVENTION ACT.

(a) IN GENERAL.—Section 10 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971h) is amended to read as follows:

''SEC. 10. AUTHORIZATION OF APPROPRIATIONS.

''(a) IN GENERAL.—There are authorized to be appropriated to the Secretary to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in Article X of the Convention $5,495,000 for each of the fiscal years 2007 through 2012.

''(b) ALLOCATION.—Of the amounts made available under subsection (a) for each fiscal year—

''(1) $150,000 are authorized for the advisory committee established under section 4 of this Act and the species working groups established under section 4A of this Act; and

''(2) $4,240,000 are authorized for research activities under this Act and section 3 of Public Law 96–339 (16 U.S.C. 971i), of which $3,000,000 shall be for the cooperative research program under section 3(b)(2)(H) of that section (16 U.S.C. 971i(b)(2)(H).''.

(b) ATLANTIC BILLFISH COOPERATIVE RESEARCH PROGRAM.—Section 3(b)(2) of Public Law 96–339 (16 U.S.C. 971i(b)(2)) is amended—

(1) by striking ''and'' after the semicolon in subparagraph (G);

(2) by redesignating subparagraph (H) as subparagraph (I); and

(3) by inserting after subparagraph (G) the following:

''(H) include a cooperative research program on Atlantic billfish based on the Southeast Fisheries Science Center Atlantic Billfish Research Plan of 2002; and''.

SEC. 106. INTERNATIONAL OVERFISHING AND DOMESTIC EQUITY.

(a) INTERNATIONAL OVERFISHING.—Section 304 (16 U.S.C. 1854) is amended by adding at the end thereof the following:

''(i) INTERNATIONAL OVERFISHING.—The provisions of this subsection shall apply in lieu

of subsection (e) to a fishery that the Secretary determines is overfished or approaching a condition of being overfished due to excessive international fishing pressure, and for which there are no management measures to end overfishing under an international agreement to which the United States is a party. For such fisheries—

''(1) the Secretary, in cooperation with the Secretary of State, immediately take appropriate action at the international level to end the overfishing; and

''(2) within 1 year after the Secretary's determination, the appropriate Council, or Secretary, for fisheries under section 302(a)(3) shall—

''(A) develop recommendations for domestic regulations to address the relative impact of fishing vessels of the United States on the stock and, if developed by a Council, the Council shall submit such recommendations to the Secretary; and

''(B) develop and submit recommendations to the Secretary of State, and to the Congress, for international actions that will end overfishing in the fishery and rebuild the affected stocks, taking into account the relative impact of vessels of other nations and vessels of the United States on the relevant stock.''.

(b) HIGHLY MIGRATORY SPECIES TAGGING RESEARCH.—Section 304(g)(2) (16 U.S.C. 1854(g)(2)) is amended by striking ''(16 U.S.C. 971d)'' and inserting ''(16 U.S.C. 971d), or highly migratory species harvested in a commercial fishery managed by a Council under this Act or the Western and Central Pacific Fisheries Convention Implementation Act,''.

SEC. 107. UNITED STATES CATCH HISTORY.

In establishing catch allocations under international fisheries agreements, the Secretary of Commerce, in consultation with the Secretary of the Department in which the Coast Guard is operating, and the Secretary of State, shall ensure that all catch history in a fishery associated with a vessel of the United States remains with the United States in that fishery, and is not transferred or credited to any other nation or vessel of such nation, including when a vessel of the United States is sold or transferred to a citizen of another nation or to an entity controlled by citizens of another nation.

SEC. 108. SECRETARIAL REPRESENTATIVE FOR INTERNATIONAL FISHERIES.

(a) IN GENERAL.—The Secretary of Commerce, in consultation with the Under Secretary of Commerce for Oceans and Atmosphere, shall designate a Senate-confirmed, senior official within the National Oceanic and Atmospheric Administration to perform the duties of the Secretary with respect to international agreements involving fisheries and other living marine resources, including policy development and representation as a U.S. Commissioner, under any such international agreements.

(b) ADVICE.—The designated official shall, in consultation with the Deputy Assistant Secretary for International Affairs and the Administrator of the National Marine Fisheries Service, advise the Secretary, Undersecretary of Commerce for Oceans and Atmosphere, and other senior officials of the Department of Commerce and the National Oceanic and Atmospheric Administration on development of policy on international fisheries conservation and management matters.

(c) CONSULTATION.—The designated official shall consult with the Senate Committee on Commerce, Science, and Transportation and the House Committee on Resources on matters pertaining to any regional or international negotiation concerning living marine resources, including shellfish, including before initialing any agreement concerning living marine resources or attending any official meeting at which management measures will be discussed, and shall otherwise keep the committees informed throughout the negotiation process.

(d) DELEGATION.—The designated official may delegate and authorize successive redelegation of such functions, powers, and duties to such officers and employees of the National Oceanic and Atmospheric Administration as deemed necessary to discharge the responsibility of the Office.

TITLE II—IMPLEMENTATION OF WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION

SEC. 201. SHORT TITLE.

This title may be cited as the ''Western and Central Pacific Fisheries Convention Implementation Act''.

SEC. 202. DEFINITIONS.

In this title:

(1) 1982 CONVENTION.—The term ''1982 Convention'' means the United Nations Convention on the Law of the Sea of 10 December 1982.

(2) AGREEMENT.—The term ''Agreement'' means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

(3) COMMISSION.—The term ''Commission'' means the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean established in accordance with this Convention.

(4) CONVENTION AREA.—The term ''convention area'' means all waters of the Pacific Ocean bounded to the south and to the east by the following line:

From the south coast of Australia due south along the 141th meridian of east longitude to its intersection with the 55th parallel of south latitude; thence due east along the 55th parallel of south latitude to its intersection with the 150th meridian of east longitude; thence due south along the 150th meridian of east longitude to its intersection with the 60th parallel of south latitude; thence due east along the 60th parallel of south latitude to its intersection with the 130th meridian of west longitude; thence due north along the 130th meridian of west longitude to its intersection with the 4th parallel of south latitude; thence due west along the 4th parallel of south latitude to its intersection with the 150th meridian of west longitude; thence due north along the 150th meridian of west longitude.

(5) EXCLUSIVE ECONOMIC ZONE.—The term ''exclusive economic zone'' means the zone established by Presidential Proclamation Numbered 5030 of March 10, 1983.

(6) FISHING.—The term ''fishing'' means:

(A) searching for, catching, taking, or harvesting fish.

(B) attempting to search for, catch, take, or harvest fish.

(C) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish for any purpose.

(D) placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons.

(E) any operations at sea directly in support of, or in preparation for, any activity described in subparagraphs (A) through (D), including transshipment.

(F) use of any other vessel, vehicle, aircraft, or hovercraft, for any activity described in subparagraphs (A) through (E) except for emergencies involving the health and safety of the crew or the safety of a vessel.

(7) FISHING VESSEL.—The term ''fishing vessel'' means any vessel used or intended for use for the purpose of fishing, including support ships, carrier vessels, and any other vessel directly involved in such fishing operations.

(8) HIGHLY MIGRATORY FISH STOCKS.—The term ''highly migratory fish stocks'' means all fish stocks of the species listed in Annex 1 of the 1982 Convention occurring in the Convention Area, and such other species of fish as the Commission may determine.

(9) SECRETARY.—The term ''Secretary'' means the Secretary of Commerce.

(10) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States.

(11) TRANSHIPMENT.—The term ''transshipment'' means the unloading of all or any of the fish on board a fishing vessel to another fishing vessel either at sea or in port.

(12) WCPCF CONVENTION; WESTERN AND CENTRAL PACIFIC CONVENTION.—The terms ''WCPCF Convention'' and ''Western and Central Pacific Convention'' means the Convention on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, with Annexes, which was adopted at Honolulu, Hawaii, on September 5, 2000, by the Multilateral High Level Conference on the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

SEC. 203. APPOINTMENT OF UNITED STATES COMMISSIONERS.

(a) IN GENERAL.—The United States shall be represented on the Commission by 5 United States Commissioners. The President shall appoint individuals to serve on the Commission at the pleasure of the President. In making the appointments, the President shall select Commissioners from among individuals who are knowledgeable or experienced concerning highly migratory fish stocks in the Western and Central Pacific Ocean, one of whom shall be an officer or employee of the Department of Commerce, and one of whom shall be a member of either the Pacific Fishery Management Council or Western Pacific Fishery Management Council. Each appointment shall coordinate with the other Council to ensure that the jurisdictional concerns of both Councils are addressed. The Commissioners shall be entitled to adopt such rules of procedures as they find necessary and to select a chairman from among members who are officers or employees of the United States Government.

(b) ALTERNATE COMMISSIONERS.—The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the Commission, Council, any Panel, or the advisory committee established pursuant to subsection (d), all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.

(c) ADMINISTRATIVE MATTERS.—

(1) EMPLOYMENT STATUS.—Individuals serving as such Commissioners, other than officers or employees of the United States Government, shall be considered to be Federal employees while performing such service, only for purposes of—

(A) injury compensation under chapter 81 of title 5, United States Code;

(B) tort claims liability as provided under chapter 171 of title 28 United States Code;

(C) requirements concerning ethics, conflicts of interest, and corruption as provided under title 18, United States Code; and

(D) any other criminal or civil statute or regulation governing the conduct of Federal employees.

(2) COMPENSATION.—The United States Commissioners or Alternate Commissioners, although officers of the United States while so serving, shall receive no compensation for their services as such Commissioners or Alternate Commissioners.

(3) TRAVEL EXPENSES.—

(A) The Secretary of State shall pay the necessary travel expenses of United States Commissioners and Alternate United States Commissioners in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(B) The Secretary of Commerce may reimburse the Secretary of State for amounts expended by the Secretary of State under this subsection.

(d) ADVISORY COMMITTEES.—

(1) ESTABLISHMENT OF PERMANENT ADVISORY COMMITTEE.—

(A) MEMBERSHIP.—There is established an advisory committee that shall be composed of—

(i) not less than 15 nor more than 20 individuals appointed by the United States Commissioners appointed under section 203, who shall select such individuals from the various groups concerned with the fisheries covered by the WCPFC Convention, providing, to the maximum extent practicable, an equitable balance among such groups;

(ii) the chairs of the Pacific Fishery Management Council and the Western Pacific Fishery Management Council's fishing industry Advisory Committees or such a chair's designee; and

(iii) officials of the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees).

(B) TERMS AND PRIVILEGES.—Each member of the advisory committee appointed under subparagraph (A) shall serve for a term of 2 years and shall be eligible for reappointment. Members of the advisory committee may attend all public meetings of the Commission, Council, or any Panel to which they are invited by the Commission, Council, or any Panel. The advisory committee shall be invited to attend all non-executive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission.

(C) PROCEDURES.—The advisory committee established by subparagraph (A) shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this chapter, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the WCPFC Convention. The advisory committee shall publish and make available to the public a statement of its organization, practices, and procedures. A majority of the members of the advisory committee shall constitute a quorum. Meetings of the advisory committee, except when in executive session, shall be open to the public, and prior notice of meetings shall be made public in a timely fashion. and the advisory committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(D) PROVISION OF INFORMATION.—The Secretary and the Secretary of State shall furnish the advisory committee with relevant information concerning fisheries and international fishery agreements.

(2) ADMINISTRATIVE MATTERS.—

(A) SUPPORT SERVICES.—The Secretary shall provide to advisory committees in a timely manner such administrative and technical support services as are necessary for their effective functioning.

(B) COMPENSATION; STATUS; EXPENSES.—Individuals appointed to serve as a member of an advisory committee—

(i) shall serve without pay, but while away from their homes or regular places of business in the performance of services for the advisory committee shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code; and

(ii) shall not be considered Federal employees by reason of their service as members of an advisory committee, except for purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 171 of title 28, United States Code.

(e) MEMORANDUM OF UNDERSTANDING.—For highly migratory species in the Pacific, the Secretary, in coordination with the Secretary of State, shall develop a memorandum of understanding with the Western Pacific, Pacific, and North Pacific Fishery Management Councils, that specifies the role of the relevant Council or Councils with respect to—

(1) participation in United States delegations to international fishery organizations in the Pacific Ocean, including government-to-government consultations;

(2) providing formal recommendations to the Secretary and the Secretary of State regarding necessary measures for both domestic and foreign vessels fishing for these species;

(3) coordinating positions with the United States delegation for presentation to the appropriate international fishery organization; and

(4) recommending those domestic fishing regulations that are consistent with the actions of the international fishery organization, for approval and implementation under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)

SEC. 204. AUTHORITY AND RESPONSIBILITY OF THE SECRETARY OF STATE.

The Secretary of State may—

(1) receive and transmit, on behalf of the United States, reports, requests, recommendations, proposals, decisions, and other communications of and to the Commission;

(2) in consultation with the Secretary of Commerce and the United States Commissioners, approve, disapprove, object to, or withdraw objections to bylaws and rules, or amendments thereof, adopted by the WCPFC Commission, and, with the concurrence of the Secretary of Commerce to approve or disapprove the general annual program of the WCPFC Commission with respect to conservation and management measures and other measures proposed or adopted in accordance with the WCPFC Convention; and

(3) act upon, or refer to other appropriate authority, any communication referred to in paragraph (1).

SEC. 205. RULEMAKING AUTHORITY OF THE SECRETARY OF COMMERCE.

(a) PROMULGATION OF REGULATIONS.—The Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the department in which the Coast Guard is operating, is authorized to promulgate such regulations as may be necessary to carry out the United States international obligations under the WCPFC Convention and this title, including recommendations and decisions adopted by the Commission. In cases where the Secretary of Commerce has discretion in the implementation of one or more measures adopted by the Commission that would govern fisheries under the authority of a Regional Fishery Management Council, the Secretary may, to the extent practicable within the implementation schedule of the WCPFC Convention and any recommendations and decisions adopted by the Commission, promulgate such regulations in accordance with the procedures established by the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(b) ADDITIONS TO FISHERY REGIMES AND REGULATIONS.—The Secretary of Commerce may promulgate regulations under this title applicable to all vessels and persons subject to the jurisdiction of the United States, including United States flag vessels wherever they may be operating, on such date as the Secretary shall prescribe.

SEC. 206. ENFORCEMENT.

(a) IN GENERAL.—The Secretary of Commerce may—

(1) administer and enforce this title and any regulations issued under this title, except to the extent otherwise provided for in this Act;

(2) request and utilize on a reimbursed or non-reimbursed basis the assistance, services, personnel, equipment, and facilities of other Federal departments and agencies in—

(A) the administration and enforcement of this title; and

(B) the conduct of scientific, research, and other programs under this title;

(3) conduct fishing operations and biological experiments for purposes of scientific investigation or other purposes necessary to implement the WCPFC Convention;

(4) collect, utilize, and disclose such information as may be necessary to implement the WCPFC Convention, subject to sections 552 and 552a of title 5, United States Code, and section 402(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1881a(b));

(5) if recommended by the United States Commissioners or proposed by a Council with authority over the relevant fishery, assess and collect fees, not to exceed three percent of the ex-vessel value of fish harvested by vessels of the United States in fisheries managed pursuant to this title, to recover the actual costs to the United States of management and enforcement under this title, which shall be deposited as an offsetting collection in, and credited to, the account providing appropriations to carry out the functions of the Secretary under this title; and

(6) issue permits to owners and operators of United States vessels to fish in the convention area seaward of the United States Exclusive Economic Zone, under such terms and conditions as the Secretary may prescribe, and shall remain valid for a period to be determined by the Secretary.

(b) CONSISTENCY WITH OTHER LAWS.—The Secretary shall ensure the consistency, to the extent practicable, of fishery management programs administered under this Act, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), the Tuna Conventions Act (16 U.S.C. 951 et seq.), the South Pacific Tuna Act (16 U.S.C. 973 et seq.), section 401 of Public Law 108–219 (16 U.S.C. 1821 note) (relating to Pacific albacore tuna), and the Atlantic Tunas Convention Act (16 U.S.C. 971).

(c) ACTIONS BY THE SECRETARY.—The Secretary shall prevent any person from violating this title in the same manner, by the same means, and with the same jurisdiction,

powers, and duties as though all applicable terms and provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857) were incorporated into and made a part of this title. Any person that violates any provision of this title is subject to the penalties and entitled to the privileges and immunities provided in the Magnuson-Stevens Fishery Conservation and Management Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of that Act were incorporated into and made a part of this title.

(d) CONFIDENTIALITY.—

(1) IN GENERAL.—Any information submitted to the Secretary in compliance with any requirement under this Act shall be confidential and shall not be disclosed, except—

(A) to Federal employees who are responsible for administering, implementing, and enforcing this Act;

(B) to the Commission, in accordance with requirements in the Convention and decisions of the Commission, and, insofar as possible, in accordance with an agreement with the Commission that prevents public disclosure of the identity or business of any person;

(C) to State or Marine Fisheries Commission employees pursuant to an agreement with the Secretary that prevents public disclosure of the identity or business or any person;

(D) when required by court order; or

(E) when the Secretary has obtained written authorization from the person submitting such information to release such information to persons for reasons not otherwise provided for in this subsection, and such release does not violate other requirements of this Act.

(2) USE OF INFORMATION.—The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve the confidentiality of information submitted in compliance with any requirement or regulation under this Act, except that the Secretary may release or make public any such information in any aggregate or summary form that does not directly or indirectly disclose the identity or business of any person. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary of any information submitted in compliance with any requirement or regulation under this Act.

SEC. 207. PROHIBITED ACTS.

(a) IN GENERAL.—It is unlawful for any person—

(1) to violate any provision of this title or any regulation or permit issued pursuant to this title;

(2) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, or an applicable permit issued pursuant to this title;

(3) to refuse to permit any officer authorized to enforce the provisions of this title to board a fishing vessel subject to such person's control for the purposes of conducting any search, investigation, or inspection in connection with the enforcement of this title or any regulation, permit, or the Convention;

(4) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, investigations, or inspection in connection with the enforcement of this title or any regulation, permit, or the Convention;

(5) to resist a lawful arrest for any act prohibited by this title;

(6) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this title or any regulation, permit, or agreement referred to in paragraph (1) or (2);

(7) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any chapter prohibited by this section;

(8) to knowingly and willfully submit to the Secretary false information (including false information regarding the capacity and extent to which a United States fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishery vessels of the United States), regarding any matter that the Secretary is considering in the course of carrying out this title;

(9) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer one a vessel under this title, or any data collector employed by the National Marine Fisheries Service or under contract to any person to carry out responsibilities under this title;

(10) to engage in fishing in violation of any regulation adopted pursuant to section 206(a) of this title;

(11) to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken or retained in violation of such regulations;

(12) to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this title to be made, kept, or furnished;

(13) to fail to stop a vessel upon being hailed and instructed to stop by a duly authorized official of the United States;

(14) to import, in violation of any regulation adopted pursuant to section 206(a) of this title, any fish in any form of those species subject to regulation pursuant to a recommendation, resolution, or decision of the Commission, or any tuna in any form not under regulation but under investigation by the Commission, during the period such fish have been denied entry in accordance with the provisions of section 206(a) of this title.

(b) ENTRY CERTIFICATION.—In the case of any fish described in subsection (a) offered for entry into the United States, the Secretary of Commerce shall require proof satisfactory to the Secretary that such fish is not ineligible for such entry under the terms of section 206(a) of this title.

SEC. 208. COOPERATION IN CARRYING OUT CONVENTION.

(a) FEDERAL AND STATE AGENCIES; PRIVATE INSTITUTIONS AND ORGANIZATIONS.—The Secretary of Commerce may cooperate with agencies of the United States government, any public or private institutions or organizations within the United States or abroad, and, through the Secretary of State, the duly authorized officials of the government of any party to the WCPFC Convention, in carrying out responsibilities under this title.

(b) SCIENTIFIC AND OTHER PROGRAMS; FACILITIES AND PERSONNEL.—All Federal agencies are authorized, upon the request of the Secretary of Commerce, to cooperate in the conduct of scientific and other programs and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the WCPFC Convention.

(c) SANCTIONED FISHING OPERATIONS AND FISHERIES EXPERIMENTS.—Nothing in this title, or in the laws or regulations of any State, prevents the Secretary or the Commission from—

(1) conducting or authorizing the conduct of fishing operations and fisheries experiments at any time for purposes of scientific investigation; or

(2) discharging any other duties prescribed by the WCPFC Convention.

(d) STATE JURISDICTION NOT AFFECTED.—Except as provided in subsection (e) of this section, nothing in this title shall be construed to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.

(e) APPLICATION OF REGULATIONS.—

(1) IN GENERAL.—regulations promulgated under section 206(a) of this title shall apply within the boundaries of any State bordering on the Convention area if the Secretary has provided notice to such State, the State does not request an agency hearing, and the Secretary determines that the State—

(A) has not, within a reasonable period of time after the promulgation of regulations pursuant to this title, enacted laws or promulgated regulations that implement the recommendations of the Commission within the boundaries of such State; or

(B) has enacted laws or promulgated regulations that implement the recommendations of the commission within the boundaries of such State that—

(i) are less restrictive that the regulations promulgated under section 206(a) of this title; or

(ii) are not effectively enforced.

(2) DETERMINATION BY SECRETARY.—The regulations promulgated pursuant to section 206(a) of this title shall apply until the Secretary determines that the State is effectively enforcing within its boundaries measures that are not less restrictive than the regulations promulgated under section 206(a) of this title.

(3) HEARING.—If a State requests a formal agency hearing, the Secretary shall not apply the regulations promulgated pursuant section 206(a) of this title within that State's boundaries unless the hearing record supports a determination under paragraph (1)(A) or (B).

(f) REVIEW OF STATE LAWS AND REGULATIONS.—To ensure that the purposes of subsection (e) are carried out, the Secretary of Commerce shall undertake a continuing review of the laws and regulations of all States to which subsection (e) applies or may apply and the extent to which such laws and regulations are enforced.

SEC. 209. TERRITORIAL PARTICIPATION.

The Secretary of State shall ensure participation in the Commission and its subsidiary bodies by American Samoa, Guam, and the Northern Mariana Islands to the same extent provided to the territories of other nations.

SEC. 210. EXCLUSIVE ECONOMIC ZONE NOTIFICATION.

Masters of commercial fishing vessels of nations fishing for species under the management authority of the Western and Central Pacific Fisheries Convention that do not carry vessel monitoring systems capable of communicating with United States enforcement authorities shall, prior to, or as soon as reasonably possible after, entering and transiting the Exclusive Economic Zone seaward of Hawaii and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area—

(1) notify the Coast Guard or the National Marine Fisheries Service Office of Law Enforcement in the appropriate region of the name, flag state, location, route, and destination of the vessel and of the circumstances under which it will enter United States waters;

(2) ensure that all fishing gear on board the vessel is stowed below deck or otherwise removed from the place where it is normally used for fishing and placed where it is not readily available for fishing; and

(3) if requested by an enforcement officer, proceed to a specified location so that a vessel inspection can be conducted.

SEC. 211. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary of Commerce $1,000,000 for each of the fiscal years 2007 through 2012 to carry out this title and to pay the United States' contribution to the Commission under section 5 of part III of the WCPFC Convention.

TITLE III—PACIFIC WHITING

SEC. 301. SHORT TITLE.

This title may be cited as the ''Pacific Whiting Act of 2006''.

SEC. 302. DEFINITIONS.

In this title:

(1) ADVISORY PANEL.—The term ''advisory panel'' means the Advisory Panel on Pacific Hake/Whiting established by the Agreement.

(2) AGREEMENT.—The term ''Agreement'' means the Agreement between the Government of the United States and the Government of Canada on Pacific Hake/Whiting, signed at Seattle, Washington, on November 21, 2003.

(3) CATCH.—The term ''catch'' means all fishery removals from the offshore whiting resource, including landings, discards, and bycatch in other fisheries.

(4) JOINT MANAGEMENT COMMITTEE.—The term ''joint management committee'' means the joint management committee established by the Agreement.

(5) JOINT TECHNICAL COMMITTEE.—The term ''joint technical committee'' means the joint technical committee established by the Agreement.

(6) OFFSHORE WHITING RESOURCE.—The term ''offshore whiting resource'' means the transboundary stock of Merluccius productus that is located in the offshore waters of the United States and Canada except in Puget Sound and the Strait of Georgia.

(7) SCIENTIFIC REVIEW GROUP.—The term ''scientific review group'' means the scientific review group established by the Agreement.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of Commerce.

(9) UNITED STATES SECTION.—The term ''United States Section'' means the United States representatives on the joint management committee.

SEC. 303. UNITED STATES REPRESENTATION ON JOINT MANAGEMENT COMMITTEE.

(a) REPRESENTATIVES.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of State, shall appoint 4 individuals to represent the United States as the United States Section on the joint management committee. In making the appointments, the Secretary shall select representatives from among individuals who are knowledgeable or experienced concerning the offshore whiting resource. Of these—

(A) 1 shall be an official of the National Oceanic and Atmospheric Administration;

(B) 1 shall be a member of the Pacific Fishery Management Council, appointed with consideration given to any recommendation provided by that Council;

(C) 1 shall be appointed from a list submitted by the treaty Indian tribes with treaty fishing rights to the offshore whiting resource; and

(D) 1 shall be appointed from the commercial sector of the whiting fishing industry concerned with the offshore whiting resource.

(2) TERM OF OFFICE.—Each representative appointed under paragraph (1) shall be appointed for a term not to exceed 4 years, except that, of the initial appointments, 2 representatives shall be appointed for terms of 2 years. Any individual appointed to fill a vacancy occurring prior to the expiration of the term of office of that individual's predecessor shall be appointed for the remainder of that term. A representative may be appointed for a term of less than 4 years if such term is necessary to ensure that the term of office of not more than 2 representatives will expire in any single year. An individual appointed to serve as a representative is eligible for reappointment.

(3) CHAIR.—Unless otherwise agreed by all of the 4 representatives, the chair shall rotate annually among the 4 members, with the order of rotation determined by lot at the first meeting.

(b) ALTERNATE REPRESENTATIVES.—The Secretary, in consultation with the Secretary of State, may designate alternate representatives of the United States to serve on the joint management committee. An alternative representative may exercise, at any meeting of the committee, all the powers and duties of a representative in the absence of a duly designated representative for whatever reason.

SEC. 304. UNITED STATES REPRESENTATION ON THE SCIENTIFIC REVIEW GROUP.

(a) IN GENERAL.—The Secretary, in consultation with the Secretary of State, shall appoint no more than 2 scientific experts to serve on the scientific review group. An individual shall not be eligible to serve on the scientific review group while serving on the joint technical committee.

(b) TERM.—An individual appointed under subsection (a) shall be appointed for a term of not to exceed 4 years, but shall be eligible for reappointment. An individual appointed to fill a vacancy occurring prior to the expiration of a term of office of that individual's predecessor shall be appointed to serve for the remainder of that term.

(c) JOINT APPOINTMENTS.—In addition to individuals appointed under subsection (a), the Secretary, jointly with the Government of Canada, may appoint to the scientific review group, from a list of names provided by the advisory panel —

(1) up to 2 independent members of the scientific review group; and

(2) 2 public advisors.

SEC. 305. UNITED STATES REPRESENTATION ON JOINT TECHNICAL COMMITTEE.

(a) SCIENTIFIC EXPERTS.—

(1) IN GENERAL.—The Secretary, in consultation with the Secretary of State, shall appoint at least 6 but not more than 12 individuals to serve as scientific experts on the joint technical committee, at least 1 of whom shall be an official of the National Oceanic and Atmospheric Administration.

(2) TERM OF OFFICE.—An individual appointed under paragraph (1) shall be appointed for a term of not to exceed 4 years, but shall be eligible for reappointment. An individual appointed to fill a vacancy occurring prior to the expiration of the term of office of that individual's predecessor shall be appointed for the remainder of that term.

(b) INDEPENDENT MEMBER.—In addition to individuals appointed under subsection (a), the Secretary, jointly with the Government of Canada, shall appoint 1 independent member to the joint technical committee selected from a list of names provided by the advisory panel.

SEC. 306. UNITED STATES REPRESENTATION ON ADVISORY PANEL.

(a) IN GENERAL.—

(1) APPOINTMENT.—The Secretary, in consultation with the Secretary of State, shall appoint at least 6 but not more than 12 individuals to serve as members of the advisory panel, selected from among individuals who are—

(A) knowledgeable or experienced in the harvesting, processing, marketing, management, conservation, or research of the offshore whiting resource; and

(B) not employees of the United States.

(2) TERM OF OFFICE.—An individual appointed under paragraph (1) shall be appointed for a term of not to exceed 4 years, but shall be eligible for reappointment. An individual appointed to fill a vacancy occurring prior to the expiration of the term of office of that individual's predecessor shall be appointed for the remainder of that term.

SEC. 307. RESPONSIBILITIES OF THE SECRETARY.

(a) IN GENERAL.—The Secretary is responsible for carrying out the Agreement and this title, including the authority, to be exercised in consultation with the Secretary of State, to accept or reject, on behalf of the United States, recommendations made by the joint management committee.

(b) REGULATIONS; COOPERATION WITH CANADIAN OFFICIALS.—In exercising responsibilities under this title, the Secretary—

(1) may promulgate such regulations as may be necessary to carry out the purposes and objectives of the Agreement and this title; and

(2) with the concurrence of the Secretary of State, may cooperate with officials of the Canadian Government duly authorized to carry out the Agreement.

SEC. 308. RULEMAKING.

(a) APPLICATION WITH MAGNUSON-STEVENS ACT.—The Secretary shall establish the United States catch level for Pacific whiting according to the standards and procedures of the Agreement and this title rather than under the standards and procedures of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), except to the extent necessary to address the rebuilding needs of other species. Except for establishing the catch level, all other aspects of Pacific whiting management shall be—

(1) subject to the Magnuson-Stevens Fishery Conservation and Management Act; and

(2) consistent with this title.

(b) JOINT MANAGEMENT COMMITTEE RECOMMENDATIONS.—For any year in which both parties to the Agreement approve recommendations made by the joint management committee with respect to the catch level, the Secretary shall implement the approved recommendations. Any regulation promulgated by the Secretary to implement any such recommendation shall apply, as necessary, to all persons and all vessels subject to the jurisdiction of the United States wherever located.

(c) YEARS WITH NO APPROVED CATCH RECOMMENDATIONS.—If the parties to the Agreement do not approve the joint management committee's recommendation with respect to the catch level for any year, the Secretary shall establish the total allowable catch for Pacific whiting for the United States catch. In establishing the total allowable catch under this subsection, the Secretary shall—

(1) take into account any recommendations from the Pacific Fishery Management Council, the joint management committee, the joint technical committee, the scientific review group, and the advisory panel;

(2) base the total allowable catch on the best scientific information available;

(3) use the default harvest rate set out in paragraph 1 of Article III of the Agreement unless the Secretary determines that the scientific evidence demonstrates that a different rate is necessary to sustain the offshore whiting resource; and

(4) establish the United State's share of the total allowable catch based on paragraph 2 of Article III of the Agreement and make any adjustments necessary under section 5 of Article II of the Agreement.

SEC. 309. ADMINISTRATIVE MATTERS.

(a) EMPLOYMENT STATUS.—Individuals serving as such Commissioners, other than officers or employees of the United States Government, shall be considered to be Federal employees while performing such service, only for purposes of—

(1) injury compensation under chapter 81 of title 5, United States Code;

(2) tort claims liability as provided under chapter 171 of title 28 United States Code;

(3) requirements concerning ethics, conflicts of interest, and corruption as provided under title 18, United States Code; and

(4) any other criminal or civil statute or regulation governing the conduct of Federal employees.

(b) COMPENSATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), an individual appointed under this title shall receive no compensation for the individual's service as a representative, alternate representative, scientific expert, or advisory panel member under this title.

(2) SCIENTIFIC REVIEW GROUP.—Notwithstanding paragraph (1), the Secretary may employ and fix the compensation of an individual appointed under section 304(a) to serve as a scientific expert on the scientific review group who is not employed by the United States government, a State government, or an Indian tribal government in accordance with section 3109 of title 5, United States Code.

(c) TRAVEL EXPENSES.—Except as provided in subsection (d), the Secretary shall pay the necessary travel expenses of individuals appointed under this title in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(d) JOINT APPOINTEES.—With respect to the 2 independent members of the scientific review group and the 2 public advisors to the scientific review group jointly appointed under section 304(c), and the 1 independent member to the joint technical committee jointly appointed under section 305(b), the Secretary may pay up to 50 percent of—

(1) any compensation paid to such individuals; and

(2) the necessary travel expenses of such individuals.

SEC. 310. ENFORCEMENT.

(a) IN GENERAL.—The Secretary may—

(1) administer and enforce this title and any regulations issued under this title;

(2) request and utilize on a reimbursed or non-reimbursed basis the assistance, services, personnel, equipment, and facilities of other Federal departments and agencies in the administration and enforcement of this title; and

(3) collect, utilize, and disclose such information as may be necessary to implement the Agreement and this title, subject to sections 552 and 552a of title 5, United States Code.

(b) PROHIBITED ACTS.—It is unlawful for any person to violate any provision of this title or the regulations promulgated under this title.

(c) ACTIONS BY THE SECRETARY.—The Secretary shall prevent any person from violating this title in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857) were incorporated into and made a part of this title. Any person that violates any provision of this title is subject to the penalties and entitled to the privileges and immunities provided in the Magnuson-Stevens Fishery Conservation and Management Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of that Act were incorporated into and made a part of this title.

(d) PENALTIES.—This title shall be enforced by the Secretary as if a violation of this title or of any regulation promulgated by the Secretary under this title were a violation of section 307 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857).

SEC. 311. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary $1,000,000 for each of the fiscal years 2007 through 2012 to carry out the obligations of the United States under the Agreement and this title.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Mexico (Mr. PEARCE) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from New Mexico.

Mr. PEARCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 5946 is an important tool for the United States to use to take action against those vessels that participate in illegal, unreported, and unregulated fishing practices. This legislation is vitally important for the health of the world's fishery resources and for the economic well-being of the U.S. high seas and domestic fishing fleets. The provisions in H.R. 5946 have already been passed the Senate by unanimous consent as a part of S. 2012.

□ 2245

I will submit into the RECORD an exchange of letters with Chairman THOMAS of the Committee on Ways and Means on the bill, and I thank him for his cooperation.

I urge an ''aye'' vote on H.R. 5946.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON WAYS AND MEANS,
Washington, DC, September 20, 2006.

Hon. RICHARD W. POMBO,
Chairman, Committee on Resources,
Longworth House Office Building,
Washington, DC.

DEAR CHAIRMAN POMBO: Thank you for your letter regarding H.R. 5946, the ''Stevens-Inouye International Fisheries Monitoring and Compliance Legacy Act of 2006,'' which was introduced on July 27, 2006.

As you noted, the Committee on Ways and Means maintains jurisdiction over trade sanctions. H.R. 5946 includes text which falls within the jurisdiction of the Committee on Ways and Means. However, in order to expedite this bill for floor consideration, the Committee will forgo action on this bill. This is being done with the understanding that it does not in any way prejudice the Committee with respect to the appointment of conferees or its jurisdictional prerogatives on this or similar legislation.

I appreciate your cooperation in this matter and agree to your offer to include this exchange of letters in the Congressional Record during floor consideration.

Best regards,

BILL THOMAS,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Washington, DC, September 20, 2006.

Hon. WILLIAM M. THOMAS,
Chairman, Committee on Ways and Means,
Longworth HOB, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to request your cooperation in scheduling H.R. 5946, the Stevens-Inouye International Fisheries Monitoring and Compliance Legacy Act of 2006, for action by the House of Representatives before adjournment of the 109th Congress. This bill, of which I am the author, amends the Magnuson-Stevens Fishery Conservation and Management Act to authorize activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and for other purposes. While the bill was referred solely to the Committee on Resources, Title I of the bill references trade sanctions from the High Seas Driftnet Fisheries Enforcement Act, and I believe the Committee on Ways and Means has a jurisdictional interest in these provisions. They are taken almost verbatim from S. 2012, a bill reauthorizing the Magnuson-Stevens Fishery Conservation and Management Act, which is currently at the Speaker's desk and which I understand may pose Constitutional issues because of their origination in the Senate.

I recognize that this action would not be considered as precedent for any future referrals of similar measures or seen as affecting your Committee's jurisdiction over the subject matter of the bill. Moreover, if the bill is conferenced with the Senate, I would support naming Ways and Means Committee members to the conference committee. I would also be pleased to include this letter and your response in the Congressional Record during debate on H.R. 5946 on the House Floor.

Thank you for your assistance with this measure, and many others during your distinguished tenure as Chairman of the Ways and Means Committee. Angela Ellard and Steven Schrage of your staff have been particularly helpful, and we appreciate your efforts, as well as theirs in this regard.

Sincerely,

RICHARD W. POMBO,
Chairman.

Mr. Speaker, I reserve the balance of my time.

Mr. KIND. Mr. Speaker, I yield myself such time as I may consume.

(Mr. KIND asked and was given permission to revise and extend his remarks.)

Mr. KIND. Mr. Speaker, we have no objection to this legislation. In fact, we support it. And I thank the chairman of our subcommittee of the Resources Committee for his support on this. I would encourage adoption and passage of this legislation.

Mr. Speaker, I yield back the balance of my time.

Mr. PEARCE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Mexico (Mr. PEARCE) that the House suspend the rules and pass the bill, H.R. 5946, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: ''A bill to amend the Magnuson-Stevens Fishery Conservation and Management Act to authorize activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and for other purposes.''.

A motion to reconsider was laid on the table.

AUTHORIZING SECRETARY OF THE INTERIOR TO IMPROVE CALIFORNIA'S SACRAMENTO-SAN JOAQUIN DELTA AND WATER SUPPLY

Mr. PEARCE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 6014) to authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to improve California's Sacramento-San Joaquin Delta and water supply, as amended.

The Clerk read as follows:

H.R. 6014

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

SECTION 1. CALIFORNIA DELTA SUBVENTION.

(a) AUTHORITY.—The Secretary of the Interior, acting through the Commissioner of Reclamation, shall deposit within 30 days of receipt, all funds under this Act into the Fund established by Cal. Water Code section 12300(a), to be used for project reimbursement under Cal. Water Code section 12300(b)(1), as in effect before July 1, 2006.

(b) ADMINISTRATIVE COSTS.—The Bureau of Reclamation may use not more than 1 percent of appropriated funds to cover administrative and overhead costs.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to carry out this section $10,000,000 for each of fiscal years 2007 through 2012. Any amounts expended under this subsection shall be considered to be non-reimbursable Federal expenditures.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Mexico (Mr. PEARCE) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from New Mexico.

Mr. PEARCE. Mr. Speaker, I yield myself such time as I may consume.

H.R. 6014, sponsored by Resources Committee Chairman RICHARD POMBO, authorizes the Secretary of the Interior to assist in protecting and improving California's Sacramento-San Joaquin Delta. The delta is one of the most flood-prone areas in the world and is currently protected by a series of deteriorating 80-year earthen levees. After Hurricane Katrina, we all know the devastating effects of levee failures. The funding in this bill helps prevent future failures that could have far-reaching impacts on the entire State of California. It is simply an ounce of prevention for a pound of cure.

I urge my colleagues to support this bill. I urge support for this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. KIND. Mr. Speaker, I yield myself such time as I may consume.

(Mr. KIND asked and was given permission to revise and extend his remarks.)

Mr. KIND. Mr. Speaker, I too support this very worthy legislation here tonight. I encourage its adoption.

Mr. Speaker, I yield back the balance of my time.

Mr. PEARCE. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Mexico (Mr. PEARCE) that the House suspend the rules and pass the bill, H.R. 6014, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

NEW MEXICO WATER PLANNING ASSISTANCE ACT

Mr. PEARCE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1711) to provide assistance to the State of New Mexico for the development of comprehensive State water plans, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1711

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''New Mexico Water Planning Assistance Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Bureau of Reclamation and the United States Geological Survey.

(2) STATE.—The term ''State'' means the State of New Mexico.

SEC. 3. COMPREHENSIVE WATER PLAN ASSISTANCE.

(a) IN GENERAL.—Upon the request of the Governor of the State and subject to subsections (b) through (f), the Secretary shall—

(1) provide to the State technical assistance and grants for the development of comprehensive State water plans;

(2) conduct water resources mapping in the State; and

(3) conduct a comprehensive study of groundwater resources (including potable, brackish, and saline water resources) in the State to assess the quantity, quality, and interaction of groundwater and surface water resources.

(b) TECHNICAL ASSISTANCE.—Technical assistance provided under subsection (a) may include—

(1) acquisition of hydrologic data, groundwater characterization, database development, and data distribution;

(2) expansion of climate, surface water, and groundwater monitoring networks;

(3) assessment of existing water resources, surface water storage, and groundwater storage potential;

(4) numerical analysis and modeling necessary to provide an integrated understanding of water resources and water management options;

(5) participation in State planning forums and planning groups;

(6) coordination of Federal water management planning efforts;

(7) technical review of data, models, planning scenarios, and water plans developed by the State; and

(8) provision of scientific and technical specialists to support State and local activities.

(c) ALLOCATION.—In providing grants under subsection (a), the Secretary shall, subject to the availability of appropriations, allocate—

(1) $5,000,000 to develop hydrologic models and acquire associated equipment for the New Mexico Rio Grande main stem sections and Rios Pueblo de Taos and Hondo, Rios Nambe, Pojoaque and Teseque, Rio Chama, and Lower Rio Grande tributaries;

(2) $1,500,000 to complete the hydrographic survey development of hydrologic models and acquire associated equipment for the San Juan River and tributaries;

(3) $1,000,000 to complete the hydrographic survey development of hydrologic models and acquire associated equipment for Southwest New Mexico, including the Animas Basin, the Gila River, and tributaries;

(4) $4,500,000 for statewide digital orthophotography mapping; and

(5) such sums as are necessary to carry out additional projects consistent with subsection (b).

(d) COST-SHARING REQUIREMENT.—

(1) IN GENERAL.—The non-Federal share of the total cost of any activity carried out using a grant provided under subsection (a) shall be 50 percent.

(2) FORM OF NON-FEDERAL SHARE.—The non-Federal share under paragraph (1) may be in the form of any in-kind services that the Secretary determines would contribute substantially toward the conduct and completion of the activity assisted.

(e) NON-REIMBURSABLE BASIS.—Any assistance or grants provided to the State under this Act shall be made on a non-reimbursable basis.

(f) AUTHORIZED TRANSFERS.—On request of the State, the Secretary shall directly transfer to 1 or more Federal agencies any amounts made available to the State to carry out this Act.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act $3,000,000 for each of fiscal years 2006 through 2010.

SEC. 5. SUNSET OF AUTHORITY.

The authority of the Secretary to carry out any provisions of this Act shall terminate 10 years after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Mexico (Mr. PEARCE) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from New Mexico.

Mr. PEARCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 1711, sponsored by Congresswoman HEATHER WILSON, authorizes the Secretary of the Interior to assist the State of New Mexico in developing comprehensive water plans.

New Mexico is experiencing record drought, and limited Federal assistance will help provide a water-use roadmap to overcome this and future droughts. This legislation specifically authorizes water resources mapping assistance in the State and allows for a comprehensive study of New Mexico's groundwater resources to assess the quantity and quality of the groundwater. Ultimately, the State and local entities will make the water-use decisions, but this bill helps provide the scientific data needed to make such decisions.

I urge my colleagues to support this bill.

Mr. Speaker, I reserve the balance of my time.

Mr. KIND. Mr. Speaker, I yield myself such time as I may consume.

(Mr. KIND asked and was given permission to revise and extend his remarks.)

Mr. KIND. Mr. Speaker, we have no objections in regards to this legislation. We encourage its adoption and passage.

Mrs. WILSON of New Mexico. Mr. Speaker, I rise today to support the New Mexico Water Planning Assistance Act (H.R. 1711).

The New Mexico Water Planning Assistance Act (H.R. 1711) would assist the state of New Mexico with the development of comprehensive state water plans that will help the state more effectively manage our most precious natural resource—water.

I introduced the New Mexico Water Planning Assistance Act on April 19, 2005 and Senator DOMENICI and Senator BINGAMAN introduced companion legislation in the Senate on January 26, 2005.

Mr. Speaker, this legislation directs the Secretary of the Interior to: (1) provide to New Mexico technical assistance and grants for the development of comprehensive State water plans; (2) conduct water resources mapping in New Mexico; and (3) conduct comprehensive studies of groundwater resources in New Mexico to assess the quantity, quality, and interaction of groundwater and surface water resources.

The legislation also directs the Secretary, subject to the availability of appropriations, to allocate: (1) $5 million to develop hydrologic models of eight New Mexico river systems; (2) $2.5 million to complete the hydrologic models for the San Juan River and other Southwest New Mexico river systems; and (3) $4.5 million for statewide digital orthophotography mapping. The federal cost share shall be on a 50–50 match basis, and all federal funds are to be non-reimbursable.

Chaco Canyon in northwestern New Mexico was the home to many indigenous southwestern peoples from A.D. 850 to 1250. Unfortunately, the Chacoans ingenuity in storing and channeling water was not enough to save them from a 50-year drought that began in 1130. The Chacoan pueblo people left Chaco Canyon in stages and established a string of pueblos along the Rio Grande and a few other desert rivers.

Mr. Speaker, U.S. Army Corps of Engineers, U.S. Bureau of Reclamation, and state conservancy and irrigation districts flood control and reclamation projects along New Mexico's river systems that store water during wet years for use during dry years help ensure that New Mexico's current population will not have to relocate during extended periods of drought—like the Chacoans were forced to do more than eight centuries ago.

However, like much of the West, the demands on New Mexico's ground and fresh water resources are immense and growing. For example, Mr. Speaker, the First Congressional District of New Mexico is bisected by the Rio Grande. The flows of the Middle Rio Grande serve the biggest city in New Mexico, Albuquerque, many smaller cities, six Indian pueblos, and a network of agriculture users. Many of these farmers irrigate the same land as their Spanish ancestors did over 4 centuries ago. In addition there is the endangered silvery minnow, which, under a 2003 U.S. Fish and Wildlife Service Biological Opinion, requires 180 miles of continuous minimum river flow in the Middle Rio Grande.

New Mexico has an average allotment of 393,000 acre-feet of Rio Grande water under the 1938 interstate compact that apportions the Rio Grande between Colorado, New Mexico, Texas, and Mexico. These demands have stretched this allotment to the limit. Further complicating the picture is the fact that Article VII of the Rio Grande Compact severely restricts New Mexico's ability to store native water up stream at Heron, Abiquiu, El Vado, or Cochiti Reservoir.

Thus far, New Mexico's water managers have been able to stretch New Mexico limited water supplies to meet the expanding demands of New Mexico cities, industries, Indian pueblos, and endangered species, without widespread displacement of its historical agriculture users. By providing federal water planning assistance to New Mexico's water managers this important legislation will help stretch New Mexico's limited water resources; and, as a result, will help prevent waters conflict in New Mexico well into the future.

In closing, I want to thank Chairman POMBO, Subcommittee Chairman RADANOVICH, and their staffs for working so hard on legislation. I particularly wanted to thank Water and Power Subcommittee staff members Kiel Weaver, Lane Dickson, and Michael Correia for there work on this bill. I also wanted to thank Nate Gentry, who works on Senator DOMENICI's Energy and Natural Resources staff, and was instrumental in helping draft this important piece of legislation. I also wanted to thank New Mexico Interstate Stream Commissioner Estaban Lopez who made the trip to Washington D.C. to testify in support of this legislation before the House Resources Subcommittee on Water and New Mexico and State Engineer John DAntonio who testified on the Senate companion legislation in the Senate Energy and Natural Resources Committee. They both do an excellent job overseeing and managing New Mexico most precious natural resource—water. I also want to thank Office of the State Engineer General Counsel DL Sanders and Interstate Stream Commission General Counsel Tanya Trujillo for their work on this legislation.

I am very pleased that the legislation is going to be voted on by the full House of Representatives so that this legislation can come one step closer to becoming law and New Mexico can come is one step closer to getting much needed federal assistant with its water planning efforts.

Mr. KIND. Mr. Speaker, I yield back the balance of my time.

Mr. PEARCE. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Mexico (Mr. PEARCE) that the House suspend the rules and pass the bill, H.R. 1711, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

LONG ISLAND SOUND STEWARDSHIP ACT OF 2006

Mr. PEARCE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5160) to establish the Long Island Sound Stewardship Initiative, as amended.

The Clerk read as follows:

H.R. 5160

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Long Island Sound Stewardship Act of 2006''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) Long Island Sound is a national treasure of great cultural, environmental, and ecological importance;

(2) 8,000,000 people live within the Long Island Sound watershed and 28,000,000 people (approximately 10 percent of the population of the United States) live within 50 miles of Long Island Sound;

(3) activities that depend on the environmental health of Long Island Sound contribute more than $5,000,000,000 each year to the regional economy;

(4) the portion of the shoreline of Long Island Sound that is accessible to the general public (estimated at less than 20 percent of the total shoreline) is not adequate to serve the needs of the people living in the area;

(5) existing shoreline facilities are in many cases overburdened and underfunded;

(6) large parcels of open space already in public ownership are strained by the effort to balance the demand for recreation with the needs of sensitive natural resources;

(7) approximately 1/3 of the tidal marshes of Long Island Sound have been filled, and much of the remaining marshes have been ditched, diked, or impounded, reducing the ecological value of the marshes; and

(8) much of the remaining exemplary natural landscape is vulnerable to further development.

(b) PURPOSE.—The purpose of this Act is to establish the Long Island Sound Stewardship Initiative to identify, protect, and enhance upland sites within the Long Island Sound ecosystem with significant ecological, educational, open space, public access, or recreational value through a bi-State network of sites best exemplifying these values.

SEC. 3. DEFINITIONS.

In this Act, the following definitions apply:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) ADVISORY COMMITTEE.—The term ''Advisory Committee'' means the Long Island Sound Stewardship Advisory Committee established by section 8.

(3) REGION.—The term ''Region'' means the Long Island Sound Stewardship Initiative Region established by section 4(a).

(4) STATE.—The term ''State'' means each of the States of Connecticut and New York.

(5) STEWARDSHIP.—The term ''stewardship'' means land acquisition, land conservation agreements, site planning, plan implementation, land and habitat management, public access improvements, site monitoring, and other activities designed to enhance and preserve natural resource-based recreation and ecological function of upland areas.

(6) STEWARDSHIP SITE.—The term ''stewardship site'' means any area of State, local, or tribal government, or privately owned land within the Region that is designated by the Administrator under section 5(a).

(7) SYSTEMATIC SITE SELECTION.—The term ''systematic site selection'' means a process of selecting stewardship sites that—

(A) has explicit goals, methods, and criteria;

(B) produces feasible, repeatable, and defensible results;

(C) provides for consideration of natural, physical, and biological patterns;

(D) addresses replication, connectivity, species viability, location, and public recreation values;

(E) uses geographic information systems technology and algorithms to integrate selection criteria; and

(F) will result in achieving the goals of stewardship site selection at the lowest cost.

(8) QUALIFIED APPLICANTS.—The term ''qualified applicant'' means a non-Federal person that owns title to property located within the borders of the Region.

(9) THREAT.—The term ''threat'' means a threat that is likely to destroy or seriously degrade a conservation target or a recreation area.

SEC. 4. LONG ISLAND SOUND STEWARDSHIP INITIATIVE REGION.

(a) ESTABLISHMENT.—There is established in the States of Connecticut and New York the Long Island Sound Stewardship Initiative Region.

(b) BOUNDARIES.—The Region consists of the immediate coastal upland areas along—

(1) Long Island Sound between mean high water and the inland boundary, as described on the map entitled ''Long Island Sound Stewardship Region'' and dated April 21, 2004; and

(2) the Peconic Estuary as described on the map entitled ''Peconic Estuary Program Study Area Boundaries'' and included in the Comprehensive Conservation and Management Plan for the Peconic Estuary Program and dated November 15, 2001.

SEC. 5. DESIGNATION OF STEWARDSHIP SITES.

(a) IN GENERAL.—The Administrator may designate a stewardship site in accordance with this Act any area that contributes to accomplishing the purpose of this Act.

(b) PUBLICATION OF LIST OF RECOMMENDED SITES.—The Administrator shall—

(1) publish in the Federal Register and make available in general circulation in the States of Connecticut and New York the list of sites recommended by the Advisory Committee; and

(2) provide a 90-day period for—

(A) the submission of public comment on the list; and

(B) an opportunity for owners of such sites to decline designation of such sites as stewardship sites.

(c) OPINION REGARDING OWNER'S RESPONSIBILITIES.—The Administrator may not designate an area as a stewardship site under this Act unless the Administrator provides to the owner of the area, and the owner acknowledges to the Administrator receipt of, a comprehensive opinion in plain English setting forth expressly the responsibility of the owner that arises from such designation.

(d) DESIGNATION OF STEWARDSHIP SITES.—Not later than 150 days after receiving from the Advisory Committee its list of recommended sites, the Administrator—

(1) shall review the recommendations of the Advisory Committee; and

(2) may designate as a stewardship site any site included in the list.

SEC. 6. RECOMMENDATIONS BY ADVISORY COMMITTEE.

(a) IN GENERAL.—The Advisory Committee shall—

(1) in accordance with this section, evaluate applications—

(A) for designation of areas as stewardship sites;

(B) to develop management plans to address threats to stewardship sites; and

(C) to act on opportunities to protect and enhance stewardship sites;

(2) develop recommended guidelines, criteria, schedules, and due dates for the submission of applications and the evaluation by the Advisory Committee of information to recommend areas for designation as stewardship sites that fulfill terms of a multi—year management plan;

(3) recommend to the Administrator a list of sites for designation as stewardship sites that further the purpose of this Act;

(4) develop management plans to address threats to stewardship sites;

(5) raise awareness of the values of and threats to stewardship sites;

(6) recommend that the Administrator award grants to qualified applicants; and

(7) recommend to the Administrator ways to leverage additional resources for improved stewardship of the Region.

(b) IDENTIFICATION OF SITES.—

(1) IN GENERAL.—Any qualified applicant may submit an application to the Advisory Committee to have a site recommended to the Administrator for designation as a stewardship site.

(2) IDENTIFICATION.—The Advisory Committee shall review each application submitted under this subsection to determine whether the site exhibits values that promote the purpose of this Act.

(3) NATURAL RESOURCE—BASED RECREATION AREAS.—In reviewmg an application for recommendation of a recreation area for designation as a stewardship site, the Advisory Committee may use a selection technique that includes consideration of—

(A) public access;

(B) community support;

(C) high population density;

(D) environmental justice (as defined in section 385.3 of title 33, Code of Federal Regulations (or successor regulations));

(E) open spaces; and

(F) cultural, historic, and scenic characteristics.

(4) NATURAL AREAS WITH ECOLOGICAL VALUE.—In reviewmg an application for recommendation of a natural area with ecological value for designation as a stewardship site, the Advisory Committee may use a selection technique that includes consideration of—

(A) measurable conservation targets for the Region; and

(B) prioritizing new sites using systematic site selection, which shall include consideration of—

(i) ecological uniqueness;

(ii) species viability;

(iii) habitat heterogeneity;

(iv) size;

(v) quality;

(vi) open spaces;

(vii) land cover;

(viii) scientific, research, or educational value; and

(ix) threats.

(5) DEVIATION FROM PROCESS.—The Advisory Committee may accept an application to recommend a site other than as provided in this subsection, if the Advisory Committee—

(A) determines that the site makes significant ecological or recreational contributions to the Region; and

(B) provides to the Administrator the reasons for deviating from the process otherwise described in this subsection.

(c) SUBMISSION OF LIST OF RECOMMENDED SITES.—

(1) IN GENERAL.—After completion of the site identification process set forth in subsection (b), the Advisory Committee shall submit to the Administrator its list of sites recommended for designation as stewardship sites.

(2) LIMITATION.—The Advisory Committee shall not include a site in the list submitted under this subsection unless, prior to submission of the list, the owner of the site is—

(A) notified of the inclusion of the site in the list; and

(B) allowed to decline inclusion of the site in the list.

(3) PUBLIC COMMENT.—In identifying sites for inclusion in the list, the Advisory Committee shall provide an opportunity for submission of, and consider, public comments.

SEC. 7. GRANTS AND ASSISTANCE.

(a) IN GENERAL.—The Administrator may provide grants, subject to the availability of appropriations, and other assistance for projects to fulfill the purpose of this Act.

(b) FEDERAL SHARE.—The Federal share of the cost of an activity carried out using any assistance or grant under this Act shall not exceed 60 percent of the total cost of the activity.

SEC. 8. LONG ISLAND SOUND STEWARDSHIP ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established a committee to be known as the ''Long Island Sound Stewardship Advisory Committee''.

(b) MEMBERSHIP.

(1) IN GENERAL.—The Administrator may appoint the members of the Advisory Committee in accordance with this subsection and the guidance in section 320(c) of the Federal Water Pollution Control Act (33 D.S.C. 1330(c)), except that the Governor of each State may appoint 2 members of the Advisory Committee.

(2) ADDITIONAL MEMBERS.—In addition to the other members appointed under this subsection, the Advisory Committee may include—

(A) a representative of the Regional Plan Association;

(B) a representative of marine trade organizations; and

(C) a representative of private landowner interests.

(3) CONSIDERATION OF INTERESTS.—In appointing members of the Advisory Committee, the Administrator shall consider—

(A) Federal, State, and local government interests and tribal interests;

(B) the interests of nongovernmental organizations;

(C) academic interests;

(D) private interests including land, agriculture, and business interests; and

(E) recreational and commercial fishing interests.

(4) CHAIRPERSON.—In addition to the other members appointed under this subsection, the Administrator may appoint as a member of the Advisory Committee an individual to serve as the Chairperson, who may be the Director of the Long Island Sound Office of the Environmental Protection Agency.

(5) COMPLETION OF APPOINTMENTS.—The Administrator shall complete the appointment of all members of the Advisory Committee by not later than 180 days after the date of enactment of this Act.

(A) VACANCIES.—A vacancy on the Advisory Committee—

(i) shall be filled not later than 90 days after the vacancy occurs;

(ii) shall not affect the powers of the Advisory Committee; and

(iii) shall be filled in the same manner as the original appointment was made.

(c) TERM.—

(1) IN GENERAL.—A member of the Advisory Committee shall be appointed for a term of 4 years.

(2) MULTIPLE TERMS.—An individual may be appointed as a member of the Advisory Committee for more than 1 term.

(D) POWERS.—The Advisory Committee may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Advisory Committee considers advisable to carry out this Act.

(e) MEETINGS.—

(1) IN GENERAL.—The Advisory Committee shall meet at the call of the Chairperson, but no fewer than 4 times each year.

(2) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Advisory Committee have been appointed, the Chairperson shall call the initial meeting of the Advisory Committee.

(3) QUORUM.—A majority of the members of the Advisory Committee shall constitute a quorum, but a lesser number of members may hold hearings.

(f) ADAPTIVE MANAGEMENT.—

(1) IN GENERAL.—The Advisory Committee shall use an adaptive management framework to identify the best policy initiatives and actions through—

(A) definition of strategic goals;

(B) definition of policy options for methods to achieve strategic goals;

(C) establishment of measures of success;

(D) identification of uncertainties;

(E) development of informative models of policy implementation;

(F) separation of the landscape into georaphic units;

(G) monitoring key responses at different spatial and temporal scales; and

(H) evaluation of outcomes and incorporation into management strategies.

(2) APPLICATION OF ADAPTIVE MANAGEMENT FRAMEWORK.—The Advisory Committee shall apply the adaptive management framework to the process for making recommendations under subsections (b) through (f) of section 6 to the Administrator regarding sites that should be designated as stewardship sites.

(3) ADAPTIVE MANAGEMENT.—The adaptive management framework required by this subsection shall consist of a scientific process—

(A) for—

(i) developing predictive models;

(ii) making management policy decisions based upon the model outputs;

(iii) revising the management policies as data become available with which to evaluate the policies; and

(iv) acknowledging uncertainty, complexity, and variance in the spatial and temporal aspects of natural systems; and

(B) that requires that management be viewed as experimental.

(g) TERMINATION OF ADVISORY COMMITTEE.—The Advisory Committee shall terminate on December 31, 2011.

SEC. 9. REPORTS.

(a) ADMINISTRATOR.—The Administrator shall publish and make available to the public on the Internet and in paper form—

(1) not later than 1 year after the date of enactment of this Act, a report that—

(A) assesses the role of this Act in protecting the Long Island Sound;

(B) establishes in coordination with the Advisory Committee gllidelines, criteria, schedules, and due dates for evaluating information to designate stewardship sites;

(C) includes information about any grants that are available for the purchase of land or property rights to protect stewardship sites; and

(D) accounts for funds received and expended during the previous fiscal year;

(2) an update of such report, at least every other year; and

(3) information on funding and any new stewardship sites more frequently than every other year.

(b) ADVISORY COMMITTEE.—

(1) REPORT.—For each of fiscal years 2007 through 2011, the Advisory Committee shall submit to the Administrator and the decisionmaking body of the Long Island Sound Study Management Conference established under section 320 of the Federal Water Pollution Control Act (33 U.S.C. 1330), an annual report that contains—

(A) a detailed statement of the findings and conclusions of the Advisory Committee since the last report under this subsection;

(B) a description of all sites recommended by the Advisory Committee to the Administrator for designation as stewardship sites;

(C) the recommendations of the Advisory Committee for such legislation and administrative actions as the Advisory Committee considers appropriate; and

(D) in accordance with paragraph (2), the recommendations of the Advisory Committee for the awarding of grants.

(2) RECOMMENDATION FOR GRANTS.—

(A) IN GENERAL.—The Advisory Committee shall recommend that the Administrator award grants to qualified applicants to help to secure and improve the open space, public access, or ecological values of stewardship sites, through—

(i) purchase of the property of a stewardship site;

(ii) purchase of relevant property rights to a stewardship site; or

(iii) entering into any other binding legal arrangement that ensures that the values of a stewardship site are sustained, including entering into an arrangement with a land manager or property owner to develop or implement a management plan that is necessary for the conservation of natural resources.

(B) EQUITABLE DISTRIBUTION OF FUNDS.—The Advisory Committee shall exert due diligence to ensure that its recommendations result in an equitable distribution of funds between the States.

SEC. 10. PRIVATE PROPERTY PROTECTION; NO REGULATORY AUTHORITY.

(a) ACCESS TO PRIVATE PROPERTY.—Nothing in this Act—

(1) requires any private property owner to allow public access (including Federal, State, or local government access) to the private property; or

(2) modifies the application of any provision of Federal, State, or local law with regard to public access to or use of private property, except as entered into by voluntary agreement of the owner or custodian of the property.

(b) LIABILITY.—Establishment of the Region does not create any liability, or have any effect on any liability under any other law, of any private property owner with respect to any person injured on the private property.

(c) RECOGNITION OF AUTHORITY TO CONTROL LAND USE.—Nothing in this Act modifies the authority of Federal, State, or local governments to regulate land use.

(d) PARTICIPATION OF PRIVATE PROPERTY OWNERS NOT REQUIRED.—Nothing in this Act requires the owner of any private property located within the boundaries of the Region to participate in any land conservation, financial or technical assistance, or other programs established under this Act.

(e) PURCHASE OF LAND OR INTEREST IN LAND FROM WILLING SELLERS ONLY.—Funds appropriated to carry out this Act may be used to purchase land or interests in land only from willing sellers.

(f) MANNER OF ACQUISITION.—All acquisitions of land under this Act shall be made in a voluntary manner and shall not be the result of forced takings.

(g) EFFECT OF ESTABLISHMENT.—

(1) IN GENERAL.—The boundaries of the Region represent the area within which Federal funds appropriated for the purpose of this Act may be expended.

(2) REGULATORY AUTHORITY.—The establishment of the Region and the boundaries of the Region do not provide any regulatory authority not in existence immediately before the enactment of this Act on land use in the Region by any management entity, except for such property rights as may be purchased from or donated by the owner of the property (including public lands donated by a State or local government).

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There is authorized to be appropriated to the Administrator $25,000,000 for each of fiscal years 2007 through 2011 to carry out this Act, including for—

(1) acquisition of land and interests in land;

(2) development and implementation of site management plans;

(3) site enhancements to reduce threats or promote stewardship; and

(4) administrative expenses of the Advisory Committee and the Administrator.

(b) USE OF FUNDS.—Amounts made available to the Administrator under this section each fiscal year shall be used by the Administrator after reviewing the recommendations included in the annual reports of the Advisory Committee under section 9.

(c) AUTHORIZATION OF GIFTS, DEVISES, AND BEQUESTS FOR SYSTEM.—In furtherance of the purpose of this Act, the Administrator may accept and use any gift, devise, or bequest of real or personal property, proceeds therefrom, or interests therein, to carry out this Act. Such acceptance may be subject to the terms of any restrictive or affirmative covenant, or condition of servitude, if such terms are considered by the Administrator to be in accordance with law and compatible with the purpose for which acceptance is sought.

(d) LIMITATION ON ADMINISTRATIVE COSTS.—Of the amount available each fiscal year to carry out this Act, not more than 8 percent may be used for administrative costs.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Mexico (Mr. PEARCE) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from New Mexico.

Mr. PEARCE. Mr. Speaker, I yield myself such time as I may consume.

I would urge my colleagues to support this legislation, sponsored by Congressman ROB SIMMONS, which would establish the Long Island Sound Stewardship Initiative. This initiative allows the administrator of the Environmental Protection Agency to provide grants to protect and restore land around the Long Island Sound in the States of Connecticut and New York. This bill acknowledges the collaborative efforts among the many public and private partners in the region and allows for a ground-up approach to managing and maintaining the long-term ecological health and public enjoyment of Long Island Sound.

I urge an ''aye'' vote on H.R. 5160.

Mr. Speaker, I reserve the balance of my time.

Mr. KIND. Mr. Speaker, I yield such time as he may consume to one of the chief sponsors and leaders of this important piece of legislation, my good friend and distinguished gentleman from New York (Mr. ISRAEL).

Mr. ISRAEL. Mr. Speaker, I thank my friend from Wisconsin for yielding.

Mr. Speaker, I want to thank Chairman POMBO and Ranking Member RAHALL for bringing this bill to the floor today. I also want to thank my colleague from Connecticut, Representative SIMMONS, and the rest of the members of the Long Island Sound Caucus for their very hard work on this legislation and their ongoing efforts to preserve and protect the Long Island Sound. I have the privilege of serving

as co-chair of the Congressional Long Island Sound Caucus with the gentleman from Connecticut (Mr. SIMMONS) and we have worked together for many years in the hope that this bill would become a reality. I was proud to introduce it with the gentleman from Connecticut, and I am proud of the Long Island Caucus for standing behind it every step of the way.

This bill is bipartisan. It is bicoastal. It is bicameral. It is one of the most important initiatives that we can take to protect the Long Island Sound, to identify and enhance sites with ecological, educational, and recreational value in Connecticut and New York. And it does so in a way that is consistent with the vision put forward by a consortium of local groups who have been working for over a decade to save the sound.

The Long Island Sound is one of our Nation's great natural wonders. It sustains a diversity of birds, wildlife, and marine organisms. It is a very important part of the national economy. It remains a vital component of our identity, our way of life.

Today over 8 million people live in the sound's watershed and 20 million people live within 50 miles of its shores. The sound alone contributes $5 billion to the regional economy through sport and commercial fishing, recreation and tourism.

Mr. Speaker, I served for 8 years as a member of the Huntington Town Board, and I worked with our local baymen and worked with different organizations to preserve the Long Island Sound, and I am acutely aware of the many environmental challenges that confront our community. In fact, my town and many others initiated bond acts, asking local taxpayers to come up with a few more dollars to support and protect the Long Island Sound. And I always believed that the Federal Government should be more of a partner with local townships. And tonight we take the first big step in that new partnership.

This bill creates a purely voluntary process to protect coastal areas along the Long Island Sound. It creates a process that will bring together stakeholders on a committee, including Connecticut and New York representatives from the Federal Government, the State government, local governments, nongovernment organizations, academic, private and development interests. This is a critically important step.

And, Mr. Speaker, before I close, I just want to mention that, in fact, this bill has been the product of cooperation at all levels of government with advocacy groups in both New York and Connecticut, and I am grateful to all of them for their input.

On a personal note, I have been very fortunate to have a wonderful staff for working on this legislation for most of the last 4 years. And I want to thank Karen Agostisi, who devoted so much of her time to this effort and helped navigate this bill through the sometimes choppy and turbulent waters of the Long Island Sound. I was privileged to work with the gentleman from Connecticut.

This is a very important step for this Federal and local partnership. I urge a ''yes'' vote on this bill. And again I thank the gentleman for his cooperation. I thank my colleagues for their consideration.

Mr. KIND. Mr. Speaker, I yield myself such time as I may consume.

(Mr. KIND asked and was given permission to revise and extend his remarks.)

Mr. KIND. Mr. Speaker, I want to again commend my good friend from New York (Mr. ISRAEL) for his leadership that he has shown on this piece of legislation. It has been many years that they have been working on this. But I also want to take a moment to commend my good friend and colleague, the gentleman from New York, TIM BISHOP, for the leadership and the work that he has put into this legislation; along with the gentlewoman from Connecticut, ROSA DELAURO, who has also been very involved; as well as 15 original cosponsors, Democratic cosponsors, from the New York delegation.

I urge an ''aye'' vote on this important bill to restore and preserve the Long Island Sound and encourage its adoption this evening.

Mr. Speaker, I yield back the balance of my time.

Mr. PEARCE. Mr. Speaker, understanding the full risk of filibuster, I yield such time as he may consume to the gentleman from Connecticut, the sponsor of the bill, Mr. SIMMONS.

(Mr. SIMMONS asked and was given permission to revise and extend his remarks.)

Mr. SIMMONS. Mr. Speaker, I thank the gentleman for yielding.

We have already heard many good words about this legislation, and I would like to associate myself with those words.

Quite simply, this legislation represents many years of effort between two States, New York and Connecticut; between the House and the Senate; and, of course, a bipartisan effort by Republicans and Democrats.

The Long Island Sound is a unique estuary, with economic and environmental assets. It generates about $6 billion annually to the regional economy and is a cherished environmental resource for over 28 million people who live within 50 miles of the shore.

Four generations of my family have enjoyed Long Island Sound, and we have lived on Long Island Sound. And yet with the increase in population, with land development, and other pressures, some of the assets of this unique estuary are being lost. And that is why this bipartisan legislation has been introduced.

It originally passed the Senate a couple of years ago in a somewhat different form and then Senator LIEBERMAN and I reintroduced it last year at the beginning of the 109th Congress. I have worked with Chairman POMBO, I have worked with subcommittee Chairman GILCHREST, and my colleagues across the aisle to make sure that the language of this bill respects property rights but also allows us to use science-based mechanisms to identify properties that can be acquired and preserved and protected for future generations.

Again, we don't infringe on property rights because the bill seeks to create and does create, we believe, a purely voluntary process to protect important sites along the sound.

The committee that we are creating is advisory in nature and has no authority to seize lands or to mandate action on private property. It simply recommends sites and allows an administrator to allocate funds to purchase or enter into legal arrangements to secure these properties. The legislation provides for transparency and accountability and is responsible, in a fiduciary manner, for the dollars that are authorized by the law.

I thank my colleagues for their bipartisan support of this wonderful piece of legislation.

Mr. Speaker, I rise today in strong support of H.R. 5160, the ''Long Island Sound Stewardship Act of 2006.''

I want to thank Chairman RICHARD POMBO and Chairman WAYNE GILCHREST—as well as their capable staff—for their leadership and work on this important legislation. I also would like to thank my co-chair of the Long Island Sound Caucus, Representative STEVE ISRAEL and the rest of the caucus for their work to promote the importance of Long Island Sound.

The Long Island Sound is a unique estuary with economic and ecological importance to the region and to the Nation. The Sound contributes approximately $6 billion annually to the regional economy and is a cherished resource for the 28 million people living within 50 miles of its shores. The Sound is heavily used for recreation and for commerce by residents of Connecticut and New York as well as numerous visitors from across the country each year. This treasure deserves our utmost support.

Senator LIEBERMAN and I originally introduced the Long Island Stewardship Act (LISSA) in the 108th Congress. H.R. 5160 is the product of bipartisan cooperation among legislators from Connecticut and New York and local groups that have been working together to protect the Sound. Without infringing on private property rights of local landowners, the bill seeks to create a purely voluntary process to protect important sites along the Sound through the creation of the Long Island Sound Advisory Committee. Chaired by the director of the Environmental Protection Agency's Long Island Sound Office and comprised of representatives from Federal, State, and local governments and nongovernmental organizations, the Committee will assess potential stewardship sites along the coast and work to preserve them.

To ensure private property rights, the Committee was made advisory in nature and would not have the authority to seize lands or to mandate action on private property. Instead,

the Committee would be required to recommend sites for stewardship and submit its findings to the EPA Administrator. The Administrator would then allocate funds to purchase relevant property rights or enter into binding legal arrangements that ensure the value of the sites is maintained in accordance with the Committee's recommendations.

In an effort to provide maximum transparency and accountability, the EPA Administrator would then be required to produce a biannual report that assesses the status of the Long Island Sound and that notifies the public of the program activities. To maintain the bistate partnership, the Committee would be required to exert due diligence to ensure that it recommends an equitable distribution of funds between Connecticut and New York.

Mr. Speaker, the use of Federal dollars requires careful scrutiny. My bill would authorize $25 million annually for 5 years to advance this important initiative. This figure represents a reduction from an initial draft of the bill during the 108th Congress, at the recommendation of Senate and House committee chairmen. And if we consider the precedent for Federal funds authorized and appropriated for estuarine ecosystem restoration programs elsewhere in the country, we'll find $25 million to be an appropriate amount. This is especially true when one considers the cost of real estate in the Long Island Sound region.

Mr. Speaker, thank you for bringing this legislation before the House. I am gratified to have the support of my colleagues in passing this bill.

Mr. SHAYS. Mr. Speaker, as an original cosponsor of th1s legislation, I rise in strong support of H.R. 5160, the Long Island Sound Stewardship Act. I recognize the vital role the Long Island Sound plays in the Fourth Congressional District as well as all of Connecticut.

The Long Island Sound contributes more than $5 billion annually to the regional economy and is one of the most populated and visited areas of our country. In fact, approximately 10 percent of the American population lives within the Long Island Sound watershed.

It is a source of livelihood, nourishment, and recreation for many in Connecticut and elsewhere, and it is critical that we treat it well.

This legislation would authorize $25 million to protect and preserve areas along the Sound's shorelines with significant ecological, recreational, or educational value. The Long Island Sound Stewardship Act gives those most familiar with the Sound's precious and diverse resources the tools necessary to continue their conservation efforts, and applies the most effective methods available to identify, protect, and enhance sites with ecological, educational, and recreation value in Connecticut and New York.

Protecting and preserving the environment is one of the most important jobs I have as a Member of Congress. We simply will not have a world to live in if we continue our neglectful ways.

The Long Island Sound is our Yellowstone. I urge passage of this legislation so that we may continue its conservation and protection.

Mr. ACKERMAN. Mr. Speaker, I rise in support of this legislation, which will help ensure that future generations of New Yorkers and all Americans will enjoy a clean, well-preserved Long Island Sound.

The Long Island Sound is critically important to our Nation and vital to the health and well-being of the communities I represent. As an Estuary of National Significance, the Sound provides habitat for a wide array of plant and animal life, and contributes an estimated $5.5 billion to the regional economy from boating, fishing and tourism-related commerce. Boating and fishing are deeply enmeshed in the culture and traditions of Long Island, and the Sound has long been our region's gateway to the seas.

Unfortunately, the effects of millions of people living adjacent to the Sound's shore have been profound. At the turn of the millennium, lobster catch rates plummeted by 90%, costing our local economy between $30 and $50 million. Dangerous levels of toxins continue to threaten the well-being of the Sound's diverse habitats and wildlife breeding areas, as well as the livelihoods of those who depend on these resources for their livelihood.

The Long Island Sound Stewardship Act supplements conservation and preservation efforts along the shoreline of Long Island and Connecticut, and authorizes $25 million in federal appropriations over the next 4 fiscal years.

Mr. Speaker, this bill is not perfect. I strongly support and will continue to advocate for funding at the original proposed level of $40 million annually. Properly conceived, the legislation should include wetlands and underwater lands within the authority of the Long Island Sound Stewardship Initiative, which will be established by this legislation. Additionally, I strongly support fully funding conservation and preservation offshore via the Long Island Sound Restoration Act, which has fallen victim to the Majority's budget cuts.

The Long Island Sound, however, is a national treasure and I believe that any preservation efforts to conserve any part of the Sound should be embraced. I do support this legislation and I would like to thank my colleague from New York, the co-chair of the Long Island Sound Caucus, Mr. ISRAEL, for all of his efforts to bring this bill to the floor and to preserve the Long Island Sound.

Mr. PEARCE. Mr. Speaker, appreciating the bipartisan nature of this, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Mexico (Mr. PEARCE) that the House suspend the rules and pass the bill, H.R. 5160, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

UTAH RECREATIONAL LAND EXCHANGE ACT OF 2006

Mr. PEARCE. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 2069) to authorize the exchange of certain land in Grand and Uintah Counties, Utah, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2069

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Utah Recreational Land Exchange Act of 2006''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) the area surrounding the Colorado River in Grand and San Juan Counties, Utah, and Dinosaur National Monument and the Book Cliffs in Uintah County, Utah, contains nationally recognized scenic vistas, significant archaeological and historic resources, valuable wildlife habitat, and outstanding opportunities for public recreation that are enjoyed by hundreds of thousands of people annually;

(2) the State of Utah owns multiple parcels of land in the area that were granted to the State under the Act of July 16, 1894 (28 Stat. 107, chapter 138), to be held in trust for the benefit of the public school system and other public institutions of the State;

(3) the parcels of State trust land are largely scattered in checkerboard fashion amid the Federal land comprising the area of the Colorado River corridor, the Dinosaur National Monument, and the Book Cliffs;

(4) the State trust land in the area of the Colorado River corridor, Dinosaur National Monument, and the Book Cliffs includes significant natural and recreational features, including—

(A) portions of Westwater Canyon of the Colorado River;

(B) the nationally recognized Kokopelli and Slickrock trails;

(C) several of the largest natural rock arches in the United States;

(D) multiple wilderness study areas and proposed wilderness areas; and

(E) viewsheds for Arches National Park and Dinosaur National Monument;

(5) the large presence of State trust land located in the Colorado River corridor, Dinosaur National Monument, and the Book Cliffs area makes land and resource management in the area more difficult, costly, and controversial for the United States and the State of Utah;

(6) although the State trust land was granted to the State to generate financial support for public schools in the State through the sale or development of natural resources, development of those resources in the Colorado River corridor, Dinosaur National Monument, and the Book Cliffs area may be incompatible with managing the area for recreational, natural, and scenic resources;

(7) the United States owns land and interests in land in other parts of the State of Utah that can be transferred to the State in exchange for the State trust land without jeopardizing Federal management objectives or needs; and

(8) it is in the public interest to exchange federally owned land in the State for the Utah State trust land located in the Colorado River Corridor, Dinosaur National Monument, and the Book Cliffs area, on terms that are fair to the United States and the State of Utah.

(b) PURPOSE.—It is the purpose of this Act to direct, facilitate, and expedite the exchange of certain Federal land and non-Federal land in the State to further the public interest by—

(1) exchanging Federal land that has limited recreational and conservation resources; and

(2) acquiring State trust land with important recreational, scenic, and conservation resources for permanent public management and use.

SEC. 3. DEFINITIONS.

In this Act:

(1) FEDERAL LAND.—The term ''Federal land'' means the land located in Grand, San

Juan, and Uintah Counties, Utah, that is identified on the maps as—

(A) ''BLM Subsurface only Proposed for Transfer to State Trust Lands'';

(B) ''BLM Surface only Proposed for Transfer to State Trust Lands''; and

(C) ''BLM Lands Proposed for Transfer to State Trust Lands''.

(2) GRAND COUNTY MAP.—The term ''Grand County Map'' means the map prepared by the Bureau of Land Management entitled ''Utah Recreational Land Exchange Act Grand County'' and dated September 22, 2006.

(3) MAPS.—The term ''maps'' means the Grand County Map and the Uintah County Map.

(4) NON-FEDERAL LAND.—The term ''non-Federal land'' means the land in Grand, San Juan, and Uintah Counties, Utah, that is identified on the maps as—

(A) ''State Trust Land Proposed for Transfer to BLM''; and

(B) ''State Trust Minerals Proposed for Transfer to BLM''.

(5) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(6) STATE.—The term ''State'' means the State of Utah, as trustee under the Utah State School and Institutional Trust Lands Management Act (Utah Code Ann. 53C–1–101 et seq.).

(7) UINTAH COUNTY MAP.—The term ''Uintah County Map'' means the map prepared by the Bureau of Land Management entitled ''Utah Recreational Land Exchange Act Uintah County'' and dated September 22, 2006.

SEC. 4. EXCHANGE OF LAND.

(a) IN GENERAL.—If, not later than 30 days after the date of enactment of this Act, the State offers to convey to the United States title to the non-Federal land, the Secretary shall—

(1) accept the offer; and

(2) on receipt of acceptable title to the non-Federal land and subject to valid existing rights, convey to the State all right, title, and interest of the United States in and to the Federal land.

(b) CONVEYANCE OF PARCELS IN PHASES.—

(1) IN GENERAL.—Notwithstanding that appraisals for all of the parcels of Federal land and non-Federal land may not have been completed under section 5, parcels of the Federal land and non-Federal land may be exchanged under subsection (a) in 3 phases beginning on the date on which the appraised values of the parcels included in the applicable phase are approved under section 5(b)(5).

(2) PHASES.—The 3 phases referred to in paragraph (1) are—

(A) phase 1, consisting of the non-Federal land identified as ''phase one'' land on the Grand County Map;

(B) phase 2, consisting of the non-Federal land identified as ''phase two'' land on the Grand County Map and the Uintah County Map; and

(C) phase 3, consisting of any remaining non-Federal land that is not identified as ''phase one'' land or ''phase two'' land on the Grand County Map or the Uintah County Map.

(3) NO AGREEMENT ON EXCHANGE.—If agreement has not been reached with respect to the exchange of an individual parcel of Federal land or non-Federal land, the Secretary and the State may agree to set aside the individual parcel to allow the exchange of the other parcels of Federal land and non-Federal land to proceed.

(c) APPURTENANT WATER RIGHTS.—Any conveyance of a parcel of Federal land or non-Federal land under this Act shall include the conveyance of water rights appurtenant to the parcel conveyed.

(d) TIMING.—

(1) IN GENERAL.—Except as provided in paragraphs (2) and (3), the exchange of land authorized by subsection (a) shall be completed not later than 330 days after the date on which the State makes the Secretary an offer to convey the non-Federal land under that subsection.

(2) EXCEPTION.—The deadline established under paragraph (1) shall not apply to a parcel of land, the value of which is being determined under section 5(b)(6)(C).

(3) EXTENSION.—The Secretary and the State may mutually agree to extend the deadline specified in paragraph (1).

(e) COMPLIANCE.—Except as otherwise provided in this Act, the exchange of land shall be carried out in compliance with all laws and regulations applicable to the exchange of Federal land for non-Federal land.

SEC. 5. EXCHANGE VALUATION, APPRAISALS, AND EQUALIZATION.

(a) EQUAL VALUE EXCHANGE.—The value of the Federal land and non-Federal land to be exchanged under this Act—

(1) shall be equal; or

(2) shall be made equal in accordance with subsection (c).

(b) APPRAISALS.—

(1) IN GENERAL.—The value of the Federal land and the non-Federal land shall be determined by appraisals conducted in accordance with—

(A) section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)); and

(B) section 2201.3 of title 43, Code of Federal Regulations (or successor regulations).

(2) SELECTION OF APPRAISER.—The appraisals of the Federal land and non-Federal land shall be conducted by 1 or more independent third-party appraisers selected jointly by the Secretary and the State.

(3) COSTS.—

(A) IN GENERAL.—The Secretary and the State shall share third-party appraisal costs equally.

(B) ADJUSTMENT.—The Secretary and the State may agree to adjust the relative value of the Federal land and non-Federal land to be exchanged under this Act if the Secretary or the State has paid a disproportionate share of the third-party appraisal costs.

(4) VALUATION OF UNLEASED FEDERAL LAND; REVENUE SHARING.—

(A) IN GENERAL.—Any parcel of Federal land that, as of the date of appraisal, is not leased under the Mineral Leasing Act (30 U.S.C. 181 et seq.), shall be appraised without regard to the presence of minerals subject to lease under that Act, if, after conveyance of the applicable parcel to the State, the State agrees to pay to the United States—

(i) 50 percent of any bonus or rental payments (in the form of money or other consideration) that the State receives for the disposition of any interest in the minerals after the date of conveyance; and

(ii) an amount equal to—

(I) the fraction of gross proceeds from mineral production (in the form of money or other consideration) to which the United States would have been entitled as a production royalty if the land had been—

(aa) retained by the United States; and

(bb) leased under the provisions of that Act in effect on the date of this Act; minus

(II) the portion of production royalties that would otherwise be payable to the State under section 35 of the Mineral Leasing Act (30 U.S.C. 191).

(B) OBLIGATION AS COVENANT.—The obligation of the State to pay bonus, rental, and royalty revenues to the United States under subparagraph (A) shall be a permanent covenant running with the applicable parcel of Federal land conveyed to the State.

(C) SPECIAL ACCOUNT.—All revenues received by the United States under this paragraph shall be deposited in a special account in the Treasury of the United States and shall be available without further appropriation to the Secretary until expended for—

(i) the equalization of values as provided in subsection (c)(1);

(ii) the purchase of lands or interests therein within the State of Utah that are otherwise eligible for purchase under the Federal Lands Transaction Facilitation Act (43 U.S.C. 2301 et. seq.); or

(iii) the purchase of lands or interests therein owned by the State of Utah as trustee under the Utah State School and Institutional Trust Lands Management Act that are determined by the Secretary to have outstanding characteristics for outdoor recreation, wildlife habitat, wilderness, or other natural resources.

(D) ACQUISITION.—Any land acquired under this section shall be—

(i) from a willing seller;

(ii) contingent on the conveyance of title acceptable to the Secretary, using title standards of the Attorney General;

(iii) at a price not to exceed fair market value consistent with applicable provisions of the Uniform Appraisal Standards for Federal Land Acquisitions; and

(iv) managed as part of the unit within which it is contained.

(5) REVIEW AND APPROVAL.—

(A) IN GENERAL.—Not later than 120 days after the date on which the appraiser is selected under paragraph (2), the appraiser shall submit to the Secretary and the State a copy of the completed appraisals for review.

(B) APPROVAL OR DISAPPROVAL.—Not later than 90 days after the date of receipt of an appraisal under subparagraph (A), the Secretary and the State shall independently approve or disapprove the appraisal.

(6) DETERMINATION OF VALUE.—

(A) DETERMINATION BY SECRETARY AND STATE.—If the Secretary and the State are unable to agree on the value of a parcel of land, the value of the parcel may be determined by the Secretary and the State in accordance with paragraphs (2) and (4) of section 206(d) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(d)).

(B) VALUATION OF LEASED FEDERAL LAND.—

(i) IN GENERAL.—If value is attributed to any parcel of Federal land because of the presence of minerals subject to leasing under the Mineral Leasing Act (30 U.S.C. 191 et seq.), and the parcel is subject to an existing lease under that Act, the value of the parcel shall be equal to the value of the parcel as determined under this section, as adjusted under clause (ii).

(ii) ADJUSTMENT.—

(I) IN GENERAL.—The value of the parcel subject to a lease under clause (i) shall be reduced by the percentage of the Federal revenue sharing obligation under section 35(a) of the Mineral Leasing Act (30 U.S.C. 191(a)).

(II) NO PROPERTY RIGHT.—An adjustment under subclause (I) shall not be considered to be a property right of the State.

(C) DETERMINATION BY COURT.—

(i) IN GENERAL.—Notwithstanding any other provision of law, if the Secretary and the State have not agreed on the value of a parcel by the date that is 1 year after the date of enactment of this Act, a Federal district court (including the United States District Court for the District of Utah, Central Division) shall have jurisdiction to determine the value of the parcel.

(ii) LIMITATION.—An action to determine the value of a parcel under clause (i) shall be brought not earlier than 1 year, but not more than 3 years, after the date of enactment of this Act.

(D) AVAILABILITY OF APPRAISALS.—

(i) IN GENERAL.—All final appraisals, appraisal reviews, and determinations of value for land to be exchanged under this Act shall

be available for public review at the Utah State Office of the Bureau of Land Management at least 30 days before the conveyance of the applicable parcels.

(ii) PUBLICATION.—The Secretary shall publish in a newspaper of general circulation in Salt Lake County, Utah, a notice that the appraisals are available for public inspection.

(c) EQUALIZATION OF VALUES.—

(1) SURPLUS OF NON-FEDERAL LAND.—If after completion of the appraisal and dispute resolution process under subsection (b), the value of the non-Federal land exceeds the value of the Federal land the Secretary shall, in partial exchange for the non-Federal land, provide for payment to the State of the amount necessary to equalize values from funds made available under the special account established by subsection (b)(4)(C). The State shall be entitled to receive a reasonable rate of interest at a rate equivalent to a five-year Treasury note on the balance of the value owed by the United States from the effective date of the exchange until full value is received by the State.

(2) SURPLUS OF FEDERAL LAND.—If after completion of the appraisal and dispute resolution process under subsection (b), the value of the Federal land exceeds the value of the non-Federal land, the value of the Federal land and non-Federal land may be equalized by—

(A) the Secretary, after consultation with the State, removing parcels of Federal land from the exchange until the value is equal; or

(B) the Secretary and the State adding additional State trust land to the non-Federal land, if—

(i) the additional land has been appraised in accordance with an ongoing Federal acquisition process or program; and

(ii) the appraised value (as determined under clause (i)) has been accepted by the Secretary.

(3) NOTICE AND PUBLIC INSPECTION.—

(A) IN GENERAL.—If the Secretary and the State determine to add or remove land from the exchange, the Secretary shall—

(i) publish in a newspaper of general circulation in Salt Lake County, Utah, a notice that identifies when and where a revised exchange map will be available for public inspection; and

(ii) transmit to the Committee on Energy and Natural Resources of the Senate and the Committee on Resources of the House of Representatives a copy of the revised exchange map.

(B) LIMITATION.—The Secretary and the State shall not add or remove land from the exchange until at least 20 days after the date on which the notice is published under subparagraph (A)(i) and the map is transmitted under subparagraph (A)(ii).

(d) RESOURCE REPORT.—

(1) IN GENERAL.—With respect to each parcel of Federal land to be conveyed to the State, the Secretary shall prepare a report, based on land management plans, resource inventories, and surveys existing on the date on which the report is prepared, that identifies any significant resource values, issues, or management concerns associated with the parcel.

(2) NOTICE AND INSPECTION.—A report shall be subject to the public notice and inspection in accordance with subsection (b)(6)(D).

SEC. 6. STATUS AND MANAGEMENT OF LAND AFTER EXCHANGE.

(a) ADMINISTRATION OF NON-FEDERAL LAND.—

(1) IN GENERAL.—Subject to paragraph (2) and in accordance with section 206(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(c)), the non-Federal land acquired by the United States under this Act shall become part of, and be managed as part of, the Federal administrative unit or area in which the land is located.

(2) MINERAL LEASING AND OCCUPANCY.—

(A) IN GENERAL.—Subject to valid existing rights, the non-Federal land acquired by the United States under this Act shall be withdrawn from the operation of the mineral leasing and mineral material disposal laws until the later of—

(i) the date that is 2 years after the date of enactment of this Act; or

(ii) the date on which the Record of Decision authorizing the implementation of the applicable resource management plans under section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712) is signed.

(B) EXCEPTION.—Any land identified on the maps as ''Withdrawal Parcels'' is withdrawn from the operation of the mineral leasing and mineral material disposal laws.

(3) RECEIPTS.—

(A) IN GENERAL.—Any receipts derived from the non-Federal land acquired under this Act shall be paid into the general fund of the Treasury.

(B) APPLICABLE LAW.—Mineral receipts from the non-Federal land acquired under this Act shall not be subject to section 35 of the Mineral Leasing Act (30 U.S.C. 191).

(b) WITHDRAWAL OF FEDERAL LAND PRIOR TO EXCHANGE.—Subject to valid existing rights, during the period beginning on the date of enactment of this Act and ending on the earlier of the date that is 3 years after the date of enactment of this Act or the date on which the Federal land is conveyed under this Act, the Federal land is withdrawn from—

(1) disposition (other than disposition under section 4) under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) the operation of—

(A) the mineral leasing laws;

(B) the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.); and

(C) the first section of the Act of July 31, 1947 (commonly known as the ''Materials Act of 1947'') (30 U.S.C. 601).

(c) GRAZING PERMITS.—

(1) IN GENERAL.—If land acquired under this Act is subject to a lease, permit, or contract for the grazing of domestic livestock in effect on the date of acquisition, the person or entity acquiring the land shall allow the grazing to continue for the remainder of the term of the lease, permit, or contract, subject to the related terms and conditions of user agreements, including permitted stocking rates, grazing fee levels, access rights, and ownership and use of range improvements.

(2) RENEWAL.—To the extent allowed by Federal or State law, on expiration of any grazing lease, permit, or contract described in paragraph (1), the holder of the lease, permit, or contract shall be entitled to a preference right to renew the lease, permit, or contract.

(3) CANCELLATION.—

(A) IN GENERAL.—Nothing in this Act prevents the Secretary or the State from canceling or modifying a grazing permit, lease, or contract if the land subject to the permit, lease, or contract is sold, conveyed, transferred, or leased for nongrazing purposes by the party.

(B) LIMITATION.—Except to the extent reasonably necessary to accommodate surface operations in support of mineral development, the Secretary or the State shall not cancel or modify a grazing permit, lease, or contract because the land subject to the permit, lease, or contract has been leased for mineral development.

(4) BASE PROPERTIES.—If land conveyed by the State under this Act is used by a grazing permittee or lessee to meet the base property requirements for a Federal grazing permit or lease, the land shall continue to qualify as a base property for the remaining term of the lease or permit and the term of any renewal or extension of the lease or permit.

(d) HAZARDOUS MATERIALS.—

(1) IN GENERAL.—The Secretary and, as a condition of the exchange, the State shall make available for review and inspection any record relating to hazardous materials on the land to be exchanged under this Act.

(2) COSTS.—The costs of remedial actions relating to hazardous materials on land acquired under this Act shall be paid by those entities responsible for the costs under applicable law.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Mexico (Mr. PEARCE) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from New Mexico.

□ 2300

Mr. PEARCE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the Utah Regional Land Exchange Act is the culmination of years of analysis and negotiations among representatives of Utah's State School Trust Lands, the Department of the Interior, locally elected officials, environmental groups and Members of Congress.

Congressman CHRIS CANNON should be commended for crafting this bipartisan legislation that will convey and exchange of over 80,000 acres of State and Federal lands for recreation, scenic and development purposes. This creative and significant exchange will be of great benefit to Utah's schools, recreationists, communities, and to all Americans who care about the proper care and management of Federal lands and in protecting important natural and scenic areas.

I urge passage of this bill.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I yield myself such time as I may consume.

(Mr. KIND asked and was given permission to revise and extend his remarks.)

Mr. KIND. Madam Speaker, the chairman of the subcommittee has adequately explained the purpose of the legislation. I would just note, however, that the lands involved do lie within the Congressional district represented by my good friend and colleague, JIM MATHESON from Utah. I commend his leadership and involvement in the passage of this legislation.

I would encourage its adoption this evening.

Madam Speaker, the majority has already explained the purpose of H.R. 2069. I would note that the lands involved lie within the Congressional District represented by my colleague, JIM MATHESON. The gentleman from

Utah is to be commended for his advocacy of a land exchange that, as amended, is a win-win for all the involved parties.

Madam Speaker, we appreciate the cooperation shown by the majority, the State of Utah, the BLM, and others in addressing issues that originally existed with the legislation. We support H.R. 2069, as amended, and have no objection to the adoption of the legislation by the House today.

Mr. MATHESON. Mr. Speaker, today I rise in strong support of H.R. 2069, the Utah Recreational Land Exchange Act of 2005.

Since statehood, Utah has held lands in trust to generate funds for public schools. But they are scattered throughout the State in a checkerboard pattern, isolated within federal land holdings. That has made it difficult for either the federal land agencies, or the School and Institutional Trust Lands Administration, to manage them according to their different objectives. Many of the State school trust lands have valuable habitat, watershed, and scenic features that shouldn't be commercially developed.

The Bureau of Land Management, meanwhile, owns land in other parts of my State that are not as environmentally sensitive and could be responsibly developed for the benefit of public schools.

This legislation proposes a land exchange—State school trust lands for BLM lands—that consolidates acreage for ease of management by federal land managers, increases the school trust fund balance, and preserves sensitive land along the world-renowned Colorado River corridor, using an equitable valuation.

Anyone who has rafted the Colorado River, or taken a mountain-biking trip to Moab, understands why these lands need to be open to future generations of Americans to enjoy. This legislation would transfer to the BLM parcels of State land in Westwater Canyon, the nationally-recognized Kokopelli and Slickrock trails, multiple wilderness study areas, and some of the largest natural rock arches in the U.S.

This bill is the result of a truly collaborative process with all stakeholders at the table. It is supported by the counties, by the State of Utah, by the environmental and recreational communities and it has evolved with the Department of the Interior's participation.

I would like to thank Congressman CANNON, all the stakeholders and the Resources Committee for working over the past 2 years to develop the bipartisan, consensus legislation that we have before us today.

I urge my colleagues to support this legislation to protect our treasured public lands and at the same time support public education in Utah.

Mr. CANNON. Mr. Speaker, I rise today in support of H.R. 2069, the Utah Recreational Land Exchange Act of 2006, which is also cosponsored by Congressman MATHESON and Congressman BISHOP.

Mr. Speaker, this legislation is the culmination of years of hard work, compromise, and determination involving the Utah School and Institutional Trust Lands Administration, the Counties, the environmental community, the recreation community, the Department of the Interior and of course the Resources Committee staff.

H.R. 2069 authorizes the exchange of approximately 45,000 acres of Utah State school trust lands within and near Utah's Colorado River corridor for approximately 40,000 acres of Federal lands in eastern Utah. This is an equal value exchange that guarantees that the school children of Utah will finally benefit from lands they own.

The Colorado River Corridor is a uniquely scenic area that includes such treasures as the Corona and Morning Glory arches, the Westwater wilderness study area, the Kokopelli and Slickrock trails, the watershed for Castle Valley, the Sand Wash rafting site, and thousands of other acres of red rock beauty. H.R. 2069 will transfer these lands, which are owned by Utah's school children, to the Bureau of Land Management.

Congress established Utah's school trust lands upon statehood for the specific purpose of generating income for Utah's school system. Therefore, in exchange for these beautiful areas, Utah's school children will receive mineral development lands in eastern Utah to provide a much needed revenue stream for the Utah school system.

H.R. 2069 is a balanced piece of legislation that will allow the Bureau of Land Management to fulfill its management mandates along the Colorado River as well as benefit Utah's school children. Revenue from Utah school trust lands—whether from grazing, surface leasing, mineral development or sale—will be placed in the State School Fund, which is a permanent income-producing endowment for the support of Utah's public education system.

H.R. 2069 is an equal value exchange that sets out a transparent and fair appraisal process. Appraisals will be conducted by jointly selected independent appraisers and pursuant to established law and regulations. The Federal Government will retain its current interest in the minerals conveyed to the State and those revenues will be utilized to purchase lands in Utah in the future. The bill also includes public notice provisions to insure that the public is aware of the status of the exchange process.

Madam Speaker, as you are aware, Utah has a long history of working hard to consolidate our school trust lands in a way that allows us to fund our public education system. We are confident and hopeful that H.R. 2069 acts as a blueprint for future exchanges so the people of Utah can continue to receive the revenue they were promised upon becoming a state.

I would like to take a moment to thank the staff that worked on this bill. Personally, I would like to thank from the Committee on Resources: Doug Crandall, Matt Miller and Todd Willens of Chairman POMBO's staff, and Jim Zoia and Rick Healy of Mr. RAHALL's staff; from the Leader's office Anne Thorsen, Greg Maurer and Jay Cranford; and from my staff Rachel Dresen for all their work on this legislation.

I urge my colleagues to support this exchange which is a win for America's Federal lands and is a win for Utah's school system.

Mr. KIND. Madam Speaker, I yield back the balance of our time.

Mr. PEARCE. Madam Speaker, I have no other speakers, and yield back the balance of my time.

The SPEAKER pro tempore (Ms. FOXX). The question is on the motion offered by the gentleman from New Mexico (Mr. PEARCE) that the House suspend the rules and pass the bill, H.R. 2069, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

PUEBLO OF ISLETA SETTLEMENT AND NATURAL RESOURCES RESTORATION ACT OF 2006

Mr. PEARCE. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 5842) to compromise and settle all claims in the case of Pueblo of Isleta v. United States, to restore, improve, and develop the valuable on-reservation land and natural resources of the Pueblo, and for other purposes.

The Clerk read as follows:

H.R. 5842

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Pueblo of Isleta Settlement and Natural Resources Restoration Act of 2006''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) there is pending before the United States Court of Federal Claims a civil action filed by the Pueblo against the United States in which the Pueblo seeks to recover damages pursuant to the Isleta Jurisdictional Act;

(2) the Pueblo and the United States, after a diligent investigation of the Pueblo claims, have negotiated a Settlement Agreement, the validity and effectiveness of which is contingent on the enactment of enabling legislation;

(3) certain land of the Pueblo is waterlogged, and it would be to the benefit of the Pueblo and other water users to drain the land and return water to the Rio Grande River; and

(4) there is Pueblo forest land in need of remediation in order to improve timber yields, reduce the threat of fire, reduce erosion, and improve grazing conditions.

(b) PURPOSES.—The purposes of this Act are—

(1) to improve the drainage of the irrigated land, the health of the forest land, and other natural resources of the Pueblo; and

(2) to settle all claims that were raised or could have been raised by the Pueblo against the United States under the Isleta Jurisdictional Act in accordance with section 5.

SEC. 3. DEFINITIONS.

In this Act:

(1) ISLETA JURISDICTIONAL ACT.—The term ''Isleta Jurisdictional Act'' means Public Law 104–198 (110 Stat. 2418).

(2) PUEBLO.—The term ''Pueblo'' means the Pueblo of Isleta, a federally recognized Indian tribe.

(3) RESTORATION FUND.—The term ''Restoration Fund'' means the Pueblo of Isleta Natural Resources Restoration Fund established by section 4(a).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(5) SETTLEMENT AGREEMENT.—The term ''Settlement Agreement'' means the Agreement of Compromise and Settlement entered into between the United States and the Pueblo, dated July 12, 2005, as modified by the Extension and Modification Agreement executed by the United States and the Pueblo on June 22, 2006, to settle the claims of the Pueblo in Docket No. 98–166L, a case pending in the United States Court of Federal Claims.

SEC. 4. PUEBLO OF ISLETA NATURAL RESOURCES RESTORATION TRUST FUND.

(a) ESTABLISHMENT.—There is established in the Treasury a trust fund, to be known as the ''Pueblo of Isleta Natural Resources Restoration Fund'', consisting of—

(1) such amounts as are transferred to the Restoration Fund under subsection (b); and

(2) any interest earned on investment of amounts in the Restoration Fund under subsection (d).

(b) TRANSFERS TO RESTORATION FUND.—Upon entry of the final judgment described in section 5(b), there shall be transferred to the Restoration Fund, in accordance with conditions specified in the Settlement Agreement and this Act—

(1) $32,838,750 from the permanent judgment appropriation established pursuant to section 1304 of title 31, United States Code; and

(2) in addition to the amounts transferred under paragraph (1), at such times and in such amounts as are specified for that purpose in the annual budget of the Department of the Interior, authorized to be appropriated under subsection (f), and made available by an Act of appropriation, a total of $7,200,000.

(c) DISTRIBUTION OF AMOUNTS FROM RESTORATION FUND.—

(1) APPROPRIATED AMOUNTS.—

(A) IN GENERAL.—Subject to paragraph (3), upon the request of the Pueblo, the Secretary shall distribute amounts deposited in the Restoration Fund pursuant to subsection (b)(2) of this section and section V of the Settlement Agreement, in accordance with the terms and conditions of the Settlement Agreement and this Act, on the condition that before any such distribution the Secretary receives from the Pueblo such assurances as are satisfactory to the Secretary that—

(i) the Pueblo shall deliver funds in the amount of $7,100,000 toward drainage and remediation of the agricultural land and rehabilitation of forest and range land of the Pueblo in accordance with section IV(C) and IV(D) of the Settlement Agreement; and

(ii) those funds shall be available for expenditure for drainage and remediation expenses as provided in sections IV(C) and IV(D) of the Settlement Agreement on the dates on which the Secretary makes distributions, and in amounts equal to the amounts so distributed, in accordance with sections IV(A) and IV(B) of the Settlement Agreement.

(B) USE OF FUNDS.—Of the amounts distributed by the Secretary from the Restoration Fund under subparagraph (A)—

(i) $5,700,000 shall be available to the Pueblo for use in carrying out the drainage and remediation of approximately 1,081 acres of waterlogged agricultural land, as described in section IV(A) of the Settlement Agreement; and

(ii) $1,500,000 shall be available to the Pueblo for use in carrying out the rehabilitation and remediation of forest and range land, as described in section IV(B) of the Settlement Agreement.

(C) FEDERAL CONSULTATION.—Restoration work carried out using funds distributed under this paragraph shall be planned and performed in consultation with—

(i) the Bureau of Indian Affairs; and

(ii) such other Federal agencies as are necessary.

(D) UNUSED FUNDS.—Any funds, including any interest income, that are distributed under this paragraph but that are not needed to carry out this paragraph shall be available for use in accordance with paragraph (2)(A).

(2) AMOUNTS FROM JUDGMENT FUND.—

(A) IN GENERAL.—Subject to paragraph (3), the amount paid into the Restoration Fund under subsection (b)(1), and interest income resulting from investment of that amount, shall be available to the Pueblo for—

(i) the acquisition, restoration, improvement, development, and protection of land, natural resources, and cultural resources within the exterior boundaries of the Pueblo, including improvements to the water supply and sewage treatment facilities of the Pueblo; and

(ii) for the payment and reimbursement of attorney and expert witness fees and expenses incurred in connection with Docket No. 98–166L of the United States Court of Federal Claims, as provided in the Settlement Agreement.

(B) NO CONTINGENCY ON PROVISION OF FUNDS BY PUEBLO.—The receipt and use of funds by the Pueblo under this paragraph shall not be contingent upon the provision by the Pueblo of the funds described in paragraph (1)(A)(i).

(3) EXPENDITURES AND WITHDRAWAL.—

(A) TRIBAL MANAGEMENT PLAN.—

(i) IN GENERAL.—Subject to clause (ii), the Pueblo may withdraw all or part of the Restoration Fund on approval by the Secretary of a tribal management plan in accordance with section 202 of the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4022).

(ii) REQUIREMENTS.—In addition to the requirements under the American Indian Trust Fund Management Reform Act of 1994 (25 U.S.C. 4001 et seq.), a tribal management plan described in clause (i) shall require that the Pueblo shall expend any funds withdrawn from the Restoration Fund under this paragraph in a manner consistent with the purposes described in the Settlement Agreement.

(B) ENFORCEMENT.—The Secretary may take judicial or administrative action to enforce the provisions of any tribal management plan described in subparagraph (A)(i) to ensure that any funds withdrawn from the Restoration Fund under this paragraph are used in accordance with this Act.

(C) LIABILITY.—If the Pueblo exercises the right to withdraw funds from the Restoration Fund under this paragraph, neither the Secretary nor the Secretary of the Treasury shall retain any liability for the accounting, disbursement, or investment of the funds withdrawn.

(D) EXPENDITURE PLAN.—

(i) IN GENERAL.—The Pueblo shall submit to the Secretary for approval an expenditure plan for any portion of the funds in the Restoration Fund made available under this Act that the Pueblo does not withdraw under this paragraph.

(ii) DESCRIPTION.—The expenditure plan shall describe the manner in which, and the purposes for which, funds of the Pueblo remaining in the Restoration Fund will be used.

(iii) APPROVAL.—On receipt of an expenditure plan under clause (i), the Secretary shall approve the plan if the Secretary determines that the plan is reasonable and consistent with this Act and the Settlement Agreement.

(E) ANNUAL REPORT.—The Pueblo shall submit to the Secretary an annual report that describes expenditures from the Restoration Fund during the year covered by the report.

(d) MAINTENANCE AND INVESTMENT OF RESTORATION FUND.—

(1) IN GENERAL.—The Restoration Fund and amounts in the Restoration Fund shall be maintained and invested by the Secretary of the Interior pursuant to the first section of the Act of June 24, 1938 (52 Stat. 1037, chapter 648).

(2) CREDITS TO RESTORATION FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Restoration Fund shall be credited to, and form a part of, the Restoration Fund.

(e) PROHIBITION ON PER-CAPITA PAYMENTS.—No portion of the amounts in the Restoration Fund shall be available for payment on a per capita basis to members of the Pueblo.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Restoration Fund $7,200,000.

SEC. 5. RATIFICATION OF SETTLEMENT, DISMISSAL OF LITIGATION, AND COMPENSATION TO PUEBLO.

(a) RATIFICATION OF SETTLEMENT AGREEMENT.—The Settlement Agreement is ratified.

(b) DISMISSAL.—Not later than 90 days after the date of the enactment of this Act, the Pueblo and the United States shall execute and file a joint stipulation for entry of final judgment in the case of Pueblo of Isleta v. United States, Docket 98–166L, in the United States Court of Federal Claims in such form and such manner as are acceptable to the Attorney General and the Pueblo.

(c) COMPENSATION.—After the date of the enactment of this Act, in accordance with the Settlement Agreement and upon entry of the final judgment described in subsection (b)—

(1) compensation to the Pueblo shall be paid from the permanent judgment appropriation established pursuant to section 1304 of title 31, United States Code, in the total amount of $32,838,750 for all monetary damages and attorney fees, interest, and any other fees and costs of any kind that were or could have been presented in connection with Docket No. 98–166L of the United States Court of Federal Claims; but

(2) the Pueblo shall retain all rights, including the right to bring civil actions based on causes of action, relating to the removal of ordnance under—

(A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.);

(B) the Defense Environmental Restoration Program under section 2701 of title 10, United States Code; and

(C) any contract entered into by the Pueblo for the removal of ordnance.

(d) OTHER LIMITATIONS ON USE OF FUNDS.—The Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.) shall not apply to funds distributed or withdrawn from the Restoration Fund under this Act.

(e) NO EFFECT ON LAND, RESOURCES, OR WATER RIGHTS.—Nothing in this Act affects the status of land and natural resources or any water right of the Pueblo.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Mexico (Mr. PEARCE) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from New Mexico.

Mr. PEARCE. Madam Speaker, I yield myself such time as I may consume.

H.R. 5842 authored by myself ratifies a settlement agreement pending between the Isleta Pueblo of New Mexico, a federally recognized tribe, and the United States.

This settlement agreement is the result of many years of environmental damage to certain reservation lands by the United States Government. H.R. 5842 would establish a land restoration fund for the Pueblo to acquire, restore and improve the land and natural resources within the exterior boundaries of the reservation.

Passage of this legislation settles all claims by the Pueblo pending in the United States Courts of Federal Claims. We understand that both the administration and the entire New Mexico delegation fully support this settlement and the corresponding legislation.

Madam Speaker, I rise today to support the passage of my bill, H.R. 5842, the ''Pueblo of Isleta Settlement and Natural Resources Restoration Act of 2006.'' I jointly introduced this bill with the support of the entire New Mexico Delegation. While this bill is a settlement of claims against America by a tribal government, the result of this settlement will benefit the Pueblo, the State of New Mexico and all of America. By passing this bill we fulfill our responsibility for the trust and management of these tribal lands.

This bill will settle the Pueblo's claims against the United States for mismanagement damages of the Pueblo's tribal lands. The final settlement to this case was reached in June between the U.S. Departments of Interior and Justice and the tribal leaders and will expire at the end of this session of Congress unless we act.

H.R. 5842 in settling the claims will result in a tremendous victory not just for the Pueblo of Isleta but also for the whole of New Mexico. Specifically, the legislation provides $32.8 million from the Department of Justice judgment fund and an additional $7.2 million to be appropriated.

The victory in the bill is that these funds will be used for the acquisition, restoration, improvement, development and protection of the land, natural resources and cultural resources of the Pueblo. The measure also calls for the Pueblo to invest $7.1 million of its own funds for the drainage and remediation of agricultural lands and the rehabilitation of forest and range land.

This commitment of the tribe shows their willingness to work to restore not just their lands but also a key portion of the Rio Grande Watershed bringing environmental improvements to every water user on the Rio Grande River.

If this bill isn't passed all we will have is more delay, more cost and a situation that benefits no one. Therefore, I urge all my colleagues to join me and help get this settlement agreement completed today. This bill benefits New Mexico, and protects the American taxpayer through a fair comprehensive settlement of the Pueblo's claim.

I want to thank many people for their hard work on making this bill a reality. Specifically, I want to thank Governor Robert Benavides of Isleta for his hard work and leadership in making this settlement such a success for not just his citizens but all of New Mexico.

I want to thank my colleague, Mrs. WILSON for her help and my Chairman Mr. POMBO for his leadership. Finally, I appreciate the hard work of the House Resources staff, Chris Fluhr, Matt Miller, and Todd Willens for helping bring this legislation to the House floor today.

Again, this settlement is good for America and should be passed here today.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, we have no objection in regards to this legislation. I will encourage its adoption this evening.

Madam Speaker, I yield back the balance of our time.

Mr. PEARCE. Madam Speaker, I have no additional Speakers, and yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Mexico (Mr. PEARCE) that the House suspend the rules and pass the bill, H.R. 5842.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

DOUGLAS COUNTY, WASHINGTON, PUD CONVEYANCE ACT

Mr. PEARCE. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 4789) to require the Secretary of the Interior to convey certain public land located wholly or partially within the boundaries of the Wells Hydroelectric Project of Public Utility District No. 1 of Douglas County, Washington, to the utility district, as amended.

The Clerk read as follows:

H.R. 4789

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Douglas County, Washington, PUD Conveyance Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) PUBLIC LAND.—The term ''public land'' means the approximately 622 acres of Federal land managed by the Bureau of Land Management and identified for conveyance on the map prepared by the Bureau of Land Management entitled ''Douglas County Public Utility District Proposal'' and dated March 2, 2006.

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(3) PUD.—The term ''PUD'' means the Public Utility District No. 1 of Douglas County, Washington.

SEC. 3. CONVEYANCE OF PUBLIC LAND, WELLS HYDROELECTRIC PROJECT, PUBLIC UTILITY DISTRICT NO. 1 OF DOUGLAS COUNTY, WASHINGTON.

(a) CONVEYANCE REQUIRED.—Notwithstanding the land use planning requirements of sections 202 and 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712, 1713), and notwithstanding section 24 of the Federal Power Act (16 U.S.C. 818) and Federal Power Order for Project 2149, and subject to valid existing rights, if not later than 45 days after the date of completion of the appraisal required under subsection (b), the Public Utility District No. 1 of Douglas County, Washington, submits to the Secretary of the Interior an offer to acquire the public land for the appraised value, the Secretary shall convey, not later than 30 days after the date of the offer, to the PUD all right, title, and interest of the United States in and to the public land.

(b) APPRAISAL.—Not later than 60 days after the date of enactment of this Act, the Secretary shall complete an appraisal of the public land. The appraisal shall be conducted in accordance with the ''Uniform Appraisal Standards for Federal Land Acquisitions'' and the ''Uniform Standards of Professional Appraisal Practice''.

(c) PAYMENT.—Not later than 30 days after the date on which the public land is conveyed under this section, the PUD shall pay to the Secretary an amount equal to the appraised value of the public land as determined under subsection (b).

(d) MAP AND LEGAL DESCRIPTIONS.—As soon as practicable after the date of enactment of this Act, the Secretary shall finalize legal descriptions of the public land to be conveyed under this section. The Secretary may correct any minor errors in the map referred to in section 2 or in the legal descriptions. The map and legal descriptions shall be on file and available for public inspection in appropriate offices of the Bureau of Land Management.

(e) COSTS OF CONVEYANCE.—As a condition of conveyance, any costs related to the conveyance under this section shall be paid by the PUD.

(f) DISPOSITION OF PROCEEDS.—The Secretary shall deposit the proceeds from the sale in the working capital fund of the Bureau of Land Management established by section 306 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1736).

SEC. 4. SEGREGATION OF LANDS.

(a) WITHDRAWAL.—Except as provided in section 3(a), effective immediately upon enactment of this Act, and subject to valid existing rights, the public land is withdrawn from

(1) all forms of entry, appropriation, or disposal under the public land laws, and all amendments thereto;

(2) location, entry, and patenting under the mining laws, and all amendments thereto; and

(3) operation of the mineral leasing, mineral materials, and geothermal leasing laws, and all amendments thereto.

(b) DURATION.—This section expires two years after the date of enactment of this Act or on the date of the completion of the conveyance under section 3, whichever is earlier.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Mexico (Mr. PEARCE) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from New Mexico.

Mr. PEARCE. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H.R. 4789 would convey nearly 400 acres of small isolated Bureau of Land Management parcels of land to the Wells Hydroelectric Project located in Anzwell, Washington. The project provides power to large parts of Oregon and Washington.

The small parcels being conveyed are difficult for the BLM to manage and makes management of the Wells Hydroelectric project area difficult for the utility company which manages its area not just for power generation, but also for a variety of public recreation uses.

The land would be conveyed for fair market value and the legislation ensures that recreational opportunities would continue.

I urge passage of this bill.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I too support this legislation. I encourage its

passage this evening and yield back the balance of our time.

Mr. PEARCE. Madam Speaker, I have no additional speakers and yield back the balance of our time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Mexico (Mr. PEARCE) that the House suspend the rules and pass the bill, H.R. 4789, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

ARTHUR V. WATKINS DAM ENLARGEMENT ACT OF 2005

Mr. PEARCE. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 3626) to authorize the Secretary of the Interior to study the feasibility of enlarging the Arthur V. Watkins Dam Weber Basin Project, Utah, to provide additional water for the Weber Basin Project to fulfill the purposes for which that project was authorized, as amended.

The Clerk read as follows:

H.R. 3626

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Arthur V. Watkins Dam Enlargement Act of 2005''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Arthur V. Watkins Dam is a feature of the Weber Basin Project, which was authorized by law on August 29, 1949.

(2) Increasing the height of Arthur V. Watkins Dam and construction of pertinent facilities may provide additional storage capacity for the development of additional water supply for the Weber Basin Project for uses of municipal and industrial water supply, flood control, fish and wildlife, and recreation.

SEC. 3. AUTHORIZATION OF FEASIBILITY STUDY.

The Secretary of the Interior, acting through the Bureau of Reclamation, is authorized to conduct a feasibility study on raising the height of Arthur V. Watkins Dam for the development of additional storage to meet water supply needs within the Weber Basin Project area and the Wasatch Front. The feasibility study shall include such environmental evaluation as required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and a cost allocation as required under the Reclamation Project Act of 1939 (43 U.S.C. 485 et seq.).

SEC. 4. COST SHARES.

(a) FEDERAL SHARE.—The Federal share of the costs of the study authorized in section 3 shall not exceed 50 percent of the total cost of the study.

(b) IN-KIND CONTRIBUTIONS.—The Secretary shall accept, as appropriate, in-kind contributions of goods or services from the Weber Basin Water Conservancy District. Such goods and services accepted under this section shall be counted as part of the non-Federal cost share for the study.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to the Secretary $1,000,000 for the Federal cost share of the study authorized in section 3.

SEC. 6. SUNSET.

The authority of the Secretary to carry out any provisions of this Act shall terminate 10 years after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Mexico (Mr. PEARCE) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from New Mexico.

Mr. PEARCE. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H.R. 3626 introduced by our colleague the esteemed ROB BISHOP from Utah begins the effort to expand water storage in northern Utah to meet growing demands.

This legislation authorizes the Bureau of Reclamation to look at the feasibility of enlarging the Arthur V. Watkins Dam for this purpose. I commend Mr. BISHOP for introducing this forward-thinking and bipartisan bill. I urge my colleagues to support this legislation.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, we too support passage of this legislation, encourage its adoption, and yield back the reminder of our time.

Mr. PEARCE. Madam Speaker, I yield such time as he may consume to the gentleman from Utah (Mr. BISHOP), the author of the legislation.

(Mr. BISHOP of Utah asked and was given permission to revise and extend his remarks.)

Mr. BISHOP of Utah. Madam Speaker, of all of the water-related bills that the Resources Committee has discussed, in my opinion this is still the best dam bill that we have, which would expand the growth of the Arthur Watkins Dam and Willard Bay.

Yesterday the Science Committee produced several bills that came to this body to try and help with the issue of drought. That was the purpose of this bay and dam in 1957 when it was produced, to make sure that we can provide adequate water resources for agriculture, and the growing population in the State of Utah.

Madam Speaker, I want to thank the chairman and the ranking member, and specifically the staff and the subcommittee chairman for bringing this bill to the floor, and to fulfill my commitment to the majority leader, I promised as soon as we passed this bill to get a haircut, no later than Tuesday of next week.

Madam Speaker, I rise today in support of H.R. 3626, the Arthur V. Watkins Dam Enlargement Act of 2005. In terms of water-related bills, this is one of the best dam bills the Committee on Resources has considered this year. H.R. 3626 will authorize the Secretary of the Interior to conduct a feasibility study which will consider enlarging the Arthur V. Watkins dam. In my home county of Box Elder, Utah, this facility is better known as Willard Bay.

Willard Bay is a popular recreation facility, drawing in outdoor enthusiasts from all over Utah. It is known for its great fishing, water skiing and beaches. Willard Bay is the furthest downstream facility operated by the Weber Basin Water Conservancy District. The first phase was constructed between 1957 and 1964, with additional improvements being made as recent as the last decade. Willard Bay is an important water storage facility in my state and district. With its 215,000 acre feet capacity, the water resource in Willard Bay meets the culinary and recreational needs of hundreds of thousands of my constituents in the Top of Utah.

As the population of Northern Utah grows, the need for additional water storage capacity is acute. Utah recently emerged from a 5 year period of drought. Winter of 2005–2006 was favorable and helped to recharge our reservoirs, lakes and aquifers. However, being in the Intermountain West, there's no guarantee that every year will be a good water year. In the high deserts of Utah, every drop of water counts.

The water engineers of the Weber Basin Water Conservancy District are the brightest and hardest working individuals in their field. They have figured out how to use almost every drop of water in the reservoir. However, it is disconcerting to look out over the reservoir during the hot summer months, when there is a drought, and not see any water in the reservoir. By studying the feasibility to increase the storage capacity, we will hopefully be in a better position to meet the water needs of our people, in the next decade.

The administration testified in favor of H.R. 3626 at a congressional hearing last November. H.R. 3626 was subsequently discharged from the House Committee on Resources on a voice vote. It is a good bill and much needed by my constituents. I appreciate Chairman POMBO and his staff for their excellent work in bringing this dam bill—the best of all of them—to the floor today.

Mr. PEARCE. Madam Speaker, I yield back the balance of our time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Mexico (Mr. PEARCE) that the House suspend the rules and pass the bill, H.R. 3626, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

LOWER REPUBLICAN RIVER BASIN STUDY ACT

Mr. PEARCE. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 4750) to authorize the Secretary of the Interior to conduct a study to determine the feasibility of implementing a water supply and conservation project to improve water supply reliability, increase the capacity of water storage, and improve water management efficiency in the Republican River Basin between Harlan County Lake in Nebraska and Milford Lake in Kansas, as amended.

The Clerk read as follows:

H.R. 4750

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Lower Republican River Basin Study Act''.

SEC. 2. REPUBLICAN RIVER BASIN FEASIBILITY STUDY.

(a) AUTHORIZATION OF STUDY.—Pursuant to reclamation laws, the Secretary of the Interior, acting through the Bureau of Reclamation and in consultation and cooperation with the States of Nebraska, Kansas, and Colorado, may conduct a study to—

(1) determine the feasibility of implementing a water supply and conservation project that will—

(A) improve water supply reliability in the Republican River Basin between Harlan County Lake in Nebraska and Milford Lake in Kansas, including areas in the counties of Harlan, Franklin, Webster, and Nuckolls in Nebraska and Jewel, Republic, Cloud, Washington, and Clay in Kansas (in this section referred to as the ''Republican River Basin'');

(B) increase the capacity of water storage through modifications of existing projects or through new projects that serve areas in the Republican River Basin; and

(C) improve water management efficiency in the Republican River Basin through conservation and other available means and, where appropriate, evaluate integrated water resource management and supply needs in the Republican River Basin; and

(2) consider appropriate cost-sharing options for implementation of the project.

(b) COST SHARING.—The Federal share of the cost of the study shall not exceed 50 percent of the total cost of the study, and shall be nonreimbursable.

(c) COOPERATIVE AGREEMENTS.—The Secretary shall undertake the study through cooperative agreements with the State of Kansas or Nebraska and other appropriate entities determined by the Secretary.

(d) COMPLETION AND REPORT.—

(1) IN GENERAL.—Except as provided in paragraph (2), not later than 3 years after the date of the enactment of this section the Secretary of the Interior shall complete the study and transmit to the Congress a report containing the results of the study.

(2) EXTENSION.—If the Secretary determines that the study cannot be completed within the 3-year period beginning on the date of the enactment of this Act, the Secretary—

(A) shall, at the time of that determination, report to the Congress on the status of the study, including an estimate of the date of completion; and

(B) complete the study and transmit to the Congress a report containing the results of the study by not later than that date.

(e) SUNSET OF AUTHORITY.—The authority of the Secretary to carry out any provisions of this Act shall terminate 10 years after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Mexico (Mr. PEARCE) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from New Mexico.

Mr. PEARCE. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H.R. 4750, sponsored by Congressman Tom Osborne, authorizes the Secretary of the Interior to study the feasibility of a water supply and conservation project in the Republican River Basin.

This legislation would enact into law one requirement of the Republican River Compact Settlement negotiated between the States of Nebraska, Kansas, and Colorado, and approved by the United States Supreme Court in 2003.

The feasibility study would help clarify the opportunities to increase water storage in the river basin, and is needed to increase water availability and encourage more efficient water use.

I urge my colleagues to support this needed legislation.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, we too support passage of this legislation, encourage its adoption and yield back the balance of our time.

Mr. PEARCE. Madam Speaker, I yield such time as he may consume to the gentleman from Nebraska (Mr. OSBORNE), the author of the legislation.

Mr. OSBORNE. Madam Speaker, I thank the gentleman from New Mexico for yielding me time and bringing this forward, and for the rapidity with which we are moving through the bills tonight. We are sorry to slow you down. But the gentleman from Kansas (Mr. MORAN) and I would like to say a few words about this bill. He was a coauthor with me.

As you mentioned, H.R. 4750 is a study as to how to more efficiently utilize water between Harlan County Dam in Nebraska and Milford Reservoir in Kansas. The reason this is so important is that Nebraska and Kansas signed a compact in 2002, which means that a lot of Nebraska water goes down the Republican River into Kansas, and Nebraska so far has been short. We are 100,000 acre feet short, as a matter of fact, over the last 3 years.

And this has been exacerbated by an extreme drought which we have had for the last 6 years. So this water shortage has made for a very critical situation. So if we can, through this study, allocate water more effectively, save some water, it will help farmers, ranchers, municipalities both in Nebraska and Kansas.

We want to thank you. We want to thank Mr. POMBO and the resources staff for bringing forth this bill on short notice. We think it is very important. We urge its passage. We appreciation the cooperation on both sides of the aisle on this bill.

Mr. PEARCE. Madam Speaker, I yield such time as he may consume to the gentleman from Kansas (Mr. MORAN).

Mr. MORAN of Kansas. Madam Speaker, I thank the gentleman from New Mexico. I also thank the gentleman from Wisconsin this evening for being here in support of H.R. 4750. As has been indicated, this is a very important issue for many in both the State of Nebraska and the State of Kansas. I particularly want to express my appreciation to the gentleman from Nebraska (Mr. OSBORNE) and really the cooperation that has existed on very difficult issues between the State of Nebraska and the State of Kansas.

Water is a huge issue in the midwest. It always has been, probably always will be. But it is especially exacerbated by the fact of inadequate rainfall for now, four, five and six years in much of Kansas and much of Nebraska.

An agreement was reached, compact litigation ensued. Ultimately a settlement of that litigation was reached. And that settlement provides for the State of Nebraska and the State of Kansas to come together, provide some money, share with the Federal Government.

The Department of Interior would then conduct a study. The State of Kansas, and I believe the State of Nebraska has appropriated this money for the fiscal year. That is why this legislation is so important to be timely considered and timely approved. All that now remains is for the Federal Government to meet its obligation under the settlement agreement.

The feasibility study is desperately needed to increase the water availability to find out how we do that, and to encourage its efficient use and conservation within our delivery system.

Madam Speaker, the feasibility study authorized by 4750 is not only necessary to ensure the State remains in compliance with that agreement, but to make certain that the economic, agriculture and personal use of water is done in a very efficient and effective way.

I urge Members of Congress to approve this legislation.

Mr. PEARCE. Madam Speaker, I would remind the Members that this is a very bipartisan bill, everything being bipartisan except the name of the river basin being studied. I would urge passage.

Madam Speaker, I yield back the balance of our time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Mexico (Mr. PEARCE) that the House suspend the rules and pass the bill, H.R. 4750, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

□ 2315

LAS CIENEGAS ENHANCEMENT ACT

Mr. PEARCE. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 5016) to provide for the exchange of certain Bureau of Land Management land in Pima County, Arizona, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5016

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Las Cienegas Enhancement Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) FEDERAL LAND.—The term ''Federal land'' means the Sahuarita parcel of land consisting of approximately 1,280 acres, as depicted on the map entitled ''Las Cienegas Enhancement Act—Federal Land'' and dated May 9, 2006.

(2) LANDOWNER.—The term ''landowner'' means Las Cienegas Conservation, LLC.

(3) NON-FEDERAL LAND.—The term ''non-Federal land'' means the Empirita-Simonson parcel of land consisting of approximately 2,392 acres, as depicted on the map entitled ''Las Cienegas Enhancement Act—Non-Federal Land'' and dated May 9, 2006.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 3. LAND EXCHANGE, BUREAU OF LAND MANAGEMENT LAND IN PIMA COUNTY, ARIZONA.

(a) EXCHANGE AUTHORIZED.—If the landowner offers to convey to the Secretary title to the non-Federal land, the Secretary shall accept the offer and convey to the landowner all, right, title, and interest of the United States in and to the Federal land.

(b) VALUATION, APPRAISALS, AND EQUALIZATION.—

(1) EQUAL VALUE EXCHANGE.—The value of the Federal land and the non-Federal land to be exchanged under this section shall be equal. If the values are not equal, the values shall be equalized in accordance with paragraph (3).

(2) APPRAISAL.—To determine the value of the Federal land and the non-Federal land, the Federal land and the non-Federal land shall be subject to an appraisal by an independent, qualified appraiser agreed to by the Secretary and landowner. The appraiser shall consider the value of the Federal land and the non-Federal land as of the date of the enactment of this Act. The appraisal shall be conducted in accordance with the Uniform Appraisal Standards for Federal Land Acquisition and the Uniform Standards of Professional Appraisal Practice. Not later than 180 days after the date of enactment of this Act, the appraisal shall be submitted to the Secretary and landowner for approval.

(3) EQUALIZATION OF VALUES.—If the values of the Federal land and non-Federal land are not equal, their values may be equalized—

(A) by reducing the acreage of the non-Federal land or the Federal land to be exchanged, as appropriate; or

(B) by the payment by the landowner or the Secretary of a cash equalization payment, which, in the case of a cash equalization payment made by the landowner, may exceed 25 percent of the value of the Federal land, notwithstanding section 206(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716(b)).

(4) DISPOSITION AND USE OF PROCEEDS.—Any cash equalization payment received by the Secretary under paragraph (3) shall be deposited in the Federal Land Disposal Account established by section 206(a) of the Federal Land Transaction Facilitation Act (43 U.S.C. 2305(a)). Amounts so deposited shall be available to the Secretary, without further appropriation and until expended, for the acquisition of land and interests in land in southern Arizona.

(c) PROTECTION OF VALID EXISTING RIGHTS.—The exchange of the Federal land and the non-Federal land shall be subject to any easements, rights-of-way, and other valid encumbrances on the land in existence on the date of enactment of this Act.

(d) TIME FOR COMPLETION OF EXCHANGE.—The exchange of the Federal land and non-Federal land under this section shall be completed—

(1) except as provided in paragraph (2), not later than one year after the date of the enactment of this Act; or

(2) if there is a dispute concerning an appraisal of the Federal land or non-Federal land or appraisal issue arising under subsection (b), before the expiration of the 90-day period beginning on the date the dispute is resolved.

(e) ADMINISTRATIVE COSTS.—As a condition of the conveyance of the Federal land to the landowner, the landowner shall pay the costs of carrying out the exchange of the Federal land and non-Federal land under this section, including any direct costs relating to any environmental reviews and mitigation of the Federal land.

(f) CORRECTION OF ERRORS; MINOR BOUNDARY ADJUSTMENTS.—The Secretary and landowner may mutually agree—

(1) to correct minor errors in the legal descriptions of the Federal land and non-Federal land to be exchanged under this section; or

(2) to make minor adjustments to the boundaries of the Federal land and non-Federal land.

(g) ROAD ACCESS.—Not later than 18 months after the date on which the non-Federal land is acquired by the Secretary, the Secretary shall provide to the Secretary of Agriculture a right-of-way through the non-Federal land for motorized public road access to the boundary of the Coronado National Forest. The right-of-way shall be provided in accordance with section 507 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1767).

(h) ADMINISTRATION OF LAND ACQUIRED BY THE UNITED STATES.—On acquisition of the non-Federal land by the Secretary, the Secretary shall—

(1) include the acquired land as part of the Las Cienegas National Conservation Area; and

(2) administer the acquired land in accordance with Public Law 106–538 (16 U.S.C. 460ooo et seq.), which established the Las Cienegas National Conservation Area, and other applicable laws.

SEC. 4. MODIFICATION OF LAS CIENEGAS NATIONAL CONSERVATION AREA BOUNDARY.

The boundary of the Las Cienegas National Conservation Area is modified to exclude the 40-acre tract that, as of the date of the enactment of this Act, is leased by the Bureau of Land Management to the town of Elgin, Arizona, for a sanitary landfill.

SEC. 5. LAND CONVEYANCE, PIMA COUNTY, ARIZONA.

As an additional condition of the conveyance of the Federal land to the landowner under section 3, the landowner shall convey, without consideration, to Pima County, Arizona, a parcel of land consisting of approximately 98 acres, as depicted on the map referred to in section 2(1) as ''land to be conveyed to Pima County''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from New Mexico (Mr. PEARCE) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from New Mexico.

Mr. PEARCE. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H.R. 5016, introduced by Mr. KOLBE, would consolidate lands within the Las Cienegas National Conservation Area located 50 miles south of Tucson. The area consists of 42,000 acres managed by the Bureau of Land Management.

This legislation would add 2,490 acres of private land to the conservation area in exchange for 1,280 acres of isolated BLM lands. The bill would also modify the boundary of the conservation area to exclude a 40-acre tract of land for a sanitary landfill. This area was inadvertently included in the original boundary.

I would urge support for this bill.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I, too, support passage of this legislation and would encourage its adoption, and I yield back the remainder of our time.

Mr. PEARCE. Madam Speaker, before I depart, I would like to thank the gentleman from Wisconsin for his great work here. I think we have set a modern land speed record on these bills, and I thank him very much.

Madam Speaker, I have no additional speakers, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from New Mexico (Mr. PEARCE) that the House suspend the rules and pass the bill, H.R. 5016, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

COLUMBIA SPACE SHUTTLE MEMORIAL STUDY ACT

Mr. GOHMERT. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 5692) to direct the Secretary of the Interior to carry out a study to determine the suitability and feasibility of establishing memorials to the Space Shuttle *Columbia* on parcels of land in the State of Texas, as amended.

The Clerk read as follows:

H.R. 5692

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Columbia Space Shuttle Memorial Study Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) MEMORIAL.—The term ''memorial'' means a memorial to the Space Shuttle Columbia that is subject to the study in section 3(a).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the National Park Service.

SEC. 3. STUDY OF SUITABILITY AND FEASIBILITY OF ESTABLISHING MEMORIALS TO THE SPACE SHUTTLE COLUMBIA.

(a) IN GENERAL.—Not later than 3 years after the date on which funds are made available, the Secretary shall conduct a special resource study to determine the feasibility and suitability of establishing a memorial as a unit or units of the National Park System to the Space Shuttle Columbia on land in the State of Texas described in subsection (b) on which large debris from the Shuttle was recovered.

(b) DESCRIPTION OF LAND.—The parcels of land referred to in subsection (a) are—

(1) the parcel of land owned by the Fredonia Corporation, located at the southeast corner of the intersection of East Hospital Street and North Fredonia Street, Nacogdoches, Texas;

(2) the parcel of land owned by Temple Inland Inc., 10 acres of a 61-acre tract bounded by State Highway 83 and Bayou Bend Road, Hemphill, Texas;

(3) the parcel of land owned by the city of Lufkin, Texas, located at City Hall Park, 301 Charlton Street, Lufkin, Texas; and

(4) the parcel of land owned by San Augustine County, Texas, located at 1109 Oaklawn Street, San Augustine, Texas.

(c) ADDITIONAL SITES.—The Secretary may recommend to Congress additional sites in the State of Texas relating to the Space Shuttle Columbia for establishment as memorials to the Space Shuttle Columbia.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. GOHMERT) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

Mr. GOHMERT. Madam Speaker, I yield myself such time as I may consume.

H.R. 5692, introduced by myself, would authorize the Secretary of the Interior to conduct a special resource study to determine the feasibility and suitability of establishing a memorial to the Space Shuttle *Columbia* in the State of Texas and for its inclusion as a unit in the National Park System.

Madam Speaker, I rise today to properly commemorate and memorialize one of this Nation's most heroic, yet heartbreaking, tragedies, the disintegration of the Space Shuttle *Columbia* as it reentered earth's atmosphere in the spring of 2003.

This legislation will serve to begin the process of appropriately honoring the bravery and sacrifice not only of the seven heroic souls of her crew and their families, but also of the numerous citizens that lent a hand in the recovery effort following the catastrophe by initiating a study of the Secretary of the Interior to determine the suitability and feasibility of establishing memorials to the Space Shuttle *Columbia* on parcels of land in East Texas where the major debris from the shuttle was recovered.

Tragically, it was strewn over hundreds of miles in my district. The commitment by my constituents in the effort to recover as much of the wreckage as possible was pivotal in determining the cause of the incident. These contributions, as well as those made by the crew of the *Columbia*, deserve this recognition.

I urge my colleagues to vote ''yes'' on H.R. 5692 and commemorate ultimately the sacrifice by Commander Rick Husband, Pilot William McCool, Payload Commander Michael Anderson, Mission Specialist David Brown, Mission Specialist Kalpana Chalwa, Mission Specialist Laurel Blair Salton Clark, and Payload Commander Ilan Ramon deserve a memorial befitting their devotion to their fellow man, their spirit of exploration and discovery, along with their courage.

I urge adoption of the bill.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I yield myself such time as I may consume.

(Mr. KIND asked and was given permission to revise and extend his remarks.)

Mr. KIND. Madam Speaker, I commend the leadership the gentleman from Texas has shown on this important initiative, and we continue to mourn the loss of the crew of the Space Shuttle *Columbia*. It is our hope this evening that the study we authorize today will help guide efforts to appropriately memorialize the brave explorers who lost their lives in that great tragedy.

Again, I thank my friend from Texas for his leadership and initiative and encourage passage of this legislation.

Madam Speaker, I yield back the remainder of our time.

Mr. GOHMERT. Madam Speaker, I thank the gentleman. I have no additional speakers, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. GOHMERT) that the House suspend the rules and pass the bill, H.R. 5692, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: ''A bill to direct the Secretary of the Interior to conduct a special resource study to determine the feasibility and suitability of establishing a memorial to the Space Shuttle *Columbia* in the State of Texas and for its inclusion as a unit of the National Park System.''.

A motion to reconsider was laid on the table.

RIO GRANDE NATURAL AREA ACT

Mr. GOHMERT. Madam Speaker, I move to suspend the rules and pass the Senate bill (S. 56) to establish the Rio Grande Natural Area in the State of Colorado, and for other purposes.

The Clerk read as follows:

S. 56

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Rio Grande Natural Area Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) COMMISSION.—The term ''Commission'' means the Rio Grande Natural Area Commission established by section 4(a).

(2) NATURAL AREA.—The term ''Natural Area'' means the Rio Grande Natural Area established by section 3(a).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 3. ESTABLISHMENT OF RIO GRANDE NATURAL AREA.

(a) IN GENERAL.—There is established the Rio Grande Natural Area in the State of Colorado to conserve, restore, and protect the natural, historic, cultural, scientific, scenic, wildlife, and recreational resources of the Natural Area.

(b) BOUNDARIES.—The Natural Area shall include the Rio Grande River from the southern boundary of the Alamosa National Wildlife Refuge to the New Mexico State border, extending ¼ mile on either side of the bank of the River.

(c) MAP AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall prepare a map and legal description of the Natural Area.

(2) EFFECT.—The map and legal description of the Natural Area shall have the same force and effect as if included in this Act, except that the Secretary may correct any minor errors in the map and legal description.

(3) PUBLIC AVAILABILITY.—The map and legal description of the Natural Area shall be available for public inspection in the appropriate offices of the Bureau of Land Management.

SEC. 4. ESTABLISHMENT OF THE COMMISSION.

(a) ESTABLISHMENT.—There is established the Rio Grande Natural Area Commission.

(b) PURPOSE.—The Commission shall—

(1) advise the Secretary with respect to the Natural Area; and

(2) prepare a management plan relating to non-Federal land in the Natural Area under section 6(b)(2)(A).

(c) MEMBERSHIP.—The Commission shall be composed of 9 members appointed by the Secretary, of whom—

(1) 1 member shall represent the Colorado State Director of the Bureau of Land Management;

(2) 1 member shall be the manager of the Alamosa National Wildlife Refuge, ex officio;

(3) 3 members shall be appointed based on the recommendation of the Governor of Colorado, of whom—

(A) 1 member shall represent the Colorado Division of Wildlife;

(B) 1 member shall represent the Colorado Division of Water Resources; and

(C) 1 member shall represent the Rio Grande Water Conservation District; and

(4) 4 members shall—

(A) represent the general public;

(B) be citizens of the local region in which the Natural Area is established; and

(C) have knowledge and experience in the fields of interest relating to the preservation, restoration, and use of the Natural Area.

(d) TERMS OF OFFICE.—

(1) IN GENERAL.—Except for the manager of the Alamosa National Wildlife Refuge, the term of office of a member of the Commission shall be 5 years.

(2) REAPPOINTMENT.—A member may be reappointed to the Commission on completion of the term of office of the member.

(e) COMPENSATION.—A member of the Commission shall serve without compensation for service on the Commission.

(f) CHAIRPERSON.—The Commission shall elect a chairperson of the Commission.

(g) MEETINGS.—

(1) IN GENERAL.—The Commission shall meet at least quarterly at the call of the chairperson.

(2) PUBLIC MEETINGS.—A meeting of the Commission shall be open to the public.

(3) NOTICE.—Notice of any meeting of the Commission shall be published in advance of the meeting.

(h) TECHNICAL ASSISTANCE.—The Secretary and the heads of other Federal agencies shall, to the maximum extent practicable, provide any information and technical services requested by the Commission to assist in carrying out the duties of the Commission.

SEC. 5. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, meet and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out this Act.

(b) COOPERATIVE AGREEMENTS.—

(1) IN GENERAL.—For purposes of carrying out the management plan on non-Federal land in the Natural Area, the Commission may enter into a cooperative agreement with the State of Colorado, a political subdivision of the State, or any person.

(2) REQUIREMENTS.—A cooperative agreement entered into under paragraph (1) shall establish procedures for providing notice to the Commission of any action proposed by

the State of Colorado, a political subdivision of the State, or any person that may affect the implementation of the management plan on non-Federal land in the Natural Area.

(3) EFFECT.—A cooperative agreement entered into under paragraph (1) shall not enlarge or diminish any right or duty of a Federal agency under Federal law.

(c) PROHIBITION OF ACQUISITION OF REAL PROPERTY.—The Commission may not acquire any real property or interest in real property.

(d) IMPLEMENTATION OF MANAGEMENT PLAN.—

(1) IN GENERAL.—The Commission shall assist the Secretary in implementing the management plan by carrying out the activities described in paragraph (2) to preserve and interpret the natural, historic, cultural, scientific, scenic, wildlife, and recreational resources of the Natural Area.

(2) AUTHORIZED ACTIVITIES.—In assisting with the implementation of the management plan under paragraph (1), the Commission may—

(A) assist the State of Colorado in preserving State land and wildlife within the Natural Area;

(B) assist the State of Colorado and political subdivisions of the State in increasing public awareness of, and appreciation for, the natural, historic, scientific, scenic, wildlife, and recreational resources in the Natural Area;

(C) encourage political subdivisions of the State of Colorado to adopt and implement land use policies that are consistent with—

(i) the management of the Natural Area; and

(ii) the management plan; and

(D) encourage and assist private landowners in the Natural Area in the implementation of the management plan.

SEC. 6. MANAGEMENT PLAN.

(a) IN GENERAL.—Not later than 4 years after the date of enactment of this Act, the Secretary and the Commission, in coordination with appropriate agencies in the State of Colorado, political subdivisions of the State, and private landowners in the Natural Area, shall prepare management plans for the Natural Area as provided in subsection (b).

(b) DUTIES OF SECRETARY AND COMMISSION.—

(1) SECRETARY.—The Secretary shall prepare a management plan relating to the management of Federal land in the Natural Area.

(2) COMMISSION.—

(A) IN GENERAL.—The Commission shall prepare a management plan relating to the management of the non-Federal land in the Natural Area.

(B) APPROVAL OR DISAPPROVAL.—

(i) IN GENERAL.—The Commission shall submit to the Secretary the management plan prepared under subparagraph (A) for approval or disapproval.

(ii) ACTION FOLLOWING DISAPPROVAL.—If the Secretary disapproves the management plan submitted under clause (i), the Secretary shall—

(I) notify the Commission of the reasons for the disapproval; and

(II) allow the Commission to submit to the Secretary revisions to the management plan submitted under clause (i).

(3) COOPERATION.—The Secretary and the Commission shall cooperate to ensure that the management plans relating to the management of Federal land and non-Federal land are consistent.

(c) REQUIREMENTS.—The management plans shall—

(1) take into consideration Federal, State, and local plans in existence on the date of enactment of this Act to present a unified preservation, restoration, and conservation plan for the Natural Area;

(2) with respect to Federal land in the Natural Area—

(A) be developed in accordance with section 202 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1712);

(B) be consistent, to the maximum extent practicable, with the management plans adopted by the Director of the Bureau of Land Management for land adjacent to the Natural Area; and

(C) be considered to be an amendment to the San Luis Resource Management Plan of the Bureau of Land Management; and

(3) include—

(A) an inventory of the resources contained in the Natural Area (including a list of property in the Natural Area that should be preserved, restored, managed, developed, maintained, or acquired to further the purposes of the Natural Area); and

(B) a recommendation of policies for resource management, including the use of intergovernmental cooperative agreements, that—

(i) protect the resources of the Natural Area; and

(ii) provide for solitude, quiet use, and pristine natural values of the Natural Area.

(d) PUBLICATION.—The Secretary shall publish notice of the management plans in the Federal Register.

SEC. 7. ADMINISTRATION OF NATURAL AREA.

(a) IN GENERAL.—The Secretary shall administer the Federal land in the Natural Area—

(1) in accordance with—

(A) the laws (including regulations) applicable to public land; and

(B) the management plan; and

(2) in a manner that provides for—

(A) the conservation, restoration, and protection of the natural, historic, scientific, scenic, wildlife, and recreational resources of the Natural Area;

(B) the continued use of the Natural Area for purposes of education, scientific study, and limited public recreation in a manner that does not substantially impair the purposes for which the Natural Area is established;

(C) the protection of the wildlife habitat of the Natural Area;

(D) a prohibition on the construction of water storage facilities in the Natural Area; and

(E) the reduction in the use of or removal of roads in the Natural Area and, to the maximum extent practicable, the reduction in or prohibition against the use of motorized vehicles in the Natural Area (including the removal of roads and a prohibition against motorized use on Federal land in the area on the western side of the Rio Grande River from Lobatos Bridge south to the New Mexico State line).

(b) CHANGES IN STREAMFLOW.—The Secretary is encouraged to negotiate with the State of Colorado, the Rio Grande Water Conservation District, and affected water users in the State to determine if changes in the streamflow that are beneficial to the Natural Area may be accommodated.

(c) PRIVATE LAND.—The management plan prepared under section 6(b)(2)(A) shall apply to private land in the Natural Area only to the extent that the private landowner agrees in writing to be bound by the management plan.

(d) WITHDRAWAL.—Subject to valid existing rights, all Federal land in the Natural Area is withdrawn from—

(1) all forms of entry, appropriation, or disposal under the public land laws;

(2) location, entry, and patent under the mining laws; and

(3) disposition under the mineral leasing laws (including geothermal leasing laws).

(e) ACQUISITION OF LAND.—

(1) IN GENERAL.—The Secretary may acquire from willing sellers by purchase, exchange, or donation land or an interest in land in the Natural Area.

(2) ADMINISTRATION.—Any land or interest in land acquired under paragraph (1) shall be administered in accordance with the management plan and this Act.

(f) APPLICABLE LAW.—Section 5(d)(1) of the Wild and Scenic Rivers Act (16 U.S.C. 1276(d)(1)) shall not apply to the Natural Area.

SEC. 8. EFFECT.

Nothing in this Act—

(1) amends, modifies, or is in conflict with the Rio Grande Compact, consented to by Congress in the Act of May 31, 1939 (53 Stat. 785, ch. 155);

(2) authorizes the regulation of private land in the Natural Area;

(3) authorizes the imposition of any mandatory streamflow requirements;

(4) creates an express or implied Federal reserved water right;

(5) imposes any Federal water quality standard within or upstream of the Natural Area that is more restrictive than would be applicable had the Natural Area not been established; or

(6) prevents the State of Colorado from acquiring an instream flow through the Natural Area under the terms, conditions, and limitations of State law to assist in protecting the natural environment to the extent and for the purposes authorized by State law.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

SEC. 10. TERMINATION OF COMMISSION.

The Commission shall terminate on the date that is 10 years after the date of enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. GOHMERT) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

Mr. GOHMERT. Madam Speaker, I yield myself such time as I may consume.

S. 56 would restore and protect the riparian zone of the Rio Grande River in southern Colorado without creating a management structure that would conflict with long-standing water uses and agricultural uses in the San Luis Valley. Federal, State and community groups, as well as private property owners, have worked collaboratively to develop a proposal for a Federal designation that protects the resources of concern, property rights and existing uses. S. 56 will establish a 33-mile natural area along the river consistent with these goals.

I urge the passage of this bill.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I, too, support passage of this legislation and encourage its adoption this evening, and I yield back the remainder of our time.

Mr. GOHMERT. Madam Speaker, I have no additional speakers, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. GOHMERT) that the House suspend the rules and pass the Senate bill, S. 56.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

GREAT LAKES FISH AND WILDLIFE RESTORATION ACT OF 2006

Mr. GOHMERT. Madam Speaker, I move to suspend the rules and pass the Senate bill (S. 2430) to amend the Great Lakes Fish and Wildlife Restoration Act of 1990 to provide for implementation of recommendations of the United States Fish and Wildlife Service contained in the Great Lakes Fishery Resources Restoration Study, as amended.

The Clerk read as follows:

S. 2430

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Great Lakes Fish and Wildlife Restoraton Act of 2006''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Great Lakes have fish and wildlife communities that are structurally and functionally changing;

(2) successful fish and wildlife management focuses on the lakes as ecosystems, and effective management requires the coordination and integration of efforts of many partners;

(3) it is in the national interest to undertake activities in the Great Lakes Basin that support sustainable fish and wildlife resources of common concern provided under the recommendations of the Great Lakes Regional Collaboration authorized under Executive Order 13340 (69 Fed. Reg. 29043; relating to the Great Lakes Interagency Task Force);

(4) additional actions and better coordination are needed to protect and effectively manage the fish and wildlife resources, and the habitats upon which the resources depend, in the Great Lakes Basin;

(5) as of the date of enactment of this Act, actions are not funded that are considered essential to meet the goals and objectives in managing the fish and wildlife resources, and the habitats upon which the resources depend, in the Great Lakes Basin; and

(6) the Great Lakes Fish and Wildlife Restoration Act (16 U.S.C. 941 et seq.) allows Federal agencies, States, and tribes to work in an effective partnership by providing the funding for restoration work.

SEC. 3. DEFINITIONS.

Section 1004 of the Great Lakes Fish and Wildlife Restoration Act of 1990 (16 U.S.C. 941b) is amended—

(1) by striking paragraphs (1), (4), and (12);

(2) by redesignating paragraphs (2), (3), (5), (6), (7), (8), (9), (10), (11), (13), and (14) as paragraphs (1), (2), (3), (4), (5), (6), (7), (9), (10), (11), and (12), respectively;

(3) in paragraph (4) (as redesignated by paragraph (2)), by inserting before the semicolon at the end the following: '', and that has Great Lakes fish and wildlife management authority in the Great Lakes Basin''; and

(4) by inserting after paragraph (7) (as redesignated by paragraph (2)) the following:

''(8) the term 'regional project' means authorized activities of the United States Fish and Wildlife Service related to fish and wildlife resource protection, restoration, maintenance, and enhancement impacting multiple States or Indian Tribes with fish and wildlife management authority in the Great Lakes basin;''.

SEC. 4. IDENTIFICATION, REVIEW, AND IMPLEMENTATION OF PROPOSALS.

Section 1005 of the Great Lakes Fish and Wildlife Restoration Act of 1990 (16 U.S.C. 941c) is amended to read as follows:

''SEC. 1005. IDENTIFICATION, REVIEW, AND IMPLEMENTATION OF PROPOSALS AND REGIONAL PROJECTS.

''(a) IN GENERAL.—Subject to subsection (b)(2), the Director—

''(1) shall encourage the development and, subject to the availability of appropriations, the implementation of fish and wildlife restoration proposals and regional projects based on the results of the Report; and

''(2) in cooperation with the State Directors and Indian Tribes, shall identify, develop, and, subject to the availability of appropriations, implement regional projects in the Great Lakes Basin to be administered by Director in accordance with this section.

''(b) IDENTIFICATION OF PROPOSALS AND REGIONAL PROJECTS.—

''(1) REQUEST BY THE DIRECTOR.—The Director shall annually request that State Directors and Indian Tribes, in cooperation or partnership with other interested entities and in accordance with subsection (a), submit proposals or regional projects for the restoration of fish and wildlife resources.

''(2) REQUIREMENTS FOR PROPOSALS AND REGIONAL PROJECTS.—A proposal or regional project under paragraph (1) shall be—

''(A) submitted in the manner and form prescribed by the Director; and

''(B) consistent with—

''(i) the goals of the Great Lakes Water Quality Agreement, as amended;

''(ii) the 1954 Great Lakes Fisheries Convention;

''(iii) the 1980 Joint Strategic Plan for Management of Great Lakes Fisheries, as revised in 1997, and Fish Community Objectives for each Great Lake and connecting water as established under the Joint Strategic Plan;

''(iv) the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 et seq.);

''(v) the North American Waterfowl Management Plan and joint ventures established under the plan; and

''(vi) the strategies outlined through the Great Lakes Regional Collaboration authorized under Executive Order 13340 (69 Fed. Reg. 29043; relating to the Great Lakes Interagency Task Force).

''(3) SEA LAMPREY AUTHORITY.—The Great Lakes Fishery Commission shall retain authority and responsibility to formulate and implement a comprehensive program to eradicate or minimize sea lamprey populations in the Great Lakes Basin.

''(c) REVIEW OF PROPOSALS.—

''(1) ESTABLISHMENT OF COMMITTEE.—There is established the Great Lakes Fish and Wildlife Restoration Proposal Review Committee, which shall operate under the guidance of the United States Fish and Wildlife Service.

''(2) MEMBERSHIP AND APPOINTMENT.—

''(A) IN GENERAL.—The Committee shall consist of 2 representatives of each of the State Directors and Indian Tribes, of whom—

''(i) 1 representative shall be the individual appointed by the State Director or Indian Tribe to the Council of Lake Committees of the Great Lakes Fishery Commission; and

''(ii) 1 representative shall have expertise in wildlife management.

''(B) APPOINTMENTS.—Each representative shall serve at the pleasure of the appointing State Director or Tribal Chair.

''(C) OBSERVER.—The Great Lakes Coordinator of the United States Fish and Wildlife Service shall participate as an observer of the Committee.

''(D) RECUSAL.—A member of the Committee shall recuse himself or herself from consideration of proposals that the member, or the entity that the member represents, has submitted.

''(3) FUNCTIONS.—The Committee shall—

''(A) meet at least annually;

''(B) review proposals and regional projects developed in accordance with subsection (b) to assess the effectiveness and appropriateness of the proposals and regional projects in fulfilling the purposes of this title; and

''(C) recommend to the Director any of those proposals and regional projects that should be funded and implemented under this section.

''(d) IMPLEMENTATION OF PROPOSALS AND REGIONAL PROJECTS.—

''(1) IN GENERAL.—After considering recommendations of the Committee and the goals specified in section 1006, the Director shall—

''(A) select proposals and regional projects to be implemented; and

''(B) subject to the availability of appropriations and subsection (e), fund implementation of the proposals and regional projects.

''(2) SELECTION CRITERIA.—In selecting and funding proposals and regional projects, the Director shall take into account the effectiveness and appropriateness of the proposals and regional projects in fulfilling the purposes of other laws applicable to restoration of the fish and wildlife resources and habitat of the Great Lakes Basin.

''(e) COST SHARING.—

''(1) IN GENERAL.—Except as provided in paragraphs (2) and (4), not less than 25 percent of the cost of implementing a proposal selected under subsection (d) (excluding the cost of establishing sea lamprey barriers) shall be paid in cash or in-kind contributions by non-Federal sources.

''(2) REGIONAL PROJECTS.—Regional projects selected under subsection (d) shall be exempt from cost sharing if the Director determines that the authorization for the project does not require a non-Federal cost-share.

''(3) EXCLUSION OF FEDERAL FUNDS FROM NON-FEDERAL SHARE.—The Director may not consider the expenditure, directly or indirectly, of Federal funds received by any entity to be a contribution by a non-Federal source for purposes of this subsection.

''(4) EFFECT ON CERTAIN INDIAN TRIBES.—Nothing in this subsection affects an Indian tribe affected by an alternative applicable cost sharing requirement under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).''.

SEC. 5. GOALS OF UNITED STATES FISH AND WILDLIFE SERVICE PROGRAMS RELATED TO GREAT LAKES FISH AND WILDLIFE RESOURCES.

Section 1006 of the Great Lakes Fish and Wildlife Restoration Act of 1990 (16 U.S.C. 941d) is amended by striking paragraph (1) and inserting the following:

''(1) Restoring and maintaining self-sustaining fish and wildlife resources.''.

SEC. 6. ESTABLISHMENT OF OFFICES.

Section 1007 of the Great Lakes Fish and Wildlife Restoration Act of 1990 (16 U.S.C. 941e) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GREAT LAKES COORDINATION OFFICE.—

''(1) IN GENERAL.—The Director shall establish a centrally located facility for the coordination of all United States Fish and

Wildlife Service activities in the Great Lakes Basin, to be known as the 'Great Lakes Coordination Office'.

''(2) FUNCTIONAL RESPONSIBILITIES.—The functional responsibilities of the Great Lakes Coordination Office shall include—

''(A) intra- and interagency coordination;

''(B) information distribution; and

''(C) public outreach.

''(3) REQUIREMENTS.—The Great Lakes Coordination Office shall—

''(A) ensure that information acquired under this Act is made available to the public; and

''(B) report to the Director of Region 3, Great Lakes Big Rivers.'';

(2) in subsection (b)—

(A) in the first sentence, by striking ''The Director'' and inserting the following:

''(1) IN GENERAL.—The Director'';.

(B) in the second sentence, by striking ''The office'' and inserting the following:

''(2) NAME AND LOCATION.—The office''; and

(C) by adding at the end the following:

''(3) RESPONSIBILITIES.—The responsibilities of the Lower Great Lakes Fishery Resources Office shall include operational activities of the United States Fish and Wildlife Service related to fishery resource protection, restoration, maintenance, and enhancement in the Lower Great Lakes.''; and

(3) in subsection (c)—

(A) in the first sentence, by striking ''The Director'' and inserting the following:

''(1) IN GENERAL.—The Director'';.

(B) in the second sentence, by striking ''Each of the offices'' and inserting the following:

''(2) NAME AND LOCATION.—Each of the offices''; and

(C) by adding at the end the following:

''(3) RESPONSIBILITIES.—The responsibilities of the Upper Great Lakes Fishery Resources Offices shall include operational activities of the United States Fish and Wildlife Service related to fishery resource protection, restoration, maintenance, and enhancement in the Upper Great Lakes.''.

SEC. 7. REPORTS.

Section 1008 of the Great Lakes Fish and Wildlife Restoration Act of 1990 (16 U.S.C. 941f) is amended to read as follows:

''SEC. 1008. REPORTS.

''(a) IN GENERAL.—Not later than December 31, 2011, the Director shall submit to the Committee on Resources of the House of Representatives and the Committee on Environment and Public Works of the Senate a report that describes—

''(1) actions taken to solicit and review proposals under section 1005;

''(2) the results of proposals implemented under section 1005; and

''(3) progress toward the accomplishment of the goals specified in section 1006.

''(b) PUBLIC ACCESS TO DATA.—For each of fiscal years 2007 through 2012, the Director shall make available through a public access website of the Department information that describes—

''(1) actions taken to solicit and review proposals under section 1005;

''(2) the results of proposals implemented under section 1005;

''(3) progress toward the accomplishment of the goals specified in section 1006;

''(4) the priorities proposed for funding in the annual budget process under this title; and

''(5) actions taken in support of the recommendations of the Great Lakes Regional Collaboration authorized under Executive Order 13340 (69 Fed. Reg. 29043; relating to the Great Lakes Interagency Task Force).

''(c) REPORT.—Not later than June 30, 2007, the Director shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Resources of the House of Representatives the 2002 report required under this section as in effect on the day before the date of enactment of the Great Lakes Fish and Wildlife Restoration Act of 2006.''.

SEC. 8. CONTINUED MONITORING AND ASSESSMENT OF STUDY FINDINGS AND RECOMMENDATIONS.

The Director of the United States Fish and Wildlife Service—

(1) shall continue to monitor the status, and the assessment, management, and restoration needs, of the fish and wildlife resources of the Great Lakes Basin; and

(2) may reassess and update, as necessary, the findings and recommendations of the report entitled ''Great Lakes Fishery Resources Restoration Study'', submitted to the President of the Senate and the Speaker of the House of Representatives on September 13, 1995.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

Section 1009 of the Great Lakes Fish and Wildlife Restoration Act of 1990 (16 U.S.C. 941g) is amended to read as follows:

''SEC. 1009. AUTHORIZATION OF APPROPRIATIONS.

''There are authorized to be appropriated to the Director for each of fiscal years 2007 through 2012—

''(1) $14,000,000 to implement fish and wildlife restoration proposals as selected by the Director under section 1005(e), of which—

''(A) not more than the lesser of 33⅓ percent or $4,600,000 may be allocated to implement regional projects by the United States Fish and Wildlife Service, as selected by the Director under section 1005(e); and

''(B) the lesser of 5 percent or $700,000 shall be allocated to the United States Fish and Wildlife Service to cover costs incurred in administering the proposals by any entity; and

''(2) $2,000,000, which shall be allocated for the activities of the Great Lakes Coordination Office in East Lansing, Michigan, of the Upper Great Lakes Fishery Resources Office, and the Lower Great Lakes Fishery Resources Office under section 1007.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. GOHMERT) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

Mr. GOHMERT. Madam Speaker, I yield myself such time as I may consume.

S. 2430 is an important piece of conservation legislation which would extend the Great Lakes Fish and Wildlife Restoration Act of 1990.

S. 2430 continues the coordination between the numerous management entities, Federal, local, regional, State and tribal, involved in the Great Lakes region. In addition, the bill will continue the efforts to improve and restore fish and wildlife resources and important habitat areas.

S. 2430 is sponsored by Senator MIKE DEWINE, and I commend the senator for his tireless leadership on behalf of the Great Lakes region and, in particular, his Ohio constituents.

I urge an ''aye'' vote on this legislation.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I yield such time as he might consume to the gentleman from Michigan (Mr. KILDEE), one of the real champions and leaders in the reauthorization of this Great Lakes Fish and Wildlife Restoration Act, my good friend.

Mr. KILDEE. Madam Speaker, I thank the gentleman for yielding.

Madam Speaker, I strongly support S. 2430, the Great Lakes Fish and Wildlife Restoration Act, companion legislation to the House bill introduced by myself and Congressman MARK KIRK.

The changes made by the Senate in S. 2430 are very positive, and I strongly urge my colleagues to support passage of the bill.

Madam Speaker, the Great Lakes are at a tipping point. These lakes, which comprise 20 percent of the earth's fresh water and 95 percent of North America's fresh water, are nothing less than in peril. It is vital this Congress do everything we can to ensure their protection and restoration.

There are thousands of different species of fish and wildlife and 130 globally endangered or rare plants and animal species that have been identified within the Great Lakes ecosystem. S. 2430 will reauthorize and improve research and conservation programs aimed at protecting and restoring this fragile ecosystem.

Our bill is the product of a long and collaborative process, and this bipartisan legislation is supported by a wide range of groups and organizations working to protect and restore the Great Lakes ecosystem.

Our bill increases the authorization level for fish and wildlife restoration projects and makes legislative changes that improve upon the Act.

Madam Speaker, while I certainly support passage of S. 2430, I believe this should only be the beginning of our efforts on behalf of the Great Lakes. This Congress must fulfill its commitment by increasing appropriations for Great Lakes' restoration and other important activities.

If funding were increased for projects under the Great Lakes Fish and Wildlife Restoration Act, our local communities and their partners could really make a difference in reversing the downward spiral of the Great Lakes.

With just a small amount of money through this program, we were able to restore the walleye population in Saginaw Bay in my congressional district. This project was a success story, and we could have many more with increased dollars from this Congress and administration.

Madam Speaker, the Great Lakes are our national treasure, and we must treat them as such. This bipartisan effort that has brought S. 2430 to the floor today shows us that many Members of Congress care about what happens to our Great Lakes.

I have enjoyed working with Representatives MARK KIRK, SHERROD BROWN, VERN EHLERS, MARCY KAPTUR, DAVID HOBSON, RAHM EMANUEL, STEVE LATOURETTE, and RON KIND, just to name a few.

Let us pass S. 2430 so we can move forward in our efforts to protect and restore the Great Lakes, and I thank the gentleman for yielding.

Mr. KIND. Madam Speaker, I yield myself such time as I may consume.

(Mr. KIND asked and was given permission to revise and extend his remarks.)

Mr. KIND. Madam Speaker, I just want to take a moment to commend my good friend from Michigan, again, for the leadership that he has shown on this piece of legislation. We just recently had another hearing in the Resources Committee, of which he was an active participant.

This has been a bipartisan effort with great collaboration from the Federal, State and local level, and obviously for those of us in the upper Midwest area, this does touch and affect us a little bit closer than perhaps the rest of the Nation.

But the legislation does mirror the companion House bill that was introduced earlier, H.R. 4953, which was sponsored by our friend Mr. KILDEE from Michigan, along with 31 other House Members that were sponsors of the legislation, including myself, as well as the gentleman from Ohio (Mr. BROWN) and also the gentleman from Michigan (Mr. DINGELL) who has been also a champion on this issue.

S. 2430 would reauthorize and improve a valuable conservation program administered by the U.S. Fish and Wildlife Service.

Mr. KILDEE just mentioned some of the success stories that have been garnered from this original bill, but as we know all too well in this chamber that we could pass the best authorized bill in the world, but if it is not supported by adequate funding, they cannot do anything with it. Unfortunately, the history of this bill has been a lot of support in both the public and private sector but not enough funding in order to accomplish the goals and really achieve the success that I know we can make in the upper Great Lakes area.

The five Great Lakes are the crown jewels of our Nation's natural resources. They are the largest group of fresh water lakes in the entire world. This has an incredible ecosystem impact but also economic impact throughout the entire region.

That is why we feel it is important to move forward on reauthorization, hopefully to get the support for funding the reauthorized bill in future years as we try to implement its provisions. I certainly encourage its passage tonight.

Madam Speaker, I yield back the remainder of our time.

Mr. GOHMERT. Madam Speaker, I yield myself such time as I may consume.

We do thank not only Senator DEWINE for his work on this but also Mr. KILDEE from Michigan and also not only was our friend from Wisconsin a tremendous asset in being quarterback of the congressional team last week, but his quarterbacking this legislation through. I urge my colleagues to vote ''aye'' on this bill.

Madam Speaker, I yield back my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. GOHMERT) that the House suspend the rules and pass the Senate bill, S. 2430, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill, as amended, was passed.

A motion to reconsider was laid on the table.

□ 2330

OUACHITA NATIONAL FOREST BOUNDARY ADJUSTMENT ACT OF 2006

Mr. GOHMERT. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 5690) to adjust the boundaries of the Ouachita National Forest in the States of Oklahoma and Arkansas.

The Clerk read as follows:

H.R. 5690

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Ouachita National Forest Boundary Adjustment Act of 2006''.

SEC. 2. BOUNDARY ADJUSTMENT, OUACHITA NATIONAL FOREST, OKLAHOMA AND ARKANSAS.

(a) BOUNDARY ADJUSTMENT.—The boundaries of the Ouachita National Forest in the States of Oklahoma and Arkansas are hereby modified as generally depicted on the following maps, all dated May 15, 2001, and more particularly delineated and described according to the final boundary adjustment maps and boundary descriptions filed in the Office of the Chief of the Forest Service:

(1) The map entitled ''Ouachita National Forest Boundary Extension for the Broken Bow Area''.

(2) The map entitled ''Ouachita National Forest Boundary Extension for the Southern Tiak Area''.

(3) The map entitled ''Ouachita National Forest Boundary Extension for the Northern Ouachita Area''.

(4) The map entitled ''Ouachita National Forest Boundary Extension for the Southern Ouachita Area''.

(5) The map entitled ''Ouachita National Forest Boundary Extension for the Eastern Ouachita Area''.

(b) AVAILABILITY AND CORRECTION.—The maps referred to in subsection (a) shall be on file and available for public inspection in the Office of the Chief of the Forest Service. The Secretary of Agriculture may make minor corrections to the maps.

(c) MANAGEMENT OF ACQUIRED LAND.—Any federally-owned lands that have been or hereafter may be acquired for National Forest System purposes within the boundaries of the Ouachita National Forest, as modified by subsection (a), shall be managed as lands acquired under the Act of March 1, 1911 (commonly known as the Weeks Act), and in accordance with the other laws and regulations pertaining to the National Forest System. Nothing in this subsection shall limit the authority of the Secretary of Agriculture to adjust the boundaries of the Ouachita National Forest pursuant to section 11 of such Act (16 U.S.C. 521).

(d) RELATION TO LAND AND WATER CONSERVATION FUND ACT.—For purposes of section 7 of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. 4601–9), the boundaries of the Ouachita National Forest, as modified by subsection (a), shall be considered to be boundaries of the Ouachita National Forest as of January 1, 1965.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. GOHMERT) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

Mr. GOHMERT. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H.R. 5690 simply makes a technical correction to section 305 of the Omnibus Parks and Public Lands Management Act of 1996. The Act provided for a land exchange between the Ouachita National Forest and private lands but did not establish the new boundaries for the National Forest. This bill remedies the problem by adjusting the National Forest boundary and also allowing future land management adjustments to proceed without the continuing need for future boundary adjustments.

I urge support for this measure.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I yield at this time such time as he may consume to the chief sponsor of this important legislation, my good friend from the great State of Oklahoma (Mr. BOREN).

Mr. BOREN. Madam Speaker, I introduced the Ouachita National Forest Boundary Adjustment Act to provide a technical correction to section 305 of the Omnibus Parks and Public Lands Management Act of 1996.

Section 305 provided for a land exchange between the Ouachita National Forest and Weyerhaeuser Timber Company but did not fully establish the new boundaries of the forest. My legislation would make this technical correction so that the boundaries of the forest would accurately reflect the land exchange.

This correction would allow the Forest Service to better manage the land, because the boundaries of the forest would be more uniform and would allow future land management adjustments without the need to continuously adjust the boundaries.

H.R. 5690 has the support of the administration, the local Forest Service office, Weyerhaeuser Timber Company, Plum Creek, and the members of the Arkansas delegation whose district would be affected.

The Forest Service is a valuable partner in preserving and managing the resource for Oklahoma and Arkansas, and I urge my colleagues to support this legislation that will make managing the Ouachita easier for the Forest Service.

Mr. KIND. Madam Speaker, I urge passage of this legislation.

Madam Speaker, I yield back the balance of my time.

Mr. GOHMERT. Madam Speaker, I also urge support for this and would thank the gentleman from Oklahoma. But I can't recognize my dear friend from Oklahoma without commenting that he has also got Texas ties that we are proud of.

Madam Speaker, I have no additional requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. GOHMERT) that the House suspend the rules and pass the bill, H.R. 5690.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

RATIFYING CONVEYANCE OF A PORTION OF THE JICARILLA APACHE RESERVATION TO RIO ARRIBA COUNTY, STATE OF NEW MEXICO

Mr. GOHMERT. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 4876) to ratify a conveyance of a portion of the Jicarilla Apache Reservation to Rio Arriba County, State of New Mexico, pursuant to the settlement of litigation between the Jicarilla Apache Nation and Rio Arriba County, State of New Mexico, to authorize issuance of a patent for said lands, and to change the exterior boundary of the Jicarilla Apache Reservation accordingly, and for other purposes.

The Clerk read as follows:

H.R. 4876

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

SECTION 1. DEFINITIONS.

For the purposes of this act, the following definitions apply:

(1) JICARILLA APACHE NATION.—The term ''Jicarilla Apache Nation'' means the Jicarilla Apache Nation, a tribe of American Indians recognized by the United States and organized under section 16 of the Act of June 18, 1934 (25 U.S.C. 476; popularly known as the Indian Reorganization Act).

(2) 1988 RESERVATION ADDITION.—The term ''1988 Reservation Addition'' means those lands known locally as the Theis Ranch that were added to the Jicarilla Apache Reservation in the state of New Mexico by the proclamation of the Secretary of the Interior issued on September 1, 1988 pursuant to authority granted by section 7 of the Act of June 18, 1934 (25 U.S.C. 467; popularly known as the Indian Reorganization Act), and published in the Federal Register on September 26, 1988 at 53 F.R. 37355–56.

(3) SETTLEMENT AGREEMENT.—The term ''Settlement Agreement'' means the agreement executed by the President of the Jicarilla Apache Nation on May 6, 2003 and executed by the Chairman of the Rio Arriba Board of County Commissioners on May 15, 2003 and approved by the Department of the Interior on June 18, 2003 to settle the Lawsuit.

(4) LAWSUIT.—The term ''Lawsuit'' means the case identified as Jicarilla Apache Tribe v. Board of County Commissioners, County of Rio Arriba, No. RA 87–2225(C), State of New Mexico District Court, First Judicial District, filed in October 1987.

(5) RIO ARRIBA COUNTY.—The term ''Rio Arriba County'' means the political subdivision of the state of New Mexico described in Section 4–21–1 and Section 4–21–2, New Mexico Statutes Annotated 1978 (Original Pamphlet).

(6) SETTLEMENT LANDS.—The term ''Settlement Lands'' means Tract A and Tract B as described in the plat of the ''Dependent Resurvey and Survey of Tract within Theis Ranch'' within the Tierra Amarilla Grant, New Mexico prepared by Leo P. Kelley, Cadastral Surveyor, United States Department of the Interior, Bureau of Land Management, dated January 7, 2004, and recorded in the office of the Rio Arriba County Clerk on March 8, 2004, in Cabinet C–1, Page 199, Document No. 242411, consisting of 70.75 acres more or less. Title to the Settlement Lands is held by the United States in trust for the Jicarilla Apache Nation.

(7) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(8) DISPUTED COUNTY ROAD.—The term ''Disputed County Road'' means the county road passing through the 1988 Reservation Addition along the course identified in the judgment entered by the New Mexico District Court in the Lawsuit on December 10, 2001 and the decision entered on December 11, 2001, which judgment and decision have been appealed to the New Mexico Court of Appeals.

SEC. 2. CONGRESSIONAL FINDINGS.

Congress finds the following:

(1) The lands constituting the 1988 Reservation Addition to the Jicarilla Apache Reservation were purchased by the Jicarilla Apache Nation in June 1985 and were conveyed to the United States by a trust deed accepted by the Secretary of the Interior in March 1988 pursuant to authority granted by section 5 of the Act of June 18, 1934 (25 U.S.C. 465; popularly known as the Indian Reorganization Act).

(2) The lands constituting the 1988 Reservation Addition were added to the Jicarilla Apache Reservation in September 1988 by proclamation of the Secretary of the Interior pursuant to authority granted by section 7 of the Act of June 18, 1934 (25 U.S.C. 467; popularly known as the Indian Reorganization Act).

(3) There is pending before the Court of Appeals of the State of New Mexico a lawsuit, filed in October 1987, that involves a claim that a county road passing through the 1988 Reservation Addition had been established by prescription prior to acquisition of the land by the Jicarilla Apache Nation in 1985.

(4) The parties to that lawsuit, the Jicarilla Apache Nation and the County of Rio Arriba, have executed a Settlement Agreement, approved by the Secretary of the Interior, to resolve all claims relating to the disputed county road, which agreement requires ratifying legislation by the Congress of the United States.

(5) The parties to the Settlement Agreement desire to settle the claims relating to the disputed county road on the terms agreed to by the parties, and it is in the best interests of the parties to resolve the claims through the Settlement Agreement and this implementing legislation.

SEC. 3. CONDITION ON EFFECT OF SECTION.

(a) IN GENERAL.—Section 4 of this Act shall not take effect until the Secretary finds the following events have occurred:

(1) The Board of Commissioners of Rio Arriba County has enacted a resolution permanently abandoning the disputed county road and has submitted a copy of that resolution to the Secretary.

(2) The Jicarilla Apache Nation has executed a quitclaim deed to Rio Arriba County for the Settlement Lands subject to the exceptions identified in the Settlement Agreement and has submitted a copy of the quitclaim deed to the Secretary.

(b) PUBLICATION OF FINDINGS.—If the Secretary finds that the conditions set forth in subsection (a) have occurred, the Secretary shall publish such findings in the Federal Register.

SEC. 4. RATIFICATION OF CONVEYANCE; ISSUANCE OF PATENT.

(a) CONDITIONAL RATIFICATION AND APPROVAL.—This Act ratifies and approves the Jicarilla Apache Nation's quitclaim deed for the Settlement Lands to Rio Arriba County, but such ratification and approval shall be effective only upon satisfaction of all conditions in section 3, and only as of the date that the Secretary's findings are published in the Federal Register pursuant to section 3.

(b) PATENT.—Following publication of the notice described in section 3, the Secretary shall issue to Rio Arriba County a patent for the Settlement Lands, subject to the exceptions and restrictive covenants described subsection (c).

(c) CONDITIONS OF PATENT.—The patent to be issued by the Secretary under subsection (b) shall be subject to all valid existing rights of third parties, including but not limited to easements of record, and shall include the following perpetual restrictive covenant running with the Settlement Lands for the benefit of the lands comprising the Jicarilla Apache Reservation adjacent to the Settlement Lands: ''Tract A shall be used only for governmental purposes and shall not be used for a prison, jail or other facility for incarcerating persons accused or convicted of a crime. For purposes of this restrictive covenant, 'governmental purposes' shall include the provision of governmental services to the public by Rio Arriba County and the development and operation of private businesses to the extent permitted by applicable State law.''.

SEC. 5. BOUNDARY CHANGE.

Upon issuance of the patent authorized by section 4, the lands conveyed to Rio Arriba County in the patent shall cease to be a part of the Jicarilla Apache Reservation and the exterior boundary of the Jicarilla Apache Reservation shall be deemed relocated accordingly.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. GOHMERT) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

Mr. GOHMERT. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H.R. 4876 settles a lawsuit between the Jicarilla Apache tribe and the county of Rio Arriba in the State of New Mexico. In 1987, the tribe challenged the validity of a county road located on land owned by the Apache tribe. In 2003, the tribe and the county entered into a settlement agreement to resolve all claims that were raised in the lawsuit. Accordingly, H.R. 4876 ratifies this settlement agreement and authorizes the conveyance of a portion of the Apache reservation to the county. Changes to the exterior boundary of the reservation will be made accordingly. As a result, this long-standing, nearly 20-year-old lawsuit will be resolved.

I urge support for the bill.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I would like to yield at this time such time as he may consume to the chief sponsor of this legislation, my good friend from the State of New Mexico, Mr. TOM UDALL.

(Mr. UDALL of New Mexico asked and was given permission to revise and extend his remarks.)

Mr. UDALL of New Mexico. Madam Speaker, this legislation will bring long overdue resolution to a dispute between the Jicarilla Apache Nation and Rio Arriba County in the State of New Mexico. Both parties and the Secretary of the Interior have already executed the terms agreed to within the settlement agreement. All that stands between the parties to this dispute and the long-overdue resolution is congressional approval.

This legislation upholds Congress' trust responsibility to the Jicarilla Nation by placing restrictive covenants on the trust land transferred to the county. As a result of the transferred land's proximity to the reservation, certain uses of the transferred land would have a detrimental effect on the remaining reservation. Therefore, this legislation allows the county to use the land only for governmental purposes and specifically prohibits the county from using the land for prisons, jails, or other incarcerated persons, and other purposes.

Madam Speaker, I urge my colleagues to support passage of this important legislation. Both the Nation and the county have waited years for this agreement to be implemented.

The dispute concerns the ownership of a road on a parcel of land formerly referred to as the Theis Ranch. The Theis Ranch property became part of the Jicarilla Nation Reservation in September of 1988.

A lawsuit was filed in October 1987 to determine the ownership status of a disputed road. In the original lawsuit, Rio Arriba County sought to establish that the County acquired the disputed road by prescription and, therefore, that the County was the road's rightful owner. However, the Jicarilla Nation contended that the Nation owned the road because the road was, and continues to be, within the boundaries of the expanded 1988 Jicarilla Reservation. On December 10, 2001, the District Court found in favor of the Jicarilla Nation, determining that the disputed road traversed the Jicarilla Reservation in several locations. Rio Arriba County appealed the District Court decision, and the appeal is currently pending before the Court of Appeals of the State of New Mexico.

In an effort to settle the road dispute amicably, the Jicarilla Nation and Rio Arriba County entered into mediation. The parties successfully reached a settlement. Representatives of the Secretary of the Interior approved the settlement on June 18, 2003. The settlement agreement, which would be implemented by this legislation, provided that the Jicarilla Nation would transfer approximately 70.5 acres of land located with the expanded 1988 Jicarilla Reservation to Rio Arriba County. In exchange for the Jicarilla Nation's land conveyance, Rio Arriba County agreed to permanently abandon any and all claims to the disputed road.

The settlement also provides that the terms of the agreement do not take effect until all parties complete their respective promises in the agreement and the United States, pursuant to federal law, approves of the conveyance of this particular Jicarilla trust land to Rio Arriba County.

Mr. KIND. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I just want to take a moment to again commend my colleague from New Mexico (Mr. UDALL) for his determination in getting this legislation before us today. Some of the more difficult and contentious issues that we deal with in this place are often issues involving property lines, jurisdictions of towns, private landowners, and Indian tribes. Mr. UDALL has never shied away from such matters, especially when they affect the Indian tribes in New Mexico, and I commend him for his leadership on this issue and encourage adoption of this legislation.

Madam Speaker, I yield back the balance of my time.

Mr. GOHMERT. Madam Speaker, we are also grateful to Mr. UDALL from New Mexico for his hard work in resolving this dispute. As a former judge, there is nothing that looks better than when all the parties can come together and agree, and I appreciate the gentleman's hard work in making that happen.

Madam Speaker, I have no additional speakers, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. GOHMERT) that the House suspend the rules and pass the bill, H.R. 4876.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

ALLOWING FOR RENEGOTIATION OF PAYMENT SCHEDULE OF CONTRACTS BETWEEN SECRETARY OF INTERIOR AND REDWOOD VALLEY COUNTY WATER DISTRICT

Mr. GOHMERT. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 5516) to allow for the renegotiation of the payment schedule of contracts between the Secretary of the Interior and the Redwood Valley County Water District, and for other purposes.

The Clerk read as follows:

H.R. 5516

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

SECTION 1. RENEGOTIATION OF PAYMENT SCHEDULE.

Section 15 of Public Law 100–516 (102 Stat. 2573) is amended as follows:

(1) By amending paragraph (2) of subsection (a) to read as follows:

''(2) If, as of January 1, 2006, the Secretary of the Interior and the Redwood Valley County Water District have not renegotiated the schedule of payment, the District may enter into such additional non-Federal obligations as are necessary to finance procurement of dedicated water rights and improvements necessary to store and convey those rights to provide for the District's water needs. The renegotiated schedule of payments shall commence when such additional obligations have been financially satisfied by the District. The date of the initial payment owed by the District to the United States shall be regarded as the start of the District's repayment period and the time upon which any interest shall first be computed and assessed under section 5 of the Small Reclamation Projects Act of 1956 (43 U.S.C. 422a et seq.).''.

(2) By striking subsection (c).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. GOHMERT) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

Mr. GOHMERT. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H.R. 5516, sponsored by Congressman MIKE THOMPSON, amends Public Law 100–516 and allows for the renegotiation of the payment schedule of water contracts between the Secretary of the Interior and the Redwood Valley County Water District in northern California.

I urge my colleagues to support this legislation.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, I, too, want to commend my colleague from the First Congressional District of California, Mr. THOMPSON, for the hard work and leadership that he has shown on this important piece of legislation.

We, too, support it and encourage its adoption.

Madam Speaker, I yield back the balance of my time.

Mr. GOHMERT. Madam Speaker, I have no additional speakers, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. GOHMERT) that the House suspend the rules and pass the bill, H.R. 5516.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

TO MODIFY A LAND GRANT PATENT ISSUED BY THE SECRETARY OF THE INTERIOR

Mr. GOHMERT. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 3606) to modify a land grant patent issued by the Secretary of the Interior.

The Clerk read as follows:

H.R. 3606

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

SECTION 1. AMENDMENTS TO LAND GRANT PATENT ISSUED BY SECRETARY OF THE INTERIOR.

Patent Number 61–2000–0007, issued by the Secretary of the Interior to the Great Lakes Shipwreck Historical Society, Chippewa County, Michigan, pursuant to section 5505 of division A of the Omnibus Consolidated Appropriations Act, 1997 (Public Law 104–208; 110 Stat. 3009–516) is amended in paragraph 6, under the heading ''SUBJECT ALSO TO THE FOLLOWING CONDITIONS'' by striking ''Whitefish Point Comprehensive Plan of October 1992, or a gift shop'' and inserting ''Human Use/Natural Resource Plan for Whitefish Point, dated December 2002, permitted as the intent of Congress''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. GOHMERT) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

Mr. GOHMERT. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H.R. 3606 is a simple measure that updates a land patent reference to an outdated management plan currently being used by the Great Lakes Shipwreck Historical Society. This 8-acre property was obtained in 1992 from the Department of the Interior under a land grant patent. Under the new resource management plan, the museum will be able to greatly improve its visitor access to wildlife areas and expand its facilities to accommodate additional shipwreck exhibits.

I urge an ''aye'' vote on this legislation.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I yield myself such the time as I may consume.

Madam Speaker, I appreciate the majority's support for this legislation and commend my good friend from the upper peninsula of Michigan, BART STUPAK, for introducing this legislation, and I encourage its adoption.

Mr. STUPAK. Madam Speaker, I want to thank the Chairman and Ranking Member and their staffs on the Committee for assisting in moving this legislation forward.

H.R. 3606 is a straightforward, non-controversial bill that would allow the Great Lakes Shipwreck Historical Society to implement the new Human Use/Natural Resource Management Plan for the Great Lakes Shipwreck Museum in Chippewa County, Michigan.

The Great Lakes Shipwreck Historical Society is a nonprofit organization dedicated to preserving the history of shipwrecks in the Great Lakes.

Since 1992, the Great Lakes Shipwreck Historical Society has operated the Great Lakes Shipwreck Museum to educate the public about shipwrecks in the region.

The Museum provides exhibits on several shipwrecks in the area, including an in-depth exhibit on the *Edmund Fitzgerald*, which was lost with her entire crew of 29 men near Whitefish Point, Michigan on November 10, 1975. Among the items on display is the 200 pound bronze bell recovered from the wreckage in 1995, as a memorial to her lost crew.

In 2002, the Great Lakes Shipwreck Historical Society, working with the U.S. Fish and Wildlife Service, the local chapter of the Audubon Society, and the local community, finalized a new management plan for the Museum to improve the experience at the Museum.

The new management plan developed by these groups will allow the Historical Society to enhance the visitor's experience by expanding the Museum's exhibits and improving parking and access to surrounding wildlife opportunities.

The new management plan represents a consensus of all associated parties, and will improve the enjoyment of the historical and ecological resources in Chippewa County, Michigan.

However, because the original land grant patent references the previous management plan, legislation to amend the patent is necessary before the new management plan can be implemented.

In response, I introduced H.R. 3606, which would amend the land grant patent to allow the new plan to be implemented. This legislation would simply change the land grant patent to include the new management plan, which has been agreed upon by all of the necessary stakeholders.

Congressman CAMP has joined me in cosponsoring this legislation, recognizing the importance of increasing visitors to our state and its economy. I thank him for his support of this legislation.

The Great Lakes Shipwreck Historical Society has continuously improved the experience at the Museum since it was established in 1992. With the approval of H.R. 3606, Congress will allow additional developments at the Great Lakes Shipwreck Museum, improving this cultural and historical resource.

I encourage my colleagues to support this simple legislation, which will improve the opportunities available to visitors of Chippewa County, Michigan and the Great Lakes Shipwreck Museum.

Mr. KIND. Madam Speaker, I yield back the remainder of my time.

Mr. GOHMERT. Madam Speaker, I have no additional speakers, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. GOHMERT) that the House suspend the rules and pass the bill, H.R. 3606.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

COMMISSION TO STUDY THE POTENTIAL CREATION OF A NATIONAL MUSEUM OF AMERICAN LATINO HERITAGE ACT OF 2006

Mr. GOHMERT. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 2134) to establish the Commission to Study the Potential Creation of a National Museum of the American Latino Community to develop a plan of action for the establishment and maintenance of a National Museum of the American Latino Community in Washington, D.C., and for other purposes, as amended.

The Clerk read as follows:

H.R. 2134

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Commission to Study the Potential Creation of a National Museum of American Latino Heritage Act of 2006''.

SEC. 2. ESTABLISHMENT OF COMMISSION.

(a) IN GENERAL.—There is established the Commission to Study the Potential Creation of a National Museum of American Latino Heritage (hereafter in this Act referred to as the ''Commission'').

(b) MEMBERSHIP.—The Commission shall consist of 23 members appointed not later than 6 months after the date of the enactment of this Act as follows:

(1) The President shall appoint 7 voting members.

(2) The Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate shall each appoint 3 voting members.

(3) In addition to the members appointed under paragraph (2), the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate shall each appoint 1 nonvoting member.

(c) QUALIFICATIONS.—Members of the Commission shall be chosen from among individuals, or representatives of institutions or entities, who possess either—

(1) a demonstrated commitment to the research, study, or promotion of American Latino life, art, history, political or economic status, or culture, together with—

(A) expertise in museum administration;

(B) expertise in fundraising for nonprofit or cultural institutions;

(C) experience in the study and teaching of Latino culture and history at the post-secondary level;

(D) experience in studying the issue of the Smithsonian Institution's representation of American Latino art, life, history, and culture; or

(E) extensive experience in public or elected service; or

(2) experience in the administration of, or the planning for the establishment of, museums devoted to the study and promotion of the role of ethnic, racial, or cultural groups in American history.

SEC. 3. FUNCTIONS OF THE COMMISSION.

(a) PLAN OF ACTION FOR ESTABLISHMENT AND MAINTENANCE OF MUSEUM.—The Commission shall submit a report to the President and the Congress containing its recommendations with respect to a plan of action for the establishment and maintenance of a National Museum of American Latino Heritage in Washington, DC (hereafter in this Act referred to as the ''Museum'').

(b) FUNDRAISING PLAN.—The Commission shall develop a fundraising plan for supporting the creation and maintenance of the Museum through contributions by the American people, and a separate plan on fundraising by the American Latino community.

(c) REPORT ON ISSUES.—The Commission shall examine (in consultation with the Secretary of the Smithsonian Institution), and submit a report to the President and the Congress on, the following issues:

(1) The availability and cost of collections to be acquired and housed in the Museum.

(2) The impact of the Museum on regional Hispanic- and Latino-related museums.

(3) Possible locations for the Museum in Washington, DC and its environs, to be considered in consultation with the National Capital Planning Commission and the Commission of Fine Arts, the Department of the Interior and Smithsonian Institution.

(4) Whether the Museum should be located within the Smithsonian Institution.

(5) The governance and organizational structure from which the Museum should operate.

(6) How to engage the American Latino community in the development and design of the Museum.

(7) The cost of constructing, operating, and maintaining the Museum.

(d) LEGISLATION TO CARRY OUT PLAN OF ACTION.—Based on the recommendations contained in the report submitted under subsection (a) and the report submitted under subsection (c), the Commission shall submit for consideration to the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on House Administration of the House of Representatives, the Committee on Rules and Administration of the Senate, the Committee on Resources of the House of Representatives, the Committee on Energy and Natural Resources of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate recommendations for a legislative plan of action to create and construct the Museum.

(e) NATIONAL CONFERENCE.—In carrying out its functions under this section, the Commission may convene a national conference on the Museum, comprised of individuals committed to the advancement of American Latino life, art, history, and culture, not later than 18 months after the commission members are selected.

SEC. 4. ADMINISTRATIVE PROVISIONS.

(a) FACILITIES AND SUPPORT OF DEPARTMENT OF THE INTERIOR.—The Department of the Interior shall provide from funds appropriated for this purpose administrative services, facilities, and funds necessary for the performance of the Commission's functions. These funds shall be made available prior to any meetings of the Commission.

(b) COMPENSATION.—Each member of the Commission who is not an officer or employee of the Federal Government may receive compensation for each day on which the member is engaged in the work of the Commission, at a daily rate to be determined by the Secretary of the Interior.

(c) TRAVEL EXPENSES.—Each member shall be entitled to travel expenses, including per diem in lieu of subsistence, in accordance with applicable provisions under subchapter I of chapter 57 of title 5, United States Code.

(d) FEDERAL ADVISORY COMMITTEE ACT.—The Commission is not subject to the provisions of the Federal Advisory Committee Act.

SEC. 5. DEADLINE FOR SUBMISSION OF REPORTS; TERMINATION.

(a) DEADLINE.—The Commission shall submit final versions of the reports and plans required under section 3 not later than 24 months after the date of the Commission's first meeting.

(b) TERMINATION.—The Commission shall terminate not later than 30 days after submitting the final versions of reports and plans pursuant to subsection (a).

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for carrying out the activities of the Commission $2,100,000 for the first fiscal year beginning after the date of the enactment of this Act and $1,100,000 for the second fiscal year beginning after the date of the enactment of this Act.

Amend the title so as to read: ''A bill to establish the Commission to Study the Potential Creation of a National Museum of American Latino Heritage to develop a plan of action for the establishment and maintenance of a National Museum of American Latino Heritage in Washington, DC, and for other purposes.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. GOHMERT) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

Mr. GOHMERT. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H.R. 2134 would create a commission to study and report on the potential creation of a National Museum of American Latino Heritage. The commission would be comprised of 23 members appointed by the President, the Speaker, the House Minority Leader, the Senate Majority Leader, and the Senate Minority Leader. The commission would issue a report on the cost of the museum, fund-raising, its impact on other Hispanic- and Latino-related museums, the possible location, and how the museum should be operated.

I appreciate the cooperation of Chairman EHLERS of the Committee on House Administration to allow this bill to be scheduled today, and I urge adoption of the bill.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I would like to yield at this time such time as he may consume to the chief sponsor of this legislation, the gentleman from California (Mr. BECERRA).

Mr. BECERRA. Madam Speaker, I would like to first begin by thanking our managers of the time for their patience and indulgence in moving forward so many good pieces of legislation.

I want to thank, first and foremost, the principal co-chair of this legislation, Ms. ILEANA ROS-LEHTINEN of Florida, for her efforts in trying to help move this legislation forward. And while I have a written statement, which I will submit for the RECORD, I also want to thank the work of the committee chairman and ranking members here, not only the full committee members, Mr. POMBO, and Mr. RAHALL, the ranking member, but also our National Parks chairman, Mr. PEARCE, and ranking member Mrs. CHRISTENSEN for their work in moving this bill through the Resources Committee. And, of course, the chairman, Mr. EHLERS, and ranking member, Ms. MILLENDER-MCDONALD, from the Committee on House Administration for also moving the bill through their committee.

□ 2345

I certainly want to thank them very much for the work of the leadership to place this bill on the suspension calendar.

Madam Speaker, I thank my colleagues, the gentleman from New Mexico (Mr. PEARCE) and the gentlewoman from the Virgin Islands (Ms. CHRISTENSEN) for their work in support of H.R. 2134, the National American Latino Heritage Museum Commission Act.

I am also grateful to the leadership and members of the House Committee on Resources and the Committee on House Administration for bringing this legislation to the floor today.

I first sponsored this legislation with my good friend, Representative ILEANA ROS-LEHTINEN, during Hispanic Heritage Month nearly three years ago. Since then, we have been hearing from many supporters, not just in the Latino community, but throughout the nation. The Senate version of this bill was sponsored by Senator KEN SALAZAR and Senator MEL MARTINEZ.

We have a good, bipartisan group of cosponsors, but I would like to emphasize that this is non-partisan legislation that will benefit all Americans. Our national museums have great influence over what Americans know and believe about our collective history and cultural life. When the children of America visit the capital to learn what our museums have to teach them, they go home believing that they have an understanding about what it means to be an American. H.R. 2134 would bring light to the issue of whether our national museums are doing all they can to provide future generations a more complete portrayal of American Latino contributions to American life, by showing that American Latinos are and always have been a part of the American experience.

The bipartisan Commission created by this bill (''Commission'') would be charged with examining and reporting to Congress and the President their recommendations on whether and how to establish a new museum dedicated to the art, history, and culture of the American Latino population of the United States. The Commission would be comprised of experts from the national art and museum communities as well as individuals with experience in administration and development of cultural institutions. Commissioners would be appointed in a bipartisan manner by the President and the leaders of the House and Senate.

Along with the question of whether a new museum is warranted, the Commission would examine such issues as the capacity for fundraising for a new museum, the availability of a collection to exhibit, whether a new museum should be part of the Smithsonian Institution or independent, the cost of establishing and maintaining a museum, and where a museum might be located in Washington, D.C. or its environs. Congress then may choose whether to act on the recommendations as it sees fit.

American Latinos will play an ever increasing role in the whole of our society. Americans of Latino heritage are a very youthful population and are projected to be more integral to the nation's economy, workforce, and electorate. Almost half of American Latinos are under the age of 25. American Latinos have a higher proportion of preschool aged children among their population then any other group. Similarly, 11 percent of the Latino population is under the age of five. Among our nation's school-age population, about every fifth student is Latino. In fact, the Census Bureau tells

us that every fifth child born today in the United States is an American of Latino heritage.

Americans of Latino heritage have been part of American history since before the founding of the United States. They were present on the American continent for more than two centuries prior to the Declaration of Independence. Spanish colonists founded the first permanent settlement in the territorial United States in St. Augustine, Florida in 1565, four decades before Jamestown and Plymouth Rock. The first church in North America was constructed by the Spanish in 1598 at San Juan Pueblo, 30 miles north of Santa Fe. One of the sixteen windows in the Colorado State Capitol depicts Casimiro Barela, a Hispano and former Governor and member of the state senate from 1876 to 1914, who was instrumental in the state's decision to publish all laws in English, German and Spanish.

During the American Revolutionary War, General Washington's army was successful at Yorktown in part because of support from a multiethnic army led by Spanish General Bernardo de Galvez on a southern front against the British, driving them out of the Gulf of Mexico, fighting them on the Mississippi and in Florida. The town of Galveston, Texas is named for him.

In every subsequent military conflict, American Latino soldiers fought alongside their American brethren. One of the first U.S. soldiers to die in Iraq, Jose Gutierrez, was an orphaned Guatemalan who at the time of his death was not even an American citizen. American Latino participation in our armed forces is not a new phenomenon. More than 10,000 Americans of Latino heritage fought for both the North and the South during the civil war. It has been estimated that anywhere from 250,000 to 500,000 American Latinos served in the armed forces during World War II. Over 53,000 Puerto Ricans served in World War II during the period 1940–1946.

According to the Pew Hispanic Center, while Latinos make up 9.5 percent of the actively enlisted forces, they are over-represented in the categories that get the most dangerous assignments (infantry, gun crews and seamanship) and make up over 17.5 percent of the front lines. This is likely the reason why, as a proportion of their total numbers, American Latinos have earned more Congressional Medals of Honor than any other ethnic group.

Presently, Latinos have one of the highest retention rates in military service. Their dedication is rooted in their deep belief in protecting American values demonstrated by post enlistment surveys which illustrate that Latino recruits note ''patriotism'' and ''service to country'' as the top two reasons for joining, as well as ''duty'' and ''honor.''

The richness of American culture also has benefited greatly from contributions made by the American Latino community.

New Orleans jazz legend Jelly Roll Morton said that our quintessential American music, jazz, was born with a ''Spanish tinge.'' The famous jazz saxophonist Stan Getz released several albums in the 1950s that integrated Brazilian samba into traditional jazz, and used the paintings of a Latina, Olga Abizu, for his album covers.

Many of our old American icons were also influenced by American Latino culture. The term ''buckaroo'' is derived form the Spanish word ''vaquero'' or cowman, from which we also got the word ''cowboy.'' Cowboy garb, boots and wide brimmed hats are all derived from the traditions of the northern Mexican charros and caballeros.

In science, the ground-controlled radar systems used for aircraft landings, and the meteorite theory of dinosaur extinction were both discovered by an American Latino, Californian Luis Walter Alvarez. Without American Latino ingenuity in bringing large-scale irrigation systems, or acequias, to the Southwest, the semi-arid climate would not have supported the crops that allowed colonization. The earliest acequias in Texas were dug by Pueblo Indians in 1680, portions of this system which were still in use in the early 1990s.

The civil rights era was a time in which American Latinos also made contributions. Before Brown v. Board of Education, California schools were desegregated by Mendez v. Westminster School District, a federal lawsuit brought by the parents of Mexican American students.

American Latinos also are investing mightily in the American economy. American Latino purchasing power nationally will top $1.08 trillion by 2010, up 413 percent from $212 billion in 1990—a gain far greater than the 177 percent increase in the buying power of all U.S. consumers in the same period. From 1997–2002, the number of businesses owned by American Latinos grew by 31 percent, three times the national average. These are indicators that American Latinos will be increasingly vital to the nation's economic well-being.

These examples show that the American Latino experience is integral to the nation's past and future. Yet scarcely any of the exhibits in our national museums in the nation's capital portray American Latino contributions to American life.

H.R. 2134 would take the next step toward ensuring that the lessons taught by our premier institutions for the arts, humanities, and American history include a better representation of Latino contributions. We hope that we will soon be able to say that the nation's capital truly exhibits America's rich cultural diversity.

I urge all of my colleagues to support this legislation.

Ms. MILLENDER-McDONALD. Madam Speaker, as Ranking Member of the Committee on House Administration, which favorably reported this important legislation along with the Resources Committee, I urge my colleagues to move quickly so that the bill can become law this year and we can begin the process of planning a National Museum of American Latino Heritage here in Washington, D.C. I congratulate Rep. BECERRA and Rep. ROS-LEHTINEN for their leadership in introducing this legislation and for their hard work in pushing it forward.

Persons of Hispanic, or Latino, descent have lived in the Western Hemisphere since the 16th Century. In the United States, they have become the largest minority group, and their impact will only grow stronger in the future. The culture of the Americas reflects a unique mixture of what was inherited from Europe, retained from the indigenous Native American inhabitants, contributed by Africans brought here during the era of slavery, and stirred in the melting pot of interaction with later immigrants from all around the world.

I am pleased to support consideration of a Latino Museum which I hope would undertake serious scholarly research as well as create and display exhibits to tell the story of the American Latino to an ever growing population, which will be increasingly exposed to such cultural influences in the years ahead. This is a project which all Americans can enthusiastically embrace.

Our Committee on House Administration worked for years with the gentleman from Georgia, Rep. JOHN LEWIS, to establish the Smithsonian African American Museum which finally became law in 2003. That legislation worked its way through Congress over a period of 17 years, passing the House and the Senate in different forms during that time, and then being successfully revived and studied by a Commission appointed by the President and Congress.

Madam Speaker, that Commission worked through 2002 and early 2003 to compile information and recommendations for Congress to use in considering whether to finally establish the Museum, and in what form. While we did not accept all of the Commission's recommendations, I found that it provided invaluable focus and momentum in moving the project forward.

H.R. 2134, and any future legislation to establish a new Museum which may spring from it, will hopefully enjoy a less tortuous path to a successful conclusion. The Commission to be created by this bill relating to the Museum of American Latino Heritage is largely patterned after the African American Museum Commission, and this time we are considering establishing the Commission at the beginning of the process of studying a Museum rather than near the end.

The new Commission will examine, among other issues, whether this new Museum should be part of the Smithsonian Institution, as is the new African American Museum. The Smithsonian has unique expertise in both museum governance and successfully presenting information which tells a story in both educational and entertaining ways.

Madam Speaker, I urge passage of this legislation.

Mr. KIND. Madam Speaker, again I want to congratulate and commend my colleague for his leadership and encourage adoption, and I yield back the balance of my time.

Mr. GOHMERT. Madam Speaker, we are grateful to the gentleman from California (Mr. BECERRA) for his work.

We have no additional speakers, and yield back the balance of our time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. GOHMERT) that the House suspend the rules and pass the bill, H.R. 2134, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title of the bill was amended so as to read: ''A bill to establish the Commission to Study the Potential Creation of a National Museum of American Latino Heritage to develop a plan of action for the establishment and maintenance of a National Museum of American Latino Heritage in Washington, DC, and for other purposes.''.

A motion to reconsider was laid on the table.

UPPER MISSISSIPPI RIVER BASIN PROTECTION ACT

Mr. GOHMERT. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 5340) to promote Department of the Interior efforts to provide a scientific basis for the management of sediment and nutrient loss in the Upper Mississippi River Basin, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5340

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Upper Mississippi River Basin Protection Act''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Reliance on sound science.

TITLE I—SEDIMENT AND NUTRIENT MONITORING NETWORK

Sec. 101. Establishment of monitoring network.
Sec. 102. Data collection and storage responsibilities.
Sec. 103. Relationship to existing sediment and nutrient monitoring.
Sec. 104. Collaboration with other public and private monitoring efforts.
Sec. 105. Reporting requirements.
Sec. 106. National Research Council assessment.

TITLE II—COMPUTER MODELING AND RESEARCH

Sec. 201. Computer modeling and research of sediment and nutrient sources.
Sec. 202. Use of electronic means to distribute information.
Sec. 203. Reporting requirements.

TITLE III—AUTHORIZATION OF APPROPRIATIONS AND RELATED MATTERS

Sec. 301. Authorization of appropriations.
Sec. 302. Cost-sharing requirements.
Sec. 303. Sunset.

SEC. 2. DEFINITIONS.

In this Act:

(1) The terms ''Upper Mississippi River Basin'' and ''Basin'' mean the watershed portion of the Upper Mississippi River and Illinois River basins, from Cairo, Illinois, to the headwaters of the Mississippi River, in the States of Minnesota, Wisconsin, Illinois, Iowa, and Missouri. The designation includes the Kaskaskia watershed along the Illinois River and the Meramec watershed along the Missouri River.

(2) The terms ''Upper Mississippi River Stewardship Initiative'' and ''Initiative'' mean the activities authorized or required by this Act to monitor nutrient and sediment loss in the Upper Mississippi River Basin.

(3) The term ''sound science'' refers to the use of accepted and documented scientific methods to identify and quantify the sources, transport, and fate of nutrients and sediment and to quantify the effect of various treatment methods or conservation measures on nutrient and sediment loss. Sound science requires the use of documented protocols for data collection and data analysis, and peer review of the data, results, and findings.

SEC. 3. RELIANCE ON SOUND SCIENCE.

It is the policy of Congress that Federal investments in the Upper Mississippi River Basin must be guided by sound science.

TITLE I—SEDIMENT AND NUTRIENT MONITORING NETWORK

SEC. 101. ESTABLISHMENT OF MONITORING NETWORK.

(a) ESTABLISHMENT.—As part of the Upper Mississippi River Stewardship Initiative, the Secretary of the Interior shall establish a sediment and nutrient monitoring network for the Upper Mississippi River Basin for the purposes of—

(1) identifying and evaluating significant sources of sediment and nutrients in the Upper Mississippi River Basin;

(2) quantifying the processes affecting mobilization, transport, and fate of those sediments and nutrients on land and in water;

(3) quantifying the transport of those sediments and nutrients to and through the Upper Mississippi River Basin;

(4) recording changes to sediment and nutrient loss over time;

(5) providing coordinated data to be used in computer modeling of the Basin, pursuant to section 201; and

(6) identifying major sources of sediment and nutrients within the Basin for the purpose of targeting resources to reduce sediment and nutrient loss.

(b) ROLE OF UNITED STATES GEOLOGICAL SURVEY.—The Secretary of the Interior shall carry out this title acting through the office of the Director of the United States Geological Survey.

SEC. 102. DATA COLLECTION AND STORAGE RESPONSIBILITIES.

(a) GUIDELINES FOR DATA COLLECTION AND STORAGE.—The Secretary of the Interior shall establish guidelines for the effective design of data collection activities regarding sediment and nutrient monitoring, for the use of suitable and consistent methods for data collection, and for consistent reporting, data storage, and archiving practices.

(b) RELEASE OF DATA.—Data resulting from sediment and nutrient monitoring in the Upper Mississippi River Basin shall be released to the public using generic station identifiers and hydrologic unit codes. In the case of a monitoring station located on private lands, information regarding the location of the station shall not be disseminated without the landowner's permission.

(c) PROTECTION OF PRIVACY.—Data resulting from sediment and nutrient monitoring in the Upper Mississippi River Basin is not subject to the mandatory disclosure provisions of section 552 of title 5, United States Code, but may be released only as provided in subsection (b).

SEC. 103. RELATIONSHIP TO EXISTING SEDIMENT AND NUTRIENT MONITORING.

(a) INVENTORY.—To the maximum extent practicable, the Secretary of the Interior shall inventory the sediment and nutrient monitoring efforts, in existence as of the date of the enactment of this Act, of Federal, State, local, and nongovernmental entities for the purpose of creating a baseline understanding of overlap, data gaps and redundancies.

(b) INTEGRATION.—On the basis of the inventory, the Secretary of the Interior shall integrate the existing sediment and nutrient monitoring efforts, to the maximum extent practicable, into the sediment and nutrient monitoring network required by section 101.

(c) CONSULTATION AND USE OF EXISTING DATA.—In carrying out this section, the Secretary of the Interior shall make maximum use of data in existence as of the date of the enactment of this Act and of ongoing programs and efforts of Federal, State, tribal, local, and nongovernmental entities in developing the sediment and nutrient monitoring network required by section 101.

(d) COORDINATION WITH LONG-TERM ESTUARY ASSESSMENT PROJECT.—The Secretary of the Interior shall carry out this section in coordination with the long-term estuary assessment project authorized by section 902 of the Estuaries and Clean Waters Act of 2000 (Public Law 106–457; 33 U.S.C. 2901 note).

SEC. 104. COLLABORATION WITH OTHER PUBLIC AND PRIVATE MONITORING EFFORTS.

To establish the sediment and nutrient monitoring network, the Secretary of the Interior shall collaborate, to the maximum extent practicable, with other Federal, State, tribal, local and private sediment and nutrient monitoring programs that meet guidelines prescribed under section 102(a), as determined by the Secretary.

SEC. 105. REPORTING REQUIREMENTS.

The Secretary of the Interior shall report to Congress not later than 180 days after the date of the enactment of this Act on the development of the sediment and nutrient monitoring network.

SEC. 106. NATIONAL RESEARCH COUNCIL ASSESSMENT.

The National Research Council of the National Academy of Sciences shall conduct a comprehensive water resources assessment of the Upper Mississippi River Basin.

TITLE II—COMPUTER MODELING AND RESEARCH

SEC. 201. COMPUTER MODELING AND RESEARCH OF SEDIMENT AND NUTRIENT SOURCES.

(a) MODELING PROGRAM REQUIRED.—As part of the Upper Mississippi River Stewardship Initiative, the Director of the United States Geological Survey shall establish a modeling program to identify significant sources of sediment and nutrients in the Upper Mississippi River Basin.

(b) ROLE.—Computer modeling shall be used to identify subwatersheds which are significant sources of sediment and nutrient loss and shall be made available for the purposes of targeting public and private sediment and nutrient reduction efforts.

(c) COMPONENTS.—Sediment and nutrient models for the Upper Mississippi River Basin shall include the following:

(1) Models to relate nutrient loss to landscape, land use, and land management practices.

(2) Models to relate sediment loss to landscape, land use, and land management practices.

(3) Models to define river channel nutrient transformation processes.

(d) COLLECTION OF ANCILLARY INFORMATION.—Ancillary information shall be collected in a GIS format to support modeling and management use of modeling results, including the following:

(1) Land use data.

(2) Soils data.

(3) Elevation data.

(4) Information on sediment and nutrient reduction improvement actions.

(5) Remotely sense data.

SEC. 202. USE OF ELECTRONIC MEANS TO DISTRIBUTE INFORMATION.

Not later than 90 days after the date of the enactment of this Act, the Director of the United States Geological Survey shall establish a system that uses the telecommunications medium known as the Internet to provide information regarding the following:

(1) Public and private programs designed to reduce sediment and nutrient loss in the Upper Mississippi River Basin.

(2) Information on sediment and nutrient levels in the Upper Mississippi River and its tributaries.

(3) Successful sediment and nutrient reduction projects.

SEC. 203. REPORTING REQUIREMENTS.

(a) MONITORING ACTIVITIES.—Commencing one year after the date of the enactment of this Act, the Director of the United States Geological Survey shall provide to Congress and make available to the public an annual report regarding monitoring activities conducted in the Upper Mississippi River Basin.

(b) MODELING ACTIVITIES.—Every three years, the Director of the United States Geological Survey shall provide to Congress and make available to the public a progress report regarding modeling activities.

TITLE III—AUTHORIZATION OF APPROPRIATIONS AND RELATED MATTERS

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

(a) UNITED STATES GEOLOGICAL SURVEY ACTIVITIES.—There is authorized to be appropriated to the United States Geological Survey $6,250,000 each fiscal year to carry out this Act (other than section 106). Of the amounts appropriated for a fiscal year pursuant to this authorization of appropriations, one-third shall be made available for the United States Geological Survey Cooperative Water Program and the remainder shall be made available for the United States Geological Survey Hydrologic Networks and Analysis Program.

(b) WATER RESOURCE AND WATER QUALITY MANAGEMENT ASSESSMENT.—There is authorized to be appropriated $650,000 to allow the National Research Council to perform the assessment required by section 106.

SEC. 302. COST-SHARING REQUIREMENTS.

Funds made available for the United States Geological Survey Cooperative Water Program under section 301(a) shall be subject to the same cost sharing requirements as specified in the last proviso under the heading ***"UNITED STATES GEOLOGICAL SURVEY–SURVEYS, INVESTIGATIONS, AND RESEARCH"*** *of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Public Law 109–54; 119 Stat. 510; 43 U.S.C. 50).*

SEC. 303. SUNSET.

The authority of the Secretary of the Interior to carry out any provisions of this Act shall terminate 10 years after the date of the enactment of this Act.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. GOHMERT) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

Mr. GOHMERT. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, under H.R. 5340, the U.S. Geological Survey will supplement, coordinate and manage data collection on sediments and nutrients in the Upper Mississippi River Basin. The data would be used to provide the baseline data and modeling tools needed to make the scientifically sound and cost-effective river management decisions.

The House passed a similar version of this bill in the 108th Congress, and I urge my colleagues to support the bill at this time.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I yield such myself such time as may consume.

(Mr. KIND asked and was given permission to revise and extend his remarks.)

Mr. KIND. Madam Speaker, I want to thank the majority for their support for this legislation this evening. This is legislation that I drafted and supported over the last couple of years with the support of many my colleagues in a bipartisan fashion. I want to commend the colleagues who have been active participants in the bipartisan Mississippi River Caucus.

This bill, the Upper Mississippi River Basin Protection Act, would develop a coordinated public-private approach to reducing nutrient and sediment flows in the Upper Mississippi River Basin.

The Mississippi River, Madam Speaker, is one of the great national treasures that we have and one of the great diverse ecosystems that flows right through the heart of America. It is North America's largest migratory route, with 40 percent of the water fowl species using this corridor during their annual migration every year. It is also the bread basket of America, which provides a lot of fertile acres are for the agricultural lands that we enjoy in the Midwest. It is also the primary drinking source to close to 30 million Americans.

But its greatest risk and challenge today is the amount of nutrients and sediments that are flowing into the basin area. The problem is multiple. Soil erosion reduces the long-term sustainability and the income of the typical farmer in middle America. Collectively, farmers annually lose more than $300 million of applied nitrogen due to runoff which ultimately enters the basin area.

Sediment fills the main shipping channel of the Mississippi River, costing the taxpayers roughly $100 million each year in dredging costs just to maintain the safe shipping channels for the navigation industry that takes and delivers many of the products to market.

Sediment fills in these valuable wetlands along the Mississippi River Basin, reducing wildlife habitat, affecting and destroying numerous acres of wetlands every year.

The loss of side channel habitat threaten the River's $1.2 recreation and $6.6 billion tourism industry impact in the Upper Mississippi River region alone. And there is inadequate scientific data on the amounts and sources of sediments and nutrients flowing into the Upper Mississippi River Basin at scales useful to land manager.

So what this legislation is attempting to do is put the science in place, allow the USGS to be the lead agency where they have developed competence in water quality and monitoring, set up a sub-basin monitoring system and develop computer models so we can do a better job of tracking the sediment and nutrient flows that enter the basin area, identify the hot spots, and better target the limited resources and voluntary and incentive-based land and water conservation programs to hopefully reduce that impact in the river basin.

What we are proposing is entirely consistent with the hypoxia study that took place in the Gulf of Mexico with the recommendations that they submitted to the Congress back in January of 2001. In fact, 40 percent of the nutrients that ultimately flow into the Gulf of Mexico creating this so-called dead zone or oxygen depletion zone, which is growing every year, has their origin in the Upper Mississippi River Basin.

This has received wide bipartisan support, both in Congress and at home. The five Upper Mississippi State governors have endorsed this proposal, along with the legislatures, and there have been countless public and private entities that have endorsed this approach too of trying to get the science in place so we can start the long-term data collection and establish the baseline so we know how to react to this great challenge that is affecting the great treasure that we know as the Mississippi River.

I want to especially commend the staff on committee for their help with this legislation, and my own staff, who has devoted countless hours on this project. I want to thank the support of the administration that has supported the legislation, along with numerous private entities throughout the Upper Midwest that have supported it and offered recommendations on how we can make this work for private landowners and public entities alike.

I want to especially thank Barry Drazkowski, who teaches at St. Mary's University at Winona, Minnesota, for the work he has done on water quality issues and for many of the ideas we have incorporated in this legislation.

Hopefully the third time is a charm. Hopefully we will get cooperation in the Senate to move this vitally important piece of legislation, because, again, the greatest threat that the Mississippi River Basin is facing today are the amount of sediments and nutrients that are flowing in, and I think there is a lot that we can do by maximizing the investment that we can make based on the science we are trying to put in place with this legislation here tonight in order to maintain the preservation and the protection of this great natural resource.

Again, I want to thank my colleague and the support we received on the Resources Committee, and encourage my colleagues to adoption this legislation this evening.

Madam Speaker, I yield back the balance of my time.

Mr. GOHMERT. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, last week we witnessed Mr. KIND from Wisconsin as the quarterback of the Congressional team run and pass doing amazing feats on the football field, and now we have seen him run with this legislation, and I urge my colleagues to help him pass this bill.

Mr. NUSSLE. Madam Speaker, I rise today in support of the Upper Mississippi River Basin Protection Act. This legislation takes a commonsense approach to reduce nutrient and sediment loss in the Upper Mississippi watershed by coordinating existing public and private water monitoring initiatives. I believe that such a partnership promotes the river's health and is beneficial the communities and people of eastern Iowa.

Most of the farm families I represent live and make their living either along the Mississippi, or its many tributaries. Soil erosion is a problem for farmers by reducing long-term sustainability and income potential of their acres. It is my understanding that farmers in the Upper Mississippi River Basin lose more than $300 million annually in applied nitrogen to soil erosion. In addition, sediment fills the main shipping channel of the Mississippi that family farmers depend on to get their commodities to markets.

Farmers live close to the land, and are committed to being good stewards. This legislation helps farmers and local conservation groups assess where problems are occurring in their watershed, and how to efficiently and effectively solve the problem.

I believe this legislation is beneficial in mending our environment along the river, and better protecting it in the future. Sediment is a threat to the Mississippi's fish, birds, and other wildlife by filling wetlands. Sediment reduces wetlands' ability to be an adequate water filter and provide habitat to the creatures that live all along the Mississippi River. It is estimated that the Upper Mississippi contributes 31 percent of the nitrogen that impairs the water quality of the Lower Mississippi basin.

Part of the Upper Mississippi Wildlife Refuge is in my district. I believe this refuge is an important treasure for Iowa. What makes this area special is, of course, the unique wildlife that lives there. This legislation helps promote wildlife by monitoring and computer modeling data to ensure scientifically sound and cost-effective decisions in promoting water quality.

Additionally, a healthy Mississippi River is very important to the communities of eastern Iowa. The Mississippi is recognized throughout the United States and abroad as "America's River". The Quad Cities area is a popular destination of international travelers who want to see and touch the water. For the residents of the Quad Cities area, the riverfront is the center of social life, with a historic district, baseball diamond, and several annually held festivals.

The City of Dubuque boasts over one million visitors thanks to the Mississippi. This community has chosen to make its story of the river the cornerstone of its urban renewal with a million dollar investment in the revitalization of the riverfront. The America's River project and historic Port of Dubuque represent the community's dedication to growing its tourism industry.

Madam Speaker, the Upper Mississippi's health and water quality essential to growing the economies of the larger river cities of Bettendorf, Davenport, Clinton, and Dubuque, and the picturesque river towns of Guttenberg, LeClair, Bellevue, and Marquette. All of these communities, along with farmers and conservationists, have invested much time and effort in promoting a clean river. I believe this legislation helps to insure these investments by coordinating the many interests of those living in the Upper Mississippi River Basin. Accordingly, I am a proud sponsor of this bill, and I urge my colleagues to join me in supporting this legislation.

Mr. GOHMERT. Madam Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. GOHMERT) that the House suspend the rules and pass the bill, H.R. 5340, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

RIO ARRIBA COUNTY LAND CONVEYANCE ACT

Mr. GOHMERT. Madam Speaker, I move to suspend the rules and pass the Senate bill (S. 213) to direct the Secretary of the Interior to convey certain Federal land to Rio Arriba County, New Mexico.

The Clerk read as follows:

S. 213

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Rio Arriba County Land Conveyance Act".

SEC. 2. DEFINITIONS.

In this Act:

(1) COUNTY.—The term "County" means the County of Rio Arriba, New Mexico.

(2) MAP.—The term "map" means the map entitled "Alcalde Proposed Land Transfer" and dated September 23, 2004.

(3) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

SEC. 3. CONVEYANCE OF LAND TO RIO ARRIBA COUNTY, NEW MEXICO.

(a) IN GENERAL.—Subject to valid existing rights, the Secretary shall convey to the County, without consideration, all right, title, and interest of the United States in and to the land (including any improvements to the land) described in subsection (b).

(b) DESCRIPTION OF LAND.—The land referred to in subsection (a) consists of approximately 171 acres of land located on the Sebastian Martin Land Grant in the vicinity of Alcalde, Rio Arriba County, New Mexico, as depicted on the map.

(c) REVERSION.—If any portion of the land conveyed under subsection (a) ceases to be used for public purposes the land shall, at the option of the Secretary, revert to the United States.

(d) CONDITIONS ON SALES.—If the County sells any portion of the land conveyed to the County under subsection (a)—

(1) the amount of consideration for the sale shall reflect fair market value, as determined by an appraisal; and

(2) the County shall pay to the Secretary an amount equal to the gross proceeds of the sale, for use by the Director of the Bureau of Land Management in the State of New Mexico, without further appropriation.

(e) COSTS.—The County shall pay any costs associated with the conveyance of land under subsection (a).

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. GOHMERT) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

Mr. GOHMERT. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, S. 213 would convey 171 acres of Bureau of Land Management lands located on the Sebastian Martin Land Grant to Rio Arriba County. The land is needed for county facilities, a cemetery for a local parish and a new public school.

Representative HEATHER WILSON, as well as the two Senators from New Mexico, are also supportive of this bill. I urge the passage of this measure.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I yield such time as he may consume to the champion of this legislation, my good friend from the State of New Mexico (Mr. UDALL).

Mr. UDALL of New Mexico. Madam Speaker, I thank the gentleman from Wisconsin.

Madam Speaker, I rise today to urge the passage of S. 213, the Rio Arriba County Land Conveyance Act. S. 213 will convey to the County of Rio Arriba approximately 171 acres of Bureau of Land Management land. The county intends to use this land for a new public school, county facilities and a cemetery for the local parish.

Rio Arriba County in northern New Mexico is a vast, beautiful county with significant amounts of Federal land. The growing population of Rio Arriba has led to an increased demand for public services but no municipal lands on which to site them.

Under most circumstances, this sort of transfer would be conducted administratively under the provisions of the Recreation and Public Purposes Act and authorizing legislation would not be required. This bill is before us today only because these lands are located on the Sebastian Martin Land Grant and were acquired by the Federal Government under the Bankhead-Jones Act. The Recreation and Public Lands Act does not apply to acquired lands, but the legislation is in keeping with provisions of that act.

The Rio Arriba County Manager, Lorenzo Valdez, and members of the Rio Arriba Board of County Supervisors worked hard on this and diligently. School Board Chairman Joe Guillen and School Board members Leroy Salazar, Ralph Medina and Isaac Medina worked tirelessly to raise the money necessary to construct the new school.

Father Terry Brennan, the Pastor of San Juan Pueblo Parish, helped on this effort in order to ensure that his parish would have the land necessary for a cemetery.

Madam Speaker, I urge my colleagues to support this bill.

Mr. KIND. Madam Speaker, we encourage adoption of this legislation, and yield back the remainder of our time.

Mr. GOHMERT. Madam Speaker, I have no additional speakers. We urge adoption and yield back the balance of our time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. GOHMERT) that the House suspend the rules and pass the Senate bill, S. 213.

The question was taken; and (two-thirds having voted in favor thereof)

the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

COLORADO NORTHERN FRONT RANGE MOUNTAIN BACKDROP PROTECTION STUDY ACT

Mr. GOHMERT. Madam Speaker, I move to suspend the rules and pass the bill (H.R. 2110) to provide for a study of options for protecting the open space characteristics of certain lands in and adjacent to the Arapaho and Roosevelt National Forests in Colorado, and for other purposes, as amended.

The Clerk read as follows:

H.R. 2110

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

SECTION 1. SHORT TITLE; FINDINGS; PURPOSE.

(a) SHORT TITLE.—This Act may be cited as the ''Colorado Northern Front Range Mountain Backdrop Protection Study Act''.

(b) FINDINGS.—Congress finds the following:

(1) Rising dramatically from the Great Plains, the Front Range of the Rocky Mountains provides a scenic mountain backdrop to many communities in the Denver metropolitan area and elsewhere in Colorado. The portion of the range within and adjacent to the Arapaho and Roosevelt National Forests also includes a diverse array of wildlife habitats and provides many opportunities for outdoor recreation.

(2) The open space character of this mountain backdrop is an important esthetic and economic asset for adjoining communities, making them attractive locations for homes and businesses.

(3) Rapid population growth in the northern Front Range area of Colorado is increasing recreational use of the Arapaho and Roosevelt National Forests and is also placing increased pressure for development of other lands within and adjacent to that national forest.

(4) Efforts by local governments and other entities have provided important protection for portions of this mountain backdrop, especially in the northern Denver metropolitan area. However, some portions of the mountain backdrop in this part of Colorado remain unprotected and are at risk of losing their open space qualities.

(5) It is in the national interest for the Federal Government, in collaboration with local communities, to assist in identifying options for increasing the protection of the mountain backdrop in the northern Front Range area of Colorado.

(c) PURPOSE.—The purpose of this Act is to identify options that may be available to assist in maintaining the open space characteristics of lands that are part of the mountain backdrop of communities in the northern section of the Front Range area of Colorado.

SEC. 2. COLORADO NORTHERN FRONT RANGE MOUNTAIN BACKDROP STUDY.

(a) STUDY AND REPORT.—The Secretary of Agriculture, acting through the Chief of the Forest Service and in consultation with the State and local officials and agencies specified in subsection (c), shall review the lands within the study area and, not later than one year after the date of the enactment of this Act, shall report to such officials and to Congress regarding the following:

(1) The present ownership of such lands.

(2) Which undeveloped land may be at risk of development.

(3) Actions that could be taken by the United States, the State of Colorado or a political subdivision of such State, or any other parties to preserve the open and undeveloped character of such lands.

(b) DEFINITIONS.—For the purposes of this section, the following definitions apply:

(1) STUDY AREA.—The term ''study area'' means those lands in southern Boulder, northern Jefferson, and northern Gilpin Counties, Colorado, that are situated west of Colorado State Highway 93, south and east of Colorado State Highway 119, and north of Colorado State Highway 46, excluding lands within the city limits of the cities of Boulder or Golden, Colorado, as generally depicted on the map entitled ''Northern Front Range Mountain Backdrop Study Area'' dated April, 2006.

(2) UNDEVELOPED LAND.—The term ''undeveloped land'' means land that—

(A) is located within the study area;

(B) is free or primarily free of structures; and

(C) the development of which is likely to adversely affect the scenic, wildlife, or recreational value of the study area.

(c) CONSULTATIONS.—In implementing this Act, the Secretary shall consult with the following:

(1) The Colorado Department of Natural Resources.

(2) Colorado State Forest Service.

(3) Colorado State Conservation Board.

(4) Great Outdoors Colorado.

(5) The Boards of County Commissioners of Boulder, Jefferson, and Gilpin Counties, Colorado.

(d) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed as authorizing the Secretary of Agriculture to take any action that would affect the use of any lands not owned by the United States.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. GOHMERT) and the gentleman from Wisconsin (Mr. KIND) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

Mr. GOHMERT. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, H.R. 2110 would require the Forest Service to review lands in or adjacent to the Arapaho and Roosevelt National Forest and report to the Congress on the present ownership of the lands, which undeveloped lands may be risk of development, and what appropriate actions could be taken to preserve the open and undeveloped character of the lands. This study involves how best to protect the open space between the western Denver metro area and the National Forest from development.

This bill was amended in committee to address issues raised by the Forest Service, and we urge its support.

Madam Speaker, I reserve the balance of my time.

Mr. KIND. Madam Speaker, I yield myself such time as I may consume.

Madam Speaker, we too encourage adoption of this legislation. I want to commend my good friend and colleague from the State of Colorado, Mr. Mark Udall, for his leadership on this important legislation. Mr. UDALL has been a leader in the effort to protect and preserve open space in Colorado and this legislation will help advance this cause. We would encourage its adoption and thank the majority for their cooperation.

Mr. UDALL of New Mexico. Madam Speaker, I rise in strong support of H.R. 210, the Colorado Northern Front Range Mountain Backdrop Protection Study bill.

The bill is intended to help local communities identify ways to protect the Front Range Mountain Backdrop in the northern sections of the Denver-metro area, especially the region just west of what will soon be the Rocky Flats National Widlife Refuge.

The Arapaho-Roosevelt National Forest includes much of the land in this backdrop area, but there are other lands as well.

Rising dramatically from the Great Plains, the Front Range of the Rocky Mountains provides a scenic mountain backdrop to many communities in the Denver metropolitan area and elsewhere in Colorado.

The portion of the range addressed in this bill also includes a diverse array of wildlife habitats and provides many opportunities for outdoor recreation.

Its open-space character is an important esthetic and economic asset for adjoining communities, making them attractive locations for homes and businesses.

But rapid population growth in the northern Front Range area of Colorado is increasing recreational use of the Arapaho-Roosevelt National Forest and is also placing increased pressure for development of other lands.

We can see this throughout Colorado and especially along the Front Range.

Homes and shopping centers are spreading up the valleys and along the highways. This development then spreads out along the ridges and mountain tops that make up the backdrop.

The result is potential loss of many of the very qualities that attract new residents.

This bill is designed to help provide a better understanding of what steps might be done to lessen that risk.

Already, local governments and other entities have provided important protection for portions of this mountain backdrop.

The bill acknowledges their good work and aims to assist further efforts along the same lines.

The bill does not interfere with the authority of local authorities regarding land use planning. And it does not infringe on private property rights.

Instead, it will bring the land protection experience of the Forest Service to the table to assist local efforts to protect areas that comprise the backdrop.

Under the bill, the Forest Service will work in collaboration with local communities, the state, nonprofit groups, and other parties.

I think this is in the national interest.

The backdrop both beckoned settlers westward and was a daunting challenge to their progress. Their first exposure to the harshness and humbling majesty of the Rocky Mountain West helped define a region, and the pioneers' independent spirit and respect for nature still lives with us to this day.

We need to work to maintain the mountain backdrop as a cultural and natural heritage for ourselves and generations to come.

This bill is intended to assist in that effort, and I urge its approval.

Mr. KIND. Madam Speaker, I yield back the balance of our time.

Mr. GOHMERT. Madam Speaker, I yield back the balance of my time and urge adoption.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. GOHMERT) that the House suspend the

rules and pass the bill, H.R. 2110, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. GOHMERT. Madam Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous material in the RECORD on the 21 bills just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

□ 0000

HONORING RUFUS JOHNSON

(Mr. CONAWAY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CONAWAY. Madam Speaker, I rise tonight to speak in recognition of the accomplishments of Rufus Johnson of Kerrville, Texas. Of African American and Cherokee descent, Mr. Johnson was born in Maryland in May of 1911 and faced adversity at a very early age. He lost his mother when he was 4 years old, but he never allowed any situation to dictate his path.

After his mother passed away, Mr. Johnson was sent to live with his aunt and uncle in Pennsylvania. As a boy in Pennsylvania, he was forbidden to swim in the city pool. This cost him the much-coveted Boy Scouts of America Eagle rank because he could not earn the swimming merit badge. Mr. Johnson never forgot this missed opportunity; and, ironically, it was this missed opportunity that led him on his path to historical significance.

Among his many life achievements, Mr. Johnson worked in the White House of President Franklin Delano Roosevelt, served in the United States Army during World War II, and became a successful attorney.

Immediately after enrolling at Howard University in Washington, D.C., he joined the Reserve Officers Training Corps, took swimming lessons and became a certified lifeguard.

Mr. Johnson's certification won him a job as the White House pool lifeguard during FDR's Presidency. Having earned the respect and admiration of FDR, Mr. Johnson became his butler as well, a position that often included lifting the President from his chair. Mr. Johnson recalls with great respect the pride and independence of President Roosevelt.

Mr. Johnson earned a place in White House history when a bowl of soup on a tray he was carrying tipped over and spilled on the President's lap. According to Mr. Johnson, it was Roosevelt himself who intentionally, but secretly, tipped the tray and caused the bowl to land on himself during the meeting. Mr. Johnson said FDR continued the conversation without pause and earned the respect of his adversary sitting at the dinner table with him.

When First Lady Roosevelt learned that Mr. Johnson was preparing to take the bar exam, she had a desk set up in the White House to allow him to study for 2 hours every day.

In October of 1942, he was called to active duty as a captain in the 92nd Infantry Division of African American soldiers. Mr. Johnson earned the admiration and respect of all who served with him and was awarded the Bronze Star, the Purple Heart, and the Combat Infantry Badge, and received a special regimental citation for bravery. He was called to duty and served again during the Korean war, where he attained the rank of lieutenant colonel.

After his service in the military, Mr. Johnson set up a law practice in California and also performed pro bono work. He argued successfully before the California Supreme Court in defense of the first amendment rights of American Indians. He won the decision, and it still stands today.

Mr. Johnson relocated to Kerrville in 1994, where he still resides with his stepdaughter, Yvonne Smith. He turned 95 last May, and the Texas State Legislature and the White House paid tribute to him on his birthday. Tonight, I pay tribute to Rufus Johnson for his years of service to our Nation. He is a respected member of his community, and he has a life story that deserves to be remembered.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. CLEAVER (at the request of Ms. PELOSI) for today on account of official business.

Ms. JACKSON-LEE of Texas (at the request of Ms. PELOSI) for today until 6:30 p.m.

Mr. MEEHAN (at the request of Ms. PELOSI) for the week of September 25 on account of a death in the family.

Ms. MILLENDER-MCDONALD (at the request of Ms. PELOSI) for September 25 and 26 on account of official business.

ENROLLED BILLS SIGNED

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

H.R. 2066. An act to amend title 40, United States Code, to establish a Federal Acquisition Service, to replace the General Supply Fund and the Information Technology Fund with an Acquisition Services Fund, and for other purposes.

H.R. 5074. An act to amend the Railroad Retirement Act of 1974 to provide for continued payment of railroad retirement annuities by the Department of the Treasury, and for other purposes.

H.R. 5187. An act to amend the John F. Kennedy Center Act to authorize additional appropriations for the John F. Kennedy Center for the Performing Arts for fiscal year 2007.

SENATE ENROLLED BILLS SIGNED

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

S. 176. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Alaska.

S. 244. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming.

S. 3525. An act to amend part B of title IV of the Social Security Act to reauthorize the promoting safe and stable families program, and for other purposes.

ADJOURNMENT

Mr. GOHMERT. Madam Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 12 o'clock and 3 minutes a.m.), the House adjourned until today, Thursday, September 28, 2006, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

9634. A letter from the Congressional Review Coordinator, APHIS, Department of Agriculture, transmitting the Department's final rule — Importation of Table Grapes From Namibia [Docket No. APHIS-2006-0025] received September 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9635. A letter from the Congressional Review Coordinator, APHIS, Department of Agriculture, transmitting the Department's final rule — Brucellosis in Cattle; State and Area Classifications; Wyoming [Docket No. APHIS-2006-0138] received September 18, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9636. A letter from the Director, Regulatory Review Group, Department of Agriculture, transmitting the Department's final rule — Storage, Handling, and Ginning Requirements for Cotton Marketing Assistance Loan Collateral (RIN: 0560-AH48) received September 20, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9637. A letter from the Dierctor, Regulatory Review Group, Department of Agriculture, transmitting the Department's final rule — Noninsured Crop Disaster Assistance Program — Tropical Regions (RIN: 0560-AH19) received September 20, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9638. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Endothall; Pesticide Tolerance [EPA-HQ-OPP-0018; FRL-8080-7] received August 14, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9639. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Trifloxystrobin; Pesticide Tolerance [EPA-HQ-OPP-2005-0299; FRL-8093-

8] received September 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9640. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Propiconazole; Pesticide Tolerance [EPA-HQ-OPP-2006-0347; FRL-8092-1] received September 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9641. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Fenbuconazole; Pesticide Tolerances [EPA-HQ-OPP-2005-0053; FRL-8093-9] received September 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9642. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Fenamindone; Pesticide Tolerance for Emergency Exemption [EPA-HQ-OPP-2006-0773; FRL-8093-3] received September 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9643. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Ethaboxam; Pesticide Tolerance [EPA-HQ-OPP-2005-0058; FRL-8091-5] received September 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9644. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Buprofezin; Pesticide Tolerance [EPA-HQ-OPP-2006-0170; FRL-8092-2] received September 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9645. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Endosulfan, Fenarimol, Imazalil, Oryzalin, Sodium Acifluorfen, Trifluralin, and Ziram; Tolerance Actions [EPA-HQ-OPP-2005-0459; FRL-8077-9] received September 12, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9646. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Difenoconazole; Pesticide Tolerance [EPA-HQ-OPP-2006-0024; FRL-8085-1] received September 12, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9647. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Eucalyptus Oil; Exemption from the Requirement of a Tolerance [EPA-HQ-OPP-2006-0695; FRL-8089-7] received September 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9648. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Epoxiconazole; Pesticide Tolerance [EPA-HQ-OPP-2005-0071; FRL-8080-9] received September 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9649. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Pantoea Agglomerans Strain E325; Exemption from the Requirement of a Tolerance [EPA-HQ-OPP-2006-0617; FRL-8091-6] received September 15, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9650. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Metrafenone; Pesticide Tolerance [EPA-HQ-OPP-2006-0324; FRL-8093-7] received September 15, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9651. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Etofenprox; Pesticide Tolerances for Emergency Exemptions [EPA-HQ-OPP-2006-0613; FRL-8089-2] received September 15, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9652. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Dithianon; Pesticide Tolerance [EPA-HQ-OPP-2006-0623; FRL-8090-5] received September 15, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

9653. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of State Implementation Plans; Utah; Revised Definitions of Volatile Organic Compounds and Clearing Index; Direct Final Rule [EPA-R08-OAR-2006-0210; FRL-8220-5] received September 21, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9654. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Vermont; Negative Declaration [R01-OAR-2006-0668; FRL-8219-2] received September 12, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9655. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the Huntington, West Virginia Portion of the Huntington-Ashland 8-Hour Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan [EPA-R03-OAR-2006-0485; FRL-8219-9] received September 12, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9656. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Alabama: Final Authorization of State Hazardous Waste Management Program Revision [EPA-R04-RCRA-2006-0575; FRL-8219-5] received September 12, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9657. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — TSCA Inventory Update Reporting Rule; Electronic Reporting [EPA-HQ-OPP-2005-0059; FRL-7752-8] (RIN: 2070-AC61) received September 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9658. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Reportable Quantity Adjustment for Isophorone Diisocyanate [EPA-HQ-SFUND-2005-0520; FRL-8217-4] (RIN: 2050-AG32) received September 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9659. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Michigan; Revised Format of 40 CFR Part 52 for Materials Being Incorporated by Reference [MI-87-1; FRL-8214-1] received September 6, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9660. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Preliminary Assessment Information Reporting Rule and Health and Safety Data Reporting Rule; Revision of Effective Dates [EPA-HQ-OPPT-2005-0014 and EPA-HQ-OPPT-2005-0055; FRL-8094-8] (RIN: 2070-AB08) received September 15, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9661. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Methods for Measurement of Visible Emissions [EPA-OAR-2004-0510; FRL-8221-4] (RIN: 2060-AF83) received September 15, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9662. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Control of Air Pollution fom New Motor Vehicles; Second Amendment to the Tier 2/Gasline Sulfur Regulations [EPA-HQ-OPP-2004-0508; FRL-8221-2] (RIN: 2060-AJ71) received September 15, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9663. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Approval and Promulgation of Air Quality Implementation Plans; Wisconsin [EPA-R05-OAR-2006-0543; FRL-8217-8] received September 15, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9664. A letter from the Chief, Policy and Rules Divison, OET, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Part 15 regarding new requirements and measurement guidelines for Access Broadband over Power Line Systems [ET Docket No. 04-37] Carrier Current Systems, including Broadband over Power Line Systems [ET Docket No. 03-104] received September 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9665. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Brawley and Campo, California) [MB Docket No. 05-219; RM-11249] received September 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9666. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Willcox, Arizona) [MB Docket No. 04-84; RM-10879] received September 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9667. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b) Table of Allotments, FM Broadcast Stations. [MB Docket No. 04-361; RM-11074] received September 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9668. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Garwood, Texas) [MB Docket No. 05-304; RM-11230] received September 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9669. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Hagerstown and Myersville, Maryland) [MB Docket No. 05-4; RM-11133] received September 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9670. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Southwest City, Missouri and Gravette, Arkansas) [MB Docket No. 06-59; RM-11319] received September 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9671. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Loretta, Tennessee, and Killen, Alabama) [MB Docket No. 05-124; RM-11174] received September 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9672. A letter from the Legal Advisor to the Bureau Chief, Media Bureau, Federal Communications Commission, transmitting the Commission's final rule — Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Frisco City, Alabama) [MB Docket No. 06-51; RM-11317] received September 7, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

9673. A letter from the Acting Director, Defense Security Cooperation Agency, transmitting reports in accordance with Section 36(a) of the Arms Export Control Act, pursuant to 22 U.S.C. 2776(a); to the Committee on International Relations.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

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

Mr. HYDE: Committee on International Relations. House Resolution 985. Resolution directing the Secretary of State to provide to the House of Representatives certain documents in the possession of the Secretary of State relating to the report submitted to the Committee on International Relations of the House of Representatives on July 28, 2006, pursuant to the Iran and Syria Nonproliferation Act (Rept. 109–689). Referred to the House Calendar.

Mr. HASTINGS of Washington: Committee on Rules. House Resolution 1045. Resolution providing for consideration of motions to suspend the rules (Rept. 109–690). Referred to the House Calendar.

Mr. PUTNAM: Committee on Rules. House Resolution 1046. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 109–691). Referred to the House Calendar.

Mr. BISHOP of Utah: Committee on Rules. House Resolution 1047. Resolution providing for consideration of the bill (H.R. 4772) to simplify and expedite access to the Federal courts for injured parties whose rights and privileges under the United States Constitution have been deprived by final actions of Federal agencies or other government officials or entities acting under color of State law, and for other purposes (Rept. 109–692). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

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

By Mr. VISCLOSKY (for himself and Mr. SANDERS):

H.R. 6196. A bill to prohibit business enterprises that lay-off a greater percentage of their United States workers than workers in other countries from receiving any Federal assistance, and for other purposes; to the Committee on Government Reform.

By Mr. TIBERI (for himself, Mr. MCKEON, Mr. OSBORNE, Mr. WILSON of South Carolina, Mrs. MCMORRIS RODGERS, Mr. BOUSTANY, Mr. GEORGE MILLER of California, Mr. HINOJOSA, Mr. WU, Mr. HOLT, Mr. DAVIS of Illinois, Mr. SCOTT of Virginia, Mr. RYAN of Ohio, Mr. LOBIONDO, and Mr. MCHUGH):

H.R. 6197. A bill to amend the Older American Act of 1965 to authorize appropriations for fiscal years 2007 through 2011, and for other purposes; to the Committee on Education and the Workforce.

By Ms. ROS-LEHTINEN (for herself, Mr. LANTOS, Mr. HYDE, and Mr. ACKERMAN):

H.R. 6198. A bill to hold the current regime in Iran accountable for its threatening behavior and to support a transition to democracy in Iran; to the Committee on International Relations, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. GINNY BROWN-WAITE of Florida (for herself and Mr. CAMP of Michigan):

H.R. 6199. A bill to improve the quality of, and access to, long-term care; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. KUCINICH (for himself, Ms. CORRINE BROWN of Florida, Mr. CLAY, Mr. CONYERS, Mr. FILNER, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HASTINGS of Florida, Mr. HINCHEY, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. KAPTUR, Ms. LEE, Mr. MCDERMOTT, Ms. MCKINNEY, Mrs. MALONEY, Ms. SOLIS, Ms. WATERS, and Ms. WOOLSEY):

H.R. 6200. A bill to amend the Help America Vote Act of 2002 to require States to conduct Presidential elections using paper ballots and to count those ballots by hand, and for other purposes; to the Committee on House Administration, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. BILBRAY (for himself and Mr. PETERSON of Minnesota):

H.R. 6201. A bill to provide a biennial budget for the United States Government and to reform earmarking in the Congress; to the Committee on the Budget, and in addition to the Committees on Rules, and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CASE:

H.R. 6202. A bill to direct the Secretary of the Interior to study the suitability and feasibility of designating the Ka'u Coast on the island of Hawaii as a unit of the National Park System; to the Committee on Resources.

By Mrs. BIGGERT (for herself, Mr. BOEHLERT, Mr. GORDON, Mr. SMITH of Texas, Mr. MCCAUL of Texas, Mr. REICHERT, Mr. WELDON of Pennsylvania, Mr. BARTLETT of Maryland, Mr. CALVERT, Mr. EHLERS, Mr. INGLIS of South Carolina, Mr. AL GREEN of Texas, Mr. WAMP, Mr. ROHRABACHER, Mr. MARIO DIAZ-BALART of Florida, Mr. HALL, Mr. SCHWARZ of Michigan, Mr. GILCHREST, Mr. JOHNSON of Illinois, and Ms. GRANGER):

H.R. 6203. A bill to provide for Federal energy research, development, demonstration, and commercial application activities, and for other purposes; to the Committee on Science.

By Mr. AKIN:

H.R. 6204. A bill to establish the Small Business Information Security Task Force; to the Committee on Small Business.

By Mr. DAVIS of Illinois:

H.R. 6205. A bill to amend the Internal Revenue Code of 1986 to provide an ex-offender low-income housing credit to encourage the provision of housing, job training, and other essential services to ex-offenders through a structured living environment designed to assist the ex-offenders in becoming self-sufficient; to the Committee on Ways and Means.

By Mr. ENGLISH of Pennsylvania (for himself, Mr. AKIN, Mr. SKELTON, and Mr. CLAY):

H.R. 6206. A bill to revise the calculation of interest on investments of the Harry S. Truman Memorial Scholarship Fund; to the Committee on Education and the Workforce.

By Mr. ENGLISH of Pennsylvania:

H.R. 6207. A bill to amend the Internal Revenue Code of 1986 to treat income earned by mutual funds from exchange-traded funds holding precious metal bullion as qualifying income; to the Committee on Ways and Means.

By Mr. ENGLISH of Pennsylvania:

H.R. 6208. A bill to amend the Trade Act of 1974 to make certain modifications to the trade adjustment assistance program; to the Committee on Ways and Means.

By Mr. ENGLISH of Pennsylvania (for himself, Mr. GREEN of Wisconsin, Mr. WILSON of South Carolina, Mr. SOUDER, Mr. KENNEDY of Minnesota, Mr. GINGREY, Mr. AKIN, Mr. MILLER of Florida, Mr. MCCOTTER, Mr. SAM JOHNSON of Texas, Mrs. MUSGRAVE, and Mr. FORTUÑO):

H.R. 6209. A bill to protect the religious freedom of providers of adoption or foster care services; to the Committee on Ways and Means.

By Mr. ENGLISH of Pennsylvania:

H.R. 6210. A bill to amend the Internal Revenue Code of 1986 to allow employees not covered by qualified retirement plans to save for retirement through automatic payroll deposit IRAs, to facilitate similar saving by the self-employed, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each

case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. HERSETH:

H.R. 6211. A bill to amend the Internal Revenue Code of 1986 to allow individuals a deduction for qualified long-term care insurance premiums, a credit for individuals who care for those with long-term care needs, and for other purposes; to the Committee on Ways and Means, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. HIGGINS (for himself, Mr. HINCHEY, Mrs. NAPOLITANO, Ms. CORRINE BROWN of Florida, and Ms. JACKSON-LEE of Texas):

H.R. 6212. A bill to amend the Internal Revenue Code of 1986 to provide a tax incentive to produce ethanol in high-consumption, low-production States, and for other purposes; to the Committee on Ways and Means.

By Mr. JOHNSON of Illinois:

H.R. 6213. A bill to authorize the conveyance of a portion of the campus of the Illiana Health Care System of the Department of Veterans Affairs to Danville Area Community College of Vermilion County, Illinois; to the Committee on Veterans' Affairs.

By Mr. KENNEDY of Rhode Island:

H.R. 6214. A bill to increase awareness of and research on autoimmune diseases, which are a major women's health problem, affect as many as 22 million Americans, and encompass more than 100 interrelated diseases, such as lupus, mulitple sclerosis, rheumatoid arthritis, Sjogren's syndrome, polymyositis, pemphigus, myasthenia gravis, Wegener's granulomatosis, psoriasis, celiac disease, autoimmune platelet disorders, scleroderma, alopecia areata, vitiligo, autoimmunethyroid disease, sarcoidosis, and fibromyalgia, and for other purposes; to the Committee on Energy and Commerce.

By Mr. LARSON of Connecticut (for himself, Mr. LEWIS of Georgia, Ms. DELAURO, Ms. WATSON, Ms. MCCOLLUM of Minnesota, Mr. BACA, Mr. GRIJALVA, Mr. SCOTT of Georgia, Mr. KENNEDY of Rhode Island, Ms. SLAUGHTER, Mr. WAXMAN, Mr. ROTHMAN, Ms. LEE, Mr. CLEAVER, Ms. MATSUI, Mr. OWENS, Mr. CONYERS, Ms. WOOLSEY, Mr. BERMAN, Mr. SERRANO, Mr. MOORE of Kansas, Ms. JACKSON-LEE of Texas, Ms. SOLIS, Mr. STARK, Mr. KUCINICH, Ms. LINDA T. SÁNCHEZ of California, Ms. CARSON, Mr. HASTINGS of Florida, and Mr. SCHIFF):

H.R. 6215. A bill to authorize the Secretary of Health and Human Services to award grants to eligible entities to prevent or alleviate the effects of youth violence in eligible urban communities by providing violence-prevention education, mentoring, counseling, and mental health services to children and adolescents in such communities; to the Committee on Energy and Commerce, and in addition to the Committee on Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. DANIEL E. LUNGREN of California (for himself and Ms. ZOE LOFGREN of California):

H.R. 6216. A bill to establish the Daniel Webster Congressional Fellowship Program for qualified graduates of law schools to serve in temporary positions in offices of the House of Representatives and Senate, and for other purposes; to the Committee on House Administration.

By Mrs. MALONEY:

H.R. 6217. A bill to amend the Child Nutrition Act of 1966 to provide vouchers for the purchase of educational books for infants and children participating in the special supplemental nutrition program for women, infants, and children under that Act; to the Committee on Education and the Workforce.

By Mr. GEORGE MILLER of California:

H.R. 6218. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Bay Area Regional Water Recycling Program projects, and for other purposes; to the Committee on Resources.

By Mr. PALLONE (for himself, Ms. SOLIS, Mr. ALLEN, Ms. BERKLEY, Mr. BISHOP of New York, Mr. BLUMENAUER, Ms. BORDALLO, Mrs. CAPPS, Mr. CAPUANO, Mr. CARDIN, Mr. CUMMINGS, Ms. DEGETTE, Mr. DOGGETT, Mr. ENGEL, Mr. FARR, Mr. FRANK of Massachusetts, Mr. GRIJALVA, Mr. GUTIERREZ, Mr. HINCHEY, Mr. HOLT, Mr. HONDA, Mr. JACKSON of Illinois, Ms. JACKSON-LEE of Texas, Mr. KUCINICH, Ms. LEE, Mr. LEVIN, Mr. LEWIS of Georgia, Mr. LYNCH, Mrs. MALONEY, Mr. MARKEY, Ms. MATSUI, Mr. MCDERMOTT, Mr. MCGOVERN, Mr. MEEHAN, Mr. GEORGE MILLER of California, Mr. MORAN of Virginia, Mr. NADLER, Mr. OWENS, Mr. PAYNE, Mr. SABO, Ms. LINDA T. SÁNCHEZ of California, Mr. SANDERS, Ms. SCHAKOWSKY, Mr. SCHIFF, Ms. SCHWARTZ of Pennsylvania, Mr. SERRANO, Mr. WAXMAN, Ms. WOOLSEY, Mr. WEXLER, Mr. CONYERS, Ms. MCCOLLUM of Minnesota, Mr. ACKERMAN, Mr. STARK, Mr. INSLEE, Mr. FATTAH, Mr. JEFFERSON, and Mr. BERMAN):

H.R. 6219. A bill to amend the Emergency Planning and Community Right-to-Know Act of 1986 to strike a provision relating to modifications in reporting frequency; to the Committee on Energy and Commerce.

By Mr. PEARCE:

H.R. 6220. A bill to require payment of three times the amount of just compensation whenever private property is taken for private economic development use; to the Committee on the Judiciary.

By Mr. SHAYS (for himself, Mr. MORAN of Virginia, Mr. TOM DAVIS of Virginia, Ms. JACKSON-LEE of Texas, and Mr. FORD):

H.R. 6221. A bill to establish the United States Public Service Academy; to the Committee on Education and the Workforce.

By Ms. SLAUGHTER:

H.R. 6222. A bill to amend the Toxic Substances Control Act to assess and reduce the levels of lead found in child-occupied facilities in the United States, and for other purposes; to the Committee on Energy and Commerce.

By Mr. VISCLOSKY:

H.R. 6223. A bill to promote the national security and stability of the economy of the United States by reducing the dependence of the United States on oil through the use of alternative fuels and new technology, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Transportation and Infrastructure, Armed Services, and Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WHITFIELD (for himself, Mr. TOWNS, Mr. PORTER, Mr. GORDON, Ms. BERKLEY, Ms. ROS-LEHTINEN, Ms. JACKSON-LEE of Texas, and Mr. WYNN):

H.R. 6224. A bill to establish a Federal incentive grant program for States that implement effective measures to prevent and reduce underage consumption of beverage alcohol, to evaluate the effectiveness and efficiency of anti-underage drinking programs funded with Federal dollars, and to provide appropriate reporting of Federal underage drinking data; to the Committee on Energy and Commerce.

By Mr. BOEHNER:

H. Con. Res. 483. Concurrent resolution providing for an adjournment or recess of the two Houses; considered and agreed to.

By Mr. CROWLEY (for himself, Mr. KUHL of New York, Mrs. MALONEY, Mr. NADLER, Mr. DOGGETT, Mr. BOEHLERT, Mr. HIGGINS, Mr. ISRAEL, Mr. SERRANO, Mr. ENGEL, Mr. ACKERMAN, Mr. HINCHEY, Mr. BISHOP of New York, Mrs. LOWEY, Mr. GEORGE MILLER of California, Mrs. MCCARTHY, Ms. SLAUGHTER, Mr. FOSSELLA, Mr. MEEKS of New York, Mr. TOWNS, and Ms. VELÁZQUEZ):

H. Con. Res. 484. Concurrent resolution commending The New York Institute for Special Education for providing excellent education for students with blindness and visual disabilities for 175 years, and for broadening its mission to provide the same quality education to students with emotional and learning disabilities; to the Committee on Education and the Workforce.

By Mr. LANGEVIN (for himself and Mr. LARSON of Connecticut):

H. Con. Res. 485. Concurrent resolution expressing the sense of the Congress that there should be established a Let's All Play Day; to the Committee on Education and the Workforce.

By Mr. SMITH of New Jersey (for himself, Mr. PITTS, and Mr. MCINTYRE):

H. Con. Res. 486. Concurrent resolution expressing the sense of Congress that the Government of Turkmenistan should take immediate steps to improve its respect for human rights and democratic practices, in keeping with its international commitments and obligations; to the Committee on International Relations, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. CONYERS (for himself, Mr. HINCHEY, Mr. VAN HOLLEN, Ms. WATERS, Mr. WEXLER, Mr. HONDA, Ms. JACKSON-LEE of Texas, Mrs. MALONEY, Ms. CORRINE BROWN of Florida, Mr. PASTOR, Mr. WEINER, Mrs. CAPPS, Mr. RUSH, Ms. ZOE LOFGREN of California, Mr. OLVER, Mr. GRIJALVA, Ms. LINDA T. SÁNCHEZ of California, Mr. SCHIFF, Mrs. CHRISTENSEN, Ms. WOOLSEY, Ms. LEE, Mr. PAYNE, Ms. SCHAKOWSKY, Mr. DAVIS of Illinois, Ms. WATSON, Mr. STARK, Mr. LEWIS of Georgia, Mr. FRANK of Massachusetts, Mr. DEFAZIO, Mr. MARKEY, Ms. NORTON, Mr. EVANS, Mr. SERRANO, Ms. BALDWIN, Mr. DELAHUNT, Mr. FARR, Mr. MCGOVERN, Mr. MEEHAN, Mr. OWENS, Mr. ACKERMAN, Ms. MOORE of Wisconsin, Ms. KILPATRICK of Michigan, Mr. THOMPSON of Mississippi, Mr. BLUMENAUER, Mr. MCDERMOTT, and Mr. BERMAN):

H. Res. 1043. A resolution directing the Director of National Intelligence to submit to the House of Representatives not later than 14 days after the date of the adoption of this resolution, in unclassified form, all documents in the possession of the Director concerning the impact of the war in Iraq on terrorism and terrorist threats, including a National Intelligence Estimated entitled

''Trends in Global Terrorism: Implications for the United States'' dated on or about April, 2006, and any other actual or pending National Intelligence Estimates concerning Iraq; to the Committee on Intelligence (Permanent Select).

By Mr. ACKERMAN (for himself, Mr. LANTOS, and Mr. HASTINGS of Florida):

H. Res. 1044. A resolution calling for the immediate and unconditional release of Israeli soldiers held captive by Hamas and Hezbollah, and for other purposes; to the Committee on International Relations.

By Mr. HONDA (for himself, Mr. EVANS, Mr. LIPINSKI, Mr. MCDERMOTT, Mr. HYDE, Ms. SCHAKOWSKY, Mr. JACKSON of Illinois, Ms. ZOE LOFGREN of California, Mr. TOWNS, Mr. BRADY of Pennsylvania, Mr. CONYERS, Mr. GONZALEZ, Mr. WYNN, Mr. SCHIFF, and Ms. MATSUI):

H. Res. 1048. A resolution honoring the courageous actions of Minnie Vautrin during the Rape of Nanking during World War II; to the Committee on Government Reform.

By Mr. ORTIZ (for himself, Mr. HALL, Mr. AL GREEN of Texas, Mr. PAUL, Mr. HINOJOSA, Mr. REYES, Mr. EDWARDS, Ms. JACKSON-LEE of Texas, Mr. GONZALEZ, Mr. DOGGETT, Mr. CUELLAR, Mr. GENE GREEN of Texas, and Ms. EDDIE BERNICE JOHNSON of Texas):

H. Res. 1049. A resolution recognizing Ann Richards' extraordinary contributions to Texas and American public life and offering condolences on her passing; to the Committee on Government Reform.

By Ms. SOLIS (for herself, Mrs. CAPPS, Ms. JACKSON-LEE of Texas, Ms. EDDIE BERNICE JOHNSON of Texas, Ms. PELOSI, Ms. NORTON, Ms. WASSERMAN SCHULTZ, Mrs. TAUSCHER, Mrs. MALONEY, Ms. SCHAKOWSKY, Ms. DELAURO, Mrs. MCCARTHY, Ms. BALDWIN, Mrs. DAVIS of California, Ms. ZOE LOFGREN of California, Ms. MATSUI, Mrs. NAPOLITANO, Ms. DEGETTE, Ms. SLAUGHTER, Ms. MCCOLLUM of Minnesota, and Ms. KAPTUR):

H. Res. 1050. A resolution honoring the life and accomplishments of the late Ann Richards, former Governor of Texas; to the Committee on Government Reform.

By Mr. WALSH (for himself, Mr. UDALL of Colorado, Mr. ENGLISH of Pennsylvania, Mr. ROHRABACHER, Mr. BURTON of Indiana, Mr. MCCOTTER, Mr. KOLBE, Mr. FRANK of Massachusetts, Mr. WOLF, Ms. BORDALLO, and Mr. BAIRD):

H. Res. 1051. A resolution expressing support for democracy in Nepal that will require the full participation of the people of Nepal in the political process to hold elections for a constituent assembly and draft a new constitution and calling upon the Communist Party of Nepal-Maoist to adhere to commitments it has made and to respect human rights; to the Committee on International Relations.

ADDITIONAL SPONSORS

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

H.R. 13: Mr. DOGGETT.
H.R. 97: Ms. BORDALLO.
H.R. 379: Mr. JACKSON of Illinois.
H.R. 450: Mr. CALVERT.
H.R. 517: Mr. MCCAUL of Texas and Mr. HALL.
H.R. 583: Mr. HASTINGS of Florida and Ms. MILLENDER-MCDONALD.
H.R. 602: Mr. JENKINS.
H.R. 611: Ms. JACKSON-LEE of Texas.
H.R. 615: Mr. JACKSON of Illinois and Mr. MORAN of Kansas.
H.R. 772: Mr. WAXMAN and Mr. HIGGINS.
H.R. 874: Mr. NEUGEBAUER, Mr. ISTOOK, Mr. KNOLLENBERG, Mr. STEARNS, and Mr. SHUSTER.
H.R. 898: Mr. FILNER.
H.R. 910: Mr. MORAN of Virginia and Mr. HOLDEN.
H.R. 994: Mr. BILBRAY and Ms. BORDALLO.
H.R. 998: Mr. RUPPERSBERGER.
H.R. 1002: Mr. BOUCHER and Mr. MURPHY.
H.R. 1275: Mr. PRICE of North Carolina.
H.R. 1298: Ms. MILLENDER-MCDONALD and Mr. FOSSELLA.
H.R. 1366: Ms. BORDALLO.
H.R. 1376: Mr. GENE GREEN of Texas, Ms. ESHOO, Mr. DEFAZIO, Mr. LYNCH, Ms. SCHWARTZ of Pennsylvania and Mr. FARR.
H.R. 1498: Mr. DENT.
H.R. 1687: Mr. MEEKS of New York.
H.R. 1902: Mr. RYAN of Ohio, Mr. MARKEY, Mr. CONYERS, and Mr. BISHOP of New York.
H.R. 1951: Mr. SWEENEY, Mr. GENE GREEN of Texas, and Mr. BILBRAY.
H.R. 2014: Mr. MCCOTTER.
H.R. 2051: Ms. KILPATRICK of Michigan.
H.R. 2230: Mr. FOLEY.
H.R. 2421: Mr. CHANDLER, Mr. POE, Mr. HUNTER, Mr. POMBO, Mr. FARR, and Ms. LEE.
H.R. 2533: Mr. OLVER.
H.R. 2642: Mr. SMITH of Washington.
H.R. 2842: Mr. KIRK.
H.R. 2861: Mr. DENT.
H.R. 3111: Mr. MURPHY.
H.R. 3186: Mr. BOUCHER.
H.R. 3326: Mr. CONYERS.
H.R. 3427: Mr. HOLT and Ms. LEE.
H.R. 3466: Mr. NUSSLE.
H.R. 3498: Mr. GOODLATTE.
H.R. 3559: Mr. PALLONE, Mr. HOLT, and Mr. DAVIS of Kentucky.
H.R. 3616: Mr. OLVER.
H.R. 3628: Ms. WOOLSEY.
H.R. 3875: Mr. UDALL of Colorado and Mr. SPRATT.
H.R. 3931: Mr. JACKSON of Illinois.
H.R. 3954: Mr. BERMAN.
H.R. 4201: Mr. GRIJALVA.
H.R. 4293: Mr. LANTOS, Mr. GEORGE MILLER of California, and Ms. ZOE LOFGREN of California.
H.R. 4341: Mr. FORD.
H.R. 4469: Mr. MEEHAN.
H.R. 4547: Mr. SULLIVAN.
H.R. 4597: Mr. HENSARLING, Mr. GILLMOR, Ms. MATSUI, Mr. PICKERING, Mr. RUPPERSBERGER, Mr. SALAZAR, Mr. CROWLEY, Mr. BOYD, Mr. ISRAEL, Mr. HOLDEN, Mr. MATHESON, Mr. MELANCON, and Mr. TAYLOR of Mississippi.
H.R. 4751: Mr. HOLT.
H.R. 4800: Mr. JACKSON of Illinois.
H.R. 4806: Mr. HOLT.
H.R. 4824: Mr. SIMMONS.
H.R. 4873: Mr. LARSON of Connecticut.
H.R. 4903: Mr. TOM DAVIS of Virginia.
H.R. 4925: Ms. WOOLSEY.
H.R. 4949: Mr. SWEENEY.
H.R. 5011: Mr. KUCINICH.
H.R. 5014: Mr. MOORE of Kansas.
H.R. 5088: Mr. SERRANO and Mr. GRIJALVA.
H.R. 5099: Mr. BOSWELL and Mr. HALL.
H.R. 5120: Mr. FEENEY.
H.R. 5139: Mr. MEEHAN.
H.R. 5200: Mr. BOUCHER and Mr. LARSON of Connecticut.
H.R. 5242: Mr. LEWIS of Kentucky and Mr. HALL.
H.R. 5280: Mr. HOLDEN.
H.R. 5310: Mrs. MILLER of Michigan.
H.R. 5312: Mr. CAMP of Michigan.
H.R. 5345: Mr. STARK.
H.R. 5362: Mr. FORD.
H.R. 5363: Mr. HALL, Mr. PETERSON of Minnesota, Mrs. CUBIN, Mr. THORNBERRY, and Mr. POMEROY.
H.R. 5437: Mr. PETERSON of Minnesota, Mr. MCHUGH, Mr. JEFFERSON, Ms. BORDALLO, Mr. DAVIS of Kentucky, and Mr. GOODE.
H.R. 5465: Mr. SAXTON.
H.R. 5472: Mr. BURGESS and Mr. CAMP of Michigan.
H.R. 5479: Mr. PLATTS.
H.R. 5513: Mr. DENT and Mr. MOLLOHAN.
H.R. 5624: Mr. FERGUSON.
H.R. 5642: Mrs. LOWEY, Mr. BRADY of Pennsylvania, Mr. EVANS, Mr. EMANUEL, and Ms. DELAURO.
H.R. 5660: Mr. DAVIS of Alabama, Mr. BISHOP of Georgia, and Mr. BOREN.
H.R. 5671: Mr. BOREN.
H.R. 5674: Mr. WATT.
H.R. 5688: Mr. SCOTT of Georgia.
H.R. 5703: Mr. FORD.
H.R. 5740: Mr. WELDON of Pennsylvania.
H.R. 5746: Mr. PRICE of North Carolina and Mr. GRIJALVA.
H.R. 5755: Mr. FORTENBERRY.
H.R. 5771: Mr. BOUCHER, Mr. RYAN of Ohio, Ms. WATERS, Ms. ESHOO, Mr. BUTTERFIELD, Mr. DAVIS of Florida, Mr. SANDERS, Mr. COSTELLO, Mrs. TAUSCHER, Ms. HOOLEY, Mr. RAHALL, Mr. HIGGINS, Ms. NORTON, Mr. LEVIN, Mr. CUELLAR, and Mr. KILDEE.
H.R. 5772: Mr. BARTLETT of Maryland.
H.R. 5784: Mr. HONDA and Ms. CORRINE BROWN of Florida.
H.R. 5791: Mr. KILDEE.
H.R. 5834: Mr. OLVER, Mr. DOGGETT, Ms. MILLENDER-MCDONALD, and Mr. LEACH.
H.R. 5862: Mr. ISSA.
H.R. 5875: Ms. MCCOLLUM of Minnesota.
H.R. 5890: Mr. GOODLATTE.
H.R. 5900: Mr. WOLF.
H.R. 5906: Mr. KLINE and Ms. MCCOLLUM of Minnesota.
H.R. 5916: Mr. MEEHAN.
H.R. 5965: Mr. HONDA, Mr. DOGGETT, and Mr. BISHOP of Georgia.
H.R. 5991: Mr. GRIJALVA and Ms. LEE.
H.R. 6008: Mr. HINOJOSA.
H.R. 6011: Mr. TERRY, Ms. BERKLEY, and Mr. REHBERG.
H.R. 6038: Mr. GRIJALVA and Mr. WELDON of Florida.
H.R. 6046: Ms. VELÁZQUEZ, Ms. SOLIS, Ms. MATSUI, Mr. FILNER, Mr. LANTOS, MR. GEORGE MILLER of California, Ms. ESHOO, Mr. MARKEY, Mr. NEAL of Massachusetts, Ms. SLAUGHTER, Mr. STARK, Ms. CORRINE BROWN of Florida, Ms. JACKSON-LEE of Texas, Mr. PALLONE, Mr. OBERSTAR, Mr. HOLT, Mr. ANDREWS, Mr. PASCRELL, and Ms. DELAURO.
H.R. 6057: Mr. DREIER, Mr. GOODLATTE, Mr. STEARNS, Mr. WESTMORELAND, Mr. REHBERG, Mr. DOOLITTLE, Mr. ENGLISH of Pennsylvania, Mr. BONNER, Mr. CANNON, Mr. NORWOOD, Mr. FOLEY, Mr. KENNEDY of Minnesota, Mr. CAMPBELL of California, and Mr. UPTON.
H.R. 6067: Mr. PRICE of North Carolina, Ms. CARSON, Ms. MCCOLLUM of Minnesota, Mr. PASCRELL, and Mr. DOYLE.
H.R. 6083: Mr. RANGEL, Mr. STARK, Mr. GRIJALVA, and Mr. SCOTT of Virginia.
H.R. 6092: Mr. PEARCE.
H.R. 6097: Mr. SULLIVAN and Mr. RUPPERSBERGER.
H.R. 6107: Ms. MILLENDER-MCDONALD and Mr. CONYERS.
H.R. 6122: Mr. BROWN of Ohio.
H.R. 6124: Mr. SERRANO and Mr. GRIJALVA.
H.R. 6132: Mr. TANNER, Mr. STARK, Mr. KENNEDY of Rhode Island, Mrs. MCCARTHY, Mr. NORWOOD, Mr. GENE GREEN of Texas, Mr. KUHL of New York, Mr. FOLEY, and Mr. CARDOZA.
H.R. 6135: Mr. REYNOLDS, Mr. CARDOZA, Mr. DOYLE, and Mr. HOLDEN.
H.R. 6136: Mr. MANZULLO, Mr. SESSIONS, Mr. REGULA, Mr. WALDEN of Oregon, Mr. HULSHOF, Mr. SHADEGG, Ms. FOXX, Mr. DANIEL E. LUNGREN of California, Mr. LEACH, Mr. MCCAUL of Texas, Mr. GUTKNECHT, Mr. JOHNSON of Illinois, Mr. ENGLISH of Pennsylvania,

Mr. DENT, Mr. CAMP of Michigan, Mrs. CAPITO, Mr. GINGREY, Mr. MARCHANT, Mr. PETERSON of Pennsylvania, Mr. GREEN of Wisconsin, Mr. BONILLA, Mr. NEUGEBAUER, Mr. GRAVES, Mr. BEAUPREZ, Mr. LATOURETTE, Mr. BOEHNER, Mr. FERGUSON, Mr. RADANOVICH, Mr. MCHUGH, Mr. PENCE, Mr. REICHERT, Mr. TERRY, Mr. KING of New York, Mr. TURNER, Mr. KNOLLENBERG, Mr. SCHWARZ of Michigan, Mr. MCINTYRE, and Mr. DEAL of Georgia.

H.R. 6137: Mr. SAM JOHNSON of Texas.

H.R. 6140: Mr. WAXMAN, Mr. WYNN, Mr. GONZALEZ, Mr. MCNULTY, Ms. BERKLEY, Mrs. MALONEY, Mr. FARR, and Mr. RUSH.

H.R. 6144: Mr. MORAN of Virginia.

H.R. 6149: Mr. JEFFERSON, Mr. PAYNE, Mr. BUTTERFIELD, Mrs. JONES of Ohio, Mrs. CHRISTENSEN, Mr. OWENS, Mr. THOMPSON of Mississippi, Mr. SCOTT of Virginia, Mr. CLAY, Mr. CLYBURN, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. RUSH, and Ms. WATSON.

H.R. 6169: Mr. GOODLATTE, Mr. HAYES, Mrs. JO ANN DAVIS of Virginia, Mr. NEUGEBAUER, Mr. FRANKS of Arizona, Mr. KENNEDY of Minnesota, Mr. WILSON of South Carolina, Mr. FORTUÑO, Mr. BURTON of Indiana, Mr. PEARCE, Mr. GARRETT of New Jersey, Mr. ROHRABACHER, Mr. MCHENRY, Mr. MARCHANT, and Mr. RYAN of Wisconsin.

H.R. 6175: Mrs. MCCARTHY and Mr. GERLACH.

H.R. 6191: Mr. HINCHEY, Mr. RUSH, Mr. GARRETT of New Jersey, Ms. SLAUGHTER, Ms. ESHOO, Mr. CROWLEY, Mr. ACKERMAN, Mr. HIGGINS, Mr. STARK, Mr. DOGGETT, Mrs. MALONEY, Mr. TOWNS, Mr. MEEHAN, Mr. ABERCROMBIE, Mr. THOMPSON of Mississippi, Ms. LEE, and Mrs. DAVIS of California.

H.R. 6193: Ms. MATSUI, Mrs. DRAKE, Mr. FILNER, and Mr. UPTON.

H.R. 6195: Mr. HALL.

H. Con. Res. 222: Mr. WELDON of Pennsylvania, Mr. WYNN, and Mr. ORTIZ.

H. Con. Res. 346: Mr. CHABOT.

H. Con. Res. 396: Mr. KUCINICH.

H. Con. Res. 434: Mr. WAXMAN, Ms. KILPATRICK of Michigan, and Mr. STARK.

H. Con. Res. 469: Mr. THOMPSON of Mississippi and Mr. GONZALEZ.

H. Con. Res. 473: Mr. CUMMINGS.

H. Con. Res. 479: Mr. YOUNG of Alaska.

H. Con. Res. 482: Mr. KING of Iowa.

H. Res. 496: Mr. BERMAN and Mr. HASTINGS of Florida.

H. Res. 787: Ms. MOORE of Wisconsin, Mr. GEORGE MILLER of California, Ms. WOOLSEY, Mr. KUCINICH, Mr. MCDERMOTT, and Mr. BERMAN.

H. Res. 944: Ms. KILPATRICK of Michigan, Mr. KILDEE, and Ms. MILLENDER-MCDONALD.

H. Res. 962: Mr. SMITH of New Jersey.

H. Res. 964: Mrs. DAVIS of California, Mr. TIBERI, Mr. BOSWELL, and Mr. KILDEE.

H. Res. 988: Mr. GONZALEZ, Mr. BRADY of Texas, Mrs. MYRICK, Mr. MCHENRY, Mr. GOHMERT, Mr. HOSTETTLER, Mr. ROHRABACHER, Mr. GUTKNECHT, Mr. MARCHANT, Mr. BURTON of Indiana, Mr. GARRETT of New Jersey, Mr. BISHOP of Utah, Mr. CANTOR, and Mr. AKIN.

H. Res. 1006: Mr. GRIJALVA.

H. Res. 1008: Mr. SMITH of Washington.

H. Res. 1033: Mr. LINDER, Mr. MARSHALL, and Mr. FOLEY.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, SECOND SESSION

Vol. 152 WASHINGTON, WEDNESDAY, SEPTEMBER 27, 2006 No. 123

Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

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

Let us pray.

Eternal Father, You are always the same. Help our legislative leaders to be honest and fair. May our lawmakers labor for justice and peace. As You use them for Your purposes, deliver them from moral paralysis and spiritual inertia.

Make them voices for those who are captives of injustice and oppression. Use them to rescue the hopeless, to help the hurting, and to have pity on the weak. Because of their faithfulness, let this Nation prosper like flowers in a well-kept garden.

As we praise You, Our Father, show Your glory throughout our world.

We pray in Your glorious Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 1 hour, with the first half of the time under the control of the Democratic leader or his designee and the second half of the time under the control of the majority leader or his designee.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

PROGRAM

Mr. FRIST. Mr. President, we have a period of 1 hour of morning business to start today's session. Following morning business, we have 1 hour of debate prior to a scheduled cloture vote on the pending amendment relating to military tribunals, to the military commissions. Before that cloture vote begins, the Democratic leader and I will continue to work toward an agreement that would allow us to consider the military tribunal legislation as a free-standing measure under a specific time agreement. We started talking about that yesterday and worked through the night, and we will continue over the course of the morning to reach that agreement. We are working in good faith toward an understanding on this bill and hope we will be able to work that out prior to that 11:30 a.m. vote. I will keep our colleagues posted as to the outcome of those talks.

If we are able to reach a consent agreement, then I will vitiate the order for the cloture vote, and we will proceed directly to the military tribunals, the so-called Hamdan legislation, today. Votes will likely occur throughout the afternoon either on the cloture vote on that issue or on amendments that may be considered to the free-standing bill.

We have a number of other important items to consider this week. The Defense appropriations conference report has been filed, and we do not expect that to take very much time at all. It may even be that we can do that at some point later today.

We have the Homeland Security appropriations that will shortly be completed, as well as other conference reports that are underway, such as port security, which may become available.

I remind my colleagues that we have a policy meeting on this side of the aisle to occur from 12:30 p.m. to 2:15 p.m. today. If we can schedule debate on one of these issues during that time, we will likely be able to remain in session in order to make progress.

I have a brief statement. Does the Democratic leader have comments?

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

WORKING ON A UNANIMOUS CONSENT AGREEMENT

Mr. REID. Mr. President, I appreciate the majority leader yielding. So everyone understands where we are, let me repeat what the majority leader said. As things now stand, we are going to have a cloture vote on the Hamdan matter, the Supreme Court detainee situation that now confronts the country, sometime this evening.

What we are going to try to do in the next hour or so is work out a unanimous consent agreement that there will be amendments allowed to be offered on the Hamdan matter. There would be amendments. We would agree between the leader and me as to how much time will be on the amendments.

I have cleared this matter with most everyone. As I told the leader today, I still have to work things out with two other members of the Judiciary Committee. Hopefully, I can do that. If not, what will happen is cloture will be invoked on Hamdan and then 30 hours will start, and there will be cloture on the fence bill, the barrier bill, sometime tomorrow. We are trying to work our way through this so the Hamdan matter will have some debate on it and some amendments offered on it. We are doing our best to do that.

As I said yesterday, late in a session such as this, everyone becomes a

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

Printed on recycled paper.

Charles Atlas—one person can stop anything. They have the right to do that. We understand that. But procedurally that is where we are now. Hopefully, we can work our way through this and have some debate on this detainee matter and move on to the fence bill, hopefully work something out on that, and put us on a glidepath to completing the work of the body, as the majority wants to do, in the next couple of days.

Mr. LEAHY. Mr. President, will the Senator yield on that point for a couple of moments?

Mr. REID. Of course.

Mr. LEAHY. Mr. President, I commend the two leaders for trying to work out these issues. Over the years, I have seen leaders try to do it at the end of a session. I don't consider myself a Charles Atlas, but I do consider myself a U.S. Senator. I have taken an oath to uphold the Constitution of the United States.

Some of us have sat in this Chamber and in committee for 5 years while what was being done in detaining the prisoners violated our Constitution and our traditions in the United States. Seven of the nine Members of the Supreme Court are Republicans, incidentally, and have said the same thing in the Hamdan decision.

We tried for 5 years to get the administration to listen to us, to tell us there are ways we could have worked this out so the United States would follow its own laws, would follow its own Constitution, would follow the ideals on which this country was founded, and give that kind of example, a shining light to the rest of the world. And now suddenly the administration, after meeting behind closed doors, predominantly just with the Republicans, says: Here, in 2 hours' time, we have a solution; accept it. I have some problems with that. I will discuss this with the leaders.

As I said, I don't stand here as Charles Atlas, but I stand here as a U.S. Senator with my rights and to protect the rights of Americans.

Mr. REID. Mr. President, reclaiming the floor for just a moment, I say to my friend from Vermont, I consider him a Charles Atlas today and any time I have ever served with him in the Senate. He is one of the most senior Members in the Senate. He is the person the Democrats have designated to be the arbiter of issues that go on in the Judiciary Committee, the busiest committee in the Senate.

I also say to my friend that he is not only a U.S. Senator but a very good one, and I look forward to working with him to work through this issue, and with other members of the committee, as I mentioned, not in name, but there are others I need to work with on the Judiciary Committee.

The PRESIDENT pro tempore. The majority leader.

Mr. FRIST. Mr. President, we will continue our discussions. The goal will be to make sure Senators do have the opportunity to debate and amend this bill. We are just trying to put together an agreement to do that. If not, we will have the cloture vote and still have that debate and that opportunity as we go forward.

NATIONAL COMPETITIVENESS INVESTMENT ACT OF 2006

Mr. FRIST. Mr. President, I wish to comment briefly on another issue, the National Competitiveness Investment Act of 2006, a bill that was introduced yesterday with bipartisan sponsorship—myself and Senator REID—a bill that focuses on our global competitiveness by focusing on education, by focusing on the resources we should be investing right here at home to make sure we are globally competitive with nations such as China and India. If we don't act, our Nation is going to lose our competitive edge.

The United States today has the strongest scientific and technological enterprise in the world, including the best universities and the best corporations investing in research. But there is growing evidence and recognition that our educational system is failing to equip our young people and older people today to compete in this increasingly global economy. We are failing in the very areas that have in the past underpinned our strength, in areas such as mathematics, science, and engineering.

We are going to have to invest in the future in those specific areas if we are going to preserve our competitive edge, what has made this country great, as we have competed with other nations around the world. We are in a 21st century global economy which depends on mathematics, science, and technology. Those are the foundations. They are the engine to create that economic security for the next generation.

Two years ago, the Senate Energy Committee asked the National Academies to identify policies that would enable the United States to successfully compete and prosper. The National Competitiveness Investment Act of 2006, a bipartisan bill we introduced yesterday, incorporates the recommendations made by the National Academies and a number of other very similar studies that have been produced over the last 2 to 3 years.

The bill reflects the bipartisan leadership of many Senators, including those of the three major Senate committees responsible—Energy, Commerce, and the HELP Committee.

In these few moments, I wish to comment on what this bill does because it is important for people to understand how we invest and where we invest to improve that global competitiveness in this 21st century economy.

The bill doubles our investment for basic Federal research over the next 5 years at the National Science Foundation and increases investment for basic research at NASA and other science-related agencies.

It creates a new teachers institute to improve teaching techniques—how we teach math and science—focusing on education, on teachers who are responsible for putting forth that knowledge.

It creates a DARPA-modeled advanced research projects agency at the Department of Energy dedicated to the goal of increasing innovation and competitiveness breakthroughs in technology.

It expands scholarship programs that are aimed to recruit and train math and science teachers—teachers who really need to focus on the K–12 area.

It encourages more students, more high school students, to take advanced placement courses and enter the international baccalaureate programs.

It will take an increased investment. Over the next 5 years, our economy will exceed $76 trillion—$76 trillion is how big our economy will grow. A 1-percent investment for the future is really a small price to pay for that continued security and leadership in the world.

I did not have the opportunity to speak to this bill yesterday when it was introduced. I encourage our colleagues to join the bipartisan leadership—again, myself and Senator REID who are sponsors of this legislation.

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

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

The legislative clerk proceeded to call the roll.

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

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

The Senator from Vermont is recognized.

RETIRING FROM THE SENATE

Mr. JEFFORDS. Mr. President, even a diehard Red Sox fan has to give the devil his due. Probably the most moving moment in the history of baseball was when longtime New York Yankees first baseman Lou Gehrig walked on the field to accept the tribute of his fans and teammates. On Independence Day in 1939, he told the crowd at Yankee Stadium that he considered himself the luckiest man on the face of the Earth.

I consider myself pretty lucky, too. I was elected to the House of Representatives in 1974. That was not the best year to be a Republican candidate. Out of an enormous freshman class of 92 new Members, which included CHRIS DODD and TOM HARKIN, only 17 of us were Republicans. And as CHUCK GRASSLEY and I walked down the aisle of the House, he with crutches and I with a neck brace, one Democrat muttered: There's two we almost got.

Time has gotten just about all of us. With my retirement and that of HENRY HYDE in the House, CHUCK GRASSLEY next year will become the last remaining Member of the Republican class of

1974, an iron horse in his own right. The silver lining for me in the electoral losses suffered by the Republicans was a chance to land senior positions on the Agriculture and Education Subcommittees that would quickly throw me into the thick of things. Throughout my career in the House, I focused on those two issues.

In 1988, with the retirement of Bob Stafford, I ran for and won a seat in the Senate. Senator Stafford was a tough act to follow. He had held just about every office in the State of Vermont and had an enormous impact on the Federal policy for education, the environment, and elsewhere. I was lucky when I got to the Senate that there were openings on both the Education and Environment Committees.

Early on, I learned what the Senate can be at its best. In 1989, Congress was in the midst of reauthorizing the Clean Air Act. Even though I was a freshman, the door was open for anyone who had the time and interest. As John Chafee, George Mitchell, and the rest of us forged a strong renewal of the Clean Air Act, I realized these were the moments I enjoyed most. I realized these were the moments I enjoyed most when smart and committed people worked together to solve tough problems and improve the lot for Americans. Every year since has provided similar moments, from rebuilding our roads to rewriting our food and drug laws.

Probably the biggest and the most rewarding challenge for me has been in the area of education. From my first year in the House when we enacted the Education of the Handicapped Act, to work that continues today on the Higher Education Act, I have tried to do my best to ensure that every child is given the opportunity to reach his or her potential.

There is plenty of work left to be done to reach this goal, and nowhere is that more true than in the District of Columbia. A decade ago, Congress stepped in to try and help the District resolve the problems plaguing its overall budget and its schools in particular. As chair of the DC Appropriations Subcommittee, I helped lead that effort. The city is to be commended for its record of fiscal responsibility in the years since, and I hope the superintendent, the new mayor, the council, and the school board will be able to make similar progress in improving the city's school system.

While Vermont has always been home, I have lived in the District of Columbia since coming to Washington. Luckily, I have never lost the ability to be moved by the sight of the Capitol dome. Its majesty struck me when I first came to Washington and it still does today. Under that dome and in the buildings around it work thousands of good people. We are all privileged to work with a whole host of people who get too little recognition, from the person recording my words, to the people who put them in the CONGRESSIONAL RECORD while we sleep—not always easy tasks, in my case.

Ours, too, is not always an easy task. I know it is hard for the public to understand the reality of life in the Congress, but the continual travel, the campaigns, and the unpredictable hours of our jobs can take a toll on our families. I have been blessed with two wonderful children, Laura and Leonard, who are here with me today, and a feisty, funny, and an incredibly strong wife, Liz. They have had to put up with an awful lot over the years so that I could serve Vermont.

Three decades is a blink of an eye in history, but what a tremendous period of change in our country we have been through. When I came to Washington, we were only three decades removed from the Second World War. My childhood heroes were heroes of that war, and it seemed as though every family had a father or son or uncle who served and sacrificed in that war. But when I came to Washington, an entirely different war was being waged in Southeast Asia. Vietnam has colored much of our thinking since. Whether Vietnam had too much or too little influence upon the ensuing three decades is a much larger debate, but we would be better served in world affairs today by being less haughty and more humble.

I regret that my departure from Congress, like my arrival, finds our country at war. Young and even not so young Americans are sacrificing life and limb while the rest of us are making little or no sacrifice. It seems to me the very least we should do is pay today for the fiscal costs of our policies. Instead, we are floating IOUs written on our children's future. This year we have no budget, and we are unwilling even to debate most of our basic spending bills before the November election. Thirty years from now, we could well face the biggest crisis in government since the Civil War, if Congress and the White House do not adopt a more honest approach to government.

The basic compact between generations is being broken. F.D.R. was right to borrow heavily to finance World War II, but are we justified in doing so today?

Earlier this month, I was privileged to attend the dedication of a monument in Virginia commemorating the sacrifice of more than 1,200 men of the Vermont Brigade during the battle of the wilderness. The tangled thickets of the 19th century have given way to mature forests. The individuals are largely forgotten, but our collective memory must endure. Today, we use blocks of granite to remind us of the sacrifices of the Civil War. In its immediate aftermath you would think no such reminder would have been needed. But 140 years ago, so the story goes, a northern Congressman literally waved a bloody shirt before his colleagues to inflame them against the South for alleged misdeeds. True patriotism is the incredible bravery of those men whose too-brief lives ended on that wilderness battlefield. Waving the bloody shirt then or today is anything but patriotic.

The beautiful Capitol dome above us, completed even as the Civil War concluded, should serve to inspire us. I am an optimist and have been every day of my life. With Lincoln, I hope that the mystic cords of memory will stretch from every battlefield and patriot grave to the hearts of the living, and that we will soon again be touched by the better angels of our nature.

Mr. President, I wish you and all of my colleagues good luck and Godspeed.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The minority leader is recognized.

Mr. REID. Mr. President, Senator JEFFORDS has been a friend and colleague for many years. We had the opportunity to serve together in the House of Representatives. We served together in the Senate. To say that he has made history during his time in Congress is an understatement. But more important, he has made a difference. I have always been impressed by his knowledge of the issues, his dedication to the public well-being, and the environment. I have had the good fortune of serving with him on the Environment and Public Works Committee. He is a stalwart. He is a true believer that the environment is in distress and things need to be done to change our environment.

He has worked to preserve the middle class and to provide for the safety of the American people in so many different ways. Senator JEFFORDS is a man of conscience. No one can question that. He grew up in Vermont where the Jeffords family first settled in the 18th century. His father was a longtime member of the Supreme Court. After JIM JEFFORDS graduated from Yale, he served in the Navy on active duty for 4 years. He served then in the Naval Reserve, retiring as a captain. Senator JEFFORDS studied law at Harvard—Yale and Harvard—which shows his intellect. He returned after having finished law school to Vermont to practice law. Shortly thereafter, he was elected to the Vermont State Senate and then attorney general. He was elected to the House of Representatives in 1975 and served there until he came to the Senate in 1989.

In walking in here I grabbed a book that has a lot of definitions. I flipped to courage. Whatever definition you have of courage, you can pick one here going back to two centuries ago:

> I love the man who can smile on trouble, who can gather strength from distress and grow brave by reflection. It is the business of little minds to shrink, but he whose heart is firm and whose conscience has approved his conduct will pursue his principles unto death.

That really is JIM JEFFORDS, and that, Mr. President, is a quote from Thomas Payne. I have seen up close JIM JEFFORDS' courage. Everyone knows, as it has been written about in books, the conversations that Senator JEFFORDS and I had prior to Senator JEFFORDS deciding that he wanted to

change course and become an Independent. That was not an easy decision. It involved years of friendship, and it involved years of his being a member of two different legislative bodies on Capitol Hill.

Most of our discussions took place on the Senate floor as people were walking around, but we had conversations in private. I know firsthand, I repeat, of the courage of this man. I in my now long public career have been involved in a number of things that I will always remember, but I will never, ever remember anything more vividly than the Senator from Vermont, as a matter of principle and courage, changing not only his course but the course of this country.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I have listened to my friend, JIM JEFFORDS, the Senator from Vermont speak here this morning. I couldn't help but think as I heard Senator JEFFORDS speak with wit and clarity, and you might say even some emotion, that JIM JEFFORDS, given the opportunity to make a speech—and many of us will do so on this Senate floor as we leave—did it being true to himself, with his own good nature, his own sense of history, and his own justifiable pride in what he has accomplished.

I have known JIM JEFFORDS from his days as a State senator in Rutland. I have known his wonderful wife, Liz Daley Jeffords. They are both dear friends of mine and my wife Marcel. Mrs. Jeffords was referred to as a great lady the other night by the anchor of our State's largest TV station. Some of us who have known JIM for years would say she gets that greatness for putting up with him for all these years. But we Vermonters found no difficulties in putting up with JIM JEFFORDS. He has been elected overwhelmingly to the offices he has held and he has done it with support from Republicans, Democrats, and Independents alike. He has gotten these votes the old-fashioned way—he earned them.

We came here together 32 years ago. I like to talk about the Leahys coming to Vermont in the 1850s. JIM reminds me his family came to Vermont a century before. We both live in small towns in Vermont; we have had that sense of Vermont. He has never lost it. He has been a good friend.

His career highlights are legendary. Let me tell you why he is supported so. First and foremost, Senator JEFFORDS is known as an environmental champion. In Vermont, they say, If you scratch a Vermonter you scratch an environmentalist, no matter the party.

He has done it in the great tradition of Senator Bob Stafford. Senator Bob Stafford is also from the same county as JIM JEFFORDS—actually JIM grew up near him. He mentioned Bob today.

He carved out a legend on education and the environment when he was here. But then JIM JEFFORDS had done that as attorney general and as a State senator in our State. For the past three decades he has left his fingerprints on nearly every environmental law enacted, from the Clean Air Act and the Clean Water Act to the Superfund program to acid rain reduction.

In fact, when others in his position would be thinking about where are the papers going and how will we retire, just a matter of months ago he offered the boldest solution to combat global climate change this body has ever considered.

He has championed legislation to strengthen our Nation's education system and increase the opportunities for individuals with disabilities.

In 1975, as a brandnew Member of the House of Representatives, as he said, coming in with a neck brace—the walking wounded from an election where both of us ran in Vermont—he coauthored what would later be known as the Individuals with Disabilities Education Act, IDEA. It was strongly supported by his colleagues here in the Senate and before that in the House. It has provided equal access to education for millions of students with disabilities, students who otherwise would have been shunted aside and this country would not have had the value of their achievements.

As chairman of the Health, Education, Labor and Pension Committee, he worked tirelessly on education, job training, and disability legislation. Most recently, his leadership in the Senate Environment and Public Works Committee was essential to the passage of the highway bill. Of course, Vermont and the rest of the country will benefit from that.

I might say there has been no greater leader for Vermont's dairy industry than Senator JEFFORDS. In his work on the Northeast Dairy Compact and the milk programs, he has fought tough battles for Vermont dairies—and won. He actually knows as much about our dairy industry as most dairy farmers.

It is what he has done for future generations. All of us can talk about what we do here. It is what we leave for our children and our grandchildren that counts. Future generations of Vermonters will honor JIM's legacy when they see the work that he began as attorney general and continued throughout the Senate—helping to restore Lake Champlain to its brilliance, its magnificence; or witness the bald eagles abounding in the wilderness areas, thanks to JIM.

I applaud him for this statement as he takes leave of the Senate—although it seems this year we will never know when we leave. None of us are getting our final airplane reservations yet. But he has done it with his usual grace and good humor. I applaud him for that and I hope all of us when we come to leave, whenever that may be, will have the opportunity to show that same grace. He served Vermont well and, just as importantly, he served the Senate well.

After a long career I might violate the rules somewhat, addressing my friend and colleague directly: For a long career, JEFF, you can leave with your head held high. You have served Vermont and your Nation proudly.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. GRASSLEY. Mr. President, I rise for the purpose of telling my colleagues that I am going to miss my colleague.

The PRESIDING OFFICER. I will interrupt the good Senator. Because the minority controls the next 7 minutes, it is necessary to gain consent from the minority.

Mr. DURBIN. I ask consent the Senator from Iowa be recognized.

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

Mr. GRASSLEY. Mr. President, I rise to tell the Senator from Vermont that I am going to miss him in the Senate and still consider him a friend. I hope to have a long relationship with him, even in his retirement. I am that Senator that JIM JEFFORDS, the Senator from Vermont, referred to as the one remaining Republican of the class of 1974. There were 17 of us. I think there were about 70 Democrats. It was a bad year for Republicans. You couldn't even put the word Republican on your literature. It was the year Nixon resigned.

There were only 140 of us in the House of Representatives at that time. I don't know whether Senator JEFFORDS felt this way, but I felt this way, that it was probably the end of the Republican Party. Well, I was wrong. He and I have been reelected to serve together, to serve our respective constituents.

I remember Senator JEFFORDS as an outstanding member of the Agriculture Committee in the House of Representatives the 6 years I served on that committee. Then there was a period of time where I was a Member of the Senate and he still stayed in the House of Representatives. Our friendship still held. But working together—you know how it is in Congress, the House and Senate; there is a Grand Canyon between us sometimes, and we don't communicate as much as we ought to. Consequently, it was like getting reacquainted with Senator JEFFORDS again when he came to the Senate. I was glad then and I am very glad now that he continued his service.

I think he is an outstanding example of probably what is an unacknowledged principle of political science—at least it is a feeling I have about the people of our country—that if you serve honorably where you are at a certain time and do the best job possible, you are going to have opportunities to enhance your position within public service. So as a State senator, then as an attorney general, then as a Congressman, and then as a Senator for the people of Vermont, I believe he got to be a Senator because people in Vermont recognized him, as a State senator, as a Congressman, and as an attorney general,

as a person who was not there because of political ambition, wanting to rise to the top, but a person, in each stage of his public service life, who did what that job required and did it well. People recognized that and in the end of the process, he came to the Senate.

In every relationship I have had with Senator JEFFORDS, whether he was Republican or an Independent, it has always been one that has been friendly and honorable and honest, and, most importantly, to describe him as a humanitarian as he approached public policy.

It seemed to me that as a Member of the Senate, whether as an Independent or as a Republican, Senator JEFFORDS brought forth what it takes to get things done in the Senate, and that is moderation. It doesn't matter whether it is a bill that is representing the philosophy of the extreme left or a bill that represents the philosophy of the extreme right, nothing such as that is going to get through the Senate. Eventually you have to have people come together seeking a middle ground, a bipartisan approach to get things done. It seems to me, in every respect, that is what Senator JEFFORDS did—he sought moderation because that is how you get solutions and that is the only way the Senate produces.

I compliment him on his dedicated public service. I congratulate him on his long service to the people of the United States and the people of Vermont. I will miss working with him. I will miss him, but I hope we have opportunities to have great relationships for the rest of our lives.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, could I inquire of the Chair, do we have a limited period of time? I see a number of our colleagues here. I am just inquiring of the Chair.

The PRESIDING OFFICER. There is 7 minutes 20 seconds remaining in this block of time for the minority.

Mr. KENNEDY. Well, I see the floor leader. I will take 2 or 3 minutes, then, because I see half a dozen of our friends here.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I believe there are at least four or five Members here who would like to speak about Senator JEFFORDS' retirement. I ask unanimous consent those Members currently on the floor, Senators ROCKEFELLER, BOXER, HARKIN, DODD and KENNEDY, be recognized for such time as they consume, and I would like to add myself to that list, and then extend whatever time we use on the minority side, if they would like to use it as well.

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

Mr. KENNEDY. Mr. President, it is entirely appropriate that we take these few moments on the floor of the Senate to listen carefully and take the measure of an extraordinary Senator, Senator JIM JEFFORDS. In these next several weeks, this Nation is going to be focused in many, many States on trying to select who is going to represent them in the Senate. And if the people of those States just took a few moments to listen to the eloquence of this Senator, they would know what the standard should be in selecting someone to represent them in this body. It is JIM JEFFORDS. He sets the standard. So we thank JIM JEFFORDS for his service—his service to the State of Vermont and his service to all of our States and to the country. We thank him for that service.

We also thank the people of Vermont for their wisdom in selecting this extraordinary talent and giving him the kind of support that they gave over a long and distinguished career, especially in those times when he was willing to take positions and stand up on issues as a matter of conscience. They understood their native son. They respected him, and they supported him. So thank you to the voters of Vermont.

Thank you to his family, Elizabeth that Senator JEFFORDS mentioned, Laura, and Leonard—a family that gave him great support. I think those of us who have been fortunate enough to know that family and meet that family understand what a strong influence it has been in terms of his service.

And thank you, Senator JEFFORDS, for that simple eloquence that we heard from you today on the floor of the Senate, going back into the history of our country, providing inspiration as we listen to you talk about the history of the Nation, mentioning with great pride the role of Vermonters in the time of the Civil War—and his understanding of history, talking about the Greatest Generation, which were inspiring figures to him and many of us continuing to the present.

He typically understated his own achievements and accomplishments. I think many of us on this floor are well familiar with them. I certainly am as someone who has had the good opportunity to serve with him on the Education Committee. I know the difference that he has made in the education of children in this country, particularly those with special needs, accomplishments which are memorable and historical. He mentioned just causally his interest in the education of the children here in the District of Columbia. A number of us who are here on the floor now remember JIM JEFFORDS speaking in our caucus not many years ago how that we, as members of the Senate who happen to either live here in the District or work here, even though we are working in this body, have a responsibility for the education of the children here. He was the inspiration of a program, a literacy program called ''Everybody Wins!'' And JIM JEFFORDS led a number of us to Brent School here near the Capitol to read with the second and third graders each week to ensure that those children were going to have an opportunity to learn to read. It was just a simple illustration, once again, that JIM JEFFORDS does not just talk the talk, he walks the walk. And on so many different times, he has been there doing just that.

So, JIM, we admire your service. You have demonstrated here—and we do not understand perhaps well enough—that you can speak with a quiet and soft voice, but you speak with a great passion and a compelling argument, and with a simplicity and effectiveness that has enriched and enhanced the quality of life and opportunity, particularly for children but also for all Americans. It is a distinguished career, and it is one I know that you should be—and are—proud of. All of us have had our own lives enriched and inspired because of our friendship with you and the type of Senator you have been.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I add my voice to my colleagues who have spoken and those who will speak in thanking our wonderful friend from Vermont for his remarkable service to our country.

I begin as well by thanking his family, Elizabeth and the children, as well as the people of Vermont, as Senator KENNEDY has said so eloquently.

Let me also include in enumeration his wonderful staff people, over the years, who have been very much a part of JIM's family. In fact, I note from the interns to senior staff people, everyone refers to him not as ''Senator'' or ''Mr. Chairman''—but just ''JIM.'' That is certainly a symbol of the kind of relationship he has had with his constituents and with his family over the years.

I have had the privilege of serving my entire time in the Senate—in the Congress—with this remarkable person from Vermont. We arrived in the House of Representatives on the very same day, 32 years ago. As JIM pointed out, he had that neck brace on, and I had a head of black hair. We have aged over those 3 decades. But my respect for JIM JEFFORDS has only grown.

He has taught us America will listen to you even if your voice is soft. His achievements in the Senate and the House are the envy of all who wish to improve a quality of life in this great country of ours. JIM's body of work is truly admirable.

But it looks even more admirable when you remind yourself that it was all the doing of a man unpretentious enough to be fond of mismatched socks, frugal enough to spend his earliest days in Washington sleeping in a parked van, and humble enough to be universally known, as I've said, as just ''JIM.'' The people of Vermont returned him to office over and over again on the strength of his plainspoken integrity and his indefatigable Yankeeness. That's what JIM brought to this body of discussion; and that was more than enough.

JIM came to Washington knowing what he wanted to accomplish, and his success is clear to us today. No one has worked with more dedication for a clean environment. JIM was an environmentalist practically before we had a word for it. In fact, he got his start in the Vermont State Senate in the 1960s, fighting the efforts of the paper mills to pour sludge right into Lake Champlain. He was a long-time nuclear watchdog and among six Congressmen to found the Congressional Solar Coalition years ago. It is telling that when he had his pick of chairmanships, Senator JIM JEFFORDS chose the Environment and Public Works Committee. Perhaps most importantly, he helped clean up the air we breathe. He mentioned it briefly. But the work of John Chafee, George Mitchell, and JIM JEFFORDS truly created the great Clean Air Act of 1990, a huge accomplishment. I want to thank JIM immensely for the tremendous effort he made years ago in improving the quality of air in this country. If he had done nothing else in 32 years, that alone would have been a significant achievement. Of course, his body of work is far more than that.

Like JIM's dedication to the environment, his work for children who come from special education needs is decades long. In 1976, he was essential to the passage of legislation guaranteeing local school districts that the Federal Goverment would pay 40 percent of the costs of educating the disabled. And if that guarantee remains unfunded today, never let it be said that it was for lack of JIM's passionate work.

I would be remiss if I didn't mention of TOM HARKIN, another fellow classmate of 1974, working with JIM and many others who cared about this issue over the years. No one contributed more to the Individuals with Disabilities Education Act than JIM JEFFORDS. Few Senators are as tied to special education, and that is a title to be very proud of. It has been my honor to work along with him in the House and the Senate on the issues that meant the most to him—on afterschool programs, on higher education, and, most especially, to secure funding for IDEA.

It Vermont, commitment to education is a longstanding tradition. Right in the middle of the Civil War, we building the dome on the Capitol to show our determination to keep this Union together; but we showed it in another way, too. A Senator from Vermont by the name of Justin Smith Morrill created the land grant colleges—the University of Connecticut is one; there are many all across the country—and his work was one more demonstration of the remarkable people who come from that State of Vermont to help build this country, defend this country, and secure this country for our children. Senator Stafford and Morrill passed on that proud tradition, and Senator JEFFORDS stands in its forefront today.

JIM has taught at every opportunity the difference between education as a privilege and education as a right. It is a right, and its worth is measured in our willingness to educate even—especially—where it is inconvenient.

There weren't many Senators shyer than JIM JEFFORDS, but there wasn't a single one fuller of quiet purpose and courage. Politics was always a means to JIM's purpose—never the other way around. And the way JIM practiced politics, the way he spent his power, was never calculated to bring him money, or fame, or even particularly glamour. It was only the quiet satisfaction of a job very well done.

That is what I think of when I recall the more than three decades of our service together. But, to tell the truth, through all those 30 years I had a privileged seat right here with him. Those without that vantage point are probably going to remember, first of all, something very different. We all know how JIM crossed this aisle for good 5 years ago, and how he has served as an an Independent ever since. JIM entered the national spotlight full of honest regret, and fully aware of how difficult his choice was for colleagues, his staff, and his supporters.

I saw JIM upclose as he struggled with a decision as few men or women ever have to. But whatever one thinks of it, there is a fact beyond dispute, which all of us appreciate in this body: JIM JEFFORDS has never followed anyone but his conscience.

If we insist, 5 years later, on reasoning out the need in votes or dollars or any other measure of practicality, we only reveal our failure to understand what that man did on the day he made his choice. Sometimes what goes on in this Chamber cannot be reasoned away. JIM taught us that, too.

So, I would like to close with a happy thought. Two years before the American Revolution, Edmund Burke gave a speech on the relationship between a representative and those whom he tries to represent.

"It is his duty," said Burke, "to sacrifice his repose, his pleasures, his satisfactions, to theirs; and above all, ever, and in all cases, to prefer their interests to his own. But his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. These he does not derive from your pleasure; no, nor from the law and the constitution. They are a trust from Providence."

JIM, you have kept your trust over these many years, in both the Senate and public life, in your State and in the Congress. We send you back to Vermont with your work in the Senate accomplished, with your conscience still clean, and with our best wishes to you and your lovely family. God bless you.

I yield the floor.

Mr. DURBIN. Mr. President, it took an act of courage for JIM JEFFORDS to declare himself an Independent. It took an act of courage for a lifelong Red Sox fan to quote a New York Yankee in his farewell address to the Senate.

JIM JEFFORDS is an extraordinary public servant. Fewer than 2,000 men and women in the history of the United States of America have served in the Senate. We all understand the great privilege of being in this body representing our great States. But people are not noted in the history of the Senate for longevity alone. People are noted for singular acts of courage. And when it comes to JIM JEFFORDS, his public career has been a singular act of courage.

I hail from the State of Abraham Lincoln, where he lived most of his adult life, and where we claimed him as part of our national heritage. When I think of JIM JEFFORDS and the political party he identifies with more than any other name, I will say he identifies with the party of that great leader Abraham Lincoln who stood up for principles often against public and popular will.

This last week, Time Magazine noted they were going to designate Senator JIM JEFFORDS of Vermont as "Person of the Week." They said in his one principled decision to become an Independent, "He demonstrated to the White House and the United States Senate that revolutionaries often come in surprising packages."

We all know what happened after JIM made his decision to become an Independent. He told me about walking home to his apartment at night down Pennsylvania Avenue. And people who were outside restaurants and cafes would stop and stand and start to applaud, and JIM would be startled by it at first. But he received more recognition then he, I am sure, expected. A lot of it came in positive terms; some in negative terms. People wanted to name their babies after him.

In Burlington, VT—I think this is probably the greatest tribute a politician could ever expect—they named a beer after him—"Jeezum Jim" they called it. I hope it was a popular brew because he has been a popular Senator.

When they asked him why he changed his affiliation to become an Independent, he replied very simply: "It is all about education." I remember it well, because I know that was the deciding factor.

Your commitment to particularly those students who struggled with disabilities, students who have these difficulties, your commitment to those kids led you to this decision. Many of us make these decisions on votes on the floor. But as has been said, for JIM JEFFORDS education went way beyond a vote or a speech. Several years ago, he established this tutoring program in Washington, DC, encouraging us, as Members of Congress, the House and the Senate, to walk just a few blocks from here, as he did so many times, to tutor the inner-city youth of Washington, DC.

He is a true Vermonter and a true Independent. When we look at his record, he was the only House Republican who voted against the Reagan tax

cut because he was afraid it would lead to dangerous deficits. How right he was. In 1993, he was the only Republican Senator to cosponsor President Clinton's health care plan. He worked for years for regulation of tobacco by the Food and Drug Administration, a goal which I share with the Senator. And he sponsored the Employment Nondiscrimination Act, banning employment discrimination on the basis of sexual orientation.

Some politicians in their career find ways to divide us. JIM JEFFORDS always looked for ways to bring us together. A strong supporter of Federal funding for AIDS research and the arts, justifiably proud of the role he played in passing the Work Incentives Improvement Act, and, of course, his record on the environment is without parallel.

I know historians will also record all these accomplishments and courageous battles when they write about JIM JEFFORDS. On July 4, 2001, several weeks after he made his decision to become an Independent, he sat down at his home in Vermont and wrote these words:

> I hope my decision will move the two parties to the center, where the American people are. The American people want an active, responsible, Federal Government.

He went on to say:

> There seems to be a hunger in country for heroes, especially for the political variety.

Not only with this one historic act of conscience but throughout his career in the House and the Senate, in public life JIM JEFFORDS has been a living example of these hopes and beliefs. I am proud to have been able to serve with him. I am proud to count him as one of my colleagues, even prouder to count him as a friend.

I thank his family for giving him this opportunity to serve and giving this wonderful man to public life.

I thank you, JIM JEFFORDS, for all you have meant.

The PRESIDING OFFICER. The Senator from Iowa is recognized.

Mr. HARKIN. Mr. President, it is, indeed, a privilege to be here this morning to personally hear the words of our good friend, Senator JEFFORDS, and to hear other Senators get up and talk about JIM in such glowing terms.

However, I must say that all the years I have known JIM JEFFORDS, he is an old-fashioned New Englander, which means he is very modest. That means he is embarrassed to receive this kind of praise and adulation. Senator JEFFORDS will just have to endure it because we love you, we respect you, we admire you, and you are one of the most beloved Members of the Senate.

Thirty-two years ago, we came together in the House. You talked about that. Our colleague, CHRIS DODD, was in that class, and also my colleague from Iowa, Senator GRASSLEY. I didn't know Senator JEFFORDS at that time, obviously. We had just come in as freshmen Members. I found myself on the Committee on Agriculture with Senator JEFFORDS. We both sat down at the end. He was on one side and I was on the other side because we were just freshmen.

We had a farm bill coming up. After a few weeks on the Agriculture Committee, we dubbed Senator JEFFORDS ''the Senator from Dairy.'' He was tenacious in fighting for his dairy farmers of Vermont and, of course, New England. Those from Iowa and Minnesota and Wisconsin—we had dairy farmers, too, and there was, shall I say, a little bit of a conflict in how we viewed the world of milk and dairy. That was my first experience with Senator JEFFORDS because we had to work things out. And we did. That was the first time I got to see the kind of person JIM JEFFORDS is and always has been. He was tenacious in fighting for his dairy farmers but willing to understand that we all have to live together; somehow we have to seek our compromises. And we did. We reached a compromise and we moved the legislation forward. That was the first time I came to really know and respect JIM JEFFORDS.

As we moved ahead in agriculture, I found another area in which I respected and admired Senator JEFFORDS. That was the area of environment and conservation. In those days, people were thinking mostly about all the commodity programs, how much money we could get in the commodity programs. We were all protecting our interests. I was protecting my Iowa interests and Senator JEFFORDS was protecting his Vermont interests.

However, conservation transcended everything. That began back in the late 1970s, in the House Agriculture Committee. We began the move toward more conservation in our farm bills, which led to more of a ''greening'' of America. He did that work also on Environment and Public Works. When I think about the environment, cleaning up the environment—clean water, clean lakes, clean streams—I have to think of JIM JEFFORDS. He was there at the beginning.

Then in 1975, on the Committee on Education, JIM JEFFORDS coauthored what later became the Individuals with Disabilities Education Act. I was not on the Committee on Education, but because of my family and because of my intense interest in disability rights, especially as it pertained to the hard-of-hearing and the deaf, I learned about this bill with JIM JEFFORDS and with Paul Simon—at that time, Senator Simon—and sort of stuck my nose in their business, if you don't mind my saying that, because I was not on the committee. I talked about how we had to help do some of these things. My focus was narrow at that time, just in hard-of-hearing and deafness at that time. My great respect for Senator JEFFORDS, or JIM, at that time grew because he was focused on how we make sure every kid in America gets an education, make sure kids with disabilities were mainstream, make sure they got the support in our schools.

It was Senator JEFFORDS who made sure that in the bill we passed, the Federal Government committed itself to providing at least 40 percent of the additional costs to States and local communities in educating kids with disabilities. Forty percent was the goal we set in the bill Senator JEFFORDS coauthored in 1975.

That moves me up to the year 2001. In the year 2001, the budget came from the White House, President Bush's budget, which severely underfunded our commitment to increasing funding. We have never reached 40 percent. I think the highest we have been is 18 percent. We have never gotten the 40 percent. Senator JEFFORDS wanted to move that up. Yet the budget came down and had a severe cut in the funding for the Individuals with Disabilities Education Act. That is when Senator JEFFORDS said no, he wanted to make sure that money was in there. That happened, mostly, on the Republican side of the aisle. I was not privy to all of that. That is when Senator JEFFORDS made his declaration of independence. A matter of conscience—he could not turn his back on all these years of moving our society forward to educating kids with disabilities in our schools and then all of a sudden say: No, we are going to turn the clock back; we are not going to do it. He wanted to keep moving forward. The budget would not allow it; he fought hard for it. Based upon the fact that the administration would not move on that, he declared his independence and became an Independent and left his party. We can all imagine how wrenching that must be, to leave the party that nurtured us, that we grew up with, that supported us all our adult life. It is a matter of conscience. You can read about it in his book, ''My Declaration of Independence.''

After that, I invited Senator JEFFORDS to come out to speak at the steak fry I have in Iowa every year. It was after the book came out. I will never forget the scene. We had thousands of people. It was a beautiful sunny Sunday afternoon. Thousands of people came to meet this person, to hear him and to hear his message. They had all these little books they were waiving, ''My Declaration of Independence.''

He had a wonderful message. His message was: don't ever turn our back on making sure every child in America has a decent education. It was a simple, straightforward message. But you should read his book.

Senator KENNEDY mentioned another thing about Senator JEFFORDS that not too many people know about; that is, his support for a program called ''Everybody Wins.'' He brought it here to Washington in the late 1990s and then began badgering us to participate in it in his usual tenacious manner. So he got a lot of us hooked on it.

It is every Tuesday. I see Senator KENNEDY goes about every Tuesday; JIM, of course, goes all the time; I go

every Tuesday we are here, and a lot of staff members. We go to Brent Elementary School. We read to a child for 1 hour every Tuesday. It has been a wonderful experience for me and I know for everyone who participates in it. In fact, we now talk about JIM as being sort of the Johnny Appleseed of this movement because now it is starting in other States. We took the idea to Iowa, and now it is sprouting in Iowa. Other States and businesses are involved. ''Everybody Wins'' is now moving around the country. Senator KENNEDY said: Senator JEFFORDS doesn't just talk the talk, he walks the walk. When he brought it here, he was there every week reading to kids and getting us to go down and read to them, also.

I have in my office a big picture that is my favorite picture. It is a big picture taken at Tiananmen Square, a picture we all will remember of the young man holding a little briefcase, a young student holding a briefcase. There is a line of tanks. He is standing in front of the tanks, and the tanks have all stopped. To those of us who have seen the video of this, the tanks were coming down the street, the student went out in the street, he stopped, the tanks turned to go one direction and he moved over a few steps, then the tanks moved another direction to get around, and he moved over and stood there. Finally, the tanks stopped right in front of him. A hatch popped open, and a military guy got out and looked at him and stood there for a few minutes. The tanks all stopped, and then the young man turned and walked off the street.

A lot of people I talk to about that picture—did they ever know who he was? No, they never did find out his name. But I gave them the name. I call him JIM JEFFORDS. To me, that young man who did that represents the JIM JEFFORDS of the world, willing to stand on principle no matter what the odds are. No matter what is coming at them, they are willing to stand on principle.

So after 32 years, we will miss this soft-spoken and self-effacing New Englander who has a spine of steel. After 32 years, Senator JEFFORDS, you have left your mark: education, job training, disability rights, the environment and, lest we forget, the dairy farmers of New England, who will never forget JIM JEFFORDS.

JIM, we are going to miss you, your kindness, your leadership, your courage, your generosity of spirit, and your example. Know that our love, our admiration, our respect, and our best wishes go with you and with Elizabeth and your family. Know that you have left on our Nation and the world a mark for all of us to follow in how to make our Nation and our world a better place.

Senator JEFFORDS, JIM, Godspeed. Come back now and then. Come back on the floor. Retired Senators have the privilege of coming to the floor. Come back on the floor and remind us why we are here.

I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. BOXER. Mr. President, this is a very poignant morning for so many. I am so glad I have been able to arrange my schedule to be here to listen to my colleagues and friends, whom I deeply respect, and to listen to the great Senator from Vermont, JIM JEFFORDS.

If I might say how blessed I have been, I got here in 1993 and went right to the Environment and Public Works Committee. I met JIM there, and now I get to sit next to him in the Senate. I got to know his staff.

We are going to miss you. But, JIM, I must say, you made a beautiful speech today. And in listening to TOM HARKIN talk about you and explain that you have always been motivated by what is right for the people, if ever you could take an opportunity to tout your accomplishments, it is when you say goodbye. People would say that is fair. But you did not do that. You did not say: This year I passed this legislation and this bill. The rest of us have been lauding your accomplishments, but it is just like you, instead, to talk about this country you love so much. And you cite to us what our challenges are. And, of course, they continue to be the challenges you have taken up: education, the environment, fiscal responsibility, war and peace. You have left a roadmap for us, and for that we are very grateful.

I mentioned that I was sworn in in 1993. That was the so-called year of the women, where we tripled the number of women in the Senate. That sounds great, but it was from two to six. We were still a very strong minority. Our leader, BARBARA MIKULSKI, the dean of the women here, always taught us, from day one—she said: You are going to have to work with the men because they control things here, and you are going to find that among these many men there are many Sir Galahads.

JIM, you are Sir Galahad. You have been a wonderful friend to us, treating us, from the minute we walked in, as equals and colleagues. We are very grateful to you for that.

I am not going to talk a long time at all. But I want to talk about three things quickly. One is, I went to your State of Vermont this last weekend. I had been there before and always marveled at how beautiful it is, but I was taken with it again.

Now, coming from California, we have our beautiful places, believe me. So I have come to appreciate beautiful places. We overlooked Lake Champlain when we were there. Knowing that you worked so hard to make that lake clean and beautiful, thank you for that. There is so much history there, JIM, that you have also helped to preserve—you and Patrick Leahy, and so many others who came before.

But what struck me about Vermont as much as the beauty is the incredible people in your State, how involved they are. It is that old New England townhall type of quality. They get it. They are involved. They love you, JIM. They love you. When I mentioned your name, oh, my goodness, the roars came up. You could hear it blocks away.

People love you here and they love you in Vermont. And your family loves you. As you said, you are blessed, as we are blessed in your presence.

The second point is your family and how much they care about you. They are so proud of you. I know how hard it was for them when you declared your independence. It rocked their world, just as it rocked your world, and just as it rocked the country. But when you do something for the right reasons, it all works out. And you did something for the right reasons, for the people of this country.

The last thing I want to say to you is, we do not know how things will work out this November, but either way, I will be taking a larger role on the committee you love, the Environment and Public Works Committee, where you have been an extraordinary leader. You have given us a roadmap on how to fight global warming—a huge challenge we face. We cannot turn away from it because if we do, we are neglecting our responsibility. You, thank goodness, have written a bill that will show us the way.

So I am here today not only to wish you well in your retirement, and joy with your family, but to tell you that I am going to follow your leadership on global warming. I am excited about the challenge. And because of the love your colleagues feel for you, I hope you will come back here, as TOM HARKIN said, to help me with that because we are going to have to move and get going on it.

Mr. President, thank you very much. And thanks to our colleagues for giving us this time we need to pay tribute to an extraordinary Senator, one who will be missed but never forgotten.

Thank you very much. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROCKEFELLER. Mr. President, I have to start off anything I say—and I will be short—about JIM JEFFORDS with the word ''friendship,'' based upon his unbelievable qualities of kindness, of goodness, of steadfastness, being the same person every day under any circumstance.

We sit together. We have sat together for quite a long time on the floor of the Senate. And we talk a lot. I have the honor of talking with his staff, too, a superb staff, who adores him.

The business of friendship in the Senate is underpracticed. If you know JIM JEFFORDS, then you know why you should take more time to know your colleagues better. Because the fact is—although it has been more so recently—it is not your politics or your party that determines how you vote, but your conscience and your sense of a moral compass that guides you. In that practice, you have to think of JIM JEFFORDS.

He is an extraordinarily wonderful human being. He has got a ferocious sense of humor, which is always delivered very quietly. And yet he is deep, he is profound, he sort of looks like Vermont: chiseled; his nose is just the right shape. And, of course, he talks that way. But he is humble, not because he wants to be, just because he is. Nothing about his record is humble. But his nature is humble. He is gentle; and he really is. He listens, does not interrupt, does not insist on his point of view—except when it counts, and then he is unmovable.

All of the subjects he has concentrated on—children, the environment, many other things that have been mentioned—there is also the matter of post-traumatic stress disorder. On the Veterans Committee, which is the one committee where I do get to—not the only committee, but I get to sit with him on that committee—he has been a champion of something which Americans still do not really understand; and that is, the ferocious nature of being wounded in war these days—an Iraqi improvised explosive device that implants shards of metal into people that will remain there for the rest of their lives; the whole question of How does somebody rehabilitate a life? and What is the VA doing about that? JIM is all over that subject.

When he switched parties to be an Independent, woe be the person who said: Switch parties from Republican to Democrat—no—Republican to Independent. And, yes, he got an enormous amount of cheering and praise based upon his moral compass. He also got a lot of death threats. Life was very hard for him for a period of time. So he understood that was going to happen. But with JIM JEFFORDS, the moral compass always prevails. I think it is one of the reasons all of us here respect him so, admire him so, look to him as to what the Senate ought to be.

I had never heard the word ''ANWR'' until it was explained to me by Senator JEFFORDS. He was there early because he was thinking, as always, of our children and grandchildren, and, as they say, their children too. We always take it one generation too far, but it is true.

Alternative fuels. Will the history books write about JIM JEFFORDS on alternative fuels? Yes, they will. Do people generally in the Senate or elsewhere know that he has spent a career working on that? Probably not.

Our air; they know about that. The groundwater; they probably know about that. But his work on alternative fuels is one of the most important things he's done.

The Title I, Head Start, improving the lives of children, all of that that has been talked about—Senator HARKIN talked about, in 1975, the Individuals with Disabilities Education Act—he has always been looking ahead. Does that make him a Good Samaritan? Does that mean he is a do-gooder or does it mean that he does good? It is the second. He does what is comfortable to him and what he feels is just for the people he serves, not only in Vermont but across the United States of America.

The work he has done with post-traumatic stress disorder is awesome in terms of those of us on the Veterans Committee. He is justifiably proud of the research and work done by Vermont's White River Junction Veterans' Administration Hospital to help veterans who are struggling, as they truly are, not just with the postwar physical problems of being wounded, but the psychological problems of that, as well.

He has never sought the limelight, and he does not care about the limelight. He has been elected time after time probably partly because of that. Because he is not like so many other people who run for public office who want to tick off everything they have done. He is JIM JEFFORDS. And with JIM JEFFORDS comes a certain set of principles, a certain set of commitments to people. The people of Vermont have understood that over the years. So he has not had to promote himself in ways that others have to do.

He has always done his work, in the words of Shakespeare, with the ''modest stillness and humility'' that becomes any human being. When you look back at his record, you can see this man from Shrewsbury, VT, has left his mark on virtually every single piece of legislation on education, job training, disability legislation, and on and on and on.

JIM has always had extraordinarily deep passions and convictions, but, at the same time, he has been a paragon of civility and humbleness. JIM has a gentle voice, but his resolve and commitment to stand up for vulnerable children, veterans in need, and our environment is assertive and strong.

Throughout his career, JIM has made some very tough personal decisions. Take his decision to switch parties to be an independent in the summer of 2001. Regardless which party you are a member of, I think all of us would agree that given the fact that his move fundamentally changed the governing structure of the Senate, it truly was a profile in courage. Time and time again, JIM has been willing to take risks for his beliefs, and he deserves our respect and admiration for such independence.

In terms of public service, JIM JEFFORDS has lived a life that many aspire to. He has spent nearly every day of his life working to make the lives of people better. In the 1950s, he served in the U.S. Navy, and until 1990 he was in the Naval Reserve, where he retired as a captain. In the 1960s, he began his political service, first as a Vermont State Senator, then as Vermont's Attorney General, and then, in the wake of the Watergate scandal, he became one of the very few Republicans elected to Congress in 1974.

JIM has been a true steward of the environment. Long before many of us knew what ANWR was, he was fighting to preserve the environment for our grandchildren and their grandchildren. He has been at the forefront of fighting to make sure our air and ground water are safe for our citizens, and he has fought for the use of alternative fuels. His efforts have truly cut a trailblazing path for many generations to come.

Over the years, JIM and I have worked on many issues together, and I am particularly proud of what we have done for our students and for our veterans. He understands how important it is to make sure that our citizens get started on the right foot. He believes that the first years of a child's life are absolutely critical in the life and future of that person, and that is why he has worked so hard to push for greater funding for Head Start and other early education programs. And that is why he has worked on Title I—to help low-performing students, who disproportionately live in the rural areas that make up much of West Virginia and Vermont, achieve the standards they must meet.

That sort of Good Samaritan principle has always guided JIM's life and career. He has been extraordinary in advocating for those whose needs are often forgotten. In fact, perhaps no American living today and certainly no American legislator—I want to echo here what Senator HARKIN has said—has done more to advance the educational success of those with disabilities. Almost from his arrival in Congress. JIM took extraordinary steps because he believed that the needs of others simply could not wait. In 1975, as a House freshman, JIM co-authored what would later be known as the Individual with Disabilities Education Act, IDEA. IDEA serves as a Federal commitment to give students with disabilities a better education.

It was an extraordinary legislative achievement, one that had even greater implications in terms of setting a moral baseline imperative that we must meet the needs of those who live difficult lives. JIM has worked, not for the well-heeled or the heavy-hitting lobbysist—he has tirelessly worked for the people who truly need help.

I have also been proud to serve with JIM on the Senate Veterans' Affairs Committee. He has been an important voice in calling for compassionate care for our veterans, especially those veterans returning from Afghanistan and Iraq.

We both have States with a very high number of soldiers and veterans, and we both know how important it is for our soldiers and veterans to have the health care they have earned and deserve. The two of us have been allies in pushing for greater funding and resources to help our soldiers with PTSD, and I know that JIM is justifiably proud of the research and work by Vermont's White River Junction to help veterans struggling with PTSD.

JIM JEFFORDS has never sought the limelight—he has sought results. He

has always done his work in the words of Shakespeare, with the modest stillness and humility that becomes any human. But when one looks back at his record, you can see that the modest man from Shrewsbury, VT, has left his mark on virtually every piece of education, job training, and disability legislation over the past quarter century. It is difficult to determine how many people JIM's efforts have helped, but if it were possible to quantify his efforts, I know we would find that hundreds of thousands of lives have been improved because of his actions in Vermont and across the country.

The Senate this year is losing a treasure, a man who in the best tradition of the Senate has never been afraid of taking heroic, principled stand without having to make a lot of noise. Sharon and I are personally losing good friends in JIM and his wife Liz. And Americans all over the country are losing one of the most dedicated fighters for the basic rights that too many disadvantaged people are shortchanged on. I wish my friend well in his retirement.

I close with the sadness of losing in our body somebody such as Senator JEFFORDS. People go to him. People are comforted by his presence. People are emboldened by his nature. They see what it is he does not say to promote himself or his ideas, and somehow they are attracted to those ideas because they understand if it comes out of JIM JEFFORDS, it is good for the public.

So I think of his family too, I say to Senator BOXER, and I think of how proud they must be. I also think of just myself, to be honest, how sad I am going to be not being able to sit next to JIM JEFFORDS and share his humor and to look upon his greatness—not just his nose, but his greatness: the classic Vermonter, the classic New Englander. He has been so incredibly good for the Senate.

Mr. President, I yield the floor.

Mr. OBAMA. Mr. President, I rise today to acknowledge the extraordinary career of Senator JIM JEFFORDS.

For the past 32 years, JIM JEFFORDS has served the citizens of Vermont and the American people with integrity, intellectual honesty, and diligence. When faced with the choice between political convenience or protecting the interests of his constituents, JIM JEFFORDS always stood for Vermont and the concerns of hard-working Americans. When others decided to do what was popular in Washington or among the chattering classes, JIM remained true to his values. He has been a model of principled leadership, often ahead of his time.

Long before protecting our environment and precious natural resources occupied America's consciousness, JIM was leading on these issues. Working across party lines throughout his career, including as chairman of the Senate Environment and Public Works Committee, JIM JEFFORDS urged the President to strengthen antipollution measures, investigated the effects of greenhouse gas emissions, and promoted increased fuel efficiency. During his time in the U.S. Senate he introduced the Global Warming Pollution Reduction Act, the High-Performance Green Buildings Act, and the Renewable Energy and Energy Efficiency Investment Act.

JIM JEFFORDS has never lost sight of his constituents and their needs. He loyally stood by farmers in Vermont and all over the Nation when he fought President Bush's dairy tax, extended the Milk Income Loss Contracts—MILC—program, and supported the Farm Security and Rural Investment Act.

JIM JEFFORDS has also committed his career to improving education, which he has treated as one of the great callings of our time. Speaking at a Rally for Education in 2002, JIM JEFFORDS said of education funding that ''it is not an option, it is a necessity, for our children, for our schools and for the future of our great Nation.'' JIM JEFFORDS championed the Head Start Program, increased funding for elementary, secondary, and higher education, and sponsored the Better Education for Students and Teachers Act. He has also provided unwavering support to American children with disabilities that face a unique set of challenges in navigating our education system. Even as a freshman Congressman some 30 years ago, JIM JEFFORDS managed to marshal his colleagues in order to pass the Individuals with Disabilities Education Act.

As a member of the Environment and Public Works Committee, I have had the opportunity to work closely with Senator JEFFORDS and his capable staff. His office and his standards of professionalism inspire great respect.

On a personal level, I continue to admire a public servant that has so consistently followed his conscience. Time magazine recognized JIM JEFFORDS as the ''Person of the Week'' for his ''revolutionary'' party switch in 2001. I do not believe that JIM necessarily set out to start a revolution; rather he invoked what might be considered a revolutionary idea to some in Washington: government ought to serve the concerns and interests of ordinary Americans instead of catering to fringe groups or election year antics. In hindsight, most will hail JIM JEFFORDS' principled decision to switch parties, though I know the decision was a difficult one for him and strained his relationship with many in this body. But JIM JEFFORDS did what he thought was right, and I applaud his courage and his example of leadership.

So I thank Senator JEFFORDS not only for his lifetime of service and accomplishments but for having raised the bar for all of us.

I wish JIM JEFFORDS and his family many happy years ahead.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. JEFFORDS. Mr. President, I thank my colleagues for their very generous and kind comments. Their remarks remind me—all of us—the Senate is a family. I also thank my colleagues for their friendship. I am honored to be able to serve with you, especially you, I say to Senator ROCKEFELLER.

You have been very kind to me over the years. I have followed your guidance, and it has been good. I thank all of my colleagues for their friendship and am honored to serve with you. And as I go forward—I don't know—I am going to wonder why I am going forward and not just staying with you.

Mr. President, now I guess we should proceed with the process that is normal. I thank the leader.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

NATIONAL SECURITY

Mr. COCHRAN. Mr. President, I am pleased to be able to advise the Senate that the Appropriations Committee has completed our work on the bill providing funds for the Department of Homeland Security and the Department of Defense for the next fiscal year which begins on October 1.

Yesterday, the other body approved the Defense appropriations conference report, which provides new spending authority for the Department of Defense. Included in this bill is $70 billion in additional appropriations to fund operations related to the global war on terror. I expect the majority leader will call up this conference report later today for approval by the Senate.

I commend the excellent leadership and hard work of the distinguished Senators from Alaska and Hawaii, the chairman of the Defense Appropriations Subcommittee and the ranking Democrat on that subcommittee, for putting together a bill that carefully considers the requests made by the administration for this massive undertaking of defending our country, identifying the challenges that we face, which threaten our security at home and abroad. It is a daunting task, but they have brought to this challenge a lot of experience, a lot of keen insight into the needs of our country, and the way the Department has to receive funding on a predictable and regular basis to achieve its goals and carry out its important mission.

It is also my hope that the Homeland Security conference report will soon be filed in the House. It includes $34.8 billion in discretionary spending. It also reflects hard work by the conferees on that subcommittee, the distinguished Senator from New Hampshire, Mr. GREGG, and the distinguished Senator from West Virginia, Mr. BYRD, who were the chairman and ranking minority member of that subcommittee. Our conferees completed work on this bill, and we expect that it will be filed in the House, as I have suggested, I hope, very soon.

The Homeland Security appropriations bill for fiscal year 2007 appropriates $1.8 billion, designated as emergency funding for border security, to help make our borders more secure. I commend the President and the Secretary of the Department of Homeland Security for their leadership and their efforts to help strengthen the capability of protecting our homeland. Four thousand new border agents have been added. Detention facilities have been constructed. Cargo inspection has been improved. Coast Guard equipment and capabilities have been upgraded and modernized. New vehicles for agents have been acquired. New technologies have been acquired, as well, to help control illegal immigration. The capacity to detect weapons of mass destruction have been improved.

The timely consideration of both of these appropriations conference reports is very important to our Nation's security. The bills provide the funding to protect our Nation from those who would threaten us.

I commend the conferees and the staff members who worked very hard to complete our work on these bills. I appreciate President Bush's leadership in sending the requests to Congress that were comprehensive, very carefully considered. I applaud the leadership of the administration for successfully protecting our homeland.

Protecting our homeland is a huge challenge. Every year there are over 500 million people who cross our borders. There are 118 million vehicles and 16 million cargo containers that enter the United States annually. We have 95,000 miles of coastlines, 2,000 miles of common border with Mexico, and 5,000 miles of common border with Canada. These are under the jurisdiction of U.S. Customs and Border Protection, the Transportation Security Administration, and the Coast Guard.

While efforts are being made at home to protect ourselves and our borders, demanding work is being done abroad by our military forces to defeat the terrorists. They have expressed their intention to kill Americans and anyone who stands in their way.

The Defense appropriations bill fully funds military pay for our troops and includes an across-the-board pay raise that was requested by the President, as well as procurement of necessary aircraft, ships, and ground equipment to ensure that our military forces are the best in the world.

The Defense appropriations bill contains $70 billion of supplemental funding to ensure that our troops have the resources needed to succeed in the global war on terrorism.

Mr. President, I commend the good work of our conferees, and I am hopeful that both conference reports will be passed by the Senate this week. It will permit the timely transition to the new fiscal year and prevent potential funding delays that could result in a disruption of programs that are very important to our national security.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, how much time is remaining on our side for morning business?

The PRESIDING OFFICER. Fifteen and a half minutes.

Mrs. HUTCHISON. Mr. President, I will take such time as I may consume, but I will be perfectly willing to vitiate our time if we are going to a cloture vote that was scheduled for 11:30 a.m. I will go with the flow.

The PRESIDING OFFICER. The Senator from Texas is recognized.

NATIONAL INTELLIGENCE ESTIMATE

Mrs. HUTCHISON. Mr. President, there has been so much in the news since last Sunday regarding parts of a National Intelligence Estimate that was put out in a major American newspaper. The leaked report has been the subject of much discussion, supposedly saying that the war in Iraq is hurting the chances of our stopping the terrorist attacks on ourselves and other freedom-loving nations.

Yesterday, the President said he believed it was very important, rather than just having the leaked portions of the National Intelligence Estimate available to the public, to have the whole document be out in the public forum. Within a matter of hours, the President declassified the Key Judgments of the National Intelligence Estimate so that everyone in America—and indeed in the world—would be able to see the full text of the Key Judgments, which was an internal, classified document that was meant to assess the threats, the global threats from terrorists to ourselves and other western nations, or other democracies around the world.

I think it is so important that we get the full report out there. The Key Judgments are on the Web for everyone to see. Anyone with a computer or a FAX machine can get these Key Judgments. I think what it does is show, clearly, that what the President is trying to do, and what our strategy in America is, is the right one; that is, that we must continue to pursue the terrorists without equivocation, without a lessening in commitment, without any hesitancy. We must go after these terrorists, who are inhuman, who have no standards of any moral framework, and we must not be diffident in our efforts to wipe them out before they attack Americans and other freedom-loving people in the world—indeed, innocent women, children, and men who are being slaughtered daily with suicide bombs and kidnappings and beheadings.

Secondly, the major point that the President is trying to make—and most of us in Congress agree with—is that we need to have a very long term commitment to help bring freedom to the people who are living under the regimes that treat women as if they are subhuman, that treat their own people who might be of a different sect as if they are lesser people, or because I am a Sunni and you are a Shiite, or I am a Kurd and you are a Sunni—any of those combinations. They are treating each other with the same violence, and inhumane treatment as they do with Americans.

Mr. President, I think if you look at the entire report, you will see that the strategy of cut and run is not the way to wipe out the terrorists. The President's strategy is not to treat terrorists with kid gloves. The President's strategy is to go on the offensive to bring terrorists to justice. The President's strategy is to also work with the innocent people in the Middle East so they can have freedom, they can have democracy, they can have a quality of life that would make their children want to live, rather than blow themselves up in order to kill innocent people. And it is to confront the terrorists with the same determination that they bring to their assault on freedom. We must treat them with absolute clarity—that we will not give up the defense of freedom and be dictated to by people who do not even treat their own people with humanity, and who treat women as if they are not human beings.

Mr. President, I want to talk about some specific parts of the report. I want to put in the RECORD some of the significant Key Judgments that I have not seen reported in the press. Here are some of the key parts of the report under the ''Key Judgments'' section of the National Intelligence Estimate:

> United States-led counterterrorism efforts have seriously damaged the leadership of al-Qaida and disrupted its operations; however, we judge that al-Qaida will continue to pose the greatest threat to the Homeland and U.S. interests abroad by a single terrorist organization. We also assess that the global jihadist movement . . . is spreading and adapting to counterterrorism efforts.
>
> Greater pluralism and more responsive political systems in Muslim majority nations would alleviate some of the grievances jihadists exploit. Over time, such progress, together with sustained, multifaceted programs targeting the vulnerabilities of the jihadist movement and continued pressure on al-Qa'ida could erode support for the jihadists.

That is saying in the internal document that pursuing democracies, freedom, and self-governance is one of the ways that we will be able to eventually erode the al-Qaida terrorist network and other terrorist networks with which we are not even yet familiar. So it is verifying that education and the attempt to bring self-governance to the Middle Eastern countries that do not have it is the right approach.

It goes on to say:

> We assess that the global jihadist movement is decentralized, lacks a coherent global strategy, and is becoming more diffused. New jihadist networks and cells, with anti-American agendas, are . . . likely to emerge. . . .
>
> We assess that the operational threat from self-radicalized cells will grow in importance

to U.S. counterterrorism efforts, particularly abroad but also in the Homeland.

The jihadists regard Europe as an important venue for attacking Western interests. Extremist networks inside the extensive Muslim diasporas in Europe facilitate recruitment and staging for urban attacks, as illustrated in the 2004 Madrid bombings and the 2005 London bombings.

The report goes on to say:

We assess that the Iraq jihad is shaping a new generation of terrorist leaders and operatives; perceived jihadist success there—

In Iraq—

would inspire more fighters to continue the struggle elsewhere.

The Iraq conflict has become the ''cause celebre'' for jihadists, breeding a deep resentment of U.S. involvement in the Muslim world. . . . Should jihadists leaving Iraq perceive themselves, and be perceived, to have failed, we judge fewer fighters will be inspired to carry on the fight.

Let me reemphasize what they are saying in their estimate. Should the terrorists be perceived as failing, they would have fewer recruits for their continued terrorist activities.

The report goes on to say:

Concomitant vulnerabilities in the jihadist movement have emerged that, if fully exposed and exploited, could begin to slow the spread of the movement. They include dependence on the continuation of Muslim-related conflicts, the limited appeal of the jihadists' radical ideology, the emergence of respected voices of moderation, and criticism of the violent tactics employed against mostly Muslim citizens.

The jihadists' greatest vulnerability is that their ultimate political solution—an ultra-conservative interpretation of shari'a-based governance spanning the Muslim world—is unpopular with the vast majority of Muslims. Exposing the religious and political straitjacket that is implied by the jihadists' propaganda would help to divide them from the audiences they seek to persuade.

Recent condemnations of violence and extremist religious interpretations by a few notable Muslim clerics signal a trend that could facilitate the growth of a constructive alternative to jihadist ideology: peaceful political activism.

That is exactly what the strategy of the United States has been. It is not a strategy that can be pursued on a short-term basis. Education and enlightenment is a very long-term strategy and the Muslim clerics now stepping up to denounce violence against other Muslims is exactly what we are seeing emerge. As this National Intelligence Estimate has revealed these developments are the beginning of how we can make a difference.

The report goes on to say:

If democratic reform efforts in Muslim majority nations progress over the next five years, political participation probably would drive a wedge between intransigent extremists and groups willing to use the political process to achieve their local objectives.

I did not read all of the Key Judgments into the RECORD. I did read excerpts because I think the strategy of America today is a strategy that is being borne out by the report, which is the opposite of what the leaks purported to say; that our efforts in Iraq are undermining the Global War on Terrorism. When in fact, with regard to the situation in Iraq, it is actually essential for us to win in order to keep our commitment, in order to show that America will stand strong when the times are tough, and they are tough. To show that we will stand against these terrorists is the most important thing we can do, and that is our strategy.

We should not be undercut by leaks that will undermine that strategy. We must be united as a Congress, as the President is trying to do, in saying that we must do the right thing, we must keep our commitments, we cannot cut and run because times are tough. We must admit that times are tough. We must admit that this has been one of the most difficult times in our history. But we must continue to be vigilant because, according to the report, if we are perceived as weak, if we are perceived as leaving because we are defeated rather than leaving after we have kept our word and are the victors in freeing the Iraqi people to have self-governance, then the jihadists, the terrorists, the networks, about which we don't even know yet, will be emboldened to come forward and hurt Americans in our homeland, as well as wherever they see a perceived weakness in the defenses of the people.

I think the President of the United States did the right thing yesterday by immediately declassifying this document because if people will take the time to read it in its totality, people will see that it verifies the strategy in the short term of standing firm against these terrorists to show that we will not buckle, we will not cut and run, we will not be divided as a nation in our commitment to freedom and preservation of our society, and the long-term strategy of taking the time and the patience and the effort to work with the Muslim clerics and the Muslim leaders who are willing to stand up, who are willing to risk their lives for the future of their civilization and say violence against Muslims or other people who have not harmed us is wrong.

That is what we are doing, and it is the right strategy.

The President has had the current strategy against terrorism verified by the National Intelligence Estimate. Unfortunately, the National Intelligence Estimate was partially leaked last week but not in its full context. In the full context, we see the verification of the strategy, and we cannot relent. We know these terrorists want to spread terrorism and harsh, violent, inhuman regimes wherever they can get a foothold. It is the hope of peace and freedom and humanity that America and our allies carry to the battle. It is a battle, it is a war. It is every bit as much a fight for freedom as any war in which America has been involved.

This is a war we cannot lose. We have stopped communism from taking over the world. We have stopped socialism from taking over the world. We cannot allow terrorists to take over the world if we are worth anything as leaders in this country. The President of the United States is resolute on this issue. Congress must stand with him. We must not allow selective leaks of internal intelligence advisories to be misconstrued to say that vigilance against terrorism is a losing proposition.

I hope we can bring America together to speak with one voice. I hope we can bring America together to stay the very long term course that we must pursue in order to have the opportunities for our children that we have had, to grow up in the greatest country on Earth. That is our responsibility. We are the leaders of this country, and if we cannot protect freedom for our children, if we cannot protect the opportunities for them that we have had, we are not worthy. I think we are worthy, I think the President is worthy, and I think it is our responsibility to stand strong and to point out the facts where the facts have not been pointed out.

That is exactly what I intend to do. That is what the President intends to do. It is my hope that we do not have a divided Congress behind him but instead a united Congress with a united people to say to the terrorists who would break down the freedom we have built for over 200 years and the beacon of freedom that we are to the world: We will stand, we will not run, we will not be lackluster in our commitment. We do not have a 30-minute attention span in this country. We have a memory, and that memory will never let terrorists take away our freedom, nor will it allow us to walk away from our responsibility to the future generations of America.

We stand on the shoulders of giants who have protected freedom in this country. We cannot let the American people down, and we will not.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. 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. DURBIN. Mr. President, I ask unanimous consent to speak as in morning business.

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

MILITARY COMMISSIONS ACT OF 2006

Mr. DURBIN. Mr. President, I rise to speak about the Military Commissions Act of 2006 which the Senate is likely to consider, possibly today, certainly this week.

For those who have been following it, the debate in Washington the last few weeks has been very interesting. It has now been 5 years since the attacks of 9/11. The present administration has finally come forward and asked Congress

to pass a bill authorizing military trials to try suspected terrorists. At this late date, the President is demanding the Congress act immediately after the administration waited 5 years to come to Congress.

It is welcome news that the President is now working with the Congress to bring the planners of 9/11 to justice. Why do we have to do it today? Why do we have to do it this week?

For some of us who have served in the Senate for a while, this reminds us of a debate that took place 4 years ago. Four years ago this Congress was told that before we could return home to face the November elections, we absolutely without fail had to vote on the question of authorizing the use of military force and giving the President the authority to invade Iraq. We were told there was a timetable that had to be met; that there was no time to spare.

Despite the fact that we had limited information about the situation in Iraq, despite the fact that we had only vague assurances from the President that he would use diplomacy before he ever considered military action, despite the fact that we didn't have a coalition of allies or forces, we were told the decision had to be made. It had to be made in October, before an election.

I recall it very well because I was up for reelection. Many of us were told: If you vote wrong on this one, you may not be reelected. It wasn't an easy vote. The toughest vote any Member of Congress can face is a vote for going to war. On that vote there were 23 Members of Congress who voted no—1 Republican, 22 Democrats—and I was one of that number. I look back on it now as the right vote. I have heard many Senators who voted to go to war that day who have said: We made a mistake.

I salute their courage for standing up and admitting that. I have yet to find a single Senator who voted against that war who has said the same.

Now we are being told, less than 2 months before another election, we absolutely have to have a vote this week on a—secure fence, they call it. See if you can catch the flaw in the logic.

The proposal is to build a 700-mile fence on the Mexican border, which is 2,000 miles long. Do you catch the flaw in this logic? Is it possible that those determined to come into the United States might go around the fence? Over it? Under it? This 700-mile fence is a 19th or early 20th century answer to a 21st century challenge. It has now become a question of political bragging rights. Which party has the longest fence to take to the American voters? Is that the best we can do on Capitol Hill?

I might add, this underlying bill says it is about time we get serious about building a fence between Canada and the United States—thousands of miles. I try to envision this, what we are talking about. The 700-mile fence on the southern border is the equivalent of a fence from the Washington Monument in the Nation's Capitol to the Sears Tower in Chicago—a fence of 700 miles.

We can argue the merits or demerits of this issue, but it is clear what it is all about. It is an effort to have a political vote as close to the election as possible. It is an effort to tap into voter sentiment on the issue of immigration. It is an effort to avoid our real responsibility, and that is to demand smart enforcement—tough enforcement at the border, and enforcement in the workplace so that those who are drawn to America to find a job will be discouraged because now there will be a tamper-proof ID to establish who a person really is before they have a chance to work in this country.

It is also ignoring the obvious, too. We need agricultural workers immediately. The crops, the fruit and produce, are rotting right now in many States such as California because the workers are not permitted to come here. That is not good for the growers, of course. It is certainly not good for America. But it is a fact.

We also face another reality. There are 10 to 12 million people here today who are undocumented. I know many of them in my city of Chicago, which I am honored to represent. Many come forward to talk about the challenges they face with current immigration laws, which are almost impossible to understand. Instead of looking at the whole picture and having an honest answer, even if it isn't that popular, the Republican leadership has decided that before we get out of town we are going to vote on a 700-mile fence, on the Mexican border and a study of a fence along the Canadian border. It tells you where we are politically.

The second part of this bill is not much different. It is an effort, I am afraid, by many political strategists, to create a political wedge issue, a replay of what we faced 4 years ago with the vote on authorizing the President to invade Iraq. The reality is that the Congress has stood ready to create commissions to try terrorists for a long time. It was 2002, when Senator ARLEN SPECTER, Republican of Pennsylvania, now chairman of the Judiciary Committee, came to me and asked me to cosponsor bipartisan legislation to authorize military commissions, and I did. The understanding was we should have commissions that are consistent with the rule of law and our constitutional values. That was 4 years ago. Nothing has happened, from the administration or in Congress. Now we are told we can't wait another day.

Instead of working with Congress, the President unilaterally created military commissions that are inconsistent with American values and the law. It was no surprise when the Supreme Court ruled in the Hamdan decision this administration's military commissions were illegal.

After the Hamdan decision, I had hoped that we could work with the administration by charting a new course, a bipartisan course, as we did with so many other things. When it came to the creation of the PATRIOT Act, it was a bipartisan effort after 9/11. When it came to reforming our intelligence agency, it was bipartisan. But, unfortunately, this effort has not been bipartisan. Instead, the Administration initially demanded that Congress pass a law simply ratifying the approach that the Supreme Court has already rejected. The Republican leadership of Congress rushed to rubberstamp the President's proposal.

We need to create military commissions so those who are guilty of terrorism and war crimes can be held accountable. But we need to do it in a way that will meet the test of the body right across the street, the U.S. Supreme Court. They will ultimately look at our product and decide whether it meets constitutional muster. If the Court rejects these new military commissions, justice for the victims of 9/11 will be delayed yet again.

It is fortunate that under the leadership of Chairman JOHN WARNER and ranking member CARL LEVIN, the Senate Armed Services Committee took a hard look at this issue and produced bipartisan legislation that is vastly superior to the bill proposed by the administration. It is disappointing, but not surprising, that the White House and Republican leadership of the Senate did not accept the Armed Services Committee bill. I am afraid that was our last best hope for a bipartisan effort. But perhaps many of them do not want a bipartisan bill. Many of those strategists want a partisan issue.

It is more important that the protection of America be done on a bipartisan basis and a sensible basis than that we posture in these last few moments before an election to try to win some advantage in the polls.

I want to salute a number of Republican Senators, one of whom is presiding at this moment, for their leadership on this issue: Senator JOHN WARNER of Virginia, Senator JOHN MCCAIN of Arizona, and Senator LINDSEY GRAHAM of South Carolina, who is presiding. Senator WARNER is a World War II vet and former Secretary of the Navy; JOHN MCCAIN, Vietnam, a Vietnam vet, former prisoner of war; LINDSEY GRAHAM, who was a judge advocate in the Air Force Reserves and is the only Senator currently serving in the National Guard or Reserves.

They spoke out, and I am sure they took some heat for saying the administration's proposal was not good enough. The chorus behind them was a strong one. General Colin Powell stepped forward and said the administration's proposal did not meet the moral test of a country that wants to fight terrorism on a global basis. He was joined by General Vessey and General Shalikashvili and other military leaders who were equally critical.

Thanks to their efforts, the bill we will consider is better than it otherwise would have been. For example, the bill would make it a crime to use abusive interrogation techniques like

waterboarding, induced hypothermia, painful stress positions, and prolonged sleep deprivation.

What it comes down to is this: How will we treat detainees and prisoners? Is there a limit to what we can or should do? Will the Geneva Conventions work? This administration, the Bush administration, said a few years ago they were quaint and obsolete in a war against terrorism. Thank goodness that point of view is no longer acceptable.

President Bush says he has one test for this legislation: Will it allow the administration's secret prisons and coercive interrogation techniques to continue?

Of course we must detain and aggressively interrogate suspected terrorists. We live in a dangerous world. There are people in this world who wish us ill. We learned it on 9/11. We learned it in countries around the world, that these are people who cannot be trifled with. They must be taken seriously, and I would not support any legislation that prevented our military or intelligence investigators from asking the hard questions of those they have detained.

But there are other tests we have to apply as well. First, is the legislation we are about to pass consistent with American values and law? What makes us better than the terrorists is that there are some lines we won't cross, even in war. I believe we can fight terrorism effectively and stay true to our Constitution.

Just as important: Will this legislation put our own troops at risk or make it more difficult to fight the war on terror. As dozens of military leaders have argued in recent weeks, this is not the last war we will fight, and the standards we set today for the treatment of detainees and prisoners will determine how our brave soldiers will be treated in this and future wars.

Despite the great efforts of Senators WARNER, MCCAIN, and GRAHAM, I am concerned that provisions in the bill that will come before us do not meet these tests.

Let's take one example. The bill would revise a law known as the War Crimes Act to give Bush administration officials and those who preceded them, back to 1997, amnesty, amnesty for authorizing illegal interrogation techniques.

Think about this for a second. This administration wrote a memo. The author of that memo is a gentleman who is now before us as a potential nominee for the Federal court. In that memo it was recommended that we might use, as part of interrogation techniques, using dogs to threaten and intimidate prisoners. That was in the memo.

Now, fast forward to Abu Ghraib and to those awful, horrific photographs we saw of the treatment of prisoners in that jail. You will recall, as I do, one of our soldiers holding on a leash a dog that was growling at one of the prisoners. That soldier is in jail today for using that dog and using that technique. The person who wrote the memo suggesting the use of dogs as an interrogation technique is not only facing no questioning, but the administration is proposing he be given a lifetime appointment to the second highest court in the land.

Where is the justice, when soldiers who use these techniques, as wrong as they are, end up in prison, and those who write the memos suggesting these techniques not only are not held accountable, they are rewarded? And now we are presented with this bill, which says we will give amnesty to those who conceived of these interrogation techniques.

Over 4 years ago, then-White House Counsel Alberto Gonzales recommended to the President that the Geneva Convention should not apply to the war on terrorism. In a January 2002 memo to the President, Mr. Gonzales concluded the war on terrorism ''renders obsolete'' the Geneva Conventions. Think of that. The Geneva Conventions, international agreements that have guided America for more than a century, were obsolete, we were told by the White House Counsel at that time, Mr. Gonzales.

In his memo to President Bush, Mr. Gonzales specifically warned that administration officials could be prosecuted under the War Crimes Act if the President did not set aside the Geneva Conventions. He argued that a presidential determination that the Geneva Conventions do not apply would ''substantially reduce the threat of domestic criminal prosecution under the War Crimes Act'' and ''would provide a solid defense to any future prosecution.''

It was during that period of redefining conduct that some terrible memos and terrible standards were generated by this administration, standards which led to some of our soldiers being imprisoned. Now this bill would say that the authors of those terrible standards cannot be held accountable.

General Colin Powell, who was Secretary of State at the time, strongly disagreed with the recommendation to set aside the Geneva Conventions. He had decades of military experience informing his judgment. He argued that complying with the Geneva Conventions and effectively fighting the war on terrorism were not only possible, it was the course America should follow. In a memo to Mr. Gonzales, Secretary Colin Powell concluded that setting aside the Geneva Conventions:

> . . . will reverse over a century of U.S. policy and practice in supporting the Geneva conventions and undermine the protections of the law of war for our own troops.

General Powell said:

> It will undermine public support among critical allies, making military cooperation more difficult to sustain.

Now look at what happened in the 4 years that followed. From Washington DC, to Guantanamo, to Abu Ghraib, damage has been done to America's image. It is clear that Secretary Colin Powell was right. Unfortunately, the President rejected his wise counsel. In February 2002 the President issued a memo directing that the Geneva Conventions would not apply to the war on terrorism.

Just this summer, in the Hamdan case, the Supreme Court ruled that the President's position on the Geneva Conventions is illegal. The Supreme Court reminded the President and all of us that we are a nation of laws, even in a time of war.

Now, 4 years after Gonzales warned President Bush about possible prosecutions under the War Crimes Act, the administration wants an amnesty, retroactive immunity for their actions. According to a recent Washington Post story, Alberto Gonzales told Republican Members of Congress:

> . . . a shield is needed for actions taken by U.S. personnel under a 2002 Presidential order which the Supreme Court declared illegal.

One reason the White House may be pushing for amnesty is because high-ranking administration officials have authorized the use of several controversial interrogation techniques that appear to violate the law. In late 2002, relying on the President's decision to set aside the Geneva Conventions, Defense Secretary Rumsfeld approved numerous interrogation tactics for use at Guantanamo. The commander of Guantanamo Bay's detention operations gave the Guantanamo policies to senior officers in Iraq, and they became the bedrock for interrogation tactics in Iraq, according to the Department of Defense's own investigation. The horrible images that emerged from Abu Ghraib have seared into our mind the nature of some of these techniques, including threatening detainees with dogs and forcing detainees into painful stress positions for long periods of time.

When other countries have used these techniques throughout modern history, the United States, through our State Department, has condemned them as torture. In a memo that has been publicly released, the Federal Bureau of Investigation concluded that the techniques authorized by the Defense Secretary but ''are not permitted by the U.S. Constitution.''

Senior military lawyers, known as Judge Advocates General, have also raised serious concerns. To take just one example, in a recent hearing of the Senate Armed Services Committee, MG Jack Rives, the Air Force JAG, said ''some of the techniques that have been authorized and used in the past have violated Common Article 3'' of the Geneva Conventions.

These are not human rights groups, partisans, or journalists. This is our own State Department, our FBI, and military lawyers saying the administration has authorized interrogation techniques that violate the law.

And who will accept responsibility for these mistakes? The soldiers. The soldiers will go to jail. But if this bill

passes, those who sent out the memos will be off the hook. So while the administration claims they want to do right by the victims of 9/11 and our brave men and women in uniform, it appears that they are not doing what justice requires.

This amnesty will protect someone else. Sadly, it will also protect those who commit war crimes against Americans. Let's not forget the original intent of the War Crimes Act, enacted in 1996 by a Republican-controlled Congress, adopted by a voice vote in the House and a unanimous vote in the Senate. Conservative Republican Congressman WALTER JONES proposed it after he met with a retired Navy pilot who spent 6 years in the Hanoi Hilton, the same Vietnamese prison where Senator JOHN MCCAIN was detained.

Congressman JONES wanted to give the Justice Department the authority to prosecute war criminals like the Vietcong who abused American POWs.

Here is what Senator Jesse Helms, a leading conservative on the Republican side of the aisle, said of the War Crimes Act:

> This bill will help to close major gaps in our Federal criminal law by permitting American servicemen and nationals, who were victims of war crimes, to see the criminals brought to justice in the United States.

So keep in mind that if we water down the War Crimes Act to immunize American government officials, we also make it harder to prosecute war criminals who abuse Americans.

There is another very troubling provision in this legislation. It would eliminate the writ of habeas corpus for detainees. Habeas corpus is a Latin phrase that means ''you have the body.'' It is the name for the procedure that allows a prisoner to challenge his detention.

Over 700 lawyers from Chicago sent me a letter strongly opposing the elimination of habeas corpus for detainees. Here is how they explained the importance of habeas corpus:

> The right of habeas corpus was enshrined in the Constitution by our Founding Fathers as the means by which anyone who is detained by the Executive may challenge the lawfulness of his detention. It is a vital part of our system of ''checks and balances'' and an important safeguard against mistakes which can be made even by the best intentional government officials.

To a nonlawyer, habeas corpus may sound like an abstract legal principle, but eliminating it would have practical and very damaging consequences: it would prevent courts from reviewing the lawfulness of the administration's detention and interrogation practices. This is yet another form of amnesty for the administration.

Why is the administration so interested in protecting itself from judicial review?

Perhaps it is because the courts have repeatedly ruled that the administration's policies violate the law.

After the September 11 terrorist attacks, the administration unilaterally created a new detention policy which applies to many hundreds who have been held in detention, some for years. The administration claimed the right to seize anyone, including an American citizen in the United States, and to hold him until the end of the war on terrorism, whenever that may be.

They claimed than even an American citizen who is detained has no rights. That means no right to challenge his detention, no right to see the evidence against him, and no right even to know why he is being held. In fact, an administration lawyer claimed in court that detainees would have no right to challenge their detentions even if they were being tortured or summarily executed.

Using their new detention policy, the administration has detained thousands of individuals in secret detention centers around the world. While it is the most well-known, Guantanamo Bay is only one of these detention centers. Many have been captured in Afghanistan and Iraq, but people who never raised arms against us have been taken prisoner far from the battlefield, in places like Bosnia and Thailand.

Who are the detainees in Guantanamo Bay? Back in 2002, Defense Secretary Rumsfeld described them as ''the hardest of the hard core'' and ''among the most dangerous, best trained, vicious killers on the face of the Earth.'' However, the administration has since released hundreds of the detainees and it now appears that Secretary Rumsfeld's assertion was false.

According to media reports, military sources indicate that many detainees have no connection to al-Qaida or the Taliban and were sent to Guantanamo over the objections of intelligence personnel who recommended they be released.

There have been all sorts of studies.

I recall visiting Guantanamo recently where Admiral Harry Harris said to me—I asked him about the prisoners there. He said, ''They are not being punished—they are only being detained.''

They haven't been charged with anything—and that is the point. Habeas corpus allows these people being held for years to ask why they are being held. They are not automatically released, but under habeas corpus they can ask: On what basis are you keeping me as a prisoner?

I hope my colleagues will stop and think about this for a moment. If there is a dangerous person in Guantanamo who threatens an American soldier or any American citizens with an act of terrorism, if they have been complicit in any act of terrorism involving al-Qaida or Taliban, from my point of view they should be incarcerated and held until there is no danger to the United States. But if we are simply holding 455 people with no charges, indefinitely, and no right to challenge the basis for their detention, until this war on terrorism, which has no definable end to it, comes to an end, that is not consistent with the principle of justice.

In 2004, in the landmark decision of Rasul v. Bush, the Supreme Court rejected the administration's detention policy. The Court held that detainees can file habeas corpus claims in court to ask why they are being detained.

Rather than changing their policies to comply with the Court's decision, the administration has asked the Republican-controlled Congress to change the law to eliminate habeas corpus for detainees. This would overturn the Court's decision in Rasul v. Bush and immunize the administration's detention policies from judicial review.

Tom Sullivan is a prominent attorney in Chicago and a friend of mine. Tom served in the Army during the Korean war. He is a former U.S. Attorney. On a pro bono basis, he and his law partner Jeff Colman have taken on the cases of several Guantanamo detainees.

Tom says that his clients were not detained on the battlefield and that they are not even accused of engaging in hostilities against the United States. He believes they are innocent and are in Guantanamo because of mistakes that were made in the fog of war. Tom has been a lawyer for more than 50 years. He believes habeas corpus is the bedrock of the American legal system because it is the only recourse available when the government has mistakenly detained an innocent person.

ADM John Hutson was a Navy judge advocate for 28 years. Admiral Hutson testified yesterday at a Senate Judiciary Committee hearing. Here is what he said about eliminating habeas for detainees:

It is inconsistent with our own history and tradition to take this action. If we diminish or tarnish our values, those values that the Founders fought for and memorialized in the Constitution and have been carefully preserved by the blood and honor or succeeding generations, then we will have lost a major battle in the war on terror . . . We don't need to do this. America is too strong. Our system of justice is too sacred to tinker with in this way.

Admiral Hutson also testified that eliminating habeas will put our own troops at risk:

> If we fail to provide a reasonable judicial avenue to consider detention, other countries will fell justified in doing the same thing. . . . It is U.S. troops who are forward deployed in greater numbers and on more occasions than all other nations combined. It is our troops who are in harm's way and deserve judicial protections. In future wars, we will want to ensure that our troops and those of our allies are treated in a manner similar to how we treat our enemies. We are now setting the standard for that treatment.

When I visited the detention facility at Guantanamo, I saw American soldiers doing their duty in a very bleak and desolate spot. I salute them for serving their country. Every day they wake up, put on the uniform of the United States and serve us with honor and distinction. Congress should not do anything to make their job more difficult.

We should not have a double standard where our brave men and women in uniform go to jail and high-ranking political appointees are not held accountable. What kind of message does that send to our soldiers?

If we eliminate habeas corpus for detainees at Guantanamo, we will put our troops in the impossible position of serving as jailers for men who are indefinitely detained with no ability to challenge their detention.

Think about that for a moment. If there were an American employee or an American citizen or an American soldier being held in a foreign place with no charges against them, indefinitely, with no recourse under the law, we would be protesting in the strongest terms.

The American people want us to bring the planners of 9/11 to justice. That should be the focus of our legislation, not giving amnesty to administration officials and not immunizing the administration's policies from judicial review.

These provisions fail two crucial tests. They are inconsistent with American values, and they would put our troops at risk. They must be changed.

I look forward to the consideration of this bill on the Senate floor with amendments to be offered to make these changes so that we can come forward with a bipartisan bill, a bill that will make America safer but not at the expense of our basic values.

I yield the floor.

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 3962 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Mississippi.

MILITARY COMMISSIONS ACT OF 2006

Mr. LOTT. If I could speak on this very important issue addressed previously by the Senator from Illinois, the Military Commissions Act of 2006, I have been restrained in making comments on this process, although I admit I have had to bite my lip a few times because I believed the process that was underway was responsible.

Let me go back and talk a little bit about the beginnings of why this act is necessary and where we are now. We have been in some very difficult times and some uncharted waters when it comes to the war on terror since September 11. It has challenged us in many ways to deal with problems we have not had to deal with before, with an amorphous enemy which does not line up in uniform, in rank, but takes the vehicle of suicide bombers or roadside bombs—the worst of all possible attacks on innocent men and women and children—with no uniform, with no concern for what it does to these innocent people, not to mention those who are trying to bring about greater peace and democracy and opportunity and security in the world, in Afghanistan and Iraq and the Middle East and, yes, here at home.

We are working through this as we go forward. These are unique times. In this process, we have been able to capture and deter some of the worst of the worst jihadists in the world, intent on killing our soldiers and innocent men and women. We have had to deal with them. These are not people who ordinarily have been captured who would be covered by the Geneva Conventions. They are not serving in a country's military; they are murderers of the worst sort.

We have had to deal with this issue. This administration has dealt with it. They have done it responsibly. Have they made some mistakes? Why, of course; we are human beings.

All of this led to a very unfortunate Supreme Court decision, referred to—again, unfortunately—as the Hamdan decision. The Supreme Court clearly made a mistake. I must admit I was disappointed in some of the rulings of the judges, but it has forced our hand to try to make it clear in the law and with the administration how we are going to deal with this question of interrogating these terrorists, how we are going to deal with some of the evidence that is acquired through that process. The administration has been working with the lawyers, with the Congress, and with the Senate to try to work through this issue.

Some people were very distraught last week that we seemed to be having disagreement within our own ranks on the Republican side of the aisle where three or four Senators or some Senators had some concerns. I felt very differently. Finally, we were dealing with issues that really matter. Questions of law, how we deal with the terrorists, how we deal with the evidence—these are very serious discussions, the kinds of things the Senate should be doing a lot more of.

While one can disagree with who was doing what, we went through a process, took up legitimate questions of the law—how to deal with the Geneva Convention; how is it perceived—and came to an agreement. I still had my doubts. There are parts I still do not particularly like. I thought it was a very good process, with a lot of different people, a lot of lawyers, a lot of military people, a lot of leadership in the Congress, and they came up with a conclusion. I have had occasion now to take a look at what they came up with, had questions about, and it is pretty good. However, it is an area where we must act because if we do not act, we are not—the administration, the Government—going to know how to deal with interrogation or with the terrorists or how to deal with the evidence. This is a case where we do not have the luxury of not dealing with this issue. We have to do it.

In some other areas, we should act. The electronic wiretaps matter—we should deal with that, but we don't have it. We can go forward on the law as it is. In this case, we have to clarify the situation, or these people who are being held in Guantanamo Bay are going to be hanging in limbo. If you are worried about them, which I am not particularly, there needs to be a process of how we will deal with them.

That is how we got where we are. That is now pending as an amendment to the border security bill that provides for a fence along our southern border with Mexico. That is not the way it should be done. It should be considered clean. But it is typical of what has happened all year long in the Senate. The whole operation from the other side of the aisle is delay it, drag it out, don't cooperate. Why can't we at least debate? Why have we gone through a day and a half of nothingness instead of considering and debating the substance of the amendment which should be a bill and also the substance of border security? Does anyone here want to leave to go home for an election period—and that is what this is really all about—without having addressed how we do the military trials and without having done something more significant about border security? Not me, although I suspect there are some who say: Yes, let's don't let anything happen; then we can blame Senators, certain people, leaders, whatever, the administration, because nothing happened. Nice deal if you can pull it off. I don't believe the American people will buy that deal.

Also, in listening to some of the comments in the Senate, it stuns me. First of all, I am an attorney. I have not practiced for a long time. I find myself now involved in a lawsuit. Whenever they say, ''Bring on the lawyers,'' look out, because now we are going to get into a huge, big discussion of the niceties of trials and evidence and all of that, and we are guaranteed to have a lot of confusion moving forward.

I wish to again emphasize what we are dealing with. We are dealing with, I believe Colin Powell was quoted as saying, the most vicious killers in the world. These are bad people. These are the people who admit they are jihadists. And if they get out, they would do everything to kill Americans, Europeans, Asians—anyone they think does not agree with their religious positions. These are not citizens, these are not employees of the government, and these are not soldiers. These are extremist jihadists of the worst sort.

Now we have people worrying about how they are going to be incarcerated or interrogated or what evidence would be admissible. Lawyers can work that out. I know enough about the law to know that judges and juries can decipher the legitimacy of evidence and how it was obtained. The parsing we have been through is a disgrace, in my opinion.

In terms of the interrogation, yes, we have to be concerned about our treaty obligations. Our President and our Government have to be concerned

about that. Senators, too. We have already voted, and I voted, to clarify our position that we are opposed to torture. I voted for the McCain position. But now, what we are arguing over, I am concerned. What are we going to do in terms of interrogation to get information that can save one marine's life or thousands of innocent people? Are we going to ask them: Please, pretty please? When they let on like some of the techniques that have been used are such horrible things—being threatened by a dog? Come on. Have they never delivered laundry to someone's house and had a dog come after them? Have they never lived? Now being threatened by a dog is considered what—torture? Oh, by the way, we can't have them in stressful positions. What is that? You mean like standing up? Some of these complaints are absolutely ludicrous. Are we going to be careful not to insult them in some way? How are we going to get this information?

And by the way, now our men and women who have to find a way to get information from these worst of the worst vicious killers in the world could be liable, and even worse than that, when they thought they were complying with the law as they understood it and as their superiors told them, they could be liable to be tried—after the fact.

This legislation at least says that prospectively, here is going to be what is expected. If you exceed this, if you get over into the torture area, yes, you will be liable. But to go back and say, now, wait a minute, what you did could make you liable, when we have people trying to do their job for the American people—our soldiers in Iraq and Afghanistan now could be sued, and there are complaints that we are not going to make sure these people are not going to be, after the fact, ex post facto, tried? These same people are talking about amnesty for people illegally in America. Yet when they talk about amnesty for people doing their job as best they could, as they understood the law, no, we do not want to give them amnesty. That would be a horrible mistake, if we do not provide some clarity and some protection for those who may have exceeded that clarity in the past even though they understood what they were doing was wrong.

Now we have this huge discussion about habeas corpus. Bring on the lawyers. What a wonderful thing we can do to come up with words like this. Our forefathers were thinking about citizens, Americans. They were not conceiving of these terrorists who are killing these innocent men, women, and children. These are not citizens. These are not people in America. We want them turned loose arbitrarily and then on the other hand turn around and, say, criticize the administration because some people who were caught in this process were subsequently released when you find out maybe they shouldn't have been?

Ladies and gentlemen, this is the political season, I am sorry to say. I would have thought the Senate could rise above all this partisan political stuff. Everybody is trying to rewrite history or rewrite the law or prove a mistake was made or this intelligence was available which was different from that intelligence. Who is taking the time and looking at where we are now? Where do we want to be? How are we going to handle interrogations? How are we going to handle evidence? How are we going to do a better job for our men and women in the decisions we make in Iraq and Afghanistan? Who is looking for the future around here? No, we are all throwing political spears at each other. I don't think the American people appreciate that. It is embarrassing, quite frankly, to me.

I have been on the Intelligence Committee for 4 years, and for 4 years we have been going back trying to refigure the intelligence. We have found out the intelligence we were receiving in that committee—the Senators, Congressmen, and the President—was not as good as it should have been. Okay, good. Admit that. Now what are we going to do about it? How many hearings do we have where the CIA and the Director of National Intelligence were asked: What are you doing to implement the law we put in place to address the problems we found? Where are we going to be in the future? What have we done to actually go to meet with our CIA agents around the world and hear what the real country situation is in critical parts of the world? Not one time have we done that.

No, even the Intelligence Committee, which for years the Senate worked to make sure it stayed nonpartisan, bipartisan, and worked together for the good of the country, in close quarters, now is just another partisan committee. Staff fight each other; intelligence information is leaked; classified intelligence information is leaked to the New York Times and the Washington Post. No one is identified. No one is punished for that.

What worries me, this is not just about politics; this is about people's lives. People get killed based on the intelligence we get or don't get or the oversight we have.

I hope we can complete our work. Hopefully, it will be good work by the end of the week.

Let's go home and get this political period over with, but when we come back next year, I think it is time we assess where we are. How are we going to do a better job? What is America's agenda? What can we do together in a bipartisan way? Is there anything left? And if we do not, I think there will be a pox on all of our houses.

So on this particular subject of the Military Commissions Act of 2006, let's get it up, let's debate it, and let's have a vote. We have to do it. I think they have done pretty good work. If I could get in a room with my lawyers, yes, I would write it differently. I think more of that evidence should be admissable with less restraints. I think more of the techniques that have been used in the interrogation of terrorists should be used than are in this provision. Once again, it is not perfect, but it is good enough. It is the right thing to do.

Madam President, observing no Senator wishing to speak at this time, I suggest the absence of a quorum.

The PRESIDING OFFICER (Ms. MURKOWSKI). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mrs. MURRAY. Madam President, I ask unanimous consent to be allowed to speak as in morning business.

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

DEMANDING ACCOUNTABILITY

Mrs. MURRAY. Madam President, the hardest decisions we make in the Senate involve asking our fellow Americans to risk their health and their lives in defense of our country. The cost to our country, to our communities, and to our families is so great that in any war we have an obligation to make sure we are doing right by our service members, by our veterans, and by our country.

That is why we in this Congress need to ask questions. We need to ask questions such as: Do our troops have a clear mission? Is there a plan to achieve that mission? Do our troops have the support and equipment they need to succeed? Do we have the right people in place? And are we taking care of our veterans when they return home from military service?

For too long, this Congress has not done its job of asking those questions and demanding answers. Here in Congress, we have a responsibility. We have a responsibility to make sure the Bush administration, or any administration, is fulfilling those critical requirements. So today I rise to offer an update on where we stand on some of these questions and to share some disturbing news from recent reports. The evidence I am going to share with my colleagues today points to five disappointing conclusions, and they all demand hearings and they demand accountability.

First of all, the Bush administration misled Congress about its failures in planning for the care of America's veterans.

Secondly, the Bush administration still does not have a plan to care for our veterans.

Third, we do not have a clear mission in the war in Iraq. And that fight has greatly impacted our ability to prosecute the broader war on terror and, according to the latest intelligence estimate, has helped to fuel new terrorist recruits.

Fourth, the Bush administration has put politics over progress in Iraq and at home. In Iraq, it sent political cronies to staff the provisional government instead of experienced professionals who could get the job done. From ''Brownie'' at FEMA to new reports about the HUD Secretary, the Bush administration put politics over competence.

Finally, Congress—us—we are not doing our job of oversight. Unless we hold hearings, until we demand answers, and until we require accountability, we will just keep muddling through with the same poor results.

We can do a lot better. We can be safer. And we can be more successful. But it has to start with an honest assessment of what is working, what is not, and what we need to change.

In that spirit, I want to discuss those five conclusions I mentioned, starting with the fact that the Bush administration misled Congress about its inadequate efforts to care for our veterans.

Over the past 2 budget years, the Bush administration was dramatically wrong in its planning for veterans health care. The result was a $3 billion shortfall last summer. And this was not just a failure in planning. It meant failing to get our veterans the services they required in a timely fashion. It meant veterans had to face long waits to see a doctor. And it meant they did not get the care they deserved.

That horrible planning is no way to care for the veterans who have sacrificed so much for us. We can do better. That is why after that failure I joined with Senators AKAKA, DURBIN, and SALAZAR. Together we asked the Government Accountability Office to investigate what happened at the VA. Well, this is the report we got back. Frankly, the answers are pretty damning, and they cast doubt on whether we can rely on this VA for accurate numbers and straight answers.

I wish to focus on the four findings in this report.

First of all, the GAO found that the VA knew it had serious problems with its budget, but they failed to notify Congress, all of us here. Even worse, they misled us. The report suggests that the VA could still, today, be sending us inaccurate information in its quarterly reports.

Secondly, the GAO found that the VA was basing its budgets on ''unrealistic assumptions, errors in estimation, and insufficient data.''

Third, the Pentagon failed to give the VA up-to-date information about how many service members would be coming down the pipeline and into the VA.

Finally, the GAO found that the VA did not adequately plan for the impact of service members coming home from Iraq and Afghanistan.

For me, I think one of the most disturbing findings is that the VA kept assuring us here in Congress that everything was fine, while inside the VA—at the same time it was assuring us things were fine—it was very clear that the shortfalls were growing. The VA, in fact, became aware it would have a problem. In October of 2004, inside the VA, they knew they had problems, but they did not admit those problems until June of 2005. Veterans were telling me of long lines and delays in care. For months, I tried to give the VA more money, but the administration fought me every step of the way. And who paid the price for those deceptions? America's veterans, and that was just wrong.

Let me walk through some of the deceptions found in this GAO report. It shows a very troubling gap between what the VA knew and what the VA told us.

According to the GAO report, starting back in October 2004, the VA knew that money was tight. It anticipated serious budget challenges, and it created, inside the VA, a ''Budget Challenges'' working group.

Two months later, in December of 2004, that budget group made internal recommendations inside the VA to deal with the shortfall they knew they had. They suggested delaying new initiatives and shifting around funding.

Two months later, in February of 2005, the Bush administration released its budget proposal for 2006. The GAO found that budget was based on ''unrealistic assumptions, errors in estimation, and insufficient data.''

A week later, at a hearing on February 15, here, I asked the VA Secretary if the President's budget was sufficient. He told me:

> I have many of the same concerns, and I end up being satisfied that we can get the job done with this budget.

Let's remember what was happening back at that time. I was hearing from veterans that they were facing delays in care and that the VA system was stretched to capacity. But the VA kept saying: Everything is fine.

On March 8, Secretary Nicholson told a House committee that the President's fiscal year 2006 budget ''gives VA what it needs.'' Well, I was hearing a much different story as I spoke with veterans in my home State and around the country. So that is why on March 10 I offered an amendment in the Senate Budget Committee to increase veterans funding by 3 percent so we could hire more doctors and provide faster care for our veterans. Unfortunately, the Republican majority said no.

Now, that same month, while that was happening, the VA's internal monthly reports showed that demand for health care was exceeding projections. That was another warning sign that the VA should have shared with us, but it did not.

On March 16, Senator AKAKA and I offered an amendment here on the Senate floor to increase veterans funding by $2.85 billion. Once again, the Republican majority said no.

The next month, on April 5, Secretary Nicholson wrote to Senator HUTCHISON:

> I can assure you that the VA does not need emergency supplemental funds in FY 2005.

A week later, on April 12, I offered two amendments on the Senate floor to boost veterans funding. First, I asked the Senate to agree that the lack of veterans funding was an emergency and we had to fix it. The Republican majority said no. So I asked the Senate to agree that supporting our veterans ought to be a priority. Again, the Republican majority said no. As a result, veterans did not get the funding they needed and the deception continued.

On June 9, I asked Secretary Nicholson at a hearing if he had enough funding to deal with the mental health challenges of veterans returning from Iraq and Afghanistan. He assured me the VA was fine.

So for 6 months, we had happy talk that everything was fine within the VA. Then, in June, just 2 weeks after the Secretary's latest assurance, the truth finally came out.

On June 23, the VA revealed a massive shortfall of $3 billion. Well, I went to work with my colleagues and we came up with the funding. But we could have solved that problem much earlier and saved our veterans the delays they were experiencing.

By misleading us the entire time, the Bush administration hurt our American veterans. We could have provided the money when it was needed. We could have been hiring the doctors and nurses we needed. We could have been buying the medical equipment that was needed. And we could have been helping thousands of veterans who were sitting on waiting lists waiting for care.

Here is the bottom line. The Bush administration knew about this problem in October of 2004. They saw it getting worse month by month, but here in the Senate, in the House, they assured us everything was fine. They worked adamantly to defeat my amendments to provide funding, and they did not come clean until June of 2005.

That is unacceptable. I think our veterans deserve real answers.

This GAO report shows that the VA was not telling us in Congress the truth and was fighting those of us who were trying to help. I think we need to bring Secretary Nicholson before the Veterans Affairs' Committee so we can get real answers. We need to ensure that the VA doesn't repeat the same mistake of the past 2 years. We owe that to our current and future veterans who sacrifice so much for us.

We need an explanation of why the VA lied to us about the so-called ''management efficiency.'' The GAO found those alleged savings were nothing but ''hot air.'' This report clearly shows the Bush administration misrepresented the truth to us in Congress for 4 fiscal years, through 4 budgets, and 4 appropriations cycles about those bogus savings. When they could not make these efficiencies a reality, they took the funds from veterans' health care. That, too, is unacceptable.

This report also suggests that even in its latest quarterly reports to us, the

VA is slow to report and doesn't provide key information we required, such as the time required for veterans to get their first appointment.

The GAO report also says that the Department of Defense failed to provide the VA up-to-date information on how many service members would be separating from service and seeking care at the VA.

That is frustrating to me because I have been asking every general who comes up here if they are doing enough to ensure a smooth transition from the Pentagon to the VA. In fact, on February 16 of last year, I questioned Secretary Rumsfeld directly. I got him to agree that caring for our veterans is part of the cost of a war. But he had no real answer when I asked why his request for the war did not include funding to care for our veterans.

Finally, the GAO report verifies that the VA failed to plan for the impact of the veterans who are coming back from Iraq and Afghanistan. I am very concerned that the Bush administration still, today, right now, does not have a plan to meet the needs of our returning service members.

Look at the gap between what the VA told us it needs and what we are actually spending on veterans' health care. In July, a few months ago, the VA sent an estimate to the Congressional Budget Office. The VA said it would need $1 billion a year for 10 years to care for veterans from Iraq.

But here is the problem. We are already spending more than $1 billion this year, and we still have not seen the lion's share of veterans return home. There will be more veterans needing help, and $1 billion a year is not going to cut it.

I have heard some of my colleagues speak about the generous increases to VA programs, and I agree they have been helpful. But unless the dollars we provide meet the needs of our veterans, we will not have fulfilled our responsibility to those we have asked to go to war for us.

Let's focus on one area of veterans health care—support for mental health challenges, such as post-traumatic stress disorder. Here is what the Associated Press said recently:

> More than one-third of Iraq and Afghanistan veterans seeking medical treatment from the Veterans Health Administration report symptoms of stress or other mental disorders—a tenfold increase in the last 18 months, according to an agency study.

That is from the Associated Press. It is a good thing that veterans are coming home and seeking help. I hope it means we have made it easier to get care and we have reduced the stigma associated with the invisible impacts of war. During the Vietnam war, I saw those challenges firsthand when I volunteered in the psychiatric ward of the Seattle VA hospital.

I think it is good that our veterans are coming home and asking for care, but we have to make sure it is our responsibility in this Congress that we have the funding to meet that need.

The AP article I mentioned talks about a soldier from Virginia Beach, VA, who was having a hard time sleeping when he came home from Iraq. Do you know what he was told? He was told he would have to wait 2½ months for an appointment at the VA facility.

Here is a service member who has gone to war in Iraq, done what his country asked, and he comes home and asks for help, and all he is told by the VA is to get in line and wait 75 days. I find that pretty disgraceful.

I have held a number of discussions in my home State of Washington with our veterans and with mental health experts. I was recently in Everett, WA, on August 17. I heard about the challenges they are facing on the ground.

Whether it is dealing with a large number of veterans with severe physical injuries, or traumatic brain injuries, the VA has no plan to deal with this.

Whether it is dealing with the 16 percent of wounded service members coming back from Iraq with eye injuries, which Walter Reed reported in August, the VA has no plan to deal with this.

Whether it is dealing with one-third of all service members to return home and separate from the military, who are seeking mental health services, the VA has no plan. And we in Congress are still not getting straight answers.

In that AP article, a VA official said he is not aware of problems with veterans getting mental health services. Dr. Michael Kussman is quoted as saying:

> We're not aware that people are having trouble getting services from us in any consistent way or pattern around the country.

A lot of our veterans advocates disagree with that. In fact, another VA official pointed to serious problems in meeting the mental health need of our veterans.

In the May edition of the Psychiatric News, Dr. Frances Murphy, the Under Secretary of Health Policy Coordination at the VA, said the agency is ill-prepared to serve the mental health needs of our Nation's veterans.

In that article, Dr. Murphy notes that some VA clinics don't provide mental health or substance abuse care, or if they do, ''waiting lists render that care virtually inaccessible.''

The Bush administration has failed to deliver our veterans the care they need, denying them the respect they deserve. Given the VA's bad track record and misleading statements, we need to demand in Congress a real plan from the VA to ensure that our veterans get the care they have earned.

Another question we need to be asking in the Senate is about our mission in Iraq today. Unless we have clarity and purpose of mission, we are not going to know when we have achieved it and when our troops can come home.

We all want the same thing in Iraq—for our troops to complete their mission successfully and come home safely. But today our troops' mission in Iraq lacks clarity. What are they accomplishing there today? Overthrowing Saddam Hussein? They already accomplished that. Looking for weapons of mass destruction? They looked; no weapons were found. Are they supposed to be setting up an Iraqi government? We have done that. The Iraqi people have created a constitution, elected leaders, and filled their Cabinet.

Our troops have done everything we have asked them to do. What is left? Will the President's policies get us there? That is the discussion we ought to be having in the Congress. But every time we ask these questions, we get the same empty response from the President, his Cabinet, and the Congress: Stay the course.

Stay the course is not a good plan, if the course you are on is not working. We also have to get to the truth about the relationship between Iraq and the broader war on terror.

On September 6, on the floor of the Senate, I warned that the President's focus on Iraq has distracted us from the larger war on terror. I said the President took a detour from the war on terror and invested the majority of our resources into Iraq—seemingly forever.

That weakens our ability to fight the broader war on terror and it leaves us vulnerable. We have not made the investments here at home to protect ourselves, and we have not finished our work against al-Qaida. Bin Laden is still on the loose. Afghanistan is a mess, and United States troops are imperiled.

Today, 3 weeks after I gave that speech on the Senate floor, we learned that the National Intelligence Estimate concluded that the war in Iraq helped to fuel the recruitment of new terrorists. The administration's failure to plan and face the truth in Iraq demands congressional hearings so we can chart a better course.

We also need to examine how the Bush administration bungled Iraqi reconstruction. On September 17, the Washington Post ran a story titled ''Ties to GOP Trumped Know-How Among Staff Sent to Rebuild Iraq.'' That article describes how Americans were selected to work in Iraq for the Coalition Provisional Authority. That article said:

> Applicants didn't need to be experts in the Middle East or in post-conflict reconstruction. What seemed most important was loyalty to the Bush administration.

It goes on to say:

> The decision to send the loyal and the willing, instead of the best and the brightest, is now regarded by many people involved in the 3 and a half year effort to stabilize and rebuild Iraq as one of the Bush administration's gravest errors.
>
> Many of those selected because of their political fidelity spent their time trying to impose a conservative agenda on the postwar occupation, which sidetracked more important reconstruction efforts and squandered good will among the Iraqi people, according to many people who participated in the reconstruction effort.

They had a political loyalty test instead of a competence test, and that

may be responsible for how long we have had to stay in Iraq and the problems we now face. Congress—us—we need to look at that and we need to hold people accountable.

Unfortunately, this pattern and practice of political favoritism within the administration extends beyond Iraq to how the Bush administration handles Government contracts here at home. Just last week, we got new evidence that a member of the President's Cabinet has made a series of statements that highlighted the importance of politics in awarding Government contracts in his agency.

In May, I asked the Inspector General at HUD to look into Secretary Alphonso Jackson's public statements that he deliberately denied a contract to a firm that had been critical of President Bush. Now, last week, the IG sent me the results of that investigation. This report is 340 pages long, with hundreds of pages of sworn testimony from dozens of HUD officials. This report includes sworn statements from HUD personnel, stating that Secretary Jackson told his staff to monitor the political affiliation of contract competitors and consider those affiliations in the awarding of contracts.

Secretary Jackson said that a HUD contractor had strong political affiliations that were not supportive of the President, and the Secretary said he did not want the contractor to receive any additional HUD contracts. As a result, the contractor's award was subjected to an unusual extent of delay and review.

So we have a Cabinet Secretary telling his staff to issue contracts based on politics, not based on who can do the best job for us, the American taxpayers. It is true that, in looking at the record, the Justice Department concluded:

> that no apparent criminal violation could be discerned based on evidence to date.

But the Justice Department came to that conclusion only because HUD staff actually ignored the Secretary's inappropriate instructions.

When you combine what has been going on at HUD with what happened at the CPA in Iraq and reports about similar issues at the Department of the Interior, it is clear that this Congress—all of us—needs to demand accountability.

That is why, last week, I wrote to White House Chief of Staff Josh Bolten and urged him to take immediate steps to ensure that political favoritism and discrimination do not play a role in Federal contracts.

I recognize we cannot rely on the White House Chief of Staff to clean up the Bush administration, which brings me to my final point this morning.

We need real oversight. In this Congress, there has been very little oversight of this administration. The President has basically had free reign because of this Republican-controlled Congress, and we have failed to do the job in asking tough questions and demanding answers.

Norman Ornstein is an expert on Congress at the conservative American Enterprise Institute, and he said this Congress is the worst he has seen in terms of oversight.

He told the Philadelphia Inquirer:

> These people have long thought of themselves as foot soldiers in the President's army, and their view is that oversight is something to avoid, lest they find something that might embarrass the administration. I don't see a single sign that this attitude will substantially change.

That was congressional expert Norman Ornstein on the Republican failure to oversee the Bush administration.

Democrats are trying to provide the oversight that Republicans so far have been unwilling to provide. On Monday, in fact, the Democratic Policy Committee held a hearing on preparations for the war in Iraq. Retired military leaders at that hearing told us that the Bush administration failed to plan for the war and that the administration misled the American people.

We had to hold those hearings under a policy committee banner because Republicans would not hold real committee oversight hearings. We have to have oversight here, no matter what the administration is, Republican or Democratic, so that we as Members of this body who represent people across the country can learn the facts and we can fix things that are not going well. That is our job. If we never have real hearings, if we never demand real accountability, well, we will never get good results.

I believe America can do a lot better. I believe we can be more secure. I believe our troops can be safer. But it has to start with the truth, not rosy predictions of how things will be, not declarations of will that gloss over the facts on the ground, not corruption in politics holding back progress. Simply the truth. And, so far, this Congress has been unwilling to let our citizens learn the truth.

I think the American people deserve better, and I hope each one of us goes home and thinks about what our responsibility is to the people we represent and to the future of this country.

Madam President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. FRIST. Mr. President, for the information of our colleagues, we will engage in a unanimous consent request which will set out the activity for the afternoon and possibly early evening on the Supreme Court Hamdan decision.

I ask unanimous consent that the cloture motion with respect to amendment No. 5036 be withdrawn, and that further, the cloture vote scheduled in relation to H.R. 6061 be delayed to occur following the disposition of S. 3930, and that the Senate now proceed to the consideration of Calendar No. 634, S. 3930, relating to military tribunals; provided further, that the substitute amendment, the text of which is at the desk, be considered and agreed to as original text for the purpose of further amendment; provided further, that the only other amendments in order, other than any managers' amendments which are to be cleared by both managers and the two leaders, be the following:

Levin, substitute; Rockefeller, congressional oversight; Kennedy, interrogation; Byrd, sunset; Specter, habeas.

I further ask unanimous consent that the listed amendments be limited to 60 minutes equally divided between the two leaders or their designees, other than the Specter amendment and the Levin amendment which will be limited to 2 hours equally divided, as stated above, and that there be 3 hours for general debate equally divided, again, between the two leaders or their designees. I further ask unanimous consent that following the disposition of the above amendments and the use or yielding back of time, the bill be read a third time and the Senate proceed to a vote on passage, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. REID. Reserving the right to object, Mr. President, this is in keeping with our agreement. I wanted the record to reflect—in case Senator LEAHY is watching us because he wanted to make sure he would have 45 minutes on his amendments and 15 minutes on the bill—it is my understanding Senator SPECTER will be giving him 15 minutes of his time, but if he doesn't, I will take it from the bill. So Senator LEAHY will have his 45 minutes, 15 minutes on this bill.

So I think this is an opportunity to improve this bill. We would all like to have had more time for hearings and debate on the floor, but we are where we are. I am thankful and grateful that we have an opportunity to improve this bill.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. Mr. President, I will have an opening statement on the bill. But what we have done is set out, with a time agreement, a way to address a very important piece of legislation. I appreciate the Democratic leader and his caucus, our leadership and our caucus all agreeing upon this outline of how we will address an issue that will make us safer and more secure.

We will turn to the bill, and then I will make an opening statement, and then we will start right in with the amendment process following my opening remarks.

MILITARY COMMISSIONS ACT OF 2006

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

The assistant legislative clerk read as follows:

A bill (S. 3930) to authorize trial by military commission for violations of the law of war, and for other purposes.

The amendment (No. 5085) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, for 5 years we have been a nation at war. It is a war unlike any we have ever before fought. It is an ideological war against radicals and zealots. We are fighting a different kind of enemy—an enemy who seeks to destroy our values, to destroy our freedom, and to destroy our way of life, people who will kill and who will actually stop at nothing to bring America to its knees. It is a war against an enemy who won't back down, ever, telling interrogators: I will never forget your face. I will kill you. I will kill your brothers, your mother, your sisters. It is a war against an enemy who undertakes years of psychological training to consciously resist interrogation and to withhold information that could be critical to thwarting future threats, future attacks. But it is also a physical war. On the field of battle, it is a war that demands quick thinking and creativity. It demands tactics that entice the enemy to reveal his weaknesses.

As we learned 5 years ago, safety and security aren't static states; they are dynamic, constantly shifting, constantly moving. We consistently and repeatedly have to be able to adjust and take stock and reassess and, when necessary, implement changes in response.

In the past 5 years alone, in this body we have passed more than 70 laws and other bills related to the war on terror, but they haven't been enough. They haven't kept pace with the ever-changing field of battle. There is more we can do and, indeed, we must do. That is why over the last month we have focused the Senate agenda on security, and that is why today we address our Nation's security by debating one of the most serious and most urgent security issues currently facing the Nation: the detainment, questioning, and prosecution of enemy combatants—terrorists captured on the battlefield.

A few weeks ago, I traveled with several of my colleagues to Guantanamo Bay. That is where the mastermind of 9/11 currently resides—Khalid Shaikh Mohammed. This man, the man the 9/11 Commission calls the principal architect behind the 9/11 attacks, didn't stop with 9/11. Not 1 month after 9/11, he was busy again plotting and planning, orchestrating, scheming, and conspiring to strike us again while we were still down. His next plot targeted the tallest buildings on the west coast with hijacked planes, buildings that house businesses and organizations absolutely critical to our economic and our financial stability, including the Library Tower in Los Angeles, CA. But this time, we were ready. We thwarted that plot, and Khalid Shaikh Mohammed now resides at Guantanamo. But he wouldn't reside there and we wouldn't have stymied his evil designs at that Library Tower if not for the ability to question detainees.

Soon after 9/11, we detained an al-Qaida operative known as Abu Zubaydah. Under questioning, he yielded several operational leads. He revealed Shaikh Mohammed's role in the 9/11 attacks. Coupled with other sources, the information he gave up led to Shaikh Mohammed's capture and detainment. Khalid Shaikh Mohammed currently awaits prosecution. That prosecution cannot happen until we act. Our great Nation will know no justice—and his victims' families will know no justice—until Congress acts by passing legislation to establish these military commissions.

Before we recess this week, we will complete this bill. We could complete it possibly today but if not, in the morning. The bill itself provides a legislative framework to detain, question, and prosecute terrorists. It reflects the agreement reached last week: Republicans united around the common goal of bringing terrorists to justice. It preserves our intelligence programs—intelligence programs that have disrupted terrorist plots and saved countless American lives.

When we capture terrorists on the battlefield, we have a right to prosecute them for war crimes. This bill establishes a system that protects our national security while ensuring a full and fair trial for detainees. The bill formally establishes terrorist tribunals to prosecute terrorists engaged in hostilities against the United States for war crimes. Terrorist detainees will be tried by a 5- or 12-member military commission overseen by a military judge. They will have the right to be presumed innocent until proven guilty, the right to military and civilian counsel, the right to present exculpatory evidence, the right to exclude evidence obtained through torture, and the right to appeal.

The bill also protects classified information—our critical sources and methods—from terrorists who could exploit it to plan another terrorist attack. It provides a national security privilege that can be asserted at trial to prevent the introduction of classified evidence. But the accused can be provided a declassified summary of that evidence.

Moreover, the bill provides legal clarity for our treaty obligations under the Geneva Conventions. It establishes a specific list of crimes that are considered grave breaches of the Geneva Conventions.

Ultimately, these procedures recognize that because we are at war, we should not try terrorists in the same way as our uniformed military or common civilian criminals. We must remember that we are fighting a different kind of enemy in a different kind of war. We are fighting an enemy who seeks to destroy our values, our freedoms, and our very way of life.

To win this war, we must provide our military, intelligence, and law enforcement communities the tools they need to keep us safe. By formally establishing terrorist tribunals, the bill provides another critical tool in fighting the war on terror, and it provides a measure of justice to the victims of 9/11.

Until Congress passes this legislation, terrorists such as Khalid Shaikh Mohammed cannot be tried for war crimes, and the United States risks fighting a blind war without adequate intelligence to keep us safe. That is simply unacceptable, and that is why this bill must be passed.

I look forward over the next few hours to an open and civilized debate in the best traditions of the Senate. I urge my colleagues—Republican, Democrat, and Independent alike—to work together to pass this bill. The American people can't afford to wait. Even though we are in the midst of an election year, this issue—the safety and security of the American people—should transcend partisan politics. The time to act is now.

Mr. President, I yield the floor.

Mr. LEVIN. Mr. President, I yield myself 15 minutes off the bill itself.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, first let me begin by commending our colleagues on the Armed Services Committee, Senator WARNER, Senator MCCAIN, and Senator GRAHAM, for their effort earlier this month to produce a military commissions bill that will protect our troops, withstand judicial review, and be consistent with American values. The administration of their own party had prepared a bill that would authorize violations of our obligations under international law, permit the abusive treatment of prisoners, and allow criminal convictions based on secret evidence. The three Senators drafted a different bill, in consultation with our senior military lawyers. When the administration objected to this bill, Senator WARNER scheduled a markup in the Senate Armed Services Committee anyway, and we reported that bill out with a bipartisan vote of 15 to 9.

Unlike the administration bill, the committee bill would not have allowed convictions based on secret testimony that is never revealed to the accused. The committee bill would not have allowed testimony obtained through cruel or inhuman treatment. The committee bill would not have allowed the use of hearsay where a better source of evidence is readily available. The committee bill would not have attempted to reinterpret our obligations under international law to permit the abuse of detainees in U.S. custody.

While the committee bill was not perfect—in particular, it included a very problematic provision on the writ of habeas corpus—the military commissions it established would have met the test of the Supreme Court's decision in the Hamdan case and provided for the trial of detainees for war crimes in a manner that is consistent with American values and the American system of justice. It provided standards we would be able to live with if other countries were to apply similar standards to our troops if our troops were captured. And, of course, the committee bill provided for the interrogation, for the detention, and for criminal trials of detainees.

Unfortunately, the committee bill was not brought to the Senate. Instead, the three Republican Senators entered into negotiations with an administration that has been relentless in its determination to legitimize the abuse of detainees and to distort military commission procedures to ensure criminal convictions. The bill before us now is the product of these negotiations. I will be offering the committee-approved bill as a substitute a little later today. The bipartisan committee bill, which came from our committee just about a week ago on a vote of 15 to 9, will be offered by me as a substitute to the bill which is now before us.

The bill before us does make a few significant improvements over the administration bill. I want to begin by outlining what those improvements are.

First, while the bill before us is not as clear as the committee bill in committing us to a standard that will protect our troops by conforming to our obligations under the Geneva Conventions, it is far preferable to the administration bill in this regard. In particular, the bill before us does not reinterpret U.S. obligations for the treatment of detainees under Common Article 3 of the Geneva Conventions. It does not place a congressional stamp of approval on an executive branch reinterpretation of those obligations. All it does in this regard is to state the obvious: that the President is responsible for administering the laws and that this gives him the authority to adopt regulations interpreting the meaning and application of the Geneva Conventions in the same manner and to the same extent as he can issue such regulations interpreting other laws.

Common Article 3 of the Geneva Conventions, the Detainee Treatment Act, and the new Army Field Manual all prohibit such interrogation abuses as forcing a detainee to be naked, to perform sexual acts or pose in a sexual manner; prevent such abuses as sensory deprivation, placing hoods or sacks over the head of a detainee, applying beatings, electric shock, burns, or other forms of physical pain; waterboarding, using military working dogs, inducing hypothermia or heat injury, conducting mock executions, or depriving the detainee of necessary food, water, or medical care. Nothing in this bill would change any of the standards of the Geneva Conventions, the Detainee Treatment Act, or the Army Field Manual. Nothing in this bill would authorize the President to do so.

Second, the bill does not permit the use of secret evidence that is not revealed to the defendant. Instead, the bill clarifies that information about sources, methods, or activities by which the United States obtained evidence may be redacted before the evidence is provided to the defendant and introduced at trial. Any material redacted from the evidence provided to the defendant cannot be introduced at trial. The defendant would have the right to be present for all proceedings and to examine and respond to all evidence considered by the military commission.

This approach is consistent with the approach taken to classified information in the Manual for Courts Martial, and it ensures that a defendant could not be convicted on the basis of secret evidence, evidence that is not known to him.

Those are two positive changes from the approach which the administration has argued for and demanded, in these two cases without success.

Unfortunately, at the insistence of the administration, the bill before us contains a great many ill-advised changes from the approved bill of the Armed Services Committee. For example, on coerced testimony, the committee-approved bill prohibited the admission of statements obtained through cruel, inhuman, or degrading treatment. The bill before us prohibits the admission of statements obtained after December 30, 2005, through ''cruel, inhuman or degrading treatment,'' but, inexplicably, contains no such prohibition for statements that were obtained before September 30, 2005. As a result, military tribunals would be free to admit, for the first time in U.S. legal history, statements that were extracted through abusive practices.

On the question of hearsay, the committee bill permitted the admission of hearsay evidence not admissible at trials by court-martial, if direct evidence, which is inherently more probative, could be procured ''through reasonable efforts, taking into consideration the unique circumstances of the conduct of military and intelligence operations during hostilities.''

The bill before us makes hearsay evidence admissible unless the defendant can demonstrate that it is unreliable or lacking in probative value. Hearsay evidence is not only inherently less reliable, its use also deprives the accused of the ability to confront witnesses against him. The approach taken by this bill not only relieves the Government of any obligation to seek direct testimony from its witnesses, it also appears to shift the burden to the accused by presuming that hearsay evidence is reliable unless the accused can demonstrate otherwise.

On the question of search warrants, the committee bill, the bill which I will be offering as a substitute later on today—the committee bill provided that evidence seized outside the United States shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant. The bill before us deletes the limitation so that it no longer applies to evidence seized outside the United States. As a result, the bill authorizes the use of evidence that is seized inside the United States without a search warrant. This provision is not limited to evidence seized from enemy combatants; it does not even preclude the seizure of evidence without a warrant from U.S. citizens. As a result, this provision appears to authorize the use of evidence that is obtained without a warrant, in violation of the U.S. Constitution.

On the definition of unlawful combatant, the committee bill defined the term ''unlawful combatant'' in accordance with the traditional law of war. The bill before us, however, changes the definition to add a presumption that any person who is ''part of'' the ''associated forces'' of a terrorist organization is an unlawful combatant, regardless of whether that person actually meets the test of engaging in hostilities against the United States or purposefully and materially is supporting such hostilities.

The bill also adds a new provision which makes the determination of a Combatant Status Review Tribunal, or CSRT, that a person is an unlawful enemy combatant—it makes that determination dispositive for the purpose of the jurisdiction of a military commission, even though the CSRT determinations may be based on evidence that would be excluded as unreliable by a military commission.

On the issue of procedures and rules of evidence, the committee bill provided that the procedures and rules of evidence applicable in trials by general courts martial would apply in trials by military commission, subject to such exceptions as the Secretary of Defense determines to be ''required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need.'' That approach, in our committee bill, was consistent with the ruling of the Supreme Court in the Hamdan case, but built in flexibility to address unique circumstances arising out of military and intelligence operations. The bill before us reverses the presumption. Instead of starting with the rules applicable in trials by courts martial and establishing exceptions, the Secretary of Defense is required to make trials by commission consistent with those rules only when he considers it practicable to do so. As one observer has pointed out, this provision is now so vaguely worded that it could even be read to authorize the administration to abandon the presumption of

innocence in trials by military commission.

On the issue of habeas corpus, the habeas corpus provision in the committee bill stripped alien detainees of habeas corpus rights, even if they had no other legal recourse to demonstrate that they were improperly detained. It also stripped those detainees of any other recourse to the U.S. courts for legal actions regarding their detention or treatment in U.S. custody. If the committee bill had been brought to the floor, I would have joined in offering an amendment to address the obvious problems with this provision. But at least the court-stripping provision in the committee bill was limited to aliens who were detained outside of the United States. The bill before us expands that provision to eliminate habeas corpus rights and all other legal rights for aliens, including lawful permanent residents detained inside or outside the United States who have been determined by the United States to be the enemy. The only requirement is that the United States determine that the alien detainee is an enemy combatant—but the bill provides no standard for this determination and offers the detainee no ability to challenge it in those cases which I have identified.

Consequently, even aliens who have been released from U.S. custody, such as the detainee that the Canadian Government recently found was detained without any basis and was subjected to torture, would be denied any legal recourse as long as the United States continues to claim that they were properly held.

I yield myself an additional 3 minutes.

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

Mr. LEVIN. In other words, a determination by the United States could not be contested, even if there is overwhelming evidence that the claim was incorrect.

These changes in the committee bill, a bill which was approved on a bipartisan basis in our committee, the changes that appear in the bill which is now before us, taken together, will put our own troops at risk if other countries decide to apply similar standards to our troops if they are captured and detained. These changes in the bill before us from the committee bill are likely to result in the reversal of convictions on appeal, and that means that efforts to convict these people of crimes can be readily reversed on appeal because of the changes that were made in the committee bill and the fact, which seems to me to be quite clear, that they do not comply in many instances with the requirements set forth in Hamdan, and the changes in the bill before us from the committee bill are inconsistent with American values.

I particularly again highlight the search and seizure requirements of our fourth amendment and the way that seems to be abandoned in the bill before us.

I close by applauding, again, Senators WARNER, MCCAIN, and GRAHAM for their willingness to stand up to the administration and at least at the Armed Services Committee produce a bill that we were able to approve in the Armed Services Committee on a strong bipartisan vote.

However, the administration has been even more relentless in their effort to legitimize the mistreatment of detainees and to undermine some of the cornerstone principles of our legal system. While the bill before us is a modest improvement over the language originally proposed by the administration, it has adopted far too many provisions from the administration's bill. The substitute which we will be offering later on today is the committee-approved bill. That will do a much better job, if we adopt it, of protecting our troops who might become detainees in the future and does a much better job of upholding our values as a nation.

I yield the floor.

The PRESIDING OFFICER. Who yields time? If no one yields time, time will be charged to both sides.

The Senator from Michigan.

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

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

Mr. LEVIN. Mr. President, I ask unanimous consent that of the time under the control of the Democratic leader, Senator REID, that 45 minutes be allocated to Senator LEAHY.

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

Mr. LEVIN. I suggest the absence of a quorum and ask that the time be charged equally to both sides.

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

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. 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. WARNER. Parliamentary inquiry: At this time the Senate is now proceeding on the Hamdi bill; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. WARNER. Mr. President, I rise to speak in support of the Military Commissions Act of 2006 which would authorize military commissions for the trial of an alien enemy unlawful combatant.

I take a moment to say my colleagues and others with whom I have served in the Senate the last 28 years stand at a moment of critical importance in the history of our Nation. What we do today will impact how we conduct the war on terror for as long as it lasts. In the estimate of this humble Senator, that could be for decades. It will fundamentally impact our relationships with our allies. It will fundamentally impact the image of the United States of America in the eyes of the world. It is crucial to our ability to keep America safe. It will speak most loudly about the core values, the principles of this great Republic known as the United States of America.

From the outset, I make it clear I respect the views of all participants in this dialog, from the President and his team, to those particularly in the Congress, but elsewhere in the Congress, on both sides of the aisle. I have certain core principles I share with several of my colleagues. I have endeavored to see this particular bill reflects those principles to the best of my ability, as have they. Nevertheless, I respect the views of others who may differ.

The goal of this legislation, from my point of view, and I think it is shared by others, is first and foremost to meet the challenge for withstanding review by the Supreme Court. Out of respect for that Court, the Hamdi decision, which was quite an interesting decision in many of its findings, divided by different panels within that Court, it is quite likely in one or more instances, if this becomes law, the bill now presently before the Senate, that will likewise be taken to the Supreme Court. That is the way we do things in the United States of America.

We hope we who have labored to craft this, and the 100 Senators who will finally cast their votes, together with the other body, will give to the President a bill that will effectively enable him to do those things to keep America free, to fight the war on terrorism and, at the same time, pass the Federal court review—whether it is the district, appellate, or the Supreme Court—such as likely will take place.

In late June, the Supreme Court struck down the President's initial plan to try detainees by military commissions. In its opinion, Hamdi v. Rumsfeld, the Court held by a fractured five-Justice panel that the present system for trials by military commission violated both the Uniform Code of Military Justice and particularly Common Article 3 of the 1949 Geneva Conventions. There were some four conventions put together in 1949. In particular, the Common Article 3 was common to all four of those conventions.

That historic moment in world history was a culmination from the learning experience of what took place all across our globe during World War II in an effort to see that certain injustices, in terms of the basic core values of the free world, would never occur again.

It is my fervent hope and conviction that whatever the Congress does, the

legislation we produce must be able to withstand further security review and scrutiny of the Federal court system, particularly the Supreme Court.

From my own personal perspective, it would be a very serious blow to the credibility of the United States—and I have said this a number of times in connection with the debate—not only in the international community but also at home, if the legislation as prepared by the Congress now and enacted by the President failed to meet another series of Federal court reviews.

To meet the mandate of the Court in its decision, Hamdi v. Rumsfeld, this legislation provides for a military commission that, in the words of Common Article 3, affords ''all the judicial guarantees which are recognized as indispensable by civilized peoples.''

That is what we are striving to obtain. The Military Commissions Act of 2006 provides these essential guarantees in the following ways. The bill generally follows the current military rule on the use of classified information at trial. That has been an area of concern probably to each and every Senator but most particularly to this Senator and others who worked closely in our group. We have, to the satisfaction of all interested parties, resolved that.

That is a very fundamental thing we must maintain; that is, the ability of our continued gathering of evidence, the protection of source and methods—nevertheless, to provide, on a real-time basis intelligence for our fighting men and women and, indeed, intelligence to protect us here at home.

However, our bill goes further by creating a privilege that protects classified information at all stages of a trial and prohibits disclosure of classified information, including sensitive intelligence sources and methods, to an alleged terrorist accused.

As a fundamental matter—and one we feel is crucial for this bill to survive judicial review—the bill would not allow an accused, however, to be tried and sentenced—perhaps even being given the death penalty—on evidence that the accused has never been allowed to see. That, in my judgment, and I think in the judgment of many, would be establishing a precedent that is without foundation in American jurisprudence or, indeed, the jurisprudence of the vast majority of nations in the world.

Further, the bill would prohibit the use of evidence that was allegedly obtained through the use of torture. A statement obtained before the date of enactment of the Detainee Treatment Act of 2005—December 30, 2005—in which the degree of coercion is in dispute could be used only—and I repeat—only at trial if the military judge finds that it is reliable and tends to prove the point for which it was offered.

A statement obtained after the date of enactment of the Detainee Treatment Act of 2005, in which the degree of coercion is in dispute, may only be admitted in evidence if the military judge finds that the first two tests are met and finds that the interrogation methods used to obtain the statement do not amount to cruel, inhuman, or degrading treatment prohibited by the Detainee Treatment Act of 2005.

The bill would generally follow the rules of evidence that apply to courts-martial. However, the Secretary of Defense, in consultation with the Attorney General, would be authorized to make substantial exceptions due to the unique circumstances presented by the conduct of military and intelligence activities so long as those exceptions are not inconsistent with the statutory provisions provided by this new law.

Most importantly, this bill achieves the President's benchmark objective by clearly defining those grave breaches of Common Article 3 of the Geneva Conventions that would be a criminal offense under the U.S. domestic law in the War Crimes Act.

That term, ''grave breaches,'' is set forth in that Convention of 1949. And in conjunction with working on this, we extensively examined the legislative history. Doing so allows our military and intelligence interrogators to know what conduct is prohibited under U.S. law. Moreover, this bill provides that no foreign sources of law may be used to define or interpret U.S. domestic criminal law implementing Common Article 3.

This bill does not provide as a matter of law that this legislation fully satisfies Common Article 3 of the Geneva Conventions. My colleagues and I feel that to make such a statement a matter of statute would amount to a reinterpretation of our obligations under the Geneva Conventions some 57 years after the United States signed those treaties. Such an action could open the door to statutory reinterpretation by a host of other nations with less regard for human rights than the United States, and would result in possibly our U.S. troops being put at greater risk should they become captives in a future conflict.

However, in addition to clearly defining grave breaches of Common Article 3 that are war crimes under the War Crimes Act, this bill acknowledges the President's authority under the Constitution to interpret the meaning and application of the Geneva Conventions, and to promulgate administrative regulations for violations of our broader treaty obligations which are not grave breaches of the Geneva Conventions. To ensure transparency, such interpretations are required to be published in the Federal Register and are subject to congressional and judicial oversight.

We have had a robust discussion of these issues among Members and with administration officials for some several months, most particularly the last few weeks. I strongly believe this bill achieves the best balance for our country. It will allow terrorists to be brought to justice in accordance with the founding principles and values that have made our Nation the greatest democracy in the world.

This bill will also provide the clarity needed to allow our essential intelligence activities to go forward—I repeat: go forward—under the law. And this bill is consistent with the Geneva Conventions, which have helped protect our own forces in conflicts over the past 57 years.

I thank my colleagues for their support. I wish at this time to thank the many staff members who have worked on this thing tirelessly. And I might add, in my 28 years here I have never known the legislative counsel's office to literally work 24 hours around the clock. Perhaps they have, but certainly they did in this instance. I want to give a special recognition and thanks to that office for assisting the Senate in preparing this bill.

Now, Mr. President, my understanding is the Senator from Michigan may well have an amendment he would like to bring forward.

The PRESIDING OFFICER. The Senator from Michigan.

AMENDMENT NO. 5086

(Purpose: In the nature of a substitute)

Mr. LEVIN. Mr. President, I now call up amendment No. 5086, which is an amendment in the nature of a substitute.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Michigan [Mr. LEVIN] proposes an amendment numbered 5086.

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

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. LEVIN. Mr. President, the amendment which I have just called up would substitute a bill which was adopted by the Senate Armed Services Committee on a bipartisan vote of 15 to 9 for the pending language.

Before I outline the differences between the bill which the committee adopted and the bill before us, I want to thank my good friend from Virginia for the work he and a number of other colleagues on the Republican side put into the committee bill to make it possible for that bill to be adopted.

In my earlier statement, when the Senator was not on the floor, I commended him and Senator MCCAIN and Senator GRAHAM for their effort earlier this month to produce a military commissions bill that would protect our troops in the event they were captured at some point down the road that would withstand judicial review and be consistent with our values.

They produced this bill in the committee, despite huge administration opposition. The chairman of the committee actually scheduled a markup, as I indicated in my prior statement, despite the opposition of the administration. The administration did then and

continues to want to permit the treatment of prisoners which is abusive. They did then and they still want to allow criminal convictions to be based on secret evidence.

But what the chairman and a number of other Republican Senators were able to do was to make some accomplishments in those two areas: in the area of secret evidence, and in the area, to an extent, of coercive statements, statements that were obtained by coercion, depending on when the statement was obtained. I will get into that in greater detail because there is a distinction in the bill that is on the floor now as to whether the statement was obtained before or after December 30, 2005, as to whether certain types of coercive treatment would be allowed and that statement, nonetheless, be admitted into evidence. I think that distinction between a statement obtained by coercion before or after December 30, 2005, is a distinction which is totally unsustainable. But I will get into that again in a moment.

But before I begin, because my friend, Senator GRAHAM, who is also on the floor now, and my friend from Virginia were not on the floor before—before I list a number of major differences with the pending bill that I and a number of others have with the pending bill—I want to again compliment my good friend from Virginia, Senator MCCAIN, and Senator GRAHAM because they had to withstand a huge amount of administration pressure to get the bill out of committee. It is a far better bill than the one which is now before us. That is why I am going to attempt to substitute it for the bill that is now before us. But, nonetheless, their effort has produced some significant gains over the administration language. I acknowledge that and I thank them for that effort before I proceed to offer the committee bill that is a substitute.

Mr. WARNER. Mr. President, will the Senator kindly yield for me to address his comments?

Mr. LEVIN. I am happy to.

The PRESIDING OFFICER. Without objection.

Mr. WARNER. Mr. President, the Senator has recited that our committee had a markup on a bill. That was after receiving from the administration its own bill. So in a sense, the Senate had before it two bills. Perhaps the formalities I will not go into. But the Senate had the administration's bill and the draft of the committee bill at the time we went into the markup.

The Senator referred to the administration's huge pressure, but those are matters we can go into at another time. But I want you to know the group I was working with, and other Senators, were working with the administration right up until the hours before the markup started.

As the Senator proceeds with his amendment, I am going to ask that the Senator from South Carolina, at the conclusion of your remarks on the amendment, be recognized for the purpose of giving his statement which, indeed, addresses the current bill in the context of the bill that was drafted by the committee, as I understand it from the Senator from South Carolina. And then we will proceed further with discussion on your bill.

We have 3 hours to consider matters here. But I point out, we have your substitute bill, which is basically a 60-minute proposition; the Rockefeller congressional oversight, which is 60 minutes; the Kennedy interrogation, which is 60 minutes; the Byrd sunset which is 60 minutes; and the Specter-Leahy habeas corpus—and I expect you might be a part of that habeas corpus amendment—which is 120 minutes.

Mr. LEVIN. If the Senator will yield?

Mr. WARNER. Yes.

Mr. LEVIN. Without losing his right to—

The PRESIDING OFFICER. Without objection.

Mr. LEVIN. The time limit on the substitute amendment is also 120 minutes.

The PRESIDING OFFICER. Correct.

Mr. WARNER. Yes, correct. I don't know if I stated that, but it should be here as a part of it.

Mr. LEAHY. Will the Senator yield, without losing his right to the floor?

Mr. WARNER. Yes.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. My understanding is the Senator from Vermont has an hour reserved on the bill, with up to 45 minutes of that on the Specter-Leahy habeas amendment.

Mr. WARNER. Mr. President, I would have to inquire of the Chair if the Chair has knowledge of that.

The PRESIDING OFFICER. That is not part of the agreement.

Mr. WARNER. Does the Senator from Michigan wish to address that request?

Mr. LEVIN. I know that I did ask unanimous consent to protect the Senator from Vermont for 45 minutes on the habeas amendment.

The PRESIDING OFFICER. The Senator from Michigan is correct. Under the consent agreement, 45 minutes has been reserved to the Senator from Vermont out of the leadership time.

Mr. LEVIN. That is on the bill itself. And on the habeas amendment, that would be up to you and Senator SPECTER—right?—to control.

Mr. LEAHY. No. Mr. President, I am confused by this. It was my understanding the Senator from Vermont had up to 45 minutes specifically reserved, not from anybody else's time, but from his own time, on the Specter-Leahy, et al., amendment, and a total—out of which the 45 minutes would have to come—of 1 hour on the bill. Is that incorrect?

Mr. WARNER. Mr. President, I would suggest the following to work our way through this: I call on the Chair to inform the Senate as to the time agreement which I understand has been agreed upon by our leaders.

The PRESIDING OFFICER. Under the previous order, there is to be 2 hours equally divided for the Levin amendment, 2 hours equally divided for the Specter amendment on habeas, 1 hour equally divided on the Rockefeller, Kennedy, Byrd amendments each; general debate is 3 hours equally divided, 90 minutes on each side, of which 45 minutes on the minority side had been allocated to the Senator from Vermont.

Mr. WARNER. At this time, I advise my colleagues that I would oppose any change to that unanimous consent and ask any Members who so desire to address the UC to do so to their respective leadership.

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

Mr. WARNER. Yes.

Mr. LEAHY. The senior Senator from Virginia has an absolute right to object to anything further. This is not what I understood had been agreed to. It is the unanimous consent that the Chair has so stated. I will not seek to change it. I don't suggest that it is the fault of the Senator from Virginia. This is not what I understood the agreement to be.

I ask unanimous consent that the senior Senator from Connecticut, Mr. DODD, be added as an original cosponsor to the Specter-Leahy habeas amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Virginia controls the floor.

Mr. WARNER. Do I see another Senator wishing to speak?

Mr. DORGAN. Mr. President, I ask unanimous consent to be added as an original cosponsor to the Specter-Leahy-Dodd amendment.

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

Mr. WARNER. Mr. President, I will yield the floor, and the Senator from Michigan will regain his right to the floor.

The PRESIDING OFFICER. The Senator from Michigan is recognized.

Mr. LEVIN. Mr. President, on September 14, the Senate Armed Services Committee favorably reported S. 3901, the Military Commissions Act of 2006, to the Senate floor with a bipartisan vote of 15 to 9. Supporters of the committee bill on both sides of the aisle emphasized that the bill met two critical tests:

First, that we would be able to live with the procedures we established if the tables are turned and our own troops were subject to similar procedures.

Second, that the bill was consistent with our American system of justice and would stand up to scrutiny on judicial review.

On the first point, the committee bill did not authorize departure from the requirements of the Geneva Conventions, did not authorize the abuse of prisoners in U.S. custody, did not authorize the use of testimony obtained

through abusive practices, because the standards for detention, interrogation, and trial in the bill were consistent with international norms. The bill contained no procedures that we could not live with if they were applied to our own troops who might be captured at some future time.

On the second point, the committee bill established legal procedures consistent with basic principles of the American system of justice, such as the right to examine and respond to all evidence presented, and the exclusion of unreliable categories of evidence, such as coerced statements. Because the bill took the approach outlined by the Supreme Court in the Hamdan case, a trial process based on rules and procedures applicable in trials by courts martial, subject to such exceptions as might be required by the unique circumstances of military and intelligence operations in an ongoing conflict, committee members could have confidence that these provisions would be upheld by the courts on appeal.

The committee bill was not brought to the Senate floor. Indeed, the majority leader reacted to the action of the Armed Services Committee by telling the press he would filibuster the bill if the Senate Armed Services Committee bill was brought to the Senate floor. Consequently, the three Republican Senators who had drafted the committee bill, Senators WARNER, MCCAIN, and GRAHAM, entered into negotiations with an administration that has been unrelenting in its determination to legitimize the abuse of detainees and to distort military commission procedures to ensure convictions.

The bill before us, which is the product of those negotiations, has been changed from the committee bill in so many ways that the bill is a very different bill from the one that was adopted by the Armed Services Committee. It is the Armed Services Committee bipartisan bill that I have now offered as a substitute to this new version that is being offered today.

Let me give you some examples of the differences between the committee-adopted bill and the bill that is before us. On coerced testimony, the committee bill prohibited the admission of statements obtained through cruel, inhuman, or degrading treatment. The bill before us prohibits the admission of statements obtained after December 30, 2005, through ''cruel, inhuman, or degrading treatment'' but inexplicably contained no such prohibition for such statements that were obtained before December 30, 2005.

As a result, military tribunals would presumably be free to admit, for the first time in U.S. legal history, statements that were extracted through cruel or inhuman practices.

By the way, on that issue, if anybody wants to read the actual difference in the way in which the December 30, 2005, date was provided in this bill as a dividing line between statements that could be admitted into evidence, although they were obtained through cruel and inhuman treatment, they can refer to sections 948(R)(c), on a statement obtained before December 30, 2005, the date of the enactment of the Detainee Treatment Act of 2005, which says:

> The degree of coercion in dispute may be admitted if the military judge finds the following: Totality of the circumstances renders the statement reliable in possessing sufficient probative value; and, 2, the interest of justice would best be served by the admission of the statement into evidence.

But subsection (d) reads:

> If the statement is obtained after December 30, 2005, the date of the enactment of the Detainee Treatment Act of 2005, the degree of coercion may be disputed and may be admitted under those same two circumstances.

It then adds a third finding that is required:

> That the interrogation methods used to obtain the statement do not amount to cruel, inhuman, or degrading treatment, prohibited by section 1003.

So if the statement is obtained after December 30, 2005, then if it is obtained through cruel and inhuman treatment, it is not allowable into evidence. But because that requirement is missing relative to statements obtained prior to December 30, 2005, presumably, even though a statement is obtained through cruel and inhuman treatment, it is nonetheless admissible into evidence if it meets the other two tests provided. That is an unsustainable provision. It would be the first time in American legal history that we would, in effect, be authorizing statements that were obtained through that type of coercion—cruel treatment, inhuman treatment—to be admitted into evidence. That is something we should not accept.

On the issue of hearsay, the committee bill permitted the admission of hearsay not admissible at trials by court-martial if direct evidence, which is inherently more probative, could be procured ''through reasonable efforts,'' taking into consideration the unique circumstances of the conduct of military and intelligence operations during hostilities.

The bill before us, unlike the committee bill, makes hearsay evidence admissible, unless the defendant can demonstrate that it is unreliable or lacking in probative value. Well, hearsay evidence is not only inherently unreliable, it is used to deprive the accused of the ability to confront the witnesses against him.

The approach taken by this bill not only relieves the Government of any obligation to seek direct testimony from its witnesses, it also appears to shift the burden to the accused by presuming that hearsay evidence is reliable, unless the accused can demonstrate otherwise.

Relative to search warrants, the committee bill provided that evidence seized outside of the United States shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant. The bill before us deletes the limitation to evidence seized outside of the United States. As a result, the bill authorizes the use of evidence that is seized inside the United States without a search warrant. I note that the chairman of the Judiciary Committee is on the floor. I particularly point out this provision to him—that because the words ''outside of the United States'' were deleted, the bill before us would allow into evidence, for the first time in history, I believe—it authorizes the use of evidence seized inside the United States without a search warrant. It is not limited to evidence seized from enemy combatants. It does not even preclude the seizure of evidence without a warrant from U.S. citizens. That is a major departure from the committee-adopted bill. It would appear to authorize the use of evidence obtained without a warrant, in violation of the United States Constitution.

The next problem I want to address is the definition of ''unlawful combatant.'' The committee bill defines the term ''unlawful combatant'' in accordance with the traditional law of war. The bill before us changes the definition to add a presumption that any person who is ''part of'' the associated forces of a terrorist organization is an unlawful combatant, regardless of whether that person actually meets the test of engaging in hostilities against the United States or purposefully and materially supporting such hostility.

In addition, the bill also adds a new provision which makes the determination of a Combatant Status Review Tribunal, CSRT, that a person is an unlawful enemy combatant, dispositive for the purpose of the jurisdiction of a military commission, even though CSRT determinations may be based on evidence that would be excluded as unreliable by a military commission.

We should not make those findings dispositive, particularly where the CSRT findings can be based on such very unreliable evidence.

Next is procedures and rules of evidence. The committee bill provided that the procedures and rules of evidence applicable in trials by general courts-martial would apply in trials by military commissions, subject to such exceptions as the Secretary of Defense determines to be ''required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need.''

So the committee bill starts with the courts-martial, the manual, and then says that the Secretary of Defense may make such exceptions as he determines are ''required by the unique circumstances of the conduct of military and intelligence operations or by practical need.''

This approach is consistent with the ruling in Hamdan. It builds in some flexibility to address unique circumstances arising out of military and

intelligence operations. The bill before us reverses the presumption, and instead of starting with the rules applicable in trials by court-martial and establishing exceptions, the Secretary of Defense is required to make trials by commission consistent with those rules only when he considers it practicable to do so. As one observer has pointed out, this provision is now so vaguely worded that it could even be read to authorize the administration to abandon the presumption of innocence in trials by military commission.

On the issue of habeas corpus, the habeas corpus provision in the committee bill stripped alien detainees of habeas corpus rights, even if they have no other legal recourse to demonstrate that they were improperly detained. It also stripped those detainees of any other recourse to U.S. courts for legal actions regarding their detention or treatment in U.S. custody.

If the substitute amendment we are offering is approved, a further amendment will be necessary to address the obvious problems with the committee habeas corpus amendment. That habeas corpus amendment is going to be offered in either event, whether or not the bill before us remains or whether or not the committee bill is substituted for it. But at least in the committee bill, the court-stripping provision was limited to aliens who were detained outside the United States. The bill before us expands that provision to eliminate habeas corpus rights and all other legal rights of redress for wrongs committed by aliens, including lawful permanent residents detained inside or outside the United States who have been determined by the United States to be enemies.

The only requirement under the bill before us is that the Government determines that the alien detainee is an enemy combatant, but the bill provides no standard for this determination and offers the detainee no ability to challenge it. Consequently, even aliens who have been released from U.S. custody, such as the detainee that the Canadian Government recently found was detained without any basis and subjected to torture, even those kinds of aliens, such as that Canadian citizen, would be denied any legal recourse as long as the United States continues to claim in a way which cannot be contested that they were properly held.

No matter how overwhelming the evidence, there is no way to contest it, and there is no legal recourse under the bill before us. That was not true of the committee bill.

The committee bill had lots of problems, in my judgment, on habeas corpus, but the bill before us, for the reasons I just outlined, goes way beyond what the committee bill provided.

As a result of these changes, the bill that is before us does not meet either of the two tests used by the majority of members at the Armed Services Committee markup. The two tests that are not met: The bill before us places our own troops at risk if others apply similar standards, and it is likely to result in convictions by military commissions that are overturned on appeal.

For example, the provision in the bill addressing coerced testimony would prohibit the use of statements that are obtained through cruel and inhuman treatment if those statements were obtained after December 30, 2005, but again, it inexplicably contains no such prohibition on statements obtained through those same methods prior to this date. This provision, in other words, expressly authorizes military commissions to consider evidence that was obtained through cruel and inhuman treatment of defendants and other witnesses.

By expressly omitting the principle that statements obtained through cruel and inhuman treatment of detainees should be precluded from evidence—even if they were obtained before December 30, 2005—this provision would set an absolutely unacceptable and frightening standard if the rest of the world adopts this same standard. This is a standard under which our own troops could be subjected to abuse and mistreatment of all kinds in order to force them to sign statements that would then be used to convict them of war crimes.

The provision also sets a standard which will be used by our terrorist enemies as evidence of U.S. hypocrisy when it comes to proclamations of human rights. Our failure to conclusively exclude statements obtained through cruel and inhuman methods are all too likely to be seen through much of the world as a confirmation of negative views of Americans and what we stand for and that have been shaped by their views of what happened at Abu Ghraib and Guantanamo.

The administration and its supporters have argued that our military judges can be counted on to exclude statements that are based on extreme forms of abuse. That may be; that may be. We have many fine military judges, and I share the hope that these judges will be willing to stand up for the humane treatment of detainees, even where Congress has failed to do so and even when the administration is unwilling to do so.

Indeed, our top military lawyers have told us that evidence obtained through coercive techniques is inherently unreliable. The Army Deputy Chief of Staff for Intelligence, LTG John Kimmons, said the same thing when he released the new Army Field Manual on interrogation procedures. He stated:

> No good intelligence is going to come from abusive practice. I think history tells us that. I think the empirical evidence of the last five years, hard years, tell us that. And moreover, any piece of intelligence which is obtained under duress . . . through the use of abusive techniques would be of questionable credibility.

I am hopeful that our military judges will likewise reject testimony that is obtained through abusive techniques as inherently unreliable and of questionable credibility.

However, our military judges cannot protect our troops in future conflicts. If an American soldier, sailor, airman, or marine is put on trial by a hostile power, he or she will not have an American military judge to stand up for his or her rights. Our troops will face foreign judges, and if the standard applied by those judges is similar to the one proposed in this bill for statements obtained prior to December 30, 2005, they are a lot less likely to get either fair treatment or fair trials.

If statements obtained through cruel and inhuman treatment of detainees are allowed into evidence, as this provision provides, any resulting convictions are unlikely to withstand scrutiny on judicial review in our own courts.

The Supreme Court specifically addressed this issue in the Hamdan case earlier this year. In that case, the Court pointed out that Common Article 3 of the Geneva Conventions prohibits the passing of sentences ''without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples.''

The Supreme Court concluded that ''[t]he regular military courts in our system are the courts-martial established by congressional statutes'' and ''can be 'regularly constituted' by the standards of our military justice system only if some practical need explains deviations from court-martial practice''; and the language requiring ''judicial guarantees which are recognized as indispensable by civilized peoples'' must require, at a minimum, that any deviation from procedures governing courts-martial be justified by ''evident practical need.''

The rules of evidence reviewed by the Supreme Court in the Hamdan case, such as the rules we are considering today, would have permitted the admission of statements obtained through coercion—other than torture—into evidence if a military commission determines the statements to be probative and reliable. The plurality opinion of the Court notes that under these procedures, ''evidence obtained through coercion [is] fully admissible.'' Similarly, Justice Kennedy's concurring opinion observes that the procedures in place ''make no provision for exclusion of coerced declarations save those 'established to have been made as a result of torture.' ''

The Supreme Court expressly rejected those procedures. The procedures established by the President, according to the Supreme Court, ''deviate from those governing courts-martial in ways not justified by any 'evident practical need,' and for that reason, at least, fail to afford the requisite guarantees'' that are recognized as indispensable by civilized peoples.

Like the procedures previously rejected by the Supreme Court, this bill

would make evidence obtained through coercion, other than torture, admissible, at least in the case of evidence obtained prior to December 30, 2005. Given that the Supreme Court has already struck down procedures that similarly failed to preclude coerced testimony once, it is surely likely that the Court will strike them down again. Whatever minimal due process may be required in the case of an alien enemy combatant, it certainly cannot be met by procedures that, as a majority of the Supreme Court has already determined, fail to provide the ''judicial guarantees which are recognized as indispensable by civilized people.''

We should also reject this provision because it is inconsistent with American values and what we stand for as a nation. During the Revolutionary War, the British mistreated many American prisoners. But as described by David Hackett Fischer in his book ''Washington's Crossing,'' General Washington ''ordered that . . . the captives would be treated as human beings with the same rights of humanity for which Americans were striving,'' and those ''moral choices in the War of Independence enlarged the meaning of the American Revolution.''

We have always believed that we hold ourselves to a higher standard than many other nations. Others may abuse prisoners; we do not. Others may engage in cruel and inhuman practices; we do not. Others may believe that the ends justify the means; we do not. It is contrary to what we stand for as a nation.

Former Navy general counsel Alberto Mora bravely fought against efforts by others in this administration to approve cruel and inhuman interrogation techniques. Mr. Mora explained his stand when he was awarded the 2006 John F. Kennedy Profile in Courage Award on May 22. He said:

> We need to be clear. Cruelty disfigures our national character. It is incompatible with our constitutional order, with our laws, and with our most prized values. Cruelty can be as effective as torture in destroying human dignity, and there is no moral distinction between one and the other. To adopt and apply a policy of cruelty anywhere within this world is to say that our forefathers were wrong about their belief in the rights of man because there is no more fundamental right than to be safe from cruel and inhuman treatment. Where cruelty exists, law does not.

If we enact this provision into law, giving a congressional stamp of approval to the use of cruel and inhuman methods to extract testimony from detainees, we will diminish ourselves as a people and, as Colin Powell stated in a recent letter to Senator MCCAIN, add to the world's doubts about the moral basis of our fight against terrorism.

The bill, as reported by the Armed Services Committee, will protect our troops, will be more likely to result in convictions that are upheld on appeal, and will be more in keeping with our values as a nation. That bill allows for interrogation, it allows for detention, it allows for prosecution, and it allows for conviction.

The issue isn't whether we interrogate or detain people. We are going to do it. We need to do it. The question is whether we do it in a way which is in keeping with our values, which is in keeping with rules we have established in the Army manual, for instance, for the treatment of people who are captured by our Army. It is whether we do it in a way that is in keeping with what we would insist others follow if they capture our people, what we insist upon in the committee substitute—that committee bill which we adopted on a bipartisan basis—our standards and rules for which we will argue if our people are captured or detained by others.

We cannot make the distinction this bill before us makes—that cruel and inhuman treatment which leads to a statement or confession is not going to be the basis for excluding a statement if that statement is made before December 30, 2005. Only after December 30, 2005, are statements excluded where they are the product of cruel and inhuman treatment. But before December 30, 2005, according to the bill in front of us now, those statements are not excluded unless they meet two other tests. We have to be very clear on this issue. After December 30, 2005, any of three tests, if met, will result in the exclusion of those statements but not before December 30, 2005, when we know as a fact that so much of the abuse took place.

So I urge our colleagues to support the substitute amendment. Again, I wish to make clear that this substitute amendment is the Senate Armed Services Committee bill which the chairman and others labored so hard to produce. It is a bill which avoids many of the pitfalls of the bill that is before us. I hope our colleagues will vote to substitute that bill for the pending language.

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

The PRESIDING OFFICER (Mr. MARTINEZ). Twenty-four minutes 10 seconds.

Mr. LEVIN. I thank the Chair, and I yield the floor.

Mr. WARNER. Mr. President, I was particularly taken by Senator LEVIN's reference to General Washington and what General Washington said with regard to prisoners. But we must be mindful that General Washington was facing the King's Army. Those were uniformed individuals. Those were individuals acting on behalf of the Crown. That is totally different—totally different—from what we as a nation and many other nations today are facing with these terrorists.

Consequently, as a part of the evolution of this extraordinary proliferation of terrorism across the world has come the definitions and terms relating to the unlawful enemy combatant—I repeat, unlawful—because those individuals are not wearing uniforms, they are not following any code of laws or conduct that has overseen much of warfare in the history of the world. They are not affiliated with any state. They are driven, in my judgment, by convictions, much of it religious convictions which are totally antithetical to their own religion, and willing to sacrifice their own lives to foster their ambitions and goals.

We expanded this definition of ''unlawful enemy combatant'' when we went from the committee bill to a bill that was worked on by, again, Senator MCCAIN, Senator GRAHAM, and myself, and in conjunction with the White House and our leadership and other colleagues.

It was pointed out to us that perhaps our bill is drawn so narrowly that we would not be able to get evidence and support convictions from those who are involved in hiding in the safe houses, wherever they are in the world, including here in the United States.

It is wrong to say that this provision captures any U.S. citizens. It does not. It is only directed at aliens—aliens, not U.S. citizens—bomb-makers, wherever they are in the world; those who provide the money to carry out the terrorism, wherever they are—again, only aliens and those who are preparing and using so many false documents.

There were a lot of categories which we, with the best of intentions, perhaps did not fully comprehend when we were working through that markup session. So at this time, I yield the floor because I see my distinguished colleague from South Carolina. I thank the Senator. He is recognized for his knowledge as an officer in the U.S. Air Force, a colonel who has practiced and studied military law for many years, and we are fortunate to have had his services and continue to have them in addressing this legislation.

I would also point out to my colleagues that Senator MCCAIN, who worked with us throughout this process, is away attending a funeral of a very dear and valued colleague, and he will be returning later this afternoon and will be fully engaged from that point on.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, I yield such time as he may consume to the Senator from South Carolina.

Mr. GRAHAM. Mr. President, I would like to return the compliment that Senator LEVIN gave to myself, Senator MCCAIN, and Senator WARNER. I have found Senator LEVIN and his staff to be very good to work with. Sometimes we reach agreement and sometimes we don't, but all the time we try. As to my staff, I appreciate the tons of time they have spent trying to give us the best product we can get in the legislative process that will adhere to our values and allow the war effort to move forward in an effective way.

As to the difference between the committee bill, which we wrote and supported, and the compromise we reached

with the White House, which we wrote and support, there are some differences. I think some of them we have addressed with Senator LEVIN's staff. They were very helpful. He found some language which was dropped inadvertently which made the bill stronger.

I would just like to suggest that whatever military experience I have had pales in comparison to the men and women who are in charge of today's military legal system. I am a reservist. I come in and out of military law. I spent 6½ years on active duty, and I really enjoyed my time. I dealt a lot in the court-martial process as a prosecutor and a defense attorney. But as a reservist and Guard member, it has been a part-time job. But those who do this full time supported the administration's proposal when it came to the admission of evidence by the military judge. I will, at an appropriate time, introduce that into the RECORD.

I believe the JAGs are a good source of advice. That doesn't mean they are the only source of advice. That doesn't mean that because the Judge Advocate Generals of all four branches say so, we need to do what they say. It would be wise to just listen, and I have tried to listen. Sometimes I agree; sometimes I don't. But they have said unanimously, it is my understanding, that the evidentiary standards in terms of admission of evidence, where the judge will determine whether the evidence is reliable and probative using the totality of circumstances to create justice, was a sufficient legal standard, and they were supportive of that standard. So this idea that we are going to allow coerced evidence into a trial purposely, that we made a conscious decision from the committee bill to the compromise to change course and take everything we had said before and just throw it over in a ditch, quite honestly, makes no sense.

Whatever motives you would like to attribute to the effort here, I can assure my colleagues I want to create a process that would be acceptable if our troops found themselves subject to it. And every military Judge Advocate, every admiral, and every general, believes the evidentiary standard in this committee bill is legally acceptable and appropriate.

Why the difference between December 30, 2005, and before? The reason we have a two-tiered system is because in 2005, due to the hard work of Senator MCCAIN and Senator LEVIN—who was a champion in trying to bring this about on the Democratic side—we were able to make a policy statement of the United States that says: Cruel and inhumane and degrading treatment as a policy will be forbidden. And we referenced the 5th, 8th, and 14th amendments standard called ''shock the conscience'' that existed in the convention on torture. All bills have excluded evidence that violates the torture statute. It is a per se exclusion. If the military judge, in their discretion, believes that the conduct in front of the court amounts to torture, in violation of the torture statute, it does not come into evidence.

The committee bill had a per se exclusion for a violation of the Detainee Treatment Act, and it has been changed, and here is why: The Detainee Treatment Act is a policy statement, not an evidentiary standard. The Detainee Treatment Act says that the Government and its agents and agencies will not engage in cruel, inhumane, and degrading treatment. I would argue that to exclude evidence in a military commission that may run afoul of degrading treatment would create a higher standard for a terrorist than our own military members have in their own courts-martial. So I think the policy statement ''cruel and inhumane and degrading'' should not be an evidentiary standard, and it is not.

But what we did do to bolster that policy statement is we took the 5th, 8th, and 14th amendment ''shock the conscience test'' and said: From the date of the Detainee Treatment Act forward, that will be an area that the judge has to make an inquiry into regarding the admission of evidence. The reason we didn't want to go backward is because before the Detainee Treatment Act passed in 2005, no one had recognized the 5th, 8th, and 14th amendment concepts applying to enemy combatants. So what we are trying to do is start over after Hamdan and incorporate into the military commission model as many protections as we can that also protect America. So going forward, from the Detainee Treatment Act forward, any evidence gathered after the Detainee Treatment Act will have to comply with the 5th, 8th, and 14th amendments requirements that make up the heart and soul of the Detainee Treatment Act. To make it retroactive and exclude statements where that concept was not known, was not part of our legal system regarding enemy combatants, in my opinion, was unwise.

So we are going forward, reinforcing the Detainee Treatment Act, and the standard of admission of evidence of reliable and probative meets the standards of justice and totality of the circumstances test, stays in place, covers all statements before and after. Our Judge Advocate Generals, to a person, have said that if you take the Detainee Treatment Act out of the equation, what is left still is acceptable. And the courts will make that decision.

I am confident that the standard that we had, the administration had when it came to the admission of evidence, was acceptable, and the judge advocates who have objected to many things did not object to that.

So the idea that we made a conscious decision to allow cruel and inhumane treatment to become a player defies what we did in totality.

The title 18, War Crimes Act, was rewritten. One of the crimes that we put in title 18 that would constitute a grave breach of the Geneva Conventions, a felony under our own law, is cruel or inhumane treatment: The act of a person who commits or conspires or attempts to commit an act intended to inflict severe or serious physical or mental pain or suffering, other than pain or suffering incidental to lawful sanctions, including serious physical abuse upon another within his custody or control. And we defined those terms. It is a felony in U.S. law to engage in cruel or inhumane treatment, not just torture. It is a felony in U.S. law to mutilate or maim.

What we did—intentionally causing serious bodily harm, rape, sexual assault or abuse, taking hostages—what we did is we took what the Geneva Conventions have defined as being a grave breach of the conventions, we put it in title 18 of the War Crimes Act, and made it a felony. So if you are a military member or CIA agent and you run afoul of the title 18 War Crimes Act, you can be prosecuted. When it comes time for the military judge to rule upon the admissibility of evidence in a military commission, the standard that we will be using has been blessed by every Judge Advocate General that we have, those in charge of our military legal system.

So I think it is a good standard. I think the fact that we put the DTA 5th, 8th and 14th amendment standard into the statute in a perfective way enhances and emboldens what we are trying to do with the DTA and will make us a better nation.

The other areas of concerns: enemy combatant definition. The enemy combatant definition that is changed from the compromise and committee bill allows us to, subject to military commission, try those people who intentionally and knowingly aid terrorism; materially support terrorism. To me, that makes sense. I want to prosecute the person who sells the guns to al-Qaida as much as the people who use the weapons. I want to go after the support network that supports terrorism. To me, that makes perfect sense. I am glad we expanded the definition because those who are assisting terrorists in a knowingly purposeful way should be held accountable for their actions.

Under no circumstance can an American citizen be tried in a military commission. The jurisdiction of military commissions does not allow for the trial of American citizens or lawful combatants, and those who say otherwise, quite frankly, have not read the legislation because there is a prohibition to that happening.

The hearsay rules that are in the compromise very much mirror the committee bill, but that we are allowing a burden shift, to me, makes sense given the global nature of the war. I can spend a lot of time explaining the differences between the two bills, but I will basically summarize by saying that the purpose of the committee bill has been met by the compromise. If it were not so, I would not vote for it. We are not allowing into evidence coerced

statements unless the judge makes the decision they are reliable, probative, and in the totality of circumstances they meet the ends of justice.

At the end of the day you are going to have a judge applying a legal standard to a request to admit evidence. The administration, in my opinion, in their first product, was trying to legislate a conviction. In many ways they were trying to set up the rules when it came to the military commission format that would allow evidence to go to the jury never seen by the accused. That would make it very hard to defend yourself.

We have changed that. Anything the jury gets to convict, the accused can examine and rebut. To me, that was a huge accomplishment that put the trials back on sound footing within our value system, and legally I think they will pass muster now.

So at the end of the day, in my opinion we do not need to try to legislate how the judge should rule. Everybody has their pet peeve about where the administration has failed or succeeded, about how the CIA has conducted its business. I have found an effort to tie the judges' hands to the point that we have no flexibility when it comes to admitting evidence. The judge is in the best place—better than anybody here—to make a decision as to what should come into that trial. What are we asking the judges to do? To use their experience, their knowledge of the law, their sense of right or wrong to determine: Is that statement reliable? Is it probative? Given everything around it, would the interests of justice be met if it came into the trial?

That is an acceptable legal standard, not only to every Judge Advocate General who serves today in our military, it should be a standard that every American is proud of because I am proud of it.

I bet you dollars to doughnuts when the Supreme Court gets hold of our work product they are going to approve it.

Finally, Hamdan is about applying the Geneva Conventions to the war on terror. Everybody I know of in the administration believed that the Geneva Conventions did not apply to these unlawful enemy combatants. I shared that belief. We were wrong. The Supreme Court—whether I agree or not—ruled. After their ruling, we had two things that we had to accomplish to get this country back on track within the rule of law. We had a challenge: to take the CIA interrogation program that existed and will exist and make sure that it was Geneva Conventions compliant.

What do the Geneva Conventions require of every country that signs the document? It requires that, domestically, that country will outlaw, within its own domestic law, grave breaches of the treaty. Every country has an affirmative duty to set out within their laws and prosecute their own people for grave breaches of the Geneva Conventions.

Title 18 is the War Crimes Act. Under title 18 we have listed nine crimes that would be considered grave breaches of the Geneva Conventions. To the CIA: Your program, whatever it may be in classified form, must comply with the War Crimes Act. And the War Crimes Act runs the gamut from torture to cruel, inhumane treatment, intentional infliction of serious bodily injury, or mental pain.

We have taken nine well-defined felonies and told the CIA and every other agency in the country: Whatever you do, if you violate these statutes you will be subject to being prosecuted.

I want a CIA program to be classified when it comes to interrogating high-value terrorist targets. I think it would be foolhardy to tell the terrorist community everything that comes your way when you join al-Qaida or some other terrorist organization. But it is important to tell every American, every CIA agent, their family, and the international community what we do will not only be within the Geneva Conventions, it is going to be beyond what the Conventions require, and I think we have accomplished that.

There are six specified events in article 129 and article 130 of the Geneva Conventions that constitute grave breaches. We have adopted all six, and we have added to that list. Whatever the CIA is doing and wherever they do it, whatever the Department of Defense is doing and wherever they do it, they now have the notice and the clarity that they did not have before to do their job within the law.

This idea that we have rewritten the statute and given immunity to people who have violated the statute is absurd. There is nothing in the compromise or the committee bill that would give immunity or amnesty to someone who violated the felony provisions. But what we did do, that I am proud of, is that we took a 1997 War Crimes Act that was so ill-defined that no one understood it and gave clarity and purpose to it so those whom we are asking to defend us from the most vicious people in the world will have a chance to know the law.

Abu Ghraib was about policies that cut legal corners, that migrated from one side of the Government to the other, that got everybody involved confused as to what you could and could not do. It was a mixture of individual deviance and bad policy, poorly trained people, not enough folks to do the job, and not trained well enough to understand what the job was. It was a mess. For 2 years we have been trying—and I have been as helpful as I know how to be—to create some sense of balance to bring order out of chaos, and we are on the verge of doing it.

This is a product, not only that I support, that I had but one that I am proud of. Every military lawyer who sits on the top of our military legal system has had input on every issue. They have had the guts to go to the House and Senate and say some things about the President's proposal are flat wrong. That took a lot of guts, and I am here to tell you the final product took their input and what their concerns were and has been changed.

But if you want a CIA program that is not classified, you lost. I want the program to be classified. But I want it to run within the obligations of the Geneva Conventions, and we have accomplished that.

Finally, what did we do in the compromise that we didn't do in the committee bill? We said that every obligation under the Geneva Conventions that our country has, outside of the War Crimes Act, will be fulfilled by our President. Under our constitutional democracy, it is the obligation of the executive branch to implement and interpret treaties. This whole debate, what I have been working on for 2 weeks and getting beat up on in every talk radio show in the country, was about how can you comply with the Geneva Conventions in a way that will be seen by the world as not getting out of the Conventions.

The proposal for the Congress to redefine the treaty terms, in my opinion, would have created a precedent for every other country, in a war that they are in the middle of, to change the treaty in the middle of a war. The conventions have been closed for years. It would have been wrong, ill-advised for the Congress to sit down with the President and rewrite the treaty obligations for domestic purposes because clearly then we would have been changing the treaty terms without notifying the other parties.

What we did to avoid that is we, Congress, defined nine crimes that would constitute grave breaches, honoring our commitment under the Geneva Conventions, to outlaw grave breaches, felonies. We have done our job, and we turned to the Executive and said in this legislation: It is your job, Mr. President, consistent with our constitutional democracy, to implement and fulfill the obligations of the treaty outside of title 18. And when you make a decision, publish what you have decided. And any decision you make cannot take power away from the courts or the Congress that we have in the same arena.

Those people who want to overturn the election, who do not like President Bush, are upset that we recognized he has a role to play. Let me tell you, he does have a role to play. Any President has the same role that we are going to give President Bush—to implement a treaty, not change a treaty.

So I think we have done a very good job of putting into law our obligations under the Geneva Conventions defining, constitutionally, who has what responsibility so that no reasonable person could say the United States has abandoned its longstanding obligations to the Geneva Conventions because we have not. And that is what we have

been sweating over for weeks. No reasonable person can say that this compromise condones torture, cruel, or inhumane treatment because we make it a felony. What we have done is given the military judge the tools he or she will need to render justice. And I have tried to embolden and strengthen the Detainee Treatment Act in a way that I think makes sense.

The military court-martial system will be the model. The military commission will deviate. And the authority given to the Secretary is the same authority given to the President: to make differences between the district courts and the military justice system as a whole. It is compliant with article 36 of the Uniform Code of Military Justice. This compromise is compliant with Hamdan. It is compliant with the values we are fighting for. And it has the flexibility we need to fight an enemy that knows no bounds.

The work product is the result of give and take, is the result of being more than one branch of Government, is the result of having to deal with a court decision that was new and novel. I can say from my point of view that not only will I vote for the compromise, I am very proud of it.

I yield the floor.

Mr. WARNER. Mr. President, my distinguished colleague from South Carolina will be placing in today's RECORD the correspondence from the judge advocate generals. I think that is very important. I think for those following this debate, it would be of great interest to give an example of how in response to the letter sent by the distinguished Senator from Michigan to a judge advocate they respond. I ask unanimous consent to have printed in the RECORD first at this juncture a letter from Senator LEVIN to Bruce MacDonald, Judge Advocate General of the Navy, on this point of what we call the two categories of evidence.

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

U.S. SENATE,
COMMITTEE ON ARMED SERVICES,
Washington, DC, September 25, 2006.

Rear Admiral BRUCE MACDONALD,
The Judge Advocate General, Department of the Navy, Washington, DC.

DEAR ADMIRAL MACDONALD: The Senate will soon begin consideration of a bill entitled the Military Commissions Act of 2006, which would add a new Chapter 47A to title 10, United States Code, addressing trials by military commission. Section 948r of the proposed new chapter would address the issue of compulsory self-incrimination and statements obtained by torture or other methods of coercion.

Under this provision, a copy of which is attached, a statement obtained on or after December 30, 2005 through coercion that is less than torture would be admissible if the military judge finds that: (1) the totality of the circumstances renders it reliable and possessing sufficient probative value; (2) the interests of justice would best be served by admission of the statement into evidence; and (3) the interrogation methods used do not violate the cruel, unusual, or inhumane treatment of punishment prohibited by the 5th, 8th, and 14th Amendments to the United States Constitution.

Under the same provision, a statement obtained before December 30, 2005 would be subject to the first two requirements, but not the third. Consequently, a statement obtained before December 30, 2005 through cruel, unusual or inhumane treatment prohibited by the U.S. Constitution would be admissible into evidence, as long as the other conditions in the provision are met.

I would appreciate if you would provide your personal views and advice as a military officer on the merits of this provision and the impact that it would have on our own troops, should they be captured by hostile forces in the future. Because this issue will be debated on the Senate floor this week, I request that you provide your views by no later than the close of business on Tuesday, September 26, 2006.

Thank you for your assistance in this matter.

Sincerely,

CARL LEVIN,
Ranking Member.

DEPARTMENT OF THE NAVY, OFFICE OF THE JUDGE ADVOCATE GENERAL
Washington, DC, September 26, 2006.

Hon. CARL LEVIN,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEVIN: Thank you for your letter of September 25, 2006, requesting my personal views on the admissibility of coerced statements at military commissions.

My consistent position before the Congress is and has been that the presiding military judge should have the discretion and authority to inquire into the underlying factual circumstances and exclude any statement derived from unlawful coercion, in order to protect the integrity of the proceeding.

This approach is consistent with the practice of international war crimes tribunals sanctioned by the United States and United Nations and addresses the concern regarding reciprocal treatment of U.S. armed forces personnel in present or future conflicts.

Sincerely,

BRUCE MACDONALD,
Rear Admiral, JAGC, U.S. Navy.

Mr. WARNER. Mr. President, it is a clear indication by those who are currently given the responsibility of defending the men and women of the United States military how this provision in the bill now before the Senate is consistent with their understanding of international and domestic law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. WARNER. Mr. President, I inquire of our distinguished colleague, is he now drawing time on the Levin amendment?

The PRESIDING OFFICER. The Senator's time is from the Democratic leader's time on the measure itself.

Mr. LEAHY. Mr. President, how much time is there to the Democratic leader on this?

The PRESIDING OFFICER. The Senator from Vermont has 47 minutes; 45 minutes of the 57 minutes remaining to the Democratic leader.

Mr. LEAHY. Mr. President, as I said earlier, I understood that the consent agreement was to give me 45 minutes on the Specter-Leahy-Dodd amendment and 15 minutes on the bill. That seems to not have been the agreement entered into by leadership. I ask that I take 10 minutes from the Democratic leader's time and the remaining time from my own 45 minutes of time.

I see the concern by the Senator from Michigan. I will take it from my 45 minutes. I also note that I will not consent to any other time agreements on this bill insofar as the time agreement I understood I had was not entered into. I will take the 45 minutes.

Mr. President, this administration has yet to come clean to the Congress or the American people in connection with the secret legal justifications it has generated and secret practices it has employed in detaining and interrogating hundreds if not thousands of people in the war on terror. Even they cannot dismiss the practices at Guantanamo as the actions of a few ''bad apples.'' With Senate adoption of the anti-torture amendment last year and the recent adoption of the Army Field Manual, I had hoped that 5 years of administration resistance to the rule of law and to the U.S. military abiding by its Geneva obligations might be drawing to a close. Despite the resistance of the Vice President and the administration, the new Army Field Manual appears to outlaw several of what the administration euphemistically calls ''aggressive'' tactics and that much of the world regards as torture and cruel and degrading treatment. Of course, the President in his signing statement undermined enactment of the anti-torture law, and now the administration is seeking still greater license to engage in harsh techniques in connection with the military tribunal legislation before us now.

What is being lost in this debate is any notion of accountability. Where are the facts of what has been done in the name of the United States? Where are the legal justifications and technicalities the administration's lawyers have been seeking to exploit? Senator LEVIN's amendment, which restores the bipartisan legislation passed by the Senate Armed Services Committee, would maintain some accountability for this administration's actions and some standards of justice and decency. The Republican leadership's legislation which is before us now strips away all accountability and erodes our most basic national values.

If the administration had answered me when I asked over and over about the Convention Against Torture and about rendition, we could have come to grips with those matters before they degenerated, as they have, into international embarrassment for the United States. As Secretary Colin Powell wrote recently, ''The world is beginning to doubt the moral basis of our fight against terrorism.'' It did not need to come to that.

If FBI Director Mueller had been more forthcoming with me at or after the May 2004 hearing in which I asked him about what the FBI had observed at Guantanamo, we could have gotten to a detention and interrogation policy

befitting the U.S. years sooner than we have.

If the administration would have responded to my many inquiries over the years regarding the rendition of Maher Arar, I would not have had to send yet another demand for information to the Attorney General this week, and we would not have been embarrassed by the Canadian commission report about his being sent by U.S. authorities to Syria where he was tortured. Mr. Arar is the Canadian citizen who was returning to Canada through New York when he was arrested by American authorities at JFK airport and held for 12 days without access to a Canadian consular official or lawyer. He was then rendered, not to Canada, but to Syria, without the knowledge or approval of Canadian officials, where he was tortured. Last week, a Canadian commission inquiry determined that Mr. Arar had no ties to terrorists, he was arrested on bad intelligence, and his forced confessions in Syria reflected torture, not the truth. Sadly, the administration is still seeking to avoid accountability by hiding behind legal doctrines. The administration continues to thwart every effort to get to the facts, to get to the truth and to be accountable. I am worried that the legislation before us is one more example of that trend.

Unfortunately, Senator LEVIN's amendment, like the Armed Services Committee's bill, retains the extremely troubling habeas provision. I will be submitting an amendment to strip that provision.

We are rushing through legislation that would have a devastating effect on our security and on our values, and we need to step back and think about what we are doing. The President recently said that ''time is of the essence'' to pass legislation authorizing military commissions. Time was of the essence when this administration took control and did not act on the dire warnings of terrorist action. Time was of the essence in August and early September 2001 when the 9/11 attacks could still have been prevented. This administration ignored warnings of a coming attack and even proposed cutting the anti-terror budget. It focused on Star Wars, not terrorism. Time was of the essence when Osama bin Laden was trapped in Tora Bora.

After 5 years of unilateral actions by this administration that have left us less safe, time is now of the essence to take real steps to keep us safe from terrorism like those in the Real Security Act, S. 3875. Instead, the President and the Republican Senate leadership call for rubberstamping more flawed White House proposals in the run up to another election. I hope that this time the U.S. Senate will act as an independent branch of the government and finally serve as a check on this administration.

We need to pursue the war on terror with strength and intelligence, but also to do so consistent with American values. The President says he wants clarity as to the meaning of the Geneva Conventions and the War Crimes Act. Of course, he did not want clarity when his administration was using its twisted interpretation of the law to authorize torture, cruel and inhumane treatment of detainees and spying on Americans without warrants and keeping those rationales and programs secret from Congress. The administration does not seem to want clarity when it refuses even to tell Congress what its understanding of the law is following the withdrawal of a memo that said the President could authorize and immunize torture. That memo was withdrawn because it could not stand up in the light of day.

It seems that the only clarity this administration wants is a clear green light from Congress to do whatever it wants. That is not clarity; it is immunity. That is what the current legislation would give to the President on interrogation techniques and on military commissions. Justice O'Connor reminded the nation before her retirement that even war is not a ''blank check'' when it comes to the rights of Americans. The Senate should not be a rubberstamp for policies that undercut American values and make Americans around the world less safe.

In reality, we already have clarity. Senior military officers tell us they know what the Geneva Conventions require, and the military trains its personnel according to these standards. We have never had trouble urging other countries around the world to accept and enforce the provisions of the Geneva Conventions. There was enough clarity for that. What the administration appears to want, instead, is to use new legislative language to create loopholes and to narrow our obligations not to engage in cruel, degrading, and inhuman treatment.

In fact, the new legislation muddies the waters. It saddles the War Crimes Act with a definition of cruel or inhuman treatment so oblique that it appears to permit all manner of cruel and extreme interrogation techniques. Senator MCCAIN said this weekend that some techniques like waterboarding and induced hypothermia would be banned by the proposed law. But Senator FRIST and the White House disavowed his statements, saying that they preferred not to say what techniques would or would not be allowed. That is hardly clarity; it is deliberate confusion.

Into that breach, this legislation throws the administration's solution to all problems: more Presidential power. It allows the administration to promulgate regulations about what conduct would and would not comport with the Geneva Conventions, though it does not require the President to specify which particular techniques can and cannot be used. This is a formula for still fewer checks and balances and for more abuse, secrecy, and power-grabbing. It is a formula for immunity for past and future abuses by the Executive.

I worked hard, along with many others of both parties, to pass the current version of the War Crimes Act. I think the current law is a good law, and the concerns that have been raised about it could best be addressed with minor adjustments, rather than with sweeping changes.

In 1996, working with the Department of Defense, Congress passed the War Crimes Act to provide criminal penalties for certain war crimes committed by and against Americans. The next year, again with the Pentagon's support, Congress extended the War Crimes Act to violations of the baseline humanitarian protections afforded by Common Article 3 of the Geneva Conventions. Both measures were supported by a broad bipartisan consensus, and I was proud to sponsor the 1997 amendments.

The legislation was uncontroversial for a good reason. As I explained at the time, the purpose and effect of the War Crimes Act as amended was to provide for the implementation of America's commitment to the basic international standards we subscribed to when we ratified the Geneva Conventions in 1955. Those standards are truly universal: They condemn war criminals whoever and wherever they are.

That is a critically important aspect of the Geneva Conventions and our own War Crimes Act. When we are dealing with fundamental norms that define the commitments of the civilized world, we cannot have one rule for us and one for them, however we define ''us'' and ''them.'' As Justice Jackson said at the Nuremberg tribunals, ''We are not prepared to lay down a rule of criminal conduct against others which we would not be willing to have invoked against us.''

In that regard, I am disturbed that the legislation before us narrows the scope of the War Crimes Act to exclude certain violations of the Geneva Conventions and, perhaps more disturbingly, to retroactively immunize past violations. Neither the Congress nor the Department of Defense had any problem with the War Crimes Act as it now stands when we were focused on using it to prosecute foreign perpetrators of war crimes. I am concerned that this is yet another example of this administration overreaching, disregarding the law and our international obligations, and seeking to immunize others to break the law. It also could well prevent us from prosecuting rogues who we all agree were out of line, like the soldiers who mistreated prisoners at Abu Ghraib.

The President said on May 5, 2004 about prisoner mistreatment at Abu Ghraib: ''I view those practices as abhorrent.'' He continued: ''But in a democracy, as well, those mistakes will be investigated, and people will be brought to justice.'' The Republican leader of the Senate said on the same day: ''I rise to express my shock and

condemnation of these despicable acts. The persons who carried them must face justice.''

Many of the despicable tactics used in Abu Ghraib the use of dogs, forced nudity, humiliation of various kinds do not appear to be covered by the narrow definitions this legislation would graft into the War Crimes Act; of course, despite the President's calls for clarity, the new provisions are so purposefully ambiguous that we cannot know for sure. If the Abu Ghraib abuses had come to light after the perpetrators left the military, they might not have been able to be brought to justice under the administration's formulation.

The President and the Congress should not be in the business of immunizing people who have broken the law, making us less safe, turning world opinion against us, and undercutting our treaty obligations in ways that encourage others to ignore the protections those treaties provide to Americans. We should be very careful about any changes we make.

If we lower our standards of domestic law to allow outrageous conduct, we can do nothing to stop other countries from doing the same. This change in our law does not prevent other countries from prosecuting our troops and personnel for violations of the Geneva Convention if they choose; it only changes our domestic law. But it could give other countries a green light to change their own law to allow them to treat our personnel in cruel and inhuman ways.

Let me be clear. There is no problem facing us about overzealous use of the War Crimes Act by prosecutors. In fact, as far as I can tell, the Ashcroft Justice Department and the Gonzales Justice Department have yet to file a single charge against anyone for violation of the War Crimes Act. Not only have they never charged American personnel under the act, they have never used it to charge terrorists either.

We can address any concerns about the War Crimes Act with reasonable amendments, as the Warner-Levin bill did, without gutting the Act in a way that undermines our moral authority and makes us less safe. Senator LEVIN's amendment goes back to the Warner-Levin bill's formulation, and I urge Senators of both parties to support it.

The proposed legislation would also allow the admission into military commission proceedings of evidence obtained through cruel and inhuman treatment. This provision would once again allow this administration to avoid all accountability for its misguided policies which have contributed to the rise of a new generation of terrorists who threaten us. Not only would the military commission legislation before us immunize those who violated international law and stomped on basic American values, but it would allow them then to use the evidence gotten in violation of basic principles of fairness and justice.

Allowing in this evidence would violate our basic standards of fairness without increasing our security. Maher Arar, the Canadian citizen sent by our government to Syria to be tortured, confessed to attending terrorist training camps. A Canadian commission investigating the case found that his confessions had no basis in fact. They merely reflected that he was being tortured, and he told his torturers what they wanted to hear. It is only one of many such documented cases of bad information resulting from torture. We gain nothing from allowing such information. The Armed Services Committee bill, which the Levin amendment restores, would not allow the use of this tainted evidence.

The military commissions legislation departs in other unfortunate ways from the Warner-Levin bill. Early this week, apparently at the White House's request, Republican drafters added a breathtakingly broad definition of ''unlawful enemy combatant'' which includes people—citizens and non-citizens—alike—who have ''purposefully and materially supported hostilities'' against the United States or its allies. It also includes people determined to be ''unlawful enemy combatant'' by any ''competent tribunal'' established by the President or the Secretary of Defense. So the government can select any person, including a U.S. citizen, whom it suspects of supporting hostilities—whatever that means—and begin denying that person the rights and processes guaranteed in our country. The implications are chilling. We should go back to the reasonable definition the Senate Armed Services Committee came up with. That is what the Levin amendment does.

I hope that we will take the opportunity before us to consider and pass bipartisan legislation that will make us safer and help our fight on terrorism, both by giving us the tools we need and by showing the world the values we cherish and defend, the same values that make us a target. We should amend the legislation before us to keep the War Crimes Act strong and to require some accountability from the administration. The Levin amendment does just that, and I urge all senators to vote for it. Let us join together on behalf of real security for Americans.

Mr. President, before we stand here congratulating ourselves too much about all the wonderful things we did in these closed-door meetings and these back-room meetings and the Bush-Cheney statements about what we are allowed to do or not allowed to do in what has become an increasingly rubberstamp Congress—the most rubberstamp Congress I have ever seen in 32 years here—I want to talk about the habeas stripping provisions, what I call un-American provisions, which are regrettably in the bill before us and unfortunately contained in the committee bill, and even included in the amendment before us now. The Specter-Leahy-Dodd amendment will eliminate those provisions from the bill pending before the Senate.

It will be interesting to see whether the Bush-Cheney administration will allow Republican Senators to vote for it. Lord knows there have not been many votes made here that have been by independent Senators.

As currently drafted, section 7 of the military commissions bill would wrongfully, and in my view, unconstitutionally eliminate the writ of habeas corpus for anyone detained by this administration on suspicion of being what they call an ''enemy combatant,'' which is a dangerous concept that is being expanded by a vague and ever-expanding definition.

The President could basically say I think you are an enemy combatant, and lock you up, and you can't even contest it.

I think of the hundreds of pages of statements made by Senators on both sides of the aisle when other countries have done something this arbitrary, or this vague, and locked up people inside their borders, and we said how un-American it is. If we pass this, we can no longer call it un-American. We can call it codified American law.

Important as the rules for military commissions are, they will apply to only a few cases. In this war on terror, you may wonder how many people have been brought to justice. We are holding about 500 people in Guantanamo. We are so committed to this war that we have charged a total of 10 people in the nearly 5 years that the President declared his intention to use military commissions. That is two a year. They just announced plans to charge an additional 14 men. At this rate, I will be about 382 years old when they get around to charging all the people they are detaining. But for the vast majority of the almost 500 prisoners at Guantanamo, and the thousands it has detained over the last 5 years, the administration's position remains as stated by Secretary of Defense Donald Rumsfeld 3 years ago: There is no interest in trying them.

It is not just a question of we have no interest in trying those we have determined to be enemy combatants. If we have dozens and dozens or even hundreds of people who are picked up by mistake or turned over by bounty hunters to get the bounty and not because they might have done something, we are not going to try them either. Sorry, we are just going to lock them up.

Perhaps the single most consequential provision of the so-called military commissions bill can now be found buried nearly 100 pages in to curtail judicial review and any meaningful accountability. This provision would perpetuate the indefinite detention of hundreds of individuals against whom the Government has brought no charges and presented no evidence, without any recourse to justice whatsoever. Maybe some of them are guilty.

If they are, try them. But we have to understand that there may be people in there who have no reason to be there and there are no charges and no evidence. This is un-American, it is unconstitutional, and it is contrary to American interests. This is not what a great and wonderful nation should be doing.

Going forward, the bill departs even more radically from our most fundamental values. I am proud to be an American, and I am proud to be a Senator. But mostly I am proud of what has been in the past our American values. Provisions that were profoundly troubling a week ago when the Armed Services Committee marked up the bill have gotten much worse in the course of the closed-door revisions over the past 5 days, including the last round of revisions, which were put in behind closed doors and sent around late yesterday, and that the majority now demands we pass immediately. Five years they sit, doing nothing, and then all of sudden, whoops, the polls look bad this fall for the election: Quick, pass anything, no matter how unconstitutional it might be.

For example, the bill has been amended to eliminate habeas corpus review even for people inside the United States, and even for people who have not been determined to be enemy combatants. Quick, pass it; quick, do it now; quick, pass it out of here so we can rubberstamp it in a signing ceremony before anybody reads the fine print.

We have done this in the past. As a witness said before our committee this week, we did this in the past. We did it with the Tonkin Gulf Resolution. We did it with the internment of Japanese Americans. Now we are about to do it again.

As the bill now stands, it would permit the President to detain indefinitely—even for life—any alien, whether in the United States or abroad, whether a foreign resident or a lawful permanent resident, without any meaningful opportunity for that person to challenge his detention. The administration would not even need to assert, much less prove, that the alien was an enemy combatant; it would suffice to say that the alien was awaiting a determination on that issue, even though they may wait 20, 30, 40 years and wait until the grave gives them their escape.

In other words, the bill would send a message to the millions of legal immigrants living in America, participating in American families, working for American businesses, and paying American taxes. Its message would be that our Government may at any minute pick them up and detain them indefinitely without charge and without any access to the courts or even to military tribunals unless and until the Government determines that they are not enemy combatants—even though they have no ability to help in that determination themselves. In turn, the bill now defines the term enemy combatants in a tortured and unprecedented broad manner.

Detained indefinitely, and unaccountably, until they are proven innocent; even though they have no right to stand up and offer proof. It is like the Canadian citizen Maher Arar, shipped off to a torture cell in Syria by the Bush-Cheney administration, despite what the Canadian Government recently concluded, that there is no evidence that he ever committed a crime or posed a threat to either the United States or Canadian security. Pick him up. He looks bad. Ship him to Syria. Torture him. Maybe he will confess to something and prove we were right.

Now it has been documented the Bush-Cheney administration did the wrong thing to the wrong man. When asked about it, what do they do? As usual, they evade all accountability. This is an administration that makes no mistakes. A rubberstamp Congress will never ask them what they did, they make no mistakes, and they hide behind a purported State secrets privilege.

The administration's defenders would like to believe Mr. Arar's case is an isolated blunder, but it is not. We have numerous press accounts that have quoted administration officials themselves who believe a significant percentage of those detained at Guantanamo Bay have no connection to terrorism. They have been held by the Bush-Cheney administration for several years and the administration intends to hold them indefinitely without trial or any recourse to justice, even though a substantial number of them are innocent people who were turned in by anonymous bounty hunters or picked up by mistake in the fog of war.

The most important purpose of habeas corpus is not to give people extra rights. No one is asking to give people special rights. Habeas corpus does not do that. Habeas corpus is intended to correct errors such as this to protect the innocent. It is precisely to prevent such abuses that the Constitution prohibits the suspension of the writ of habeas corpus ''unless when in cases of rebellion or invasion public safety may require it.''

I would assume the Bush-Cheney administration is not saying we are handling this question of terrorists so poorly that we are under invasion now. And I have no doubt this bill, which will permanently eliminate the writ of habeas corpus for all aliens within and outside the United States whenever the Government says they might be enemy combatants, violates that prohibition. I believe even the present Supreme Court, seven of the nine members now Republican, would hold it unconstitutional.

When former Secretary of State Colin Powell wrote of his concerns with the administration's bill, he wrote: ''The world is beginning to doubt the moral basis of our fight against terrorism.''

Talk to anyone who travels around the world anywhere, even among some of our closest allies, our best friends. We are asked, What are you doing? Have you lost your moral compass? And these are countries that faced terrorist attacks long before we did.

General Powell, former head of the Joint Chiefs of Staff, was right.

We have heard from current and former diplomats, military lawyers, Federal judges, law professors, law school deans, and even a former Solicitor General under the first President Bush, Kenneth Starr, that they have grave concerns with the habeas corpus stripping provisions of this bill. I have letters that come from across the political and legal spectrum saying this is wrong.

I ask unanimous consent that some of these letters be printed in the RECORD.

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

SEPTEMBER 25, 2006.

To United States Senators and Members of Congress.

DEAR MADAMS/SIRS: This letter is written in the name of the former members of the diplomatic service of the United States listed below.

We urge that the Congress, as it considers the pending detainee legislation, not eliminate the jurisdiction of the courts to entertain habeas corpus petitions filed on behalf of those detainees.

There is no more central principle of democracy than that an officer of the executive branch of government may restrain no one except at sufferance of the judiciary. The one branch is vital to insure the legitimacy of the actions of the other. Habeas corpus is the ''Great Writ.'' It is by habeas corpus that a person—any person—can insure that the legality of his or her restraint is confirmed by a court independent of the branch responsible for the restraint. Elimination of judicial review by this route would undermine the foundations of our democratic system.

Weare told that the central purpose of our engagement in that ''vast external realm'' today is the promotion of democracy for others. All nations, we urge, should embrace the principles and practices of freedom and governance that we have embraced. But to eliminate habeas corpus in the United States as an avenue of relief for the citizens of other countries who have fallen into our hands cannot but make a mockery of this pretension in the eyes of the rest of the world. The perception of hypocrisy on our part—a sense that we demand of others a behavioral ethic we ourselves may advocate but fail to observe—is an acid which can overwhelm our diplomacy, no matter how well intended and generous. Pretensions are one thing; behavior another, and quite the more powerful message. To proclaim democratic government to the rest of the world as the supreme form of government at the very moment we eliminate the most important avenue of relief from arbitrary governmental detention will not serve our interests in the larger world.

This is the first and primary reason for rejecting the proposal. But the second is almost as important, and that is its potential for a reciprocal effect. Pragmatic considerations, in short, are in this instance at one with considerations of principle. Judicial relief from arbitrary detention should be preserved here else our personnel serving abroad

will suffer the consequences. To deny habeas corpus to our detainees can be seen as prescription for how the captured members of our own military, diplomatic and NGO personnel stationed abroad may be treated.

As former officials in the diplomatic service of our nation, this consideration weighs particularly heavily for us. The United States now has a vast army of young Foreign Service officers abroad. Many are in acute and immediate danger. Over a hundred, for example, are serving in Afghanistan. Foreign service in a high-risk post is voluntary. These officers are there willingly. The Congress has every duty to insure their protection, and to avoid anything which will be taken as justification, even by the most disturbed minds, that arbitrary arrest is the acceptable norm of the day in the relations between nations, and that judicial inquiry is an antique, trivial and dispensable luxury.

We urge that the proposal to curtail the reach of the Great Writ be rejected.

Respectfully submitted,

William D. Rogers, former Under Secretary of State; Ambassador J. Brian Atwood; Ambassador Harry Barnes; Ambassador Richard E. Benedick; Ambassador A Peter Burleigh; Ambassador Herman J. Cohen; Ambassador Edwin G. Corr; Ambassador John Gunther Dean; Ambassador Theodore L. Eliot, Jr.; Ambassador Chas W. Freeman, Jr.; Ambassador Robert S. Gelbard.

Ambassador Lincoln Gordon; Ambassador William C. Harrop; Ambassador Ulric Haynes, Jr.; Ambassador Robert E. Hunter; Ambassador L. Craig Johnstone; Ambassador Robert V. Keeley; Ambassador Bruce P. Laingen; Anthony Lake, former National Security Advisor; Ambassador Princeton N. Lyman; Ambassador Donald McHenry; Ambassador George Moore.

Ambassador George Moose; Ambassador Thomas M. T. Niles; Ambassador Robert Oakley; Ambassador Robert H. Pelletreau; Ambassador Pete Peterson; Ambassador Thomas R. Pickering; Ambassador Anthony Quainton; Helmut Sonnenfeldt, former Counselor of the Department of State; Ambassador Roscoe S. Suddarth; Ambassador Phillips Talbot; Ambassador William Vanden Heuvel; Ambassador Alexander F. Watson.

TO MEMBERS OF CONGRESS: The undersigned retired federal judges write to express our deep concern about the lawfulness of Section 6 of the proposed Military Commissions Act of 2006 (''MCA''). The MCA threatens to strip the federal courts of jurisdiction to test the lawfulness of Executive detention at the Guantanamo Bay Naval Station and elsewhere outside the United States. Section 6 applies ''to all cases, without exception, pending on or after the date of the enactment of [the MCA] which relate to any aspect of the detention, treatment, or trial of an alien detained outside of the United States . . . since September 11, 2001.''

We applaud Congress for taking action establishing procedures to try individuals for war crimes and, in particular, Senator Warner, Senator Graham, and others for ensuring that those procedures prohibit the use of secret evidence and evidence gained by coercion. Revoking habeas corpus, however, creates the perverse incentive of allowing individuals to be detained indefinitely on that very basis by stripping the federal courts of their historic inquiry into the lawfulness of a prisoner's confinement.

More than two years ago, the United States Supreme Court ruled in Rasul v. Bush, 542 U.S. 466 (2004), that detainees at Guantanamo have the right to challenge their detention in federal court by habeas corpus. Last December, Congress passed the Detainee Treatment Act, eliminating jurisdiction over future habeas petitions filed by prisoners at Guantanamo, but expressly preserving existing jurisdiction over pending cases. In June, the Supreme Court affirmed in Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006), that the federal courts have the power to hear those pending cases. These cases should be heard by the federal courts for the reasons that follow.

The habeas petitions ask whether there is a sufficient factual and legal basis for a prisoner's detention. This inquiry is at once simple and momentous. Simple because it is an easy matter for judges to make this determination—federal judges have been doing this every day, in every courtroom in the country, since this Nation's founding. Momentous because it safeguards the most hallowed judicial role in our constitutional democracy—ensuring that no man is imprisoned unlawfully. Without habeas, federal courts will lose the power to conduct this inquiry.

We are told this legislation is important to the ineffable demands of national security, and that permitting the courts to play their traditional role will somehow undermine the military's effort in fighting terrorism. But this concern is simply misplaced. For decades, federal courts have successfully managed both civil and criminal cases involving classified and top secret information. Invariably, those cases were resolved fairly and expeditiously, without compromising the interests of this country. The habeas statute and rules provide federal judges ample tools for controlling and safeguarding the flow of information in court, and we are confident that Guantanamo detainee cases can be handled under existing procedures.

Furthermore, depriving the courts of habeas jurisdiction will jeopardize the Judiciary's ability to ensure that Executive detentions are not grounded on torture or other abuse. Senator John McCain and others have rightly insisted that the proposed military commissions established to try terror suspects of war crimes must not be permitted to rely on evidence secured by unlawful coercion. But stripping district courts of habeas jurisdiction would undermine this goal by permitting the Executive to detain without trial based on the same coerced evidence.

Finally, eliminating habeas jurisdiction would raise serious concerns under the Suspension Clause of the Constitution. The writ has been suspended only four times in our Nation's history, and never under circumstances like the present. Congress cannot suspend the writ at will, even during wartime, but only in ''Cases of Rebellion or Invasion [when] the public Safety may require it.'' U.S. Const. art. I, §9, cl. 2. Congress would thus be skating on thin constitutional ice in depriving the federal courts of their power to hear the cases of Guantanamo detainees. At a minimum, Section 6 would guarantee that these cases would be mired in protracted litigation for years to come. If one goal of the provision is to bring these cases to a speedy conclusion, we can assure you from our considerable experience that eliminating habeas would be counterproductive.

For two hundred years, the federal judiciary has maintained Chief Justice Marshall's solemn admonition that ours is a government of laws, and not of men. The proposed legislation imperils this proud history by abandoning the Great Writ to the siren call of military necessity. We urge you to remove the provision stripping habeas jurisdiction from the proposed Military Commissions Act of 2006 and to reject any legislation that deprives the federal courts of habeas jurisdiction over pending Guantanamo detainee cases.

Respectfully,

Judge John J. Gibbons, U.S. Court of Appeals for the Third Circuit (1969–1987), Chief Judge of the U.S. Court of Appeals for the Third Circuit (1987–1990).

Judge Shirley M. Hufstedler, U.S. Court of Appeals for the Ninth Circuit (1968–1979).

Judge Nathaniel R. Jones, U.S. Court of Appeals for the Sixth Circuit (1979–2002).

Judge Timothy K. Lewis, U.S. District Court, Western District of Pennsylvania (1991–1992), U.S. Court of Appeals for the Third Circuit (1992–1999).

Judge William A. Norris, U.S. Court of Appeals for the Ninth Circuit (1980–1997).

Judge George C. Pratt, U.S. District Court, Eastern District of New York (1976–1982), U.S. Court of Appeals for the Second Circuit (1982–1995).

Judge H. Lee Sarokin, U.S. District Court for the District of New Jersey (1979–1994), U.S. Court of Appeals for the Third Circuit (1994–1996).

William S. Sessions, U.S. District Court, Western District of Texas (1974– 1980), Chief Judge of the U.S. District Court, Western District of Texas (1980–1987).

Judge Patricia M. Wald, U.S. Court of Appeals for District of Columbia Circuit (1979–1999), Chief Judge of the U.S. Court of Appeals for District of Columbia Circuit (1986–1991).

MALIBU, CA,
September 24, 2006.

Hon. ARLEN SPECTER,
Chairman, Senate Committee on the Judiciary, Washington, DC.

DEAR CHAIRMAN SPECTER: I write to express my concerns about the limitations on the writ of habeas corpus contained in the compromise military commissions bill, The Military Commissions Act of 2006 (S. 3930). Although S. 3930 contains many laudable improvements to military commission procedure, section 6 of the bill effectively bars detainees at the U.S. Naval Base at Guantanamo Bay, Cuba from applying for habeas corpus review of their executive detention. I am concerned that limitation may go too far in limiting habeas corpus relief, especially in light of the apparent conflict between the holdings of *Rasul* v. *Bush*, 124 S. Ct. 2684 (2004), and *Johnson* v. *Eisentrager*, 339 U.S. 763 (1950).

Although the *Rasul* Court limited its holding to statutory habeas rights, which may be limited by the Congress, the Supreme Court nevertheless viewed Guantanamo Bay, Cuba as a territory within the control and jurisdiction of the United States. Accordingly, the *Eisentrager* case may no longer be relied upon with confidence to rule out constitutional habeas protections for Guantanamo detainees. One of the *Eisentrager* factors that limited constitutional habeas rights for aliens in military custody was whether the detainee was held outside of the United States. Based on the finding of the *Rasul* case that Guantanamo Bay falls within U.S. territorial jurisdiction, Guantanamo detainees likely have a different constitutional status than the alien detainees in *Eisentrager*, who were held in Landsberg, Germany.

Article 1, section 9, clause 2 of the United States Constitution provides that ''[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.'' The United States is neither in a state of rebellion nor invasion. Consequently, it would problematic for Congress to modify the constitutionally protected writ of habeas corpus under current events.

I encourage the Senate Judiciary Committee to study the constitutional implications of S. 3930 on the habeas corpus rights of detainees in United States territory. Although no one wants the War on Terror to be litigated in the courts, Congress should act cautiously to strike a balance between the need to detain enemy combatants during the present conflict and the need to honor the historic privilege of the writ of habeas corpus. I thank you for holding a hearing on this topic and hope that it helps to strike that balance.

Sincerely,

KENNETH W. STARR.

Mr. LEAHY. Monday we rushed to hold a hearing before the Judiciary committee on this important issue, and what happens? The surrogate for the administration, former White House associate counsel Brad Berenson, who testified before us, defends the habeas corpus stripping provisions of this bill by arguing that the United States has been and still is suffering from an invasion that requires the suspension of habeas corpus.

What are we doing? What is going on? That is outrageous. That is running scared. That is so wrong. Is he saying that for 5 years this administration has been allowing an ongoing invasion in the United States and we are not aware of it? Are we going to suspend the great writ on this basis?

To quote Kenneth Starr:

The United States is neither in a state of rebellion nor invasion. Consequently, it would [be] problematic for Congress to modify the constitutionally protected writ of habeas corpus under current events.

I suppose the administration would say we are not modifying it. Heck, no, we are eliminating it. We are not modifying the writ of habeas corpus, we are knocking it out for all aliens.

I agree with those from the right to the left, we should not modify, and we certainly should not eliminate, the great writ of habeas corpus. I agree with hundreds of law professors who described an earlier, less extreme version of the habeas provisions of this bill as ''unwise and contrary to the most fundamental precepts of American constitutional tradition.'' And I agree with the former ambassadors and other senior diplomats who wrote to us saying that eliminating habeas corpus for aliens does not help America, it does not make America safer, but rather it harms our interests abroad and makes us less safe.

Maybe some of those who want to pretend how powerful they have been in military matters ought to talk to those who have been in the military and actually understand a time when we are reaping the mistakes of our folly in Iraq. Let us not expand it further. The United States, especially since World War II and the Marshall Plan, has been a beacon of hope and freedom for the world. How do we spread a message of freedom abroad if our message to those who come to America is that they may be detained indefinitely without any recourse to justice?

In the wake of the attack of September 11, and in the fact of the continuing terrorist threat, now is not the time for the United States to abandon its principles. Admiral Hutson was right to point out that when we do, there would be little to distinguish America from a banana republic or the repressive regimes against which we are trying to rally the world and the human spirit.

Now is not the time to abandon American values and to shiver and quake as though we are a weak country and we have to rely on secrecy and torture. We are too great a nation for that. Those are the ways of weakness. Those are the ways of repression and oppression. Those are not the ways of America. Those are not the ways of this Nation I love.

The habeas provisions of this bill are wrongheaded. They are flagrantly unconstitutional. Tinkering with them would not make them less wrongheaded but might make them less flagrantly unconstitutional. I see no reason to save the administration from itself and from the inevitable defeat when the Supreme Court strikes them down.

Why should those who take our oath to uphold the Constitution seriously, who understand the fundamental importance of habeas to freedom, find ourselves compromising with such an irresponsible provision?

That is why at the appropriate point the chairman of the Senate Judiciary Committee and I will offer just one amendment, to remove the habeas provisions from the bill in their entirety. That is the right thing to do. I should also add, that is the American thing to do. We would still be left with the disgraceful but less extreme habeas stripping provisions that we enacted earlier this year in the Detainee Treatment Act. But we would at least not make one bad mistake even worse. By not totally eliminating habeas for all aliens, we can reduce the damage to America's credibility as a champion of freedom and show the American people and the courts that Congress is not entirely cavalier when it comes to its constitutional obligations. We can show the world that this great Nation is not so frightened and so shaky and so quaky that we are going to have to give up the principles that made us a great nation.

Our amendment would reduce the grave harm that will be done if the bill before the Senate passes. It was not too late last night for the Republicans to make yet more revisions to this unconstitutional bill. It is not too late today for the Senate to make the bill a little less bad, a little less offensive to the values and freedom for which America stands.

This is one American who is not going to run and hide. This is one American who is not willing to cut down the laws of our Nation. This is one American who thinks these laws and our protections have made us great not only here but abroad. This is one American who thinks that our freedoms, our laws, our protections, are what attracted people from other countries, people from other countries who have fled oppression in their own country and fled a lack of rule of law in their own country, to come to America, where we have a rule of law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, we are anxious to go on with the matters before the Senate this afternoon in connection with this pending bill.

As I understand it, the amount of time remaining on the Levin substitute amendment is how much?

The PRESIDING OFFICER. The Senator from Michigan has 24 minutes 10 seconds; the Senator from Virginia has 24 minutes.

Mr. WARNER. It had been my hope we could set this amendment aside pending instructions from the leadership as to a time of vote and proceed to another amendment.

At this point in time, I see another colleague who is seeking recognition.

I yield the floor.

Mr. REED. Mr. President, I ask for 12 minutes from the time.

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

Mr. REED. Mr. President, we are engaged in a very important debate about the way we will bring to justice very heinous individuals who committed terrorism. I will put in context first what I think the situation is.

First, our most essential mission in the war on terror is to find these individuals, to attempt to capture them, and if they have refused to be captured, to take extreme measures to eliminate them as terrorist threats to the United States.

If they are in our hands as detainees or in any capacity, we have an obligation to interrogate them and we have to be consistent with international norms while also recognizing that as we treat people in our custody we can expect if our military personnel fall in the hands of a military power, they will be similarly treated. We must be very conscious of this.

But an important point that is often overlooked in the entire debate, all of the individuals we are talking about today—the 14 detainees at Guantanamo Bay and others—are enemy combatants. Under international law, they can be held indefinitely. There is a big difference between an individual who is an enemy combatant and someone who is in a criminal justice situation someplace else. Even if these individuals are acquitted of their crimes, they are still in the custody of the United States and still will remain in the custody of the United States.

So as we debate this issue of military tribunals, we have to recognize what we are talking about is not allowing people to walk out the door because our procedures are inadequate, because some clever attorney can take advantage of the rules of evidence. They will

never walk out the door. What we are talking about is whether we will have legitimacy to impose the most difficult sanction on an individual, the most severe sanction. To be consistent with our value as a nation, I believe we have to have procedures that are procedurally legitimate, that are fair and are perceived that way.

There is another issue here, not just in terms of our moral standing. It is a very practical one. I have suggested it before. How we treat these people will be the standard with which our military personnel will be treated overseas. We will surrender the right to condemn those people who may in the future hold our soldiers if they choose to use procedural gimmicks, if they want to stage show trials rather than real trials, if they want to punish an American fighting man or woman without any regard for the principles and practices of international law. That is, I think, the issue before us today.

The substitute Senator LEVIN has offered today is one we supported on a bipartisan basis in the committee. It was a strong, good bill. It represented not only our best principles, but it recognized that these principles could also and would also be applied in the future—we hope not—but certainly we have to recognize the possibility that American military personnel will be in the hands of hostile forces in the future.

The bill we had in the Armed Services Committee did things this legislation before us undoes. For example, the committee bill prohibited the admission of statements obtained through cruel, inhuman, or degrading treatment. The bill before us prohibits the admission of statements obtained after December 30, 2005, through ''cruel, inhuman or degrading treatment,'' but it contains no prohibition against using statements so obtained prior to December 30, 2005.

I do not think the Geneva Conventions were in abeyance up until December 30, 2005. I do not think the standards we should insist upon did not exist there. And very practically speaking, ask yourself, would we accept the response from a foreign power who said: Oh, of course, we are going to follow the Geneva Conventions. Of course we are not going to use abusive treatment to obtain a confession, prior to December 30, 2020 or 2015? I think this seriously weakens not only the legitimacy of this approach but also our ability to argue with compelling legal and moral force in the future that other nations have to play by the rules.

There are other provisions here in this bill, and there are many of them that I think alter dramatically what we accomplished on a bipartisan basis, what was applauded by General Powell and General Vessey and others.

For example, the committee bill provided that evidence seized outside of the United States shall not be excluded from trial by military commissions on the grounds the evidence was not seized pursuant to a search warrant. That was a very practical provision. We are not going to require a soldier, a special forces operator who is running through the woods of some foreign land, to produce a search warrant when he picks up valuable intelligence material.

But the bill before us deletes the limitation to evidence seized outside the United States. As a result, the bill authorizes the use of evidence that is seized inside the United States without a search warrant. This provision is not limited to evidence seized from enemy combatants. It does not even preclude the seizure of evidence without a warrant when that evidence is seized from United States citizens.

If you want an invitation to irresponsible conduct within the United States, disregarding our principles of justice and the Constitution of the United States, it might be found here because, frankly, we have the obligation to establish rules we can live with. No one is arguing with trying to create some type of situation in which a soldier has to pull out his Black's Law Dictionary and have his warrant and do all these things, but it is quite a bit different from police authorities here in the United States.

Additional problems with this bill: The committee bill, the one we supported in the Armed Services Committee, provided that the procedures and rules of evidence applicable in trials by general courts martial would apply in trials by military commissions, subject to such exceptions as the Secretary of Defense determines to be ''required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need.'' Establish a rule saying: Listen, we are going to use the procedures for courts martial except if the Secretary says there is some expedient circumstance. Because of hostilities, we have to make changes. This approach is consistent with Hamdan and the Supreme Court.

The bill before us reverses the presumption. Instead of starting with the rules applicable in trials by courts martial as the governing provision, and then establishing exceptions, the Secretary of Defense is required to make trials by commission consistent with those rules only when he considers it is practical. The exception has swallowed up the rule.

As one observer has pointed out, this provision is now so vaguely worded that it could even be read to authorize the administration to abandon the presumption of innocence in trials by military commissions, with the claim that military expedience requires a determination that the individual is guilty, and then he or she may prove their innocence. That, I think, is a significant retreat from the standards we established.

There is another major issue here that is so important, and it is often confused; and that is with respect to Common Article 3. In Hamdan, the Supreme Court held that Common Article 3 applies to all members of al-Qaida, terrorists, anyone who comes into our control, not only in the areas of fair trials, but also in the areas of treatment.

But I want to clarify this because this is often, I think, distorted and perhaps deliberately so. Many opponents of this legislation have stated that ''terrorists should not be given the same rights as our military personnel.'' What they are, I think, imprecisely but deliberately, perhaps, suggesting is that we are attempting to treat these individual terrorists as prisoners of war. And that is not the case. There are four Geneva Conventions. The first two protect sick and injured soldiers. The fourth protects civilians in areas of hostilities.

The third convention—not the third Common Article—the third Geneva Convention deals with prisoners of war, our soldiers who fall into the hands of hostile forces. These provisions are very clear about how POWs must be treated. You only have to give your name, rank, and serial number. That is it. Beyond that, there is no question. You cannot have any mental or physical coercion. ''[P]risoners of war who refuse to answer may not be threatened, insulted, or exposed to any unpleasant or disadvantageous treatment of any kind.''

That is the way soldiers should be treated—all of our soldiers. But the Supreme Court never said that is the way we have to treat these terrorists. What they said is Common Article 3, which is in every Convention. It establishes a general baseline of the treatment of individuals. POWs are treated at a much higher status because of their uniformed participation in armed conflict, because of their discipline, because of the fact that we expect them to follow rules, too. But people who fall into our hands who are enemy combatants do not deserve that treatment. They are not going to get it here. But they have to be afforded Common Article 3 protection. It has been described as ''a convention within a convention.''

Common Article 3 of the Geneva Conventions mandates that all persons taking no active part in hostilities, including those who have laid down their arms or been incapacitated by capture or injury, are to be treated humanely and protected from ''violence to life and person,'' and any ''outrages upon personal dignity, in particular, humiliating and degrading treatment.'' Anyone in our custody has to be afforded the protections of Common Article 3.

The PRESIDING OFFICER. The Senator has used 12 minutes.

Mr. REED. Mr. President, I know there are others who wish to speak. I ask unanimous consent for 2 additional minutes to simply summarize.

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

Mr. REED. We have to follow Common Article 3. However, the bill we are

considering today authorizes the President to interpret the Geneva Conventions and provides that such interpretations ''shall be authoritative . . . as a matter of U.S. law, in the same manner as other administrative regulations.'' I think we are verging on a situation where the President, by definition, by clarification, and by regulation, could eviscerate these Common Article 3 protections.

As I mentioned before, Secretary Powell and others have stated this is the core ideal, principle, we have to use in dealing with all of these individuals.

Let me simply conclude, there is, I think, the presumption here that if we do not establish procedures that basically make it a slam dunk case, that we somehow are going to see these terrorists walk away, snub their noses at us, and start actively conspiring against us again.

They will never see the light of day. No President will release these individuals. And no President will be forced under any international law to do so. But we will be judged whether, when we impose punishment—not detention, punishment—on these individuals, we have done it according to our principles that we can argue before the world and the American people represent our values; and we can insist that other nations that may hold our forces or civilians abide by the same principles. That is the issue here today. That is why I support Senator LEVIN's substitute amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. COBURN). Who yields time?

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

The PRESIDING OFFICER. Ten minutes 16 seconds.

Mr. LEVIN. Mr. President, I yield 9 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 9 minutes.

Mr. BINGAMAN. Mr. President, I thank my colleague from Michigan for yielding me time and I also thank him for bringing forth this amendment.

I strongly support his proposal, essentially, to take the legislation, the agreement that was worked out in the Armed Services Committee by our colleagues, and to substitute that for what is now before us.

This overall military commissions bill has three general areas of focus: first, the rules pertaining to the interrogation of prisoners; second, the procedures we should have in place for the trial of individuals who are brought before military commissions; and, third, the rights of those prisoners who under this bill will continue to be held without being charged at Guantanamo or elsewhere in the world, or even in this country.

Let me take a moment to briefly comment on these first two issues before I discuss the third issue, which I believe has not received the attention that it deserves.

With regard to interrogation techniques, I have been deeply troubled by the administration's insistence on weakening the prohibition on the use of torture and cruel and inhumane treatment. I strongly believe that we can give our military and intelligence officers the tools they need to protect the American public without abandoning our basic decency. The use of torture and other abusive techniques are not only morally repugnant, but they are ineffective and do great damage to our Nation's credibility with respect to our commitment to human rights. They also put our soldiers at risk of being subjected to similar treatment.

Rather than redefining the Geneva Conventions to permit harsh interrogation techniques by the CIA, as the administration had proposed, the Republican compromise legislation retroactively revises the War Crimes Act so that criminal liability does not result from techniques that the United States may have employed, such as simulated drowning, exposure to hypothermia, and prolonged sleep deprivation.

Under the Detainee Treatment Act, which we passed last year to reaffirm the prohibition on torture, the military is clearly prohibited from engaging in torture or cruel, degrading or inhumane treatment, as specified in the recently issued Army Field Manual. However, under the bill we are debating today, the CIA would be allowed to continue to subject detainees to harsh interrogation techniques without fear of criminal liability. As the President has stated, the ''program'' can continue.

In essence, the legislation defines prisoner abuse and criminal liability in such a way that the administration is able to argue that it is complying with international and domestic legal restraints while at the same time continue to use techniques that amount to abuse under international treaty obligations.

There is also a fundamental lack of clarity with respect to what conduct this legislation forbids. For example, when asked if water-boarding is permitted under this bill, Senator MCCAIN has said that it would not be allowed. But if one asks the administration, it will only say CIA interrogation techniques are classified and that the bill allows the CIA to continue to use so-called alternative interrogation techniques—techniques which our military is prohibited from employing.

I think there is little doubt that these disturbing practices continue. This type of legal ambiguity has not served us well with respect to the treatment of detainees, and we should be taking this opportunity to provide greater legal clarity, not further muddying the water.

I am also concerned about the rules and procedures of the newly constituted military commissions. The bill permits statements allegedly derived through coercive means to be used if the statements are probative and were obtained prior to December 2005, which coincides with the enactment of the Detainee Treatment Act. Statements obtained after the enactment of the Detainee Treatment Act cannot be admitted as evidence if they have been derived through interrogation techniques that amount to cruel, unusual, or inhumane treatment as prohibited by the fifth, eighth, and fourteenth amendments to the U.S. Constitution. Essentially we are saying that you can't admit statements derived from coercive methods except for those statements derived when we were using coercive methods. Having these two different standards may be beneficial from the prosecution's perspective in terms of increasing the likelihood that statements will be found admissible, but it is not exactly the clarity we should have with regard to standards of justice.

There are also a variety of problems regarding the rules on hearsay, the appeals process, the definition and retroactive application of crimes, and the admission of secret evidence, among others. Overall, the rules and procedures contained in the proposed legislation fall short of the basic fairness required in any criminal trial.

I wish to talk about the provisions that relate to habeas corpus. One of the most disturbing provisions in the underlying legislation pertains to the disposition of those prisoners who will never be charged before a military commission or any court but who, instead, will be held indefinitely—or at least that option exists for our executive and our military to hold those individuals indefinitely in confinement.

The current bill endorses the administration's practice of designating people, including U.S. citizens, I would point out, as ''enemy combatants.'' It eliminates the ability of aliens—non-U.S. citizens—to bring habeas claims or other claims related to their detention or their treatment or their conditions of confinement.

Whereas the previous attempt to strip the Federal courts of jurisdiction over these individuals under the Detainee Treatment Act applied only to individuals held by the Department of Defense at Guantanamo, this current legislation applies to any alien who is detained by the United States anywhere in the world, including those who are held within the United States. The current language also makes it clear that the elimination of judicial review is retroactive. It applies to all cases involving the detention of individuals since September 11, 2001.

Various of my colleagues have already talked about the right of habeas corpus and its importance in our system of justice. Simply stated, the ability to file a writ of habeas corpus is the right of a person to challenge the legal basis for their detention.

Habeas, which is also known as the Great Writ, is one of the most fundamental protections against arbitrary

governmental power. This right dates back to the Magna Carta of 1215, and is enshrined in Article I, section 9, clause 2 of the U.S. Constitution. Filing a habeas petition doesn't entitle a person to a full-blown trial, but it does provide a means to ask whether the person's confinement is in compliance with the law. It doesn't confer any additional constitutional rights; it simply allows a person to ask whether their depravition of liberty is consistent with the Constitution.

One of the principal arguments proponents for removing this protection have put forward in the past was that maintaining habeas rights leads to unnecessary and frivolous litigation. The fact is that these arguments misconstrue the nature of habeas petitions. The reality is, in my view, that court-stripping provisions will not, in fact, lead to less litigation. For example, if this measure is passed, the courts will be forced to consider whether this provision amounts to a suspension of the writ of habeas corpus. If it is determined that it does suspend the writ of habeas corpus, the courts will determine whether the suspension clause of the Constitution has been satisfied. Our Constitution is very clear. It says Congress is afforded the authority to suspend habeas in cases of rebellion and invasion. At a time when our courts are open and functioning, I think a person would be hard-pressed to argue that public safety requires removing judicial review. One would be hard-pressed to argue that we are in a period of rebellion, or that we have suffered an invasion, as that phrase was intended by our Founding Fathers.

The one other issue, of course, that I think is important is that the Constitution gives Congress the power to suspend the writ. Here we are not just suspending the writ; this proposal is to abolish the writ, to permanently eliminate this right, this protection for this group of individuals. In my view, it makes more sense to simply allow the courts to hear the cases that are pending in the courts and determine the legality of the detention that is occurring. It makes more sense to do that than it does to litigate over whether those individuals who are incarcerated, in fact, have a right to have their cases heard.

If what the administration says is true and the indefinite imprisonment of individuals at Guantanamo or elsewhere is legal, then why does the administration continue to fight so hard to eliminate the ability of the courts to hear those cases? If these individuals are in fact ''the worst of the worst,'' which we have been assured, then why is it so difficult to provide some factual basis for continuing to detain them?

The likelihood is that some, and maybe many, of these prisoners have very little to do with terrorism. According to a 2002 CIA report, most of the Guantanamo prisoners ''did not belong there.'' According to a Wall Street Journal article earlier this year, an estimated 70 percent of the individuals held at Guantanamo were wrongfully imprisoned. BG Jay Hood, the former commander at Guantanamo, was quoted as saying, ''Sometimes, we just didn't get the right folks.''

I don't believe that all of those being held at Guantanamo are innocent. Clearly, they are not. Those who are a threat need to be held accountable for their actions, need to be tried before properly constituted military commissions or criminal courts. Those who are not a threat need to be released and returned to their country of origin. The point is that judicial review allows us to sort the good from the bad and focus our efforts on those who in fact do pose a threat to our country.

It is during times like these that our Founding Fathers envisioned habeas corpus rights needed to be preserved. If judicial review is not required as a matter of law, it makes sense from a policy standpoint to preserve these essential rights in the law. Having a court determine whether a person's detention by the executive branch is consistent with our Constitution and laws does not inhibit this Nation's ability to fight terrorism. To the contrary, ensuring that we are holding the right people not only allows us to focus on those who truly pose a threat, it also will help to reduce criticism in the world community that the United States is not complying with its own laws and Constitution.

In a letter I received from over 30 former diplomats, they stated:

> To proclaim democratic government to the rest of the world as the supreme form of government at the very time that we eliminate the most important avenue of relief from arbitrary governmental detention will not serve our interest in the larger world.

I agree with that statement.

It is also important to note that should the current habeas language be removed from the bill, Guantanamo prisoners would still be prohibited from bringing habeas claims in the future under current law. In the Rasul decision, the Supreme Court held that U.S. courts have jurisdiction to hear habeas claims of Guantanamo prisoners. Congress subsequently passed the Detainee Treatment Act, which contained the Graham-Levin compromise language regarding the elimination of habeas. Graham argued that the language was retroactive and barred all pending cases, and Levin argued that the language only eliminated cases initiated after the enactment of the act.

In assessing whether the Supreme Court had jurisdiction to hear the Hamdan case, the Court found that because congressional intent was unclear it would be inappropriate to view the statute as retroactive. As such, if the status quo is maintained, we would still have language on the books that prohibits any future habeas claims from being filed on behalf of Guantanamo prisoners. Although I disagree with the law as it currently stands, Senators should know that if the language in the existing bill is removed, this Congress has already drastically limited judicial review.

It is important to look at the big picture. As general matter, this bill puts in place procedures to try suspected terrorist by military commissions whereby the only ones who will have an opportunity to prove their innocence will be the high-level prisoners. The suspected low-level prisoners will continue to linger in indefinite imprisonment without charges. Before the previous military commissions were found unconstitutional, the administration charged approximately 10 detainees with crimes. None were ever tried. The President has indicated that he now intends to charge the 14 CIA prisoners, or at least some of them, under the newly constituted military commissions.

Therefore, the reality is that of the approximately 450 prisoners now at Guantanamo only about 25 will likely receive trials. Under the compromise legislation, the remaining prisoners, many of whom have been imprisoned for more than 4 years, will not be held accountable nor will they be able to prove their innocence—instead, they will be denied the right to challenge the legality of their continued confinement.

As Rear Admiral John Hutson, Rear Admiral Guter, and Brigadier General Brahms, pointed out in a letter to the Senate Armed Services Committee, the effect of this legislation would be to give greater protections to the likes of Khalid Sheikh Mohammed than to the vast majority of the Guantanamo detainees, who claim that they have nothing to do with al-Qaida or the Taliban.

Mr. President I ask unanimous consent that this letter be printed in the RECORD following my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered. (See exhibit 1.)

Mr. BINGAMAN. Most troubling of all, with this legislation Congress is giving its consent to the executive branch to continue to unilaterally designate individuals as enemy combatants and imprison them indefinitely. We are saying that the President can pick up whoever he wants, designate them an enemy combatant and hold them without substantive judicial review.

I know that many of my colleagues have worked to ensure that the military commission procedures comply with our international legal obligations under the Geneva Conventions and that our Nation's soldiers are not put at risk by diminished standards. I support these efforts, and believe that the trial of these suspected terrorists is long overdue. However, passing this flawed bill is not the solution.

Mr. President, this debate is about who we are as a people and whether we are going to continue to adhere to the rule of law and basic human rights. It

is about our fundamental values as a people. The U.S. Constitution was crafted by men who were keenly aware of the potential abuse that could result from providing the executive branch with unrestrained powers with respect to individuals' liberties. The Constitution was crafted to be relevant in the good times, as well as in the times when our Nation faces domestic or foreign threats.

It deeply concerns me that with this bill we are sanctioning the indefinite imprisonment of people without charges. This is wrong. Should this legislation pass as currently drafted, history will not look kindly on this mistaken endeavor.

Frankly, the notion that Congress is willing to provide the President with the authority to indefinitely imprison people without ever having to charge them is quite astonishing. What is more amazing is that the Senate appears prepared to do so after one brief hearing in the Senate Judiciary Committee on the issue and with little substantive debate on the Senate floor.

We must also remember that in establishing these military commissions we are not solving the Guantanamo problem. This legislation will result in a flurry of legal challenges. The administration's handling of detainee issues has brought us Guantanamo, Abu Griab, and a series of Supreme Court decisions rejecting the administration's legal positions. Let us not complicate the problem by enacting the provisions.

Mr. President, I yield the floor.

EXHIBIT 1

SEPTEMBER 12, 2006.

Senator JOHN WARNER,
Chairman, U.S. Senate Committee on Armed Services, U.S. Senate, Washington, DC.
Senator CARL LEVIN,
Ranking Member, U.S. Senate Committee on Armed Services, U.S. Senate, Washington, DC.

We find it necessary yet again to communicate with you about issues arising out of our policies concerning detainees held at Guantanamo Bay. It would appear that each time the U.S. Supreme Court speaks, efforts are taken to reverse by legislation the decision of the Court. We refer, of course, to the Supreme Court's *Rasul* and *Hamdan* decisions and to the provision in the Administration's proposed Military Commissions Act of 2006 that would strip the federal courts of jurisdiction over even the pending habeas cases that have been brought by the detainees at Guantanamo to challenge the basis for their detention. We urge you to reject any such habeas-stripping provision.

As we have argued and agreed since 9/11, it is necessary for Congress to enact legislation to create military commissions that recognize both the basic notions of due process and the need for specialized rules and procedures to deal with the new paradigm we call the war on terror. This effort must cover those already charged with violating the laws of war and those newly transferred to Guantanamo Bay.

But the military commissions we are now fashioning will have no application to the vast majority of the detainees who have never been charged, and most likely never will be charged. These detainees will not go before any commissions, but will continue to be held as ''enemy combatants.'' It is critical to these detainees, who have not been charged with any crime, that Congress not strip the courts of jurisdiction to hear their pending habeas cases. The habeas cases are the only avenue open for them to challenge the bases for their detention—potentially life imprisonment—as ''enemy combatants.''

We strongly agree with those who have argued that we must arrive at a position worthy of American values, i.e., that we will not allow military commissions to rely on secret evidence, hearsay, and evidence obtained by torture. But it would be utterly inconsistent, and unworthy of American values, to include language in the draft bill that would, at the same time, strip the courts of habeas jurisdiction and allow detainees to be held, potentially for life, based on CSRT determinations that relied on just such evidence. The effect would be to give greater protections to the likes of Khalid Sheikh Mohammed than to the vast majority of the Guantanamo detainees, who claim that they had nothing to do with al Qaeda or the Taliban.

We are on a course that should have been plotted and navigated years ago, and we might be close to consensus. We ask that, in the closing moments of your consideration of this vital bill, you restore the faith of those who long have been a voice for simple commitment to our longstanding basic principles, to our integrity as a nation, and to the rule of law. We urge you to oppose any further erosion of the proper authority of our courts and to reject any provision that would strip the courts of habeas jurisdiction.

As Alexander Hamilton and James Madison emphasized in the Federalist Papers, the writ of habeas corpus embodies principles fundamental to our nation. It is the essence of the rule of law, ensuring that neither king nor executive may deprive a person of liberty without some independent review to ensure that the detention has a reasonable basis in law and fact. That right must be preserved. Fair hearings do not jeopardize our security. They are what our country stands for.

Sincerely,

JOHN D. HUTSON,
Rear Admiral, JAGC, USN (Ret.).
DONALD J. GUTER,
Rear Admiral, JAGC, USN (Ret.).
DAVID M. BRAHMS,
Brigadier General, USMC (Ret.).

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, we are prepared to yield back the time on this side. First, I simply say to my colleagues that this has been a good debate. But I assure colleagues that the bill now before them has been very carefully reviewed by the Department of Justice, and I have even reached out to scholars—lawyers who I know have a considerable depth of knowledge about international matters as well as our own fabric of law as it relates to criminal prosecution. I myself served as assistant U.S. attorney for close to 5 years.

We bring before this Chamber a work product which we believe is consistent with international as well as domestic law. It strikes a balance. We have no intention to try to accord aliens engaged as unlawful combatants with all the rights and privileges of American citizens, but we recognize that they are human beings, and this country has standards that respect life and human beings. But at the same time, we are engaged in a war on terror. Let there be no mistake about that.

One of the challenges in this war on terror is with these individuals who are willing to act as human bombs. It doesn't have a lot of precedent. We have been very careful to try to strike a balance between the standards and principles that guide this Nation, at the same time recognizing that we need the tools to fight this war on terror—fighting it in a way that not only enables our men and women in the Armed Forces in forward deployments to carry out their missions but to preserve and protect us here at home from tragic incidents like we experienced on 9/11.

As I have worked through each of these provisions and consulted with my colleagues, I always bring up the images of 9/11. I think our President has done his best to try to prepare this Nation, in many ways, to protect ourselves from the repetition of that or any incident like it—a lesser incident or a greater incident. It is a constant challenge.

But the bill before this body represents our best product that we could achieve, working together and in consultation with a wide range of individuals who have an expertise in these complicated legal matters and can provide to us their own corroboration of our judgments as to how best to structure this legal document and strike the balance that we must between our standards of law and our recognition of international law. I think that is the hallmark of what Senators MCCAIN, GRAHAM, and myself set out to do—to make sure this Nation cannot be perceived as trying to rewrite in any way Common Article 3, which is the law of our land, I remind citizens who are following this debate. It is the international treaties to which we, with the advice and consent of the Senate and that of the President, acceded and signed, and it has become part of the law of the land. I am proud of the work we have done, certainly, in that complicated area, as well as others.

Mr. President, at this time, I am prepared to yield back all the time on this side and ask for the yeas and nays.

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

The yeas and nays were ordered.

Mr. LEVIN. Mr. President, there is no question that we have to fight the war on terrorism, and we can win that war, but we can do so without compromising the very principles that govern this Nation and have given us strength and attract us to so many other nations. Those principles are compromised in the bill before us. They were not compromised in the committee bill that passed on a bipartisan vote.

Here are two quick examples of how our basic principles are compromised

in this bill: Evidence shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant. In other words, in the United States of America, evidence can be seized from an American citizen, not an enemy combatant—it can be seized from any one of us without a search warrant and used in one of these trials. This language in the bill which is before us would authorize the use of that evidence so seized. That is a fundamental compromise with the principles that have governed this Nation. We have never allowed testimony and statements that have been obtained through cruel and inhuman treatment to be introduced into evidence. Yet that is the way the bill is written.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. LEVIN. Mr. President, I ask unanimous consent for 30 additional seconds to finish that statement.

Mr. WARNER. I have no objection.

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

Mr. LEVIN. I thank the Chair.

A second example of how a fundamental principle is compromised in the bill before us is, if a statement is obtained through cruel and inhuman treatment of somebody, for the first time in American jurisprudence, this bill would apparently say that statement is allowable in evidence if it was acquired before December 30, 2005. That is unlike statements that are acquired after December 30, 2005, where there are no ifs, ands, or buts, there are no other tests that need to be applied—if it was obtained through cruel and inhuman treatment, it is not admissible into evidence. That is a fundamental principle which is not followed for statements obtained before December 30, 2005, in the bill before us. That is another example of why the substitute, I hope, will be adopted, which is the committee bill—a bipartisan bill—that is now before us.

Mr. WARNER. Mr. President, I ask to reclaim about 6 minutes of my time so that I can engage my colleague in a colloquy.

The PRESIDING OFFICER. The Senator has that right and may reclaim his time.

Mr. WARNER. Mr. President, I wish to make clear that category of evidence cannot reach those established standards of torture. No evidence that was gained by means that are tantamount to the torture can be admitted.

Mr. President, I ask my colleague, am I not correct in that statement?

Mr. LEVIN. That is correct. That is not in dispute.

Mr. WARNER. Does the Senator concur in that statement?

Mr. LEVIN. I surely do. We are talking here about cruel and inhuman treatment.

Mr. WARNER. Correct, but the judge of the court is going to look at that evidence. We have set forth certain standards that have to be met, but one standard that judge cannot violate is the standard of torture. If that case can be made, then that judge has no ability to admit any evidence which is tantamount to torture. I ask my colleague, is that not correct?

Mr. LEVIN. The statement is correct. The issue, of course, which we are debating is why, relative to statements obtained prior to December 30, 2005, is another test omitted, which is present for statements obtained after December 30, 2005, which are statements that are obtained through cruel and inhuman treatment. That is the issue which I raised.

Mr. WARNER. Lastly, Mr. President, I ask my colleague, he makes reference to the illegal searches and seizures, which is the fourth amendment to the U.S. Constitution. That Constitution does not give protection to aliens who are the subject of these trials; am I not correct in that?

Mr. LEVIN. I think that is true. It may or may not protect aliens, but it does protect American citizens. And the language on page 21 does not protect American citizens from seizures that are illegal. It says:

> Anything which is seized without a search warrant is allowable into these trials.

It is not limited to material that is seized from aliens or material which is seized from enemy combatants. It says illegally obtained material can be admitted into this trial, period.

We had such a restriction in the bill which came out of committee so that it was limited to evidence which was seized abroad, for instance. That would be fine because they may not have the fourth amendment that we do. But in the bill which is now before us, there is no such limitation.

I will read the one sentence:

> Evidence shall not be excluded—

Shall not be excluded—

> from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or other authorization.

In the substitute bill, that allowance of illegally seized evidence is limited to evidence which is not seized from American citizens here. So that distinction has been obliterated in the bill which is before us.

Mr. WARNER. Mr. President, we have clearly debated it, but I want to make, in conclusion, the observation that no evidence which is the consequence of torture can be admitted. The aliens are not entitled to the constitutional provisions of the fourth amendment and, therefore, I urge our colleagues to think carefully through those arguments which we believe we have fully answered and carefully written this bill to be in conformity with our Constitution.

Mr. President, I yield back the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to amendment No. 5086. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Arizona (Mr. MCCAIN) and the Senator from Maine (Ms. SNOWE).

Mr. DURBIN. I announce that the Senator from Hawaii (Mr. INOUYE) is necessarily absent.

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

The result was announced—yeas 43, nays 54, as follows:

[Rollcall Vote No. 254 Leg.]

YEAS—43

Akaka	Durbin	Mikulski
Baucus	Feingold	Murray
Bayh	Feinstein	Nelson (FL)
Biden	Harkin	Obama
Bingaman	Jeffords	Pryor
Boxer	Johnson	Reed
Byrd	Kennedy	Reid
Cantwell	Kerry	Rockefeller
Carper	Kohl	Salazar
Chafee	Lautenberg	Sarbanes
Clinton	Leahy	Schumer
Conrad	Levin	Stabenow
Dayton	Lieberman	Wyden
Dodd	Lincoln	
Dorgan	Menendez	

NAYS—54

Alexander	DeWine	Martinez
Allard	Dole	McConnell
Allen	Domenici	Murkowski
Bennett	Ensign	Nelson (NE)
Bond	Enzi	Roberts
Brownback	Frist	Santorum
Bunning	Graham	Sessions
Burns	Grassley	Shelby
Burr	Gregg	Smith
Chambliss	Hagel	Specter
Coburn	Hatch	Stevens
Cochran	Hutchison	Sununu
Coleman	Inhofe	Talent
Collins	Isakson	Thomas
Cornyn	Kyl	Thune
Craig	Landrieu	Vitter
Crapo	Lott	Voinovich
DeMint	Lugar	Warner

NOT VOTING—3

Inouye	McCain	Snowe

The amendment (No. 5086) was rejected.

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

The motion to lay on the table was agreed to.

Mr. WARNER. Mr. President, the managers, working with our leadership, of course, have a designated number of amendments. My understanding at this time is that the Senator from Pennsylvania will be recognized for the purpose of proposing an amendment.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

AMENDMENT NO. 5087

(Purpose: To strike the provision regarding habeas review)

Mr. SPECTER. Mr. President, I call up amendment No. 5064.

The PRESIDING OFFICER. The Senator is advised we have No. 5087 at the desk?

Mr. SPECTER. The amendment which I seek to call up, Mr. President, is one which proposes to strike section 7 of the Military Commission Act entirely.

Mr. WARNER. Mr. President, if the Senator will yield for a moment, I ask

the Chair to recite the unanimous consent agreement with regard to the amendment of Senator SPECTER, the time limitation being?

The PRESIDING OFFICER. The amendment has 2 hours equally divided on it.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER], for himself and Mr. LEAHY, Mr. DODD, and Mr. FEINGOLD, proposes an amendment numbered 5087:

On page 93 strike line 9 and all that follows through page 94, line 13.

Mr. LEAHY. Mr. President, will the Senator yield for a couple of clarifications?

Mr. SPECTER. I do yield.

Mr. LEAHY. Mr. President, in stating the time, isn't there also the remainder of the time? I did not use my full 45 minutes this afternoon. Doesn't the Senator from Vermont have some remaining time on this amendment?

The PRESIDING OFFICER. The Senator from Vermont has remaining time on the bill.

Mr. LEAHY. How much time is that?

The PRESIDING OFFICER. The Senator from Vermont has 23 minutes on the bill.

Mr. LEAHY. Mr. President, am I correct that the amendment is offered on behalf of the distinguished senior Senator from Pennsylvania and myself, the distinguished senior Senator from Connecticut, and the distinguished Senator from Wisconsin, Mr. FEINGOLD?

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

Mr. LEAHY. I ask and also the distinguished Senator from North Dakota, Mr. DORGAN.

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

Mr. REID. If the Senator from Pennsylvania will yield just for a question?

Mr. SPECTER. I do.

Mr. REID. I have had conversations—I have not spoken with the Senator from Pennsylvania, but I have spoken with his staff on a number of occasions. I had the understanding that the Senator would be able to give Senator LEAHY a few minutes off of his time to speak on this amendment?

Mr. SPECTER. I will consider that, depending on how the argument goes. I appreciate very much the contribution of the distinguished ranking member. I do not know how many people on this side are going to seek time, but I do believe we can accommodate the request of Senator LEAHY. But I want to see how the argument goes before making a commitment.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, substantively, my amendment would retain the constitutional right of habeas corpus for people detained at Guantanamo. The bill before the Senate strips the Federal district court of jurisdiction to hear these cases. The right of habeas corpus was established in the Magna Carta in 1215 when, in England, there was action taken against King John to establish a procedure to prevent illegal detention.

What the bill seeks to do is to set back basic rights by some 900 years. This amendment would strike that provision and make certain that the constitutional right and the statutory right—but fundamentally the constitutional right of habeas corpus—is maintained. The core provision is contained in article I, section 9, clause 2 of the U.S. Constitution, which states:

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

We do not have either rebellion or invasion, so it is a little hard for me to see, as a basic principle of constitutional law, how the Congress can suspend the writ of habeas corpus in the face of that flat language. When you have an issue of constitutionality, how can constitutionality be determined and interpreted except in the Court?

We had a very extended discussion of this in the confirmation of Chief Justice Rehnquist, and the Chief Justice said that the Congress of the United States lacked the authority to remove the jurisdiction of the Federal courts on issues involving the first amendment.

The same thing would apply generally. It is a constitutional question. But here you have it buttressed in addition by an express provision by the Framers, focusing on the writ of habeas corpus in and of itself, and saying you can't suspend it, so that anyone who can make an argument about stripping jurisdiction—I don't think it lies on a constitutional issue generally because if it does, who is going to interpret the Constitution if the Court does not have jurisdiction? But the writ of habeas corpus is so important and so fundamental and so deeply ingrained in our tradition, going back to 1215 against King John, that the Framers made it expressed and explicit.

It appears to me that this is really dispositive and you don't really need several hours to develop it. But I shall proceed on the matter as to how we got where we are and what the Supreme Court has had to say in four major cases in the course of the last 18 months.

The Congress of the United States has the express responsibility under article I, section 8 of the U.S. Constitution to establish rules governing people captured on land and sea. But the Congress of the United States did not act after 9/11, and we had people detained at Guantanamo. Legislation was introduced by many Senators. Senator DURBIN and I introduced a bill. Senator LEAHY introduced a bill. Many Senators introduced legislation, but the Congress did not act on it. Congress did not act on it because it was too hot to handle. What resulted is what results many times—Congress punted. It didn't act, left it to the Supreme Court of the United States. That took a long time, to have these cases come through the judicial process.

Finally, in June of 2005 the Supreme Court ruled in three major cases: Hamdi v. Rumsfeld, Rasul v. Bush, and Rumsfeld v. Padilla. The Supreme Court of the United States rejected the argument of the Government that the President had inherent power under article 2 and could act on that constitutional authority, and the Supreme Court said that habeas corpus was effective.

In Rasul v. Bush, the Supreme Court said that it applied even to aliens. It didn't have to be a citizen; that the Constitution draws no distinction between Americans and aliens held in custody and said the writ of habeas corpus applied.

In the case of Hamdi v. Rumsfeld, Justice O'Connor had this to say: All agree that absent suspension, the writ of habeas corpus remains available to every individual detained within the United States.

That was held to apply to Guantanamo, since the United States controlled Guantanamo.

Justice O'Connor went on to say that under the U.S. Constitution, article I, section 9, clause 2:

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Justice O'Connor then goes on to delineate statute 2241, which sets the outline of the procedures, and then says habeas petitioners would have the same opportunity to present and rebut facts that court cases like this retain some ability to vary the ways in which they do so as mandated by due process.

What has happened in Guantanamo with respect to the proceedings under the Combat Status Review Tribunal, referred to as CSRT, demonstrates the importance of having some impartial judicial review to find what, in fact, has happened. These tribunals operate with very little information. Somebody is picked up on the battlefield. There is no record preserved as to what that individual did. If there was a weapon involved, it has been placed with many other weapons, and it can't be identified. The proceedings simply do not comport with basic fairness because the individuals do not have the right to know what evidence there is against them.

Repeatedly, the Combat Status Review Tribunal said the information is classified and the individual can't have it.

There was specific reference to the proceedings in the CSRT in the case action en re: Guantanamo Detainee Cases, 355 Fed. Sup. Section 443, 2005. The U.S. District Court for the District of Columbia criticized the way CSRTs required detainees to answer allegations based on information that cannot be disclosed to the detainees. The Court described what might be referred

to as a comical scene, where the detainee said he couldn't answer the allegations whether the detainee associated with a known al-Qaida operative because the tribunal could not provide the alleged operative's name.

The detainee said: Give me his name.

The tribunal said: I do not know.

The detainee said: How can I answer this?

The detainee's frustration reportedly led to laughter among all of the tribunal's participants. And the District Court then said:

> The laughter reflected in the transcript is understandable, and this exchange might have been humorous had the consequences of the detainee's enemy combatant status not been so terribly serious and had the detainee's criticism of the process not been so piercingly accurate.

How can you sanction that kind of a proceeding? If it is not a sham, it certainly is insufficient. As I reflect on it, it is more than insufficient. It is, in fact, a sham.

When it was apparent that both the committee bill and the administration's position was going to strike habeas corpus, the Judiciary Committee held on short notice a hearing on Monday. We had a distinguished array of witnesses appear. LCDR Charles Swift was present. The attorney who represented Hamdan before the Supreme Court gave very compelling evidence as to why habeas corpus was indispensable in order to have basic justice. Bruce Fein, ranking member of the Reagan administration in the Justice Department, was emphatic on his conclusion about the need to retain habeas corpus. The very distinguished retired U.S. Navy rear admiral, John Hutson, who is now the dean of the Franklin Pierce Law Center, testified about his experience and the importance of retaining habeas corpus. We called, as a matter of balance, other witnesses: David Rivkin and Bradford A. Berenson.

I commend to my colleagues the testimony of Thomas B. Sullivan, LCDR Charles D. Swift, Bruce Fein, David B. Rivkin, Jr., Bradford A. Berenson, and John D. Hutson.

Mr. President, the testimony that was given by Thomas B. Sullivan was especially poignant. Mr. Sullivan is a man in his late seventies. He was U.S. Attorney for 4 years in the late 1970s. He has a distinguished law practice with Jenner & Block. He has been to Guantanamo on many occasions and has represented many people who are detained in Guantanamo.

His testimony was, as I say, especially poignant when he said that long after all of those in the hearing room are dead, there would be an apology made if habeas corpus is denied, just as the apology was made after the detention of the Japanese in World War II being a denial of basic and fundamental fairness, where we in the United States pride ourselves on the rule of law.

He made reference to a number of individual cases where the proceedings before the Combat Status Review Tribunal were just totally insufficient, reflecting hearings where individuals were called in, they did not speak the language, they did not have an attorney, they did not have access to the information which was presented against them, and they were detained.

Mr. President, documentation presented to the committee speaks eloquently and emphatically about the procedures which lack the most fundamental of due process. These individuals did not know what their charges were; they were so vague and illusory, just like the detainee who was alleged to have an al-Qaida associate. They wouldn't even produce the man's name. How do you know what the charge is? Then they don't have attorneys. Then they don't know what the evidence is. It is classified, and they are not told what the evidence is.

This goes back, again, to Justice O'Connor's opinion where she says:

> Habeas petitioners would have some opportunity to present and rebut facts.

Well, how can you rebut facts when you do not know what the facts are? How can you rebut facts when the material is classified and you are not told what the alleged facts are? That is why it is so important that the courts be open.

I have had considerable experience with habeas corpus when I was a prosecuting attorney. When a habeas corpus petition is presented, it requires the government—the Commonwealth of Pennsylvania when I was DA—to take a close look at the case and to focus on it.

One of the matters that was inserted into the RECORD from Mr. Sullivan, after he filed the petition for a writ of habeas corpus and was proceeding to gather evidence to present it, he says:

> Several months ago without notice to me and without explanation, compensation, or apology, the United States Government returned Mr. Abdul-Hadi al Siba to Saudi Arabia.

So when the Government had to defend, apparently they found out what the case was about. When they had to find out what the case was about, they sent the detainee back to Saudi Arabia.

But here we have a very explicit statement by Justice O'Connor about the right to rebut the facts. It simply is not present in the proceedings which happened before the Combat Status Review Tribunal.

Kenneth Starr, formerly Solicitor General, formerly judge on the Court of Appeals for the District of Columbia, could not be present at our hearing on Monday but submitted this letter dated September 24. I will not read it in its entirety but only the first sentence where he says:

> I write to express my concerns about the limitation on writ of habeas corpus contained in the comprehensive military commissions bill.

Then, in the third paragraph, he cites article I, section 9, clause 2, which I have referred to, about the privilege being suspended only in the case of invasion or rebellion, and again notes the obvious—that we do not face either an invasion or rebellion.

Mr. President, how much time of my hour remains?

The PRESIDING OFFICER. The Senator has consumed 21 minutes.

Mr. SPECTER. Mr. President, that states the essence of the proposition.

I reserve the remainder of my time and yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. WARNER. Mr. President, if I could just use such time as I want, I will not take much because I am anxious for my colleagues to address this issue.

The distinguished Senator from Pennsylvania made the statement that they have constitutional rights. I wish to respectfully sort of differ with the Senator. The Supreme Court, in the Rasul case, ruled that rights of aliens held at Guantanamo Bay, Cuba, 28 U.S.C, 2241—the Court did not reach the question of the constitutional right of habeas corpus that applies to a U.S. citizen; of course, they being aliens. In the Rasul case, the Court interpreted the habeas corpus statute, section 2241, to apply to an alien held at Guantanamo Bay. That holding is based in large part due to the unique long-term lease that the Court took judicial notice of and other evidence brought before the Court, the long-term lease tantamount to U.S. territory.

For more than 50 years, the Court held that aliens in military detention outside the United States had no right to petition the Federal courts for review of their military detention. So I question whether you can elevate that to a constitutional status.

Mr. SPECTER. If I may respond, Mr. President, I didn't cite Rasul v. Bush for a constitutional proposition. I cited Hamdi v. Rumsfeld, and I cited the opinion of Justice O'Connor. But let me repeat it because it is the core consideration. She said:

> All agree that absent suspicion the writ of habeas corpus remains available to every individual detained within the United States. Of course, that does include Guantanamo.

Then Justice O'Connor goes on to say:

> United States Constitution, article I, section 9, clause 2, privilege of writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety requires it.

Then she says that all agree that suspension of the writ has not occurred here. Then she deals with the statute, 2241, and makes the comment that it sets the procedures, but Justice O'Connor puts detention in the Hamdi case squarely on constitutional grounds.

Mr. WARNER. There are a variety of divided opinions on that point.

At this time, I will regain the floor and discuss this issue. I am anxious to hear from my two colleagues, one from South Carolina and one from Texas, who seek recognition.

Mr. SPECTER. If I might be recognized.

Mr. WARNER. I yield the floor on my time.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, what the distinguished chairman says is accurate about Rasul, but you have Hamdi, which puts it on constitutional grounds. It is that simple.

I yield the floor.

Mr. WARNER. I yield such time as the distinguished Senator from South Carolina desires.

Mr. GRAHAM. Mr. President, this debate is a strength, not a weakness, in our country.

In my opinion, the fundamental question for the Senate to answer when it comes to determining enemy combatant status is, Who should make that determination? Should that be a military decision or should it be a judicial decision?

I am firmly in the camp that when it comes to determining who an enemy of the United States is, one who has taken up arms and who presents a threat to our Nation, that is not something judges are trained to do, nor should they be doing. That is something our military should do.

For as long as I have been a military lawyer, Geneva Conventions article 4, where it talks about a competent tribunal to decide whether a person is a civilian—lawful, unlawful, combatant—that competent tribunal has been seen in terms of military people making those decisions.

I have a tremendous respect for our courts. We will follow whatever they tell Congress to do because we are a rule-of-law nation, but this Congress has a role to play.

Unlike my chairman, Senator SPECTER, I believe the question before the Congress is not whether an enemy combatant noncitizen alien has a constitutional right to habeas corpus because I don't believe that is what the court has said. The issue for the Congress is whether habeas corpus rights should be given to an enemy combatant noncitizen under section 2241 and whether the military should make the determination of who an enemy combatant is versus judiciary.

What happens now is that when someone is brought to Guantanamo Bay, very shortly after they arrive, the military will create a combat status review tribunal that is supposed to be compliant with article 4 of the Geneva Conventions, a competent tribunal.

When we look at the history of competent tribunals, normally they are one person. We will have three people. Of the three people will be a military intelligence officer—and it could be other officers within our military who have expertise in determining what the battlefield situation is and who is involved with the enemy forces and who is not. That tribunal has an evidentiary standard to meet. The tribunal must make a finding by a preponderance of the evidence that the person before them indeed fits within the definition ''enemy combatant.'' There is a rebuttal of presumption in favor of the Government's evidence.

Our Federal courts will have the opportunity shortly to determine whether the combat status review tribunal is constitutional due process. The reason I say that is because under the Detainee Treatment Act we passed last year, every detainee at Guantanamo Bay will have their day in Federal court.

After the military renders their decision that they are an enemy combatant, as a matter of right each person can go to the DC Circuit Court of Appeals, and the Federal DC Circuit Court of Appeals will look at that case with two issues before them: Does this CSRT process, the annual review board, does it constitutionally pass muster as being adequate due process not only under the Geneva Conventions but under our Constitution to the extent it applies? Second, was the decision rendered by that board finding the person enemy combatant by the preponderance of the evidence—the standards and procedures involved, do they pass muster? And in the individual case, did they get it right? That is the structure for them to decide the issue set up in a constitutionally sound manner.

The reason I oppose my chairman, for whom I have great respect, is because the habeas process is a doctrine that is normally associated with criminal law, and we are in a war. The Japanese and German prisoners we interred in World War II never had access to our Federal courts to bring lawsuits against the people who confined them—our own troops—for a reason: it was a right not given in international law to an enemy prisoner, and it was not a right we gave to any prisoner we have held in the history of our country consciously as Congress.

The problem in this case is the Government argued that Guantanamo Bay was outside the jurisdiction of the United States. Why is it important? It is clear that our habeas statutes do not apply overseas. The Government lost that argument. Chairman SPECTER is absolutely right. The court said that for legal purposes, Guantanamo Bay falls within the confines of the United States. Section 2241, the habeas statute, unless Congress says otherwise, will apply to this environment.

Now it is time for Congress to decide, in its wisdom, whether the Federal courts should be determining who an enemy combatant is through a habeas action. Do we want that to reside in the military, where it has been for our whole history, and allow Federal courts to review the military decision, not substitute their judgment for the military?

It is not about who loves America and who is un-American. Mr. Sullivan came to my office yesterday. He is a lawyer representing detainees at Guantanamo Bay. He is a great American. He gave me four or five stories about how his client appeared before the Combat Status Review Tribunal, and he had nothing but bad things to say about the way his client was treated and the procedures in place.

Once a week, I get a call from somebody from South Carolina who says their family member was screwed in court. And then what I try to do is to make sure we listen to them respectfully but understand that there are a lot of complaints about any system.

Mr. Sullivan's complaints got me thinking, and I think there is a way to provide some remedies that do not exist now without substituting judges for military officers when it comes to wartime decisions. I will privately talk to him about that.

I urge this Senate to think in broad terms. Do we really want to allow the Federal judiciary to have trials over every decision about who an enemy combatant is or is not, taking that away from the military? Do we really want the people who have been housed by our military to bring every known lawsuit to man against the people fighting the war and protecting us?

I compliment Senator SPECTER because in this new version they take the conditions of confinement lawsuits off the table. There are 400-something cases that have been filed arising from Guantanamo Bay detention. There is a $300 million lawsuit against Secretary Rumsfeld. There are allegations that people do not get enough exercise. It goes on and on and on. Never in the history of warfare has the host country allowed an enemy prisoner to bring a court case against those people who are fighting the enemy on behalf of the host country. That needs to stop.

I am urging this Senate to dismiss under 2241 the right of habeas actions by enemy prisoners so that judges will not take the role of the military. Adopt anew what we did last year, allowing the military to use a process that I believe is Geneva Conventions compliant, and then some, and have as a backstop judicial review, where the DC Circuit Court of Appeals can review the military's decision. That way, we will have due process unknown to any other war. That will keep the roles of the responsible parties intact. The role of the military in a time of war, I earnestly believe, is to control the battlefield and to designate who is in bounds and out of bounds when it comes to the battlefield. The role of the courts in a time of war is to pass muster and judgment over the processes we create—not substituting their judgment for the military but passing judgment over the infrastructure the military uses to make these decisions.

The problem with this war—there is no capital to conquer, no navy to sink, no army to defeat. The people we are fighting owe an allegiance to an idea, not to a piece of property. They have no home to defend. They have an idea they would like to sell, and they are

selling that idea, whether you want to buy it or not. They are selling it in a very brutal way. They are trying to get good and decent people accepting their view of the world because they are terrified of the way the enemy behaves. This is a war unlike other wars in this regard. People do not wear uniforms, but the ideas the terrorists represent are not unknown to mankind. Hitler wore a uniform. He had the same view of mankind as these people do: there are some people not worth living because they are different.

We have to adjust, but we do not need to change who we are. I am not asking this Senate to change who America is because we are fighting barbarians. Quite honestly, we will never win this war if we move in their direction. Our goal is to get the world to move in our direction by practicing what we preach.

I believe the way to balance the interests of our need to protect ourselves and to adhere to the rule of law is to apply the law of armed conflict, not criminal law.

The act of 9/11, in my opinion, was an act of war, not a crime. And the problem with this country is the people we are fighting were at war with us a long time before we knew we were at war with them. Now we are at war.

This administration, on occasion, in my opinion, has tried to cut the corners of the law of armed conflict. I embrace the law of conflict. I want to fully apply the actions of the United States. I embrace the Geneva Conventions. I want to apply it fully to the war we are fighting even though our enemy will not. But I am insistent, with my vote and with my time in this Senate, that we fight the war and not criminalize the war.

No enemy prisoner should have access to Federal courts—a noncitizen, enemy combatant terrorist—to bring a lawsuit against those fighting on our behalf. No judge should have the ability to make a decision that has been historically reserved to the military. That does not make us safer.

There is due process in place for the enemy combatants at Guantanamo Bay, Afghanistan, and Iraq that I believe is Geneva Conventions compliant. There is judicial review consistent with the military being the lead agency. I urge this Senate to adopt that and to reject this amendment.

I yield the floor.

Mr. SPECTER. Will the Senator from South Carolina respond to a question?

Mr. GRAHAM. I will try.

Mr. SPECTER. I direct an inquiry to my colleague from South Carolina. Would the Senator respond to the question?

Mr. GRAHAM. Yes. I will try my best.

Mr. SPECTER. I didn't want you to yield for a question because I didn't want to interrupt your presentation.

I begin by complimenting the Senator from South Carolina for his excellent work. He and Senator WARNER and Senator MCCAIN have done exemplary work in maintaining the Geneva Conventions and appropriate rules and to classify evidence.

When you talk about constitutional issues and you talk about section 2241, I agree with the Senator, but how do you deal with the flat terms of the Constitution, ''the privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion public safety may require it''? How do you deal with that if you do not have rebellion?

Mr. GRAHAM. Mr. Chairman, I guess one could make that argument. I have been assuming something from the beginning—that the Court's decision in Rasul and Hamdi is a statement by the Court that because Guantanamo Bay falls within the jurisdiction of the United States, it is section 2241 that we are dealing with. It is a statutory right of habeas that has been granted to enemy combatants. And if there is a constitutional right of habeas corpus given to enemy combatants, that is a totally different endeavor, and it would change in many ways what I have said.

I do not know what the Court will decide, but if the Court does say in the next round of legal appeals there is a constitutional right to habeas corpus by those detained at Guantanamo Bay, then the Senator is absolutely right. We would have to make a different legal determination. We would have to make a different legal analysis. And if the Court does that, I will sit down with the Senator and we will figure out how to work through that.

I am just being as honest with the Senator as I know how to be. I think this is a statutory problem, not a constitutional problem.

Mr. SPECTER. Well, Mr. President, the distinguished chairman of the Armed Services Committee says he does not want to come back and legislate again. If this bill is passed, we will be right back here at a later date.

When the Senator from South Carolina says it is not on constitutional grounds, the plain English of the decision says it is. But let me ask the Senator one further question; that is, you fought hard to have classified evidence available in the trials, albeit a war crimes trial. And you have Justice O'Connor saying they have to have the opportunity to rebut facts. When these proceedings are handled so much on classified information the detainees cannot see, would it not be consistent with your approach on classified information generally to at least have them know something about the charge so they can rebut the facts?

Mr. GRAHAM. If I may, I would invite the chairman—I cannot remember what paragraph the language is in, but Justice O'Connor gave some guidance to the military—I think it is Army Regulation 190-dash-something—that she indicated would be a proper mechanism or at least a guide of how to set up due process rights for this administrative determination. So after that decision, I know the military looked at the Army regulation that she cited and built the CSRT process off that concept. I am of the opinion that the Combat Status Review Tribunal does afford the rights Justice O'Connor indicated and is more than the Army regulation would allow that she cited, and it is fully compliant with article 5 of the Geneva Conventions—competent tribunal—but if you look in that decision, she mentions an Army regulation as a guide as to how to do this. I think the military, the Department of Defense, has gone beyond that.

Mr. SPECTER. Well, Mr. President, there is flexibility, I agree, but the determination as to whether that flexibility is adequate is up to the Court. That is what the Supreme Court has said.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. I thank the Chair.

I would say to my colleague, there is an interesting thing we best watch here as we are trying to determine the rights of these people because it seems to me if there is such a fundamental right of constitutionality attached to this thing, then someone might argue: Well, if it is actionable in Guantanamo—this lease thing is to me a fairly weak basis on which to do it—what about 18,000 in our custody in Iraq now? So we just better exercise a little caution as we begin to use that because if we begin to extend habeas corpus to 18,000 in Iraq, we have a problem.

Mr. President, I yield the floor.

Mr. SPECTER. Mr. President, I stipulate that Senator WARNER is right about Iraq on this point.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. KYL. Mr. President, I have a longer presentation, but what I would like to do is respond specifically to the argument Senator SPECTER is now making, and then Senator CORNYN has longer remarks to make.

Let me begin by saying that I have the utmost respect for the chairman of the committee, my friend, the Senator from Pennsylvania. And he is entitled to be wrong once in a while. In this matter, he is wrong. It was testimony before the committee on Monday that verifies that this is not a constitutional issue with respect to aliens. It is only a constitutional issue with respect to citizens.

This legislation has nothing to do with citizens. The decision cited by the Senator from Pennsylvania is the Hamdi decision, which dealt with a U.S. citizen. And, of course, the writ of habeas corpus applies to U.S. citizens. Our legislation does not.

Here is what David Rivkin, a partner at Baker & Hostetler law firm, testified to on Monday. He said in this legislation:

> We are giving [alien enemy combatants] a lot more . . . than they are legally entitled to under either international [law] or the law in the U.S. constitution.

Now, let me just proceed from that. Our Supreme Court has held that U.S. constitutional protections do not apply to aliens held outside of our borders. The Johnson v. Eisentrager case, for example, rejected the view that the U.S. Constitution applies to enemy war prisoners held abroad, saying:

> No decision of this Court supports such a view. None of the learned commentators on our Constitution has ever hinted at it. The practice of every modern government is opposed to it.

In 1990, the Supreme Court reaffirmed this view in the Verdugo case, saying:

> [W]e have rejected the claim that aliens are entitled to Fifth Amendment rights outside the sovereign territory of the United States.

That case also makes it clear that constitutional protections do not extend to aliens detained in this country who have no substantial connection to this country. The Supreme Court there said that aliens ''receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country.''

The Verdugo Court further clarified that ''lawful but involuntary'' presence in the United States ''is not of the sort to indicate any substantial connection with our country.''

Now, the Rasul case took great pains to emphasize that its extension of habeas to Guantanamo Bay was only statutory. Some Justices may have wanted to make Rasul a constitutional holding, but there was no majority for such a ruling.

So both Eisentrager and Verdugo are still the governing law in this area. These precedents hold that aliens who are either held abroad or held here but have no other substantial connection to this country are not entitled to invoke the U.S. Constitution.

As committee witness Brad Berenson noted at Monday's hearing:

> [N]othing in the Constitution, including the Suspension Clause, confers rights of access to our courts for alien enemy combatants being held in the ordinary course of armed conflict.

He also refuted the argument that constitutional rights of habeas for enemy combatants is embedded in the Rasul decision. As he explained before, going through the logic of that opinion and its dependence on the 1973 Braden case, and I am quoting:

> If there were a constitutional right to habeas corpus relief for alien enemies held abroad, the implication would thus be that it sprang into existence some time after 1973, if not just two years ago in 2004, and received no mention in Rasul. No matter how robust a concept of the ''living Constitution'' one embraces, this sort of Miracle-Gro Constitution cannot fit within it.

He was trying to be clever there to point out the fact that never has the Court come close to holding that for alien enemy combatants there is a constitutional right of habeas. And no decision of the Supreme Court has ever grounded its decision on the Constitution—only the case with respect to U.S. citizens.

So I do not fear the Supreme Court overturning what we are trying to do here. One never knows what the Court might do. And Senator SPECTER certainly is correct that if it did, we would have to revisit this issue. I am totally confident, however, that this legislation would be upheld and certainly not be declared unconstitutional based upon a view that the habeas provisions apply to alien enemy combatants.

Mr. President, the Specter amendment strikes at the heart of the litigation reforms in this bill—it undercuts the entire bill. The amendment would undercut and override the carefully calibrated accountability and supervision mechanisms negotiated by the Armed Services committee. And it would give enemy soldiers challenging their detention unprecedented access to our courts. It should be strongly opposed.

Under the MCA, detainees already receive extremely generous process without habeas corpus lawsuits.

Every detainee held at Guantanamo currently receives a Combatant Status Review Tribunal (CSRT) review of his detention. The CSRT process is modeled on and closely tracks the Article 5 hearings conducted under the Geneva Conventions. In the 2004 Hamdi decision, the Supreme Court cited Article 5 hearings as an example of the type of hearing that would be adequate to justify detention of even an American citizen who has engaged in war against the United States. Moreover, under the Geneva Conventions, Article 5 hearings are given to detainees only when there is substantial doubt as to their status. In all American wars, only a small percentage of detainees have ever been given Article 5 hearings. Yet at Guantanamo, we have given a CSRT hearing to every detainee who has been brought there. And finally, it bears emphasis that the CSRT gives unlawful enemy combatants even more procedural protections than the Geneva Conventions' Article 5 hearing give to lawful enemy combatants. For example:

> A CSRT provides a detainee with a personal representative to help him prepare his case. An Article 5 tribunal does not.
>
> Under the CSRT procedure, the hearing officer is required to search government files for ''evidence to suggest that the detainee should not be designated as an enemy combatant.'' An Article 5 tribunal provides no such right.
>
> CSRTs give the detainee a summary of the evidence supporting his detention in advance of the hearing. Article 5 tribunals do not.
>
> CSRTs are subject to review by supervising authorities and may be remanded for further review. Article 5 provides no such rights.

Finally, after a CSRT is completed, the Detainee Treatment Act, DTA, and the Military Commissions Act, MCA, give an al-Qaida detainee the right to appeal the result to the DC Circuit. That circuit—staffed by some of the best judges in this country—is then authorized to make sure that all proper procedures were followed in the CSRT hearing, and to judge whether the CSRT process is consistent with the Constitution and with federal statutes—though no treaty lawsuits are authorized, pursuant to long-standing precedent.

Now I would grant, the DTA does not allow re-examination of the facts underlying a prisoner's detention, and it limits the review to the administrative record. I commented on these provisions more extensively in remarks submitted for the RECORD on December 21. But as committee witness Brad Berenson noted at Monday's Judiciary Committee hearing, quoting the Supreme Court's 2001 decision in St. Cyr, ''the traditional rule on habeas corpus review of non-criminal executive detentions was that 'the courts generally did not review the factual determinations made by the executive.'''' And under the original common-law writ of habeas corpus, the facts in the custodian's return could not be contested. Thus, although the DTA does not allow sufficiency-of-the-evidence challenges, neither did the common law writ of habeas corpus—especially for noncriminal executive detentions. DTA review is limited—it has to be, or we would face the same litigation burdens as under the Rasul-inspired litigation. But common-law habeas itself is a limited remedy. Under the DTA, prisoners are not denied anything that they would have been entitled to under the original common-law writ of habeas corpus.

Moreover, the fact that we are letting detainees go to court to challenge their conviction is totally unprecedented. At a hearing held on Monday before the Judiciary Committee, one of the witnesses who opposes the MCA, Rear Admiral John Hutson, nevertheless conceded in his testimony that ''[i]n World War II, when thousands and thousands of German and Italian POWs were imprisoned in various camps throughout the United States . . . there is only one recorded case of a POW using habeas to test his imprisonment. He was an Italian American and his petition was denied.''

Just to be clear: there were 425,000 enemy combatants held in the United States during World War II. Yet according to Senator SPECTER's own witness at his Judiciary Committee hearing, only one habeas petition challenging detention was filed—and that was filed by an American citizen. The MCA only applies to aliens—not American citizens, so even that case would not have been affected by this bill.

World War II did see several petitions challenging military trials, but the MCA and the DTA also allow judicial review of military commissions.

At Senator SPECTER's September 25, 2006, hearing on the MCA before the Judiciary Committee, committee witness Brad Berenson, a partner at the Sidley & Austin law firm, testified that ''[n]o nation on the face of the earth in any previous conflict has given people they

have captured anything like [the procedures provided by CSRTs and the DTA], and none does so today.'' Mr. Berenson reiterated: The MCA's procedures ''are in fact more generous than anything we or any other nation in the history of the world has previously afforded to our military adversaries.''

At the same hearing—Senator SPECTER's hearing on the MCA on Monday—we also heard from David Rivkin, a partner at the Baker & Hostetler law firm. This is what he had to say: ''[t]he level of due process that these detainees are getting [under CSRTs and the DTA] far exceeds the level of due process accorded to any combatants, captured combatants, lawful or unlawful, in any war in human history.'' Mr. Rivkin added: ''We are giving [alien enemy combatants] a lot more . . . than they are legally entitled to under either international [law] or the law in the U.S. Constitution.''

The Supreme Court has held that U.S. constitutional protections do not apply to aliens held outside of our borders. For example, in Johnson v. Eisentrager (1950), the Supreme Court rejected the view that the U.S. Constitution applies to enemy war prisoners held abroad, noting that ''[n]o decision of this Court supports such a view. None of the learned commentators on our Constitution has ever hinted at it. The practice of every modern government is opposed to it.'' In 1990, the Supreme Court reaffirmed this view in the Verdugo case, holding that ''we have rejected the claim that aliens are entitled to Fifth Amendment rights outside the sovereign territory of the United States.''

The Verdugo case also makes clear that constitutional protections do not extend to aliens detained in this country who have no substantial connection to this country. The Supreme Court noted that aliens ''receive constitutional protections when they have come within the territory of the United States and developed substantial connections with this country.'' The Verdugo Court further clarified that ''lawful but involuntary'' presence in the United States ''is not of the sort to indicate any substantial connection with our country.'' That is *United States* v. *Verdugo-Urquidez*, 494 U.S. 259 (1990).

Rasul v. Bush took great pains to emphasize that its extension of habeas to Guantanamo Bay was only statutory. Some Justices may have wanted to make Rasul a constitutional holding, but there clearly was no majority for such a ruling.

Eisentrager and Verdugo are still the governing law in this area. These precedents hold that aliens who are either held abroad, or held here but have no other substantial connection to this country, are not entitled to invoke the U.S. Constitution. As committee witness Brad Berenson noted at Monday's hearing, ''nothing in the Constitution, including the Suspension Clause, confers rights of access to our courts for alien enemy combatants being held in the ordinary course of an armed conflict.'' Berenson also refuted the argument that a constitutional right of habeas for enemy combatants is embedded in the Rasul decision. As he explained, going through the logic of that opinion and its dependence on the 1973 Braden case:

> If there were a constitutional right to habeas corpus relief for alien enemies held abroad, the implication would thus be that it sprang into existence some time after 1973, if not just two years ago in 2004, and received no mention in Rasul. No matter how robust a concept of the ''living Constitution'' one embraces, this sort of Miracle-Gro Constitution cannot fit within it.

The Specter amendment would have led to a nightmare of litigation in other wars.

During World War II, the United States held millions of axis enemy combatants. During some periods, enemy war prisoners were shipped into this country at the rate of 60,000 a month. By the end of the war, over 425,000 enemy war prisoners were detained in prison camps inside the United States. Overall, the United States detained over two million enemy combatants during World War II. Prisoner camps for these combatants existed in all but three of the then-48 states.

If the Specter amendment had been law during World War II, all of these 2 million enemy combatants would have been allowed to file habeas corpus lawsuits in Federal district court against our Armed Forces. Just try to imagine what that would have meant. The vast majority of these 2 million enemy prisoners were not familiar with the American legal system and did not speak English. If they had habeas corpus rights, they surely would have had to be provided with a lawyer in order to effectuate those rights. Also, should each of these 2 million prisoners also have been given access to the classified evidence that might be used against them to justify their detention? Should all 2 million of these prisoners have been entitled to call witnesses on their behalf? Should they have been allowed to recall the U.S. soldiers at the front who captured them, and to cross examine them?

The consequences of the Specter amendment are unimaginable. We cannot allow enemy war prisoners to sue us in our own courts. Such a system would make it simply impossible for the United States to fight a war. But don't take my word for it. The United States Supreme Court came to the same conclusion in its landmark decision in Johnson v. Eisentrager. The Supreme Court in that case clearly and eloquently explained why we cannot allow alien enemy combatants to sue our military in our courts:

> A basic consideration in habeas corpus practice is that the prisoner will be produced before the court. This is the crux of the statutory scheme established by the Congress; indeed, it is inherent in the very term ''habeas corpus.'' And though production of the prisoner may be dispensed with where it appears on the face of the application that no cause for granting the writ exists, Walker v. Johnston, we have consistently adhered to and recognized the general rule. Ahrens v. Clark. To grant the writ to these prisoners might mean that our army must transport them across the seas for hearing. This would require allocation of shipping space, guarding personnel, billeting and rations. It might also require transportation for whatever witnesses the prisoners desired to call as well as transportation for those necessary to defend legality of the sentence. The writ, since it is held to be a matter of right, would be equally available to enemies during active hostilities as in the present twilight between war and peace. Such trials would hamper the war effort and bring aid and comfort to the enemy. They would diminish the prestige of our commanders, not only with enemies but with wavering neutrals. It would be difficult to devise more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him to account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home. Nor is it unlikely that the result of such enemy litigiousness would be a conflict between judicial and military opinion highly comforting to enemies of the United States.

The Specter Amendment would disrupt the operation of Guantanamo and undermine the war on terror. We already know that habeas litigation at Guantanamo has consumed enormous resources and disrupted day-to-day operation of the base. The United States February 17, 2006 Supplemental Brief in the Al Odah case in the DC circuit describes the burdens imposed on the military by the Guantanamo litigation and the frivolous nature of some of the claims being pursued. At pages 12–14, the brief describes the following:

According to the Justice Department: ''The detainees have urged habeas courts to dictate conditions on [Guantanamo Naval] Base ranging from the speed of Internet access afforded their lawyers to the extent of mail delivered to the detainees;'' More than 200 cases have been filed on behalf of 600 purported detainees. This number exceeds the number of detainees actually held at Guantanamo, which is near 500; Also according to the Justice Department: ''The Department of Defense has been forced to reconfigure its operations at Guantanamo Naval Base to accommodate hundreds of visits by private habeas counsel. . . . This habeas litigation has consumed enormous resources and disrupted the day-to-day operation of Guantanamo Naval Base;'' The United States also notes that this litigation has had a serious negative impact on the war with Al Qaeda. According to the U.S. brief:

> Perhaps most disturbing, the habeas litigation has imperiled crucial military operations during a time of war. In some instances, habeas counsel have violated protective orders and jeopardized the security of the base by giving detainees information likely to cause unrest. Moreover, habeas counsel have frustrated interrogation critical to preventing further terrorist attacks on the United States. One of the coordinating counsel for the detainees boasted about this in public:

The litigation is brutal for [the United States.] It's huge. We have over one hundred lawyers now from big and small firms working to represent the detainees. Every time an attorney goes down there, it makes it that much harder [for the U.S. military] to do what they're doing. You can't run an interrogation . . . with attorneys. What are they going to do now that we're getting court orders to get more lawyers down there?

Brad Berenson, who testified at the September 25 Judiciary Committee hearing on this bill, offers what I think is a fitting comment on the habeas corpus litigation at Guantanamo Bay thus far. He concluded his testimony by noting, ''All freedom-loving people cherish the Great Writ. But we debase the writ, rather than honor it, if we extend it into realms where neither history nor tradition support its use.''

At Monday's Judiciary Committee hearing, some witness suggested that the bulk of the detainees held at Guantanamo are innocent. One witness at Monday's Judiciary Committee hearing, a lawyer who represents 10 Saudis held at Guantanamo, went so far as to assert that ''none of the ten . . . are enemies of the United States.'' This lawyer even told us that the men at Guantanamo ''do not appear any more dangerous . . . than my younger grandchild, who is 12.'' Another witness at the Judiciary Committee's September 25 hearing asserted that ''[n]ot a crumb of evidence has been adduced suggesting that the writ would risk freeing terrorists to return to fight against the United States.''

This characterization, and similar assertions that the bulk of the detainees at Guantanamo are innocent, simply do not comport with reality. The United States has already released a number of detainees. These are detainees who our own Armed Forces decided were not enemy combatants or were no longer dangerous. Our Armed Forces are obviously very cautious about whom they release—they have great reason to be cautious, since they bear the consequences of releasing anyone who is a threat. Yet we already know that even among those detainees whom our Armed Forces thought were not dangerous, a significant number instead turned out to remain committed to war against the United States and its allies. According to a October 22, 2004 story in the Washington Post, at least 10 detainees released from Guantanamo have been recaptured or killed fighting U.S. or coalition forces in Afghanistan or Pakistan. This is what the Washington Post described:

One of the repatriated prisoners is still at large after taking leadership of a militant faction in Pakistan and aligning himself with al Qaeda, Pakistani officials said. In telephone calls to Pakistani reporters, he has bragged that he tricked his U.S. interrogators into believing he was someone else.

Another returned captive is an Afghan teenager who had spent two years at a special compound for young detainees at the military prison in Cuba, where he learned English, played sports and watched videos, informed sources said. U.S. officials believed they had persuaded him to abandon his life with the Taliban, but recently the young man, now 18, was recaptured with other Taliban fighters near Kandahar, Afghanistan, according to the sources, who asked for anonymity because they were discussing sensitive military information.

* * * * *

The latest case emerged two weeks ago when two Chinese engineers working on a dam project in Pakistan's lawless Waziristan region were kidnapped. The commander of a tribal militant group, Abdullah Mehsud, 29, told reporters by satellite phone that his followers were responsible for the abductions.

Mehsud said he spent two years at Guantanamo Bay after being captured in 2002 in Afghanistan fighting alongside the Taliban. At the time he was carrying a false Afghan identity card, and while in custody he maintained the fiction that he was an innocent Afghan tribesman, he said. U.S. officials never realized he was a Pakistani with deep ties to militants in both countries, he added.

I managed to keep my Pakistani identity hidden all these years,'' he told Gulf News in a recent interview. Since his return to Pakistan in March, Pakistani newspapers have written lengthy accounts of Mehsud's hair and looks, and the powerful appeal to militants of his fiery denunciations of the United States. ''We would fight America and its allies,'' he said in one interview, ''until the very end.''

Last week Pakistani commandos freed one of the abducted Chinese engineers in a raid on a mud-walled compound in which five militants and the other hostage were killed.

The 10 or more returning militants are but a fraction of the 202 Guantanamo Bay detainees who have been returned to their homelands. Of that group, 146 were freed outright, and 56 were transferred to the custody of their home governments. Many of those men have since been freed.

Mark Jacobson, a former special assistant for detainee policy in the Defense Department who now teaches at Ohio State University, estimated that as many as 25 former detainees have taken up arms again. ''You can't trust them when they say they're not terrorists,'' he said.

* * * * *

Another former Guantanamo Bay prisoner was killed in southern Afghanistan last month after a shootout with Afghan forces. Maulvi Ghafar was a senior Taliban commander when he was captured in late 2001. No information has emerged about what he told interrogators in Guantanamo Bay, but in several cases U.S. officials have released detainees they knew to have served with the Taliban if they swore off violence in written agreements.

Returned to Afghanistan in February, Ghafar resumed his post as a top Taliban commander, and his forces ambushed and killed a U.N. engineer and three Afghan soldiers, Afghan officials said, according to news accounts.

A third released Taliban commander died in an ambush this summer. Mullah Shahzada, who apparently convinced U.S. officials that he had sworn off violence, rejoined the Taliban as soon as he was freed in mid-2003, sources with knowledge of his situation said.

I urge that anyone consider these facts before contending that the bulk of the detainees at Guantanamo are ''innocent.''

I would also like to respond to some of the attacks that have been made on the underlying DTA. One of the complaints made is that there is no mandate in the DTA, or in the MCA, that the military conduct CSRTs for enemy combatants that it captures. In a September 25 letter to Senators, for example, the ACLU urges opposition to the MCA on the ground, among other things, that ''[w]hile the bill does allow limited appeals for those who do go before a military commission or a Combatant Status Review Tribunal, CSRT, there is no guarantee that any person detained by our government be provided with either a trial or a CSRT.'' Similarly, at the September 25 hearing before the Judiciary Committee, committee witness Bruce Fein argued against the MCA on the ground ''the fact is that the statute would enable the executive branch to simply decline to hold CSRT proceedings . . . [I]t gives the executive branch, if it wishes, [the right] to hold detainees indefinitely without any access to the Federal courts. [Military commanders could] say, we do not want to hold a Combatant Status Review Tribunal, it is so clear that they [the detainees] are enemy combatants. If they do not hold the tribunal hearing, there is no access to Federal courts under the statute.''

My response to these critics is that what they have described does accurately describes the DTA and MCA—and also the Geneva Conventions. As I noted earlier, the Geneva Conventions require an Article 5 hearing on the status of a detainee, but only if there is doubt as to his status. Under the Geneva Conventions, I would submit, there is no need for any Article 5 hearing for any of the al-Qaida and Taliban detainees, because there is simply no question that these detainees are not entitled to privileged status under the Geneva Conventions. The Conventions allow the military to make blanket determinations, and our nation would certainly be within its rights to do so here. What the military currently is doing for Guantanamo detainees goes well beyond the process to which they are entitled. What these critics want Congress to apply to our Armed Forces is a rule of no good deed goes unpunished. Because the military, in response to criticism of Guantanamo, started giving everyone at Guantanamo a CSRT hearing, these critics contend, it should be compelled to do so for all future detainees, and for all future wars. What is now given as a matter of executive grace, they contend, should be transformed into a legislative mandate.

This the Armed Services committees and this congress declined to do. Aside from the fact that these detainees, aliens all, are not entitled to CSRTs or any Article 5 type hearing under the Geneva Conventions, it would be absurdly impractical to require the military to provide such hearings in all future conflicts. Consider, for example, the case of World War II. As I mentioned earlier, the United States detained over 2,000,000 enemy combatants during that conflict. How on earth could we possibly expect the military to conduct CSRTs for 2 million people?

And how could the DC Circuit be expected to handle 2 million appeals from CSRTs, even under the de minimis facial challenge authorized by the DTA? It is simply inconceivable.

The CSRTs and DTA review, I concede, would be insufficient to justify detention of a United States citizen accused of a crime. This is not civilian criminal justice due process. But these detainees are not entitled to civilian criminal justice due process. Nor are they entitled to such hearings under the Geneva Conventions.

What the DTA review standards do offer is judicial review that is consistent with military needs and with the executive branch's primacy among the branches of government in the conduct of war. It is judicial review in keeping with the traditional limited role of the courts in reviewing the conduct of war. As others have noted, DTA judicial review is limited to two narrow inquiries: did the CSRTs and commissions use the standards and procedures identified by the Secretary of Defense, and is the use of these systems to either continue the detention of enemy combatants or try them for war crimes consistent with the Constitution and federal statutes? The first inquiry I think is straightforward: did the military follow its own rules? This inquiry does not ask whether the military reached the correct result by applying its rules or whether a judge agrees that the evidence meets some particular standard of evidence. The inquiry is simply whether the correct rule was employed.

Former United States Attorney General Bill Barr, in his testimony before the Senate Judiciary Committee on June 15 of last year, described the understanding of judicial review of military decisions that the DTA's review standards are designed to reflect:

> It seems to me that the kinds of military decisions at issue here—namely, what and who poses a threat to our military operations—are quintessentially Executive in nature. They are not amenable to the type of process we employ in the domestic law enforcement arena. They cannot be reduced to neat legal formulas, purely objective tests and evidentiary standards. They necessarily require the exercise of prudential judgment and the weighing of risks. This is one of the reasons why the Constitution vests ultimate military decision-making in the President as Commander-in-Chief. If the concept of Commander-in-Chief means anything, it must mean that the office holds the final authority to direct how, and against whom, military power is to be applied to achieve the military and political objectives of the campaign.
>
> I am not speaking here of ''deference'' to Presidential decisions. In some contexts, courts are fond of saying that they ''owe deference'' to some Executive decisions. But this suggests that the court has the ultimate decision-making authority and is only giving weight to the judgment of the Executive. This is not a question of deference—the point here is that the ultimate substantive decision rests with the President and that courts have no authority to substitute their judgments for that of the President.

I think that last point is worth emphasizing. The DTA is not an invitation for the courts to substitute their judgment for that of the military. It is not for the courts to decide if someone is an enemy combatant, regardless of the standard of review. It is simply not the role of the courts to make that decision. It is not the courts, after all, who bear the burden of capturing an enemy combatant again if he is released and rejoins the battle. The only thing the DTA asks the courts to do is check that the record of the CSRT hearings reflect that the military has used its own rules. It is up to the military to decide what the result should be under those rules, or even how those rules should be modified in the future.

I would also reiterate a few words about the legality review that the DTA provides. This provision authorizes, in effect, a facial challenge to the CSRTs. I anticipate that once the District of Columbia circuit decides these questions with regard to a particular set of CSRT procedures in use, that decision will operate as circuit precedent unless and until the CSRT procedures are changed. Based on the long body of Supreme Court precedent governing judicial review of military affairs, I do not anticipate that any type of hearing is required by the Constitution or by Federal statute in order for the military to be allowed to detain alien enemy combatants. The Geneva Conventions do require hearings when there is doubt as to a detainee's privileged status, but those Conventions are not enforced through the courts, and the DTA does not disturb that limit on judicial enforceability. Allow me to quote the previous understanding of the scope of judicial review of military-commission trials that the DTA is designed to embody, as expressed in the Supreme Court's landmark decision in Johnson v. Eisentrager:

> It is not for us to say whether these prisoners were or were not guilty of a war crime, or whether if we were to retry the case we would agree to the findings of fact or the application of the laws of war made by the Military Commission. The petition shows that these prisoners were formally accused of violating the laws of war and fully informed of particulars of these charges. As we observed in the Yamashita case, ''If the military tribunals have lawful authority to hear, decide and condemn, their action is not subject to judicial review merely because they have made a wrong decision on disputed facts. Correction of their errors of decision is not for the courts but for the military authorities which are alone authorized to review their decisions. We consider here only the lawful power of the commission to try the petitioner for the offense charged.''

Finally, I would like to reiterate the most important reason why I believe that Congress needs to bring an end to the habeas litigation involving war-on-terror detainees. Keeping captured terrorists out of the court system is a prerequisite for conducting effective and productive interrogation. And it is interrogation of terrorist detainees that has proved to be an important source of critical intelligence that has saved American lives.

Giving detainees access to federal judicial proceedings threatens to seriously undermine vital U.S. intelligence-gathering activities. Under the new Rasul-imposed system, shortly after al-Qaida and Taliban detainees arrive at Guantanamo Bay, they are informed that they have the right to challenge their detention in Federal court and the right to see a lawyer. Detainees overwhelmingly have exercised both rights. The lawyers inevitably tell detainees not to talk to interrogators. Also, mere notice of the availability of these proceedings gives detainees hope that they can win release through adversary litigation, rather than by cooperating with their captors.

Navy Vice-Admiral Lowell Jacoby addressed this matter in a declaration attached to the United States's brief in the Padilla litigation in the Southern District of New York. Vice-Admiral Jacoby at the time was the Director of the Defense Intelligence Agency. He noted in the Declaration that:

> DIA's approach to interrogation is largely dependent upon creating an atmosphere of dependency and trust between the subject and the interrogator. Developing the kind of relationship of trust and dependency necessary for effective interrogations is a process that can take a significant amount of time. There are numerous examples of situations where interrogators have been unable to obtain valuable intelligence from a subject until months, or, even years, after the interrogation process began.
>
> Anything that threatens the perceived dependency and trust between the subject and interrogator directly threatens the value of interrogation as an intelligence gathering tool. Even seemingly minor interruptions can have profound psychological impacts on the delicate subject-interrogator relationship. Any insertion of counsel into the subject-interrogator relationship, for example—even if only for a limited duration or for a specific purpose—can undo months of work and may permanently shut down the interrogation process.

Specifically with regard to Jose Padilla, Vice Admiral Jacoby also noted in his Declaration that:

> Providing [Padilla] access to counsel now would create expectations by Padilla that his ultimate release may be obtained through an adversarial civil litigation process. This would break—probably irreparably—the sense of dependency and trust that the interrogators are attempting to create.

In remarks that I submitted for the RECORD when the original DTA was enacted, I described some of the valuable intelligence that the United States has gained as a result of the interrogation of al-Qaida detainees. The President made a similar case in a speech that he delivered on September 6, but much better than I had done. I would like to simply quote at length, so that it is available in the RECORD, what the President described—why it is important that our intelligence agents be able to conduct effective interrogations of al-Qaida members. On the sixth of this month, the President stated:

> Within months of September the 11th, 2001, we captured a man known as Abu Zubaydah. We believe that Zubaydah was a senior terrorist leader and a trusted associate of

Osama bin Laden. Our intelligence community believes he had run a terrorist camp in Afghanistan where some of the 9/11 hijackers trained, and that he helped smuggle al Qaeda leaders out of Afghanistan after coalition forces arrived to liberate that country. Zubaydah was severely wounded during the firefight that brought him into custody—and he survived only because of the medical care arranged by the CIA.

After he recovered, Zubaydah was defiant and evasive. He declared his hatred of America. During questioning, he at first disclosed what he thought was nominal information—and then stopped all cooperation. Well, in fact, the ''nominal'' information he gave us turned out to be quite important. For example, Zubaydah disclosed Khalid Sheikh Mohammed—or KSM—was the mastermind behind the 9/11 attacks, and used the alias ''Muktar.'' This was a vital piece of the puzzle that helped our intelligence community pursue KSM. Abu Zubaydah also provided information that helped stop a terrorist attack being planned for inside the United States—an attack about which we had no previous information. Zubaydah told us that al Qaeda operatives were planning to launch an attack in the U.S., and provided physical descriptions of the operatives and information on their general location. Based on the information he provided, the operatives were detained—one while traveling to the United States.

We knew that Zubaydah had more information that could save innocent lives, but he stopped talking. As his questioning proceeded, it became clear that he had received training on how to resist interrogation. And so the CIA used an alternative set of procedures. These procedures were designed to be safe, to comply with our laws, our Constitution, and our treaty obligations. The Department of Justice reviewed the authorized methods extensively and determined them to be lawful. I cannot describe the specific methods used—I think you understand why—if I did, it would help the terrorists learn how to resist questioning, and to keep information from us that we need to prevent new attacks on our country. But I can say the procedures were tough, and they were safe, and lawful, and necessary.

Zubaydah was questioned using these procedures, and soon he began to provide information on key al Qaeda operatives, including information that helped us find and capture more of those responsible for the attacks on September the 11th. For example, Zubaydah identified one of KSM's accomplices in the 9/11 attacks—a terrorist named Ramzi bin al Shibh. The information Zubaydah provided helped lead to the capture of bin al Shibh. And together these two terrorists provided information that helped in the planning and execution of the operation that captured Khalid Sheikh Mohammed.

Once in our custody, KSM was questioned by the CIA using these procedures, and he soon provided information that helped us stop another planned attack on the United States. During questioning, KSM told us about another al Qaeda operative he knew was in CIA custody—a terrorist named Majid Khan. KSM revealed that Khan had been told to deliver $50,000 to individuals working for a suspected terrorist leader named Hambali, the leader of al Qaeda's Southeast Asian affiliate known as ''J-I''. CIA officers confronted Khan with this information. Khan confirmed that the money had been delivered to an operative named Zubair, and provided both a physical description and contact number for this operative.

Based on that information, Zubair was captured in June of 2003, and he soon provided information that helped lead to the capture of Hambali. After Hambali's arrest, KSM was questioned again. He identified Hambali's brother as the leader of a ''J-I'' cell, and Hambali's conduit for communications with al Qaeda. Hambali's brother was soon captured in Pakistan, and, in turn, led us to a cell of 17 Southeast Asian ''J-I'' operatives. When confronted with the news that his terror cell had been broken up, Hambali admitted that the operatives were being groomed at KSM's request for attacks inside the United States—probably [sic] using airplanes.

During questioning, KSM also provided many details of other plots to kill innocent Americans. For example, he described the design of planned attacks on buildings inside the United States, and how operatives were directed to carry them out. He told us the operatives had been instructed to ensure that the explosives went off at a point that was high enough to prevent the people trapped above from escaping out the windows.

KSM also provided vital information on al Qaeda's efforts to obtain biological weapons. During questioning, KSM admitted that he had met three individuals involved in al Qaeda's efforts to produce anthrax, a deadly biological agent—and he identified one of the individuals as a terrorist named Yazid. KSM apparently believed we already had this information, because Yazid had been captured and taken into foreign custody before KSM's arrest. In fact, we did not know about Yazid's role in al Qaeda's anthrax program. Information from Yazid then helped lead to the capture of his two principal assistants in the anthrax program. Without the information provided by KSM and Yazid, we might not have uncovered this al Qaeda biological weapons program, or stopped this al Qaeda cell from developing anthrax for attacks against the United States.

These are some of the plots that have been stopped because of the information of this vital program. Terrorists held in CIA custody have also provided information that helped stop a planned strike on U.S. Marines at Camp Lemonier in Djibouti—they were going to use an explosive laden water tanker. They helped stop a planned attack on the U.S. consulate in Karachi using car bombs and motorcycle bombs, and they helped stop a plot to hijack passenger planes and fly them into Heathrow or the Canary Wharf in London.

We're getting vital information necessary to do our jobs, and that's to protect the American people and our allies.

Information from the terrorists in this program has helped us to identify individuals that al Qaeda deemed suitable for Western operations, many of whom we had never heard about before. They include terrorists who were set to case targets inside the United States, including financial buildings in major cities on the East Coast. Information from terrorists in CIA custody has played a role in the capture or questioning of nearly every senior al Qaeda member or associate detained by the U.S. and its allies since this program began. By providing everything from initial leads to photo identifications, to precise locations of where terrorists were hiding, this program has helped us to take potential mass murderers off the streets before they were able to kill.

This program has also played a critical role in helping us understand the enemy we face in this war. Terrorists in this program have painted a picture of al Qaeda's structure and financing, and communications and logistics. They identified al Qaeda's travel routes and safe havens, and explained how al Qaeda's senior leadership communicates with its operatives in places like Iraq. They provided information that allows us—that has allowed us to make sense of documents and computer records that we have seized in terrorist raids. They've identified voices in recordings of intercepted calls, and helped us understand the meaning of potentially critical terrorist communications.

The information we get from these detainees is corroborated by intelligence, and we've received—that we've received from other sources—and together this intelligence has helped us connect the dots and stop attacks before they occur. Information from the terrorists questioned in this program helped unravel plots and terrorist cells in Europe and in other places. It's helped our allies protect their people from deadly enemies. This program has been, and remains, one of the most vital tools in our war against the terrorists. It is invaluable to America and to our allies. Were it not for this program, our intelligence community believes that al Qaeda and its allies would have succeeded in launching another attack against the American homeland. By giving us information about terrorist plans we could not get anywhere else, this program has saved innocent lives.

I don't think that it can be seriously doubted that this intelligence would not have been obtained if these men—Khalid Shaisk Muhammed and Abu Zubaydah—had been given the right to file a habeas petition and access to a lawyer immediately after they were captured. And had we not obtained this information, lives of Americans and other innocent people would have been lost.

The DTA and the MCA create a balanced and appropriate mechanism for managing the detention of alien enemy combatants. They are consistent with military tradition and our Nation's security needs. The Specter amendment would upend that system. I urge the Specter amendment's defeat.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I only need one sentence to refute the arguments of the Senator from Arizona, and it comes back to Justice O'Connor's opinion again. She says:

> All agree that, absent suspension, the writ of habeas corpus remains available to every individual—

Every individual—

> detained within the United States.

Guantanamo is held to be within that concept. But she talks about ''every individual.'' That includes citizens and noncitizens.

I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I congratulate the distinguished chairman of the Senate Judiciary Committee and my other colleagues who serve on the Judiciary Committee—Senator GRAHAM and Senator KYL—for the quality of the discussion and debate. This is the kind of debate I came to the Senate and hoped to participate in.

I want to try to address the concerns raised by the distinguished chairman of the Judiciary Committee about this constitutional issue. I happen to agree with what the Senator from Arizona said about the way the U.S. Supreme Court has interpreted the rights of an

alien with regard to their constitutional rights.

The difference is, the Hamdi case the chairman was citing really had to do with whether Guantanamo Bay—leased property in Cuba—was within the jurisdiction of the Court. It held because it was under a lease and under the control of the United States that it was subject to the laws pertaining to habeas corpus. But the way I read the case—and I believe this is correct and consistent with the way the Senator from Arizona interpreted it—it does not apply, they did not hold that it applied to an alien. But I want to say, even if he is right—and I disagree that he is—that aliens, particularly unlawful combatants captured on the battlefield, have all the rights an American citizen does under the Constitution, I believe his concerns are answered by the Swain case, decided by the U.S. Supreme Court, which held that if, in fact, there is an adequate substitute remedy, that in fact that satisfies any constitutional concerns with regard to the writ of habeas corpus.

I believe the Detainee Treatment Act, which we passed just last year, provides an adequate substitute remedy sufficient to meet Supreme Court scrutiny. Even if the Supreme Court woke up and decided that all of a sudden it would overrule all of its old cases and hold that an unlawful combatant, an alien—not a citizen of this country—was somehow entitled to the whole panoply of constitutional rights, that would satisfy the Supreme Court's concerns about the process to which that alien was due.

But I also want to question sort of the logic of applying the Constitution to unlawful combatants captured on the battlefield. Are we saying they are entitled to a fourth amendment right against unreasonable searches and seizures? Are we saying they have a fifth amendment right not to incriminate themselves? Well, surely not. We have all acknowledged the importance of being able to capture actionable intelligence through the interrogation process. And much of the debate we have been having in these last few weeks has been: How do we preserve this important intelligence-gathering tool which has allowed us to detect and disrupt terrorist attacks? How do we preserve that and at the same time meet our other legal obligations, constitutional and statutory?

I believe the Senator from South Carolina had a question. I would be happy to yield to him for a question.

Mr. GRAHAM. Mr. President, I appreciate that, and I am sorry to interrupt. But I went back to the Hamdi decision that referenced the exchange we had with the chairman in reference to the point the Senator just made.

Justice O'Connor said:

> Hamdi has received no process. An interrogation by one's captor, however effective an intelligence-gathering tool, hardly constitutes a constitutionally adequate fact-finding before a neutral decisionmaker.

When you turn to the next page, she says:

> There remains the possibility that the standards we have articulated could be met by an appropriately authorized and properly constituted military tribunal. Indeed, it is notable that military regulations already provide for such process in related instances, dictating that tribunals be made available to determine the status of enemy detainees who assert prisoner-of-war status under the Geneva Convention.

She is referring to Army regulation 190–8. And my question to Senator CORNYN is, do you agree that Justice O'Connor was telling the Department of Defense that if you will model a tribunal on Army regulation 190–8, you will have met your obligation to have a competent tribunal under the Geneva Conventions to make an enemy combatant status determination?

Mr. CORNYN. Mr. President, I say to the Senator from South Carolina, I think that is certainly a reasonable construction of what the opinion says.

Let me describe for our colleagues the kind of petitions for writ of habeas corpus we are talking about that are being filed at Guantanamo Bay.

A Canadian detainee who threw a grenade that killed an Army medic in a firefight and who comes from a family with longstanding al-Qaida ties moved for a preliminary injunction forbidding interrogation of him. That is one example.

Another one is a Kuwaiti detainee who seeks a court order that they must be provided dictionaries in contravention of the force protection policy at Guantanamo Bay, and that their lawyer be given high-speed Internet access at their lodging on the base and be allowed to use classified Department of Defense telecommunications facilities, all under the theory that otherwise their ''right to counsel'' is unduly burdened.

Then there is the motion by a high-level al-Qaida detainee complaining about base security procedures, speed of mail delivery, and medical treatment—even though they have abundant medical treatment and medical facilities at Guantanamo Bay. They further seek an order that he be transferred to the ''least onerous conditions'' at Guantanamo Bay and is asking the court to order that Guantanamo Bay authorities allow him to keep any books and reading materials sent to him and to ''report to the court'' on his opportunities for exercise, communication, recreation, and worship, among other things.

Then there is the ''emergency'' motion seeking a court order requiring the authorities at Guantanamo Bay to set aside its normal security practices and show detainees DVDs that are purported to be family videos.

Finally, I will mention, by way of absurd examples, the motion by Kuwaiti detainees who are unsatisfied with the Koran they are provided as standard issue by the Guantanamo authorities, and they seek a court order that they be able to keep various other supplemental religious material, such as a ''tafsir,'' or 4-volume Koran with commentary, in their cells.

To say there is ''no meaningful judicial review'' or adequate substitute remedy afforded unlawful combatants flies in the face of the facts.

The Senator from South Carolina described the fact that these detainees are, under current law, entitled to a combat status review tribunal, whose decision could then be appealed to the DC Circuit Court of Appeals to make sure the officials have actually provided the process to which these detainees are due, to make sure they have not been swept up in the fog of war and were innocent bystanders. This provides a fair process for them and adequate judicial review.

We also have an annual administrative review board that determines, on an annual basis, whether this remains a necessity to keep these individuals in detention. I will point out that sometimes we are too lenient in terms of who we let go. I will cite to you a story of October 22, 2004, in the Washington Post, entitled ''Released Detainees Rejoining the Fight.'' There are at least 10 detainees who were released from Guantanamo Bay that have been recaptured or killed while fighting U.S. or coalition forces after they were released.

The Supreme Court of the United States has talked about the impracticality of providing enemy combatants of the U.S. the full privilege of litigation. The Eisentrager court explained clearly and eloquently why we don't let enemy combatants sue the U.S. military and our soldiers in our own Federal courts. This is what the court said:

> Such trials would hamper the war effort and bring aid and comfort to the enemy. . . . It would be difficult to devise a more effective fettering of a field commander than to allow the very enemies he is ordered to reduce to submission to call him into account in his own civil courts and divert his efforts and attention from the military offensive abroad to the legal defensive at home. Nor is it unlikely that the result of such enemy litigiousness would be a conflict between judicial and military opinion highly comforting to enemies of the United States.

Those burdens placed on our military by enemy combatant litigation against our military effort persist today, and we have it within our power to eliminate that burden, to allow our men and women in uniform to fight the fight they volunteered to do on our behalf, to keep us safe and, at the same time, provide an adequate substitute remedy through the Detainee Treatment Act, as I have described a moment ago.

More than 200 cases have been filed on behalf of a purported 600 detainees. Strangely, that exceeds the number of detainees who are actually at Guantanamo Bay. So we have lawsuits for people who don't even exist, apparently.

According to the Department of Justice:

> This habeas litigation has consumed enormous resources and disrupted the day-to-day operation at Guantanamo Naval Base.

The United States of America, in a brief filed in the Al Odah case, said:

> Perhaps most disturbing, the habeas litigation has imperiled crucial military operations during a time of war. In some cases, habeas counsel have violated protective orders and jeopardized the security of the base by giving detainees information likely to cause unrest. Moreover, habeas counsel have frustrated interrogation critical to preventing further terrorist attacks on the United States.

This seems to have been validated—these criticisms—by the U.S. in briefs filed in Federal court by a lawyer who has filed those lawsuits on behalf of enemy combatants held at Guantanamo Bay. He boasted about disrupting U.S. war efforts in a magazine, where he said:

> The litigation is brutal for [the United States.] It's huge. We have over 100 lawyers now from big and small firms working to represent detainees. Every time an attorney goes down there, it makes it that much harder [for the United States military] to do what they're doing. You can't run an interrogation . . . with attorneys. What are they going to do now that we're getting court orders to get more lawyers down there?

I know time is precious and I want to yield back to the chairman of the Armed Services Committee, but I believe those who argue for an extension of full habeas corpus rights, such as would be provided to an American citizen in civilian courts, are making a fundamental mistake by confusing two different realms of constitutional law. One would apply to an American citizen accused of a crime, where certainly the desire and the order of business is to protect that individual against unjust charges, and to make sure that the full panoply of the Bill of Rights applies to that individual. Different considerations apply when you are talking about a declared enemy of the U.S., and particularly an unlawful combatant, someone who doesn't wear the uniform, someone who doesn't respect the law of wars, and who targets innocent civilians in the pursuit of their ideology.

I don't think we should make that mistake. So I reluctantly oppose the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I address the Senate on this issue and pose a question to my distinguished colleague, the senior Senator from Pennsylvania. I will put into the RECORD, following the conclusion of my remarks and my colloquy with the Senator from Pennsylvania, additional material.

Before I yield the floor, it is my desire to conclude the time on our side with the Senator from Missouri, and then reserve the remainder of my time for tomorrow. It would be my hope that the Senator from Pennsylvania, likewise, would save such remarks he may wish to make for tomorrow. As he knows, there is a function going on now, which I think most of us are trying to attend.

With that, I yield the floor.

Mr. SPECTER. Mr. President, that is satisfactory to me. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 33 minutes remaining.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, the amendment to give unlawful combatant habeas corpus rights to mirror U.S. domestic procedures is unnecessary and inappropriate.

The amendment is unnecessary because the U.S. is already giving enemy unlawful combatants more rights to question their continued incarceration than they are entitled to under international law.

Under Geneva Conventions Article 5, combatants captured during wartime are due a hearing to determine their lawful status only if such status is in doubt.

The United States goes beyond this requirement to give every combatant a status hearing, even when there is no doubt as to their status.

The U.S. gives combatants Combat Status Review Tribunal hearings, known as CSRTs, to determine their status and review the need for their continued incarceration.

If this were not enough, there is a review process under the Detainee Treatment Act, passed last year, to which detainees are also subjected.

There is no need for further review processes for these enemy combatant detainees. An enemy combatant detainee sounds a little sterile, but take a look at the name that is often referred to dealing with this. The Supreme Court case which brought about the need for this legislation deals with Hamdan. Let's be clear, Hamdan was Osama bin Laden's body guard and driver. This is the kind of person about whom we are talking. Giving unlawful enemy combatants such as these U.S. domestic habeas rights is inappropriate. These people are not U.S. citizens, arrested in the U.S. on some civil offense; they are, by definition, aliens engaged in or supporting terrorist hostilities against the U.S., and doing so in violation of the laws of the war.

Some may not have been around long enough to remember that the U.S. detained hundreds of thousands of German and Japanese soldiers, captured on World War II battlefields. We didn't give these enemy combatants access to U.S. domestic courts or habeas corpus rights. Not only would that have been absurd, it would have totally bogged down the legal system.

There has never been a legal question over the appropriateness of a separate military process for enemy combatants. We should not now start admitting them to the U.S. domestic legal process.

Current military review processes are more than adequate. Indeed, they exceed international standards. Granting enemy combatants additional U.S. domestic habeas corpus rights is unnecessary and inappropriate.

I urge my colleagues to oppose this amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, at this time, I observe no other Senators desiring to address the subject with regard to the pending bill. Having said that, 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. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

VOTE EXPLANATION

Mr. MCCAIN. Mr. President, due to the passing of a close friend, I was not present for the vote on amendment No. 5086, offered by Mr. LEVIN. With whis statement, I would like to inform the Senate that, had I been present, I would have voted against this amendment, which sought to strike the pending legislation on military commissions and insert the text of the bill reported out of the Armed Services Committee.

Senators WARNER, GRAHAM and I wrote and supported the bill that was reported out of the Senate Armed Services Committee. Over the past 2 weeks, however, we have been involved in negotiations with the White House and the House of Representatives and reached a compromise.

The compromise legislation, which I support, does not redefine the Geneva Conventions in any way. It amends the War Crimes Act—which currently says only that a violation of Common Article 3 is a war crime—by enumerating nine categories of offenses that constitute ''grave breaches of Common Article 3'' and thus are war crimes, punishable by imprisonment or death.

The bill authorizes the President to interpret the Geneva Conventions—a power he has already under the Constitution—as to what constitute nongrave breaches. These interpretations must be published in the Federal Register, and they will have same force as other administrative regulations, and thus may be trumped by law passed by Congress.

I am pleased with the agreement that we have reached with the administration and I support this legislation in the form pending on the floor. For this reason, if I had been present, I would have cast my vote against amendment No. 5086.

Mr. ROBERTS. Mr. President, I rise today in support of the timely passage of this legislation. In my view it is essential to the successful prosecution of our war against the terrorists.

Ever since the Supreme Court announced its decision in the case of Hamdan v. Rumsfeld, I have made clear that my three primary goals for legislation authorizing military tribunals were: (1) Adjudicating the cases of detained terrorists in proceedings that are consistent with our values of justice, (2) protecting classified information, and (3) ensuring that our military and intelligence officers have clear standards for what is, and is not, permissible during detention and interrogation operations.

After discussing these issues with National Security Adviser Hadley and officials at the Department of Justice, I am comfortable in saying that this legislation accomplishes each of those goals.

First, the legislation authorizes the President to establish military commissions for the trial of unlawful enemy combatants. Enemy combatants tried under this legal system will have the benefit of a comprehensive process that assures them of legal representation, access to witnesses and evidence, the ability to present a defense, and the ability to appeal any judgment to the Court of Military Commission Review, the DC Circuit Court of Appeals, and, ultimately, to the Supreme Court.

I dare say that some who may be tried by these military commissions will receive more due process and legal protection than they were ever willing to grant to others.

Second, while ensuring a full and fair process, the legislation also recognizes the important role that classified information is likely to play in these trials. The legislation expressly provides the government with a privilege to protect classified information. At the same time, the bill provides a number of ways for the trial court to ensure that the defendant is sufficiently apprised of the evidence to be used against him. I think this bill strikes the right balance between providing a full and fair process, and protecting classified information.

Third, and most important to me as chairman of the Intelligence Committee, the bill provides military and intelligence officers conducting detention and interrogation operations with clear standards.

Why is this so important? Because, there is a consensus in the intelligence community that terrorist interrogations are the single best source of actionable intelligence against the plots of a determined enemy.

Interrogation is a tool used by our brave men and women in the military and intelligence community to combat a continuing terrorist threat from those who are bent on attacking and killing Americans.

The majority of useable and actionable intelligence against al-Qaida comes from terrorist interrogations and debriefings. This tool is vital to keeping Americans safe—it is irreplaceable and it must be preserved.

Of particular note is the CIA's detention and interrogation program, which has been a supremely valuable source of information. This program has produced intelligence that has helped disrupt terrorist networks and prevent terrorist attacks. Furthermore, it has been carefully monitored to ensure that it complies with all our laws.

But, the Supreme Court's decision in Hamdan applied the Geneva Convention's Common Article 3 to unlawful enemy combatants. This threatened to shut down the CIA's detention and interrogation operations.

The standard articulated in Common Article 3 is extremely vague. This standard leaves military and intelligence officers in the dark as to what is, and what is not, permitted in detaining and interrogating unlawful enemy combatants. Moreover, because under current law any violation of Common Article 3 is a criminal violation, our interrogators potentially could be subjected to criminal prosecution for otherwise lawful actions.

Consequently, Congress must act to ensure that our military personnel and intelligence officers are not forced to operate, or be subjected to prosecution, under such a vague standard. It is our responsibility to provide clear guidance to military personnel and intelligence officers as to what is, and is not, permitted in interrogations. The standard must be clear enough so that our intelligence officers, who are making judgment calls in the field, can continue to operate.

The legislation currently before the Senate provides that clarity. It expressly provides for what acts constitute grave breaches of Common Article 3 and what acts would be subject to prosecution. It further allows the President to promulgate regulations for lesser violations of treaty obligations.

As a result, in passing this legislation, we will give the dedicated and honorable Americans on the front lines in the war on terror the clarity they need to fulfill their mission.

To win this war and keep Americans safe, our troops in the field and our law enforcement personnel here at home need timely and actionable intelligence. We get that intelligence in many forms such as satellite imagery, intercepted communications, financial tracking and human intelligence, including interrogations. In the past months, many of these intelligence collection tools have been damaged by deliberate leaks of classified information.

We can ill afford to lose any of these intelligence collection tools if we are to succeed. I am grateful that this bill will allow our Nation to continue its highly valuable interrogation programs.

I support the bill, and I urge my colleagues to do the same.

Mr. WARNER. Mr. President, we have had a very good debate. We have voted on one amendment. We have time remaining on the Specter amendment. We should be able to conclude that debate in the morning and proceed, I presume, to a prompt vote on the Specter amendment, and then proceed with the other two amendments.

MORNING BUSINESS

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate now proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

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

ULTRASOUND IMAGING

Mr. FRIST. Mr. President, I rise to speak about the use of ultrasound imaging by emergency physicians. October 2006 marks the 10-year anniversary of the establishment of the American College of Emergency Physicians, ACEP, Section of Emergency Ultrasound, which actively encourages research and training of emergency physicians in the use of emergency ultrasound. October 15, 2006, celebrates Emergency Ultrasound Day.

As a trauma surgeon, I spent many days and nights serving the emergency department. Emergency ultrasound, defined as the use of ultrasound imaging at the patient's bedside, is a critical component of quality emergency medical care. Ultrasound imaging enhances the physician's ability to evaluate, diagnose, and treat patients in the emergency department. It provides immediate information and can answer specific questions about the patient's physical condition, such as determining whether a presenting patient has thoracic and abdominal traumas, ectopic pregnancy, pericardial effusion, and many other conditions.

High-quality emergency care is dependent on rapid diagnostic tools, enhanced safety of emergency procedures, and reduced treatment time. Imaging technology has greatly improved quality of care and made invasive medical procedures safer.

Emergency physicians are trained in the use of imaging equipment during their residency as well as continuing medical education courses. Hospital privileges further validate this training.

Emergency ultrasound has moved outside the hospital due to its compact nature. In fact, emergency ultrasound technology is helpful onsite during military and disaster medical care. It has served in the care of America's brave military troops during both the gulf and Iraq wars. Also, emergency ultrasound was used to care for patients last year after Hurricane Katrina and will be helpful in responding to other disasters and mass casualty events.

Mr. President, I congratulate the work of the ACEP Section of Emergency Ultrasound. It has increased awareness of the contribution and value of emergency ultrasound by emergency physicians in the medical

care of emergency patients, survivors of disasters, and our military forces serving at home and abroad. Research in this field should continue to be encouraged to allow the adaptation of critical technologies to continually improve the quality of emergency care.

BURMA

Mr. McCONNELL. Mr. President, I wish to mark an important milestone: the 18th anniversary of the founding of the Burmese National League for Democracy, NLD. As the world knows well, the NLD is the legitimate leadership of the country of Burma, as the party was elected overwhelmingly by the Burmese people in 1990.

Sadly, the 18th anniversary for the NLD is not a time for rejoicing. The NLD remains firmly under the boot of the Burmese ruling junta, the State Peace and Development Council, SPDC. Many of its leaders are imprisoned, including Nobel Laureate and democracy advocate Daw Aung San Suu Kyi, and NLD vice chairman, U Tin Oo. Thirteen elected NLD members of Parliament and over 400 party members currently serve in prison. Other NLD members have endured torture and have been killed as the SPDC continues to wage a campaign of harassment, intimidation—and worse—against party members and supporters.

In a testament to the courage and determination of its leadership, and despite these great hardships, the NLD remains unbowed. It continues to pursue nonviolent political change in Burma. I am proud to say that the Senate stands squarely alongside the NLD in its efforts. I am hopeful that the United Nations, U.N., Security Council will as well. Due to the determined efforts of many countries, including the United States, Burma is slated to be on the Council's agenda for the first time ever. It will then be time for member states to stand up and be counted in support of a nonpunitive resolution on Burma.

It should be noted that U.N. Under Secretary General Ibrahim Gambari's trip to Rangoon earlier this year was a complete failure. Mr. Gambari should not make a second trip to Burma unless and until the U.N. Security Council has considered and passed a resolution that, among other things, details the threats the SPDC poses to the people of Burma and the entire region. Such action would be a clear message to the SPDC that when it comes to Burma, the world is not satisfied with the status quo.

Similarly, I would encourage all relevant bureaus at the State Department and the National Security Council—particularly those relating to African affairs—to remain engaged and focused on this issue. The task of promoting democracy and reconciliation in Burma should not be left only to the East Asian and Pacific Affairs and the Democracy, Human Rights, and Labor bureaus at the State Department. With three African nations currently sitting on the U.N. Security Council, our African affairs specialists need to more actively engage in building support for such a resolution. Ghana has already demonstrated its solidarity with the cause of freedom. The Republic of Congo and Tanzania need to follow suit.

Finally, on this, the 18th anniversary of the founding of NLD, I call upon the Burmese military regime to release Suu Kyi and all political prisoners. Only then can discussions on a meaningful reconciliation process—one that includes the full and unfettered participation of the NLD and ethnic minorities—proceed.

I ask unanimous consent that a Boston Globe Editorial on Burma be printed in the RECORD.

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

[From the Boston Globe, Sept. 26, 2006]

AN AGENDA FOR BURMA

Having placed the case of Burma's military junta on the formal agenda of the Security Council earlier this month, the United Nations now has an opportunity to show that it can be something more than an impatient debating club. If in the waning days of his tenure UN Secretary General Kofi Annan exercises the right combination of firmness and finesse with Burma's military dictators, he can help protect human rights, democracy, and regional security in Asia.

Unlike the coercive measures contemplated to cope with Iran's pursuit of nuclear weapons or genocide in Darfur, the UN is not being asked to dispatch armed peacekeepers to Burma to impose risky economic sanctions on the narco-dictatorship there. Rather, moral suasian and diplomatic pressure are the means for dealing with the junta's violations of human rights and its threats to regional peace and security—threats manifest in the export of heroin, methamphetamine, HIV/AIDS, and the hundreds of thousands of refugees who have fled the military's brutal assaults on ethnic minorities.

Annan must be careful, however, in the way he exerts the UN's soft power. Last May, he sent UN undersecretary-general for political affairs, Ibrahim Gambari, to Burma, where he met with Nobel Peace Prize winner Aung San Suu Kyi as well as junta leaders. At the time, Gambari said he thought the junta bosses were ''ready to turn a new page.'' But Gambari and Annan looked gullible soon after, when the junta extended Suu Kyi's house arrest for another year and intensified its campaign of ethnic cleansing, rape, and murder in the region inhabited by 2 million people of the Karen ethnic group.

Annan shouldn't allow Gambari to undertake a return trip to Burma without a Security Council resolution that spells out clear and reasonable demands for the true turning of a new page. That should include the release of all 1,100 political prisoners in Burma, including Suu Kyi and fellow leaders of the National League for Democracy, the party that won 82 percent of Parliamentary seats in a 1990 election that the junta has refused to honor ever since.

The NLD, which commemorates the anniversary of its 1988 founding on Sept. 27, must be invited along with other parties and representatives of Burma's ethnic nationalities to participate in a genuine political dialogue. The resolution Gambari takes to Burma should specify that such a dialogue means working out terms for an agreement on a return to democracy. That resolution should also require the junta to end its attacks on ethnic minorities and to permit international aid organizations to have unimpeded access to all those in need within Burma. Nearly all the people of Burma need the world's help.

RECOGNIZING SERGEANT LEIGH ANN HESTER

Mr. McCONNELL. Mr. President, I ask the entire Senate to join me today in congratulating one of Kentucky's amazing young heroes. SGT Leigh Ann Hester of Bowling Green, KY, is traveling to the Nation's Capital to receive the USO's Service Member of the Year Award at the organization's 2006 USO World Gala this September 28.

Sergeant Hester is being honored for her valorous service in combat in Iraq, which earned her the Silver Star medal. The Silver Star is the Army's third-highest award for gallantry, and Sergeant Hester is the first female soldier to win the medal for valor in combat since World War II.

A retail store manager in Bowling Green, Sergeant Hester joined the U.S. Army in 2001 and was assigned to the Kentucky National Guard's 617th Military Police Company, based in Richmond, KY. In March 2005, she was on the southeastern outskirts of Baghdad, shadowing a convoy of tractor-trailers carrying supplies for American forces.

The convoy was ambushed by about 50 heavily armed terrorists. They attacked from a trench alongside the road and rained down machine-gun fire and rocket-propelled grenades on the convoy for a sustained 3 minutes. Several truck drivers were killed, more were wounded. Thinking they had the upper hand, the terrorists moved towards the convoy, preparing to take hostages.

Suddenly three armored humvees roared up to the carnage. Sergeant Hester, as team leader of the second humvee, maneuvered her team into a position to draw the enemy's fire and begin fighting back with grenades and M203 rounds.

Sergeant Hester and her squad leader got out of their humvees and rushed the trench about 20 meters away from them to clear out the enemy. They worked their way through the insurgents, throwing grenades and firing M4s. When she ran low on ammunition, she ran back to a humvee to reload, exposing herself to enemy fire from multiple directions. Because this squad had been so well disciplined, Sergeant Hester was able to reach blindly into any of the humvees and know exactly where to grab more ammunition.

Finally, the soldiers of the 617th had put down enough fire that the enemy fell silent. It turns out that Sergeant Hester and her team, just 10 in all, had not only put themselves in the middle of a firefight against greater numbers and all survived, they had scored the highest death toll of insurgents in Iraq in many months. They killed 27, captured several wounded, seized a sizable

weapons cache, and secured valuable intelligence.

Sergeant Hester's actions were cited as having ''saved the lives of numerous convoy members.'' For her bravery, she was awarded the Silver Star medal on June 16, 2006.

Sergeant Hester's courage, dedication, and sacrifice on behalf of her country and her fellow soldiers make her a hero and a role model that every young Kentuckian can emulate. I am proud that a woman of such character and determination hails from the Bluegrass State, and I know the entire Senate joins me in thanking her for her service in defense of America and America's ideals.

HONORING OUR ARMED FORCES

SERGEANT FIRST CLASS RICHARD J. HENKES

Mrs. LINCOLN. Mr. President, it is my honor to pay tribute to the life of SFC Richard J. Henkes, a brave soldier who gave his life in support of Operation Iraqi Freedom. Sergeant Henkes will be remembered as a courageous soul, a proud father, and an inspiration to those who knew him best. The 200 people who gathered at his memorial service are a testament to the number of lives he touched. They are lives that he continues to touch through the legacy he leaves behind.

Sergeant Henkes wrestled and ran track in high school, but his true passion was snowboarding. He shared this passion with his 6-year-old daughter, Isabel, as well as with his 17-year-old niece, Cassidy, who fondly remembers the caring uncle who was always there to pick her up when she would fall. Above all, Sregeant Henkes was a compassionate, outgoing, and fun-loving guy with a great sense of humor. It was this compassion for others and desire to make a difference that drove him to carry on his family's rich history of military service, dating back to World War I.

Stationed out of Fort Lewis, WA, Sergeant Henkes served with C Company, 2nd Battalion, 3rd Infantry Regiment, 2nd Infantry Division. In Iraq, he was recently placed in command of his platoon—a challenge that he embraced. Tragically, Sergeant Henkes died on September 3 from injuries sustained from a roadside bomb in Mosul, Iraq. People say he knew of the dangers of war, but he believed his mission would make a difference in the lives of countless people and that it was worth the sacrifice. Mourners paid tribute to Sergeant Henkes in the Woodburn, OR, National Guard Armory on September 11. At the ceremony, he was posthumously awarded the Bronze Star and Purple Heart service medals by his battalion.

We grieve the loss of another soldier who made the ultimate sacrifice to defend the freedoms we all cherish. Sergeant Henkes leaves behind a legacy that will live on through the people he inspired and the young daughter who will grow up knowing that her father lived to make a difference in the world. My thoughts and prayers are with his daughter Isabel, his parents, Chris and Jim Stanton of Ashdown, AR, and Richard and Karen Henkes of Woodburn, OR, and to all those who knew and loved him.

Mr. SUNUNU. Mr. President, I rise today in support of S. 3549, the Foreign Investment and National Security Act. S. 3549 reforms the Committee on Foreign Investment in the United States, which is more commonly known as CFIUS. CFIUS is the entity of our Federal Government charged with reviewing any type of foreign investment in the United States, and reviews all corporate transactions involving foreign-owned companies. Its top priority has always been to protect America's national security interests, and that must remain its main focus. However, this foremost concern can and must be addressed without jeopardizing foreign investment in our country—a critical economic engine.

This CFIUS reform bill represents an effort by the Senate to ensure that the national security interests of the United States are protected in the context of foreign investment in U.S. industries. As a member of the Banking Committee, I supported this effort as a necessary way to restore the confidence of the American people in the CFIUS process, and I commend Chairman SHELBY and Ranking Member SARBANES and my colleagues on the committee for their work to date on this legislation. Though I supported Senate passage of the bill in an effort to keep this important legislation moving through the legislative process, I want to highlight two provisions in the bill with which I have significant concerns because they will have a chilling effect on foreign investment.

First, the provision that potentially extends the initial 30-day review period to a 60-day period would place all foreign investors, including those of our closest allies, at a competitive disadvantage. Under current law, most transactions, foreign and domestic, require an antitrust review under the Hart-Scott-Rodino Act which takes a minimum of thirty days. However, the foreign investor is also, appropriately, required to undergo a 30-day CFIUS review, which may occur concurrently with the HSR review. This process allows a thorough review without putting one type of investor at a disadvantage to another. S. 3549, however, would potentially expand the 30-day CFIUS review to 60 days, creating a much longer delay and one that is disconnected from the HSR-mandated time table. This would create a substantial competitive disadvantage. Our government ought to be able to quickly identify and clarify the national security implications of a given transaction certainly within the 30 days prescribed under current law.

The second provision with which I have concern would require repeated and detailed notifications about ongoing transactions to many Members of Congress and State Governors. Such notifications would only politicize transactions, do little to resolve national security concerns and undermine the CFIUS process.

This bill makes a strong attempt to strike the appropriate balance between national security, sound economic policy, and appropriate oversight. The two provisions I have highlighted upset this balance, but because I support this overall effort, I look forward to continued collaboration with Senators SHELBY and SARBANES and the other members of the Banking Committee as we address these issues in conference with the House.

NOMINATION OF FRANCISCO AUGUSTO BESOSA

Mr. BAUCUS. Mr. President, I would have voted in support of the nomination of Francisco Augusto Besosa to the U.S. District Court for the District of Puerto Rico. However, I was on my way back from Montana and was unable to make it to the Senate floor before the vote ended.

Mr. Besosa is well qualified for the position and will be a good addition to the court.

Francisco Augusto ''Frank'' Besosa is partner and head of the litigation department of Adsuar Muniz Goyco Besosa, P.S.C. in San Juan, Puerto Rico. After graduating from Brown University in 1971, he served 5 years in active military service in military intelligence. He was honorably discharged from Inactive Reserve from the U.S. Army with the rank of captain in 1977. He earned a J.D. from Georgetown University Law Center in 1979. After law school, Mr. Besosa returned to Puerto Rico and joined the law firm of O'Neill & Borges.

With the exception of 3 years in the 1980s as an assistant U.S. attorney, Mr. Besosa has spent his entire legal career in private practice in several firms conducting civil and commercial litigation in Puerto Rico. His work has focused on banking and bankruptcy; securities regulation; admiralty; insurance; torts including personal injury, medical malpractice, and product liability; telecommunications and intellectual property both at the trial and appellate level.

Mr. Besosa is a member of numerous bars including the Puerto Rico Bar Association, the Federal Bar Association, American Bar Association, District of Columbia Bar Association, U.S. Court of Appeals for the First Circuit and the Federal Circuit, and the Hispanic National Bar Association. He has held a variety of leadership positions in the Federal Bar Association Puerto Rico Chapter including director, president-elect, vice president, secretary and treasurer.

The ABA has recommended Mr. Besosa for the position with a unanimous ''well qualified'' rating.

Given his qualifications and experience, Mr. Besosa is a good fit for the

U.S. District Court for the District of Puerto Rico. I would have supported his nomination.

Mr. COLEMAN. Mr. President, I rise today to discuss the Secure Fence Act of 2006 and the issue of securing our northern border. Without question, securing the border is our most vital need in dealing with illegal immigrants and as it stands, our borders lay vulnerable to not only an influx of illegal immigrants but also transportation of dangerous materials. The facts are clear—each year over 1 million unauthorized aliens are interdicted entering the country mostly on the southwest border. Testimony by the Border Patrol union chief places the estimate of illegal entrants not interdicted by Border Patrol to be two times those actually caught. Simply put, the Border Patrol is overwhelmed by the sheer volume of the traffic and it is time to take action.

The Secure Fence Act of 2006 requires the Secretary of Homeland Security to take all appropriate actions to achieve operational control over all U.S. international land and maritime borders within 18 months of its enactment. Additionally, the bill authorizes 700 miles of double-layered fencing at specified locations along the almost 2,000-mile southwest U.S. international border with Mexico.

This bill also takes the right approach in terms of northern border security. The legislation requires the Department of Homeland Security to conduct a study on the feasibility of a state of-the-art infrastructure security system along the northern international land and maritime border of the United States. The study shall include the necessity of implementing such a system, the feasibility of implementing such a system and the economic impact implementing such a system will have along the northern border.

In my home state of Minnesota, we share 547 miles of border with Canada and 458 of those miles are a water boundary. I want to make it clear to my constituents and our Canadian friends that this legislation should not be used to justify construction of a wall along the northern border but to take an inventory of the systems that are working and not working and ensure that we put in place the most effective approach. We are going to measure twice before building once.

The United States and Canada share a long history of working together on issues of mutual concern. Both countries share a common border and common objectives: to ensure that the border is open for business, but closed to crime. The Canada-United States Smart Border Declaration and Action Plan and programs such as the Security and Prosperity Partnership and the Integrated Border Enforcement Teams are great examples of cooperative initiatives that have proven successful.

I am fully confident this strong relationship and commitment to border security will continue as it is one of the cornerstones to securing our northern border.

NATIONAL EMPLOY OLDER WORKERS WEEK

Mr. KOHL. Mr. President, I rise today to recognize National Employ Older Workers Week, a time to celebrate the many older workers who are redefining retirement and the employers that welcome their talents.

Many older Americans do not see retirement as just a period of leisure; they continue to contribute to our nation's businesses, communities, and economy. And some employers, facing a shortage of skilled and experienced workers, have recognized the value of older workers by changing their policies to attract and retain them.

One of those employers is Mercy Health System, which is based in Wisconsin and has 63 health care facilities across Wisconsin and Illinois. AARP recently ranked Mercy Health System the top employer for older workers in the country. Mercy Health System attracts and retains older workers by providing flexible work options, like its Work-to-Retire Program, which offers reduced and seasonal work schedules while maintaining health benefits.

Yet too few employers have followed Mercy Health System's lead in creating better work options for older Americans. While most older workers want to work past traditional retirement age, many do not want to work a traditional full-time schedule. Today, only about one-third of older workers have flexible work schedules. Even when employers offer flexible work options like part-time work schedules, most do not also offer benefits: only 22 percent of part-time workers have access to health benefits.

So while older workers and some employers have begun to reinvent retirement, we have a long way to go. That is why I authored the Older Worker Opportunity Act, which aims to expand opportunities for older Americans to work longer if they so choose. The centerpiece of this legislation is a tax credit for employers that offer flexible, reduced, or seasonal work schedules to older workers while maintaining their health and pension benefits. Such a credit would reward employers like Mercy Health System who are doing the right thing, while encouraging other employers to follow their lead. Greater workplace flexibility would not only benefit older Americans, but would also reduce employer costs by increasing productivity and job retention.

Just this week, the National Committee to Preserve Social Security and Medicare endorsed the Older Worker Opportunity Act. In its letter of support, president and CEO Barbara Kennelly offered that the bill ''could help pave the way for significant increases in older worker employment.'' I agree, and I am proud to have them join our other supporters, including the National Council on Aging, the National Older Worker Career Center, Watson Wyatt Worldwide, the Committee for Economic Development, the Association of Jewish Family and Children's Agencies, and United Jewish Communities. With their backing, this bill will continue to gain steam.

During National Employ Older Workers Week, we also celebrate the Senior Community Service Employment Program—SCSEP—which has provided community service and job training to low-income seniors for 40 years. As our baby boomers age and seniors become a growing share of the population, we must strengthen SCSEP so that all eligible seniors get the help they need. Many of us were concerned when the Administration proposed a major overhaul of this program, which would have been disruptive to both grantees and participants. I am hopeful that the Older Americans Act reauthorization bill will preserve the basic structure of the program and build on its success.

I urge Congress to pass the OAA reauthorization as soon as possible so that seniors in need of SCSEP services have the tools to stay active in the workforce and their communities. But beyond reauthorization, we must also boost SCSEP's funding, which is currently only enough to serve less than one percent of the eligible population. As a member of the Appropriations Committee, I will continue to press for additional funding so that all older Americans who want or need to work longer have the opportunity to do so.

As older Americans live longer and healthier lives, most have the ability and desire to remain active. Some want to maintain physical and mental health, some need to improve their financial security, and some want to continue to contribute to society. Whatever the reason, it's time to change the way we think about retirement. Older Americans are a valuable asset to our nation's businesses, communities, and economy, and we must tap their reservoir of experience and talents. Our seniors deserve it, and our economic future may well depend on it.

CHILD AND FAMILY SERVICES IMPROVEMENT ACT

Mr. GRASSLEY. Mr. President, yesterday, the House of Representatives passed the Senate amendment to S. 3525, which represents the bipartisan and bicameral agreement on the Child and Family Services Improvement Act of 2006.

I was pleased to have introduced the Senate amendment with my friend and partner on the Senate Finance Committee, Senator MAX BAUCUS. Senator BAUCUS and I were joined by Senator ORRIN G. HATCH, and Senator JOHN D. ROCKEFELLER, Jr. and Senator OLYMPIA J. SNOWE. All of these members have a long history of support for important programs to improve the well-being of children.

This important legislation reauthorizes the Promoting Safe and Stable Families Program which provides services to families for family support, family preservation, time-limited reunification of families, and for adoption and post-adoption services. These are critical funding streams, and the reauthorization of the Promoting Safe and Stable Families Program ensures that families can rely on these preventative and supportive services.

The legislation also aligns the Child Welfare Services Act with the prevention activities of the Promoting Safe and Stable Families Program by providing incentives to States to invest in prevention services while allowing States to continue current State spending on existing State priorities.

S. 3525 provides support for increased caseworker visits as well as adopts a version of President Bush's proposal to provide a voucher for mentoring services for children of prisoners.

Additionally, the legislation increases access for funding for Indian tribes, which was a key priority of both Senator BAUCUS and Senator KENT CONRAD.

The legislation that will soon be signed by the President also includes grants for regional partnerships to address the growing problem of methamphetamine and other substance abuse and addictions that have had a substantial impact on child welfare systems and services.

Funding for these competitive grants was a key priority of mine, and I am pleased that the compromise we were able to work out with the House maintains the support for grants to improve the outcomes for children affected by methamphetamine abuse and addiction.

Mr. President, the Senate Finance Committee did a great deal of work on issues relating to child welfare. We held the first full committee hearing in 10 years on child welfare, and we held an additional hearing on the effects of the methamphetamine epidemic on the child welfare system. We worked on a bipartisan basis to mark up and pass the Improving Outcomes for Children Affected by Meth Act of 2005. Key provisions of that bill are features in the legislation which will soon be signed into law.

But there is more that can be done to strengthen and improve child welfare services. I intend to continue to work on a bipartisan basis to develop and enact reforms to ensure that all children have access to loving, permanent homes.

I would like to take this opportunity to thank the staff who worked tirelessly to get this bill done. Members of Congress in both the House and the Senate are very well served by our staffs. These men and women care a great deal about these programs, and we are indebted to them for their insights and analysis.

I am grateful to the talented staff from the office of Senator BAUCUS, specifically, Diedra Henry-Spires, Doug Steiger, and Michelle Easton. Additionally, I am grateful to Senator ROCKEFELLER's extremely knowledgeable aid Barbara Pryor.

I appreciate the work of the staff on the Subcommittee on Human Resources of the House Committee on Ways and Means, Matt Weidinger and Christine Calpin for the majority and Nick Gwyn and Sonja Nesbit for the minority.

I also thank the dedicated analyst from the Congressional Research Service, Emilie Stoltzfus who provided staff with invaluable expertise on child welfare programs.

Thanks to Christina Hawley Anthony from the Congressional Budget Office as well as legislative counsels Ruth Ernst and James Grossman.

Finally, I appreciate the efforts of my own Finance Committee policy lead on this issue, Becky Shipp as well as Mark Hayes, Ted Totman, and Kolan Davis.

Mr. President, because a formal conference was not convened on this bill, there is no conference report filed. However, the staff has prepared a section-by-section analysis of the Senate-House agreement for purposes of the legislative history.

Mr. President, some will say this has been a ''do nothing congress.'' I couldn't disagree more, and I believe that the children and families served by this legislation would disagree as well.

Mr. President, I ask unanimous consent that the section-by-section analysis to which I referred be printed in the RECORD.

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

SECTION-BY-SECTION ANALYSIS

S. 3525, THE CHILD AND FAMILY SERVICES IMPROVEMENT ACT OF 2006, AS AMENDED

(Prepared by the Staff of the U.S. House Committee on Ways and Means and the U.S. Senate Committee on Finance, September 27, 2006)

Section 1—Short Title

''The Child and Family Services Improvement Act of 2006''

Section 2—Findings

The legislation makes a number of findings regarding the provision of services under two child welfare programs authorized under Title IV–B of the Social Security Act, the Child Welfare Services (CWS) program and the Promoting Safe and Stable Families (PSSF) program. The findings note the importance of monthly caseworker visits in improving outcomes for children. They also outline the relationship between the entry of children into the child welfare system and their parent's abuse of methamphetamine and other substances.

Section 3—Reauthorization of the Promoting Safe and Stable Families Program

Current Law

For fiscal year (FY) 2006, authorizes mandatory funding of $345 million for the Promoting Safe and Stable Families (PSSF) program (Title IV–B, Subpart 2 of the Social Security Act) and discretionary funding of $200 million for each of FYs 2002 through 2006.

S. 3525

The legislation extends the mandatory PSSF funding authorization of $345 million for five years (FYs 2007 through 2011) and extends the discretionary funding authorization of $200 million for each of those same five years. The legislation expands the reporting requirement to include both proposed spending and actual spending under the CWS and PSSF programs, and at State option, other programs that support child abuse prevention activities and child welfare services. The legislation also prohibits HHS from making any payment of PSSF funds to a State for administrative costs that exceed 10 percent of total program expenditures (Federal and non-Federal) of a State.

Reason for Change

The PSSF program supports four categories of services provided to children and families: family preservation services, community-based family support services, time-limited reunification services, and adoption promotion and support services. The legislation recognizes the importance of encouraging States to invest in these activities. Thus the legislation provides for the $200 million increase in mandatory PSSF funds over the next five years included in the Deficit Reduction Act of 2005 (Pub. L. 109–171). In total $345 million in mandatory funds (the recent $305 million allotment of annual mandatory funds, plus a $40 million annual increase provided under the Deficit Reduction Act of 2005) will be provided in each of FYs 2007 through 2011.

The legislation also will ensure better oversight and accountability of spending under the CWS and PSSF programs by requiring States to report on projected and actual spending under these two programs. Specifically, data on actual spending will help track State investments for the four priorities of the PSSF program.

Section 4—Targeting of Promoting Safe and Stable Families Program Resources

Current Law

Current law requires States to include assurances in their PSSF plan that they will spend significant portions of their PSSF funds in each of four priority areas: (1) family preservation services; (2) community-based family support services; (3) time-limited family reunification services; and (4) adoption promotion and support services.

S. 3525

The legislation retains the four priorities of PSSF while targeting the additional $40 million per year provided under the Deficit Reduction Act of 2005 (Pub. L. 109–171) to two new priorities: (1) support for monthly caseworker visits; and (2) competitive grants to promote the well-being of children in or at risk of placement in the child welfare system as a result of their parent's abuse of methamphetamine or other substances.

The legislation provides a total of $95 million to States to support monthly caseworker visits of children in foster care under the responsibility of the State, with a primary emphasis on activities designed to improve caseworker retention, recruitment, training, and ability to access the benefits of technology. States will receive $40 million from FY 2006 PSSF funds (with these funds available through FY 2009), $5 million in FY 2008, $10 million in FY 2009, and $20 million in each of FYs 2010 and 2011 to support monthly caseworker visits. States cannot use these funds to supplant any Federal funds already paid to the State under the Title IV–E program that could be used for the purposes outlined above.

To promote the well-being of children affected by their parent's abuse of methamphetamine or other substances, the legislation provides a total of $145 million to the Secretary of the Department of Health and Human Services (HHS) to award competitive

grants to regional partnerships to pursue innovative approaches to help children and families. Funding will be $40 million in FY 2007, $35 million in FY 2008, $30 million, in FY 2009 and $20 million in each of FYs 2010 and 2011. Partnerships must include the State child welfare agency or an Indian tribe and at least one other eligible partner, including: child welfare service providers (nonprofit and for-profit), community providers of health or mental health services, local law enforcement agencies, judges and court personnel, juvenile justice officials, school personnel, the State agency responsible for administering the substance abuse prevention and treatment block grant (authorized under Title XIX–B, Subpart II of the Public Health Services Act), and any other providers, agencies, personnel, officials or entities related to the provision of child and family services. Grants of between $500,000 and $1 million per year will be awarded for 2 to 5 year periods.

A priority will be given to grant applications that propose to combat methamphetamine abuse, given its substantial affect on child welfare in some areas. Funding for the grants must be used to support the purposes of this program, which may include family-based comprehensive long-term substance abuse treatment services, early intervention and prevention services, mental health services, parent skills training, and replication of successful models for providing family-based comprehensive long-term substance abuse treatment services. Grantees must provide a 15 percent match in the first and second year, a 20 percent match in the third and fourth year, and a 25 percent match in the fifth year. In-kind contributions can qualify towards the match requirement. The Secretary of HHS must consult with State leaders to develop performance indicators and reporting is required of all grant recipients.

The legislation also redirects current PSSF research funding to support evaluation, research, and technical assistance related to the above two PSSF funding priorities. In each of FYs 2007 through 2011, at least $1 million must be spent for research and technical assistance activities that support monthly caseworker visits and at least $1 million must be spent for research and technical assistance activities with respect to the competitive grant program to promote the well-being of children in or at risk of placement in the child welfare system due to a parent's abuse of methamphetamine or other substances.

Reason for Change

The targeting of funds to support monthly visits of foster children is in response to research highlighting how monthly visits lead to better outcomes for children. The Child and Family Service Reviews (CFSRs) completed in each State found a strong correlation between frequent caseworker visits with children and positive outcomes for children, such as timely achievement of permanency and other indicators of child well-being. However, despite the fact that nearly all States had written standards suggesting monthly visits were State policy, a December 2005 report completed by the HHS Office of the Inspector General found that only 20 States were able to produce reports showing whether caseworkers actually visited children in foster care on at least a monthly basis. States are encouraged to invest these resources in those activities with proven effectiveness in supporting monthly caseworker visits of foster children and should be cognizant that these funds may not supplant what States already spend from their Title IV–E programs for these activities. These resources are intended to increase State investment in these important areas.

Parental substance abuse is a well-known problem affecting the child welfare system, and the Office of Applied Studies of the Substance Abuse and Mental Health Services Administration reported that the number of new uses of methamphetamines (meth) has increased 72 percent in the past decade. A study by the National Association of Counties which surveyed 300 counties in 13 States reported that meth abuse is a major cause of child abuse and neglect. Forty percent of all the child welfare officials in the survey reported an increase in out-of-home placements due to meth abuse in 2005.

Section 5—Allotments and Grants to Indian Tribes

Current Law

Requires that 1 percent of all mandatory PSSF funds, and 2 percent of any discretionary appropriations for the PSSF program, be set aside for tribal programs. (The minimum tribal funding provided is $3.45 million and the maximum annual tribal funding possible is $7.45 million.)

Out of the tribal funds reserved, Indian tribes or tribal organizations with an approved plan must be allotted PSSF funds (based on the relative share of tribal persons under age 21 but only among tribes or tribal organizations with approved plans). The Secretary of HHS may exempt a tribe from any plan requirement that it determines would be inappropriate for that tribe (taking into account the resources, needs, and other circumstances of that tribe). However, no tribe or tribal organization may have an approved plan (or receive funds) unless its allotment is equal to at least $10,000. Funds allotted are paid directly to the tribal organization of the Indian tribe to which the money is allotted.

S. 3525

The legislation increases the set-aside for tribal programs to 3 percent of any discretionary funds appropriated. It also increases the set-aside for tribal programs to 3 percent of the mandatory funds authorized and which remain after the separate reservation of funds is made for (1) monthly caseworker visits, and (2) competitive grants to combat methamphetamine and other substance abuse. Therefore, the minimum funding available per year for tribal programs would be $9.15 million and the maximum funding would be $15.15 million. The legislation eliminates the ability of the Secretary of HHS to exempt tribes from the PSSF plan requirements related to nonsupplantation, data reporting, and monitoring. However, the Secretary retains the ability to waive for Indian tribes the PSSF requirement to invest significant amounts of program funds in each of the four PSSF activities and to spend no more than 10 percent of PSSF funds on administrative costs.

The legislation also permits tribal consortia to have access to an allotment of PSSF funds (and related technical assistance) on the same basis as such funds are currently available to Indian tribes. A tribal consortium's allotment is to be determined based on the number of tribal persons under age 21 in each tribe that is a part of the tribal consortium. If tribes choose to apply collectively as a consortium, the population of tribal persons under age 21 for each tribe would be combined in order to determine the size of the grant to the consortium, including whether the consortium meets the $10,000 eligibility threshold in the Act. A tribal consortium could select which Indian tribal organization (among the tribes in the consortium) would receive the direct payment of its allotment.

Reason for Change

The legislation recognizes the importance of assisting tribes in their efforts to assist abused and neglected children. The legislation significantly increases the amount of funds provided to tribes and allows tribal consortia to apply for PSSF funds. This step is being taken to encourage the further development of tribal child welfare programs, which largely serve severely disadvantaged communities and families and can do so in a culturally appropriate manner. Permanency outcomes for Indian children can be improved if tribal consortia are able to have access to an allotment of PSSF funding on the same basis as is currently available to Indian tribes. This will facilitate smaller tribes' building their own programs and will allow for administrative efficiencies in tribal program administration.

To collect additional data and ensure proper oversight of these funds, tribes and tribal consortia interested in applying for this substantial increase in PSSF funds will be required to adhere to the same data and monitoring plan requirements as States. This additional data will inform how these funds have helped the tribes better ensure the safety, permanency, and well-being of tribal children.

Section 6—Improvements to the Child Welfare Services (CWS) Program

Current Law

Up to $325 million annually is authorized on an indefinite basis for the Child Welfare Services (CWS) program, which provides funds to States to support a wide range of child welfare activities. Federal funding represents 75 percent of total funding for this program, and States are required to contribute 25 percent of total CWS funding from State funds.

S. 3525

The legislation maintains the annual discretionary authorization level of $325 million per year but limits the funding authorization to FYs 2007 through 2011. The legislation also specifies that the purpose of the CWS program for which funds may be expended is to promote State flexibility in the development and expansion of a coordinated child and family services program that utilizes community-based agencies and that ensures all children are raised in safe, loving families, by: (1) protecting and promoting the welfare of all children; (2) preventing the neglect, abuse, or exploitation of children; (3) supporting at-risk families through services which allow children, where appropriate, to remain safely with their families or return to their families in a timely manner; (4) promoting the safety, permanence and well-being of children in foster care and adoptive families; and (5) providing training, professional development and support to ensure a well-qualified child welfare workforce.

The legislation eliminates the plan requirements related to child day care standards and those related to the use of paraprofessionals or volunteers and restates and renumbers the remaining provisions with generally the same intent. It rewrites the provision concerning policies and procedures for children abandoned shortly after birth to assert that a State must have in effect administrative and judicial procedures for children who are abandoned at or shortly after birth (including policies and procedures providing for legal representation of the children) to ensure expeditious decisions can be made for their permanent placement. Further, it clarifies that the State may include residential educational programs as a living arrangement for children for whom reunification, adoption, or guardianship have been ruled out as permanency goals. This provision does not undermine current State policies regarding placement of children in adoptive homes and does not eliminate the 25 bed policy.

Beginning October 1, 2007 (i.e. the beginning of FY 2008), the legislation limits administrative funding to 10 percent, but defines administrative funds to exclude caseworker services and supervision of such services. Also beginning in FY 2008, the legislation limits how much each State can expend from Federal CWS funding for foster care maintenance payments, adoption assistance payments, or child day care to what the State can show that it spent for such purposes in FY 2005. Further, beginning with FY 2008, States are not allowed to use State spending on foster care maintenance payments to meet the State matching requirement to receive Federal CWS fund in amounts that exceed what the State spent from such funds in FY 2005.

The legislation also adds new requirements to the CWS plan the State submits to (1) describe how the State consults with and involves physicians and other appropriate medical professionals in the assessment of children in foster care and in determining appropriate medical treatment, and (2) develop a plan on how to respond, track and continue care for children receiving child welfare services in the event of a disaster.

Reason for Change

The legislation will reorganize and update the CWS program and encourage more effective oversight. It also aligns the program to be coterminous with the reauthorization of the PSSF program to allow for better coordination between the two programs. It will encourage States to invest funding in prevention services, but allows each State to maintain in the coming years its FY 2005 level of spending from Federal CWS funds for foster care, adoption assistance and child care purposes. It adds a new State planning requirement to ensure consultation with medical professionals as well as State planning to continue the availability of child welfare services during a disaster.

Section 7—Monthly Caseworker Standard

Current Law

There is no minimum Federal standard for monthly visits of foster children in State custody.

S. 3525

The legislation requires the State to update its CWS State plan by October 1, 2007 to describe its standards for the content and frequency of caseworker visits of foster children in State custody, which at a minimum must ensure that children are visited on a monthly basis and that the caseworker visits are well-planned and focused on issues pertinent to case planning and service delivery to ensure the safety, permanency, and well-being of children.

The legislation also sets a minimum Federal standard requiring each State and territory to achieve by October 1, 2011 monthly caseworker visits for at least 90 percent of foster children in State custody, with the majority of those visits occurring in the child's residence. Each State and territory would be held accountable for its efforts and the legislation prescribes a planning process to achieve this goal. To receive FY 2008 CWS funds, States must submit to HHS data for FY 2007 on the percentage of foster children visited on a monthly basis by their caseworker and the percentage of those visits that occurred in the child's residence. Based on this data, HHS will work with each State to set target levels for the State to meet to achieve a 90 percent monthly visitation standard by FY 2012 and will establish these target levels by June 30, 2008. Then, beginning in FY 2009, States must achieve their annual goal for the percentage of caseworker visits and the percentage of visits that occur in the child's residence, or face an enhanced matching requirement in order to draw down their full allotment of Federal CWS funds. The share of non-Federal spending that is required in a State that does not meet its visitation target level in a year increases by a minimum of 1 percentage point, up to a maximum of 5 percentage points, depending on the degree to which the State has missed its target level; absent the commitment of additional State funds, Federal funds would be reduced to yield the modified State share of overall CWS funding, consistent with the degree of the State's failure to achieve its visitation target for that year.

No later than March 31, 2010, HHS must submit to the House Committee on Ways and Means and the Senate Committee on Finance a report that outlines the progress States have made in meeting their caseworker visitation standards and that offers recommendations, developed in consultation with State administrators of child welfare programs and members of State legislatures, to assist States in meeting this standard.

Reason for Change

Holding States accountable for achieving monthly caseworker visits for at least 90 percent of foster children responds to research highlighting how monthly visits lead to better outcomes for children. HHS shall work with the States to establish a plan to achieve this goal by FY 2012 and States are encouraged to invest the new PSSF resources provided in FY 2006 and later fiscal years in activities that have been shown to be effective in achieving increased caseworker visitation of foster children. The above accountability measure will ensure that, even in the case of a State that fails to fulfill its specified level of caseworker visits, the full Federal CWS allotment to a State will remain available so long as that State increases its State CWS spending modestly, according to the provisions of the legislation.

Section 8—Reauthorization of Program for Mentoring Children of Prisoners

Current Law

The Mentoring Children of Prisoners program is administered by HHS and makes competitive grants to support the establishment or expansion and operation of programs that provide mentoring services to children of prisoners.

S. 3525

The legislation reauthorizes the existing Mentoring Children of Prisoners program through FY 2011 at such sums as may be necessary and increases the HHS set-aside for research, technical assistance, and evaluation from 2.5 percent to 4 percent. It authorizes a new 3-year pilot program to provide vouchers to qualified mentoring groups to offer services to individual children of prisoners, but specifies both annual caps on funding for this purpose and that at least $25 million must be available each year for site-based grants provided under the program. The voucher pilot program will be administered by a national group that will work closely with HHS to manage the program with the goal to distribute least 3,000 vouchers in the first year, 8,000 vouchers in the second year and 13,000 vouchers in the third year. The legislation specifies that the national group must identify in its voucher distribution plan how the group will prioritize providing vouchers to children in areas which have not been served under the current site-based mentoring program. During the third year of this pilot HHS shall provide a report based on an independent evaluation to the House Committee on Ways and Means and the Senate Committee on Finance on the number of children who received vouchers for mentoring services and any conclusions regarding the voucher pilot program's effectiveness.

Reason for Change

The continuation of the Mentoring Children of Prisoners program will enable public and private organizations to establish or expand projects that provide one-on-one mentoring for children of incarcerated parents and those recently released from prison. At the same time, children have not been able to access mentoring services in some States and rural areas because of the absence of a site-based grant to provide this service. The voucher pilot program will evaluate the effectiveness of using vouchers to expand the delivery of mentoring services to children of prisoners, including to children in rural and underserved areas.

Section 9—Reauthorization of the Court Improvement Program

Current Law

For each of FYs 2002 through 2006, an eligible highest State court (with an approved application) is entitled to a share of funds to assess and make improvements to its handling of child welfare procedures. A set-aside of $10 million from the mandatory funds authorized and 3.3 percent of any discretionary appropriation is provided from the PSSF program to support the Court Improvement Program. To receive its full allotment of these funds the court, in each of FYs 2002 through 2006, is required to provide at least 25 percent of the expenditures for this purpose.

S. 3525

The legislation reauthorizes the funding for the Court Improvement Program for 5 years, through FY 2011.

Reason for Change

The Court Improvement Program has played an important role in assisting State courts in their efforts to expedite judicial proceedings for at-risk children. The legislation will ensure these funds continue to remain available, and is in addition to the $100 million provided over FYs 2006 through 2010 under the Deficit Reduction Act of 2005 (Pub. L. 109–171) to support training and data collection efforts of State courts.

Section 10—Requirement for Foster Care Proceedings to Include, in an Age-Appropriate Manner, Consultation with the Child that Is the Subject of the Proceeding

Current Law

Current law does not include a standard for consulting with children in court proceedings.

S. 3525

The legislation requires States to assure that in any permanency hearing held with respect to the child, including any hearing regarding the transition of the child from foster care to independent living, the court or administrative body conducting the hearing consults in an age-appropriate manner with the child regarding the plan being proposed for the child.

Reason for Change

Each child deserves the opportunity to participate and be consulted in any court proceeding affecting his or her future, in an age-appropriate manner.

Section 11—Technical Amendments

Section 12—Effective Dates

The legislation will become effective on October 1, 2006, except for provisions with other specified effective dates or if HHS determines that a State legislature must act before the State can comply with the changes.

HONORING CHIEF JUDGE WILLIAM WALTER WILKINS, Jr.

Mr. DEMINT. Mr. President, I rise today to honor the years of dedicated service that William Walter Wilkins, Chief Judge of the U.S. Court of Appeals for the Fourth Circuit, has given to the Federal judiciary. Hailing from my hometown of Greenville, SC, his contributions to South Carolina and our Nation are immeasurable.

Chief Judge Wilkins began his public service in 1967 as an officer in the U.S. Army, eventually earning the rank of colonel in the U.S. Army Reserves. Upon his honorable discharge from the Army, Chief Judge Wilkins worked as a law clerk for the Honorable Clement F. Haynsworth, Jr., U.S. Court of Appeals Fourth Circuit until 1970, then going on to become a legal assistant for the late Senator Strom Thurmond. And Senator Thurmond got it exactly right when he called Chief Judge Wilkins ''a man of character and unquestionable integrity.''

While in private practice, Chief Judge Wilkins was elected as the first Republican Solicitor for the Thirteenth Judicial Circuit since Reconstruction, a post that showcased his extensive knowledge and mastery of the legal profession.

In 1981, newly elected President Ronald Reagan used his first Presidential appointment to nominate Chief Judge Wilkins to the position of the U.S. District Judge for the District of South Carolina. Chief Judge Wilkins was confirmed by this body on July 20, 1981 and received his commission on July 22, 1981.

In 1985, President Reagan appointed Chief Judge Wilkins to be the first Chair of the United States Sentencing Commission, where he was given the task of creating guidelines for the sentencing of Federal defendants. He served in this capacity until 1994. During that time, he was also appointed to be U.S. Circuit Judge for the Fourth Circuit Court of Appeals, where he has served as Chief Judge since 2003.

Chief Judge Wilkins is a nationally recognized jurist and is known for this scholarship, sharp wit, and unyielding allegiance to the rule of law. Not only is the State of South Carolina honored to be the home of a man of his integrity, but the United States is privileged to have such a distinguished jurist defending our American legal system.

I commend Chief Judge Wilkins for his 25 years of public service to the United States.

HONORING RANDE YEAGER

Mr. COLEMAN. Mr. President, I would like to take this opportunity to commend Rande Yeager, a constituent of mine, on completing a year as president of the American Land Title Association, ALTA. He ably represented the land title industry at a time when the value and public policy purposes of title insurance and the maintenance of land records came under challenge.

His leadership of ALTA over this past year was a natural extension of his corporate experience. As president of Old Republic National Title Insurance Company, one of the leading title underwriters in this country and my State of Minnesota, Rande has experience being both a leader and a spokesperson for a large company.

As ALTA president, Rande made numerous trips to State conventions across the country to get to know his colleagues better, hear their concerns for their businesses and the industry, and came back ready to find out how ALTA could help. He also came to Washington to promote the importance of title insurance and land record maintenance.

ALTA has been well served by Rande's leadership. I congratulate him on his year as president and best wishes on his future endeavors.

MIDDLE GEORGIA BUCKS SENIOR BOYS BASKETBALL TEAM

Mr. CHAMBLISS. Mr. President, I have submitted a resolution to congratulate the 2006 Middle Georgia Bucks Senior Boys Basketball Team of Macon, GA, for their winning season. Not only did they win the 2006 Amateur Athletic Union National Championship, AAU, they won the 2006 State of Georgia AAU Championship and the 2006 Hoosier Showcase in Indianapolis, IN, as well. The Bucks finished the season with an undefeated record of 27 wins and 0 losses. On August 1, they claimed their national victory by defeating the North Carolina Gators by a score of 97 to 75.

This resolution recognizes and commends the hard work, tenacity, and steadfast commitment to excellence of the members, parents, coaches, and managers of the Middle Georgia Bucks. It also commends the Amateur Athletic Union for continuing the tradition of fostering the development of sportsmanship, discipline, and self-assurance in young adults. This talented team, managed by Alfonza Hall and coached by Melvin Flowers, Chris Cromartie, and Al Hagan, has brought great pride to the State of Georgia and the Middle Georgia community, where the fans have shown unwavering enthusiasm, support, and admiration for the players and coaches.

Mr. President, I would like to recognize the players individually for their accomplishment: Lehmon Colbert; LaShun Watson; Anthony Miller; Terrell ''Sput'' Dunham; Keith Ramsey; Giles Mack; Antonio Steele; Tay Waller; Jarvis Ogletree; Rashad Faust; Sean LeGree; Jermaine Sparks; Josh Williams; Akila Carter; and Jeremiah Crutcher. I extend my heartfelt congratulations to each of these players and their families, and to all involved in the organization. I urge my colleagues to support the resolution.

ADDITIONAL STATEMENTS

TRIBUTE TO JARED JENSEN

• Mr. ALLARD. Mr. President, today I honor the service and sacrifice of Officer Jared Jensen.

My wife Joan and I were deeply saddened to hear of the death of Officer Jared Jensen while in the line of duty.

It takes a person of great courage to become an officer of the law. It takes a strong, hardworking, and considerate individual. It takes a special someone who is willing to pay the ultimate price in protecting the safety of others.

Officer Jared Jensen was just this person. He served the Colorado Springs Police Department with honor and valor for more than 3 years. Officer Jared Jensen was a dedicated police officer who had a passion for upholding the law.

Officer Jared Jensen was a husband, a brother, and a son. He is survived by his wife Natalie, a brother, who also serves the Colorado Springs Police Department, and his loving parents. Among his many hobbies and interests, Officer Jared Jensen was an avid NASCAR racing fan and golfer. Throughout his life, Jared's caring heart was evident in his devotion to family and friends, his love of animals, and his loyalty to his fellow officers with whom he served.

The city of Colorado Springs has lost a valuable member of its community, and we are all forever grateful for Officer Jared Jensen's service and dedication to the safety and well-being of others. His service to the city of Colorado Springs is highly commendable, and his contributions will be remembered.

On October 6, 2006, the Police Cross and Medal of Valor will be presented to Officer Jared Jensen, posthumously, and given to his widow Natalie at the 21st Annual Medal of Valor Award Ceremony in Colorado Springs, Colorado. These awards represent his extraordinary heroism and honorable service to the Colorado Springs Police Department.

I extend my deepest appreciation to Officer Jared Jensen. May his bravery and unwavering sense of duty serve as a role model for the future generation of law officers.•

COMMENDING FORT PECK RESERVATION AND FEDERAL HIGHWAYS ADMINISTRATION

• Mr. BURNS. Mr. President, I want to take this moment to call the Senate's attention to a historic agreement that was signed today between the Federal Highways Administration and the Assiniboine & Sioux tribes at the Fort Peck Reservation in Montana.

Today, Fort Peck entered into an agreement with FHWA to directly manage highway funds for the reservation, allowing increased focus on the local needs of tribal members. Fort

Peck is one of five tribes that were selected for this new partnership. By empowering the tribes to administer these funds directly, FHWA is recognizing the critical need for improved transportation infrastructure on tribal lands. From increased safety to economic development, tribal authorities are best suited to direct this funding in a manner that will serve the needs of their communities.

In the recently passed highway bill, the Indian reservation roads account was substantially increased, which also demonstrates the Federal commitment to tribal transportation needs. I was pleased to support this increase, and even more pleased that Montana is leading the way in this new era of government-to-government cooperation in administering these funds.

I am a firm believer that empowering folks on the ground to address the specific needs of their communities generally yields the best results, and no where is that more true than in Indian Country. Montana's tribes are working tirelessly to improve the quality of life for their people, and investing in basic infrastructure, like roads, is the foundation of economic growth in these rural areas. Safe, reliable roads are needed to get kids to school, people to work, and products to market. This is a basic need we are talking about here, and I am confident that the leaders at the Fort Peck reservation are best suited to tackle these challenges.

I would like to congratulate Fort Peck and FHWA for this groundbreaking partnership. I am hopeful that we can build on this initiative and expand the ability of tribal leaders to shape the future of their people. ●

HONORING ADMIRAL JOHN WILLIAM KIME

● Ms. SNOWE. Mr. President, I would like to take a moment today to honor and pay tribute to ADM John William Kime, the 19th commandant of the Coast Guard who passed away on September 14, 2006.

During his distinguished 41-year career in the Coast Guard, Admiral Kime embodied the ideals of superior public service. An officer of great vision and ability, his leadership as the Commandant of the Coast Guard from 1990 to 1994 left an indelible legacy of resource stewardship, environmental protection, and increased national security.

Admiral Kime graduated from the U.S. Coast Guard Academy in 1957. Following graduation, he immediately went to sea, serving in both deck and engineering assignments aboard the Coast Guard cutter Casco. In 1960, he assumed command of Loran Station Wake Island.

After his tour of duty in the South Pacific, Admiral Kime earned masters degrees in marine engineering and naval engineering from the Massachusetts Institute of Technology and embarked on what ultimately became his lifelong professional passion: improving the safety and security of this Nation's maritime interests.

Admiral Kime commanded the Marine Safety Office in Baltimore, and served as the principal U.S. negotiator at the International Maritime Organization, IMO, conference in London where he was a key contributor during drafting of the liquefied gas container ship safety codes. Also during his time in Washington, Admiral Kime oversaw the structural design of the Coast Guard's Polar Class icebreakers—two vessels that have proven to be the anvil upon which this Nation's scientific research at the Earth's poles has been forged.

While commanding the Coast Guard's Eleventh District, Admiral Kime was summoned to direct the Federal response to the Exxon Valdez oil spill, an event of national significance that influenced the rest of his career. Admiral Kime went on to serve as Chief of the Marine Safety, Security and Environmental Division in Washington DC and was ultimately confirmed by the 101st Congress as Commandant of the U.S. Coast Guard in 1990.

As Commandant, Admiral Kime oversaw implementation of the landmark Oil Pollution Act of 1990. This act streamlined and strengthened the Federal Government's ability to prevent and respond to catastrophic oil spills. For his immense successes in improving commercial shipping regulations, he was awarded the 1993 International Maritime Prize by the International Maritime Organization.

From overseeing the structural design of our Polar ice breaking fleet to pioneering improvements in the way our Nation prevents and responds to oil spills in the wake of the Exxon Valdez disaster, Admiral Kime's influence and energy remains visible in the wonderful performance of the U.S. Coast Guard today.

Mr President, I ask all Members of the Senate to join me in recognizing Admiral Kime's service in our Nation's Coast Guard and remembering both his life and his dedication to the United States of America.●

HONORING THE SERVICE OF DR. DOROTHY C. STRATTON

● Ms. SNOWE. Mr. President, on September 17, 2006, this Nation lost another distinguished member of our ''greatest generation,'' Dr. Dorothy Constance Stratton. She was 107.

An inspirational leader and true patriot, Dr. Stratton was born in March of 1899, attended high school in the Midwest, and graduated from Ottawa University with a bachelor of arts degree in 1933. She went on to earn a master of arts degree in psychology from the University of Chicago and a doctorate of philosophy from Columbia University.

After earning her degrees, Dr. Stratton became the first full-time dean of women at Purdue University. Always committed to establishing a more positive and constructive atmosphere for women on campus, her pioneering force brought to life a vision to make science more appealing to women. With enthusiasm and energy, she developed an experimental curriculum that proved successful and increased undergraduate enrollment of women at Purdue from 600 to over 1,400.

In 1942, as the dark clouds of World War II gathered over our Nation, Dr. Statton felt compelled to duty and took a leave of absence from Purdue to join the Naval Women's Reserve. Shortly after receiving her commission in the Navy as a lieutenant, President Roosevelt signed an amendment to Public Law 773, thereby establishing the Coast Guard's Women Reserve.

Known for her brilliance as an organizer and administrator, a newly promoted Lieutenant Commander Stratton was sworn in as Coast Guard Women's Reserve new director, simultaneously making Dr. Statton the first women accepted for service as a commissioned officer in the history of the U.S. Coast Guard.

Lieutenant Commander Stratton immediately left her mark on the newly established Reserve Service. Shortly after accepting the position of director she sent a memo to wartime Coast Guard Commandant ADM Russell R. Waesche. Dr. Stratton wrote, ''The motto of the Coast Guard is 'Semper Paratus—Always Ready.' The initials of this motto are, of course, S-P-A-R. Why not call the members of the Women's Reserve SPARs?. . . . As I understand it, a spar is a supporting beam and that is what we hope each member or the Women's Reserve will be.'' And so they were.

Under Stratton's inspiring leadership the newly named SPARs expanded to include nearly 1,000 officers and over 10,0000 enlisted women. These dedicated, selfless women initially replaced men working in traditional clerical and routine services at shore stations, but as the war progressed, SPARs worked as parachute riggers, pilot trainer operators, aviation machinists' mates, and air control tower operators. Known as the ''women behind the men behind the guns,'' their duties eventually extended to include the most important port security, logistical, and administrative jobs. By wars end, the SPARs successes had forever changed the role of women in the Coast Guard, and Dr. Stratton had been promoted to the rank of captain, another first for the U.S. Coast Guard.

Following her time as SPAR director, Dr. Stratton became the first director of personnel at the International Monetary Fund, followed by service as executive director of the Girl Scouts of the U.S.A. She was also the United Nations representative of the International Federation of University Women.

History is replete with events demonstrating the service and sacrifices

made by American women. More than 400,000 women served during World War II. We are humbled by their love and dedication to our Nation.

I ask my colleagues to join with me today in honoring and recognizing CAPT Dorothy Stratton for her service to the United States, the U.S. Coast Guard and its Reserve, and for the inspiration and legacy she created for the women of this great Nation.●

RECOGNIZING MISSOURI ORGANIZATIONS

● Mr. BOND. Mr. President, I would like to take this opportunity to recognize the valuable efforts of the Missouri National Guard, Missouri School Boards' Association, and National Guard Bureau as they have collaborated to support Missouri's prototypical satellite/wireless communications efforts. They have significantly contributed to our knowledge and experience in delivering interagency, interoperable communications capabilities relevant to both the Nation and Show Me state.

The Missouri School Boards' Association has closely collaborated with the National Guard to demonstrate that a limited amount of Federal funding can be leveraged to provide for the creation of interagency, interoperable, satellite/wireless, disaster response communications capability, creating reliable local, State and Federal communications infrastructure. This capability can support a number of initiatives, including first responder training, distance learning, telemedicine, and local law enforcement. It is significant to note that a critical component of this demonstration effort is to prove that various agencies can leverage common, shared infrastructure, which reduces sustainment costs and improves government efficiency. Every indication is that this model can successfully support information security and network defense requirements.

Since beginning the Missouri effort, much has already been learned. Lessons learned include: interagency interoperability offers an opportunity to transform how we communicate and for significant cost avoidance, including the reduction of annual recurring costs; impediments to interagency interoperability are not because the technology is unavailable or because security requirements cannot be addressed; and challenges and opportunities related to successful interagency communications interoperability exist at all local, State, and Federal Government levels.

The Missouri National Guard has validated the use of affordable satellite technology to create reliable, redundant disaster response network communications. The National Guard has leveraged existing resources and teamed with State and Federal agencies to confirm the reliability and capabilities of a planned network. Ongoing activities to support these efforts, resourced largely from federal FY05 funds, include defining the procurement process related to executing this effort; completing a foundational analysis, the development of ''white papers,'' to define the precise relevance of the effort; completing required Department of Defense accreditation of deployable communications capabilities; completing a national survey of communications requirements, capabilities, and existing shortfalls to confirm that there is a national need for this type of capability; providing deployable communications capabilities for testing/validation. These capabilities will directly support the National Guard, as well as legitimize the concept that state government prior to and during times of emergency can leverage Guard equipment; and providing deployable communications capabilities to be shared with the Missouri School Boards' Association in order that the association, during non-emergency situations, can validate applications with schools.

With remaining Federal funds appropriated in fiscal year 2005, the Missouri School Boards' Association will also coordinate an effort to validate the ability to leverage emerging wireless technologies in a defined geographical area in Missouri. This demonstration will also validate the relevance of IPTV, Internet protocol television, with wireless technologies so that field-based educational opportunities can be transmitted ''live'' to school classrooms. From Federal fiscal year 2006 funds, the Missouri School Boards' Association will coordinate a wireless demonstration project in a second defined geographical area in Missouri. This project will incorporate lessons learned from the initial demonstration project in a defined geographical space.

Once again, I thank the Missouri National Guard, Missouri School Boards' Association, and National Guard Bureau for their work to support Missouri's prototypical satellite/wireless communications efforts. It is an outstanding example of collaboration.●

COMMENDATION TO THE ''BACK TO BUSINESS'' RADIO PROGRAM

● Ms. SNOWE. Mr. President, as chair of the Senate Committee on Small Business and Entrepreneurship, I rise today to commend the University of Maine and Machias Savings Bank for underwriting the ''Back To Business'' radio program hosted by Deb Neuman for a second year.

Heard on WVOM in Old Town, ME, Back To Business is an advice and news program geared specifically toward fostering the creation, development, and continued success of small businesses in Maine. It has been a strong, supportive, and unwavering voice for Maine's small businesses, providing an interactive forum that discusses pressing issues of the day, such as small business access to investment capital, regulatory, and tax compliance burdens, and the lack of affordable health insurance options in Maine.

The small business owners that appear on ''Back To Business'' frequently cite Maine's business climate as challenging on several fronts. Moving forward, it is critical that we also think forward and equip America's small businesses with the knowledge and tools to confront the challenges of tomorrow so that they can create jobs and continue to strengthen our economy. I can proudly report that ''Back To Business'' offers Maine small businesses vital knowledge and useful tools and resources. We must not forget that the Federal and State governments should be partners, working together with the business community to support small businesses.

Small businesses create nearly three-quarters of all net new jobs, represent 97 percent of all business in Maine, and employ 61 percent of Maine's workers. Mainers are more than ever relying upon small business ownership as an alternative to the traditional workplace where the manufacturing industry and corporate America once offered life long futures for workers.

As chair of the Senate Small Business Committee, I have introduced an ambitious legislative agenda to break down small business barriers. I recently introduced a bill that would expand the Small Business Administration's Historically Underutilized Business Zones or HUBZones program to include rural Maine towns and regions that were previously ineligible. According to the SBA, 110 Maine businesses in 11 counties received more than $12.7 million in HUBZone Program dollars in fiscal year 2005. Unfortunately, current law is preventing more regions in Maine from being certified as HUBZones. Under my bill, small businesses in rural Maine, including the Katahdin region, would be classified as HUBZones to qualify and compete for Federal contracts and subcontracts.

I have also worked hard to find a solution to the small business health insurance crisis. Small businesses in Maine and across the country are trapped in stagnant, dysfunctional insurance markets with premiums that are increasing at exponential percentage levels. Last year, I requested a Government Accountability Office Report that showed a startling market consolidation. In Maine, five large insurance companies control 98 percent of the market, leaving small businesses with few affordable coverage options.

This is why I have long championed legislation that would create Small Business Health Plans, which would allow small businesses to pool together nationally, to offer quality health insurance products to their employees at significantly lower costs. This year we came closer than ever before to passing SBHPs into law, and I will continue to push forward with my colleagues on both sides of the political aisle, to fashion bipartisan legislation that can be

signed into law to bring small businesses relief.

Mr. President, I again commend WVOM's ''Back to Business'' program, which is a true public service to Mainers. Their mission to educate elected officials, opinion leaders, and the people of Maine about the importance of small businesses to our economy and our country is invaluable.●

GFWC TRAVELERS CLUB CELEBRATES 100TH ANNIVERSARY

● Mr. THUNE. Mr. President, today I recognize GFWC Travelers Club of Chamberlain, SD. On September 12, 2006, GFWC Travelers Club celebrated its 100th anniversary.

As the oldest continuing volunteer club in Brule County, GFWC Travelers Club has been a leader in providing funding and assistance in numerous areas. They have been involved in founding and supporting libraries, both locally and nationally, granting educational scholarships, helping to maintain Ellsworth Air Force Base in South Dakota and many other valuable and necessary community projects.

It gives me great pleasure to rise and recognize the great work that GFWC Travelers Club has done and to wish them all the best of luck as they celebrate their 100th anniversary.●

RECOGNIZING THE CUSTER SENIOR CENTER

● Mr. THUNE. Mr. President, today I recognize the Custer Senior Center of Custer, SD, on its 35th anniversary. Custer Senior Center truly deserves this recognition for its years of service to the seniors of Custer and of South Dakota.

The Custer Senior Center first began when VISTA volunteers Peggy and David Viers placed an advertisement in the Custer Chronicle asking those interested in starting a community senior center to meet at the Community Church on April 6, 1970. The citizens of Custer came together and the Senior Center officially opened in May of 1970 with 52 charter members.

Since this time, the Custer Senior Center has provided an invaluable community service by creating a welcoming place for Custer's senior citizens to meet together for fellowship and support. I am confident that the Senior Center will continue to bring together Custer's citizens of all ages in the years to come.

I would like to offer my congratulations to the Custer Senior Center on their 35th anniversary and wish them the best of luck as they celebrate this important event.●

MESSAGES FROM THE HOUSE

At 9:33 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5631) making appropriations for the Department of Defense for the fiscal year ending September 30, 2007, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate to the amendments of the House to the bill (S. 3525) to amend subpart 2 of part B of title IV of the Social Security Act to improve outcomes for children in families affected by methamphetamine abuse and addiction, to reauthorize the promoting safe and stable families program, and for other purposes.

The message further announced that the House has passed the bill (S. 403) to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions, with an amendment, in which it requests the concurrence of the Senate.

ENROLLED BILLS SIGNED

The message also announced that the Speaker has signed the following enrolled bills:

S. 1275. An act to designate the facility of the United States Postal Service located at 7172 North Tongass Highway, Ward Cove, Alaska, as the ''Alice R. Brusich Post Office Building''.

S. 1323. An act to designate the facility of the United States Postal Service located on Lindbald Avenue, Girdwood, Alaska, as the ''Dorothy and Connie Hibbs Post Office Building''.

S.2690. An act to designate the facility of the United States Postal Service located at 8801 Sudley road in Manassas, Virginia, as the ''Harry J. Parrish Post Office''.

H.R. 1442. An act to complete the codification of title 46, United States Code, ''Shipping'', as positive law.

The enrolled bills were subsequently signed by the President pro tempore (Mr. STEVENS).

ENROLLED BILL SIGNED

At 11:57 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bill:

S. 3525. An act to amend part B of title IV ofthe Social Security Act to reauthorize the promoting safe and stable families program, and for other purposes.

The enrolled bill was subsequently signed by the President pro tempore (Mr. STEVENS).

At 1:06 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 971. An act to extend the deadline for commencement of construction of certain hydroelectric projects in Connecticut, and for other purposes.

H.R. 1215. An act to provide for the implementation of a Green Chemistry Research and Development Program, and for other purposes.

H.R. 2679. An act to amend the Revised Statutes ofthe United States to prevent the use of the legal system in a manner that extorts money from State and local governments, and the Federal Government, and inhibits such governments' constitutional actions under the first, tenth, and fourteenth amendments.

H.R. 4377. An act to extend the time required for construction of a hydroelectric project, and for other purposes.

H.R. 4417. An act to provide for the reinstatement of a license for a certain Federal Energy Regulatory project.

H.R. 4559. An act to provide for the conveyance of certain National Forest System land to the towns of Laona and Wabeno, Wisconsin, and for other purposes.

H.R. 4942. An act to establish a capability and office to promote cooperation between entities of the United States and its allies in the global war on terrorism for the purpose of engaging in cooperative endeavors focused on the research, development, and commercialization of high-priority technologies intended to detect, prevent, respond to, recover from, and mitigate against acts of terrorism and other high consequence events and to address the homeland security needs of Federal, State, and local governments.

H.R. 5092. An act to modernize and reform the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

H.R. 5103. An act to provide for the conveyance of the former Konnarock Lutheran Girls School in Smyth County, Virginia, which is currently owned by the United States and administered by the Forest Service, to facilitate the restoration and reuse of the property, and for other purposes.

H.R. 5136. An act to establish a National Integrated Drought Information System within the National Oceanic and Atmospheric Administration to improve drought monitoring and forecasting capabilities.

H.R. 5313. An act to reserve a small percentage of the amounts made available to the Secretary of Agriculture for the farmland protection program to fund challenge grants to encourage the purchase of conservation easements and other interests in land to be held by a State agency, county, or other eligible entity, and for other purposes.

H.R. 5533. An act to prepare and strengthen the biodefenses of the United States against deliberate, accidental, and natural outbreaks of illness, and for other purposes.

H.R. 5835. An act to amend title 38, United States Code, to improve information management within the Department of Veterans Affairs, and for other purposes.

H.R. 6131. An act to permit certain expenditures from the Leaking Underground Storage Tank Trust Fund.

H.R. 6159. An act to extend temporarily certain authorities of the Small Business Administration.

H.R. 6160. An act to recruit and retain Border Patrol Agents.

H.R. 6164. An act to amend title IV of the Public Health Service Act to revise and extend the authorities of the National Institutes of Health, and for other purposes.

The message further announced that the House has passed the following bills, without amendment:

S. 176. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Alaska.

S. 244. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming.

The message also announced that pursuant to 10 U.S.C. 9355(a), amended

by Public Law 108–375, and the order of the House of December 18, 2005, the Speaker reappoints the following Member of the House of Representatives to the Board of Visitors to the United States Air Force Academy: Ms. KILPATRICK of Michigan.

At 3:00 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 483. Concurrent resolution providing for a conditional adjournment of the House of Representatives and a conditional recess or adjournment of the Senate.

At 6:13 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 3850. An act to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating agency industry.

At 6:57 p.m., a message from the House of Representatives, delivered by Ms. Chiappardi, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 5347. An act to reauthorize the HOPE VI program for revitalization of public housing projects.

H.R. 6166. An act to amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes.

ENROLLED BILLS SIGNED

The message further announced that the Speaker has signed the following enrolled bills:

S. 176. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Alaska.

S. 244. An act to extend the deadline for commencement of construction of a hydroelectric project in the State of Wyoming.

H.R. 2066. An act to amend title 40, United States Code, to establish a Federal Acquisition Service, to replace the General Supply Fund and the Information Technology Fund with an Acquisition Services Fund, and for other purposes.

H.R. 5074. An act to amend the Railroad Retirement Act of 1974 to provide for continued payment of railroad retirement annuities by the Department of the treasury, and for other purposes.

H.R. 5187. An act to amend the John F. Kennedy Center Act to authorize additional appropriations for the John F. Kennedy Center for the Performing Arts for fiscal year 2007.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 3936. A bill to invest in innovation and education to improve the competitiveness of the United States in the global economy.

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 4377. An act to extend the time required for construction of a hydroelectric project, and for other purposes.

H.R. 4417. An act to provide for the reinstatement of a license for a certain Federal Energy Regulatory project.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 5132. An act to direct the Secretary of the Interior to conduct a special resource study to determine the suitability and feasibility of including in the National Park System certain sites in Monroe County, Michigan, relating to the Battles of the River Raisin during the War of 1812.

ENROLLED BILLS PRESENTED

The Secretary of the Senate announced that on today, September 27, 2006, she had presented to the President of the United States the following enrolled bills:

S. 1275. An act to designate the facility of the United States Postal Service located at 7172 North Tongass Highway, Ward Cove, Alaska, as the ''Alice R. Brusich Post Office Building''.

S. 1323. An act to designate the facility of the United States Postal Service located on Lindbald Avenue, Girdwood, Alaska, as the ''Dorothy and Connie Hibbs Post Office Building''.

S. 2690. An act to designate the facility of the United States Postal Service located at 8801 Sudley road in Manassas, Virginia, as the ''Harry J. Parrish Post Office''.

S. 3525. An act to amend part B oftitle IV of the Social Security Act to reauthorize the promoting safe and stable families program, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–8435. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Importation of Table Grapes from Namibia'' (Docket No. APHIS–2006–0025) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8436. A communication from the Director, Regulatory Review Group, Commodity Credit Corporation, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Storage, Handling, and Ginning Requirements for Cotton Marketing Assistance Loan Collateral'' (RIN0560–AH48) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8437. A communication from the Under Secretary, Research Education Economics, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''National Research Initiative Competitive Grants Program—Revisions to Administrative Provisions'' (RIN0524–AA32) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8438. A communication from the Assistant Secretary of the Army (Civil Works), transmitting, pursuant to law, a report relative to the Comprehensive Everglades Restoration Plan; to the Committee on Environment and Public Works.

EC–8439. A communication from the Acting Assistant Secretary for Fish and Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Migratory Bird Hunting: Late Seasons and Bag and Possession Limits for Certain Migratory Game Birds'' (RIN1018–AU42) received on September 21, 2006; to the Committee on Environment and Public Works.

EC–8440. A communication from the Acting Assistant Secretary for Fish and Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Migratory Bird Hunting: Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2006–07 Early Season'' (RIN1018–AU42) received on September 21, 2006; to the Committee on Environment and Public Works.

EC–8441. A communication from the Acting Assistant Secretary for Fish and Wildlife and Parks, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Migratory Bird Hunting: Final Frameworks for Late Season Migratory Bird Hunting Regulations'' (RIN1018–AU42) received on September 21, 2006; to the Committee on Environment and Public Works.

EC–8442. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $50,000,000 to Jordan; to the Committee on Foreign Relations.

EC–8443. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Rural Health Clinics: Amendments to Participation Requirements and Payment Provisions; and Establishment of a Quality Assessment and Performance Improvement Program; Suspension of Effectiveness'' ((RIN0938–AJ17)(CMS–1910–IFC)) received on September 22, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–8444. A communication from the Regulations Coordinator, Centers for Medicare and Medicaid Services, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Fire Safety Requirements for Certain Health Care Facilities; Alcohol-Based Hand Sanitizer Amendment'' ((RIN0938–AN36)(CMS–3145–F)) received on September 22, 2006; to the Committee on Health, Education, Labor, and Pensions.

EC–8445. A communication from the General Counsel, Federal Retirement Thrift Investment Board, transmitting, pursuant to law, the report of a rule entitled ''Court Orders and Legal Processes Affecting Thrift Savings Plan Accounts'' (5 CFR Part 1653) received on September 22, 2006; to the Committee on Homeland Security and Governmental Affairs.

EC–8446. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Bentazon, Carboxin, Dipropyl Isocinchomeronate, Oil of Lemongrass (Oil of Lemon) and Oil of Orange; Tolerance Actions'' (FRL No. 8093-5) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8447. A communication from the Principal Deputy Associate Administrator, Office

of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Flufenoxuron; Pesticide Tolerance'' (FRL No. 8092-3) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8448. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Metconazole; Pesticide Tolerance'' (FRL No. 8085-2) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8449. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Quizalofop Ethyl; Pesticide Tolerance'' (FRL No. 8094-5) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8450. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''p-Chlorophenoxyacetic Acid, Glyphosate, Difenzoquat, and Hexazinone; Tolerance Actions'' (FRL No. 8089-6) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8451. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Pendimethalin; Pesticide Tolerance'' (FRL No. 8092-6) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8452. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Low Pathogenic Avian Influenza; Voluntary Control Program and Payment of Indemnity'' (Docket No. APHIS-2005-0109) received on September 22, 2006; to the Committee on Agriculture, Nutrition, and Forestry.

EC–8453. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Emission Reductions to Meet Phase II of the Nitrogen Oxides (NO_x) SIP Call'' (FRL No. 8225-1) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8454. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Additional NO_x Emission Reductions to Support Philadelphia-Trenton-Wilmington One-Hour Ozone Nonattainment Area, and Remaining NO_x SIP Call Requirements'' (FRL No. 8224-9) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8455. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Control Volatile Organic Compound Emissions; Volatile Organic Compound Control for El Paso, Gregg, Nueces, and Victoria Counties and the Ozone Standard Nonattainment Areas of Beaumont/Port Arthur, Dallas/Fort Worth, and Houston/Galveston'' (FRL No. 8224-7) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8456. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Ambient Air Quality Standards for Particulate Matter'' (FRL No. 8225-3) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8457. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''National Priorities List, Final Rule'' (FRL No. 8223-3) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8458. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—Fire Suppression and Explosion Protection'' ((RIN2060-AM24) (FRL No. 8223-4)) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8459. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Protection of Stratospheric Ozone: Notice 21 for Significant New Alternatives Policy Program'' ((RIN2060-AG12) (FRL No. 8223-9)) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8460. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Withdrawal of Certain Chemical Substances from Preliminary Assessment Information Reporting and Health and Safety Data Reporting Rules'' ((RIN2070-AB08) (FRL No. 8096-5)) received on September 22, 2006; to the Committee on Environment and Public Works.

EC–8461. A communication from the Assistant Attorney General, Office of Legislative Affairs, Department of Justice, transmitting, pursuant to law, a report relative to the administration of the Foreign Agents Registration Act for the six months ending December 31, 2005; to the Committee on the Judiciary.

EC–8462. A communication from the Director, Regulations Management, Board of Veterans' Appeals, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Board of Veterans' Appeals: Clarification of a Notice of Disagreement'' (RIN2900-AL97) received on September 22, 2006; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INHOFE, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

S. 1848. A bill to promote remediation of inactive and abandoned mines, and for other purposes (Rept. No. 109–351).

By Mr. INHOFE, from the Committee on Environment and Public Works, without amendment:

S. 3630. A bill to amend the Federal Water Pollution Control Act to reauthorize a program relating to the Lake Pontchartrain Basin, and for other purposes (Rept. No. 109–352).

By Mr. INHOFE, from the Committee on Environment and Public Works, with an amendment:

H.R. 3929. A bill to amend the Water Desalination Act of 1996 to authorize the Secretary of the Interior to assist in research and development, environmental and feasibility studies, and preliminary engineering for the Municipal Water District of Orange County, California, Dana Point Desalination Project located at Dana Point, California (Rept. No. 109–353).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. STEVENS for the Committee on Commerce, Science, and Transportation.

Calvin L. Scovel, of Virginia, to be Inspector General, Department of Transportation.

*Charles Darwin Snelling, of Pennsylvania, to be a Member of the Board of Directors of the Metropolitan Washington Airports Authority for a term expiring May 30, 2012.

*David H. Pryor, of Arkansas, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2008.

*Chris Boskin, of California, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for a term expiring January 31, 2012.

*Sharon Lynn Hays, of Virginia, to be an Associate Director of the Office of Science and Technology Policy.

*Cynthia A. Glassman, of Virginia, to be Under Secretary of Commerce for Economic Affairs.

*Collister Johnson, Jr., of Virginia, to be Administrator of the Saint Lawrence Seaway Development Corporation for a term of seven years.

Mr. STEVENS. Mr. President, for the Committee on Commerce, Science, and Transportation I report favorably the following nomination lists which were printed in the Records on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Coast Guard nominations beginning with Paul S. Szwed and ending with Brigid M. Pavilonis, which nominations were received by the Senate and appeared in the Congressional Record on September 20, 2006.

Coast Guard nominations beginning with Margaret A. Blomme and ending with Rickey D. Thomas, which nominations were received by the Senate and appeared in the Congressional Record on September 21, 2006.

Coast Guard nominations beginning with Meredith L. Austin and ending with Werner A. Winz, which nominations were received by the Senate and appeared in the Congressional Record on September 21, 2006.

Coast Guard nominations beginning with Joyce E. Aivalotis and ending with Jose M. Zuniga, which nominations were received by the Senate and appeared in the Congressional Record on September 21, 2006.

By Mr. GRASSLEY for the Committee on Finance.

*John K. Veroneau, of Virginia, to be a Deputy United States Trade Representative, with the Rank of Ambassador.

*Robert K. Steel, of Connecticut, to be an Under Secretary of the Department of the Treasury.

By Mr. CRAIG for the Committee on Veterans' Affairs.

*Robert T. Howard, of Virginia, to be an Assistant Secretary of Veterans Affairs (Information and Technology).

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. FRIST:

S. 3946. A bill to make an alien who is a member of a criminal gang removable from the United States and inadmissible to the United States, to permit the Secretary of Homeland Security to deny a visa to an alien who is a national of a country that has denied or delayed accepting an alien removed from the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. FRIST:

S. 3947. A bill to permit the Secretary of Homeland Security to grant citizenship to an alien who serves on active duty in the Armed Forces, to assist such an alien in applying for citizenship, and for other purposes; to the Committee on the Judiciary.

By Mr. FRIST:

S. 3948. A bill to amend chapter 27 of title 18, United States Code, to prohibit the unauthorized construction, financing, or, with reckless disregard, permitting the construction or use on one's land, of a tunnel or subterranean passageway between the United States and another country; to the Committee on the Judiciary.

By Mr. FRIST:

S. 3949. A bill to study the geographic areas in Mexico from which illegal immigrants are entering the United States and to develop plans to address the social, political, and economic conditions that are contributing to such illegal immigration; to the Committee on Foreign Relations.

By Ms. SNOWE (for herself and Mr. KERRY):

S. 3950. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for qualified equity investments in certain small businesses; to the Committee on Finance.

By Mr. SMITH (for himself, Mr. CONRAD, Mr. KERRY, and Mr. BINGAMAN):

S. 3951. A bill to amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to increase the retirement security of women and small business owners, and for other purposes; to the Committee on Finance.

By Mr. BINGAMAN (for himself and Mr. SMITH):

S. 3952. A bill to amend the Internal Revenue Code of 1986 to allow employees not covered by qualified retirement plans to save for retirement through automatic payroll deposit IRAs, to facilitate similar savings by the self-employed, and for other purposes; to the Committee on Finance.

By Mr. KERRY:

S. 3953. A bill to foster development of minority-owned small businesses; to the Committee on Small Business and Entrepreneurship.

By Mr. KENNEDY (for himself and Mr. MENENDEZ):

S. 3954. A bill to amend title XVIII of the Social Security Act to require monthly reporting regarding the number of individuals who have fallen into the part D donut hole and the amount such individuals are spending on covered part D drugs while in the donut hole; to the Committee on Finance.

By Mr. LIEBERMAN (for himself, Mr. SMITH, Mr. AKAKA, Ms. CANTWELL, Mr. CHAFEE, Mrs. CLINTON, Mr. DAYTON, Mr. FEINGOLD, Mr. JEFFORDS, Mr. KENNEDY, Mr. KERRY, Mr. LAUTENBERG, Mr. LEAHY, Mr. LEVIN, Mrs. MURRAY, and Mr. WYDEN):

S. 3955. A bill to provide benefits to domestic partners of Federal employees; to the Committee on Homeland Security and Governmental Affairs.

By Mr. DEWINE:

S. 3956. A bill to create a grant program for collaboration programs that ensure coordination among criminal justice agencies, adult protective service agencies, victim assistance programs, and other agencies or organizations providing services to individuals with disabilities in the investigation and response to abuse of or crimes committed against such individuals; to the Committee on the Judiciary.

By Mr. INHOFE:

S. 3957. A bill to protect freedom of speech exercisable by houses of worship or mediation and affiliated organizations; to the Committee on Finance.

By Mrs. CLINTON (for herself, Mr. SPECTER, Mr. KENNEDY, and Ms. MIKULSKI):

S. 3958. A bill to establish the United States Public Service Academy; to the Committee on Homeland Security and Governmental Affairs.

By Mr. WARNER (for himself and Mr. ALLEN):

S. 3959. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income certain combat zone compensation of civilian employees of the United States; to the Committee on Finance.

By Mr. KENNEDY:

S. 3960. A bill to provide for the competitive status for certain Internal Revenue Service employees; to the Committee on Finance.

By Mr. STEVENS (for himself, Mr. INOUYE, Mr. LOTT, and Mr. LAUTENBERG):

S. 3961. A bill to provide for enhanced safety in pipeline transportation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. DOMENICI (for himself and Mr. CRAIG):

S. 3962. A bill to enhance the management and disposal of spent nuclear fuel and high-level radioactive waste, to assure protection of public health and safety, to ensure the territorial integrity and security of the repository at Yucca Mountain, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FEINGOLD (for himself and Mr. KERRY):

S. Res. 588. A resolution to express the sense of the Senate that States should have in place backup systems to deal with any failure of electronic voting equipment during the November 7, 2006, general election; to the Committee on Rules and Administration.

By Mrs. LINCOLN (for herself, Mr. CRAIG, Mr. CHAMBLISS, Mr. DORGAN, Mr. CONRAD, Mr. GRASSLEY, Mr. PRYOR, Mr. HARKIN, Mr. CRAPO, Mr. DEWINE, Mr. TALENT, Mr. BAUCUS, Mr. THUNE, Mr. BURNS, Mr. BOND, Mr. ENZI, Ms. STABENOW, Mr. COCHRAN, and Mr. JOHNSON):

S. Con. Res. 119. A concurrent resolution expressing the sense of Congress that public policy should continue to protect and strengthen the ability of farmers and ranchers to join together in cooperative self-help efforts; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. VITTER:

S. Con. Res. 120. A concurrent resolution expressing the support of Congress for the creation of a National Hurricane Museum and Science Center in southwest Louisiana; to the Committee on Commerce, Science, and Transportation.

ADDITIONAL COSPONSORS

S. 304

At the request of Mr. LAUTENBERG, the name of the Senator from New Jersey (Mr. MENENDEZ) was added as a cosponsor of S. 304, a bill to amend title 18, United States Code, to prohibit certain interstate conduct relating to exotic animals.

S. 408

At the request of Mr. DEWINE, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 408, a bill to provide for programs and activities with respect to the prevention of underage drinking.

S. 440

At the request of Mr. BUNNING, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 440, a bill to amend title XIX of the Social Security Act to include podiatrists as physicians for purposes of covering physicians services under the medicaid program.

S. 1085

At the request of Mr. KENNEDY, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1085, a bill to provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families.

S. 1508

At the request of Mr. COCHRAN, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 1508, a bill to require Senate candidates to file designations, statements, and reports in electronic form.

At the request of Mr. FEINGOLD, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1508, supra.

S. 1740

At the request of Mr. CRAPO, the name of the Senator from Georgia (Mr. CHAMBLISS) was added as a cosponsor of S. 1740, a bill to amend the Internal Revenue Code of 1986 to allow individuals to defer recognition of reinvested

capital gains distributions from regulated investment companies.

S. 2491

At the request of Mr. CORNYN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 2491, a bill to award a Congressional gold medal to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator.

S. 2563

At the request of Mr. COCHRAN, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 2563, a bill to amend title XVIII of the Social Security Act to require prompt payment to pharmacies under part D, to restrict pharmacy co-branding on prescription drug cards issued under such part, and to provide guidelines for Medication Therapy Management Services programs offered by prescription drug plans and MA–PD plans under such part.

S. 2659

At the request of Mr. AKAKA, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 2659, a bill to amend title 38, United States Code, to provide for the eligibility of Indian tribal organizations for grants for the establishment of veterans cemeteries on trust lands.

S. 3651

At the request of Mr. DURBIN, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 3651, a bill to reduce child marriage, and for other purposes.

S. 3681

At the request of Mr. DOMENICI, the names of the Senator from Oklahoma (Mr. COBURN) and the Senator from Louisiana (Mr. VITTER) were added as cosponsors of S. 3681, a bill to amend the Comprehensive Environmental Response Compensation and Liability Act of 1980 to provide that manure shall not be considered to be a hazardous substance, pollutant, or contaminant.

S. 3707

At the request of Mr. LOTT, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of S. 3707, a bill to improve consumer access to passenger vehicle loss data held by insurers.

S. 3742

At the request of Mr. LOTT, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 3742, a bill to amend the Internal Revenue Code of 1986 to provide incentives to encourage investment in the expansion of freight rail infrastructure capacity and to enhance modal tax equity.

S. 3744

At the request of Mr. DURBIN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 3744, a bill to establish the Abraham Lincoln Study Abroad Program.

S. 3795

At the request of Mr. ROCKEFELLER, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 3795, a bill to amend title XVIII of the Social Security Act to provide for a two-year moratorium on certain Medicare physician payment reductions for imaging services.

S. 3800

At the request of Mr. HAGEL, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 3800, a bill to amend the Foreign Assistance Act of 1961 to require recipients of United States foreign assistance to certify that the assistance will not be used to intentionally traffic in goods or services that contain counterfeit marks or for other purposes that promote the improper use of intellectual property, and for other purposes.

S. 3812

At the request of Mr. ISAKSON, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. 3812, a bill to require the Food and Drug Administration to conduct consumer testing to determine the appropriateness of the current labeling requirements for indoor tanning devices and determine whether such requirements provide sufficient information to consumers regarding the risks that the use of such devices pose for the development of irreversible damage to the skin, including skin cancer, and for other purposes.

S. 3855

At the request of Mr. CONRAD, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 3855, a bill to provide emergency agricultural disaster assistance, and for other purposes.

S. 3887

At the request of Mr. DORGAN, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 3887, a bill to prohibit the Internal Revenue Service from using private debt collection companies, and for other purposes.

S. 3912

At the request of Mr. ENSIGN, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 3912, a bill to amend title XVIII of the Social Security Act to extend the exceptions process with respect to caps on payments for therapy services under the Medicare program.

S. 3913

At the request of Mr. ROCKEFELLER, the names of the Senator from Maryland (Mr. SARBANES), the Senator from Wisconsin (Mr. KOHL), the Senator from South Dakota (Mr. JOHNSON) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 3913, a bill to amend title XXI of the Social Security Act to eliminate funding shortfalls for the State Children's Health Insurance Program (SCHIP) for fiscal year 2007.

S. 3934

At the request of Ms. SNOWE, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 3934, a bill to terminate authorization for the project for navigation, Rockport Harbor, Maine.

S. 3936

At the request of Mr. FRIST, the names of the Senator from South Dakota (Mr. JOHNSON), the Senator from Indiana (Mr. LUGAR) and the Senator from West Virginia (Mr. ROCKEFELLER) were added as cosponsors of S. 3936, a bill to invest in innovation and education to improve the competitiveness of the United States in the global economy.

S. 3943

At the request of Mrs. BOXER, the names of the Senator from Massachusetts (Mr. KERRY), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Colorado (Mr. SALAZAR), the Senator from New York (Mrs. CLINTON) and the Senator from Nevada (Mr. REID) were added as cosponsors of S. 3943, a bill to amend the Help America Vote Act of 2002 to reimburse jurisdictions for amounts paid or incurred in preparing, producing, and using contingency paper ballots in the November 7, 2006, Federal general election.

S. RES. 585

At the request of Mr. VITTER, his name was added as a cosponsor of S. Res. 585, a resolution commending the New Orleans Saints of the National Football League for winning their Monday Night Football game on Monday, September 25, 2006 by a score of 23 to 3.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. FRIST:

S. 3946. A bill to make an alien who is a member of a criminal gang removable from the United States and inadmissible to the United States, to permit the Secretary of Homeland Security to deny a visa to an alien who is a national of a country that has denied or delayed accepting an alien removed from the United States, and for other purposes; to the Committee on the Judiciary.

By Mr. FRIST:

S. 3947. A bill to permit the Secretary of Homeland Security to grant citizenship to an alien who serves on active duty in the Armed Forces, to assist such an alien in applying for citizenship, and for other purposes; to the Committee on the Judiciary.

By Mr. FRIST:

S. 3948. A bill to amend chapter 27 of title 18, United States Code, to prohibit the unauthorized construction, financing, or, with reckless disregard, permitting the construction or use on one's land, of a tunnel or subterranean passageway between the United States and another country; to the Committee on the Judiciary.

By Mr. FRIST:

S. 3949. A bill to study the geographic areas in Mexico from which illegal immigrants are entering the United

States and to develop plans to address the social, political, and economic conditions that are contributing to such illegal immigration; to the Committee on Foreign Relations.

Mr. FRIST. Mr. President, like all of my colleagues in this body, I recognize that our immigration system needs vast improvements. While we have spent a great deal of time discussing immigration over the past year, it appears unlikely that this body will pass comprehensive reform before we break for the recess. This week we have been discussing an important bill that would begin the process completely securing our southern border. I support that bill wholeheartedly and I would also hope to make other improvements to our immigration laws we can make before we end this session.

Today, therefore, I'm proposing four separate bills intended to strengthen our immigration system.

One will help military men and women become citizens more quickly, another will make it easier to remove gang members from our country, another will impose tough penalties on people who tunnel beneath our borders, and the fourth will begin an effort to stop illegal immigration at its source.

I'd like to discuss all four bills briefly . . . they have different purposes and will all complement each other in efforts to improve our immigration system.

I am introducing the Community Protection Against International Gangs Act. Street gangs remain the bane of our society. Their members sell narcotics, steal, and commit horrific acts of violence. Many of these gangs—groups like Mara Salvatrucha, better known as MS–13—draw their membership from immigrants to the United States. While the overwhelming majority of immigrants in the United States obey the law, those who join these gangs wreak havoc on immigrant communities all over the country.

To protect our Nation, we need to stop them . . . now.

Thus, I'm proposing the CPAIGA Act. This law will make our policy clear: immigrants who join gangs are no longer welcome in our country. Under my bill, anyone who joins a gang or helps one faces immediate deportation proceedings. In addition, my bill will let the Secretary of State and the Secretary of Homeland Security deny visas to the nationals of any country that refuses to take back its own criminals.

I am also introducing the Enhanced Border Tunnel Prevention Act. To enhance our crackdown on sophisticated criminal conspiracies, we should also impose tough new penalties on those who construct tunnels under our border. People who build tunnels, or allow them to be built on land that they own or control, should face serious time in prison. Smugglers who use them should have their penalties doubled. We can't allow our borders to become a sieve.

In addition, I am introducing the Soldiers to Citizens Act. Just as we make it clear that criminals have no place in the United States, we should simultaneously do everything we can to welcome the finest people from around the world. Every year, over 8,000 people who are not U.S. citizens enlist in our armed forces.

They serve with valor and distinction . . . they defend our liberty. If they wish to become citizens, they should not face unnecessary burdens.

Under my legislation, anyone who gives our military 2 years of honorable and satisfactory service can acquire citizenship under an expedited process. Service in the military strongly implies that a person has acquired the things we expect from new citizens: a command of English, good moral character, understanding of our history and appreciation for our democratic institutions. Thus, soldiers, sailors, airmen, and marines whose chains of command certify that they've met these requirements should be able to acquire citizenship by filling out some simple paperwork and swearing the citizenship oath.

I believe that the Senate should do everything it can to speed the citizenship process for others in the military who do not want to avail themselves of this process. In particular, we must do away with the burdensome, duplicative process that requires military enlistees to give fingerprints once when they join the military and again when they apply for citizenship. At the same time, we should establish a high-quality, toll-free information center to provide timely, accurate information to any servicemember interested in becoming a citizen.

Finally, I am introducing the Illegal Immigration Source Study and Focus Act. Finally, I believe we need to do more to deal with the underlying causes of much illegal immigration: social, economic, and political conditions in Mexico that lead many to believe they have no choice but as to leave their homeland. Illegal immigration hurts both the United States and Mexico. Our governments must work together so we can understand what areas produce the most illegal immigrants and what we might do to help immigrants.

My bill would begin a process of collaboration. It will mandate regular reports on the areas that produce the most illegal immigrants and, just as importantly, focus our own aid to Mexico on improving the conditions that produce illegal immigration in the first place.

Steps like those I have proposed will not change our immigration system overnight. They will not end illegal immigration.

But they will make our cities safer, stem the flow of illegal immigration, and help those who serve in our armed forces. These are worthy measures and I urge all of my colleagues to support them.

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

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

S. 3946

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Community Protection Against International Gangs Act''.

SEC. 2. INADMISSIBILITY AND REMOVAL OF ALIEN GANG MEMBERS.

(a) INADMISSIBILITY.—Section 212(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)) is amended by adding at the end the following:

''(J) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who a consular officer, the Attorney General, or the Secretary of Homeland Security knows or has reason to believe—

''(i) is, or has been, a member of a criminal street gang (as defined in section 521(a) of title 18, United States Code); or

''(ii) has participated in the activities of such a criminal street gang, knowing or having reason to know that such activities promoted, furthered, aided, or supported the illegal activity of the criminal street gang,

is inadmissible.''.

(b) REMOVAL.—Section 237(a)(2) (8 U.S.C. 1227(a)(2)) is amended by adding at the end the following:

''(F) ALIENS ASSOCIATED WITH CRIMINAL GANGS.—Unless the Secretary of Homeland Security or the Attorney General waives the application of this subparagraph, any alien who the Secretary of Homeland Security or the Attorney General knows or has reason to believe—

''(i) is, or at any time after admission has been, a member of a criminal street gang (as defined in section 521(a) of title 18, United States Code); or

''(ii) has participated in the activities of such a criminal street gang, knowing or having reason to know that such activities promoted, furthered, aided, or supported the illegal activity of the criminal street gang,

is deportable.''.

SEC. 3. PENALTY FOR FAILURE TO ACCEPT AN ALIEN REMOVED FROM THE UNITED STATES.

Section 243(d) of the Immigration and Nationality Act (8 U.S.C. 1253(d)) is amended to read as follows:

''(d) DENYING VISAS TO NATIONALS OF COUNTRY DENYING OR DELAYING ACCEPTING ALIEN.—The Secretary of Homeland Security, after making a determination that the government of a foreign country has denied or unreasonably delayed accepting an alien who is a citizen, subject, national, or resident of that country after the alien has been ordered removed, and after consultation with the Secretary of State, may instruct the Secretary of State to deny a visa to any citizen, subject, national, or resident of that country until the country accepts the alien that was ordered removed.''.

S. 3947

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Soldiers to Citizens Act''.

SEC. 2. CITIZENSHIP FOR MEMBERS OF THE ARMED FORCES.

Section 329 of the Immigration and Nationality Act (8 U.S.C. 1440) is amended—

(1) in subsection (b), by striking ''subsection (a)'' and inserting ''subsection (a) or (d)''; and

(2) by adding at the end the following:

''(d) Notwithstanding any other provision of law, except for provisions relating to revocation of citizenship under subsection (c), an individual who is not a citizen of the United States shall not be denied the opportunity to apply for membership in the United States Armed Forces. Such an individual who becomes an active duty member of the United States Armed Forces shall, consistent with this section and with the approval of the individual's chain of command, be granted United States citizenship after performing at least 2 years of honorable and satisfactory service on active duty. Not later than 90 days after such requirements are met with respect to an individual, such individual shall be granted United States citizenship.

''(e) An alien described in subsection (d) shall be naturalized without regard to the requirements of this title or any other requirements, processes, or procedures of the Secretary of Homeland Security, if the alien—

''(1) files an application for naturalization in accordance with such procedures to carry out this section as may be established by regulation by the Secretary of Homeland Security or the Secretary of Defense;

''(2) demonstrates to the alien's military chain of command proficiency in the English language, good moral character, and knowledge of the Federal Government and United States history, consistent with the requirements contained in this Act; and

''(3) takes the oath required under section 337 of this Act and participates in an oath administration ceremony in accordance with this Act.''.

SEC. 3. WAIVER OF REQUIREMENT FOR FINGERPRINTS FOR MEMBERS OF THE ARMED FORCES.

Notwithstanding any other provision of law or any regulation, the Secretary of Homeland Security shall use the fingerprints provided by an individual at the time the individual enlists in the Armed Forces to satisfy any requirement for fingerprints as part of an application for naturalization if the individual—

(1) may be naturalized pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 and 1440);

(2) was fingerprinted in accordance with the requirements of the Department of Defense at the time the individual enlisted in the Armed Forces; and

(3) submits an application for naturalization not later than 12 months after the date the individual enlisted in the Armed Forces.

SEC. 4. PROVISION OF INFORMATION ON NATURALIZATION TO MEMBERS OF THE ARMED FORCES.

The Secretary of Homeland Security shall—

(1) establish a dedicated toll-free telephone service available only to members of the Armed Forces and the families of such members to provide information related to naturalization pursuant to section 328 or 329 of the Immigration and Nationality Act (8 U.S.C. 1439 and 1440), including the status of an application for such naturalization;

(2) ensure that the telephone service required by paragraph (1) is operated by employees of the Department of Homeland Security who—

(A) have received specialized training on the naturalization process for members of the Armed Forces and the families of such members; and

(B) are physically located in the same unit as the military processing unit that adjudicates applications for naturalization pursuant to such section 328 or 329; and

(3) implement a quality control program to monitor, on a regular basis, the accuracy and quality of information provided by the employees who operate the telephone service required by paragraph (1), including the breadth of the knowledge related to the naturalization process of such employees.

S.3948

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Enhanced Border Tunnel Prevention Act''.

SEC. 2. CONSTRUCTION OF BORDER TUNNEL OR PASSAGE.

(a) IN GENERAL.—Chapter 27 of title 18, United States Code, is amended by adding at the end the following:

''§ 554. Border tunnels and passages

''(a) Any person who knowingly constructs or finances the construction of a tunnel or subterranean passage that crosses the international border between the United States and another country, other than a lawfully authorized tunnel or passage known to the Secretary of Homeland Security and subject to inspection by the Bureau of Immigration and Customs Enforcement, shall be imprisoned for not more than 25 years.

''(b) Any person who knows or recklessly disregards the construction or use of a tunnel or passage described in subsection (a) on land that the person owns or controls shall be imprisoned for not more than 15 years.

''(c) Any person who uses a tunnel or passage described in subsection (a) to unlawfully smuggle an alien, goods (in violation of section 545), controlled substances, weapons of mass destruction (including biological weapons), or a member of a terrorist organization (as defined in section 212(a)(3)(B)(vi) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(vi))) shall be subject to a maximum term of imprisonment that is twice the maximum term of imprisonment that would have otherwise been applicable had the unlawful activity not made use of such a tunnel or passage.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 27 of title 18, United States Code, is amended by adding at the end the following:

''Sec. 554. Border tunnels and passages.''.

(c) CRIMINAL FORFEITURE.—Section 982(a)(6) of title 18, United States Code, is amended by inserting ''554,'' before ''1425,''.

SEC. 3. DIRECTIVE TO THE UNITED STATES SENTENCING COMMISSION.

(a) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall promulgate or amend sentencing guidelines to provide for increased penalties for persons convicted of offenses described in section 554 of title 18, United States Code, as added by section 2.

(b) REQUIREMENTS.—In carrying out this section, the United States Sentencing Commission shall—

(1) ensure that the sentencing guidelines, policy statements, and official commentary reflect the serious nature of the offenses described in section 554 of title 18, United States Code, and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) provide adequate base offense levels for offenses under such section;

(3) account for any aggravating or mitigating circumstances that might justify exceptions, including—

(A) the use of a tunnel or passage described in subsection (a) of such section to facilitate other felonies; and

(B) the circumstances for which the sentencing guidelines currently provide applicable sentencing enhancements;

(4) ensure reasonable consistency with other relevant directives, other sentencing guidelines, and statutes;

(5) make any necessary and conforming changes to the sentencing guidelines and policy statements; and

(6) ensure that the sentencing guidelines adequately meet the purposes of sentencing set forth in section 3553(a)(2) of title 18, United States Code.

S. 3949

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Illegal Immigration Source Study and Focus Act''.

SEC. 2. STUDIES AND REPORTS ON ILLEGAL IMMIGRATION FROM MEXICO.

(a) STUDIES.—Not later than 1 year after the date of the enactment of this Act, and once every 5 years thereafter, the Secretary of State, in cooperation with the Secretary of Homeland Security, shall conduct a study—

(1) to identify the geographic areas in Mexico from which—

(A) large numbers of residents are leaving to enter the United States in violation of Federal immigration law; and

(B) large percentages of the population of such areas are leaving to enter the United States in violation of Federal immigration law; and

(2) to analyze the social, political, and economic conditions in the geographic areas identified under paragraph (1) that contribute to illegal immigration into the United States.

(b) REPORTS.—Not later than 16 months after the date of the enactment of this Act, and every 5 years thereafter, the Secretary of State shall submit to Congress a report that—

(1) describes the results of the study conducted under subsection (a); and

(2) provides recommendations on how the Government of the United States can improve the conditions described in subsection (a)(2).

SEC. 3. IMMIGRATION IMPACT FOCUS AREAS.

(a) DESIGNATION.—Based on the results of each study conducted under section 2(a) and subject to subsection (b), the Administrator of the United States Agency for International Development, in consultation with the Secretary of State, the Secretary of Homeland Security, and appropriate officials of the Government of Mexico, shall designate not more than 4 geographic areas within Mexico as Immigration Impact Focus Areas.

(b) POPULATION LIMITS.—An area may not be designated as an Immigration Impact Focus Area under subsection (a) unless the population of such area is—

(1) not less than 0.5 percent of the total population of Mexico; and

(2) not more than 5.0 percent of the total population of Mexico.

(c) DEVELOPMENT ASSISTANCE PLAN.—The Administrator of the United States Agency for International Development, in consultation with the Secretary of State, shall develop a plan to concentrate, to the extent practicable, economic development and humanitarian assistance provided to Mexico in the Immigration Impact Focus Areas designated under subsection (a).

Ms. SNOWE (for herself and Mr. KERRY):

S. 3950. A bill to amend the Internal Revenue Code of 1986 to allow a credit against income tax for qualified equity investments in certain small businesses; to the Committee on Finance.

Ms. SNOWE. Mr. President, to help start-up small businesses obtain access to capital, today I rise with my colleague Senator KERRY to introduce the Access to Capital for Entrepreneurs Act of 2006 or ACE Act. Our bill would encourage equity investments in qualified small businesses by providing so-called ''angel investors'' with a tax incentive to fund new small business enterprises. Angel investors are high-net-worth individuals who invest in and support start-up companies in the critical early stages of growth.

As Chair of the Senate Committee on Small Business and Entrepreneurship, I meet with prospective entrepreneurs in Maine and across the country and repeatedly hear about their dreams of starting dynamic new businesses. Unfortunately, their hopes can sometimes be dashed when these entrepreneurs encounter barriers to raising the funds they need to get their ''start-up'' enterprises off the ground.

For entrepreneurs and other aspiring small business owners, a self-evident truth since the founding of our country is that it takes money to make money. Our legislation makes that goal a little easier for aspiring small business owners by ensuring that our entrepreneurs have access to venture capital and credit markets so they can continue to drive America's economic growth and job creation. Since small businesses represent 99 percent of all employers and create nearly 75 percent of all net new jobs, Congress must do everything within its power to help them grow and thrive.

Under the Access to Capital for Entrepreneurs Act of 2006, angel investors would be eligible for a 25 percent tax credit to offset up to $500,000 of investments per year. Because the legislation limits the investment per small business to $250,000, which is the amount a typical entrepreneur requires to begin operations, an investor would have to invest in at least two companies to receive the full $500,000 tax credit. To qualify for the tax incentive, the angel investor must have an income of $200,000 over a two-year period, or net worth of $1 million. It's patterned after successful tax credits that have been enacted in 21 states, including Maine.

Recent research shows that venture capitalists are now targeting their investments for larger businesses or for later in a business's development, leaving precious little seed money for new ventures. Today, venture capitalists invest an average of $7 million per deal, an amount that far exceeds the needs of a nascent small business. Moreover, in 2005, of the $21.7 billion invested by venture capitalists, just 3.3 percent was allocated to start-up small businesses.

There were 227,000 angel investors who were active in 2005. Yet there are hundreds of thousands more waiting to be created. IRS statistics show that the ratio of potential to active angel investors is between 7 to 1 and 10 to 1. There is an enormous untapped market of future investors who we can call to help finance emerging small businesses in virtually every sector of the economy.

Our bill would remedy this situation by encouraging more angel investors to fund more of our Nation's smallest businesses. These businesses are critical to the economy, as they generate 60 percent to 80 percent of net new jobs and contribute more than 50 percent of non-farm private-sector output.

In addition, if the provisions of the ACE Act are signed into law, many small businesses that would otherwise fail for lack of adequate resources could grow and expand, creating more jobs for Americans, and further bolstering our Nation's economy. With no incentive, angel investments helped create 198,000 jobs in the United States during 2005. Imagine how many more jobs we could create if we enact the tax credit we are proposing today.

I am committed to supporting our Nation's small business community by increasing its access to capital. The entrepreneurial spirit of our 25 million small businesses dates back to our Nation's founding. From family farms to software development, small businesses are the heart of our economy and the linchpin for the innovation that moves our country forward. Americans who assume the risks and responsibilities inherent in owning and operating a business deserve our praise, admiration and unwavering support.

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

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

S. 3950

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Access to Capital for Entrepreneurs Act of 2006''.

SEC. 2. EQUITY INVESTMENT IN SMALL BUSINESS TAX CREDIT.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by adding at the end the following new section:

''SEC. 45N. EQUITY INVESTMENT IN SMALL BUSINESS TAX CREDIT.

''(a) GENERAL RULE.—For purposes of section 38, in the case of a qualified investor, the equity investment in small business tax credit determined under this section for the taxable year is an amount equal to 25 percent of the amount of each qualified equity investment made by the qualified investor during the taxable year.

''(b) CREDIT AMOUNT.—For purposes of determining the small business tax credit under subsection (a)—

''(1) LIMITATION PER QUALIFIED INVESTOR.—The amount of qualified equity investments made by the qualified investor during the taxable year shall not exceed $500,000.

''(2) LIMITATION PER QUALIFIED SMALL BUSINESS.—The amount of qualified equity investments made by the qualified investor in a qualified small business during the taxable year shall not exceed $250,000.

''(c) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED INVESTOR.—The term 'qualified investor' means—

''(A) an individual who qualifies as an accredited investor under rules and regulations prescribed by the Commissioner of the Securities and Exchange Commission, or

''(B) a partnership with respect to which all of the partners are individuals who qualify as accredited investors under rules and regulations prescribed by the Commissioner of the Securities and Exchange Commission.

''(2) QUALIFIED EQUITY INVESTMENT.—The term 'qualified equity investment' means the transfer of cash or cash equivalents in exchange for stock or capital interest in a qualified small business.

''(3) QUALIFIED SMALL BUSINESS.—The term 'qualified small business' means a private small business concern (within the meaning of section 3 of the Small Business Act)—

''(A) that meets the applicable size standard (as in effect on January 1, 2005) established by the Administrator of the Small Business Administration pursuant to subsection (a)(2) of such section, and

''(B) has its principal place of business in the United States.

For purposes of this section, all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b)) shall be treated as 1 qualified small business.

''(d) ACTIVE BUSINESS REQUIREMENT.—

''(1) IN GENERAL.—Holding stock in a qualified small business shall not be treated as a qualified equity investment unless, during substantially all of the qualified investor's holding period for such stock, such qualified small business meets the active business requirements of paragraph (2).

''(2) REQUIREMENTS.—

''(A) IN GENERAL.—For purposes of paragraph (1), the requirements of this paragraph are met by a qualified small business for any period if during such period at least 80 percent (by value) of the assets of such qualified small business are used by such qualified small business in the active conduct of 1 or more qualified trades or businesses.

''(B) SPECIAL RULE FOR CERTAIN ACTIVITIES.—For purposes of subparagraph (A), if, in connection with any future qualified trade or business, a qualified small business is engaged in—

''(i) start-up activities described in section 195(c)(1)(A),

''(ii) activities resulting in the payment or incurring of expenditures which may be treated as research and experimental expenditures under section 174, or

''(iii) activities with respect to in-house research expenses described in section 41(b)(4), assets used in such activities shall be treated as used in the active conduct of a qualified trade or business. Any determination under this subparagraph shall be made without regard to whether a qualified small business has any gross income from such activities at the time of the determination.

''(C) QUALIFIED TRADE OR BUSINESS.—For purposes of this paragraph, the term 'qualified trade or business' is as defined in section 1202(e)(3).

''(D) STOCK IN OTHER ENTITIES.—

''(i) LOOK-THRU IN CASE OF SUBSIDIARIES.—For purposes of this subsection, stock and debt in any subsidiary entity shall be disregarded and the parent qualified small business shall be deemed to own its ratable share of the subsidiary's assets, and to conduct its ratable share of the subsidiary's activities.

''(ii) PORTFOLIO STOCK OR SECURITIES.—A qualified small business shall be treated as failing to meet the requirements of subparagraph (A) for any period during which more than 10 percent of the value of its assets (in

excess of liabilities) consists of stock or securities in other entities which are not subsidiaries of such qualified small business other than assets described in subparagraph (E)).

''(iii) SUBSIDIARY.—For purposes of this subparagraph, an entity shall be considered a subsidiary if the parent owns more than 50 percent of the combined voting power of all classes of stock entitled to vote, or more than 50 percent in value of all outstanding stock, of such entity.

''(E) WORKING CAPITAL.—For purposes of subparagraph (A), any assets which—

''(i) are held as a part of the reasonably required working capital needs of a qualified trade or business of the qualified small business, or

''(ii) are held for investment and are reasonably expected to be used within 2 years to finance research and experimentation in a qualified trade or business or increases in working capital needs of a qualified trade or business,

shall be treated as used in the active conduct of a qualified trade or business. For periods after the qualified small business has been in existence for at least 2 years, in no event may more than 50 percent of the assets of the qualified small business qualify as used in the active conduct of a qualified trade or business by reason of this subparagraph.

''(F) MAXIMUM REAL ESTATE HOLDINGS.—A qualified small business shall not be treated as meeting the requirements of subparagraph (A) for any period during which more than 10 percent of the total value of its assets consists of real property which is not used in the active conduct of a qualified trade or business. For purposes of the preceding sentence, the ownership of, dealing in, or renting of real property shall not be treated as the active conduct of a qualified trade or business.

''(G) COMPUTER SOFTWARE ROYALTIES.—For purposes of subparagraph (A), rights to computer software which produces active business computer software royalties (within the meaning of section 543(d)(1)) shall be treated as an asset used in the active conduct of a trade or business.

''(e) CERTAIN PURCHASES BY QUALIFIED INVESTOR OF ITS OWN STOCK.—

''(1) REDEMPTIONS FROM QUALIFIED INVESTOR OR RELATED PERSON.—Stock acquired by the qualified investor shall not be treated as a qualified equity investment if, at any time during the 4-year period beginning on the date 2 years before the issuance of such stock, the qualified small business issuing such stock purchased (directly or indirectly) any of its stock from the qualified investor or from a person related (within the meaning of section 267(b) or 707(b)) to the qualified investor.

''(2) SIGNIFICANT REDEMPTIONS.—Stock issued by a qualified small business to a qualified investor shall not be treated as a qualified equity investment if, during the 2-year period beginning on the date 1 year before the issuance of such stock, such qualified small business made 1 or more purchases of its stock with an aggregate value (as of the time of the respective purchases) exceeding 5 percent of the aggregate value of all of its stock as of the beginning of such 2-year period.

''(3) TREATMENT OF CERTAIN TRANSACTIONS.—If any transaction is treated under section 304(a) as a distribution in redemption of the stock of any qualified small business, for purposes of subparagraphs (A) and (B), such qualified small business shall be treated as purchasing an amount of its stock equal to the amount treated as such a distribution under section 304(a).

''(f) SPECIAL RULE FOR RELATED PARTIES.—

''(1) IN GENERAL.—No credit shall be allowed under subsection (a) with respect to a qualified equity investment made by a qualified investor in a qualified small business that is a related party to the qualified investor.

''(2) RELATED PARTY.—For purposes of paragraph (1), a person is a related party with respect to another person if such person bears a relationship to such other person described in section 267(b) or 707(b), or if such persons are engaged in trades or businesses under common control (within the meaning of subsections (a) and (b) of section 52).

''(g) RECAPTURE OF CREDIT IN CERTAIN CASES.—

''(1) IN GENERAL.—If, at any time during the 3-year period beginning on the date that the qualified equity investment is made by the qualified investor, there is a recapture event with respect to such investment, then the tax imposed by this chapter for the taxable year in which such event occurs shall be increased by the credit recapture amount.

''(2) CREDIT RECAPTURE AMOUNT.—For purposes of paragraph (1), the credit recapture amount is an amount equal to the sum of—

''(A) the aggregate decrease in the credits allowed to the taxpayer under section 38 for all prior taxable years which would have resulted if no credit had been determined under this section with respect to such investment, plus

''(B) interest at the underpayment rate established under section 6621 on the amount determined under subparagraph (A) for each prior taxable year for the period beginning on the due date for filing the return for the prior taxable year involved.

No deduction shall be allowed under this chapter for interest described in subparagraph (B).

''(3) RECAPTURE EVENT.—For purposes of paragraph (1), there is a recapture event with respect to a qualified equity investment if such investment is sold, transferred, or exchanged by the qualified investor, but only to the extent that such sale, transfer, or exchange is not the direct result of a complete or partial liquidation of the qualified small business in which such qualified equity investment is made.

''(4) SPECIAL RULES.—

''(A) TAX BENEFIT RULE.—The tax for the taxable year shall be increased under paragraph (1) only with respect to credits allowed by reason of this section which were used to reduce tax liability. In the case of credits not so used to reduce tax liability, the carryforwards and carrybacks under section 39 shall be appropriately adjusted.

''(B) NO CREDITS AGAINST TAX.—Any increase in tax under this subsection shall not be treated as a tax imposed by this chapter for purposes of determining the amount of any credit under this chapter or for purposes of section 55.

''(h) BASIS REDUCTION.—The basis of any qualified equity investment shall be reduced by the amount of any credit determined under this section with respect to such investment.

''(i) REGULATIONS.—

''(1) IN GENERAL.—The Secretary shall prescribe such regulations as necessary to carry out the provisions of this section.

''(2) CERTIFICATION OF QUALIFIED EQUITY INVESTMENT.—Such regulations shall require that a qualified investor—

''(A) certify that the small business in which the equity investment is made meets the requirements described in subsection (c)(3), and

''(B) include the name, address, and taxpayer identification number of such small business on the return claiming the credit under subsection (a).

''(j) TERMINATION.—This section shall not apply to qualified equity investments made in taxable years beginning after December 31, 2011.''.

(b) CREDIT MADE PART OF GENERAL BUSINESS CREDIT.—Subsection (b) of section 38 of the Internal Revenue Code of 1986 is amended by striking ''and'' at the end of paragraph (29), by striking the period at the end of paragraph (30) and inserting '', and'', and by adding at the end the following new paragraph:

''(31) in the case of a taxpayer, the equity investment in small business tax credit determined under section 45N(a).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 45N. Equity investment in small business tax credit.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to qualified equity investments made after December 31, 2006, in taxable years beginning after such date.

By Mr. BINGAMAN (for himself and Mr. SMITH):

S. 3952. A bill to amend the Internal Revenue Code of 1986 to allow employees not covered by qualified retirement plans to save for retirement through automatic payroll deposit IRAs, to facilitate similar savings by the self-employed, and for other purposes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today with my colleagues, Senator SMITH and Senator KERRY, to introduce this important legislation that will ensure that more working Americans have a retirement account. This legislation is the result of the collaborative work done by David John of the Heritage Foundation and Mark Iwry of the Retirement Security Project to provide a simple, cost-effective way to increase retirement security for our Nation's workers who currently do not have a retirement plan. The Automatic IRA Act of 2006 will require employers who do not currently sponsor a retirement plan to offer their workers the opportunity to have part of their paycheck to be sent directly to an IRA. This will not only help millions of Americans begin saving for their retirement but will also provide subtle encouragement to employers to sponsor a qualified retirement account such as a SIMPLE or a 401(k).

In 2004, it was estimated that as many as 71 million Americans work for an employer who does not offer them any kind of retirement plan—almost half of all of our country's workers. Without an employer-sponsored retirement plan, many of these workers will not be saving adequately for their retirement. The first steps to addressing this growing inequity are to ensure that all workers have easy access to a retirement account and the ability to have part of their wages go directly from their paycheck into this account. Both of these features have been proven to encourage retirement savings and are imperative if we are going to address our national retirement savings rate.

Under this legislation, all employers with more than 10 employees who do

not sponsor a qualified retirement or pension plan must offer its employees the ability to have wages remitted directly to an automatic IRA through payroll deduction. These employers will not be required to make any contributions to these accounts and will receive a tax credit to offset the administrative costs of remitting part of the employee's wages to the IRA. It is entirely up to the employer as to what IRA options the employees would have. For instance, the employer could decide to remit the funds to the IRA of the employee's choice or the employer could decide to remit the money to the financial institution of his or her choice. The employer will also have a new option—the ability to remit the money to a new, simplified type of IRA, the automatic IRA. A board, similar to the Federal Government's existing Thrift Savings Plan Board, would create standards for these new accounts that must be followed by participating financial service companies. This board will also be responsible for educating the public about the importance of having a qualified retirement account as part of their duties.

Mr. President, it is going to take a bipartisan approach to address our Nation's retirement savings problems. I again want to applaud the efforts made by Mr. John of the Heritage Foundation and Mr. Iwry from the Retirement Security Project in advancing this proposal. It is now up to all of us in this Chamber to follow their example and pass this legislation.

I ask unanimous consent that the material be printed in the RECORD.

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

THE RETIREMENT SECURITY PROJECT

PURSUING UNIVERSAL RETIREMENT SECURITY THROUGH AUTOMATIC IRAS

(Testimony before the Subcommittee on Long-Term Growth and Debt Reduction, Committee on Finance, United States Senate, June 29, 2006)

Chairman Smith, Ranking Member Kerry, and Senator Grassley, we appreciate the opportunity to testify before you. We are submitting our testimony as a single joint statement because we believe strongly in the need for a common strategy to expand retirement savings, and in the importance of approaching these issues in a manner that transcends ideological and partisan differences.

At the request of Committee staff, this written statement focuses on our proposal to expand retirement savings for small business workers—the automatic IRA. We are pleased by the positive reaction the proposal has received and are grateful to our colleagues, including those in government and in various stakeholder organizations, who have contributed to these ideas.

With the looming retirement security crisis facing our country, policy-makers from both parties are focused on ways to strengthen pensions and increase savings. Our proposal for automatic IRAs would provide a relatively simple, cost-effective way to increase retirement security for the estimated 71 million workers whose employers (usually smaller businesses) do not sponsor plans. It would enable these employees to save for retirement by allowing them to have their employers regularly transfer amounts from their paycheck to an IRA.

We are by no means suggesting that the automatic IRA proposal is the only step that should be taken to expand retirement savings for small business workers. In fact, we have long believed in the primacy of employer-sponsored retirement plans as vehicles for pension coverage. Additionally, we continue to advocate strongly for the expansion of pension coverage through automatic features in 401(k) and similar retirement savings plans.

The automatic 401(k) approach makes intelligent use of defaults—the outcomes that occur when individuals are unable or unwilling to make an affirmative choice or otherwise fail to act—to enlist the power of inertia to promote saving. Automating enrollment, escalation of contributions, investment, and rollovers expands coverage in several ways. Enrolling employees in a plan unless they opt out increases significantly the number of eligible employees who participate in the plan. Escalating the amount of the default contribution tends to increase the amount people save over time. Providing for a default investment (which participants can reject in favor of other alternatives) reflecting consensus investment principles such as diversification and asset allocation tends to raise the expected investment return on contributions. Finally, making retention or rollover of benefits rather than consumption the default when an employee leaves a job furthers the long-term preservation of retirement savings for their intended purposes. By helping improve performance under the nondiscrimination standards and generally making plans more effective in providing retirement benefits, the automatic 401(k) can also encourage more employers to sponsor or continue sponsoring plans.

The automatic IRA builds on the success of the automatic 401(k). Moreover, as explained below, we would intend and expect the introduction of automatic IRAs to expand the number of employers that choose to sponsor 401(k) or SIMPLE plans instead of offering only automatic IRAs. But for millions of workers who continue to have no employer plan, the automatic IRA would provide a valuable retirement savings opportunity.

The automatic IRA proposal is set out in the remainder of this written statement.

EXECUTIVE SUMMARY OF PROPOSAL

This testimony proposes an ambitious but practical set of initiatives to expand dramatically retirement savings in the United States—especially to those not currently offered an employer-provided retirement plan. The essential strategy here, as in the case of the automatic 401(k) described above, is to make saving more automatic—and hence easier, more convenient, and more likely to occur. As noted, making saving easier by making it automatic has been shown to be remarkably effective at boosting participation in 401(k) plans, but roughly half of U.S. workers are not offered a 401(k) or any other type of employer-sponsored plan. Among the 153 million working Americans in 2004, over 71 million worked for an employer that did not sponsor a retirement plan of any kind, and another 17 million did not participate in their employer's plan. This testimony explores a new and, we believe, promising approach to expanding the benefits of automatic saving to a wider array of the population: the ''automatic IRA.''

The automatic IRA would feature direct payroll deposits to a low-cost, diversified individual retirement account. Most American employees not covered by an employer-sponsored retirement plan would be offered the opportunity to save through the powerful mechanism of regular payroll deposits that continue automatically (an opportunity now limited mostly to 401(k)-eligible workers).

Employers above a certain size (e.g., 10 employees) that have been in business for at least two years but that still do not sponsor any plan for their employees would be called upon to offer employees this payroll-deduction saving option. These employers would receive a temporary tax credit for simply serving as a conduit for saving, by making regular payroll deposit available to their employees. Employers would receive a small additional tax credit for each employee who participates. Other employers that do not sponsor a plan also would receive the tax credit if they offered payroll deduction saving.

Firms would be provided a standard notice to inform employees of the automatic IRA (payroll-deduction saving) option, and a standard form to elicit from each employee a decision either to participate or to opt out. For most employees, the payroll deductions would be made by direct deposit similar to the very common direct deposit of paychecks to employees' accounts at their financial institutions.

To maximize participation, employers would be provided a standard enrollment module reflecting current best practices in enrollment procedures. The use of automatic enrollment (whereby employees automatically participate at a statutorily specified rate of contribution unless they opt out) would be encouraged in two ways. First, the standard materials provided to employers would be framed so as to present auto enrollment as the presumptive enrollment method, although employer would be able to opt for the alternative of obtaining responses from all employees. Second, employers using auto enrollment to promote participation would not need to obtain responses from unresponsive employees. As discussed earlier, evidence from the 401(k) universe strongly suggests that high levels of participation tend to result not only from auto enrollment but also from the practice of eliciting from each eligible individual an explicit decision to participate or to opt out.

Employers making direct deposit or payroll deduction available would be protected from potential fiduciary liability and from having to choose or arrange default investments. Instead, diversified default investments and a handful of standard, low-cost investment alternatives would be specified by statute and regulation. Payroll deduction contributions would be transferred, at the employer's option, to a central repository, which would remit them to IRAs designated by employees or, absent employee designation, to a default collective retirement account.

Investment management as well as record keeping and other administrative functions would be contracted to private sector financial institutions to the fullest extent practicable. Costs would be minimized through a no-frills design relying on index funds, economies of scale, and maximum use of electronic technologies, and modeled to some degree on the Thrift Savings Plan for federal government employees. Once accounts reached a predetermined balance (e.g., $15,000) sufficient to make them sufficiently profitable to attract the interest of the full range of IRA providers, account owners would have the option to transfer them to IRAs of their choosing.

This approach involves no employer contributions, no employer compliance with qualified plan or ERISA requirements, and, as noted, no employer liability or responsibility for selecting investments, for selecting an IRA provider, or for opening IRAs for employees. It also steers clear of any adverse impact on employer-sponsored plans or on

the incentives designed to encourage firms to adopt new plans. In fact, the indirect intended effect of the proposal would be to draw small employers into the private pension system.

Our proposed approach would seek to capitalize on the rapid trend toward automated or electronic fund transfers. With the spread of new, low-cost technologies, employers are increasingly using automated or electronic systems to manage payroll, including withholding and federal tax deposits, and for other transfers of funds. Many employers use an outside payroll service provider, an online payroll service, or software to perform these functions, including direct deposit of paychecks to accounts designated by employees.

For firms already offering direct deposit, including many that use outside payroll providers, direct deposit to an IRA would entail no additional cost, insofar as these systems have unused fields that could be used for the additional direct deposit destination. Other small businesses still write paychecks by hand, complete the federal tax deposit forms and Forms W–2 by hand, and deliver them to employees and to the local depositary institution. Our proposal would not require these employers to make the transition to automatic payroll processing or use of on-line systems (although it might have the effect of encouraging such transitions).

At the same time, we would not be inclined to deny payroll deduction savings to all employees of employers that do not yet use automatic payroll processing (and we would not want to give small employers an incentive to drop automatic payroll processing). These employees would benefit from the ability to save through regular payroll deposits at the workplace whether the deposits are made electronically or by hand. Employees would still have the advantages of a method of saving that, once begun, continues automatically, that is more likely to begin because of workplace enrollment arrangements and peer group reinforcement, and that often will not reduce take-home pay. To that end, we outline below a strategy to address these situations efficiently and with minimal cost.

For the self-employed and others who have no employer, regular contributions to IRAs would be facilitated in three principal ways: (1) extending the payroll deposit option to many independent contractors who work for employers (other than the very smallest businesses); (2) enabling taxpayers to direct the IRS to make direct deposit of a portion of their income tax refunds; and (3) expanding access to automatic debit arrangements, including on-line and traditional means of access through professional and trade associations that could help arrange for automatic debit and direct deposit to IRAs. Automatic debit essentially replicates the power of payroll deduction insofar as it continues automatically once the individual has chosen to initiate it.

In addition, a powerful financial incentive to contribute might be provided by means of matching deposits to the IRAs. Private financial institutions that maintain the accounts could deliver matching contributions and be reimbursed through tax credits.

THE BASIC PROBLEM AND PROPOSED SOLUTION

In general, the households that tend to be in the best financial position to confront retirement are the 42 percent of the workforce that participate in an employer-sponsored retirement plan. For reasons we have discussed earlier, traditionally, the takeup rate for IRAs (those who contribute as a percentage of those who are eligible) is less than 1 in 10, but the takeup rate for employer-sponsored 401(k) plans tends to be on the order of 7 in 10.

Moreover, as discussed, an increasing share of 401(k) plans are including automatic features that make saving easier and bolster participation. When firms are not willing to sponsor 401(k)-type plans, the automatic IRA proposed here would apply many of the lessons learned from 401(k) plans so that more workers could enjoy automated saving to build assets—but without imposing any significant burden on employers. Employers that do not sponsor plans for their employees could facilitate saving by employees—without sponsoring a plan, without making employer matching contributions, and without complying with plan qualification or fiduciary standards. Employers can help employees save simply by offering to remit a portion of their pay to an IRA, preferably by direct deposit, at little or no cost to the employer.

Such direct deposit savings using IRAs would not and should not replace retirement plans, such as pension, profit sharing, 401(k), or SIMPLE–IRA plans. Indeed, the automatic IRA would be carefully designed so as to avoid any adverse effect on employer sponsorship of ''real'' plans, which must adhere to standards requiring reasonably broad or proportionate coverage of moderate and lower-income workers and various safeguards for employees, and which often involve employer contributions. Instead, payroll-deduction direct deposit savings, as envisioned here, would promote wealth accumulation for retirement by filling in the coverage gaps around employer-sponsored retirement plans. Moreover, as described below, the arrangements we propose are designed to set the stage for small employers to ''graduate'' from offering payroll deduction to sponsoring an actual retirement plan.

EMPLOYEE ACCESS TO PAYROLL DEPOSIT SAVING

The automatic IRA is a means of facilitating direct deposits to a retirement account, giving employees access to the power of direct deposit saving. In much the same way that millions of employees have their pay directly deposited to their account at a bank or other financial institution, and millions more elect to contribute to 401(k) plans by payroll deduction, employees would have the choice to instruct the employer to send an amount they select directly from their paychecks to an IRA. Employers generally would be required to offer their employees the opportunity to save through such direct deposit or payroll-deduction IRAs.

Direct deposit to IRAs is not new. In 1997, Congress encouraged employers not ready or willing to sponsor a retirement plan to at least offer their employees the opportunity to contribute to IRAs through payroll deduction. Both the IRS and the Department of Labor have issued administrative guidance to publicize the payroll deduction or direct deposit IRA option for employers and to ''facilitate the establishment of payroll deduction IRAs.'' This guidance has made clear that employers can offer direct deposit IRAs without the arrangement being treated as employer sponsorship of a retirement plan that is subject to ERISA or qualified plan requirements. However, it appears that few employers actually have direct deposit or payroll-deduction IRAs—at least in a way that actively encourages employees to take advantage of the arrangement. After some years of encouragement by the government, direct deposit IRAs have simply not caught on widely among employers and, consequently, offer little opportunity for employees to save.

With this experience in mind, we propose a new strategy designed to induce employers to offer, and employees to take up, direct deposit or payroll deposit saving.

Tax credit for employers that serve as conduit for employee contributions

Under our proposal, firms that do not provide employees a qualified retirement plan, such as a pension, profit-sharing, or 401(k) plan, would be given an incentive (a temporary tax credit) to offer those employees the opportunity to make their own payroll deduction contributions to IRAs using the employers' payroll systems as a conduit. The tax credit would be available to a firm for the first two years in which it offered payroll deposit saving to an IRA, in order to help the firm adjust to any modest administrative costs associated with the ''automatic IRA.'' This automatic IRA credit would be designed to avoid competing with the tax credit available under current law to small businesses that adopt a new employer-sponsored retirement plan.

SMALL BUSINESS NEW PLAN STARTUP CREDIT

Under current law, an employer with 100 or fewer employees that starts a new retirement plan for the first time can generally claim a tax credit for a portion of its startup costs. The credit equals 50 percent of the cost of establishing and administering the plan (including educating employees about the plan) up to $500 per year. The employer can claim the credit of up to $500 for each of the first three years of the plan.

Accordingly, the automatic IRA tax credit could be set, for example, at $50 plus $10 per employee enrolled. It would be capped at, say, $250 or $300 in the aggregate—low enough to make the credit meaningful only for very small businesses, and lower than the $500 three-year credit available under current law for establishing a new employer plan. Employers would be precluded from claiming both the new plan startup credit and the proposed automatic IRA credit; otherwise, somewhat larger employers might have a financial incentive to limit a new plan to fewer than all of their employees in order to earn an additional credit for providing payroll deposit saving to other employees. As in the case of the current new plan startup credit, employers also would be ineligible for the credit if they had sponsored a retirement plan during the preceding three years for substantially the same group of employees covered by the automatic IRA.

Example: Joe employs four people in his auto body shop, and currently does not sponsor a retirement plan for his employees. If Joe chooses to adopt a 401(k) or SIMPLE–IRA plan, he and each of his employees generally can contribute up to $15,000 (401(k)) or $10,000 (SIMPLE) a year, and the business might be required to make employer contributions. Under this scenario, Joe can claim the startup tax credit for 50 percent of his costs over three years up to $500 per year.

Alternatively, if Joe decides only to offer his employees payroll deposit to an IRA, the business will not make employer contributions, and Joe can claim a tax credit for each of the next two years of $50 plus $10 for each employee who signs up to contribute out of his own salary.

Employers with more than 10 employees that have been in business for at least two years and that still do not sponsor any plan for their employees would be called upon to offer employees this opportunity to save a portion of their own wages using payroll deposit. If the employer sponsored a plan designed to cover only a subset of its employees (such as a particular subsidiary, division or other business unit), it would have to offer the payroll deposit facility to the rest of its workforce (i.e., employees not in that business unit) other than employees excluded from consideration under the qualified plan coverage standards (union-represented employees or nonresident aliens)

and those in the permissible qualified plan eligibility waiting period. The arrangement would be structured so as to avoid, to the fullest extent possible, employer costs or responsibilities. The tax credit would be available both to those firms that are required to offer payroll deposit to all of their employees and to the small or new firms that are not required to offer the automatic IRA, but do so voluntarily. The intent would be to encourage, without requiring, the smallest employers to participate.

Acting as conduit entails little or no cost to employers

For many if not most employers, offering direct deposit or payroll deduction IRAs would involve little or no cost. Unlike a 401(k) or other employer-sponsored retirement plan, the employer would not be maintaining a plan. First, there would be no employer contributions: employer contributions to direct deposit IRAs would not be required or permitted. Employers willing to make retirement contributions for their employees would continue to do so in accordance with the safeguards and standards governing employer-sponsored retirement plans, such as SIMPLE–IRAs, 401(k)s, and traditional pensions. (The SIMPLE–IRA is essentially a payroll deposit IRA with an employee contribution limit that is in between the IRA and 401(k) limits and with employer contributions, but without the annual reports, plan documents, and most of the other administrative requirements applicable to other employer plans.)

Employer-sponsored retirement plans are the saving vehicles of choice and should be encouraged; the direct deposit IRA is a fallback designed to apply to employees who are not fortunate enough to be covered under an actual employer retirement plan. (As discussed below, it is also intended to encourage more employers to make the decision sooner or later to ''graduate'' to sponsorship of an employer plan.)

Direct deposit or payroll deduction IRAs also would minimize employer responsibilities. Firms would not be required to: comply with plan qualification or ERISA rules; establish or maintain a trust to hold assets (since IRAs would receive the contributions); determine whether employees are actually eligible to contribute to an IRA; select investments for employee contributions; select among IRA providers, or set up IRAs for employees.

Employers would be required simply to let employees elect to make a payroll-deduction deposit to an IRA (in the manner described below, with a standard notice informing employees of the automatic IRA (payroll-deposit saving) option, and a standard form eliciting the employee's decision to participate or to opt out. Employer then would implement deposits elected by employees. Employers would not be required to remit the direct deposits to the IRA provider(s) any faster than the timing of the federal payroll deposits they are required to make. (Those deposits generally are required to be made on a standard schedule, either monthly or twice a week.) Nor would employers be required to remit direct deposits to a variety of different IRAs specified by their employees (as explained below).

A requirement to offer payroll-deduction to an IRA would by no means be onerous. It would dovetail neatly with what employers already do. Employers of course are already required to withhold federal income tax and payroll tax from employees' pay and remit those amounts to the federal tax deposit system. While this withholding does not require the employer to administer an employee election of the sort associated with direct deposit to an IRA, the tax withholding amounts do vary from employee to employee and depend on the way each employee completes IRS Form W–4 (which employers ordinarily obtain from new hires to help the employer comply with income tax withholding). The employee's payroll deposit IRA election might be made on an attachment or addendum to the Form W–4. Because employees' salary reduction contributions to IRAs would ordinarily receive tax-favored treatment, the employer would report on Form W–2 the reduced amount of the employee's taxable wages together with the amount of the employee's contribution.

Direct deposit; automated fund transfers

Our proposed approach would seek to capitalize on the rapid trend toward automated or electronic fund transfers. With the spread of new, low-cost technologies, employers are increasingly using automated or electronic systems to manage payroll, including withholding and federal tax deposits, and for other transfers of funds. It is common for employers to retain an outside payroll service provider to perform these functions, including direct deposit of paychecks to accounts designated by employees or contractors. Other employers use an on-line payroll service that offers direct deposit and check printing (or that allows employers to write checks by hand). Still others do not outsource their payroll tax and related functions to a third-party payroll provider but do use readily available software or largely paperless on-line methods to make their federal tax deposits and perhaps other fund transfers, just as increasing numbers of households pay bills and manage other financial transactions on line. (The IRS encourages employers to use its free Electronic Federal Tax Payment System for making federal tax deposits.)

For the many firms that already offer their workers direct deposit, including many that use outside payroll providers, direct deposit to an IRA would entail no additional cost, even in the short term, insofar as the employer's system has unused fields that could be used for the additional direct deposit destination. Other small businesses still write their own paychecks by hand, complete the federal tax deposit forms and Forms W–2 by hand, and deliver them to employees and to the local bank or other depositary institution. Our proposal would not require these employers to make the transition to automatic payroll processing or use of on-line systems (although it might have the beneficial effect of encouraging such transitions).

At the same time, we would not be inclined to deny the benefits of payroll deduction savings to all employees of employers that do not yet use automatic payroll processing (and we would not want to give small employers an incentive to drop automatic payroll processing). These employees would benefit from the ability to save through regular payroll deposits at the workplace whether the deposits are made electronically or by hand. Employees would still have the advantages of tax-favored saving that, once begun, continues automatically, that is more likely to begin because of workplace enrollment arrangements and peer group reinforcement, and need not cause a visible reduction in take-home pay if begun promptly when employees are hired.

Accordingly, we would suggest a three-pronged strategy with respect to employers that do not use automatic payroll processing.

First, a large proportion of the employers that still process their payroll by hand would be exempted under the exception for very small employers described below. As a result, this proposal would focus chiefly on those employers that already offer their employees direct deposit of paychecks but have not used the same technology to provide employees a convenient retirement saving opportunity.

Second, employers would have the ease of ''piggybacking'' the payroll deposits to IRAs onto the federal tax deposits they currently make. The process, including timing and logistics, for both sets of deposits would be the same. Accompanying or appended to the existing federal tax deposit forms would be a similar payroll deposit savings form enabling the employer to send all payroll deposit savings to a single destination. The small employer who mails or delivers its federal tax deposit check and form to the local bank (or whose accountant or financial provider assists with this) would add another check and form to the same mailing or delivery.

Third, as noted, the existing convenient, low-cost on-line system for federal tax deposits would be expanded to accommodate a parallel stream of payroll deduction savings payments.

Since employers making payroll deduction savings available to their employees would not be required to make contributions or to comply with plan qualification or ERISA requirements with respect to these arrangements, the cost to employers would be minimal. They would administer and implement employee elections to participate or to opt out through their payroll systems. On occasion, employers might need to address mistakes or misunderstandings regarding employee payroll deductions and deposit directions. The time and attention required of the employer could generally be expected to be minimized through orderly communications, written or electronic, between employees and employers, facilitated by the use of standard forms that ''piggyback'' on the existing IRS forms such as the W–4 used by individuals to elect levels of income tax withholding.

Exemption for small and new employers

As discussed, the requirement to offer payroll deposit to IRAs as a substitute for sponsoring a retirement plan would not apply to the smallest firms (those with up to 10 employees) or to firms that have not been in business for at least two years. However, even small or new firms that are exempted would be encouraged to offer payroll deposit through the tax credit described earlier. (In addition, a possible approach to implementation of this program would be to require payroll deposit for the first year or two only by non-plan sponsors that are above a slightly larger size. This would try out the new system and could identify any ''bugs'' or potential improvements before broader implementation.)

Employees of small employers that are exempted—like other individuals who do not work for an employer that is part of the payroll deposit system outlined here—would be able to use other mechanisms to facilitate saving. These include the ability to contribute by instructing the IRS to make a direct deposit of a portion of an income tax refund, by setting up an automatic debit arrangement for IRA contributions (perhaps with the help of a professional or trade association), and by other means discussed below.

Employee Participation

Like a 401(k) contribution, the amount elected by the employee as a salary reduction contribution generally would be tax-favored. It either would be a ''pre-tax'' contribution to a traditional, tax-deductible IRA—deducted or excluded from the employee's gross income for tax purposes—or a contribution to a Roth IRA, which instead receives tax-favored treatment upon distribution. An employee who did not qualify to

make a deductible IRA contribution or a Roth IRA contribution (for example, because of income that exceeds the applicable income eligibility thresholds), would be responsible for making the appropriate adjustment on the employee's tax return. The statute would specify which type of IRA is the default, and the firm would have no responsibility for ensuring that employees satisfied the applicable IRA requirements.

It is often argued that a Roth IRA is the preferred alternative for lowerincome individuals on the theory that their marginal income tax rates are likely to increase as they become more successful economically. The argument is often made also that a Roth is preferable for many others on the assumption that federal budget deficits will cause income tax rates to rise in the future. On either of those assumptions, all other things being equal, the Roth's tax advantage for payouts would likely be more valuable than the traditional IRA's tax deduction for contributions. In addition, the Roth, by producing less taxable income in retirement years, could avoid exposing the individual to a higher rate of incomerelated tax on social security benefits in retirement.

This point of view, however, may well overstate the probability that our tax system, including the federal income tax, social security taxes, and the tax treatment of the Roth IRA, will continue essentially as it is. If, instead of increasing marginal tax rates, we moved to a consumption or value added tax or another system that exempts savings or retirement savings from tax—or if a future Congress eliminated or limited the Roth income tax (and social security benefits tax) advantages—the choice of a Roth over a deductible IRA would entail giving up the proverbial bird in the hand for two in the bush.

Because the automatic IRA proposal would encourage but not require individuals to save, the associated incentives for saving are important. The instant gratification taxpayers can obtain from a deductible IRA might do more to motivate many households than the government's long-term promise of an uncertain tax benefit in an uncertain future. (In addition, by shifting the loss of tax revenues beyond the congressional budget ''window'' period, the Roth also presents a special challenge to a policy of fiscal responsibility.) Accordingly, we are inclined to make the traditional IRA the default but to allow individuals to elect payroll deposits to a Roth.

Employees covered

Employees eligible for payroll deposit savings might be, for example, employees who have worked for the employer on a regular basis (including parttime) for a specified period of time and whose employment there is expected to continue. Employers would not be required, however, to offer direct deposit savings to employees they already cover under a retirement plan, including employees eligible to contribute (whether or not they actually do so) to a 401(k)-type salary-reduction arrangement. Accordingly, as discussed, an employer that limits retirement plan coverage to a portion of its workforce generally would be required to offer direct deposit or other payroll deduction saving to the rest of the workforce.

THE AUTOMATIC IRA

Obstacles to participation

Even if employers were required to offer direct deposit to IRAs, various impediments would prevent many eligible employees from taking advantage of the opportunity. To save in an IRA, individuals must make a variety of decisions and must overcome inertia. At least five key questions are involved in the process for employees:

a) whether to participate at all;

b) where (with which financial institution) to open an IRA (or, if they have an IRA already, whether to use it or open a new one);

c) whether the IRA should be a traditional or Roth IRA;

d) how much to contribute to the IRA; and

e) how to invest the IRA.

Once these decisions have been made, the individual must still take the initiative to fill out the requisite paperwork (whether on paper or electronically) to participate. Even in 401(k) plans, where decisions (b) and, unless the plan offers a Roth 401(k) option, (c) are not required, millions of employees are deterred from participating because of the other three decisions or because they simply do not get around to enrolling in the plan.

Overcoming the obstacles to participation: Encouraging automatic enrollment

These obstacles can be overcome by making participation easier and more automatic, in much the same way as is being done increasingly in the 401(k) universe. An employee eligible to participate in a 401(k) plan automatically has a savings vehicle ready to receive the employee's contributions (the plan sponsor sets up an account in the plan for each participating employee) and benefits from a powerful automatic savings mechanism in the form of regular payroll deduction. With payroll deduction as the method of saving, deposits continue to occur automatically and regularly—without the need for any action by the employee—once the employee has elected to participate. And finally, to jump-start that initial election to participate, an increasing percentage of 401(k) plan sponsors are using ''automatic enrollment.''

Auto enrollment tends to work most effectively when it is followed by gradual escalation of the initial contribution rate. The automatic contribution rate can increase either on a regular, scheduled basis, such as 4 percent in the first year, 5 percent in the second year, etc., or in coordination with future pay raises. But if the default mode is participation in the plan (as it is under auto enrollment), employees no longer need to overcome inertia and take the initiative in order to save; saving happens automatically, even if employees take no action.

Employers offering payroll deposit saving to an IRA should be explicitly permitted to arrange for appropriate automatic increases in the automatic IRA contribution rate. However, an employer facilitating saving in an automatic IRA has far less of an incentive to use automatic escalation (or to set the initial automatic contribution rate as high as it thinks employees will accept) than an employer sponsoring a 401(k) plan. The 401(k) sponsor generally has a financial incentive to encourage nonhighly compensated employees to contribute as much as possible, because their average contribution level determines how much highly compensated employees can contribute under the 401(k) nondiscrimination standards. Because no nondiscrimination standards apply to IRAs, employers have no comparable incentive to maximize participation and contributions to IRAs.

Automatic enrollment, which has typically been applied to newly hired employees (as opposed to both new hires and employees who have been with the employer for some years), has produced dramatic increases in 401(k) participation. This is especially true in the case of lower-income and minority employees. In view of the basic similarities between employee payroll-deduction saving in a 401(k) and under a direct deposit IRA arrangement, the law should, at a minimum, permit employers to automatically enroll employees in direct deposit IRAs.

The conditions imposed by the Treasury Department on 401(k) auto enrollment would apply to direct or payroll deposit IRA auto enrollment as well: all potentially auto enrolled employees must receive advance written notice (and annual notice) regarding the terms and conditions of the saving opportunity and the auto enrollment, including the procedure for opting out, and all employees must be able to opt out at any time.

It is not at all clear, however, whether simply allowing employers to use auto enrollment with direct deposit IRAs will prove to be effective. A key motivation for using auto enrollment in 401(k) plans is to improve the plan's score under the 401(k) nondiscrimination test by encouraging more moderate- and lower-paid (''nonhighly compensated'') employees to participate, which in turn increases the permissible level of tax-preferred contributions for highly compensated employees. This motivation is absent when the employer is merely providing direct deposit IRAs, rather than sponsoring a qualified plan such as a 401(k), because no nondiscrimination standards apply unless there is a plan.

A second major motivation for using 401(k) auto enrollment in many companies is management's sense of responsibility or concern for employees and their retirement security. Many executives involved in managing employee plans and benefits have opted for auto enrollment because they believe far too many employees are saving too little and investing unwisely and need a strong push to ''do the right thing'' and take advantage of the 401(k) plan. This motivation—by no means present in all employers—is especially unlikely to be driving an employer that merely permits payroll deposit to IRAs without sponsoring a retirement plan.

Third, employers might have greater concern about potential employee reaction to auto enrollment in the absence of an employer matching contribution. The high return on employees' investment delivered by the typical 401(k) match helps give confidence to 401(k) sponsors using auto enrollment that they are doing right by their employees and need not worry unduly about potential complaints from workers who failed to read the notice.

Finally, an employer concern that has made some plan sponsors hesitate to use auto enrollment with 401(k) plans might loom larger in the case of auto enrollment with direct deposit IRAs. This is the concern about avoiding a possible violation of state laws that prohibit deductions from employee paychecks without the employee's advance written authorization. Assuming most direct deposit IRA arrangements are not employer plans governed by ERISA, such state laws, as they apply to automatic IRAs, may not be preempted by ERISA because they do not ''relate to any employee benefit plan.'' For reasons such as these, without a meaningful change in the law, most employers that are unwilling to offer a qualified plan today are unlikely to take the initiative to automatically enroll employees in direct deposit IRAs.

Not requiring employers to use automatic enrollment

One possible response would be to require employers to use automatic enrollment in conjunction with the direct deposit IRAs (while giving the employers a tax credit and legal protections). The argument for such a requirement would be that it would likely increase participation dramatically while preserving employee choice (workers could always opt out), and that, for the reasons summarized above, employers that do not provide a qualified plan (or a match) are unlikely to use auto enrollment voluntarily.

The arguments against such a requirement include the concern that a workforce that presumably has not shown sufficient demand for a qualified retirement plan to induce the employer to offer one might react unfavorably to being automatically enrolled in direct deposit savings without a matching contribution. (In addition, some small business owners who have only a few employees and work with all of them on a daily basis might take the view that automatic enrollment is unnecessary because of the constant flow of communication between the owner and each employee.)

It is noteworthy, however, that recent public opinion polling shows strong support among registered voters for making saving easier by making it automatic, with 71 percent of respondents favoring a fully automatic 401(k), including automatic enrollment, automatic investment, and automatic contribution increases over time, with the opportunity to opt out at any stage. A vast majority (85 percent) of voters said that if they were automatically enrolled in a 401(k), they would not opt out, even when given the opportunity to do so. In addition, given the choice, 59 percent of respondents preferred a workplace IRA with automatic enrollment to one without.

Requiring explicit ''Up or Down'' employee elections while encouraging auto enrollment

An alternative approach that has been used in 401(k) plans and might be particularly well suited to payroll deposit savings is to require all eligible employees to submit an election that explicitly either accepts or declines direct deposit to an IRA. Instead of treating employees who fail to respond as either excluded or included, this ''up or down'' election approach has no default. There is evidence suggesting that requiring employees to elect one way or the other can raise 401(k) participation nearly as much as auto enrollment does. Requiring an explicit election picks up many who would otherwise fail to participate because they do not complete and return the enrollment form due to procrastination, inertia, inability to decide on investments or level of contribution, and the like.

Accordingly, a possible strategy for increasing participation in payroll deposit IRAs would be to require employers to obtain a written (including electronic) ''up or down'' election from each eligible employee either accepting or declining the direct deposit to an IRA. Under this strategy, employers that voluntarily auto enroll their employees in the direct deposit IRAs would be excused from the requirement that they obtain an explicit election from each employee because all employees who fail to elect would be participating. This exemption—treating an employer's use of auto enrollment as an alternative means of satisfying its required-election obligation—would add an incentive for employers to use auto enrollment without requiring them to use it. Any firms that prefer not to use auto enrollment would simply obtain a completed election from each employee, either electronically or on a paper form. And either way—whether the employer chose to use auto enrollment or the required-election approach—participation would likely increase significantly, perhaps even approaching the level that might be achieved if auto enrollment were required for all payroll deposit IRAs.

This combined strategy for promoting payroll deposit IRA participation could be applied separately to new hires and existing employees: thus, an employer auto enrolling new hires would be exempted from obtaining completed elections from all new hires (but not from existing employees), while an employer auto enrolling both new hires and existing employees would be excused from having to obtain elections from both new hires and existing employees.

The required election would not obligate employers to obtain a new election from each employee every year. Once an employee submitted an election form, that employee would not be required to make another election: as in most 401(k) plans, the initial election would continue throughout the year and from year to year unless and until the employee chose to change it. Similarly, an employee who failed to submit an election form and was auto enrolled by default in the payroll deposit IRA would continue to be auto enrolled unless and until the employee took action to make an explicit election.

To maximize participation, employers would receive a standard enrollment module reflecting current best practices in enrollment procedures. A nationwide website with standard forms would serve as a repository of state-of-the-art best practices in and savings education. The use of automatic enrollment (whereby employees automatically are enrolled at a statutorily specified rate of contribution—such as 3% of pay—unless they opt out) would be encouraged in two ways. First, the standard materials provided to employers would be framed so as to present auto enrollment as the presumptive or perhaps even the default enrollment method, although employers would be easily able to opt out in favor of simply obtaining an ''up or down'' response from all employees. In effect, such a ''double default'' approach would use the same principle at both the employer and employee level by auto enrolling employers into auto enrolling employees. Second, as noted, employers using auto enrollment to promote participation would not need to obtain responses from unresponsive employees.

Compliance and enforcement

Employers' use of the required-election approach would also help solve an additional problem—enforcing compliance with a requirement that employers offer direct deposit savings. As a practical matter, many employers might question whether the IRS would ever really be able to monitor and enforce such a requirement. Employers may believe that, if the IRS asked an employer why none of its employees used direct deposit IRAs, the employer could respond that it told its employees about this option and they simply were not interested. However, if employers that were required to offer direct deposit savings had to obtain a signed election from each eligible employee who declined the payroll deposit option, employers would know that the IRS could audit their files for each employee's election. This by itself would likely improve compliance.

In fact, a single paper or e-mail notice could advise the employee of the opportunity to engage in payroll deduction savings and elicit the employee's response. The notice and the employee's election might be added or attached to IRS Form W–4. (As noted, the W–4 is the form an employer ordinarily obtains from new hires and often from other employees to help the employer comply with its income tax—withholding obligations.) If the employer chose to use auto enrollment, the notice would also inform employees of that feature (including the default contribution level and investment and the procedure for opting out), and the employer's records would need to show that employees who failed to submit an election were in fact participating in the payroll deduction savings.

Employers would be required to certify annually to the IRS that they were in compliance with the payroll deposit savings requirements. This might be done in conjunction with the existing IRS Form W–3 that employers file annually to transmit Forms W–2 to the government. Failure to offer payroll deposit savings would ultimately need to be backed up by an appropriate sanction, such as the threat of civil monetary penalties or an excise tax.

Portability of savings

IRAs are inherently portable. Unlike a 401(k) or other employer plan, an IRA survives and functions independently of the individual saver's employment status. Thus the IRA owner is not at risk of forfeiting or losing the account or suffering an interruption in the ability to contribute when changing or losing employment. As a broad generalization, the automatic IRAs outlined here presumably would be freely transferable to and with other IRAs and qualified plans that permit such transfers. (However, as discussed below, the investment limitations and other cost-containment features of these IRAs raise the issue of whether transferability to other types of vehicles should be subject to restrictions.)

MAKING A SAVINGS VEHICLE AVAILABLE

Most current direct deposit arrangements use a payroll-deduction savings mechanism similar to the 401(k), but, unlike the 401(k), do not give the employee a ready-made vehicle or account to receive deposits. The employee must open a recipient account and must identify the account to the employer. However, where the purpose of the direct deposit is saving, it would be useful to many individuals who would rather not choose a specific IRA to have a ready-made fallback or default account available for the deposits.

Under this approach, modeled after the SIMPLE-IRA, which currently covers an estimated 2 million employees, individuals who wish to direct their contributions to a specific IRA would do so. The employer would follow these directions as employers ordinarily do when they make direct deposits of paychecks to accounts specified by employees. At the same time, the employer would also have the option of simplifying its task by remitting all employee contributions in the first instance to IRAs at a single private financial institution that the employer designates. However, even in this case, employees would be able to transfer the contributions, without cost, from the employer's designated financial institution to an IRA provider chosen by the employee.

By designating a single IRA provider to receive all contributions, the employer could avoid the potential administrative hassles of directing deposits to a multitude of different IRAs for different employees, while employees would be free to transfer their contributions from the employer's designated institution to an IRA provider of their own choosing. Even this approach, though, still places a burden on either the employer or the employee to choose an IRA. For many small businesses, the choice might not be obvious or simple. In addition, the market may not be very robust because at least some of the major financial institutions that provide IRAs may well not be interested in selling new accounts that seem unlikely to grow enough to be profitable within a reasonable time. Some of the major financial firms appear to be motivated at least as much by a desire to maximize the average account balance as by the goal of maximizing aggregate assets under management. They therefore may shun small accounts that seem to lack much potential for rapid growth.

The current experience with automatic rollover IRAs is a case in point. Firms are required to establish these IRAs as a default vehicle for qualified plan participants whose employment terminates with an account balance of not more than $5,000 and who fail to provide any direction regarding rollover or

other payout. The objective is to reduce leakage of benefits from the tax-favored retirement system by stopping involuntary cashouts of account balances between $1,000 and $5,000. (Plan sponsors continue to have the option to cash out balances of up to $1,000 and to retain in the plan account balances between $1,000 and $5,000 instead of rolling them over to an IRA.) Because plan sponsors are required to set up IRAs only for ''unresponsive'' participants—those who fail to give instructions as to the disposition of their benefits—these IRAs are presumed to be less likely than other IRAs are to attract additional contributions. Accordingly, significant segments of the IRA provider industry have not been eager to cater to this segment of the market. As a result, plan sponsors have tended to reduce their cashout level from $5,000 to $1,000 so that new IRAs would not have to be established.

For somewhat similar reasons, IRA providers might expect payroll deposit IRAs to be less profitable than other products. As a result, employers and employees might well find that providers are not marketing to them aggressively and that the array of payroll deposit IRA choices is comparatively limited.

The prospect of tens of millions of personal retirement accounts with relatively small balances likely to grow relatively slowly suggests that the market may need to be encouraged to develop widely available low-cost personal accounts or IRAs. Otherwise, for ''small savers,'' fixed-cost investment management and administrative fees may consume too much of the earnings on the account and potentially even erode principal.

A standard default account

Accordingly, to facilitate saving and minimize costs, we believe that a strong case can be made for a default IRA that would be automatically available to receive direct deposit contributions without requiring either the employee or employer to choose among IRA providers and without requiring the employee to take the initiative to open an IRA. Under this approach, for the convenience of both employees and employers, those who wish to save but have no time or taste for the process of locating and choosing an IRA would be able to use a standard default, or automatic, account. If neither the employer nor the employee designated a specific IRA provider, the contributions would go to a personal retirement account within a plan that would in some respects resemble the federal Thrift Savings Plan (the 401(k)-type retirement savings plan that covers federal government employees).

These standard default accounts would be maintained and operated by private financial institutions under contract with the federal government. To the fullest extent practicable, the private sector would provide the investment funds, investment management, record keeping, and related administrative services. To serve as a default account for direct deposits that have not been directed elsewhere by employers or employees, an account need not be maintained by a governmental entity. Given sufficient quality control and adherence to reasonably uniform standards, various private financial institutions could contract to provide the default accounts, on a collective or individual institution basis, more or less interchangeably—perhaps allocating customers on a geographic basis or in accordance with other arrangements based on providers' capacity. These fund managers could be selected through competitive bidding. Once individual default accounts reached a predetermined balance (e.g., $15,000) sufficient to make them potentially profitable for many private IRA providers, account owners would have the option to transfer them to IRAs of their choosing.

Cost containment

Both the direct deposit IRAs expressly selected by employees and employers and the standardized direct deposit IRAs that serve as default vehicles would be designed to minimize the costs of investment management and account administration. It should be feasible to realize substantial cost savings through index funds, economies of scale in asset management and administration, uniformity, and electronic technologies.

In accordance with statutory guidelines for all direct deposit IRAs, government contract specifications would call for a no-frills approach to participant services in the interest of minimizing costs. By contrast to the wide open investment options provided in most current IRAs and the high (and costlier) level of customer service provided in many 401(k) plans, the standard account would provide only a few investment options (patterned after the Thrift Savings Plan, if not more limited), would permit individuals to change their investments only once or twice a year, and would emphasize transparency of investment and other fees and other expenses.

Specifically, costs of direct deposit IRAs might be reduced by federal standards that, to the extent possible,

Exclude brokerage services and retail equity funds from the investment options available under the IRA.

Limit the number of investment options under the IRA.

Allow individuals to change their investments only once or twice per year.

Specify a low-cost default investment option and provide that, if any of an individual's account balance is invested in the default option, all of it must be.

Prohibit loans (IRAs do not allow them in any event) and perhaps limit preretirement withdrawals.

Limit access to customer service call centers.

Preclude commissions.

Make compliance testing unnecessary.

Give account owners only a single account statement per year (especially if daily valuation is built into the system and is available to account owners).

Encourage the use of electronic and other new technologies (including enrollment on a web site) for fund transfers, record keeping, and communications among IRA providers, participating employees, and employers to reduce paperwork and cost. Electronic administration has considerable potential to cut costs.

The availability to savers of a major low-cost personal account alternative in the form of the standard account may even help, through market competition, to drive down the costs and fees of IRAs offered separately by private financial institutions. Through efficiencies associated with collective investment and greater uniformity, the standard account should help move the system away from the retail-type cost structure characteristic of current IRAs. It should also help create a broad infrastructure of individual savings accounts that would cover most of the working population.

In conjunction with these steps, Congress and the regulators may be able to do more to require simplified, uniform disclosure and description of IRA investment and administrative fees and charges (building on previous work by the Department of Labor relating to 401(k) fees). Such disclosure should help consumers compare costs and thereby promote healthy price competition.

Another approach would begin by recognizing the trade-off between asset management costs and investment types. As a broad generalization, asset management charges tend to be low for money market funds, certificates of deposit, and certain other relatively low-risk, lower-return investments that generally do not require active management. However, it appears that limiting individual accounts to these types of investments would be unnecessarily restrictive. As discussed below (under ''Default Investment Fund''), passively managed index funds, such as those used in the Thrift Savings Plan, are also relatively inexpensive.

A very different approach to cost containment would be to impose a statutory or regulatory limitation on investment management and administrative fees that providers could charge. One example is the United Kingdom's limit on permissible charges for management of ''stakeholder pension'' accounts—an annual 150 basis point fee cap for five years that is scheduled to drop to 100 basis points thereafter. As another and more limited example, the U.S. Department of Labor has imposed a kind of limitation on fees charged by providers of automatic rollover IRAs established by employers for terminating employees who fail to provide any direction regarding the disposition of account balances of up to $5,000. Labor regulations provide a fiduciary safe harbor for auto rollover IRAs that preserve principal and that do not charge fees greater than those charged by the IRA provider for other IRAs it provides.

Presumably, a mandatory limit would give rise to potential cross-subsidies from products that are free of any limit on fees to the IRAs that are subject to the fee limit—a result that could be viewed either as an inappropriate distortion or as a necessary and appropriate allocation of resources. We would view a mandatory limit as a last resort, preferring the market-based strategies outlined above.

Default investment fund

Both the IRAs offered independently by private financial institutions and explicitly selected by employees or employers and the default IRAs would serve the important purpose of providing low-cost professional asset management to millions of individual savers, presumably improving their aggregate investment results. To that end, all of these accounts would offer a similar, limited set of investment options, including a default investment fund in which deposits would automatically be invested unless the individual chose otherwise. This default investment would be a highly diversified ''target asset allocation'' or ''life-cycle'' fund comprised of a mix of equities and fixed income or stable value investments, and probably relying heavily on index funds. (The life-cycle funds recently introduced into the federal Thrift Savings Plan are one possible model.) A portion or all of the fixed income component could be comprised of Treasury inflation protected securities (''TIPS'') to protect against the risk of inflation.

The mix of equities and fixed income would be intended to reflect the consensus of most personal investment advisers, which emphasizes sound asset allocation and diversification of investments—including exposure to equities (and perhaps other assets that have higher-risk and higher-return characteristics), at least given the foundation of retirement income already delivered through Social Security and assuming the funds will not shortly be needed for expenses. The use of index funds would avoid the costs of active investment management while promoting wide diversification.

This default investment would actually consist of several different funds, depending on the individual's age, with the more conservative investments (such as those relying

more heavily on TIPS) applicable to older individuals who are closer to the time when they might need to use the funds. Individuals who selected the default fund or were defaulted into it would have their account balances entirely invested in that fund. However, they would be free to exit the fund at specified times and opt for a different investment option among those offered within the IRA.

The standard automatic (default) investment would also serve two other key purposes. It would encourage employee participation in direct deposit savings by enabling employees who are satisfied with the default to simplify what may be the most difficult decision they would otherwise be required to make as a condition of participation (i.e., how to invest). Finally, the standard default investment should encourage more employers to use automatic enrollment (thereby boosting employee participation) by saving them from having to choose a default investment. This, in turn, would make it easier to protect employers from responsibility for IRA investments, especially employers using automatic enrollment (as discussed below).

We would not fully specify the default investment by statute. It is desirable to maintain a degree of flexibility in order to reflect a consensus of expert financial advice over time. Accordingly, general statutory guidelines would be fleshed out at the administrative level after regular comment by and consultation with private-sector investment experts.

An additional and major design issue is whether the standard, limited set of investment options for payroll deposit IRAs should be only a minimum set of options in each IRA, so that the IRA provider would be permitted to provide any additional options it wished. Limiting the IRAs to these specified options would best serve the purposes of containing costs, improving investment results for IRA owners in the aggregate, and simplifying individuals' investment choices. At the same time, such restrictions would constrain the market, potentially limit innovation, and limit choice for individuals who prefer other alternatives.

One of the ways to resolve this tradeoff would be to limit direct deposit IRAs to the prescribed array of investment options without imposing any comparable limits on other IRAs, and to allow owners of direct deposit IRAs (including default IRAs) to transfer or roll over their account balances between the two classes of accounts. Under this approach, the owner of a direct deposit IRA could transfer the account balance to other (unrestricted) IRAs that are willing to accept such transfers (but perhaps only after the account balance reaches a specified amount that would no longer be unprofitable to most IRA providers). While such a transfer to an unrestricted IRA would deprive the owner of the cost-saving advantages of the no-frills, limited-choice model, such a system would still enable individuals to retain the efficiencies and cost protection associated with the standard low-cost model if they so choose.

Employers protected from any risk of fiduciary liability

Employers traditionally have been particularly concerned about the risk of fiduciary liability associated with their selection of retirement plan investments.

This concern extends to the employer's designation of default investments that employees are free to decline in favor of alternative investments. In the IRA universe, employers transferring funds to automatic rollover IRAs and employer-sponsored SIMPLE-IRAs retain a measure of fiduciary responsibility for initial investments.

By contrast, under our proposal, employers making direct deposits would be insulated from such potential liability. These employers would have no liability or fiduciary responsibility with respect to the manner in which direct deposits are invested in default IRAs or in nondefault IRAs (whether selected by the employer or the employee), nor would employers be exposed to potential liability with respect to any employee's choice of IRA provider or type of IRA. This protection of employers is facilitated by statutory designation of standard investment types that reduces the need for continuous professional investment advice. To protect workers against inappropriate IRA providers or inappropriate employer selection of IRA providers while continuing to insulate employers from fiduciary responsibility, employers could be precluded from imposing a particular IRA provider on its employees other than the government-contracted default IRA or could be constrained to choose among an approved list of providers based on capital adequacy, soundness, and other criteria.

Public opinion polling

Recent public opinion polling has shown overwhelming support for payroll deduction direct deposit saving. Among registered voters surveyed, 83 percent of respondents said they would be agreeable to having their employer offer to sign them up for an IRA and allow them to contribute to it through direct deposit of a small amount from their paycheck to help them save for retirement. Similarly, 79 percent of registered voters expressed support (and 54 percent expressed ''strong'' support) for giving taxpayers the option to have part of their income tax refund deposited into a retirement savings account such as an IRA by just checking a box on their tax return.

In addition, the polling shows very strong support for a requirement that goes far beyond our proposal, that every company offer its employees some kind of retirement plan—such as a pension or 401(k), or at least an IRA to which employees could contribute. Among registered voters surveyed in August 2005, 77 percent supported such a requirement (and 59 percent responded that they were ''strongly'' in support). As discussed, the approach described in this paper would not require employers to offer their employees retirement plans, but would give firms a financial incentive to offer their employees access to payroll deduction as a convenient and easy means of saving, and would require firms above a certain size and maturity to extend this offer to their employees.

THE IMPORTANCE OF PROTECTING EMPLOYER PLANS

Employer-sponsored pension, profit-sharing, 401(k), and other plans can be particularly effective—more so than IRAs—in accumulating benefits for employees. As noted earlier, the participation rate in 401(k)s, for example, tends to range from two thirds to three quarters of eligible employees, in contrast to IRAs, in which fewer than 1 in 10 eligible individuals participates. Employer plans tend to be far more effective than IRAs at providing coverage because of a number of attributes: for one thing, pension and profit-sharing plans, for example, are funded by employer contributions that automatically are made for the benefit of eligible employees without requiring the employee to take any initiative in order to participate. Second, essentially all tax-qualified employer plans must abide by standards that either seek to require reasonably proportionate coverage of rank and-file workers or give the employer a distinct incentive to encourage widespread participation by employees. This encouragement typically takes the form of both employer-provided retirement savings education efforts and employer matching contributions. The result is that the naturally eager savers, who tend to be in the higher tax brackets, tend to subsidize or bring along the naturally reluctant savers, who often are in the lowest (including zero) tax brackets.

Employer-sponsored retirement plans also have other features that tend to make them effective in providing or promoting coverage. As noted, the proposal outlined here seeks to transplant some of these features to the IRA universe. These include the automatic availability of a saving vehicle, the use of payroll deduction (which continues automatically once initiated), matching contributions (further discussed below), professional investment management, and peer group reinforcement of saving behavior.

The automatic IRA must thus be designed carefully to avoid competing with or crowding out employer plans and to avoid encouraging firms to drop or reduce the employer contributions that many make to plan participants. Owners and others who control the decision whether to adopt or continue maintaining a retirement plan for employees should continue to have incentives to sponsor such plans. The ability to offer employees direct deposit to IRAs should be designed so that it will not prompt employers to drop, curtail, or refrain from adopting retirement plans.

Probably the single most important protection for employer plans is to set maximum permitted contribution levels to the automatic IRA so that they will be sufficient to meet the demand for savings by most households but not high enough to satisfy the appetite for tax-favored saving of business owners or decision-makers. The average annual contribution to a 401(k) plan by a nonhighly compensated employee is somewhat greater than $2,000, and average annual 401(k) contributions by employees generally tend to be on the order of 7 percent of pay. A $3,000 contribution is 7.5 percent of pay for a family earning $40,000, and 6 percent of pay for a family earning $50,000.

Yet IRA contribution limits are already higher than these contribution levels. IRAs currently allow a married couple to contribute up to $8,000 ($4,000 each) on a tax-favored basis, and an additional $1,000 ($500 each) if they are age 50 or older. By 2008, these figures are scheduled to rise to $10,000 plus $2,000 ($1,000 each) for those age 50 or older. These amounts—the current $9,000 a year for those age 50 and over ($8,000 for others) and the post-2007 $12,000 annual amount for those age 50 and over ($10,000 for others)—may well be enough to satisfy the desire of many small-business owners for tax-favored retirement savings. Even some small-business owners that might consider saving somewhat more than $10,000 or $12,000 per year might well conclude that they are better off not incurring the cost of making contributions and providing a plan for their employees because the net benefit to them of having a plan for employees is not greater than the net benefit of simply saving through IRAs and giving their employees access to IRAs.

Accordingly, at the most, payroll deposit IRAs should not permit contributions above the current IRA dollar limits, and could be limited to a lower amount such as $3,000. (A 3% of pay contribution would remain below $3,000 for employees whose compensation did not exceed $100,000.) Imposing a lower limit on the payroll deduction IRA would reduce to some degree the risk that employees will exceed the maximum IRA dollar contribution limit because of auto enrollment, combined with possible other contributions to an IRA. That is already a risk under current

law, but the automatic nature of auto enrollment increases the risk, especially if auto escalation is implemented. There is a tradeoff between the desirability of limiting the contribution amount (to mitigate both this risk and the risk of competing with employer plans) and the simplicity of using an existing vehicle (the IRA) ''as is''.

In any event, the employee—not the employer—would be responsible for monitoring any of all of their IRA contributions to comply with the maximum limit (in part because employees can contribute on their own and through multiple employers). The ultimate reconciliation would be made by the individual when filing the federal income tax return.

In addition, the automatic IRA should be designed to avoid reducing ordinary employees' incentives to contribute to employer-sponsored plans such as 401(k)s. If workers perceive a program such as direct deposit savings to IRAs as a more attractive destination for their contributions than an employer-sponsored plan (for example, because of better matching, tax treatment, investment options, or liquidity), it could unfortunately divert employee contributions from employer plans. This in turn could have a destabilizing effect by making it difficult for employers to meet the nondiscrimination standards applicable to 401(k)s and other plans and therefore potentially discouraging employers from continuing the plans or their contributions. While a detailed discussion of these points is beyond the scope of this paper, it is important to maintain a relationship between IRAs and employer-sponsored retirement plans that preserves and protects the employer plans.

Automatic payroll deduction can promote marketing and adoption of employer plans

Our approach is designed not only to avoid causing any reduction or contraction of employer plans, but actually to promote expansion of employer plans. Consultants, third-party administrators, financial institutions, and other plan providers could be expected to view this proposal as providing a valuable new opportunity to market 401(k)s, SIMPLE-IRAs and other tax-favored retirement plans to employers. Firms that, under this proposal, were about to begin offering their employees payroll deduction saving or had been offering their employees payroll deduction saving for a year or two could be encouraged to ''trade up'' to an actual plan such as a 401(k) or SIMPLE-IRA.

Especially because these plans can now be purchased at very low cost, it would seem natural for many small businesses to graduate from payroll deduction savings and complete the journey to a qualified plan in order to obtain the added benefits in terms of recruitment, employee relations, and larger tax-favored saving opportunities for owners and managers.

The following compares the maximum annual tax-favored contribution levels for IRAs, SIMPLE-IRA plans and 401(k) plans in effect for 2006:

	IRA	SIMPLE-IRA	401(k)
Under age 50	$4,000 per spouse ($5,000 after 2007)	$10,000	$15,000
Age 50 and above	$4,500 per spouse ($6,000 after 2007)	$12,000	$20,000

In addition, as noted, small employers that adopt a new plan for the first time are entitled to a tax credit of up to $500 each year for three years. As discussed, the proposed tax credit for offering payroll deposit would be smaller, so as to maintain the incentive for employers to go beyond the payroll deduction or direct deposit IRA and adopt an actual plan such as a SIMPLE, 401(k), or other employer plan.

ENCOURAGING CONTRIBUTIONS BY NONEMPLOYEES

The payroll deposit system outlined thus far would not automatically cover self-employed individuals, employees of the smallest or newest businesses that are exempt from any payroll deposit obligation, or certain unemployed individuals who can save. A strategy centered on automatic arrangements can also make it easier for these people to contribute to IRAs.

Encouraging automatic debit arrangements

For individuals who are not employees or who otherwise lack access to payroll deduction, automatic debit arrangements can serve as a counterpart to automatic payroll deduction. Automatic debit enables individuals to spread payments out over time and to make payments on a regular and timely basis by having them automatically charged to and deducted from an account—such as a checking or savings account or credit card—at regular intervals on a set schedule. The individual generally gives advance authorization to the payer that manages the account or the recipient of the payment, or both. The key is that, as in the case of payroll deduction, once the initial authorization has been given, regular payments continue without requiring further initiative on the part of the individual. For many consumers, automatic debit is a convenient way to pay bills or make payments on mortgages or other loans without having to remember to make each payment when due and without having to write and mail checks.

Similarly, as an element of an automatic IRA strategy, automatic debit can facilitate saving while reducing paperwork and cutting costs. For example, households can be encouraged to sign up on-line for regular automatic debits to a checking account or credit card that are directed to an IRA or other saving vehicle. With on-line sign-up and monitoring, steps can be taken to familiarize more households with automatic debit arrangements and, via Internet websites and otherwise, to make those arrangements easier to set up and use as a mechanism for saving in IRAs.

Facilitating automatic debit iras through professional or trade associations

Professional and trade associations could facilitate the establishment of IRAs and the use of automatic debit and direct deposit to the IRAs. Independent contractors and other individuals who do not have an employer often belong to such an association. The association, for example, might be able to make saving easier for those members who wish to save by making available convenient arrangements for automatic debit of members' accounts. Association websites can make it easy for members to sign up on line, monitor the automatic debit savings, and make changes promptly when they wish to. Although such associations generally lack the payroll-deduction mechanism that is available to employers, they can help their members set up a pipeline involving regular automatic deposits (online or by traditional means) from their personal bank or other financial accounts to an IRA established for them.

Facilitating direct deposit of income tax refunds to IRAs

Another major element of a strategy to encourage contributions outside of employment would be to allow taxpayers to deposit a portion of their income tax refunds directly into an IRA by simply checking a box on their tax returns.

Currently, the IRS allows direct deposits of refunds to be made to only one account. This all-or-nothing approach discourages many households from saving any of the refund because at least a portion of the refund is often needed for immediate expenses. Allowing households instead to split their refunds to deposit a portion directly into an IRA could make saving simpler and, thus, more likely.

The Bush administration has supported divisible refunds in its last three budget documents; however, the necessary administrative changes have yet to be implemented. Since federal income tax refunds total nearly $230 billion a year (more than twice the estimated annual aggregate amount of net personal savings in the United States), even a modest increase in the proportion of refunds saved every year could bring about a significant increase in savings.

Extending direct deposit to independent contractors

Millions of Americans are self-employed as independent contractors. Many of these workers receive regular payments from firms, but because they are not employees, they are not subject to income tax or payroll tax withholding. These individuals might be included in the direct deposit system by giving them the right to request that the firm receiving their services direct deposit into an IRA a specified portion from the compensation that would otherwise be paid to them.

Compared to writing a large check to an IRA once a year, this approach has several potential advantages to independent contractors, which might well encourage them to save. These include the ability to commit themselves to save a portion of their compensation before they receive it (which, for some people, makes the decision to defer consumption easier); the ability to avoid having to make an affirmative choice among various IRA providers; remittance of the funds by the firm by direct deposit to the IRA; and, where payments are made to the independent contractor on a regular basis, an arrangement that, like regular payroll with holdings for employees, automatically continues the pattern of saving through repeated automatic payroll deductions unless and until the individual elects to change.

In many cases, the independent service provider will not have a sufficient connection to a firm that receives the services, or both the independent contractor and the firm will be unwilling to enter into a payroll deposit type of arrangement. In such instances, the independent contractor could contribute to an IRA using automatic debit (as discussed above) or by sending together with the estimated taxes that generally are due four times a year.

Matching deposits as a financial incentive

A powerful financial incentive for direct deposit saving by those who are not in the higher tax brackets (and who therefore derive little benefit from a tax deduction or exclusion) would be a matching deposit to their direct deposit IRA. One means of delivering such a matching deposit would be via the bank, mutual fund, insurance carrier, brokerage firm, or other financial institution that provides the direct deposit IRA. For example, the first $500 contributed to an IRA by an individual who is eligible to make deductible contributions to an IRA might be

matched by the private IRA provider on a dollar-for-dollar basis, and the next $1,000 of contributions might be matched at the rate of 50 cents on the dollar. The financial provider would be reimbursed for its matching contributions through federal income tax credits.

Recent evidence from a randomized experiment involving matched contributions to IRAs suggests that a simple matching deposit to an IRA can make individuals significantly more likely to contribute and more likely to contribute larger amounts.

Matching contributions—similar to those provided by most 401(k) plan sponsors—not only would help induce individuals to contribute directly from their own pay, but also, if the match were automatically deposited in the IRA, would add to the amount saved in the IRA. The use of matching deposits, however, would make it necessary to implement procedures designed to prevent gaming—contributing to induce the matching deposit, then quickly withdrawing those contributions to retain the use of those funds. Among the possible approaches would be to place matching deposits in a separate subaccount subject to tight withdrawal rules and to impose a financial penalty on early withdrawals of matched contributions.

American households have a compelling need to increase their personal saving, especially for long-term needs such as retirement. This paper proposes a strategy that would seek to make saving more automatic—hence easier, more convenient, and more likely to occur—largely by adapting to the IRA universe practices and arrangements that have proven successful in promoting 401(k) participation. In our view, the automatic IRA approach outlined here holds considerable promise of expanding retirement savings for millions of workers.

Mr. KERRY. Mr. President, I am pleased to join my colleagues Senators SMITH, CONRAD, and BINGAMAN in introducing the Women's Retirement Security Act of 2006. This legislation comes on the heels of the passage of the Pension Protection Act of 2006, which makes improvements to the defined benefit pension plan system.

The legislation that we are introducing today builds upon that legislation and focuses on defined contribution plans. Our pension system has shifted away from defined benefit plans to defined contribution plans. We should make it easier for employers to offer defined contribution plans and for individuals to participate in these plans.

At a time when we have a negative savings rate that is the lowest since the Great Depression, we should provide appropriate incentives to help individuals save for retirement. In an effort to achieve this, the Women's Retirement Security Act of 2006 focuses on increasing retirement savings, the preservation of income, equity in divorce, improving financial literacy, and encouraging small businesses to enter and remain in the employer retirement plan system.

This legislation increases savings by allowing employees to contribute a portion of their paycheck to an individual retirement account (IRA) if their employer does not offer a pension plan. Automatic IRAs will help the 71 million workers that do not have employer-sponsored plans. It is a low-cost, sensible solution that provides a stepping stone toward employer-sponsored retirement plans. More workers are likely to contribute to an IRA if the contribution is deducted from their payroll. Automatic IRAs will help combat the inertia that is a factor in our low savings rate. The bill also provides a tax credit to help small businesses with the cost of implementation.

Women are often placed at a disadvantage in our retirement system because they cycle in and out of the work force. The Women's Retirement Security Act of 2006 addresses this issue by requiring employers that offer defined contribution plans to cover part-time employees that meet specific requirements.

Pension coverage needs to improve, particularly for small businesses. In 2004, only 26 percent of workers at firms with fewer than 25 employees participated in pension plans. Progress has been made on providing coverage to small businesses. Currently, more than 19 million workers are covered by small business retirement plans, but more than 36 million Americans work for firms with less than 25 employees.

The Women's Retirement Security Act of 2006 provides a start-up credit for new small business retirement contributions. In addition, it removes rules that discourage small employers from adopting deferral only plans.

By Mr. KERRY:

S. 3953. A bill to foster development of minority-owned small businesses; to the Committee on Small Business and Entrepreneurship.

Mr. KERRY. Mr. President, I rise today to introduce the Minority Entrepreneurship Development Act of 2006. It's especially appropriate that this bill be introduced during Hispanic Heritage Month. Millions of Latino Americans during this time reflect on their place in this country and the positive contributions they have made here. One area where we can be certain that the Hispanic community has made a significant contribution is in business. The principled and strong leadership of Hispanic Americans can be seen in corporate boards and sole proprietorships alike. As a Nation, we must support the development of the next generation of business leaders within the Latino community. I believe that this legislation will help in that effort.

This legislation is aimed at giving potential and burgeoning entrepreneurs the tools they need to realize their goals. Whether those goals include creating a small business that will employ people from the community or taking a small business and making it into a major enterprise, it's imperative that we develop the tools to help minority small business owners succeed.

I want to take a moment and tell you why it's so important to expand the numbers of entrepreneurs in the minority community. As the Ranking Member on the Senate Committee on Small Business and Entrepreneurship, I have received firsthand testimony and countless reports documenting the positive economic impact that occurs when we foster entrepreneurship in underserved communities. There are signs of significant economic returns when minority businesses are created and are able to grow in size and capacity. Between 1987 and 1997, revenue from minority owned firms rose by 22.5 percent, an increase equivalent to an annual growth rate of 10 percent. Employment opportunities within minority owned firms increased by 23 percent during that same period. There is a clear correlation between the growth of minority owned firms and the economic viability of the minority community.

Although, these economic numbers tell a significant part of the story, they don't tell the whole story of what these firms mean to the minority communities they serve and represent. Many of these business leaders are first generation immigrants; many are first generation business owners and many represent, for those in their communities, what hard work, determination and patience can do.

We must encourage those kinds of values in our minority communities and, quite frankly, in our nation as a whole. For generations, millions have come to our shores in search of a better life. Millions of others were brought here by force and for years were not given a voice in how their lives would turn out. But how ever we got here, we all have become branches of this great tree we call America. This tree is still nourished by roots planted by our forefathers more than 200 years ago. Those men and women planted the roots of hard work, innovation, faith and risk taking.

When you think about it, those words are the perfect description of an entrepreneur. It is the spirit of entrepreneurship that has made our nation great. And that is why it is absolutely imperative that we continue to support and develop that spirit in our minority communities. To that end, this legislation provides several tools to help minority entrepreneurs as they develop and grow their businesses.

First, this legislation will create an Office of Minority Small Business Development. One of its primary functions will be to increase the number of small business loans that minority businesses receive. Latinos, African-Americans, Asian-Americans and women have been receiving far fewer small business loans than they reasonably should.

To ensure that this trend is reversed and minorities begin to get a greater share of loan dollars, venture capital investments, counseling, and contracting opportunities, this bill will give the new office the authority to monitor the outcomes for programs under Capital Access, Entrepreneurial Development, and Government Contracting. It also requires the head of

the Office to work with SBA's partners, trade associations and business groups to identify more effective ways to market to minority business owners, and to work with the head of Field Operations to ensure that district offices have staff and resources to market to minorities.

Second, this legislation will create the Minority Entrepreneurship and Innovation Pilot Program. This program will offer a competitive grant to Historically Black Colleges and Universities, Tribal Colleges, and Hispanic-Serving Institutions to create an entrepreneurship curriculum at these institutions and to open Small Business Development Centers on campus to serve local businesses.

The goal of this program is to target students in highly skilled fields such as engineering, manufacturing, science and technology, and guide them towards entrepreneurship as a career option. Traditionally, minority-owned businesses are disproportionately represented in the service sectors. Promoting entrepreneurial education to undergraduate students will help expand business ownership beyond the service sectors to higher yielding technical and financial sectors.

Third, this legislation will create the Minority Access to Information Distance Learning Pilot Program. This program will offer competitive grants to well established national minority non-profit and business organizations to create distance learning programs for small business owners who are interested in doing business with the federal government.

The goal of this program is to provide low cost training to the many small business owners who cannot afford to pay a consultant thousands of dollars for advice or training on how to prepare themselves to contract with the federal government. There are thousands of small businesses in this country that are excellent and efficient. They are primed to provide the goods and services that this nation needs to stay competitive. This program will help prepare them to do just that.

Finally, this legislation will extend the Socially and Economically Disadvantaged Business Program which expired in 2003. This program provides a Price Evaluation Adjustment for Socially and Economically Disadvantaged businesses as a way of increasing their competitiveness when bidding against larger firms. This is one more tool to increase opportunities for our minority small business owners.

I have outlined several ways that we can create a more positive environment for our minority small business community. These are reasonable steps that we ought to take without delay. Moreover, these are important steps that will help bolster a movement that is already underway. According to U.S. Census data, Hispanics are opening businesses 3 times faster than the national average. Also, business development and entrepreneurship have played a significant role in the expansion of the black middle class in this country for over a century. These business owners are embodying the entrepreneurial spirit that our forefathers carried with them as they established this nation.

With this legislation, we will help to extend that spirit to the next generation. Not only is this vital for our minority communities, but it is vital for America. I urge my colleagues to join with me in support of the Minority Entrepreneurship Development Act of 2006.

By Mr. KENNEDY (for himself and Mr. MENENDEZ):

S. 3954. A bill to amend title XVIII of the Social Security Act to require monthly reporting regarding the number of individuals who have fallen into the part D donut hole and the amount such individuals are spending on covered part D drugs while in the donut hole; to the Committee on Finance.

Mr. KENNEDY. Mr. President, more and more seniors are waking each day and learning they've fallen into the dreaded ''donut hole''—the gap in prescription drug coverage that leaves them with large drug costs to pay by themselves until coverage resumes. As a result, millions of seniors can't afford the drugs they urgently need, even though they're paying for Medicare coverage.

It's important to have a full accounting of how many seniors are affected, so that Congress and the public can make sensible choices about Medicare. Senator MENENDEZ and I intend to introduce legislation to require Medicare to track and publicly report how many enrollees fall into the donut hole, and how much they are spending themselves for their needed prescriptions.

We wouldn't be facing this problem if the administration and the Republican Congress had cared more about seniors than about drug industry profits when Medicare prescription drug coverage was enacted. They refused to let Medicare negotiate drug prices, which the Veterans Administration is allowed to do for veterans. Instead of allocating adequate Federal funds to the drug benefit, they made sure that HMOs received large overpayments, which enable them to force Medicare beneficiaries into their plans by offering extra benefits, while still allowing the plans to make large profits.

It's long past time to correct this glaring defect in Medicare drug coverage. Once we have up-to-date information on the damage being done by the donut hole, we can correct the problem and give seniors the Medicare coverage they deserve.

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

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

S. 3954

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Honest Medicare Act of 2006''.

SEC. 2. MONTHLY REPORTING REGARDING THE NUMBER OF INDIVIDUALS WHO HAVE FALLEN INTO THE PART D DONUT HOLE AND THE AMOUNT SUCH INDIVIDUALS ARE SPENDING ON COVERED PART D DRUGS WHILE IN THE DONUT HOLE.

Section 1860D–1 of the Social Security Act (42 U.S.C. 1395w–101) is amended by adding at the end the following new subsection:

''(d) INFORMATION REGARDING INDIVIDUALS WHO HAVE REACHED THE INITIAL COVERAGE LIMIT.—Not later than the 15th of each month (beginning with February 2007), the Secretary shall make available to the public information on—

''(1) the number of individuals enrolled in a prescription drug plan or an MA–PD plan who have reached the initial coverage limit applicable under the plan but who have not reached the annual out-of-pocket threshold specified in section 1860D–2(b)(4)(B); and

''(2) the amount such individuals are spending on covered part D drugs after they have reached such limit and before they have reached such threshold.''.

By Mr. DEWINE:

S 3956. A bill to create a grant program for collaboration programs that ensure coordination among criminal justice agencies, adult protective service agencies, victim assistance programs, and other agencies or organizations providing services to individuals with disabilities in the investigation and response to abuse of or crimes committed against such individuals; to the Committee on the Judiciary.

Mr. DEWINE. Mr. President, it is a well-known fact that people with disabilities face a great risk of abuse and victimization—in fact, studies indicate that disabled adults experience violence or abuse at least twice as often as those without disabilities. This shameful situation is made even worse by the fact that far too often these crimes are not reported, or if they are reported, they are not effectively prosecuted—with the result that crime victims with disabilities are left vulnerable to further victimization. This is a tragic situation and one which requires action.

The good news is that we have a model to follow, a response which works. Massachusetts has set up an excellent program to enhance cooperation and coordination between law enforcement and the State officials and programs which provide services and care to the disabled, and this coordination has greatly improved the ability of the criminal justice system to prosecute these offenders and protect those with disabilities from crime. In fact, since the implementation of the program, criminal referrals in these types of cases in Massachusetts went up from 32 before the program began to 880 in 2004, the most recent year for which we have statistics.

We should try to extend the success of the Massachusetts program around the country. Accordingly, today I am introducing the Crime Victims with Disabilities Act of 2006. This legislation would establish a $10 million Federal grant program to make money available to States and localities which are

interested in setting up similar programs to enhance training, coordination, and cooperation within the law enforcement and disabilities services communities order to address this problem.

The legislation would require a State or local government to design a cooperative plan to improve the reporting and prosecution of crimes against people with disabilities, including within the system at least one criminal justice agency and at least one agency or organization which provides services to individuals with disabilities. The legislation encourages local innovation; as long as the application meets the basic goals of protecting people with disabilities from crime and prosecuting those who attempt to victimize them, it can be designed in whatever way the applicants decide will work best in the affected community. The grants would be for a maximum of $300,000 over 2 years, with a potential for a one-time renewal.

I have worked closely with the creators of the Massachusetts program and many others who work in law enforcement and who provide services to crime victims and people with disabilities, and I believe this legislation will help States and localities create programs that can address the problem of violence against people with disabilities. This is a serious problem, and I encourage my colleagues to support this effort to help address it.

By Mr. INHOFE:

S. 3957. A bill to protect freedom of speech exercisable by houses of worship or mediation and affiliated organizations; to the Committee on Finance.

Mr. INHOFE. Mr. President, I rise today to introduce legislation which will protect the Constitutionally-guaranteed exercise of free speech and exercise of religion, the Religious Freedom Act of 2006.

The American people may be surprised to learn a few things about their government's relationship with religion. They may be surprised to learn that the Federal Government of the United States of America, in the land of the free, does not allow religious leaders in houses of worship of all religious orders to say anything that might be construed as political in nature. The American people may further be surprised to learn that the federal agency tasked with enforcing the absolute ban on political speech for houses of worship is the Internal Revenue Service. It is the IRS that reviews the content of sermons and homilies and threatens to revoke those institutions' tax-exempt status if they dare to speak out on the political matters of the day. Many times, the only evidence on which the IRS will base their case is a third-party complaint and may move forward with threatening letters and the revocation of their tax-exempt status even if the prohibited activities—the exercise of their First Amendment Rights—were incidental or unintentional. Furthermore, the IRS admits that it applies a ''coded language'' policy to political speech. That is, discussion of a moral issue, if it happens to be a matter discussed in our public debates, is a political issue and is consequently banned by the IRS. The American people may even be more surprised to learn that the IRS is stepping up the enforcement of the ban on political speech in houses of worship and has recently emphasized the ''coded language'' policy.

A skeptic might assert that something as serious as an IRS-enforced ban on political discourse in a church must have a tenured legislative history buttressed by decades of sound First Amendment jurisprudence. The American people may be surprised to learn that the exact opposite is true. The First Amendment freedoms of houses of worship were stripped away in 1954 by the ''Johnson Amendment,'' a floor amendment named for then-Senator Lyndon Johnson, which placed an absolute ban on political speech by tax exempt organizations. Although the legislative record is relatively silent on this matter, the amendment and its subsequent ban were enacted without a hearing, any debate, or any public comment. History also indicates that Senator Johnson enacted this ban as a means of silencing some anticommunist nonprofits that were mobilizing against his political campaign. It now silences important comment on the issues of the day. Although the Supreme Court has affirmed and reaffirmed a ''profound national commitment'' to the proposition that debate on issues should be ''uninhibited, robust, and wide-open,'' the debate has been unconstitutionally restricted for nearly 50 years.

Whereas the legislative history of the Johnson Amendment is dubious where it even exists, the history of the relationship between politics and the pulpit is a history of a positive force for change in momentous times in our history when we as a nation have reaffirmed our commitment to an open and tolerant society. From slavery to segregation, religious leaders in America clearly have been effective forces for good, and they are also for more modern issues such as abortion, assisted suicide, and human trafficking. Perhaps no one could better articulate an important aspect of the history of politics and the pulpit than Martin Luther King, Jr.: ''The church must be reminded that it is not the master or the servant of the state, but rather the conscience of the state. It must be the guide and the critic of the state, and never its tool . . . [or] it will become an irrelevant social club without moral or spiritual authority.'' The Johnson Amendment silences the ''conscience of the state.'' It's difficult to see how religious leaders can in any way continue to function as Martin Luther King Jr.'s ideal of the church as the ''conscience of the state,'' as the church has done so effectively during trying times for our state, when houses of worship are banned absolutely from discussing matters of the state.

The moral questions of the day are more often than not also fundamental social and political questions—questions that concern what we value as a nation. It is truly astounding that today, in America, religious leaders are banned from any comment on those moral issues. It is not partisan; this ban on speech makes no distinction between the ideological divide of left versus right in America: one church leader is investigated for publicly opposing abortion and another for discussing the morality of the Iraq War. Indeed, the American people may be surprised to learn this about their country.

The American people would allowing religious leaders, of all kinds, to speak their consciences on the issues facing our nation, and to do so without the threat of IRS punishment through the revocation of their tax-exempt status. This is why I am introducing legislation that will do just that. The Religious Freedom Act of 2006 simply states that religious leaders may discuss political matters, as a Constitutionally protected right, without the threat of an IRS investigation. Upon enactment, this bill will reaffirm the Supreme Court's holding that this country has a ''profound national commitment'' to a national debate that is ''uninhibited, robust, and wide-open.'' It will also reaffirm Martin Luther King, Jr.'s ideal of churches as the ''conscience of the state.'' I ask that the text of this statement be included in the CONGRESSIONAL RECORD by unanimous consent.

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

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

S. 3957

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Religious Freedom Act of 2006''.

SEC. 2. PROTECTION OF FREEDOM OF SPEECH FOR HOUSES OF WORSHIP OR MEDITATION.

(a) IN GENERAL.—Notwithstanding any other provision of law, no organization described in subsection (b) may be denied its Federal tax exemption under the Internal Revenue Code of 1986 by administrative or judicial action, nor shall donors to such organization be denied the deductibility of their contributions under such Code, because such organization engages in an activity that is protected by the United States Constitution, including comment on public issues, election contests, and pending legislation made in the theological or philosophical context of such organization.

(b) HOUSES OF WORSHIP OR MEDITATION AND AFFILIATED ORGANIZATIONS.—For purposes of subsection (a), an organization described in this subsection is a church, synagogue, mosque, temple, or other house of worship or meditation (including any organization affiliated with any of the foregoing)—

(1) with an established form of worship or meditation and a recognizable creed that minimally acknowledges the right of others to freely accept or reject such form and creed, and

(2) which meets 2 or more of the following indicia: definite and distinct ecclesiastical government; formal code of doctrine and discipline; distinct religious history; membership not axiomatically associated with any other organization; organization of ordained ministers; ordained ministers selected after completing prescribed courses of study; a literature of its own; established places of worship or meditation; regular congregations; regular religious services; classes for the religious instruction of youth or seniors or both; auxiliaries to provide relief and sustenance to the poor and deprived; and auxiliaries to provide youth with morally-structured community service and supervised opportunities to compete in sport and intellect-expanding activities as an alternative to destructive behavior such as crime and drug use.

(c) CONSTRUCTION.—This section shall not be construed so as to exempt any organization described in subsection (b) from the operation of any other law generally applicable to all organizations and individuals.

By Mrs. CLINTON (for herself, Mr. SPECTER, Mr. KENNEDY, and Ms. MIKULSKI):

S. 3958. A bill to establish the United States Public Service Academy; to the Committee on Homeland Security and Governmental Affairs.

Mrs. CLINTON. Mr. President, I rise today to introduce legislation that will create an undergraduate institution designed to cultivate a generation of young leaders dedicated to public service. The U.S. Public Service Academy Act, the PSA Act, will establish a national academy, modeled after the military service academies, to serve as an extraordinary example of effective, national public education.

The tragic events of September 11 and the devastation of natural disasters Hurricanes Katrina and Rita have demonstrated just how critical it is for our Nation to improve its ability to respond to future emergencies and to confront daily challenges. These events also underscore how much our Nation depends upon strong public institutions and competent civilian leadership at all levels of society.

Our country must improve its ability to groom future public servants to fill the pipeline as the baby boomer generation approaches retirement from critical public sector careers. Recent studies have shown that 2 million teachers are approaching retirement this decade alone, and more than 80 percent of law enforcement agencies are unable to fill positions due to a lack of qualified candidates.

The PSA Act will establish the U.S. Public Service Academy to provide a 4-year, federally subsidized college education for more than 5,000 students a year in exchange for a 5-year commitment to public service following graduation. Academy graduates will help to fill the void in public service our Nation will soon face by serving for 5 years in areas such as public education, public health, law enforcement, and the nonprofit sector.

Not only has the public service sector expressed a need for a young, talented, and high-qualified workforce, many college students today have already expressed a strong desire to serve. A recent study conducted by the Higher Education Research Institute found that more than two-thirds of the 2005 freshman class expressed a desire to serve others, the highest rate in a generation.

Unfortunately, as thousands of American youth seek to serve their Nation in a civilian capacity, many are often priced out of public service due to rising college debts. Over the past decade, the average debt burden for a college graduate has increased by 58 percent. Many of the students who want to serve our country owe more than $20,000 in student loans after graduating from college.

By providing a quality college education at no cost to the student, the U.S. Public Service Academy would tap into the renewed sense of patriotism and civic obligation among young people and create a corps of competent civilian leaders.

The establishment of a U.S. Public Service Academy is an innovative way to strengthen and protect America by creating a corps of well-trained, highly qualified civilian leaders. I am hopeful that my Senate colleagues from both sides of the aisle will join me today to move this legislation to the floor without delay.

By Mr. WARNER (for himself and Mr. ALLEN):

S. 3959. A bill to amend the Internal Revenue Code of 1986 to exclude from gross income certain combat zone compensation of civilian employees of the United States; to the Committee on Finance.

Mr. WARNER. Mr. President, I rise today along with my colleague Senator GEORGE ALLEN to introduce the Federal Employee Combat Zone Tax Parity Act, which would provide parity to civilian Federal employees by extending the tax credit currently received by military personnel in combat zones to the civilian Federal employees working along side them. My fellow Virginian, Congressman FRANK WOLF, has introduced a similar bill in the House of Representatives.

In addition, several Federal employee organizations, such as the American Federation of Government Employees (AFGE), the National Treasury Employees Union (NTEU), the Financial Management Association (FMA), the Senior Executives Association (SEA), the American Foreign Service Association (AFSA), and the National Federation of Federal Employees (NFFE), strongly support this legislation.

As of today, I have made eleven separate trips to Iraq and Afghanistan to see firsthand the work of our military personnel, which is essential to success in these regions. In addition, the work of our Federal civilian employees in these regions is significantly important.

At the moment, a majority of the work in the reconstruction of these countries is being done by the military and the Department of State (DOS). These dedicated men and women deserve our gratitude. However, as I have said on a number of occasions, our challenging task requires the coordination and work of Federal agencies across the spectrum.

Regardless of whether one is in the military or a civilian, there are certain risks and hardships associated with working overseas. As a result, the Federal Government provides certain incentives to individuals when they take on extremely challenging jobs. For example, those in the military working in a combat zone receive the Combat Zone Tax Credit.

This tax credit permits military personnel working in combat zones to exclude a certain amount of income from their Federal income taxes. This benefit for the military was established in 1913.

Private contractors working in Iraq and Afghanistan get a similar benefit. Under the Foreign Earned Income Tax Credit, contractors are allowed to exclude a portion of their income from taxes while they work abroad, like in Iraq and Afghanistan.

To date, however, no similar benefit exists for Federal employees serving in the same combat zones. I do not believe it is fair for our Federal employees to be excluded from the same benefits available to military personnel and private contractors in the same combat zone.

The Commonwealth of Virginia, of which I have been honored to serve for the last 28 years in the Senate, is home to over 200,000 Federal employees. I have long been a strong supporter of our Federal employees as I have been for our military personnel.

Our efforts in the war on terrorism can only be successful with a highly skilled and experienced workforce. I can personally attest to the dedication of civil service employees throughout the Federal Government. Since the September 11th attacks, Federal employees have been relocated, reassigned, and worked long hours under strenuous circumstances without complaints, proving time and again their loyalty to their country is first and foremost.

During my service as Secretary of the Navy during which I was privileged to have some 650,000 civilian employees working side by side with the uniformed Navy, I valued very highly the sense of teamwork between the civilian and uniformed members of the United States Navy. Teamwork is an intrinsic military value, in my judgment, and essential to mission accomplishment. A sense of parity and fairness is important for developing this teamwork.

In Iraq and Afghanistan, the teamwork of the entire Federal Government is essential to harness our overall efforts to secure a measure of democracy for the peoples of those countries, and

we need to make it easier for our Federal employees to participate.

I recently offered additional legislation to achieve this goal. My bill, S. 2600, would provide the heads of agencies other than DOS and the Department of Defense (DOD) with the authority, at their discretion, to give their employees who serve in Iraq and Afghanistan allowances, benefits, and gratuities comparable to those provided to State Department and DOD employees serving in those countries.

Currently, the agency heads of non-DOD and DOS agencies do not have such authority, and it is essential, as part of the U.S. effort to bring democracy and freedom to Iraq and Afghanistan, that agency heads be able to give their workers in those countries the same benefits as those they work beside.

In the last estimate, there are almost 2,000 Federal employees working a variety of jobs in Iraq and Afghanistan. I am grateful for their hard work in potentially dangerous situations. And, I know there are many other Federal employees who are anxious to serve their country and engage in these efforts, but it is a lot to risk.

Providing parity in this important tax credit would provide a significant incentive for individuals to take on this challenge—a challenge that America desperately needs Federal employees to undertake.

Throughout the world, America's civil servants are serving our government and our people, often in dangerous situations. They are on the ground in the war on terrorism taking over new roles to relieve military personnel of tasks civilian employees can perform. They are playing a vital role in the reconstruction of Iraq and Afghanistan.

We have a long tradition in Congress of recognizing the valuable contributions of our Federal employees in both the military service and in the civil service by providing fair and equitable treatment. This bill gives us the ability to continue this tradition while at the same time providing an important incentive to help America meet its needs.

I urge my colleagues to join with me in support of this legislation.

By Mr. STEVENS (for himself, Mr. INOUYE, Mr. LOTT, and Mr. LAUTENBERG):

S. 3961. A bill to provide for enhanced safety in pipeline transportation, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. STEVENS. Mr. President, I am pleased to introduce the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006. I am joined by my colleagues from the Commerce, Science, and Transportation Committee, Senators INOUYE, LOTT and LAUTENBERG.

Pipelines are one of the safest forms of transportation, and in most cases their safety record has been steadily improving. Unfortunately however, as recent events in my State demonstrate, there is still much to be done. This bill addresses the problems that have occurred in Alaska and other safety issues that have been brought to the Committee's attention.

The bill reauthorizes the pipeline safety programs of the Pipeline and Hazardous Materials Safety Administration (PHMSA) for Fiscal Years 2007 through 2010.

Highlights of the bill include:

Increased Department of Transportation Resources Dedicated to Overseeing Pipeline Safety—The bill provides an additional 45 Federal inspectors (a 50 percent increase) over the 4 years of the bill at a cost of $6 million in Fiscal Year 2010. Currently PHMSA has 90 inspectors, but the DOT Inspector General has stated in the past that these relatively low staffing levels are a matter for concern. Ninety inspectors translate to one inspector for every 18,000 miles of pipeline in this country.

Strengthened Programs to Reduce Construction Related Damage to Pipelines—The bill includes new civil enforcement authority against excavators and pipeline operators responsible for third-party damage incidents and provides grants to states that have damage prevention programs in place. Construction related damage, such as damage caused by excavation for a highway project, is the greatest cause of pipeline accidents that result in death or injury. This occurs most often on the distribution systems that run through the neighborhoods where people live and work. These incidents have increased by 49 percent since 1996.

Applying DOT Safety Standards to the Currently Unregulated Low Stress Pipelines—On August 31, the DOT announced proposed rules to cover low stress pipelines in unusually sensitive areas. Pipeline operators will have to meet new safety requirements, including cleaning and continuous monitoring, along more than 1,200 miles of pipelines. However, low-stress lines that aren't in such sensitive areas would continue to be unregulated. The bill goes further than the regulation and requires DOT oversight of all low-stress pipelines.

Increased Accountability of Pipeline Company Officials—The bill includes a provision that would require senior officials at pipeline companies to certify that the information they are providing to regulators is accurate.

Enhanced Pipeline Research—The bill would also boost PHMSA's research and technology development budget for pipeline safety issues such as corrosion by $10 million over the length of the bill.

A Study of Pipelines Critical to Energy Supply—The bill includes a study of oil pipelines that are critical to the nation's energy supply in order to determine if there are sufficient safety regulations in place to ensure their safety.

The House Transportation and Infrastructure Committee and the House Energy and Commerce Committee are also working on pipeline safety legislation. I hope that our three Committees can work together over the next month while the Congress is out of session to develop a joint legislative product that we can pass and have signed into law when we return in November. Many of the provisions in the three bills are similar and we should have enough common ground to achieve this goal.

By Mr. DOMENICI (for himself and Mr. CRAIG):

S. 3962. A bill to enhance the management and disposal of spent nuclear fuel and high-level radioactive waste, to assure protection of public health and safety, to ensure the territorial integrity and security of the repository at Yucca Mountain, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. DOMENICI. Mr. President, I note the arrival on the floor of the distinguished Senator from Nevada. The legislation that I will be talking about is of significant interest to the Senator from Nevada. But it will take many months on the floor of the Senate before we finish.

Today my fellow Senators I am introducing legislation that I believe will place the Department of Energy's nuclear waste program back on track.

As we all know, the history of the Yucca Mountain project has been rocky at best. The Yucca Mountain project has a very long pedigree, starting back to the late 1950's when the National Academy of Sciences reported to the Atomic Energy Commission suggesting that burying radioactive high-level waste in geologic formations should receive consideration.

In the 1980s, when Congress decided to pursue a geologic repository, we were quite optimistic—so optimistic that we told the Department of Energy—DOE—to enter into contracts with utilities that promised that we would begin taking nuclear waste off their hands by 1998. Well, obviously that didn't happen. What did happen was that the courts found that the government is liable for its failure to meet its contractual obligation.

While moving more slowly than planned, DOE's nuclear waste program has made progress toward making the goal of a permanent geologic repository for nuclear waste a reality. In 2002, the President and Congress approved the Yucca Mountain site, and instructed DOE to file a license application for the repository with the Nuclear Regulatory Commission—NRC. That decision has been made.

With the siting decision made, it will now be up to the NRC to evaluate the scientific data and determine whether the repository will permanently, and safely, isolate nuclear waste.

Yucca Mountain is the cornerstone of our national comprehensive spent nuclear fuel management strategy for

this country. Let me be clear: We need Yucca Mountain. We must make this program work. I believe the bill introduced today will do that.

This bill will remove legal barriers that will allow DOE to meet its obligation to accept and store spent nuclear fuel as soon as possible, without prejudging the outcome of the NRC's repository licensing decision.

The bill I will introduce today authorizes the DOE to permanently withdraw 147,000 acres currently controlled by the Bureau of Land Management, the Air Force, and the Nevada Test Site, a license condition of the NRC.

This legislation will repeal the arbitrary 70,000 metric ton statutory limit on emplacement of radioactive material at Yucca Mountain. The capacity of the mountain will be determined by scientific and technical analysis.

The DOE may also begin construction of needed infrastructure for the repository and surface storage facilities as soon as they complete an environmental impact statement that evaluates these activities.

This legislation will begin to consolidate the defense waste and spent nuclear fuel at Yucca Mountain. The bill requires DOE to file for a permit to build a surface storage facility at the Nevada Test Site at the same time it files its license application for a repository at Yucca Mountain.

As soon as the department receives the permit for the surface storage facilities from the NRC, the department may begin moving defense fuel and waste to the Nevada Test Site. The spent nuclear fuel from our Navy and defense activities that kept us safe during the Cold War will be consolidated and secure at the site.

Only after the NRC issues a construction permit for Yucca Mountain, may the department begin moving civilian spent fuel to the Nevada Test Site.

This bill will withdraw the land for the rail route for Yucca, a vital transportation component. There is a provision that also provides that appropriations from the Nuclear Waste Fund will not count against the allocations for discretionary spending. The DOE will have access to the full funds in the Nuclear Waste Fund, monies collected from our constituents, to complete this project.

This bill compliments the short, medium, and long term components of the nuclear fuel cycle that I began to talk about this past summer. The thinking of how to handle nuclear spent fuel in the late 1970s and early 1980s and the way we approached its management is changing, we need to acknowledge that change.

In the short term, according to DOE's most optimistic schedule, the NRC's construction permit will not be issued until 2011. The Consolidated and Preparation ''CAP'' proposal in the Energy and Water Appropriations bill begins to enable DOE to fulfill its contractual liability for spent fuel storage before DOE can move spent fuel to Yucca Mountain by providing new authorities for DOE to accept and store civilian spent nuclear fuel within the states in which it was generated.

In the mid term, this legislation lays the foundation to integrate Yucca Mountain and Global Nuclear Energy Partnership—GNEP—by providing that before spent fuel is shipped to Nevada, the Secretary of Energy determines if it can be recycled within a reasonable amount of time. Current plans for GNEP do not include recycling all 55,000 metric tons of civilian spent fuel that has already been generated. This proposal will avoid moving waste to Nevada that should be shipped instead to a GNEP facility.

In the long term, this measure provides DOE with the authorities needed to execute the Yucca Mountain project, and to begin long term emplacement, while the GNEP program will reduce the volume of material to be emplaced in the mountain, eliminating the need for a second repository program.

The three pieces of the fuel cycle that I have discussed today—interim storage, GNEP and Yucca Mountain—will establish a comprehensive program that will provide confidence that our nation's nuclear waste will be managed safely both for current and future reactors.

We can solve this problem and I hope we can move forward together.

I send to the desk a bill which does all of the things that I have just spoken to. I am sure many Senators and their staffs will be interested. This will certainly not proceed in any hurry; it will take a while. But I intend to move it as best I can. There will be opportunities to stop the movement at every opportunity. I am just hopeful that we will carry all the way through, as we have in the past, and go to conference and take something to the President and see where we are.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I want to again express my appreciation to the distinguished Senator from New Mexico—I know this is a feeling shared by a lot of Senators—for his efforts and leadership over many years in the Senate but particularly in the energy area. He has been persistent.

We did pass a good energy policy bill last year. Obviously, he would like for it to have been, perhaps, even broader, but we got it done. It is making a contribution and will continue to have a positive contribution into more diverse energy policy in this country from which the American people will benefit.

I thank the Senator for his leadership on this particular area of the nuclear repository. We must deal with this issue. We can do it. His input was critical. I thank him.

Mr. DOMENICI. I thank the Senator. It is a pleasure working with him.

When I have legislation such as the legislation I just described, which is very difficult, and I know we are going to come to spots in the Senate, stopovers where we will have to vote because it is good for the country, I am counting in the column that if I have done my work, will this Senator vote for it, the Senator's name. I believe if we do our work and get our votes properly and line up what we propose, a Senator such as Senator LOTT will not be running around asking people what is going on in his State.

This matter deserves his attention, as it deserves my attention. I believe we will get that.

I thank the Senator.

Mr. CRAIG. Mr. President, I rise today to express my strong support for the Nuclear Fuel Management and Disposal Act introduced today by Senator PETE DOMENICI. Senator DOMENICI has long been a courageous supporter of dependable, emissions-free nuclear energy, and he is largely responsible for the current renaissance of nuclear power in this country—with upwards of 30 new nuclear reactors on the drawing board to be licensed in the next several years. Senator DOMENICI's landmark legislation will help assure the future of nuclear power in this country by providing the necessary legislation for moving forward on the long-stalled Yucca Mountain repository and authorizing much-needed interim storage for spent fuel and high-level waste that has been accumulating around the country. For used nuclear fuel that will eventually be recycled, the Senate Energy and Water Appropriations bill approved by the Appropriations Committee earlier this year provides for interim storage of commercial spent fuel at Consolidation and Preparation—CAP—facilities. Senator DOMENICI's legislation introduced today addresses defense spent fuel and high-level waste that cannot be recycled, so that these wastes will be sent to Yucca Mountain for storage and eventual disposal. In this way, this bill removes the final roadblock to developing new nuclear power in this country.

And let me say a few words about this ''roadblock'' to Yucca that has persisted for so many years. The Federal Government made a promise to take possession of spent nuclear fuel in order to safely and permanently dispose of it in a geologic repository. We promised to begin taking this fuel back in 1998—8 years ago. However, through concerted efforts by the state of Nevada and its congressional delegation, progress on Yucca has often slowed to a crawl. This is the classic NIMBY attitude—''not in my backyard.'' And yet my colleague from Nevada, Mr. REID, has repeatedly called for this Congress and the administration to do something to help reduce emissions of greenhouse gases because of his concerns about global warming.

This Congress and this administration have done a great deal to promote emission-free power generation. This Congress passed the Energy Policy Act last year, which provided financial incentives for new, emission-free sources

of energy, including wind, solar, clean coal—and nuclear. And earlier this year, this administration introduced the Advanced Energy Initiative—AEI—to support research and development of new energy sources—including nuclear power. In fact, the Global Nuclear Energy Partnership—GNEP—is one part of the AEI. One goal of GNEP is to reduce the amount and toxicity of nuclear waste ultimately destined for disposal at Yucca Mountain; another goal is to eventually help expand the deployment of emission-free nuclear power in developing countries that otherwise would need to depend on burning fossil fuels for their growing energy demands. Contrary to Senator REID's comments about doing nothing to help reduce greenhouse gas emissions, we have done a great deal to develop emission-free energy in this country and abroad. But the deployment of nuclear power requires that we manage the spent fuel from nuclear power plants in a safe and responsible manner. One aspect of that management strategy must be to open the Yucca Mountain repository as soon as possible.

As Senator DOMENICI has said, Yucca Mountain is the cornerstone of a comprehensive spent-fuel management strategy for this country, but Yucca alone cannot meet the government's spent-fuel obligations. Through GNEP we will also explore technologies that promise to reduce the volume and toxicity of spent fuel. Thus, GNEP, interim storage and Yucca Mountain together provide a comprehensive program for safely managing our Nation's Nuclear waste.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 588—TO EXPRESS THE SENSE OF THE SENATE THAT STATES SHOULD HAVE IN PLACE BACKUP SYSTEMS TO DEAL WITH ANY FAILURE OF ELECTRONIC VOTING EQUIPMENT DURING THE NOVEMBER 7, 2006, GENERAL ELECTION

Mr. FEINGOLD (for himself and Mr. KERRY) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 588

Whereas widespread problems with new voting technology have been reported this year in primaries in Ohio, Arkansas, Illinois, Maryland, and elsewhere;

Whereas States such as Texas, Arkansas, and others have had to unexpectedly administer provisional ballots after electronic voting machines failed;

Whereas equipment malfunctions in the Arkansas district 16 State Senate primary race precipitated a recount that, in turn, produced a new winner;

Whereas computer problems in 4 southern Indiana counties required workers to manually enter the number of votes for each candidate in each precinct;

Whereas a deadline to test electronic voting machines in West Virginia was pushed back to the day before the May 9 primary election due to problems and delays with the new machines;

Whereas glitches in the electronic voter check-in system in Montgomery County, Maryland, resulted in polls remaining open for additional hours and required a recount of thousands of paper provisional ballots;

Whereas 40 percent of registered voters nationally are expected to cast ballots on new machines in the November 7 midterm elections;

Whereas the larger number of voters participating in the November 7 midterm elections may result in even more equipment failures than occurred in the primary elections;

Whereas millions of voters could be disenfranchised in the November 7 midterm elections, as thousands have already been in 2006 primary elections, due to the failure of electronic voting machines; and

Whereas former Attorney General Richard Thornburgh and former Ohio Governor Richard Celeste, co-chairs of the Committee to Study a Framework for Understanding Electronic Voting of the National Academies' National Research Council wrote recently: ''If major problems arise with unproven technology and new election procedures, the political heat will be high indeed. . . . Jurisdictions need to come up with contingency plans for such November problems, if they haven't done so already. One possible example: Make preparations to fall back to paper ballots if necessary.'': Now, therefore, be it

Resolved, That it is the sense of the Senate that each State and jurisdiction that uses electronic voting equipment should have in place for use in the November 7, 2006, general election a backup system, such as the use of paper ballots, in the case of any failure of the electronic voting equipment.

SENATE CONCURRENT RESOLUTION 119—EXPRESSING THE SENSE OF CONGRESS THAT PUBLIC POLICY SHOULD CONTINUE TO PROTECT AND STRENGTHEN THE ABILITY OF FARMERS AND RANCHERS TO JOIN TOGETHER IN COOPERATIVE SELF-HELP EFFORTS

Mrs. LINCOLN (for herself, Mr. CRAIG, Mr. CHAMBLISS, Mr. DORGAN, Mr. CONRAD, Mr. GRASSLEY, Mr. PRYOR, Mr. HARKIN, Mr. CRAPO, Mr. DEWINE, Mr. TALENT, Mr. BAUCUS, Mr. THUNE, Mr. BURNS, Mr. BOND, Mr. ENZI, Ms. STABENOW, Mr. COCHRAN, and Mr. JOHNSON) submitted the following concurrent resolution; which was referred to the Committee on Agriculture, Nutrition, and Forestry:

S. CON. RES. 119

Whereas, the ability of farmers and ranchers in the United States to join together in cooperative self-help efforts is vital to their continued economic viability;

Whereas, Federal laws have long recognized the importance of protecting and strengthening the ability of farmers and ranchers to join together in cooperative self-help efforts, including to cooperatively market their products, ensure access to competitive markets, and help achieve other important public policy goals;

Whereas, farmer- and rancher-owned cooperatives play an important role in helping farmers and ranchers improve their income from the marketplace, manage their risk, meet their credit and other input needs, and compete more effectively in a rapidly changing global economy;

Whereas, farmer- and rancher-owned cooperatives also play an important role in providing consumers in the United States and abroad with a dependable supply of safe, affordable, high-quality food, fiber and related products;

Whereas, farmer- and rancher-owned cooperatives also help meet the energy needs of the United States, including through the production and marketing of renewable fuels such as ethanol and biodiesel;

Whereas, there are nearly 3,000 farmer- and rancher-owned cooperatives located throughout the United States with a combined membership representing a majority of the nearly 2 million farmers and ranchers in the United States; and

Whereas, farmer- and rancher-owned cooperatives also contribute significantly to the economic well being of rural America as well as the overall economy, including accounting for as many as 250,000 jobs: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the Sense of the Congress that public policy should continue to protect and strengthen the ability of farmers and ranchers to join together in cooperative self-help efforts—

(1) to improve their income from the marketplace and their economic well-being;

(2) to capitalize on new market opportunities; and

(3) to help meet the food and fiber needs of consumers, provide for increased energy production, promote rural development, maintain and create needed jobs, and contribute to a growing United States economy.

SENATE CONCURRENT RESOLUTION 120—EXPRESSING THE SUPPORT OF CONGRESS FOR THE CREATION OF A NATIONAL HURRICANE MUSEUM AND SCIENCE CENTER IN SOUTHWEST LOUISIANA

Mr. VITTER submitted the following concurrent resolution; which was referred to the Committee on Commerce, Science, and Transportation:

S. CON. RES. 120

Whereas the Creole Nature Trail All-American Road District Board of Commissioners has begun to create and develop a National Hurricane Museum and Science Center in the southwest Louisiana area;

Whereas protecting, preserving, and showcasing the intrinsic qualities that make Louisiana a one-of-a-kind experience is the mission of the Creole Nature Trail All-American Road;

Whereas the horrific experience and the devastating long-term effects of Hurricanes Katrina and Rita will play a major role in the history of the United States;

Whereas a science center of this caliber will educate and motivate young and old in the fields of meteorology, environmental science, sociology, conservation, economics, history, communications, and engineering;

Whereas it is only appropriate that the effects of hurricanes and the rebuilding efforts be captured in a comprehensive center such as a National Hurricane Museum and Science Center to interpret the effects of hurricanes in and outside of Louisiana; and

Whereas it is critical that the history of past hurricanes be preserved so that all people in the United States can learn from this history: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress supports and encourages the creation of a National Hurricane Museum and Science Center in southwest Louisiana.

AMENDMENTS SUBMITTED AND PROPOSED

SA 5075. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table.

SA 5076. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5077. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5078. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5079. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5080. Mr. MARTINEZ submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5081. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5082. Mr. SPECTER (for himself, Mr. LEAHY, and Mr. SMITH) submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5083. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5084. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, supra; which was ordered to lie on the table.

SA 5085. Mr. FRIST proposed an amendment to the bill S. 3930, to authorize trial by military commission for violations of the law of war, and for other purposes.

SA 5086. Mr. LEVIN (for himself, Mr. DAYTON, and Mr. REED) proposed an amendment to the bill S. 3930, supra.

SA 5087. Mr. SPECTER (for himself, Mr. LEAHY, Mr. DORGAN, Mr. DODD, Mr. DAYTON, Mr. FEINGOLD, Mrs. CLINTON, and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill S. 3930, supra.

SA 5088. Mr. KENNEDY (for himself, Mrs. FEINSTEIN, and Mrs. CLINTON) submitted an amendment intended to be proposed by him to the bill S. 3930, supra; which was ordered to lie on the table.

SA 5089. Mr. MARTINEZ submitted an amendment intended to be proposed to amendment SA 5066 submitted by Mrs. HUTCHISON (for herself and Mr. KYL) and intended to be proposed to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table.

SA 5090. Mr. BENNETT (for Mr. FRIST) proposed an amendment to the bill S. 403, to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

SA 5091. Mr. BENNETT (for Mr. FRIST) proposed an amendment to amendment SA 5090 proposed by Mr. BENNETT (for Mr. FRIST) to the bill S. 403, supra.

TEXT OF AMENDMENTS

SA 5075. Mr. LEVIN submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Military Commissions Act of 2006''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Constitution of the United States grants to Congress the power ''To define and punish . . . Offenses against the Law of Nations'', as well as the power ''To declare War . . . To raise and support Armies . . . [and] To provide and maintain a Navy''.

(2) The military commission is the traditional tribunal for the trial of persons engaged in hostilities for violations of the law of war.

(3) Congress has, in the past, both authorized the use of military commission by statute and recognized the existence and authority of military commissions.

(4) Military commissions have been convened both by the President and by military commanders in the field to try offenses against the law of war.

(5) It is in the national interest for Congress to exercise its authority under the Constitution to enact legislation authorizing and regulating the use of military commissions to try and punish violations of the law of war.

(6) Military commissions established and operating under chapter 47A of title 10, United States Code (as enacted by this Act), are regularly constituted courts affording, in the words of Common Article 3 of the Geneva Conventions, ''all the judicial guarantees which are recognized as indispensable by civilized peoples''.

SEC. 3. AUTHORIZATION FOR MILITARY COMMISSIONS.

(a) IN GENERAL.—The President is authorized to establish military commissions for the trial of alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses specifically made triable by military commission as provided in chapter 47 of title 10, United States Code, and chapter 47A of title 10, United States Code (as enacted by this Act).

(b) CONSTRUCTION.—The authority in subsection (a) may not be construed to alter or limit the authority of the President under the Constitution and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.

(c) SCOPE OF PUNISHMENT AUTHORITY.—A military commission established pursuant to subsection (a) shall have authority to impose upon any person found guilty under a proceeding under chapter 47A of title 10, United States Code (as so enacted), a sentence that is appropriate for the offense or offenses for which there is a finding of guilt, including a sentence of death if authorized under such chapter, imprisonment for life or a term of years, payment of a fine or restitution, or such other lawful punishment or condition of punishment as the military commission shall direct.

(d) EXECUTION OF PUNISHMENT.—The Secretary of Defense is authorized to carry out a sentence of punishment imposed by a military commission established pursuant to subsection (a) in accordance with such procedures as the Secretary may prescribe.

(e) ANNUAL REPORT ON TRIALS BY MILITARY COMMISSIONS.—

(1) ANNUAL REPORT REQUIRED.—Not later than December 31 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions established pursuant to subsection (a) during such year.

(2) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

SEC. 4. MILITARY COMMISSIONS.

(a) MILITARY COMMISSIONS.—

(1) IN GENERAL.—Subtitle A of title 10, United States Code, is amended by inserting after chapter 47 the following new chapter:

''CHAPTER 47A—MILITARY COMMISSIONS

''SUBCHAPTER	Sec.
''I. General Provisions	948a.
''II. Composition of Military Commissions	948h.
''III. Pre-Trial Procedure	948q.
''IV. Trial Procedure	949a.
''V. Sentences	949s.
''VI. Post-Trial Procedure and Review of Military Commissions	950a.
''VII. Punitive Matters	950aa.

''SUBCHAPTER I—GENERAL PROVISIONS

''Sec.
''948a. Definitions.
''948b. Military commissions generally.
''948c. Persons subject to military commissions.
''948d. Jurisdiction of military commissions.

''§ 948a. Definitions

''In this chapter:

''(1) ALIEN.—The term 'alien' means an individual who is not a citizen of the United States.

''(2) CLASSIFIED INFORMATION.—The term 'classified information' means the following:

''(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

''(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

''(3) LAWFUL ENEMY COMBATANT.—The term 'lawful enemy combatant' means an individual who is—

''(A) a member of the regular forces of a State party engaged in hostilities against the United States;

''(B) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or

''(C) a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

''(4) UNLAWFUL ENEMY COMBATANT.—The term 'unlawful enemy combatant' means an individual engaged in hostilities against the United States who is not a lawful enemy combatant.

''§ 948b. Military commissions generally

''(a) PURPOSE.—This chapter establishes procedures governing the use of military

commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission.

''(b) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided therein or in this chapter, and many of the provisions of chapter 47 of this title are by their terms inapplicable to military commissions. The judicial construction and application of chapter 47 of this title, while instructive, is therefore not of its own force binding on military commissions established under this chapter.

''(c) INAPPLICABILITY OF CERTAIN PROVISIONS.—(1) The following provisions of this title shall not apply to trial by military commission under this chapter:

''(A) Section 810 (article 10 of the Uniform Code of Military Justice), relating to speedy trial, including any rule of courts-martial relating to speedy trial.

''(B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of the Uniform Code of Military Justice), relating to compulsory self-incrimination.

''(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

''(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by the terms of such provisions or by this chapter.

''(d) TREATMENT OF RULINGS AND PRECEDENTS.—The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial convened under chapter 47 of this title. The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not form the basis of any holding, decision, or other determination of a court-martial convened under that chapter.

''§ 948c. Persons subject to military commissions

''Any alien unlawful enemy combatant engaged in hostilities or having supported hostilities against the United States is subject to trial by military commission as set forth in this chapter.

''§ 948d. Jurisdiction of military commissions

''A military commission under this chapter shall have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter, sections 904 and 906 of this title (articles 104 and 106 of the Uniform Code of Military Justice), or the law of war, and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter, chapter 47 of this title, or the law of war.

''SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

''Sec.

''948h. Who may convene military commissions.
''948i. Who may serve on military commissions.
''948j. Military judge of a military commission.
''948k. Detail of trial counsel and defense counsel.
''948l. Detail or employment of reporters and interpreters.
''948m. Number of members; excuse of members; absent and additional members.

''§ 948h. Who may convene military commissions

''Military commissions under this chapter may be convened by the Secretary of Defense or by any officer or official of the United States designated by the Secretary for that purpose.

''§ 948i. Who may serve on military commissions

''(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter, including commissioned officers of the reserve components of the armed forces on active duty, commissioned officers of the National Guard on active duty in Federal service, or retired commissioned officers recalled to active duty.

''(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members thereof such members of the armed forces eligible under subsection (a) who, as in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

''(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

''§ 948j. Military judge of a military commission

''(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which he has been detailed.

''(b) ELIGIBILITY.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

''(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person is eligible to act as military judge in a case of a military commission under this chapter if he is the accuser or a witness or has acted as investigator or a counsel in the same case.

''(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may he vote with the members.

''(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to him by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

''(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter shall not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to his performance of duty as a military judge on the military commission.

''§ 948k. Detail of trial counsel and defense counsel

''(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

''(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

''(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable.

''(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such military commissions.

''(b) TRIAL COUNSEL.—Subject to subsection (e), trial counsel detailed for a military commission under this chapter must be—

''(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice)) who is—

''(A) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(B) certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member; or

''(2) a civilian who is—

''(A) a member of the bar of a Federal court or of the highest court of a State; and

''(B) otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

''(c) MILITARY DEFENSE COUNSEL.—Subject to subsection (e), military defense counsel detailed for a military commission under this chapter must be a judge advocate (as so defined) who is—

''(1) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(2) certified as competent to perform duties as defense counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member.

''(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).

''(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

''(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

''§ 948l. Detail or employment of reporters and interpreters

''(a) COURT REPORTERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military

commission under this chapter shall detail to or employ for the military commission qualified court reporters, who shall prepare a verbatim record of the proceedings of and testimony taken before the military commission.

''(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the military commission, and, as necessary, for trial counsel and defense counsel for the military commission, and for the accused.

''(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the military commission, who shall also be responsible for preparing the record of the proceedings of the military commission.

''§ 948m. Number of members; excuse of members; absent and additional members

''(a) NUMBER OF MEMBERS.—(1) A military commission under this chapter shall, except as provided in paragraph (2), have at least five members.

''(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of members prescribed by section 949m(c) of this title.

''(b) EXCUSE OF MEMBERS.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

''(1) as a result of challenge;

''(2) by the military judge for physical disability or other good cause; or

''(3) by order of the convening authority for good cause.

''(c) ABSENT AND ADDITIONAL MEMBERS.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

''SUBCHAPTER III—PRE-TRIAL PROCEDURE

''Sec.
''948q. Charges and specifications.
''948r. Compulsory self-incrimination prohibited; statements obtained by torture or cruel, inhuman, or degrading treatment.
''948s. Service of charges.

''§ 948q. Charges and specifications

''(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter shall be signed by a person subject to chapter 47 of this title under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

''(1) that the signer has personal knowledge of, or reason to believe, the matters set forth therein; and

''(2) that they are true in fact to the best of his knowledge and belief.

''(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges and specifications against him as soon as practicable.

''§ 948r. Compulsory self-incrimination prohibited; statements obtained by torture or cruel, inhuman, or degrading treatment

''(a) IN GENERAL.—No person shall be required to testify against himself at a proceeding of a military commission under this chapter.

''(b) STATEMENTS OBTAINED BY TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT.—A statement obtained by use of torture or by cruel, inhuman, or degrading treatment prohibited by section 1003 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd), whether or not under color of law, shall not be admissible in a military commission under this chapter, except against a person accused of torture or such treatment as evidence the statement was made.

''(c) STATEMENTS OBTAINED BY ALLEGED COERCION NOT AMOUNTING TO TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT.—An otherwise admissible statement obtained through the use of alleged coercion not amounting to torture or cruel, inhuman, or degrading treatment prohibited by section 1003 of the Detainee Treatment Act of 2005 may be admitted in evidence in a military commission under this chapter only if the military judge finds that—

''(1) the totality of the circumstances under which the statement was made render it reliable and possessing sufficient probative value; and

''(2) the interests of justice would best be served by admission of the statement into evidence.

''§ 948s. Service of charges

''The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused and military defense counsel a copy of the charges upon which trial is to be had in English and, if appropriate, in another language that the accused understands, sufficiently in advance of trial to prepare a defense.

''SUBCHAPTER IV—TRIAL PROCEDURE

''Sec.
''949a. Rules.
''949b. Unlawfully influencing action of military commission.
''949c. Duties of trial counsel and defense counsel.
''949d. Sessions.
''949e. Continuances.
''949f. Challenges.
''949g. Oaths.
''949h. Former jeopardy.
''949i. Pleas of the accused.
''949j. Opportunity to obtain witnesses and other evidence.
''949k. Defense of lack of mental responsibility.
''949l. Voting and rulings.
''949m. Number of votes required.
''949n. Military commission to announce action.
''949o. Record of trial.

''§ 949a. Rules

''(a) PROCEDURES AND RULES OF EVIDENCE.—Pretrial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense. Such procedures may not be contrary to or inconsistent with this chapter. Except as otherwise provided in this chapter or chapter 47 of this title, the procedures and rules of evidence applicable in trials by general courts-martial of the United States shall apply in trials by military commission under this chapter.

''(b) EXCEPTIONS.—(1) The Secretary of Defense, in consultation with the Attorney General, may make such exceptions in the applicability in trials by military commission under this chapter from the procedures and rules of evidence otherwise applicable in general courts-martial as may be required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need.

''(2) Notwithstanding any exceptions authorized by paragraph (1), the procedures and rules of evidence in trials by military commission under this chapter shall include, at a minimum, the following rights:

''(A) To examine and respond to all evidence considered by the military commission on the issue of guilt or innocence and for sentencing.

''(B) To be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

''(C) To the assistance of counsel.

''(D) To self-representation, if the accused knowingly and competently waives the assistance of counsel, subject to the provisions of paragraph (4).

''(E) To the suppression of evidence that is not reliable or probative.

''(F) To the suppression of evidence the probative value of which is substantially outweighed by—

''(i) the danger of unfair prejudice, confusion of the issues, or misleading the members; or

''(ii) considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

''(3) In making exceptions in the applicability in trials by military commission under this chapter from the procedures and rules otherwise applicable in general courts-martial, the Secretary of Defense may provide the following:

''(A) Evidence seized outside the United States shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or authorization.

''(B) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence complies with the provisions of section 948r of this title.

''(C) Evidence shall be admitted as authentic so long as—

''(i) the military judge of the military commission determines that there is sufficient evidence that the evidence is what it is claimed to be; and

''(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.

''(D) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission only if—

''(i) the proponent of the evidence makes known to the adverse party, sufficiently in advance of trial or hearing to provide the adverse party with a fair opportunity to meet the evidence, the proponent's intention to offer the evidence, and the particulars of the evidence (including information on the circumstances under which the evidence was obtained); and

''(ii) the military judge finds that the totality of the circumstances render the evidence more probative on the point for which it is offered than other evidence which the proponent can procure through reasonable efforts, taking into consideration the unique circumstances of the conduct of military and intelligence operations during hostilities.

''(4)(A) The accused in a military commission under this chapter who exercises the

right to self-representation under paragraph (2)(D) shall conform his deportment and the conduct of the defense to the rules of evidence, procedure, and decorum applicable to trials by military commission.

''(B) Failure of the accused to conform to the rules described in subparagraph (A) may result in a partial or total revocation by the military judge of the right of self-representation under paragraph (2)(D). In such case, the detailed defense counsel of the accused or an appropriately authorized civilian counsel shall perform the functions necessary for the defense.

''(c) DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Defense may delegate the authority of the Secretary to prescribe regulations under this chapter.

''§ 949b. Unlawfully influencing action of military commission

''(a) IN GENERAL.—(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or their functions in the conduct of the proceedings.

''(2) No person may attempt to coerce or, by any unauthorized means, influence—

''(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

''(B) the action of any convening, approving, or reviewing authority with respect to their judicial acts; or

''(C) the exercise of professional judgment by trial counsel or defense counsel.

''(3) The provisions of this subsection shall not apply with respect to—

''(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

''(B) statements and instructions given in open proceedings by a military judge or counsel.

''(b) PROHIBITION ON CONSIDERATION OF ACTIONS ON COMMISSION IN EVALUATION OF FITNESS.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

''(1) consider or evaluate the performance of duty of any member of a military commission under this chapter; or

''(2) give a less favorable rating or evaluation to any commissioned officer because of the zeal with which such officer, in acting as counsel, represented any accused before a military commission under this chapter.

''§ 949c. Duties of trial counsel and defense counsel

''(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.

''(b) DEFENSE COUNSEL.—(1) The accused shall be represented in his defense before a military commission under this chapter as provided in this subsection.

''(2) The accused shall be represented by military counsel detailed under section 948k of this title.

''(3) The accused may be represented by civilian counsel if retained by the accused, provided that such civilian counsel—

''(A) is a United States citizen;

''(B) is admitted to the practice of law in a State, district, or possession of the United States, or before a Federal court;

''(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

''(D) has been determined to be eligible for access to information classified at the level Secret or higher; and

''(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

''(4) If the accused is represented by civilian counsel, military counsel detailed shall act as associate counsel.

''(5) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in such person's sole discretion, may detail additional military counsel to represent the accused.

''(6) Defense counsel may cross-examine each witness for the prosecution who testifies before a military commission under this chapter.

''§ 949d. Sessions

''(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—(1) At any time after the service of charges which have been referred for trial by military commission under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

''(A) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

''(B) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

''(C) if permitted by regulations prescribed by the Secretary of Defense, receiving the pleas of the accused; and

''(D) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 949a of this title and which does not require the presence of the members.

''(2) Except as provided in subsections (b), (c), and (d), any proceedings under paragraph (1) shall be conducted in the presence of the accused, defense counsel, and trial counsel, and shall be made part of the record.

''(b) DELIBERATION OR VOTE OF MEMBERS.—When the members of a military commission under this chapter deliberate or vote, only the members may be present.

''(c) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter.

''(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) only upon making a specific finding that such closure is necessary to—

''(A) protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

''(B) ensure the physical safety of individuals.

''(3) A finding under paragraph (2) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

''(4)(A) Subject to the provisions of this paragraph, classified information shall be handled in accordance with rules applicable in trials by general courts-martial of the United States.

''(B) Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. This subparagraph applies to all stages of proceedings of military commissions under this chapter.

''(C) After the original classification authority or head of the agency concerned has certified in writing that evidence and the sources thereof have been declassified to the maximum extent possible, consistent with the requirements of national security, the military judge may, to the extent practicable in accordance with the rules applicable in trials by court-martial, authorize—

''(i) the deletion of specified items of classified information from documents made available to the accused;

''(ii) the substitution of a portion or summary of the information for such classified documents; or

''(iii) the substitution of a statement admitting relevant facts that the classified information would tend to prove.

''(D) A claim of privilege under this paragraph, and any materials in support thereof, shall, upon the request of the Government, be considered by the military judge in camera and shall not be disclosed to the accused.

''(d) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

''(1) to ensure the physical safety of individuals; or

''(2) to prevent disruption of the proceedings by the accused.

''§ 949e. Continuances

''The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

''§ 949f. Challenges

''(a) CHALLENGES AUTHORIZED.—The military judge and members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the military commission. The military judge shall determine the relevance and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

''(b) PEREMPTORY CHALLENGES.—The accused and trial counsel are each entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

''(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, the accused and trial counsel are each entitled to one peremptory challenge against members not previously subject to peremptory challenge.

''§ 949g. Oaths

''(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

''(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording thereof, and whether the oath shall be taken for all cases

in which duties are to be performed or for a particular case, shall be as provided in regulations prescribed by the Secretary of Defense. The regulations may provide that—

''(A) an oath to perform faithfully duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty; and

''(B) if such an oath is taken, such oath need not again be taken at the time the judge advocate or other person is detailed to that duty.

''(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

''(c) OATH DEFINED.—In this section, the term 'oath' includes an affirmation.

''§ 949h. Former jeopardy

''(a) IN GENERAL.—No person may, without his consent, be tried by a military commission under this chapter a second time for the same offense.

''(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

''§ 949i. Pleas of the accused

''(a) PLEA OF NOT GUILTY.—If an accused in a military commission under this chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

''(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without a vote. The finding shall constitute the finding of the military commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

''§ 949j. Opportunity to obtain witnesses and other evidence

''(a) IN GENERAL.—(1) Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense.

''(2) Process issued in military commissions under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

''(A) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

''(B) shall run to any place where the United States shall have jurisdiction thereof.

''(b) DISCLOSURE OF EXCULPATORY EVIDENCE.—As soon as practicable, trial counsel in a military commission under this chapter shall disclose to the defense the existence of any known evidence that reasonably tends to exculpate or reduce the degree of guilt of the accused.

''(c) TREATMENT OF CERTAIN ITEMS.—In accordance with the rules applicable in trials by general courts-martial in the United States, and to the extent provided in such rules, the military judge in a military commission under this chapter may authorize trial counsel, in making documents available to the accused pursuant to subsections (a) and (b)—

''(1) to delete specified items of classified information from such documents;

''(2) to substitute an unclassified summary of the classified information in such documents; or

''(3) to substitute an unclassified statement admitting relevant facts that classified information in such documents would tend to prove.

''§ 949k. Defense of lack of mental responsibility

''(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

''(b) BURDEN OF PROOF.—The accused in a military commission under this chapter has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

''(c) FINDINGS FOLLOWING ASSERTION OF DEFENSE.—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue in a military commission under this chapter, the military judge shall instruct the members as to the defense of lack of mental responsibility under this section and shall charge the members to find the accused—

''(1) guilty;

''(2) not guilty; or

''(3) subject to subsection (d), not guilty by reason of lack of mental responsibility.

''(d) MAJORITY VOTE REQUIRED FOR FINDING.—The accused shall be found not guilty by reason of lack of mental responsibility under subsection (c)(3) only if a majority of the members present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

''§ 949l. Voting and rulings

''(a) VOTE BY SECRET WRITTEN BALLOT.—Voting by members of a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

''(b) RULINGS.—(1) The military judge in a military commission under this chapter shall rule upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.

''(2) Any ruling made by the military judge upon a question of law or an interlocutory question (other than the factual issue of mental responsibility of the accused) is conclusive and constitutes the ruling of the military commission. However, a military judge may change his ruling at any time during the trial.

''(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote is taken of the findings of a military commission under this chapter, the military judge shall, in the presence of the accused and counsel, instruct the members as to the elements of the offense and charge the members—

''(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

''(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

''(3) that, if there is reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

''(4) that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the United States.

''§ 949m. Number of votes required

''(a) CONVICTION.—No person may be convicted by a military commission under this chapter of any offense, except as provided in section 949i(b) of this title or by concurrence of two-thirds of the members present at the time the vote is taken.

''(b) SENTENCES.—(1) Except as provided in paragraphs (2) and (3), sentences shall be determined by a military commission by the concurrence of two-thirds of the members present at the time the vote is taken.

''(2) No person may be sentenced to death by a military commission, except insofar as—

''(A) the penalty of death has been expressly authorized under this chapter, chapter 47 of this title, or the law of war for an offense of which the accused has been found guilty;

''(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

''(C) the accused was convicted of the offense by the concurrence of all the members present at the time the vote is taken; and

''(D) all members present at the time the vote was taken concurred in the sentence of death.

''(3) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the members present at the time the vote is taken.

''(c) NUMBER OF MEMBERS REQUIRED FOR PENALTY OF DEATH.—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of members of the military commission under this chapter shall be not less than 12 members.

''(2) In any case described in paragraph (1) in which 12 members are not reasonably available for a military commission because of physical conditions or military exigencies, the convening authority shall specify a lesser number of members for the military commission (but not fewer than 5 members), and the military commission may be assembled, and the trial held, with not less than the number of members so specified. In any such case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

''§ 949n. Military commission to announce action

''A military commission under this chapter shall announce its findings and sentence to the parties as soon as determined.

''§ 949o. Record of trial

''(a) RECORD; AUTHENTICATION.—Each military commission under this chapter shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. Where appropriate, and as provided in regulations prescribed by the Secretary of Defense, the record of a military commission under this chapter may contain a classified annex.

''(b) COMPLETE RECORD REQUIRED.—A complete record of the proceedings and testimony shall be prepared in every military commission under this chapter.

''(c) PROVISION OF COPY TO ACCUSED.—A copy of the record of the proceedings of the military commission under this chapter shall be given the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall receive a redacted version of the record consistent with the requirements of section 949d(c)(4) of this title. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

''SUBCHAPTER V—SENTENCES

''Sec.
''949s. Cruel or unusual punishments prohibited.
''949t. Maximum limits.
''949u. Execution of confinement.

''§ 949s. Cruel or unusual punishments prohibited

''Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

''§ 949t. Maximum limits

''The punishment which a military commission under this chapter may direct for an offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

''§ 949u. Execution of confinement

''(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

''(1) in any place of confinement under the control of any of the armed forces; or

''(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

''(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

''SUBCHAPTER VI—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

''Sec.
''950a. Error of law; lesser included offense.
''950b. Review by the convening authority.
''950c. Waiver or withdrawal of appeal.
''950d. Appeal by the United States.
''950e. Rehearings.
''950f. Review by United States Court of Appeals for the Armed Forces and Supreme Court.
''950g. Appellate counsel
''950h. Execution of sentence; suspension of sentence.
''950i. Finality of proceedings, findings, and sentences.

''§ 950a. Error of law; lesser included offense

''(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

''(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

''§ 950b. Review by the convening authority

''(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

''(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

''(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after accused has been give an authenticated record of trial under section 949o(c) of this title.

''(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

''(3) The accused may waive his right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing, and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

''(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

''(2) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in his sole discretion, only—

''(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

''(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

''(3)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

''(B) Subject to regulations prescribed by the Secretary of Defense, action under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

''(C) In taking action under this paragraph, the convening authority may, in his sole discretion, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

''(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

''(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in his sole discretion, order a proceeding in revision or a rehearing.

''(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—

''(i) there is an apparent error or omission in the record; or

''(ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

''(B) In no case may a proceeding in revision—

''(i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;

''(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or

''(iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

''(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

''§ 950c. Waiver or withdrawal of appeal

''(a) WAIVER OF RIGHT OF REVIEW.—(1) An accused may file with the convening authority a statement expressly waiving the right of the accused to appellate review by the United States Court of Appeals for the Armed Forces under section 950f(a) of this title of the final decision of the military commission under this chapter.

''(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

''(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice of the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

''(b) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

''(c) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

''§ 950d. Appeal by the United States

''(a) INTERLOCUTORY APPEAL.—(1) Except as provided in paragraph (2), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the United States Court of Appeals for the Armed Forces under section 950f of this title of any order or ruling of the military judge that—

''(A) terminates proceedings of the military commission with respect to a charge or specification;

''(B) excludes evidence that is substantial proof of a fact material in the proceeding; or

''(C) relates to a matter under subsection (c) or (d) of section 949d of this title.

''(2) The United States may not appeal under paragraph (1) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

''(b) NOTICE OF APPEAL.—The United States shall take an appeal of an order or ruling under subsection (a) by filing a notice of appeal with the military judge within five days after the date of the order or ruling.

''(c) APPEAL.—An appeal under this section shall be forwarded, by means specified in regulations prescribed the Secretary of Defense, directly to the United States Court of Appeals for the Armed Forces. In ruling on an appeal under this section, the Court may act only with respect to matters of law.

''§ 950e. Rehearings

''(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

''(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

''(A) the accused may not be tried for any offense of which he was found not guilty by the first military commission; and

''(B) no sentence in excess of or more than the original sentence may be imposed unless—

''(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

''(ii) the sentence prescribed for the offense is mandatory.

''(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

''§ 950f. Review by United States Court of Appeals for the Armed Forces and Supreme Court

''(a) REVIEW BY UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES.—(1) Subject to the provisions of this subsection, the United States Court of Appeals for the Armed Forces shall have exclusive jurisdiction to determine the final validity of any judgment rendered by a military commission under this chapter.

''(2) The United States Court of Appeals for the Armed Forces may not determine the final validity of a judgment of a military commission under this subsection until all other appeals from the judgment under this chapter have been waived or exhausted.

''(3)(A) An accused may seek a determination by the United States Court of Appeals for the Armed Forces of the final validity of the judgment of the military commission under this subsection only upon petition to the Court for such determination.

''(B) A petition on a judgment under subparagraph (A) shall be filed by the accused in the Court not later than 20 days after the date on which written notice of the final decision of the military commission is served on the accused or defense counsel.

''(C) The accused may not file a petition under subparagraph (A) if the accused has waived the right to appellate review under section 950c(a) of this title.

''(4) The determination by the United States Court of Appeals for the Armed Forces of the final validity of a judgment of a military commission under this subsection shall be governed by the provisions of section 1005(e)(3) of the Detainee Treatment Act of 2005 (42 U.S.C. 801 note).

''(b) REVIEW BY SUPREME COURT.—The Supreme Court of the United States may review by writ of certiorari pursuant to section 1257 of title 28 the final judgment of the United States Court of Appeals for the Armed Forces in a determination under subsection (a).

''§ 950g. Appellate counsel

''(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications of counsel for appearing before military commissions under this chapter.

''(b) REPRESENTATION OF UNITED STATES.—Appellate counsel may represent the United States in any appeal or review proceeding under this chapter. Appellate Government counsel may represent the United States before the Supreme Court in case arising under this chapter when requested to do so by the Attorney General.

''(c) REPRESENTATION OF ACCUSED.—The accused shall be represented before the United States Court of Appeals for the Armed Forces or the Supreme Court by military appellate counsel, or by civilian counsel if retained by him.

''§ 950h. Execution of sentence; suspension of sentence

''(a) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

''(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgement as to the legality of the proceedings (and with respect to death, approval under subsection (a)).

''(2) A judgement as to legality of proceedings is final for purposes of paragraph (1) when—

''(A) the time for the accused to file a petition for review by the United States Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by the Court; or

''(B) review is completed in accordance with the judgment of the United States Court of Appeals for the Armed Forces and (A) a petition for a writ of certiorari is not timely filed, (B) such a petition is denied by the Supreme Court, or (C) review is otherwise completed in accordance with the judgment of the Supreme Court.

''(c) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.

''§ 950i. Finality of proceedings, findings, and sentences

''(a) FINALITY.—The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, except as otherwise provided by the President.

''(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES AND ACTIONS.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of enactment of this chapter, relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.

''SUBCHAPTER VII—PUNITIVE MATTERS

''Sec.
''950aa. Definitions; construction of certain offenses; common circumstances.
''950bb. Principals.
''950cc. Accessory after the fact.
''950dd. Conviction of lesser offenses.
''950ee. Attempts.
''950ff. Conspiracy.
''950gg. Solicitation.
''950hh. Murder of protected persons.
''950ii. Attacking civilians.
''950jj. Attacking civilian objects.
''950kk. Attacking protected property.
''950ll. Pillaging.
''950mm. Denying quarter.
''950nn. Taking hostages.
''950oo. Employing poison or similar weapons.
''950pp. Using protected persons as a shield.
''950qq. Using protected property as a shield.
''950rr. Torture.
''950ss. Cruel, unusual, or inhumane treatment or punishment.
''950tt. Intentionally causing serious bodily injury.
''950uu. Mutilating or maiming.
''950vv. Murder in violation of the law of war.
''950ww. Destruction of property in violation of the law of war.
''950xx. Using treachery or perfidy.
''950yy. Improperly using a flag of truce.
''950zz. Improperly using a distinctive emblem.
''950aaa. Intentionally mistreating a dead body.
''950bbb. Rape.
''950ccc. Hijacking or hazarding a vessel or aircraft.
''950ddd. Terrorism.
''950eee. Providing material support for terrorism.
''950fff. Wrongfully aiding the enemy.
''950ggg. Spying.
''950hhh. Contempt.
''950iii. Perjury and obstruction of justice.

''§ 950aa. Definitions; construction of certain offenses; common circumstances

''(a) DEFINITIONS.—In this subchapter:

''(1) The term 'military objective' means combatants and those objects during an armed conflict which, by their nature, location, purpose, or use, effectively contribute to the war-fighting or war-sustaining capability of an opposing force and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker under the circumstances at the time of an attack.

''(2) The term 'protected person' means any person entitled to protection under one or more of the Geneva Conventions, including civilians not taking an active part in hostilities, military personnel placed out of combat by sickness, wounds, or detention, and military medical or religious personnel.

''(3) The term 'protected property' means any property specifically protected by the law of war, including buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, but only if and to the extent such property is not being used for military purposes or is not otherwise a military objective. The term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

''(b) CONSTRUCTION OF CERTAIN OFFENSES.—The intent required for offenses under sections 950hh, 950ii, 950jj, 950kk, and 950ss of

this title precludes their applicability with regard to collateral damage or to death, damage, or injury incident to a lawful attack.

''(c) COMMON CIRCUMSTANCES.—An offense specified in this subchapter is triable by military commission under this chapter only if the offense is committed in the context of and associated with armed conflict.

''§ 950bb. Principals

''Any person punishable under this chapter who—

''(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

''(2) causes an act to be done which if directly performed by him would be punishable by this chapter,

is a principal.

''§ 950cc. Accessory after the fact

''Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.

''§ 950dd. Conviction of lesser offenses

''An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

''§ 950ee. Attempts

''(a) IN GENERAL.—Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military commission under this chapter may direct.

''(b) SCOPE OF OFFENSE.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

''(c) EFFECT OF CONSUMMATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

''§ 950ff. Conspiracy

''Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this subchapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950gg. Solicitation

''Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a military commission under this chapter may direct.

''§ 950hh. Murder of protected persons

''Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

''§ 950ii. Attacking civilians

''Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950jj. Attacking civilian objects

''Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

''§ 950kk. Attacking protected property

''Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

''§ 950ll. Pillaging

''Any person subject to this chapter who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be punished as a military commission under this chapter may direct.

''§ 950mm. Denying quarter

''Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

''§ 950nn. Taking hostages

''Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950oo. Employing poison or similar weapons

''Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or toxic properties, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950pp. Using protected persons as a shield

''Any person subject to this chapter who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack. or to shield, favor, or impede military operations, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950qq. Using protected property as a shield

''Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

''§ 950rr. Torture

''(a) OFFENSE.—Any person subject to this chapter who commits an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(b) SEVERE MENTAL PAIN OR SUFFERING DEFINED.—In this section, the term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''§ 950ss. Cruel, unusual, or inhumane treatment or punishment

''Any person subject to this chapter who subjects another person in their custody or under their physical control, regardless of nationality or physical location, to cruel, unusual, or inhumane treatment or punishment prohibited by the Fifth, Eighth, and 14th Amendments to the Constitution of the United States shall be punished, if death results to the victim, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950tt. Intentionally causing serious bodily injury

''(a) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(b) SERIOUS BODILY INJURY DEFINED.—In this section, the term 'serious bodily injury' means bodily injury which involves—

''(1) a substantial risk of death;

''(2) extreme physical pain;

''(3) protracted and obvious disfigurement; or

''(4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

''§ 950uu. Mutilating or maiming

''Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of

the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950vv. Murder in violation of the law of war

''Any person subject to this chapter who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

"§ 950ww. Destruction of property in violation of the law of war

''Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall punished as a military commission under this chapter may direct.

"§ 950xx. Using treachery or perfidy

''Any person subject to this chapter who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950yy. Improperly using a flag of truce

''Any person subject to this chapter who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

"§ 950zz. Improperly using a distinctive emblem

''Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

"§ 950aaa. Intentionally mistreating a dead body

''Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessary, shall be punished as a military commission under this chapter may direct.

"§ 950bbb. Rape

''Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

"§ 950ccc. Hijacking or hazarding a vessel or aircraft

''Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950ddd. Terrorism

''Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950eee. Providing material support for terrorism

''(a) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in section 950ddd of this title), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

''(b) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this section, the term 'material support or resources' has the meaning given that term in section 2339A(b) of title 18.

"§ 950fff. Wrongfully aiding the enemy

''Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

"§ 950ggg. Spying

''Any person subject to this chapter who, in violation of the law of war and with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

"§ 950hhh. Contempt

''A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.

"§ 950iii. Perjury and obstruction of justice

''A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to the military commission.''.

(2) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A and part II of subtitle A of title 10, United States Code, are each amended by inserting after the item relating to chapter 47 the following new item:

''Chapter 47A. Military Commissions 948a''.

(b) SUBMITTAL OF PROCEDURES TO CONGRESS.—

(1) SUBMITTAL OF PROCEDURES.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the procedures for military commissions prescribed under chapter 47A of title 10, United States Code (as added by subsection (a)).

(2) SUBMITTAL OF MODIFICATIONS.—Not later than 60 days before the date on which any proposed modification of the procedures described in paragraph (1) shall go into effect, the Secretary shall submit to the committees of Congress referred to in that paragraph a report describing such modification.

SEC. 5. AMENDMENTS TO OTHER LAWS.

(a) DETAINEE TREATMENT ACT OF 2005.—Section 1004(b) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 42 U.S.C. 200dd–1(b)) is amended—

(1) by striking ''may provide'' and inserting ''shall provide'';

(2) by inserting ''or investigation'' after ''criminal prosecution''; and

(3) by inserting ''whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,'' after ''described in that subsection,''.

(b) UNIFORM CODE OF MILITARY JUSTICE.—Chapter 47 of title, 10, United States Code (the Uniform Code of Military Justice), is amended as follows:

(1) Section 802 (article 2 of the Uniform Code of Military Justice) is amended by adding at the end the following new paragraph:

''(13) Lawful enemy combatants (as that term is defined in section 948a(3) of this title) who violate the law of war.''.

(2) Section 821 (article 21 of the Uniform Code of Military Justice) is amended by striking ''by statute or law of war''.

(3) Section 836(a) (article 36(a) of the Uniform Code of Military Justice) is amended by inserting ''(other than military commissions under chapter 47A of this title)'' after ''other military tribunals''.

(c) PUNITIVE ARTICLE OF CONSPIRACY.—Section 881 of title 10, United States Code (article 81 of the Uniform Code of Military Justice)), is amended—

(1) by inserting ''(a)'' before ''Any person''; and

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

''(b) Any person subject to this chapter or chapter 47A of this title who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.''.

(d) REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.—

(1) REVIEW BY SUPREME COURT.—Section 1259 of title 28, United States Code, is amended by adding at the end the following new paragraph:

''(5) Cases tried by military commission and reviewed by the United States Court of Appeals for the Armed Forces under section 950f of title 10.''.

(2) DETAINEE TREATMENT ACT OF 2005.—Section 1005(e) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 10 U.S.C. 801 note) is amended—

(A) in paragraphs (3) and (4), by striking ''United States Court of Appeals for the District of Columbia Circuit'' each place it appears and inserting ''United States Court of Appeals for the Armed Forces''; and

(B) in paragraph (3)—

(i) in subparagraph (A), by striking ''pursuant to Military Commission Order No. 1. dated August 31, 2005 (or any successor military order)'' and inserting ''by a military commission under chapter 47A of title 10, United States Code'';

(ii) by striking subparagraph (B) and inserting the following new subparagraph (B):

''(ii) GRANT OF REVIEW.—Review under this paragraph shall be as of right.'';

(iii) in subparagraph (C)—

(I) in clause (i)—

(aa) by striking ''pursuant to the military order'' and inserting ''by a military commission''; and

(bb) by striking ''at Guantanamo Bay, Cuba''; and

(II) in clause (ii), by striking ''pursuant to such military order'' and inserting ''by the military commission''; and

(iv) in subparagraph (D)(i), by striking ''specified in the military order'' and inserting ''specified for a military commission''.

SEC. 6. HABEAS CORPUS MATTERS.

(a) IN GENERAL.—Section 2241 of title 28, United States Code, is amended—

(1) by striking subsection (e) (as added by section 1005(e)(1) of Public Law 109–148 (119 Stat. 2742)) and by striking subsection (e) (as added by added by section 1405(e)(1) of Public Law 109–163 (119 Stat. 3477)); and

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

''(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained outside of the United States who—

''(A) is currently in United States custody; or

''(B) has been determined by the United States to have been properly detained as an enemy combatant.

''(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, treatment, or trial of an alien detained outside of the United States who—

''(A) is currently in United States custody; or

''(B) has been determined by the United States to have been properly detained as an enemy combatant.

''(3) In this subsection, the term 'United States', when used in a geographic sense, has the meaning given that term in section 1005(g) of the Detainee Treatment Act of 2005.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, treatment, or trial of an alien detained outside the United States (as that term is defined in section 2241(e)(3) of title 28, United States Code (as added by subsection (a)) since September 11, 2001.

SEC. 7. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.

(a) IN GENERAL.—No person may invoke the Geneva Conventions or any protocols thereto as an individually enforceable right in any civil action against an officer, employee, member of the Armed Forces or another agent of the United States Government, or against the United States, for the purpose of any claim for damages for death, injury, or damage to property in any court of the United States or its States or territories. This subsection does not affect the obligations of the United States under the Geneva Conventions.

(b) GENEVA CONVENTIONS DEFINED.—In this section, the term ''Geneva conventions'' means—

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

SEC. 8. REVISION TO WAR CRIMES OFFENSE UNDER FEDERAL CRIMINAL CODE.

(a) IN GENERAL.—Section 2441 of title 18, United States Code, is amended—

(1) in subsection (c), by striking paragraph (3) and inserting the following new paragraph (3):

''(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or''; and

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

''(d) COMMON ARTICLE 3 VIOLATIONS.—

''(1) GRAVE BREACH OF COMMON ARTICLE 3.—In subsection (c)(3), the term 'grave breach of common Article 3' means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

''(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

''(B) CRUEL, UNUSUAL, OR INHUMANE TREATMENT OR PUNISHMENT.—The act of a person who subjects another person in the custody or under the physical control of the United States Government, regardless of nationality or physical location, to cruel, unusual, or inhumane treatment or punishment prohibited by the Fifth, Eighth, and 14th Amendments to the Constitution of the United States.

''(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

''(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this section, one or more persons taking no active part in hostilities, including those placed out of active combat by sickness, wounds, detention, or any other cause.

''(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this section, one or more persons taking no active part in hostilities, including those placed out of active combat by sickness, wounds, detention, or any other cause, by disfiguring such person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of the body of such person or persons, without any legitimate medical or dental purpose.

''(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

''(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

''(H) SEXUAL ASSAULT OR ABUSE.—The act of person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

''(I) TAKING HOSTAGES.—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

''(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

''(A) the term 'severe mental pain or suffering' shall be applied for purposes of paragraph (1)(A) in accordance with the meaning given that term in section 2340(2) of this title;

''(B) the term 'serious bodily injury' shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title; and

''(C) the term 'sexual contact' shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title.

''(3) INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) of paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(4) INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.''.

(b) CONSTRUCTION.—Such section is further amended by adding at the end the following new subsections:

''(e) INAPPLICABILITY OF FOREIGN SOURCES OF LAW IN INTERPRETATION.—No foreign source of law shall be considered in defining or interpreting the obligations of the United States under this title.

''(f) NATURE OF CRIMINAL SANCTIONS.—The criminal sanctions in this section provide penal sanctions under the domestic law of the United States for grave breaches of the international conventions done at Geneva August 12, 1949. Such criminal sanctions do not alter the obligations of the United States under those international conventions.''.

(c) PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.—Such section is further amended by adding at the end the following new subsection:

''(g) PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.—The provisions of section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1) shall apply with respect to any criminal prosecution relating to the detention and interrogation of individuals described in such provisions that is grounded in an offense under

subsection (a) by reason of subsection (c)(3) with respect to actions occurring between September 11, 2001, and December 30, 2005.''.

SEC. 9. DETENTION COVERED BY REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.

Section 1005(e)(2)(B)(i) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2742; 10 U.S.C. 801 note) is amended by striking ''the Department of Defense at Guantanamo Bay, Cuba'' and inserting ''the United States''.

SEC. 10. SEVERABILITY.

If any provision of this Act or amendment made by a provision of this Act, or the application of such provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the amendments made by this Act, and the application of such provisions and amendments to any other person or circumstance, shall not be affected thereby.

SA 5076. Mr. DURBIN submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international and maritime borders of the United States, which was ordered to lie on the table; as follows;

On page ___, between lines _____ and _____ and insert the following:

(3) EXCEPTION TO RETROACTIVE APPLICABILITY.—Notwithstanding paragraph (2), the amendments made by this subsection shall take effect with respect to any individual appointed by the President to a position in any agency or department of the United States on the date of the enactment of this Act

---

SA 5077. Mr. BYRD submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie in the table; as follows:

On page 5, line 19, add at the end the following: ''The authority of the President to establish new military commissions under this section shall expire on December 31, 2011. However, the expiration of that authority shall not be construed to prohibit the conduct to finality of any proceedings of a military commission established under this section before that date.''.

SA 5078. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. 11. OVERSIGHT OF CENTRAL INTELLIGENCE AGENCY PROGRAMS.

(a) DIRECTOR OF CENTRAL INTELLIGENCE AGENCY REPORTS ON DETENTION AND INTERROGATION PROGRAM.—

(1) QUARTERLY REPORTS REQUIRED.—Not later than three months after the date of the enactment of this Act, and every three months thereafter, the Director of the Central Intelligence Agency shall submit to the congressional intelligence committees a report on the detention and interrogation program of the Central Intelligence Agency during the preceding three months.

(2) ELEMENTS.—In addition to any other matter necessary to keep the congressional intelligence committees fully and currently informed about the detention and interrogation program of the Central Intelligence Agency, each report under paragraph (1) shall include (but not be limited to), for the period covered by such report, the following:

(A) A description of any detention facility operated or used by the Central Intelligence Agency.

(B) A description of the detainee population, including—

(i) the name of each detainee;

(ii) where each detainee was apprehended;

(iii) the suspected activities on the basis of which each detainee is being held; and

(iv) where each detainee is being held.

(C) A description of each interrogation technique authorized for use and guidelines on the use of each such technique.

(D) A description of each legal opinion of the Department of Justice and the General Counsel of the Central Intelligence Agency that is applicable to the detention and interrogation program.

(E) The actual use of interrogation techniques.

(F) A description of the intelligence obtained as a result of the interrogation techniques utilized.

(G) Any violation of law or abuse under the detention and interrogation program by Central Intelligence Agency personnel, other United States Government personnel or contractors, or anyone else associated with the program.

(H) An assessment of the effectiveness of the detention and interrogation program.

(I) An appendix containing all guidelines and legal opinions applicable to the detention and interrogation program, if not included in a previous report under this subsection.

(b) DIRECTOR OF CENTRAL INTELLIGENCE AGENCY REPORTS ON DISPOSITION OF DETAINEES.—

(1) QUARTERLY REPORTS REQUIRED.—Not later than three months after the date of the enactment of this Act, and every three months thereafter, the Director of the Central Intelligence Agency shall submit to the congressional intelligence committees a report on the detainees who, during the preceding three months, were transferred out of the detention program of the Central Intelligence Agency.

(2) ELEMENTS.—In addition to any other matter necessary to keep the congressional intelligence committees fully and currently informed about transfers out of the detention program of the Central Intelligence Agency, each report under paragraph (1) shall include (but not be limited to), for the period covered by such report, the following:

(A) For each detainee who was transferred to the custody of the Department of Defense for prosecution before a military commission, the name of the detainee and a description of the activities that may be the subject of the prosecution.

(B) For each detainee who was transferred to the custody of the Department of Defense for any other purpose, the name of the detainee and the purpose of the transfer.

(C) For each detainee who was transferred to the custody of the Attorney General for prosecution in a United States district court, the name of the detainee and a description of the activities that may be the subject of the prosecution.

(D) For each detainee who was rendered or otherwise transferred to the custody of another nation—

(i) the name of the detainee and a description of the suspected terrorist activities of the detainee;

(ii) the rendition process, including the locations and custody from, through, and to which the detainee was rendered; and

(iii) the knowledge, participation, and approval of foreign governments in the rendition process.

(E) For each detainee who was rendered or otherwise transferred to the custody of another nation during or before the preceding three months—

(i) the knowledge of the United States Government, if any, concerning the subsequent treatment of the detainee and the efforts made by the United States Government to obtain that information;

(ii) the requests made by United States intelligence agencies to foreign governments for information to be obtained from the detainee;

(iii) the information provided to United States intelligence agencies by foreign governments relating to the interrogation of the detainee;

(iv) the current status of the detainee;

(v) the status of any parliamentary, judicial, or other investigation about the rendition or other transfer; and

(vi) any other information about potential risks to United States interests resulting from the rendition or other transfer.

(c) CIA INSPECTOR GENERAL AND GENERAL COUNSEL REPORTS.—

(1) ANNUAL REPORTS REQUIRED.—Not later than one year after the date of the enactment of this Act, and annually thereafter, the Inspector General of the Central Intelligence Agency and the General Counsel of the Central Intelligence Agency shall each submit to the congressional intelligence committees a report on the detention, interrogation and rendition programs of the Central Intelligence Agency during the preceding year.

(2) ELEMENTS.—Each report under paragraph (1) shall include, for the period covered by such report, the following:

(A) An assessment of the adherence of the Central Intelligence Agency to any applicable law in the conduct of the detention, interrogation, and rendition programs of the Central Intelligence Agency.

(B) Any violations of law or other abuse on the part of personnel of the Central Intelligence Agency, other United States Government personnel or contractors, or anyone else associated with the detention, interrogation, and rendition programs of the Central Intelligence Agency in the conduct of such programs.

(C) An assessment of the effectiveness of the detention, interrogation, and rendition programs of the Central Intelligence Agency.

(D) Any recommendations to ensure that the detention, interrogation, and rendition programs of the Central Intelligence Agency are conducted in a lawful and effective manner.

(3) CONSTRUCTION OF REPORTING REQUIREMENT.—Nothing in this subsection shall be construed to modify the authority and reporting obligations of the Inspector General of the Central Intelligence Agency under section 17 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q) or any other law.

(d) CERTIFICATION OF COMPLIANCE.—Not later than three months after the date of the enactment of this Act, and promptly upon any subsequent approval of interrogation techniques for use by the Central Intelligence Agency, the Attorney General shall submit to the congressional intelligence committees—

(1) an unclassified certification whether or not each approved interrogation technique complies with the Constitution of the United States and all applicable treaties, statutes, Executive orders, and regulations; and

(2) an explanation of why each approved technique complies with the Constitution of the United States and all applicable treaties, statutes, Executive orders, and regulations.

(e) FORM OF REPORTS.—Except as provided in subsection (d)(1), each report under this section shall be submitted in classified form.

(f) AVAILABILITY OF REPORTS.—Each report under this section shall be fully accessible by each member of the congressional intelligence committees.

(g) DEFINITIONS.—In this section:

(1) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term ''congressional intelligence committees'' means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) LAW.—The term ''law'' includes the Constitution of the United States and any applicable treaty, statute, Executive order, or regulation.

SA 5079. Mr. ROCKEFELLER submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. 11. DEADLINE FOR TRANSFER OF DETAINEES HELD BY THE CENTRAL INTELLIGENCE AGENCY.

(a) DEADLINE FOR TRANSFER.—Except as provided in subsection (b), not later than one year after the commencement of the detention of an individual by the Central Intelligence Agency, the Director of the Central Intelligence Agency shall—

(1) transfer the individual to the custody of the Department of Defense for prosecution before a military commission or for any other lawful purpose for which the Department of Defense may hold the individual;

(2) transfer the individual to the Attorney General for prosecution in a United States district court; or

(3) transfer the individual to a foreign nation in a manner consistent with the treaty obligations of the United States.

(b) EXTENSION.—The President may extend the period otherwise provided by subsection (a), as previously extended (if at all) under this subsection, for the transfer of an individual under this section by an additional period of 180 days if the President submits to the congressional intelligence committees a classified certification that it is in the national security interest of the United States to retain the individual in the custody of the Central Intelligence Agency for such additional period. A separate certification shall be submitted with respect to each extension under this subsection.

(c) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term ''congressional intelligence committees'' means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

SA 5080. Mr. MARTINEZ submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

On page 2, line 18, strike ''prevention'' and all that follows through line 21, and insert the following: ''effective prevention of unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband, as determined by the Secretary of Homeland Security.''.

SA 5081. Mr. SPECTER submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

On page 93, strike line 5 and all that follows through page 94, line 9.

SA 5082. Mr. SPECTER (for himself, Mr. LEAHY, and Mr. SMITH) submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

On page 94, line 2, strike the quotation marks and the second period and insert the following:

''(3)(A) Paragraph (1) shall not apply to an application for a writ of habeas corpus challenging the legality of the detention of an alien described in paragraph (1), including a claim of innocence, filed by or on behalf of such an alien who has been detained by the United States for longer than 1 year.

''(B) No second or successive application for a writ of habeas corpus may be filed by or on behalf of an alien described in paragraph (1).''.

SA 5083. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

On page 94, strike lines 10 through 12 and insert the following:

SEC. 8. REVISIONS TO DETAINEE TREATMENT ACT OF 2005.

(a) PERMISSIBLE INTERROGATION TECHNIQUES.—

(1) IN GENERAL.—Section 1002 of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2739; 10 U.S.C. 801 note) is amended by striking ''Department of Defense'' each place it appears in subsections (a) and (b) and inserting ''United States Government''.

(2) CONFORMING AMENDMENT.—The heading of such section is amended to read as follows:

''SEC. 1002. UNIFORM STANDARDS FOR THE INTERROGATION OF PERSONS UNDER THE DETENTION OF THE UNITED STATES GOVERNMENT.''.

SA 5084. Mr. KENNEDY submitted an amendment intended to be proposed to amendment SA 5036 proposed by Mr. FRIST to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

On page 83, between lines 8 and 9, insert the following:

(2) PROTECTION OF UNITED STATES PERSONS.—The Secretary of State shall notify other parties to the Geneva Conventions that—

(A) the United States has historically interpreted the law of war and the Geneva Conventions, including in particular common Article 3, to prohibit a wide variety of cruel, inhuman, and degrading treatment of members of the United States Armed Forces and United States persons;

(B) during and following previous armed conflicts, the United States Government has prosecuted persons for engaging in cruel, inhuman, and degrading treatment, including the use of waterboarding techniques, stress positions, including prolonged standing, the use of extreme temperatures, beatings, sleep deprivation, and other similar acts;

(C) this Act and the amendments made by this Act preserve the capacity of the United States to prosecute nationals of enemy powers for engaging in acts against members of the United States Armed Forces and United States persons that have been prosecuted by the United States as war crimes in the past; and

(D) should any United States person be subjected to the following acts, without limitation, under circumstances in which the Geneva Conventions are applicable, the United States would consider such acts to constitute punishable offenses under common Article 3 and would act accordingly: forcing the person to be naked, perform sexual acts, or pose in a sexual manner; applying beatings, electric shocks, burns, or other forms of physical pain to the person; waterboarding the person; using dogs on the person; inducing hypothermia or heat injury in the person; conducting a mock execution of the person; and depriving the person of necessary food, water, or medical care.

SA 5085. Mr. FRIST proposed an amendment to the bill S. 3930, to authorize trial by military commission for violations of the law of war, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Military Commissions Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Construction of Presidential authority to establish military commissions.
Sec. 3. Military commissions.
Sec. 4. Amendments to Uniform Code of Military Justice.
Sec. 5. Treaty obligations not establishing grounds for certain claims.
Sec. 6. Implementation of treaty obligations.
Sec. 7. Habeas corpus matters.
Sec. 8. Revisions to Detainee Treatment Act of 2005 relating to protection of certain United States Government personnel.
Sec. 9. Review of judgments of military commissions.
Sec. 10. Detention covered by review of decisions of Combatant Status Review Tribunals of propriety of detention.

SEC. 2. CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO ESTABLISH MILITARY COMMISSIONS.

The authority to establish military commissions under chapter 47A of title 10, United States Code, as added by section 3(a), may not be construed to alter or limit the authority of the President under the Constitution of the United States and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.

SEC. 3. MILITARY COMMISSIONS.

(a) MILITARY COMMISSIONS.—

(1) IN GENERAL.—Subtitle A of title 10, United States Code, is amended by inserting after chapter 47 the following new chapter:

"CHAPTER 47A—MILITARY COMMISSIONS

''Subchapter
''I. General Provisions 948a
''II. Composition of Military Commissions 948h
''III. Pre-Trial Procedure 948q
''IV. Trial Procedure 949a
''V. Sentences 949s
''VI. Post-Trial Procedure and Review of Military Commissions 950a
''VII. Punitive Matters 950p

''SUBCHAPTER I—GENERAL PROVISIONS

''Sec.
''948a. Definitions.
''948b. Military commissions generally.
''948c. Persons subject to military commissions.
''948d. Jurisdiction of military commissions.
''948e. Annual report to congressional committees.

"§ 948a. Definitions

''In this chapter:

''(1) UNLAWFUL ENEMY COMBATANT.—(A) The term 'unlawful enemy combatant' means—

''(i) a person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda, or associated forces); or

''(ii) a person who, before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense.

''(B) CO-BELLIGERENT.—In this paragraph, the term 'co-belligerent', with respect to the United States, means any State or armed force joining and directly engaged with the United States in hostilities or directly supporting hostilities against a common enemy.

''(2) LAWFUL ENEMY COMBATANT.—The term 'lawful enemy combatant' means a person who is—

''(A) a member of the regular forces of a State party engaged in hostilities against the United States;

''(B) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or

''(C) a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

''(3) ALIEN.—The term 'alien' means a person who is not a citizen of the United States.

''(4) CLASSIFIED INFORMATION.—The term 'classified information' means the following:

''(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

''(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

''(5) GENEVA CONVENTIONS.—The term 'Geneva Conventions' means the international conventions signed at Geneva on August 12, 1949.

"§ 948b. Military commissions generally

''(a) PURPOSE.—This chapter establishes procedures governing the use of military commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission.

''(b) AUTHORITY FOR MILITARY COMMISSIONS UNDER THIS CHAPTER.—The President is authorized to establish military commissions under this chapter for offenses triable by military commission as provided in this chapter.

''(c) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided in this chapter. The judicial construction and application of that chapter are not binding on military commissions established under this chapter.

''(d) INAPPLICABILITY OF CERTAIN PROVISIONS.—(1) The following provisions of this title shall not apply to trial by military commission under this chapter:

''(A) Section 810 (article 10 of the Uniform Code of Military Justice), relating to speedy trial, including any rule of courts-martial relating to speedy trial.

''(B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of the Uniform Code of Military Justice), relating to compulsory self-incrimination.

''(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

''(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by this chapter.

''(e) TREATMENT OF RULINGS AND PRECEDENTS.—The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial convened under chapter 47 of this title. The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not form the basis of any holding, decision, or other determination of a court-martial convened under that chapter.

''(f) STATUS OF COMMISSIONS UNDER COMMON ARTICLE 3.—A military commission established under this chapter is a regularly constituted court, affording all the necessary 'judicial guarantees which are recognized as indispensable by civilized peoples' for purposes of common Article 3 of the Geneva Conventions.

''(g) GENEVA CONVENTIONS NOT ESTABLISHING SOURCE OF RIGHTS.—No alien unlawful enemy combatant subject to trial by military commission under this chapter may invoke the Geneva Conventions as a source of rights.

"§ 948c. Persons subject to military commissions

''Any alien unlawful enemy combatant is subject to trial by military commission under this chapter.

"§ 948d. Jurisdiction of military commissions

''(a) JURISDICTION.—A military commission under this chapter shall have jurisdiction to try any offense made punishable by this chapter or the law of war when committed by an alien unlawful enemy combatant before, on, or after September 11, 2001.

''(b) LAWFUL ENEMY COMBATANTS.—Military commissions under this chapter shall not have jurisdiction over lawful enemy combatants. Lawful enemy combatants who violate the law of war are subject to chapter 47 of this title. Courts-martial established under that chapter shall have jurisdiction to try a lawful enemy combatant for any offense made punishable under this chapter.

''(c) DETERMINATION OF UNLAWFUL ENEMY COMBATANT STATUS DISPOSITIVE.—A finding, whether before, on, or after the date of the enactment of the Military Commissions Act of 2006, by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense that a person is an unlawful enemy combatant is dispositive for purposes of jurisdiction for trial by military commission under this chapter.

''(d) PUNISHMENTS.—A military commission under this chapter may, under such limitations as the Secretary of Defense may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter or the law of war.

"§ 948e. Annual report to congressional committees

''(a) ANNUAL REPORT REQUIRED.—Not later than December 31 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions under this chapter during such year.

''(b) FORM.—Each report under this section shall be submitted in unclassified form, but may include a classified annex.

''SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

''Sec.
''948h. Who may convene military commissions.
''948i. Who may serve on military commissions.
''948j. Military judge of a military commission.
''948k. Detail of trial counsel and defense counsel.
''948l. Detail or employment of reporters and interpreters.
''948m. Number of members; excuse of members; absent and additional members.

"§ 948h. Who may convene military commissions

''Military commissions under this chapter may be convened by the Secretary of Defense or by any officer or official of the United States designated by the Secretary for that purpose.

"§ 948i. Who may serve on military commissions

''(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter.

''(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members of the commission such members of the armed forces eligible under subsection (a), as in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

''(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

"§ 948j. Military judge of a military commission

''(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military

commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which he has been detailed.

''(b) QUALIFICATIONS.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

''(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person is eligible to act as military judge in a case of a military commission under this chapter if he is the accuser or a witness or has acted as investigator or a counsel in the same case.

''(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members of the commission except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may he vote with the members of the commission.

''(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to him by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

''(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter shall not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to his performance of duty as a military judge on the military commission.

''§ 948k. Detail of trial counsel and defense counsel

''(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

''(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

''(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable after the swearing of charges against the accused.

''(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such commissions.

''(b) TRIAL COUNSEL.—Subject to subsection (e), trial counsel detailed for a military commission under this chapter must be—

''(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice) who—

''(A) is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(B) is certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member; or

''(2) a civilian who—

''(A) is a member of the bar of a Federal court or of the highest court of a State; and

''(B) is otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

''(c) MILITARY DEFENSE COUNSEL.—Subject to subsection (e), military defense counsel detailed for a military commission under this chapter must be a judge advocate (as so defined) who is—

''(1) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(2) certified as competent to perform duties as defense counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member.

''(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).

''(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

''(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

''§ 948l. Detail or employment of reporters and interpreters

''(a) COURT REPORTERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter shall detail to or employ for the commission qualified court reporters, who shall make a verbatim recording of the proceedings of and testimony taken before the commission.

''(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the commission and, as necessary, for trial counsel and defense counsel and for the accused.

''(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the commission, who shall also be responsible for preparing the record of the proceedings.

''§ 948m. Number of members; excuse of members; absent and additional members

''(a) NUMBER OF MEMBERS.—(1) A military commission under this chapter shall, except as provided in paragraph (2), have at least five members.

''(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of members prescribed by section 949m(c) of this title.

''(b) EXCUSE OF MEMBERS.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

''(1) as a result of challenge;

''(2) by the military judge for physical disability or other good cause; or

''(3) by order of the convening authority for good cause.

''(c) ABSENT AND ADDITIONAL MEMBERS.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

''SUBCHAPTER III—PRE-TRIAL PROCEDURE

''Sec.
''948q. Charges and specifications.
''948r. Compulsory self-incrimination prohibited; treatment of statements obtained by torture and other statements.
''948s. Service of charges.

''§ 948q. Charges and specifications

''(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter shall be signed by a person subject to chapter 47 of this title under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

''(1) that the signer has personal knowledge of, or reason to believe, the matters set forth therein; and

''(2) that they are true in fact to the best of the signer's knowledge and belief.

''(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges against him as soon as practicable.

''§ 948r. Compulsory self-incrimination prohibited; treatment of statements obtained by torture and other statements

''(a) IN GENERAL.—No person shall be required to testify against himself at a proceeding of a military commission under this chapter.

''(b) EXCLUSION OF STATEMENTS OBTAINED BY TORTURE.—A statement obtained by use of torture shall not be admissible in a military commission under this chapter, except against a person accused of torture as evidence that the statement was made.

''(c) STATEMENTS OBTAINED BEFORE ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained before December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005) in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and

''(2) the interests of justice would best be served by admission of the statement into evidence.

''(d) STATEMENTS OBTAINED AFTER ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained on or after December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005) in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders the statement reliable and possessing sufficient probative value;

''(2) the interests of justice would best be served by admission of the statement into evidence; and

''(3) the interrogation methods used to obtain the statement do not amount to cruel, inhuman, or degrading treatment prohibited by section 1003 of the Detainee Treatment Act of 2005.

''§ 948s. Service of charges

''The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused

and military defense counsel a copy of the charges upon which trial is to be had. Such charges shall be served in English and, if appropriate, in another language that the accused understands. Such service shall be made sufficiently in advance of trial to prepare a defense.

''SUBCHAPTER IV—TRIAL PROCEDURE

''Sec.
''949a. Rules.
''949b. Unlawfully influencing action of military commission.
''949c. Duties of trial counsel and defense counsel.
''949d. Sessions.
''949e. Continuances.
''949f. Challenges.
''949g. Oaths.
''949h. Former jeopardy.
''949i. Pleas of the accused.
''949j. Opportunity to obtain witnesses and other evidence.
''949k. Defense of lack of mental responsibility.
''949l. Voting and rulings.
''949m. Number of votes required.
''949n. Military commission to announce action.
''949o. Record of trial.

''§ 949a. Rules

''(a) PROCEDURES AND RULES OF EVIDENCE.—Pretrial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense, in consultation with the Attorney General. Such procedures shall, so far as the Secretary considers practicable or consistent with military or intelligence activities, apply the principles of law and the rules of evidence in trial by general courts-martial. Such procedures and rules of evidence may not be contrary to or inconsistent with this chapter.

''(b) RULES FOR MILITARY COMMISSION.—(1) Notwithstanding any departures from the law and the rules of evidence in trial by general courts-martial authorized by subsection (a), the procedures and rules of evidence in trials by military commission under this chapter shall include the following:

''(A) The accused shall be permitted to present evidence in his defense, to cross-examine the witnesses who testify against him, and to examine and respond to evidence admitted against him on the issue of guilt or innocence and for sentencing, as provided for by this chapter.

''(B) The accused shall be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

''(C) The accused shall receive the assistance of counsel as provided for by section 948k.

''(D) The accused shall be permitted to represent himself, as provided for by paragraph (3).

''(2) In establishing procedures and rules of evidence for military commission proceedings, the Secretary of Defense may prescribe the following provisions:

''(A) Evidence shall be admissible if the military judge determines that the evidence would have probative value to a reasonable person.

''(B) Evidence shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or other authorization.

''(C) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence complies with the provisions of section 948r of this title.

''(D) Evidence shall be admitted as authentic so long as—

''(i) the military judge of the military commission determines that there is sufficient basis to find that the evidence is what it is claimed to be; and

''(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.

''(E)(i) Except as provided in clause (ii), hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission if the proponent of the evidence makes known to the adverse party, sufficiently in advance to provide the adverse party with a fair opportunity to meet the evidence, the intention of the proponent to offer the evidence, and the particulars of the evidence (including information on the general circumstances under which the evidence was obtained). The disclosure of evidence under the preceding sentence is subject to the requirements and limitations applicable to the disclosure of classified information in section 949j(c) of this title.

''(ii) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial shall not be admitted in a trial by military commission if the party opposing the admission of the evidence demonstrates that the evidence is unreliable or lacking in probative value.

''(F) The military judge shall exclude any evidence the probative value of which is substantially outweighed—

''(i) by the danger of unfair prejudice, confusion of the issues, or misleading the commission; or

''(ii) by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

''(3)(A) The accused in a military commission under this chapter who exercises the right to self-representation under paragraph (1)(D) shall conform his deportment and the conduct of the defense to the rules of evidence, procedure, and decorum applicable to trials by military commission.

''(B) Failure of the accused to conform to the rules described in subparagraph (A) may result in a partial or total revocation by the military judge of the right of self-representation under paragraph (1)(D). In such case, the detailed defense counsel of the accused or an appropriately authorized civilian counsel shall perform the functions necessary for the defense.

''(c) DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Defense may delegate the authority of the Secretary to prescribe regulations under this chapter.

''(d) NOTIFICATION TO CONGRESSIONAL COMMITTEES OF CHANGES TO PROCEDURES.—Not later than 60 days before the date on which any proposed modification of the procedures in effect for military commissions under this chapter goes into effect, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing the modification.

''§ 949b. Unlawfully influencing action of military commission

''(a) IN GENERAL.—(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or his functions in the conduct of the proceedings.

''(2) No person may attempt to coerce or, by any unauthorized means, influence—

''(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

''(B) the action of any convening, approving, or reviewing authority with respect to his judicial acts; or

''(C) the exercise of professional judgment by trial counsel or defense counsel.

''(3) Paragraphs (1) and (2) do not apply with respect to—

''(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

''(B) statements and instructions given in open proceedings by a military judge or counsel.

''(b) PROHIBITION ON CONSIDERATION OF ACTIONS ON COMMISSION IN EVALUATION OF FITNESS.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

''(1) consider or evaluate the performance of duty of any member of a military commission under this chapter; or

''(2) give a less favorable rating or evaluation to any commissioned officer because of the zeal with which such officer, in acting as counsel, represented any accused before a military commission under this chapter.

''§ 949c. Duties of trial counsel and defense counsel

''(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.

''(b) DEFENSE COUNSEL.—(1) The accused shall be represented in his defense before a military commission under this chapter as provided in this subsection.

''(2) The accused shall be represented by military counsel detailed under section 948k of this title.

''(3) The accused may be represented by civilian counsel if retained by the accused, but only if such civilian counsel—

''(A) is a United States citizen;

''(B) is admitted to the practice of law in a State, district, or possession of the United States or before a Federal court;

''(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

''(D) has been determined to be eligible for access to classified information that is classified at the level Secret or higher; and

''(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

''(4) Civilian defense counsel shall protect any classified information received during the course of representation of the accused in accordance with all applicable law governing the protection of classified information and may not divulge such information to any person not authorized to receive it.

''(5) If the accused is represented by civilian counsel, detailed military counsel shall act as associate counsel.

''(6) The accused is not entitled to be represented by more than one military counsel.

However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in that person's sole discretion, may detail additional military counsel to represent the accused.

''(7) Defense counsel may cross-examine each witness for the prosecution who testifies before a military commission under this chapter.

''§ 949d. Sessions

''(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—(1) At any time after the service of charges which have been referred for trial by military commission under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

''(A) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

''(B) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

''(C) if permitted by regulations prescribed by the Secretary of Defense, receiving the pleas of the accused; and

''(D) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 949a of this title and which does not require the presence of the members.

''(2) Except as provided in subsections (c) and (e), any proceedings under paragraph (1) shall—

''(A) be conducted in the presence of the accused, defense counsel, and trial counsel; and

''(B) be made part of the record.

''(b) PROCEEDINGS IN PRESENCE OF ACCUSED.—Except as provided in subsections (c) and (e), all proceedings of a military commission under this chapter, including any consultation of the members with the military judge or counsel, shall—

''(1) be in the presence of the accused, defense counsel, and trial counsel; and

''(2) be made a part of the record.

''(c) DELIBERATION OR VOTE OF MEMBERS.—When the members of a military commission under this chapter deliberate or vote, only the members may be present.

''(d) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter, but only in accordance with this subsection.

''(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) only upon making a specific finding that such closure is necessary to—

''(A) protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

''(B) ensure the physical safety of individuals.

''(3) A finding under paragraph (2) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

''(e) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

''(1) to ensure the physical safety of individuals; or

''(2) to prevent disruption of the proceedings by the accused.

''(f) PROTECTION OF CLASSIFIED INFORMATION.—

''(1) NATIONAL SECURITY PRIVILEGE.—(A) Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. The rule in the preceding sentence applies to all stages of the proceedings of military commissions under this chapter.

''(B) The privilege referred to in subparagraph (A) may be claimed by the head of the executive or military department or government agency concerned based on a finding by the head of that department or agency that—

''(i) the information is properly classified; and

''(ii) disclosure of the information would be detrimental to the national security.

''(C) A person who may claim the privilege referred to in subparagraph (A) may authorize a representative, witness, or trial counsel to claim the privilege and make the finding described in subparagraph (B) on behalf of such person. The authority of the representative, witness, or trial counsel to do so is presumed in the absence of evidence to the contrary.

''(2) INTRODUCTION OF CLASSIFIED INFORMATION.—

''(A) ALTERNATIVES TO DISCLOSURE.—To protect classified information from disclosure, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(i) the deletion of specified items of classified information from documents to be introduced as evidence before the military commission;

''(ii) the substitution of a portion or summary of the information for such classified documents; or

''(iii) the substitution of a statement of relevant facts that the classified information would tend to prove.

''(B) PROTECTION OF SOURCES, METHODS, OR ACTIVITIES.—The military judge, upon motion of trial counsel, shall permit trial counsel to introduce otherwise admissible evidence before the military commission, while protecting from disclosure the sources, methods, or activities by which the United States acquired the evidence if the military judge finds that (i) the sources, methods, or activities by which the United States acquired the evidence are classified, and (ii) the evidence is reliable. The military judge may require trial counsel to present to the military commission and the defense, to the extent practicable and consistent with national security, an unclassified summary of the sources, methods, or activities by which the United States acquired the evidence.

''(C) ASSERTION OF NATIONAL SECURITY PRIVILEGE AT TRIAL.—During the examination of any witness, trial counsel may object to any question, line of inquiry, or motion to admit evidence that would require the disclosure of classified information. Following such an objection, the military judge shall take suitable action to safeguard such classified information. Such action may include the review of trial counsel's claim of privilege by the military judge in camera and on an ex parte basis, and the delay of proceedings to permit trial counsel to consult with the department or agency concerned as to whether the national security privilege should be asserted.

''(3) CONSIDERATION OF PRIVILEGE AND RELATED MATERIALS.—A claim of privilege under this subsection, and any materials submitted in support thereof, shall, upon request of the Government, be considered by the military judge in camera and shall not be disclosed to the accused.

''(4) ADDITIONAL REGULATIONS.—The Secretary of Defense may prescribe additional regulations, consistent with this subsection, for the use and protection of classified information during proceedings of military commissions under this chapter. A report on any regulations so prescribed, or modified, shall be submitted to the Committees on Armed Services of the Senate and the House of Representatives not later than 60 days before the date on which such regulations or modifications, as the case may be, go into effect.

''§ 949e. Continuances

''The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

''§ 949f. Challenges

''(a) CHALLENGES AUTHORIZED.—The military judge and members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the commission. The military judge shall determine the relevance and validity of challenges for cause. The military judge may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

''(b) PEREMPTORY CHALLENGES.—Each accused and the trial counsel are entitled to one peremptory challenge. The military judge may not be challenged except for cause.

''(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

''§ 949g. Oaths

''(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

''(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary of Defense. Those regulations may provide that—

''(A) an oath to perform faithfully duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty; and

''(B) if such an oath is taken, such oath need not again be taken at the time the judge advocate or other person is detailed to that duty.

''(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

''§ 949h. Former jeopardy

''(a) IN GENERAL.—No person may, without his consent, be tried by a military commission under this chapter a second time for the same offense.

''(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

''§ 949i. Pleas of the accused

''(a) ENTRY OF PLEA OF NOT GUILTY.—If an accused in a military commission under this

chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

''(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without a vote. The finding shall constitute the finding of the commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

''§ 949j. Opportunity to obtain witnesses and other evidence

''(a) RIGHT OF DEFENSE COUNSEL.—Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense.

''(b) PROCESS FOR COMPULSION.—Process issued in a military commission under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

''(1) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

''(2) shall run to any place where the United States shall have jurisdiction thereof.

''(c) PROTECTION OF CLASSIFIED INFORMATION.—(1) With respect to the discovery obligations of trial counsel under this section, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(A) the deletion of specified items of classified information from documents to be made available to the accused;

''(B) the substitution of a portion or summary of the information for such classified documents; or

''(C) the substitution of a statement admitting relevant facts that the classified information would tend to prove.

''(2) The military judge, upon motion of trial counsel, shall authorize trial counsel, in the course of complying with discovery obligations under this section, to protect from disclosure the sources, methods, or activities by which the United States acquired evidence if the military judge finds that the sources, methods, or activities by which the United States acquired such evidence are classified. The military judge may require trial counsel to provide, to the extent practicable, an unclassified summary of the sources, methods, or activities by which the United States acquired such evidence.

''(d) EXCULPATORY EVIDENCE.—(1) As soon as practicable, trial counsel shall disclose to the defense the existence of any evidence known to trial counsel that reasonably tends to exculpate the accused. Where exculpatory evidence is classified, the accused shall be provided with an adequate substitute in accordance with the procedures under subsection (c).

''(2) In this subsection, the term 'evidence known to trial counsel', in the case of exculpatory evidence, means exculpatory evidence that the prosecution would be required to disclose in a trial by general court-martial under chapter 47 of this title.

''§ 949k. Defense of lack of mental responsibility

''(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

''(b) BURDEN OF PROOF.—The accused in a military commission under this chapter has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

''(c) FINDINGS FOLLOWING ASSERTION OF DEFENSE.—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue in a military commission under this chapter, the military judge shall instruct the members of the commission as to the defense of lack of mental responsibility under this section and shall charge them to find the accused—

''(1) guilty;

''(2) not guilty; or

''(3) subject to subsection (d), not guilty by reason of lack of mental responsibility.

''(d) MAJORITY VOTE REQUIRED FOR FINDING.—The accused shall be found not guilty by reason of lack of mental responsibility under subsection (c)(3) only if a majority of the members present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

''§ 949l. Voting and rulings

''(a) VOTE BY SECRET WRITTEN BALLOT.—Voting by members of a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

''(b) RULINGS.—(1) The military judge in a military commission under this chapter shall rule upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.

''(2) Any ruling made by the military judge upon a question of law or an interlocutory question (other than the factual issue of mental responsibility of the accused) is conclusive and constitutes the ruling of the military commission. However, a military judge may change his ruling at any time during the trial.

''(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote is taken of the findings of a military commission under this chapter, the military judge shall, in the presence of the accused and counsel, instruct the members as to the elements of the offense and charge the members—

''(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

''(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

''(3) that, if there is reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

''(4) that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the United States.

''§ 949m. Number of votes required

''(a) CONVICTION.—No person may be convicted by a military commission under this chapter of any offense, except as provided in section 949i(b) of this title or by concurrence of two-thirds of the members present at the time the vote is taken.

''(b) SENTENCES.—(1) No person may be sentenced by a military commission to suffer death, except insofar as—

''(A) the penalty of death is expressly authorized under this chapter or the law of war for an offense of which the accused has been found guilty;

''(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

''(C) the accused is convicted of the offense by the concurrence of all the members present at the time the vote is taken; and

''(D) all the members present at the time the vote is taken concur in the sentence of death.

''(2) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the members present at the time the vote is taken.

''(3) All other sentences shall be determined by a military commission by the concurrence of two-thirds of the members present at the time the vote is taken.

''(c) NUMBER OF MEMBERS REQUIRED FOR PENALTY OF DEATH.—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of members of the military commission under this chapter shall be not less than 12.

''(2) In any case described in paragraph (1) in which 12 members are not reasonably available because of physical conditions or military exigencies, the convening authority shall specify a lesser number of members for the military commission (but not fewer than 9 members), and the military commission may be assembled, and the trial held, with not fewer than the number of members so specified. In such a case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

''§ 949n. Military commission to announce action

''A military commission under this chapter shall announce its findings and sentence to the parties as soon as determined.

''§ 949o. Record of trial

''(a) RECORD; AUTHENTICATION.—Each military commission under this chapter shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member of the commission if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. Where appropriate, and as provided in regulations prescribed by the Secretary of Defense, the record of a military commission under this chapter may contain a classified annex.

''(b) COMPLETE RECORD REQUIRED.—A complete record of the proceedings and testimony shall be prepared in every military commission under this chapter.

''(c) PROVISION OF COPY TO ACCUSED.—A copy of the record of the proceedings of the military commission under this chapter shall be given the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall be given a redacted version of the record consistent with the requirements of section 949d of this title. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

''SUBCHAPTER V—SENTENCES

''Sec.
''949s. Cruel or unusual punishments prohibited.
''949t. Maximum limits.
''949u. Execution of confinement.

"§ 949s. Cruel or unusual punishments prohibited

''Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

"§ 949t. Maximum limits

''The punishment which a military commission under this chapter may direct for an offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

"§ 949u. Execution of confinement

''(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

''(1) in any place of confinement under the control of any of the armed forces; or

''(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

''(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

''SUBCHAPTER VI—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

''Sec.
''950a. Error of law; lesser included offense.
''950b. Review by the convening authority.
''950c. Appellate referral; waiver or withdrawal of appeal.
''950d. Appeal by the United States.
''950e. Rehearings.
''950f. Review by Court of Military Commission Review.
''950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court.
''950h. Appellate counsel.
''950i. Execution of sentence; procedures for execution of sentence of death.
''950j. Finality or proceedings, findings, and sentences.

"§ 950a. Error of law; lesser included offense

''(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

''(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

"§ 950b. Review by the convening authority

''(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

''(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

''(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after the accused has been given an authenticated record of trial under section 949o(c) of this title.

''(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

''(3) The accused may waive his right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

''(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

''(2)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

''(B) Subject to regulations prescribed by the Secretary of Defense, action on the sentence under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

''(C) In taking action under this paragraph, the convening authority may, in his sole discretion, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

''(3) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in his sole discretion, may—

''(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

''(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

''(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

''(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in his sole discretion, order a proceeding in revision or a rehearing.

''(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—

''(i) there is an apparent error or omission in the record; or

''(ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

''(B) In no case may a proceeding in revision—

''(i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;

''(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or

''(iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

''(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

"§ 950c. Appellate referral; waiver or withdrawal of appeal

''(a) AUTOMATIC REFERRAL FOR APPELLATE REVIEW.—Except as provided under subsection (b), in each case in which the final decision of a military commission (as approved by the convening authority) includes a finding of guilty, the convening authority shall refer the case to the Court of Military Commission Review. Any such referral shall be made in accordance with procedures prescribed under regulations of the Secretary.

''(b) WAIVER OF RIGHT OF REVIEW.—(1) In each case subject to appellate review under section 950f of this title, except a case in which the sentence as approved under section 950b of this title extends to death, the accused may file with the convening authority a statement expressly waiving the right of the accused to such review.

''(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

''(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice on the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

''(c) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

''(d) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

"§ 950d. Appeal by the United States

''(a) INTERLOCUTORY APPEAL.—(1) Except as provided in paragraph (2), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the Court of Military Commission Review of any order or ruling of the military judge that—

''(A) terminates proceedings of the military commission with respect to a charge or specification;

''(B) excludes evidence that is substantial proof of a fact material in the proceeding; or

''(C) relates to a matter under subsection (d), (e), or (f) of section 949d of this title or section 949j(c) of this title.

''(2) The United States may not appeal under paragraph (1) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

''(b) NOTICE OF APPEAL.—The United States shall take an appeal of an order or ruling under subsection (a) by filing a notice of appeal with the military judge within five days after the date of such order or ruling.

''(c) APPEAL.—An appeal under this section shall be forwarded, by means specified

in regulations prescribed the Secretary of Defense, directly to the Court of Military Commission Review. In ruling on an appeal under this section, the Court may act only with respect to matters of law.

''(d) APPEAL FROM ADVERSE RULING.—The United States may appeal an adverse ruling on an appeal under subsection (c) to the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in the Court of Appeals within 10 days after the date of such ruling. Review under this subsection shall be at the discretion of the Court of Appeals.

''§ 950e. Rehearings

''(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

''(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

''(A) the accused may not be tried for any offense of which he was found not guilty by the first military commission; and

''(B) no sentence in excess of or more than the original sentence may be imposed unless—

''(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

''(ii) the sentence prescribed for the offense is mandatory.

''(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

''§ 950f. Review by Court of Military Commission Review

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Court of Military Commission Review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing military commission decisions under this chapter, the court may sit in panels or as a whole in accordance with rules prescribed by the Secretary.

''(b) APPELLATE MILITARY JUDGES.—The Secretary shall assign appellate military judges to a Court of Military Commission Review. Each appellate military judge shall meet the qualifications for military judges prescribed by section 948j(b) of this title or shall be a civilian with comparable qualifications. No person may be serve as an appellate military judge in any case in which that person acted as a military judge, counsel, or reviewing official.

''(c) CASES TO BE REVIEWED.—The Court of Military Commission Review, in accordance with procedures prescribed under regulations of the Secretary, shall review the record in each case that is referred to the Court by the convening authority under section 950c of this title with respect to any matter of law raised by the accused.

''(d) SCOPE OF REVIEW.—In a case reviewed by the Court of Military Commission Review under this section, the Court may act only with respect to matters of law.

''§ 950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court

''(a) EXCLUSIVE APPELLATE JURISDICTION.—(1)(A) Except as provided in subparagraph (B), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission (as approved by the convening authority) under this chapter.

''(B) The Court of Appeals may not review the final judgment until all other appeals under this chapter have been waived or exhausted.

''(2) A petition for review must be filed by the accused in the Court of Appeals not later than 20 days after the date on which—

''(A) written notice of the final decision of the Court of Military Commission Review is served on the accused or on defense counsel; or

''(B) the accused submits, in the form prescribed by section 950c of this title, a written notice waiving the right of the accused to review by the Court of Military Commission Review under section 950f of this title.

''(b) STANDARD FOR REVIEW.—In a case reviewed by it under this section, the Court of Appeals may act only with respect to matters of law.

''(c) SCOPE OF REVIEW.—The jurisdiction of the Court of Appeals on an appeal under subsection (a) shall be limited to the consideration of—

''(1) whether the final decision was consistent with the standards and procedures specified in this chapter; and

''(2) to the extent applicable, the Constitution and the laws of the United States.

''(d) SUPREME COURT.—The Supreme Court may review by writ of certiorari the final judgment of the Court of Appeals pursuant to section 1257 of title 28.

''§ 950h. Appellate counsel

''(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications for counsel appearing before military commissions under this chapter.

''(b) REPRESENTATION OF UNITED STATES.—Appellate counsel appointed under subsection (a)—

''(1) shall represent the United States in any appeal or review proceeding under this chapter before the Court of Military Commission Review; and

''(2) may, when requested to do so by the Attorney General in a case arising under this chapter, represent the United States before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court.

''(c) REPRESENTATION OF ACCUSED.—The accused shall be represented by appellate counsel appointed under subsection (a) before the Court of Military Commission Review, the United States Court of Appeals for the District of Columbia Circuit, and the Supreme Court, and by civilian counsel if retained by the accused. Any such civilian counsel shall meet the qualifications under paragraph (3) of section 949c(b) of this title for civilian counsel appearing before military commissions under this chapter and shall be subject to the requirements of paragraph (4) of that section.

''§ 950i. Execution of sentence; procedures for execution of sentence of death

''(a) IN GENERAL.—The Secretary of Defense is authorized to carry out a sentence imposed by a military commission under this chapter in accordance with such procedures as the Secretary may prescribe.

''(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

''(c) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death, approval under subsection (b)).

''(2) A judgment as to legality of proceedings is final for purposes of paragraph (1) when—

''(A) the time for the accused to file a petition for review by the Court of Appeals for the District of Columbia Circuit has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court; or

''(B) review is completed in accordance with the judgment of the United States Court of Appeals for the District of Columbia Circuit and—

''(i) a petition for a writ of certiorari is not timely filed;

''(ii) such a petition is denied by the Supreme Court; or

''(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

''(d) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.

''§ 950j. Finality or proceedings, findings, and sentences

''(a) FINALITY.—The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, except as otherwise provided by the President.

''(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES AND ACTIONS.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of the enactment of the Military Commissions Act of 2006, relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.

''SUBCHAPTER VII—PUNITIVE MATTERS

''Sec.
''950p. Statement of substantive offenses.
''950q. Principals.
''950r. Accessory after the fact.
''950s. Conviction of lesser included offense.
''950t. Attempts.
''950u. Solicitation.
''950v. Crimes triable by military commissions.
''950w. Perjury and obstruction of justice; contempt.

''§ 950p. Statement of substantive offenses

''(a) PURPOSE.—The provisions of this subchapter codify offenses that have traditionally been triable by military commissions. This chapter does not establish new

crimes that did not exist before its enactment, but rather codifies those crimes for trial by military commission.

''(b) EFFECT.—Because the provisions of this subchapter (including provisions that incorporate definitions in other provisions of law) are declarative of existing law, they do not preclude trial for crimes that occurred before the date of the enactment of this chapter.

''§ 950q. Principals

''Any person is punishable as a principal under this chapter who—

''(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission;

''(2) causes an act to be done which if directly performed by him would be punishable by this chapter; or

''(3) is a superior commander who, with regard to acts punishable under this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts or had done so and who failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

''§ 950r. Accessory after the fact

''Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.

''§ 950s. Conviction of lesser included offense

''An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

''§ 950t. Attempts

''(a) IN GENERAL.—Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military commission under this chapter may direct.

''(b) SCOPE OF OFFENSE.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

''(c) EFFECT OF CONSUMMATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

''§ 950u. Solicitation

''Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a military commission under this chapter may direct.

''§ 950v. Crimes triable by military commissions

''(a) DEFINITIONS AND CONSTRUCTION.—In this section:

''(1) MILITARY OBJECTIVE.—The term 'military objective' means—

''(A) combatants; and

''(B) those objects during an armed conflict—

''(i) which, by their nature, location, purpose, or use, effectively contribute to the opposing force's war-fighting or war-sustaining capability; and

''(ii) the total or partial destruction, capture, or neutralization of which would constitute a definite military advantage to the attacker under the circumstances at the time of the attack.

''(2) PROTECTED PERSON.—The term 'protected person' means any person entitled to protection under one or more of the Geneva Conventions, including—

''(A) civilians not taking an active part in hostilities;

''(B) military personnel placed hors de combat by sickness, wounds, or detention; and

''(C) military medical or religious personnel.

''(3) PROTECTED PROPERTY.—The term 'protected property' means property specifically protected by the law of war (such as buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, or places where the sick and wounded are collected), if such property is not being used for military purposes or is not otherwise a military objective. Such term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

''(4) CONSTRUCTION.—The intent specified for an offense under paragraph (1), (2), (3), (4), or (12) of subsection (b) precludes the applicability of such offense with regard to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(b) OFFENSES.—The following offenses shall be triable by military commission under this chapter at any time without limitation:

''(1) MURDER OF PROTECTED PERSONS.—Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(2) ATTACKING CIVILIANS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(3) ATTACKING CIVILIAN OBJECTS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

''(4) ATTACKING PROTECTED PROPERTY.—Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

''(5) PILLAGING.—Any person subject to this chapter who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be punished as a military commission under this chapter may direct.

''(6) DENYING QUARTER.—Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

''(7) TAKING HOSTAGES.—Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(8) EMPLOYING POISON OR SIMILAR WEAPONS.—Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or toxic properties, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(9) USING PROTECTED PERSONS AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(10) USING PROTECTED PROPERTY AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

''(11) TORTURE.—

''(A) OFFENSE.—Any person subject to this chapter who commits an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) SEVERE MENTAL PAIN OR SUFFERING DEFINED.—In this section, the term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''(12) CRUEL OR INHUMAN TREATMENT.—

''(A) OFFENSE.—Any person subject to this chapter who commits an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control shall be punished, if death results to the victim, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by

such punishment, other than death, as a military commission under this chapter may direct.

''(B) DEFINITIONS.—In this paragraph:

''(i) The term 'serious physical pain or suffering' means bodily injury that involves—

''(I) a substantial risk of death;

''(II) extreme physical pain;

''(III) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(IV) significant loss or impairment of the function of a bodily member, organ, or mental faculty.

''(ii) The term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''(iii) The term 'serious mental pain or suffering' has the meaning given the term 'severe mental pain or suffering' in section 2340(2) of title 18, except that—

''(I) the term 'serious' shall replace the term 'severe' where it appears; and

''(II) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''(13) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—

''(A) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) SERIOUS BODILY INJURY DEFINED.—In this paragraph, the term 'serious bodily injury' means bodily injury which involves—

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) protracted and obvious disfigurement; or

''(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

''(14) MUTILATING OR MAIMING.—Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(15) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(16) DESTRUCTION OF PROPERTY IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall punished as a military commission under this chapter may direct.

''(17) USING TREACHERY OR PERFIDY.—Any person subject to this chapter who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(18) IMPROPERLY USING A FLAG OF TRUCE.—Any person subject to this chapter who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

''(19) IMPROPERLY USING A DISTINCTIVE EMBLEM.—Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

''(20) INTENTIONALLY MISTREATING A DEAD BODY.—Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessity, shall be punished as a military commission under this chapter may direct.

''(21) RAPE.—Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

''(22) SEXUAL ASSAULT OR ABUSE.—Any person subject to this chapter who forcibly or with coercion or threat of force engages in sexual contact with one or more persons, or causes one or more persons to engage in sexual contact, shall be punished as a military commission under this chapter may direct.

''(23) HIJACKING OR HAZARDING A VESSEL OR AIRCRAFT.—Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(24) TERRORISM.—Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(25) PROVIDING MATERIAL SUPPORT FOR TERRORISM.—

''(A) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in paragraph (24)), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

''(B) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this paragraph, the term 'material support or resources' has the meaning given that term in section 2339A(b) of title 18.

''(26) WRONGFULLY AIDING THE ENEMY.—Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

''(27) SPYING.—Any person subject to this chapter who with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(28) CONSPIRACY.—Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this chapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950w. Perjury and obstruction of justice; contempt

''(a) PERJURY AND OBSTRUCTION OF JUSTICE.—A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to military commissions under this chapter.

''(b) CONTEMPT.—A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.''.

(2) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A, and at the beginning of part II of subtitle A, of title 10, United States Code, are each amended by inserting after the item relating to chapter 47 the following new item:

''47A. Military Commissions ..... 948a''.

(b) SUBMITTAL OF PROCEDURES TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the procedures for military commissions prescribed under chapter 47A of title 10, United States Code (as added by subsection (a)).

SEC. 4. AMENDMENTS TO UNIFORM CODE OF MILITARY JUSTICE.

(a) CONFORMING AMENDMENTS.—Chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended as follows:

(1) APPLICABILITY TO LAWFUL ENEMY COMBATANTS.—Section 802(a) (article 2(a)) is amended by adding at the end the following new paragraph:

''(13) Lawful enemy combatants (as that term is defined in section 948a(2) of this title) who violate the law of war.''.

(2) EXCLUSION OF APPLICABILITY TO CHAPTER 47A COMMISSIONS.—Sections 821, 828, 848, 850(a), 904, and 906 (articles 21, 28, 48, 50(a), 104, and 106) are amended by adding at the end the following new sentence: ''This section does not apply to a military commission established under chapter 47A of this title.''.

(3) INAPPLICABILITY OF REQUIREMENTS RELATING TO REGULATIONS.—Section 836 (article 36) is amended—

(A) in subsection (a), by inserting '', except as provided in chapter 47A of this title,'' after ''but which may not''; and

(B) in subsection (b), by inserting before the period at the end '', except insofar as applicable to military commissions established under chapter 47A of this title''.

(b) PUNITIVE ARTICLE OF CONSPIRACY.—Section 881 of title 10, United States Code (article 81 of the Uniform Code of Military Justice), is amended—

(1) by inserting ''(a)'' before ''Any person''; and

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

''(b) Any person subject to this chapter who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.''.

SEC. 5. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.

(a) IN GENERAL.—No person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its States or territories.

(b) GENEVA CONVENTIONS DEFINED.—In this section, the term ''Geneva Conventions'' means—

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

SEC. 6. IMPLEMENTATION OF TREATY OBLIGATIONS.

(a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

(1) IN GENERAL.—The acts enumerated in subsection (d) of section 2441 of title 18, United States Code, as added by subsection (b) of this section, and in subsection (c) of this section, constitute violations of common Article 3 of the Geneva Conventions prohibited by United States law.

(2) PROHIBITION ON GRAVE BREACHES.—The provisions of section 2441 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 129 of the Third Geneva Convention for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of an armed conflict not of an international character. No foreign or international source of law shall supply a basis for a rule of decision in the courts of the United States in interpreting the prohibitions enumerated in subsection (d) of such section 2441.

(3) INTERPRETATION BY THE PRESIDENT.—

(A) As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.

(B) The President shall issue interpretations described by subparagraph (A) by Executive Order published in the Federal Register.

(C) Any Executive Order published under this paragraph shall be authoritative (except as to grave breaches of common Article 3) as a matter of United States law, in the same manner as other administrative regulations.

(D) Nothing in this section shall be construed to affect the constitutional functions and responsibilities of Congress and the judicial branch of the United States.

(4) DEFINITIONS.—In this subsection:

(A) GENEVA CONVENTIONS.—The term ''Geneva Conventions'' means—

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

(ii) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(B) THIRD GENEVA CONVENTION.—The term ''Third Geneva Convention'' means the international convention referred to in subparagraph (A)(iii).

(b) REVISION TO WAR CRIMES OFFENSE UNDER FEDERAL CRIMINAL CODE.—

(1) IN GENERAL.—Section 2441 of title 18, United States Code, is amended—

(A) in subsection (c), by striking paragraph (3) and inserting the following new paragraph (3):

''(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or''; and

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

''(d) COMMON ARTICLE 3 VIOLATIONS.—

''(1) PROHIBITED CONDUCT.—In subsection (c)(3), the term 'grave breach of common Article 3' means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

''(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

''(B) CRUEL OR INHUMAN TREATMENT.—The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

''(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

''(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

''(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

''(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

''(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

''(H) SEXUAL ASSAULT OR ABUSE.—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

''(I) TAKING HOSTAGES.—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

''(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

''(A) the term 'severe mental pain or suffering' shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340(2) of this title;

''(B) the term 'serious bodily injury' shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title;

''(C) the term 'sexual contact' shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title;

''(D) the term 'serious physical pain or suffering' shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and

''(E) the term 'serious mental pain or suffering' shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term 'severe mental pain or suffering' (as defined in section 2340(2) of this title), except that—

''(i) the term 'serious' shall replace the term 'severe' where it appears; and

''(ii) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''(3) INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(4) INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.

''(5) DEFINITION OF GRAVE BREACHES.—The definitions in this subsection are intended only to define the grave breaches of common Article 3 and not the full scope of United States obligations under that Article.''.

(2) RETROACTIVE APPLICABILITY.—The amendments made by this subsection, except as specified in subsection (d)(2)(E) of section 2441 of title 18, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 (as amended by section 4002(e)(7) of Public Law 107–273).

(c) ADDITIONAL PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT.—

(1) IN GENERAL.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(2) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT DEFINED.—In this subsection, the term ''cruel, inhuman, or degrading treatment or punishment'' means cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(3) COMPLIANCE.—The President shall take action to ensure compliance with this subsection, including through the establishment of administrative rules and procedures.

SEC. 7. HABEAS CORPUS MATTERS.

(a) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by striking both the subsection (e) added by section 1005(e)(1) of Public Law 109–148 (119 Stat. 2742) and the subsection (e) added by added by section 1405(e)(1) of Public Law 109–163 (119 Stat. 3477) and inserting the following new subsection (e):

''(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

''(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.

SEC. 8. REVISIONS TO DETAINEE TREATMENT ACT OF 2005 RELATING TO PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.

(a) COUNSEL AND INVESTIGATIONS.—Section 1004(b) of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1(b)) is amended—

(1) by striking ''may provide'' and inserting ''shall provide'';

(2) by inserting ''or investigation'' after ''criminal prosecution''; and

(3) by inserting ''whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,'' after ''described in that subsection''.

(b) PROTECTION OF PERSONNEL.—Section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1) shall apply with respect to any criminal prosecution that—

(1) relates to the detention and interrogation of aliens described in such section;

(2) is grounded in section 2441(c)(3) of title 18, United States Code; and

(3) relates to actions occurring between September 11, 2001, and December 30, 2005.

SEC. 9. REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.

Section 1005(e)(3) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 10 U.S.C. 801 note) is amended—

(1) in subparagraph (A), by striking ''pursuant to Military Commission Order No. 1. dated August 31, 2005 (or any successor military order)'' and inserting ''by a military commission under chapter 47A of title 10, United States Code'';

(2) by striking subparagraph (B) and inserting the following new subparagraph (B):

''(B) GRANT OF REVIEW.—Review under this paragraph shall be as of right.'';

(3) in subparagraph (C)—

(A) in clause (i)—

(i) by striking ''pursuant to the military order'' and inserting ''by a military commission''; and

(ii) by striking ''at Guantanamo Bay, Cuba''; and

(B) in clause (ii), by striking ''pursuant to such military order'' and inserting ''by the military commission''; and

(4) in subparagraph (D)(i), by striking ''specified in the military order'' and inserting ''specified for a military commission''.

SEC. 10. DETENTION COVERED BY REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.

Section 1005(e)(2)(B)(i) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2742; 10 U.S.C. 801 note) is amended by striking ''the Department of Defense at Guantanamo Bay, Cuba'' and inserting ''the United States''.

SA 5086. Mr. LEVIN (for himself, Mr. DAYTON, and Mr. REED) proposed an amendment to the bill S. 3930, to authorize trial by military commission for violations of the law of war, and for other purposes; as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Military Commissions Act of 2006''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The Constitution of the United States grants to Congress the power ''To define and punish . . . Offenses against the Law of Nations'', as well as the power ''To declare War . . . To raise and support Armies . . . [and] To provide and maintain a Navy''.

(2) The military commission is the traditional tribunal for the trial of persons engaged in hostilities for violations of the law of war.

(3) Congress has, in the past, both authorized the use of military commission by statute and recognized the existence and authority of military commissions.

(4) Military commissions have been convened both by the President and by military commanders in the field to try offenses against the law of war.

(5) It is in the national interest for Congress to exercise its authority under the Constitution to enact legislation authorizing and regulating the use of military commissions to try and punish violations of the law of war.

(6) Military commissions established and operating under chapter 47A of title 10, United States Code (as enacted by this Act), are regularly constituted courts affording, in the words of Common Article 3 of the Geneva Conventions, ''all the judicial guarantees which are recognized as indispensable by civilized peoples''.

SEC. 3. AUTHORIZATION FOR MILITARY COMMISSIONS.

(a) IN GENERAL.—The President is authorized to establish military commissions for the trial of alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses specifically made triable by military commission as provided in chapter 47 of title 10, United States Code, and chapter 47A of title 10, United States Code (as enacted by this Act).

(b) CONSTRUCTION.—The authority in subsection (a) may not be construed to alter or limit the authority of the President under the Constitution and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.

(c) SCOPE OF PUNISHMENT AUTHORITY.—A military commission established pursuant to subsection (a) shall have authority to impose upon any person found guilty under a proceeding under chapter 47A of title 10, United States Code (as so enacted), a sentence that is appropriate for the offense or offenses for which there is a finding of guilt, including a sentence of death if authorized under such chapter, imprisonment for life or a term of years, payment of a fine or restitution, or such other lawful punishment or condition of punishment as the military commission shall direct.

(d) EXECUTION OF PUNISHMENT.—The Secretary of Defense is authorized to carry out

a sentence of punishment imposed by a military commission established pursuant to subsection (a) in accordance with such procedures as the Secretary may prescribe.

(e) ANNUAL REPORT ON TRIALS BY MILITARY COMMISSIONS.—

(1) ANNUAL REPORT REQUIRED.—Not later than December 31 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions established pursuant to subsection (a) during such year.

(2) FORM.—Each report under this subsection shall be submitted in unclassified form, but may include a classified annex.

SEC. 4. MILITARY COMMISSIONS.

(a) MILITARY COMMISSIONS.—

(1) IN GENERAL.—Subtitle A of title 10, United States Code, is amended by inserting after chapter 47 the following new chapter:

"CHAPTER 47A—MILITARY COMMISSIONS

''SUBCHAPTER	Sec.
''I. General Provisions	948a.
''II. Composition of Military Commissions	948h.
''III. Pre-Trial Procedure	948q.
''IV. Trial Procedure	949a.
''V. Sentences	949s.
''VI. Post-Trial Procedure and Review of Military Commissions	950a.
''VII. Punitive Matters	950aa.

''SUBCHAPTER I—GENERAL PROVISIONS

''Sec.
''948a. Definitions.
''948b. Military commissions generally.
''948c. Persons subject to military commissions.
''948d. Jurisdiction of military commissions.

"§ 948a. Definitions

''In this chapter:

''(1) ALIEN.—The term 'alien' means an individual who is not a citizen of the United States.

''(2) CLASSIFIED INFORMATION.—The term 'classified information' means the following:

''(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

''(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

''(3) LAWFUL ENEMY COMBATANT.—The term 'lawful enemy combatant' means an individual who is—

''(A) a member of the regular forces of a State party engaged in hostilities against the United States;

''(B) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or

''(C) a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

''(4) UNLAWFUL ENEMY COMBATANT.—The term 'unlawful enemy combatant' means an individual engaged in hostilities against the United States who is not a lawful enemy combatant.

"§ 948b. Military commissions generally

''(a) PURPOSE.—This chapter establishes procedures governing the use of military commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission.

''(b) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided therein or in this chapter, and many of the provisions of chapter 47 of this title are by their terms inapplicable to military commissions. The judicial construction and application of chapter 47 of this title, while instructive, is therefore not of its own force binding on military commissions established under this chapter.

''(c) INAPPLICABILITY OF CERTAIN PROVISIONS.—(1) The following provisions of this title shall not apply to trial by military commission under this chapter:

''(A) Section 810 (article 10 of the Uniform Code of Military Justice), relating to speedy trial, including any rule of courts-martial relating to speedy trial.

''(B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of the Uniform Code of Military Justice), relating to compulsory self-incrimination.

''(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

''(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by the terms of such provisions or by this chapter.

''(d) TREATMENT OF RULINGS AND PRECEDENTS.—The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial convened under chapter 47 of this title. The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not form the basis of any holding, decision, or other determination of a court-martial convened under that chapter.

"§ 948c. Persons subject to military commissions

''Any alien unlawful enemy combatant engaged in hostilities or having supported hostilities against the United States is subject to trial by military commission as set forth in this chapter.

"§ 948d. Jurisdiction of military commissions

''A military commission under this chapter shall have jurisdiction to try persons subject to this chapter for any offense made punishable by this chapter, sections 904 and 906 of this title (articles 104 and 106 of the Uniform Code of Military Justice), or the law of war, and may, under such limitations as the President may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter, chapter 47 of this title, or the law of war.

''SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

''Sec.
''948h. Who may convene military commissions.
''948i. Who may serve on military commissions.
''948j. Military judge of a military commission.
''948k. Detail of trial counsel and defense counsel.
''948l. Detail or employment of reporters and interpreters.
''948m. Number of members; excuse of members; absent and additional members.

"§ 948h. Who may convene military commissions

''Military commissions under this chapter may be convened by the Secretary of Defense or by any officer or official of the United States designated by the Secretary for that purpose.

"§ 948i. Who may serve on military commissions

''(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter, including commissioned officers of the reserve components of the armed forces on active duty, commissioned officers of the National Guard on active duty in Federal service, or retired commissioned officers recalled to active duty.

''(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members thereof such members of the armed forces eligible under subsection (a) who, as in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

''(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

"§ 948j. Military judge of a military commission

''(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which he has been detailed.

''(b) ELIGIBILITY.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

''(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person is eligible to act as military judge in a case of a military commission under this chapter if he is the accuser or a witness or has acted as investigator or a counsel in the same case.

''(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may he vote with the members.

''(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to him by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

''(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter shall not prepare or review any

report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to his performance of duty as a military judge on the military commission.

"§ 948k. Detail of trial counsel and defense counsel

''(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

''(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

''(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable.

''(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such military commissions.

''(b) TRIAL COUNSEL.—Subject to subsection (e), trial counsel detailed for a military commission under this chapter must be—

''(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice)) who is—

''(A) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(B) certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member; or

''(2) a civilian who is—

''(A) a member of the bar of a Federal court or of the highest court of a State; and

''(B) otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

''(c) MILITARY DEFENSE COUNSEL.—Subject to subsection (e), military defense counsel detailed for a military commission under this chapter must be a judge advocate (as so defined) who is—

''(1) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(2) certified as competent to perform duties as defense counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member.

''(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).

''(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

''(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

"§ 948l. Detail or employment of reporters and interpreters

''(a) COURT REPORTERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter shall detail to or employ for the military commission qualified court reporters, who shall prepare a verbatim record of the proceedings of and testimony taken before the military commission.

''(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the military commission, and, as necessary, for trial counsel and defense counsel for the military commission, and for the accused.

''(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the military commission, who shall also be responsible for preparing the record of the proceedings of the military commission.

"§ 948m. Number of members; excuse of members; absent and additional members

''(a) NUMBER OF MEMBERS.—(1) A military commission under this chapter shall, except as provided in paragraph (2), have at least five members.

''(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of members prescribed by section 949m(c) of this title.

''(b) EXCUSE OF MEMBERS.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

''(1) as a result of challenge;

''(2) by the military judge for physical disability or other good cause; or

''(3) by order of the convening authority for good cause.

''(c) ABSENT AND ADDITIONAL MEMBERS.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

''SUBCHAPTER III—PRE-TRIAL PROCEDURE

''Sec.
''948q. Charges and specifications.
''948r. Compulsory self-incrimination prohibited; statements obtained by torture or cruel, inhuman, or degrading treatment.
''948s. Service of charges.

"§ 948q. Charges and specifications

''(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter shall be signed by a person subject to chapter 47 of this title under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

''(1) that the signer has personal knowledge of, or reason to believe, the matters set forth therein; and

''(2) that they are true in fact to the best of his knowledge and belief.

''(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges and specifications against him as soon as practicable.

"§ 948r. Compulsory self-incrimination prohibited; statements obtained by torture or cruel, inhuman, or degrading treatment

''(a) IN GENERAL.—No person shall be required to testify against himself at a proceeding of a military commission under this chapter.

''(b) STATEMENTS OBTAINED BY TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT.—A statement obtained by use of torture or by cruel, inhuman, or degrading treatment prohibited by section 1003 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd), whether or not under color of law, shall not be admissible in a military commission under this chapter, except against a person accused of torture or such treatment as evidence the statement was made.

''(c) STATEMENTS OBTAINED BY ALLEGED COERCION NOT AMOUNTING TO TORTURE OR CRUEL, INHUMAN, OR DEGRADING TREATMENT.—An otherwise admissible statement obtained through the use of alleged coercion not amounting to torture or cruel, inhuman, or degrading treatment prohibited by section 1003 of the Detainee Treatment Act of 2005 may be admitted in evidence in a military commission under this chapter only if the military judge finds that—

''(1) the totality of the circumstances under which the statement was made render it reliable and possessing sufficient probative value; and

''(2) the interests of justice would best be served by admission of the statement into evidence.

"§ 948s. Service of charges

''The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused and military defense counsel a copy of the charges upon which trial is to be had in English and, if appropriate, in another language that the accused understands, sufficiently in advance of trial to prepare a defense.

''SUBCHAPTER IV—TRIAL PROCEDURE

''Sec.
''949a. Rules.
''949b. Unlawfully influencing action of military commission.
''949c. Duties of trial counsel and defense counsel.
''949d. Sessions.
''949e. Continuances.
''949f. Challenges.
''949g. Oaths.
''949h. Former jeopardy.
''949i. Pleas of the accused.
''949j. Opportunity to obtain witnesses and other evidence.
''949k. Defense of lack of mental responsibility.
''949l. Voting and rulings.
''949m. Number of votes required.
''949n. Military commission to announce action.
''949o. Record of trial.

"§ 949a. Rules

''(a) PROCEDURES AND RULES OF EVIDENCE.—Pretrial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense. Such procedures may not be contrary to or inconsistent with this chapter. Except as otherwise provided in this chapter or chapter 47 of this title, the procedures and rules of evidence applicable in trials by general courts-martial of the United States shall apply in trials by military commission under this chapter.

''(b) EXCEPTIONS.—(1) The Secretary of Defense, in consultation with the Attorney General, may make such exceptions in the applicability in trials by military commission under this chapter from the procedures

and rules of evidence otherwise applicable in general courts-martial as may be required by the unique circumstances of the conduct of military and intelligence operations during hostilities or by other practical need.

''(2) Notwithstanding any exceptions authorized by paragraph (1), the procedures and rules of evidence in trials by military commission under this chapter shall include, at a minimum, the following rights:

''(A) To examine and respond to all evidence considered by the military commission on the issue of guilt or innocence and for sentencing.

''(B) To be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

''(C) To the assistance of counsel.

''(D) To self-representation, if the accused knowingly and competently waives the assistance of counsel, subject to the provisions of paragraph (4).

''(E) To the suppression of evidence that is not reliable or probative.

''(F) To the suppression of evidence the probative value of which is substantially outweighed by—

''(i) the danger of unfair prejudice, confusion of the issues, or misleading the members; or

''(ii) considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

''(3) In making exceptions in the applicability in trials by military commission under this chapter from the procedures and rules otherwise applicable in general courts-martial, the Secretary of Defense may provide the following:

''(A) Evidence seized outside the United States shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or authorization.

''(B) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence complies with the provisions of section 948r of this title.

''(C) Evidence shall be admitted as authentic so long as—

''(i) the military judge of the military commission determines that there is sufficient evidence that the evidence is what it is claimed to be; and

''(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.

''(D) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission only if—

''(i) the proponent of the evidence makes known to the adverse party, sufficiently in advance of trial or hearing to provide the adverse party with a fair opportunity to meet the evidence, the proponent's intention to offer the evidence, and the particulars of the evidence (including information on the circumstances under which the evidence was obtained); and

''(ii) the military judge finds that the totality of the circumstances render the evidence more probative on the point for which it is offered than other evidence which the proponent can procure through reasonable efforts, taking into consideration the unique circumstances of the conduct of military and intelligence operations during hostilities.

''(4)(A) The accused in a military commission under this chapter who exercises the right to self-representation under paragraph (2)(D) shall conform his deportment and the conduct of the defense to the rules of evidence, procedure, and decorum applicable to trials by military commission.

''(B) Failure of the accused to conform to the rules described in subparagraph (A) may result in a partial or total revocation by the military judge of the right of self-representation under paragraph (2)(D). In such case, the detailed defense counsel of the accused or an appropriately authorized civilian counsel shall perform the functions necessary for the defense.

''(c) DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Defense may delegate the authority of the Secretary to prescribe regulations under this chapter.

''§ 949b. Unlawfully influencing action of military commission

''(a) IN GENERAL.—(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or their functions in the conduct of the proceedings.

''(2) No person may attempt to coerce or, by any unauthorized means, influence—

''(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

''(B) the action of any convening, approving, or reviewing authority with respect to their judicial acts; or

''(C) the exercise of professional judgment by trial counsel or defense counsel.

''(3) The provisions of this subsection shall not apply with respect to—

''(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

''(B) statements and instructions given in open proceedings by a military judge or counsel.

''(b) PROHIBITION ON CONSIDERATION OF ACTIONS ON COMMISSION IN EVALUATION OF FITNESS.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

''(1) consider or evaluate the performance of duty of any member of a military commission under this chapter; or

''(2) give a less favorable rating or evaluation to any commissioned officer because of the zeal with which such officer, in acting as counsel, represented any accused before a military commission under this chapter.

''§ 949c. Duties of trial counsel and defense counsel

''(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.

''(b) DEFENSE COUNSEL.—(1) The accused shall be represented in his defense before a military commission under this chapter as provided in this subsection.

''(2) The accused shall be represented by military counsel detailed under section 948k of this title.

''(3) The accused may be represented by civilian counsel if retained by the accused, provided that such civilian counsel—

''(A) is a United States citizen;

''(B) is admitted to the practice of law in a State, district, or possession of the United States, or before a Federal court;

''(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

''(D) has been determined to be eligible for access to information classified at the level Secret or higher; and

''(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

''(4) If the accused is represented by civilian counsel, military counsel detailed shall act as associate counsel.

''(5) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in such person's sole discretion, may detail additional military counsel to represent the accused.

''(6) Defense counsel may cross-examine each witness for the prosecution who testifies before a military commission under this chapter.

''§ 949d. Sessions

''(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—(1) At any time after the service of charges which have been referred for trial by military commission under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

''(A) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

''(B) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

''(C) if permitted by regulations prescribed by the Secretary of Defense, receiving the pleas of the accused; and

''(D) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 949a of this title and which does not require the presence of the members.

''(2) Except as provided in subsections (b), (c), and (d), any proceedings under paragraph (1) shall be conducted in the presence of the accused, defense counsel, and trial counsel, and shall be made part of the record.

''(b) DELIBERATION OR VOTE OF MEMBERS.—When the members of a military commission under this chapter deliberate or vote, only the members may be present.

''(c) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter.

''(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) only upon making a specific finding that such closure is necessary to—

''(A) protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

''(B) ensure the physical safety of individuals.

''(3) A finding under paragraph (2) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

''(4)(A) Subject to the provisions of this paragraph, classified information shall be handled in accordance with rules applicable

in trials by general courts-martial of the United States.

''(B) Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. This subparagraph applies to all stages of proceedings of military commissions under this chapter.

''(C) After the original classification authority or head of the agency concerned has certified in writing that evidence and the sources thereof have been declassified to the maximum extent possible, consistent with the requirements of national security, the military judge may, to the extent practicable in accordance with the rules applicable in trials by court-martial, authorize—

''(i) the deletion of specified items of classified information from documents made available to the accused;

''(ii) the substitution of a portion or summary of the information for such classified documents; or

''(iii) the substitution of a statement admitting relevant facts that the classified information would tend to prove.

''(D) A claim of privilege under this paragraph, and any materials in support thereof, shall, upon the request of the Government, be considered by the military judge in camera and shall not be disclosed to the accused.

''(d) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

''(1) to ensure the physical safety of individuals; or

''(2) to prevent disruption of the proceedings by the accused.

''§ 949e. Continuances

''The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

''§ 949f. Challenges

''(a) CHALLENGES AUTHORIZED.—The military judge and members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the military commission. The military judge shall determine the relevance and validity of challenges for cause, and may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

''(b) PEREMPTORY CHALLENGES.—The accused and trial counsel are each entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

''(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, the accused and trial counsel are each entitled to one peremptory challenge against members not previously subject to peremptory challenge.

''§ 949g. Oaths

''(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

''(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording thereof, and whether the oath shall be taken for all cases in which duties are to be performed or for a particular case, shall be as provided in regulations prescribed by the Secretary of Defense. The regulations may provide that—

''(A) an oath to perform faithfully duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty; and

''(B) if such an oath is taken, such oath need not again be taken at the time the judge advocate or other person is detailed to that duty.

''(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

''(c) OATH DEFINED.—In this section, the term 'oath' includes an affirmation.

''§ 949h. Former jeopardy

''(a) IN GENERAL.—No person may, without his consent, be tried by a military commission under this chapter a second time for the same offense.

''(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

''§ 949i. Pleas of the accused

''(a) PLEA OF NOT GUILTY.—If an accused in a military commission under this chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

''(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without a vote. The finding shall constitute the finding of the military commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

''§ 949j. Opportunity to obtain witnesses and other evidence

''(a) IN GENERAL.—(1) Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense.

''(2) Process issued in military commissions under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

''(A) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

''(B) shall run to any place where the United States shall have jurisdiction thereof.

''(b) DISCLOSURE OF EXCULPATORY EVIDENCE.—As soon as practicable, trial counsel in a military commission under this chapter shall disclose to the defense the existence of any known evidence that reasonably tends to exculpate or reduce the degree of guilt of the accused.

''(c) TREATMENT OF CERTAIN ITEMS.—In accordance with the rules applicable in trials by general courts-martial in the United States, and to the extent provided in such rules, the military judge in a military commission under this chapter may authorize trial counsel, in making documents available to the accused pursuant to subsections (a) and (b)—

''(1) to delete specified items of classified information from such documents;

''(2) to substitute an unclassified summary of the classified information in such documents; or

''(3) to substitute an unclassified statement admitting relevant facts that classified information in such documents would tend to prove.

''§ 949k. Defense of lack of mental responsibility

''(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

''(b) BURDEN OF PROOF.—The accused in a military commission under this chapter has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

''(c) FINDINGS FOLLOWING ASSERTION OF DEFENSE.—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue in a military commission under this chapter, the military judge shall instruct the members as to the defense of lack of mental responsibility under this section and shall charge the members to find the accused—

''(1) guilty;

''(2) not guilty; or

''(3) subject to subsection (d), not guilty by reason of lack of mental responsibility.

''(d) MAJORITY VOTE REQUIRED FOR FINDING.—The accused shall be found not guilty by reason of lack of mental responsibility under subsection (c)(3) only if a majority of the members present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

''§ 949l. Voting and rulings

''(a) VOTE BY SECRET WRITTEN BALLOT.—Voting by members of a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

''(b) RULINGS.—(1) The military judge in a military commission under this chapter shall rule upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.

''(2) Any ruling made by the military judge upon a question of law or an interlocutory question (other than the factual issue of mental responsibility of the accused) is conclusive and constitutes the ruling of the military commission. However, a military judge may change his ruling at any time during the trial.

''(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote is taken of the findings of a military commission under this chapter, the military judge shall, in the presence of the accused and counsel, instruct the members as to the elements of the offense and charge the members—

''(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

''(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

''(3) that, if there is reasonable doubt as to the degree of guilt, the finding must be in a

lower degree as to which there is no reasonable doubt; and

''(4) that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the United States.

''§ 949m. Number of votes required

''(a) CONVICTION.—No person may be convicted by a military commission under this chapter of any offense, except as provided in section 949i(b) of this title or by concurrence of two-thirds of the members present at the time the vote is taken.

''(b) SENTENCES.—(1) Except as provided in paragraphs (2) and (3), sentences shall be determined by a military commission by the concurrence of two-thirds of the members present at the time the vote is taken.

''(2) No person may be sentenced to death by a military commission, except insofar as—

''(A) the penalty of death has been expressly authorized under this chapter, chapter 47 of this title, or the law of war for an offense of which the accused has been found guilty;

''(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

''(C) the accused was convicted of the offense by the concurrence of all the members present at the time the vote is taken; and

''(D) all members present at the time the vote was taken concurred in the sentence of death.

''(3) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the members present at the time the vote is taken.

''(c) NUMBER OF MEMBERS REQUIRED FOR PENALTY OF DEATH.—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of members of the military commission under this chapter shall be not less than 12 members.

''(2) In any case described in paragraph (1) in which 12 members are not reasonably available for a military commission because of physical conditions or military exigencies, the convening authority shall specify a lesser number of members for the military commission (but not fewer than 5 members), and the military commission may be assembled, and the trial held, with not less than the number of members so specified. In any such case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

''§ 949n. Military commission to announce action

''A military commission under this chapter shall announce its findings and sentence to the parties as soon as determined.

''§ 949o. Record of trial

''(a) RECORD; AUTHENTICATION.—Each military commission under this chapter shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. Where appropriate, and as provided in regulations prescribed by the Secretary of Defense, the record of a military commission under this chapter may contain a classified annex.

''(b) COMPLETE RECORD REQUIRED.—A complete record of the proceedings and testimony shall be prepared in every military commission under this chapter.

''(c) PROVISION OF COPY TO ACCUSED.—A copy of the record of the proceedings of the military commission under this chapter shall be given the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall receive a redacted version of the record consistent with the requirements of section 949d(c)(4) of this title. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

''SUBCHAPTER V—SENTENCES

''Sec.
''949s. Cruel or unusual punishments prohibited.
''949t. Maximum limits.
''949u. Execution of confinement.

''§ 949s. Cruel or unusual punishments prohibited

''Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

''§ 949t. Maximum limits

''The punishment which a military commission under this chapter may direct for an offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

''§ 949u. Execution of confinement

''(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

''(1) in any place of confinement under the control of any of the armed forces; or

''(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

''(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

''SUBCHAPTER VI—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

''Sec.
''950a. Error of law; lesser included offense.
''950b. Review by the convening authority.
''950c. Waiver or withdrawal of appeal.
''950d. Appeal by the United States.
''950e. Rehearings.
''950f. Review by United States Court of Appeals for the Armed Forces and Supreme Court.
''950g. Appellate counsel
''950h. Execution of sentence; suspension of sentence.
''950i. Finality of proceedings, findings, and sentences.

''§ 950a. Error of law; lesser included offense

''(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

''(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

''§ 950b. Review by the convening authority

''(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

''(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence of the military commission under this chapter.

''(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after accused has been give an authenticated record of trial under section 949o(c) of this title.

''(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

''(3) The accused may waive his right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing, and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

''(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

''(2) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in his sole discretion, only—

''(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

''(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

''(3)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

''(B) Subject to regulations prescribed by the Secretary of Defense, action under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

''(C) In taking action under this paragraph, the convening authority may, in his sole discretion, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

''(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

''(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in his sole discretion, order a proceeding in revision or a rehearing.

''(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—

''(i) there is an apparent error or omission in the record; or

''(ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

''(B) In no case may a proceeding in revision—

''(i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;

''(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or

''(iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

''(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

''§ 950c. Waiver or withdrawal of appeal

''(a) WAIVER OF RIGHT OF REVIEW.—(1) An accused may file with the convening authority a statement expressly waiving the right of the accused to appellate review by the United States Court of Appeals for the Armed Forces under section 950f(a) of this title of the final decision of the military commission under this chapter.

''(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

''(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice of the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

''(b) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

''(c) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

''§ 950d. Appeal by the United States

''(a) INTERLOCUTORY APPEAL.—(1) Except as provided in paragraph (2), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the United States Court of Appeals for the Armed Forces under section 950f of this title of any order or ruling of the military judge that—

''(A) terminates proceedings of the military commission with respect to a charge or specification;

''(B) excludes evidence that is substantial proof of a fact material in the proceeding; or

''(C) relates to a matter under subsection (c) or (d) of section 949d of this title.

''(2) The United States may not appeal under paragraph (1) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

''(b) NOTICE OF APPEAL.—The United States shall take an appeal of an order or ruling under subsection (a) by filing a notice of appeal with the military judge within five days after the date of the order or ruling.

''(c) APPEAL.—An appeal under this section shall be forwarded, by means specified in regulations prescribed the Secretary of Defense, directly to the United States Court of Appeals for the Armed Forces. In ruling on an appeal under this section, the Court may act only with respect to matters of law.

''§ 950e. Rehearings

''(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

''(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

''(A) the accused may not be tried for any offense of which he was found not guilty by the first military commission; and

''(B) no sentence in excess of or more than the original sentence may be imposed unless—

''(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

''(ii) the sentence prescribed for the offense is mandatory.

''(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

''§ 950f. Review by United States Court of Appeals for the Armed Forces and Supreme Court

''(a) REVIEW BY UNITED STATES COURT OF APPEALS FOR THE ARMED FORCES.—(1) Subject to the provisions of this subsection, the United States Court of Appeals for the Armed Forces shall have exclusive jurisdiction to determine the final validity of any judgment rendered by a military commission under this chapter.

''(2) The United States Court of Appeals for the Armed Forces may not determine the final validity of a judgment of a military commission under this subsection until all other appeals from the judgment under this chapter have been waived or exhausted.

''(3)(A) An accused may seek a determination by the United States Court of Appeals for the Armed Forces of the final validity of the judgment of the military commission under this subsection only upon petition to the Court for such determination.

''(B) A petition on a judgment under subparagraph (A) shall be filed by the accused in the Court not later than 20 days after the date on which written notice of the final decision of the military commission is served on the accused or defense counsel.

''(C) The accused may not file a petition under subparagraph (A) if the accused has waived the right to appellate review under section 950c(a) of this title.

''(4) The determination by the United States Court of Appeals for the Armed Forces of the final validity of a judgment of a military commission under this subsection shall be governed by the provisions of section 1005(e)(3) of the Detainee Treatment Act of 2005 (42 U.S.C. 801 note).

''(b) REVIEW BY SUPREME COURT.—The Supreme Court of the United States may review by writ of certiorari pursuant to section 1257 of title 28 the final judgment of the United States Court of Appeals for the Armed Forces in a determination under subsection (a).

''§ 950g. Appellate counsel

''(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications of counsel for appearing before military commissions under this chapter.

''(b) REPRESENTATION OF UNITED STATES.—Appellate counsel may represent the United States in any appeal or review proceeding under this chapter. Appellate Government counsel may represent the United States before the Supreme Court in case arising under this chapter when requested to do so by the Attorney General.

''(c) REPRESENTATION OF ACCUSED.—The accused shall be represented before the United States Court of Appeals for the Armed Forces or the Supreme Court by military appellate counsel, or by civilian counsel if retained by him.

''§ 950h. Execution of sentence; suspension of sentence

''(a) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

''(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgement as to the legality of the proceedings (and with respect to death, approval under subsection (a)).

''(2) A judgement as to legality of proceedings is final for purposes of paragraph (1) when—

''(A) the time for the accused to file a petition for review by the United States Court of Appeals for the Armed Forces has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by the Court; or

''(B) review is completed in accordance with the judgment of the United States Court of Appeals for the Armed Forces and (A) a petition for a writ of certiorari is not timely filed, (B) such a petition is denied by the Supreme Court, or (C) review is otherwise completed in accordance with the judgment of the Supreme Court.

''(c) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.

''§ 950i. Finality of proceedings, findings, and sentences

''(a) FINALITY.—The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, except as otherwise provided by the President.

''(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES AND ACTIONS.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of enactment of this chapter, relating to the prosecution, trial, or judgment of a

military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.

''SUBCHAPTER VII—PUNITIVE MATTERS

''Sec.
''950aa. Definitions; construction of certain offenses; common circumstances.
''950bb. Principals.
''950cc. Accessory after the fact.
''950dd. Conviction of lesser offenses.
''950ee. Attempts.
''950ff. Conspiracy.
''950gg. Solicitation.
''950hh. Murder of protected persons.
''950ii. Attacking civilians.
''950jj. Attacking civilian objects.
''950kk. Attacking protected property.
''950ll. Pillaging.
''950mm. Denying quarter.
''950nn. Taking hostages.
''950oo. Employing poison or similar weapons.
''950pp. Using protected persons as a shield.
''950qq. Using protected property as a shield.
''950rr. Torture.
''950ss. Cruel, unusual, or inhumane treatment or punishment.
''950tt. Intentionally causing serious bodily injury.
''950uu. Mutilating or maiming.
''950vv. Murder in violation of the law of war.
''950ww. Destruction of property in violation of the law of war.
''950xx. Using treachery or perfidy.
''950yy. Improperly using a flag of truce.
''950zz. Improperly using a distinctive emblem.
''950aaa. Intentionally mistreating a dead body.
''950bbb. Rape.
''950ccc. Hijacking or hazarding a vessel or aircraft.
''950ddd. Terrorism.
''950eee. Providing material support for terrorism.
''950fff. Wrongfully aiding the enemy.
''950ggg. Spying.
''950hhh. Contempt.
''950iii. Perjury and obstruction of justice.

''§ 950aa. Definitions; construction of certain offenses; common circumstances

''(a) DEFINITIONS.—In this subchapter:

''(1) The term 'military objective' means combatants and those objects during an armed conflict which, by their nature, location, purpose, or use, effectively contribute to the war-fighting or war-sustaining capability of an opposing force and whose total or partial destruction, capture, or neutralization would constitute a definite military advantage to the attacker under the circumstances at the time of an attack.

''(2) The term 'protected person' means any person entitled to protection under one or more of the Geneva Conventions, including civilians not taking an active part in hostilities, military personnel placed out of combat by sickness, wounds, or detention, and military medical or religious personnel.

''(3) The term 'protected property' means any property specifically protected by the law of war, including buildings dedicated to religion, education, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected, but only if and to the extent such property is not being used for military purposes or is not otherwise a military objective. The term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

''(b) CONSTRUCTION OF CERTAIN OFFENSES.—The intent required for offenses under sections 950hh, 950ii, 950jj, 950kk, and 950ss of this title precludes their applicability with regard to collateral damage or to death, damage, or injury incident to a lawful attack.

''(c) COMMON CIRCUMSTANCES.—An offense specified in this subchapter is triable by military commission under this chapter only if the offense is committed in the context of and associated with armed conflict.

''§ 950bb. Principals

''Any person punishable under this chapter who—

''(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission; or

''(2) causes an act to be done which if directly performed by him would be punishable by this chapter,

is a principal.

''§ 950cc. Accessory after the fact

''Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.

''§ 950dd. Conviction of lesser offenses

''An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

''§ 950ee. Attempts

''(a) IN GENERAL.—Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military commission under this chapter may direct.

''(b) SCOPE OF OFFENSE.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

''(c) EFFECT OF CONSUMMATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

''§ 950ff. Conspiracy

''Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this subchapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950gg. Solicitation

''Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a military commission under this chapter may direct.

''§ 950hh. Murder of protected persons

''Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

''§ 950ii. Attacking civilians

''Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950jj. Attacking civilian objects

''Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

''§ 950kk. Attacking protected property

''Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

''§ 950ll. Pillaging

''Any person subject to this chapter who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be punished as a military commission under this chapter may direct.

''§ 950mm. Denying quarter

''Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

''§ 950nn. Taking hostages

''Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950oo. Employing poison or similar weapons

''Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or toxic properties, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950pp. Using protected persons as a shield

''Any person subject to this chapter who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack. or to shield, favor, or impede military operations, shall be punished, if death results to one or more

of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950qq. Using protected property as a shield

''Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

"§ 950rr. Torture

''(a) OFFENSE.—Any person subject to this chapter who commits an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(b) SEVERE MENTAL PAIN OR SUFFERING DEFINED.—In this section, the term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

"§ 950ss. Cruel, unusual, or inhumane treatment or punishment

''Any person subject to this chapter who subjects another person in their custody or under their physical control, regardless of nationality or physical location, to cruel, unusual, or inhumane treatment or punishment prohibited by the Fifth, Eighth, and 14th Amendments to the Constitution of the United States shall be punished, if death results to the victim, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950tt. Intentionally causing serious bodily injury

''(a) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(b) SERIOUS BODILY INJURY DEFINED.—In this section, the term 'serious bodily injury' means bodily injury which involves—

''(1) a substantial risk of death;

''(2) extreme physical pain;

''(3) protracted and obvious disfigurement; or

''(4) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"§ 950uu. Mutilating or maiming

''Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950vv. Murder in violation of the law of war

''Any person subject to this chapter who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

"§ 950ww. Destruction of property in violation of the law of war

''Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall punished as a military commission under this chapter may direct.

"§ 950xx. Using treachery or perfidy

''Any person subject to this chapter who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950yy. Improperly using a flag of truce

''Any person subject to this chapter who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

"§ 950zz. Improperly using a distinctive emblem

''Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

"§ 950aaa. Intentionally mistreating a dead body

''Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessary, shall be punished as a military commission under this chapter may direct.

"§ 950bbb. Rape

''Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

"§ 950ccc. Hijacking or hazarding a vessel or aircraft

''Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950ddd. Terrorism

''Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

"§ 950eee. Providing material support for terrorism

''(a) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in section 950ddd of this title), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

''(b) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this section, the term 'material support or resources' has the meaning given that term in section 2339A(b) of title 18.

"§ 950fff. Wrongfully aiding the enemy

''Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

"§ 950ggg. Spying

''Any person subject to this chapter who, in violation of the law of war and with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

"§ 950hhh. Contempt

''A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.

"§ 950iii. Perjury and obstruction of justice

''A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to the military commission.''.

(2) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A and part II of subtitle A of title 10, United States Code, are each amended by inserting after the item relating to chapter 47 the following new item:

''Chapter 47A. Military Commissions 948a''.

(b) SUBMITTAL OF PROCEDURES TO CONGRESS.—

(1) SUBMITTAL OF PROCEDURES.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the procedures for military commissions prescribed under chapter 47A of title 10, United States Code (as added by subsection (a)).

(2) SUBMITTAL OF MODIFICATIONS.—Not later than 60 days before the date on which any proposed modification of the procedures described in paragraph (1) shall go into effect, the Secretary shall submit to the committees of Congress referred to in that paragraph a report describing such modification.

SEC. 5. AMENDMENTS TO OTHER LAWS.

(a) DETAINEE TREATMENT ACT OF 2005.—Section 1004(b) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 42 U.S.C. 200dd–1(b)) is amended—

(1) by striking ''may provide'' and inserting ''shall provide'';

(2) by inserting ''or investigation'' after ''criminal prosecution''; and

(3) by inserting ''whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,'' after ''described in that subsection,''.

(b) UNIFORM CODE OF MILITARY JUSTICE.—Chapter 47 of title, 10, United States Code (the Uniform Code of Military Justice), is amended as follows:

(1) Section 802 (article 2 of the Uniform Code of Military Justice) is amended by adding at the end the following new paragraph:

''(13) Lawful enemy combatants (as that term is defined in section 948a(3) of this title) who violate the law of war.''.

(2) Section 821 (article 21 of the Uniform Code of Military Justice) is amended by striking ''by statute or law of war''.

(3) Section 836(a) (article 36(a) of the Uniform Code of Military Justice) is amended by inserting ''(other than military commissions under chapter 47A of this title)'' after ''other military tribunals''.

(c) PUNITIVE ARTICLE OF CONSPIRACY.—Section 881 of title 10, United States Code (article 81 of the Uniform Code of Military Justice)), is amended—

(1) by inserting ''(a)'' before ''Any person''; and

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

''(b) Any person subject to this chapter or chapter 47A of this title who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.''.

(d) REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.—

(1) REVIEW BY SUPREME COURT.—Section 1259 of title 28, United States Code, is amended by adding at the end the following new paragraph:

''(5) Cases tried by military commission and reviewed by the United States Court of Appeals for the Armed Forces under section 950f of title 10.''.

(2) DETAINEE TREATMENT ACT OF 2005.—Section 1005(e) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 10 U.S.C. 801 note) is amended—

(A) in paragraphs (3) and (4), by striking ''United States Court of Appeals for the District of Columbia Circuit'' each place it appears and inserting ''United States Court of Appeals for the Armed Forces''; and

(B) in paragraph (3)—

(i) in subparagraph (A), by striking ''pursuant to Military Commission Order No. 1. dated August 31, 2005 (or any successor military order)'' and inserting ''by a military commission under chapter 47A of title 10, United States Code'';

(ii) by striking subparagraph (B) and inserting the following new subparagraph (B):

''(ii) GRANT OF REVIEW.—Review under this paragraph shall be as of right.'';

(iii) in subparagraph (C)—

(I) in clause (i)—

(aa) by striking ''pursuant to the military order'' and inserting ''by a military commission''; and

(bb) by striking ''at Guantanamo Bay, Cuba''; and

(II) in clause (ii), by striking ''pursuant to such military order'' and inserting ''by the military commission''; and

(iv) in subparagraph (D)(i), by striking ''specified in the military order'' and inserting ''specified for a military commission''.

SEC. 6. HABEAS CORPUS MATTERS.

(a) IN GENERAL.—Section 2241 of title 28, United States Code, is amended—

(1) by striking subsection (e) (as added by section 1005(e)(1) of Public Law 109–148 (119 Stat. 2742)) and by striking subsection (e) (as added by added by section 1405(e)(1) of Public Law 109–163 (119 Stat. 3477)); and

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

''(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained outside of the United States who—

''(A) is currently in United States custody; or

''(B) has been determined by the United States to have been properly detained as an enemy combatant.

''(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, treatment, or trial of an alien detained outside of the United States who—

''(A) is currently in United States custody; or

''(B) has been determined by the United States to have been properly detained as an enemy combatant.

''(3) In this subsection, the term 'United States', when used in a geographic sense, has the meaning given that term in section 1005(g) of the Detainee Treatment Act of 2005.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, treatment, or trial of an alien detained outside the United States (as that term is defined in section 2241(e)(3) of title 28, United States Code (as added by subsection (a)) since September 11, 2001.

SEC. 7. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.

(a) IN GENERAL.—No person may invoke the Geneva Conventions or any protocols thereto as an individually enforceable right in any civil action against an officer, employee, member of the Armed Forces or another agent of the United States Government, or against the United States, for the purpose of any claim for damages for death, injury, or damage to property in any court of the United States or its States or territories. This subsection does not affect the obligations of the United States under the Geneva Conventions.

(b) GENEVA CONVENTIONS DEFINED.—In this section, the term ''Geneva conventions'' means—

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

SEC. 8. REVISION TO WAR CRIMES OFFENSE UNDER FEDERAL CRIMINAL CODE.

(a) IN GENERAL.—Section 2441 of title 18, United States Code, is amended—

(1) in subsection (c), by striking paragraph (3) and inserting the following new paragraph (3):

''(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or''; and

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

''(d) COMMON ARTICLE 3 VIOLATIONS.—

''(1) GRAVE BREACH OF COMMON ARTICLE 3.—In subsection (c)(3), the term 'grave breach of common Article 3' means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

''(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

''(B) CRUEL, UNUSUAL, OR INHUMANE TREATMENT OR PUNISHMENT.—The act of a person who subjects another person in the custody or under the physical control of the United States Government, regardless of nationality or physical location, to cruel, unusual, or inhumane treatment or punishment prohibited by the Fifth, Eighth, and 14th Amendments to the Constitution of the United States.

''(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

''(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this section, one or more persons taking no active part in hostilities, including those placed out of active combat by sickness, wounds, detention, or any other cause.

''(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this section, one or more persons taking no active part in hostilities, including those placed out of active combat by sickness, wounds, detention, or any other cause, by disfiguring such person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of the body of such person or persons, without any legitimate medical or dental purpose.

''(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more

persons, including lawful combatants, in violation of the law of war.

''(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

''(H) SEXUAL ASSAULT OR ABUSE.—The act of person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

''(I) TAKING HOSTAGES.—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

''(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

''(A) the term 'severe mental pain or suffering' shall be applied for purposes of paragraph (1)(A) in accordance with the meaning given that term in section 2340(2) of this title;

''(B) the term 'serious bodily injury' shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title; and

''(C) the term 'sexual contact' shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title.

''(3) INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) of paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(4) INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.''.

(b) CONSTRUCTION.—Such section is further amended by adding at the end the following new subsections:

''(e) INAPPLICABILITY OF FOREIGN SOURCES OF LAW IN INTERPRETATION.—No foreign source of law shall be considered in defining or interpreting the obligations of the United States under this title.

''(f) NATURE OF CRIMINAL SANCTIONS.—The criminal sanctions in this section provide penal sanctions under the domestic law of the United States for grave breaches of the international conventions done at Geneva August 12, 1949. Such criminal sanctions do not alter the obligations of the United States under those international conventions.''.

(c) PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.—Such section is further amended by adding at the end the following new subsection:

''(g) PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.—The provisions of section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1) shall apply with respect to any criminal prosecution relating to the detention and interrogation of individuals described in such provisions that is grounded in an offense under subsection (a) by reason of subsection (c)(3) with respect to actions occurring between September 11, 2001, and December 30, 2005.''.

SEC. 9. DETENTION COVERED BY REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.

Section 1005(e)(2)(B)(i) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2742; 10 U.S.C. 801 note) is amended by striking ''the Department of Defense at Guantanamo Bay, Cuba'' and inserting ''the United States''.

SEC. 10. SEVERABILITY.

If any provision of this Act or amendment made by a provision of this Act, or the application of such provision or amendment to any person or circumstance, is held to be unconstitutional, the remainder of this Act and the amendments made by this Act, and the application of such provisions and amendments to any other person or circumstance, shall not be affected thereby.

SA 5087. Mr. SPECTER (for himself, Mr. LEAHY, Mr. DORGAN, Mr. DODD, Mr. DAYTON, Mr. FEINGOLD, Mrs. CLINTON, and Mr. BINGAMAN) submitted an amendment intended to be proposed by him to the bill S. 3930, to authorize trial by military commission for violations of the law of war, and for other purposes; as follows:

On page 93, strike line 9 and all that follows through page 94, line 13.

SA 5088. Mr. KENNEDY (for himself, Mrs. FEINSTEIN, and Mrs. CLINTON) submitted an amendment intended to be proposed by him to the bill S. 3930, to authorize trial by military commission for violations of the law of war, and for other purposes; which was ordered to lie on the table; as follows:

On page 83, between lines 8 and 9, insert the following:

(2) PROTECTION OF UNITED STATES PERSONS.—The Secretary of State shall notify other parties to the Geneva Conventions that—

(A) the United States has historically interpreted the law of war and the Geneva Conventions, including in particular common Article 3, to prohibit a wide variety of cruel, inhuman, and degrading treatment of members of the United States Armed Forces and United States citizens;

(B) during and following previous armed conflicts, the United States Government has prosecuted persons for engaging in cruel, inhuman, and degrading treatment, including the use of waterboarding techniques, stress positions, including prolonged standing, the use of extreme temperatures, beatings, sleep deprivation, and other similar acts;

(C) this Act and the amendments made by this Act preserve the capacity of the United States to prosecute nationals of enemy powers for engaging in acts against members of the United States Armed Forces and United States citizens that have been prosecuted by the United States as war crimes in the past; and

(D) should any United States person to whom the Geneva Conventions apply be subjected to any of the following acts, the United States would consider such act to constitute a punishable offense under common Article 3 and would act accordingly. Such acts, each of which is prohibited by the Army Field Manual include forcing the person to be naked, perform sexual acts, or pose in a sexual manner; applying beatings, electric shocks, burns, or other forms of physical pain to the person; waterboarding the person; using dogs on the person; inducing hypothermia or heat injury in the person; conducting a mock execution of the person; and depriving the person of necessary food, water, or medical care.

SA 5089. Mr. MARTINEZ submitted an amendment intended to be proposed to amendment SA 5066 submitted by Mrs. HUTCHISON (for herself and Mr. KYL) and intended to be proposed to the bill H.R. 6061, to establish operational control over the international land and maritime borders of the United States; which was ordered to lie on the table; as follows:

On page 1, between lines 2 and 3, insert the following:

(d) OPERATIONAL CONTROL DEFINED.—Notwithstanding subsection (b), for purposes of this section the term ''operational control'' means effective prevention of unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband, as determined by the Secretary of Homeland Security.

SA 5090. Mr. BENNETT (for Mr. FRIST) proposed an amendment to the bill S. 403, to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions; as follows:

On page 12, line 2, strike ''45 days'' and insert ''46 days''.

SA 5091. Mr. BENNETT (for Mr. FRIST) proposed an amendment to amendment SA 5090 proposed by Mr. BENNETT (for Mr. FRIST) to the bill S. 403, to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions; as follows:

Strike ''46 days'' and insert ''44 days''.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on September 27, 2006, at 10 a.m., to conduct a hearing on the nominations of Mr. Christopher A. Padilla, of the District of Columbia, to be Assistant Secretary of the Department of Commerce; and Mr. Bijan Rafiekian, of California, to be a Member of the Board of Directors of the Export-Import Bank of the United States.

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

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to hold a committee markup on Wednesday, September 27, 2006 at 10 a.m.

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

COMMITTEE ON FINANCE

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on

Finance be authorized to meet during the session on Wednesday, September 27, 2006, at a time and location to be determined, following a vote on the Senate Floor, to consider favorably reporting the nominations of John K. Veroneau, to be Deputy United States Trade Representative, with the Rank of Ambassador, Executive Office of the President, and Robert K. Steel, to be Under Secretary, U.S. Department of the Treasury.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, September 27, 2006, at 2:30 p.m. to hold a hearing on nominations.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, September 27, 2006, at 10 a.m. for a hearing titled, ''Development of an Artificial Pancreas: Will New Technologies Improve Care for People With Diabetes and Reduce the Burden on the Health Care System?''

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, September 27, 2006, at 10 a.m. for a hearing titled, ''The Potential of an Artificial Pancreas: Improving Care for People With Diabetes.''

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Veterans' Affairs be authorized to meet during the session of the Senate on Wednesday, September 27, 2006, to hold a meeting to mark up the nomination of Robert T. Howard to be Assistant Secretary for Information and Technology, Department of Veterans' Affairs.

The meeting will take place in the Reception Room off the Senate Floor in the Capitol following the first roll call vote of the day.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. LOTT. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on September 27, 2006 at 2:30 p.m. to hold a closed briefing.

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

SUBCOMMITTEE ON BIOTERRORISM AND PUBLIC HEALTH PREPAREDNESS

Mr. LOTT. Mr. President, I ask unanimous consent that the Subcommittee on bioterrorism and Public Health Preparedness, be authorized to hold a hearing during the session of the Senate on Wednesday, September 27, 2006 at 2:30 p.m. in SD–430.

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

SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY

Mr. LOTT. Mr. President, I ask unanimous consent that the Subcommittee on Immigration, Border Security and Citizenship be authorized to meet to conduct a hearing on ''Oversight Hearing: U.S. Refugee Admissions and Policy'' on Wednesday, September 27, at 3 p.m. in SD–226.

Witness List

Panel I: The Honorable Ellen Sauerbray, Assistant Secretary of State, Population, Refugees and Migration, Department of State, Washington, DC; Jonathan ''Jock'' Scharfen, Deputy Director, U.S. Citizenship and Immigration Services, Department of Homeland Security, Washington, DC.

Panel II: Michael Horowitz, Director, Project for Civil Justice Reform and Project for International Religious Liberty, Hudson Institute, Washington, DC; Father Kenneth Gavin, S.J., Vice-Chair, Refugee Council U.S.A. and National Director, Jesuit Refugee Service, U.S.A., Washington, DC.

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

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. LOTT. Mr. President, I ask unanimous consent that the Subcommittee on Public Lands and Forests be authorized to meet during the session of the Senate on Wednesday, September 27 at 10 a.m.

The purpose of the hearing is to receive testimony on the following bills: S. 3000, a bill to grant rights-of-way for electric transmission lines over certain native allotments in the State of Alaska; S. 3599, to establish the Prehistoric Trackways National Monument in the State of New Mexico; S. 3794, to provide for the implementation of the Owyhee Initiative Agreement, and for other purposes; S. 3854, to designate certain land in the State of Oregon as wilderness, and for other purposes; H.R. 3603, to promote the economic development and recreational use of National Forest System lands and other public lands in Central Idaho, to designate the Boulder-White Cloud Management Area to ensure the continued management of certain National Forest System lands and Bureau of Land Management lands for recreational and grazing use and conservation and resource protection, to add certain National Forest System lands and Bureau of Land Management lands in Central Idaho to the National Wilderness Preservation System, and for other purposes; and H.R. 5025, to protect for future generations the recreational opportunities, forest, timber, clean water, wilderness and scenic values, and diverse habitat of Mount Hood National Forest, Oregon, and for other purposes.

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

SUBCOMMITTEE ON READINESS AND MANAGEMENT SUPPORT

Mr. LOTT. Mr. Speaker, I ask unanimous consent that the Subcommittee on Readiness and Management Support be authorized to meet during the session of the Senate on September 27, 2006, at 10 a.m., to receive testimony on U.S. policy and practice with respect to the use of riot control agents by the U.S. Armed forces.

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

PRIVILEGES OF THE FLOOR

Mr. WARNER. I ask unanimous consent a fellow from Senator GRAHAM's staff, Adam Brake, have floor privileges for the duration of the Military Commissions Act of 2006.

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

Mr. LEVIN. Mr. President, I ask unanimous consent that William Johnson, a fellow in Senator KENNEDY's office, be granted floor privileges during the consideration of S. 3930.

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

Mr. CORNYN. Mr. President, I ask unanimous consent that two of my law clerks, Natasha Solce and John Huffman, be granted the privilege of the floor during the remainder of the week.

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

Mr. BENNETT. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

MEASURE READ THE FIRST TIME—H.R. 5132

Mr. BENNETT. Mr. President, I understand there is a bill at the desk. I ask for its first reading.

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

The assistant legislative clerk read as follows:

A bill (H.R. 5132) to direct the Secretary of Interior to conduct a special resource study to determine the suitability and feasibility of including in the National Park System certain sites in Monroe County, Michigan, relating to the battles of the River Raisin during the War of 1812.

Mr. BENNETT. Mr. President, I now ask for its second reading, and in order to place the bill on the calendar under the provisions of rule XIV, I object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will receive its second reading on the next legislative day.

MEASURE PLACED ON THE CALENDAR—S. 3936

Mr. BENNETT. Mr. President, I understand there is a bill at the desk due for a second reading.

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

The assistant legislative clerk read as follows:

A bill (S. 3936) to invest in innovation and education to improve the competitiveness of the United States in the global economy.

Mr. BENNETT. Mr. President, in order to place the bill on the calendar under the provisions of rule XIV, I object to further proceedings.

The PRESIDING OFFICER. Objection is heard. The bill will be placed on the calendar.

STAR PRINT—S. 3867

Mr. BENNETT. Mr. President, I ask unanimous consent that S. 3867 be star printed with the changes that are at the desk.

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

CONGRESSIONAL TRIBUTE TO DR. NORMAN E. BORLAUG ACT OF 2006

Mr. BENNETT. Mr. President, I ask unanimous consent that the Committee on Banking, Housing and Urban Affairs be discharged from further consideration of S. 2250, and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2250) to award a Congressional Gold Medal to Dr. Norman E. Borlaug.

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

Mr. HARKIN. Mr. President, today the Senate pays tribute to a true American hero and fellow native Iowan in passing S. 2250, a bill to award Dr. Norman E. Borlaug the Congressional Gold Medal, which is the highest congressional expression of national appreciation for distinguished achievement and contribution. This is a fitting honor to a man who is frequently credited with saving more lives than anyone who has ever lived.

Commonly known as ''The Father of the Green Revolution,'' Dr. Borlaug's scientific and humanitarian efforts have saved countless people from starvation and hunger while raising standards of living throughout the world.

Dr. Borlaug was born in 1914 near Cresco, IA. Like many Iowans at the time, he grew up on a small farm and attended a one-room school house for his first 8 years of education. After graduating from high school, he attended the University of Minnesota and earned his bachelor of science in forestry. Immediately after receiving his degree in 1937, he worked for the U.S. Forestry Service. He returned to the University of Minnesota to receive his master's degree in 1939 and doctorate in 1942.

In 1944 Dr. Borlaug accepted an appointment as a geneticist and plant pathologist with the Cooperative Wheat Research and Production Program in Mexico. This program was a joint undertaking by the Mexican Government and the Rockefeller Foundation involving research in plant genetics, plant breeding, plant pathology, agronomy, soil science, and cereal technology. He spent two decades working with farmers in Mexico to develop a new disease resistant variety of wheat that could triple its output in grain. This breakthrough achievement in plant breeding enabled Mexico to become self-sufficient in wheat production while vastly improving the livelihood of many poor farmers.

The United Nations asked Dr. Borlaug to travel to India and Pakistan in the 1960s to help the warring countries, which were threatened with an imminent pandemic famine. Working with scientists from both countries, Dr. Borlaug convinced India and Pakistan to adopt his new seeds and approach to agriculture to avert potential starvation and famine. In a short time, both countries attained self-sufficiency in wheat production and millions of people were saved from hunger, famine and death. Dr. Borlaug continued his work in Southeast Asia, and the results were the same.

In 1970, Dr. Borlaug was awarded the Nobel Peace Prize for his work in agriculture, reversing food shortages and saving millions of lives. Today, at the age of 92, Dr. Borlaug continues his tireless work to alleviate and prevent hunger throughout the world. He is the head of the Sasakawa Global 2000 program, which is working to bring the Green Revolution to Africa and alleviate hunger and malnutrition in the sub-Saharan region. He founded the World Food Prize in 1986 as a means to recognize and inspire achievements in increasing the quality, quantity and availability of food in the world. He also continues his role as an educator at Texas A&M University while also continuing research at the International Center for the Improvement of Wheat and Maize in Mexico.

Dr. Borlaug has been awarded the Presidential Medal of Freedom, the National Academy of Science's Public Service Medal and the Rotary International Award for World Understanding and Peace. Today the Senate approves legislation to award Dr. Borlaug the Congressional Gold Medal. Dr. Borlaug is a true American hero and it is fitting that Congress honors this man who has done so much to alleviate hunger and human suffering, improve the quality of life around the globe and promote understanding and peace among all of the world's people.

I would like to thank Senator GRASSLEY and the many cosponsors of this bill for their support and work to honor Dr. Borlaug with this high distinction.

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

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

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2250

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Congressional Tribute to Dr. Norman E. Borlaug Act of 2006''.

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Dr. Norman E. Borlaug, was born in Iowa where he grew up on a family farm, and received his primary and secondary education.

(2) Dr. Borlaug attended the University of Minnesota where he received his B.A. and Ph.D. degrees and was also a star NCAA wrestler.

(3) For the past 20 years, Dr. Borlaug has lived in Texas where he is a member of the faculty of Texas A&M University.

(4) Dr. Borlaug also serves as President of the Sasakawa Africa Association.

(5) Dr. Borlaug's accomplishments in terms of bringing radical change to world agriculture and uplifting humanity are without parallel.

(6) In the immediate aftermath of World War II, Dr. Borlaug spent 20 years working in the poorest areas of rural Mexico. It was there that Dr. Borlaug made his breakthrough achievement in developing a strand of wheat that could exponentially increase yields while actively resisting disease.

(7) With the active support of the governments involved, Dr. Borlaug's ''green revolution'' uplifted hundreds of thousands of the rural poor in Mexico and saved hundreds of millions from famine and outright starvation in India and Pakistan.

(8) Dr. Borlaug's approach to wheat production next spread throughout the Middle East. Soon thereafter his approach was adapted to rice growing, increasing the number of lives Dr. Borlaug has saved to more than a billion people.

(9) In 1970, Dr. Borlaug received the Nobel Prize, the only person working in agriculture to ever be so honored. Since then he has received numerous honors and awards including the Presidential Medal of Freedom, the Public Service Medal, the National Academy of Sciences' highest honor, and the Rotary International Award for World Understanding and Peace.

(10) At age 91, Dr. Borlaug continues to work to alleviate poverty and malnutrition. He currently serves as president of Sasakawa Global 2000 Africa Project, which seeks to extend the benefits of agricultural development to the 800,000,000 people still mired in poverty and malnutrition in sub-Saharan Africa.

(11) Dr. Borlaug continues to serve as Chairman of the Council of Advisors of the World Food Prize, an organization he created in 1986 to be the ''Nobel Prize for Food and Agriculture'' and which presents a $250,000 prize each October at a Ceremony in Des Moines, Iowa, to the Laureate who has made an exceptional achievement similar to Dr. Borlaug's breakthrough 40 years ago. In the almost 20 years of its existence, the World

Food Prize has honored Laureates from Bangladesh, India, China, Mexico, Denmark, Sierra Leone, Switzerland, the United Kingdom, and the United States.

(12) Dr. Borlaug has saved more lives than any other person who has ever lived, and likely has saved more lives in the Islamic world than any other human being in history.

(13) Due to a lifetime of work that has led to the saving and preservation of an untold amount of lives, Dr. Norman E. Borlaug is deserving of America's highest civilian award: the congressional gold medal.

SEC. 3. CONGRESSIONAL GOLD MEDAL.

(a) PRESENTATION AUTHORIZED.—The President Pro Tempore of the Senate and the Speaker of the House of Representatives are authorized to make appropriate arrangements for the presentation, on behalf of Congress, of a gold medal of appropriate design, to Dr. Norman E. Borlaug, in recognition of his enduring contributions to the United States and the world.

(b) DESIGN AND STRIKING.—For the purpose of the presentation referred to in subsection (a), the Secretary of the Treasury (in this Act referred to as the ''Secretary'') shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

SEC. 4. DUPLICATE MEDALS.

Under such regulations as the Secretary may prescribe, the Secretary may strike and sell duplicates in bronze of the gold medal struck under section 3 at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medal.

SEC. 5. STATUS AS NATIONAL MEDALS.

(a) NATIONAL MEDAL.—The medal struck under this Act is a national medal for purposes of chapter 51 of title 31, United States Code.

(b) NUMISMATIC ITEMS.—For purposes of section 5134 of title 31, United States Code, all duplicate medals struck under this Act shall be considered to be numismatic items.

SEC. 6. AUTHORITY TO USE FUND AMOUNTS; PROCEEDS OF SALE.

(a) AUTHORITY TO USE FUND AMOUNTS.—There are authorized to be charged against the United States Mint Public Enterprise Fund, such sums as may be necessary to pay for the cost of the medals struck under this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals under section 4 shall be deposited in the United States Mint Public Enterprise Fund.

BYRON NELSON CONGRESSIONAL GOLD MEDAL ACT

Mr. BENNETT. Mr. President, I ask unanimous consent the Committee on Banking, Housing and Urban Affairs be discharged from further consideration of S. 2491 and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2491) to award a Congressional Gold Medal to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator.

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

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

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

The bill (S. 2491) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 2491

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Byron Nelson Congressional Gold Medal Act''.

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Byron Nelson was a top player in the sport of golf during the World War II era and his accomplishments as a player, a teacher, and commentator are renowned.

(2) Byron Nelson won 54 career victories, including a record 11 in a row in 1945, during his short 13-year career.

(3) Byron Nelson won 5 majors, including 2 Masters (1937 and 1942), 2 Professional Golf Association (PGA) Championships (1940 and 1945) and the U.S. Open (1939).

(4) Sports journalist Bill Nichols recently ranked the greatest seasons on the PGA tour for The Dallas Morning News and picked Roanoke, Texas-resident Byron Nelson's 1945 tour as the greatest season of golf in American history.

(5) In 1945, Byron Nelson accumulated 18 total victories, 11 of which were consecutive, while averaging 68.33 strokes per round for 30 tournaments.

(6) At the Seattle Open in 1945, Byron Nelson shot a record 62 for 18 holes and the world record 259, 29 shots under par for 72 holes.

(7) Byron Nelson is one of only 2 golfers to be named ''Male Athlete of the Year'' twice by the Associated Press: in 1944, when he won 7 tournaments and averaged 69.67 strokes for 85 rounds, and again after his 1945 season.

(8) The World Golf Hall of Fame honored Byron Nelson in 2004 by featuring an exhibit entitled ''Byron Nelson: A Champion ... A Gentleman''.

(9) Byron Nelson was selected for the Ryder Cup 4 times—in 1937, 1939, 1947 and 1965, and on that last occasion he led the United States Ryder Cup team as team captain to victory over Great Britain.

(10) Byron Nelson was also a pioneer in the golf business, helping to develop the golf shoes and umbrellas used today.

(11) In 1966, True Temper created the ''Iron Byron'' robot to replicate Byron Nelson's swing in order to test the company's equipment, but the robot was eventually used for club and ball testing by the United States Golf Association (USGA) and many other manufacturing companies.

(12) Byron Nelson mentored many golf hopefuls, including 1964 Player of the Year Ken Venturi and 6-time PGA Player of the Year Tom Watson.

(13) Byron Nelson was one of the first golf analysts on network television where his understanding of the game in general, and the golf swing in particular, was demonstrably profound.

(14) Byron Nelson received the United States Golf Association's Bob Jones Award for distinguished sportsmanship in golf in 1974.

(15) In 1974, the Golf Writers Association of America presented Byron Nelson with the Richardson Award for consistently outstanding contributions to golf.

(16) Since 1983, the Byron and Louise Nelson Golf Endowment Fund has provided over $1,500,000 in endowment funds to Abilene Christian University in Abilene, Texas.

(17) Byron Nelson received the PGA Distinguished Service Award in 1993. This award is presented to an individual who has helped perpetuate the ideals and values of the PGA.

(18) Byron Nelson has served as an honorary chairperson for the Metroport Meals on Wheels since 1992.

(19) In 1994, the Golf Course Superintendents Association of America presented Byron Nelson with the Old Tom Morris Award for outstanding contributions to the game.

(20) Byron Nelson helped to develop the Tournament Players Course (TPC) Four Seasons at Los Colinas, Texas, site of the EDS Byron Nelson Championship and the Byron Nelson Golf School, into a world-class facility.

(21) The EDS Byron Nelson Championship is the only PGA tour event named in honor of a professional golfer and traditionally attracts the strongest players in the sport.

(22) Since its inception, the EDS Byron Nelson Championship has raised $88,000,000 for Salesmanship Club Youth and Family Centers, a nonprofit agency that provides education and mental health services for more than 2,700 children and their families in the greater Dallas area.

(23) In 2002, Byron Nelson received the prestigious Donald Ross Award from the American Society of Golf Course Architects (ASGCA) for his significant contribution to the game of golf and the profession of golf course architecture.

(24) The United States Golf Association presented Byron Nelson the Ike Grainger Award for volunteer service to the game of golf in 2002.

(25) In 2002, the National Golf Foundation presented Byron Nelson with the Graffis Award for outstanding lifelong contributions to the game of golf.

SEC. 3. CONGRESSIONAL GOLD MEDAL.

(a) PRESENTATION AUTHORIZED.—The President pro tempore of the Senate and the Speaker of the House of Representatives shall make appropriate arrangements for the presentation, on behalf of the Congress, of a gold medal of appropriate design to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator.

(b) DESIGN AND STRIKING.—For purposes of the presentation referred to in subsection (a), the Secretary of the Treasury (hereafter in this Act referred to as the ''Secretary'') shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

SEC. 4. DUPLICATE MEDALS.

The Secretary may strike and sell duplicates in bronze of the gold medal struck pursuant to section 3 under such regulations as the Secretary may prescribe, at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medal.

SEC. 5. STATUS OF MEDALS.

(a) NATIONAL MEDALS.—The medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

(b) NUMISMATIC ITEMS.—For purposes of section 5134 of title 31, United States Code, all medals struck under this Act shall be considered to be numismatic items.

SEC. 6. AUTHORITY TO USE FUND AMOUNTS; PROCEEDS OF SALE.

(a) AUTHORITY TO USE FUND AMOUNTS.—There is authorized to be charged against the United States Mint Public Enterprise Fund, such amounts as may be necessary to pay for the costs of the medals struck pursuant to this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals authorized under section 4 shall be deposited into the United States Mint Public Enterprise Fund.

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

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

CHILD INTERSTATE ABORTION NOTIFICATION ACT

Mr. BENNETT. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on the bill (S. 403) to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

S. 403

Resolved, That the bill from the Senate (S. 403) entitled ''An Act to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions'', do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Child Interstate Abortion Notification Act''.

SEC. 2. TRANSPORTATION OF MINORS IN CIRCUMVENTION OF CERTAIN LAWS RELATING TO ABORTION.

Title 18, United States Code, is amended by inserting after chapter 117 the following:

''CHAPTER 117A—TRANSPORTATION OF MINORS IN CIRCUMVENTION OF CERTAIN LAWS RELATING TO ABORTION

''Sec

''2431. Transportation of minors in circumvention of certain laws relating to abortion.

''2432. Transportation of minors in circumvention of certain laws relating to abortion.

''§2431. Transportation of minors in circumvention of certain laws relating to abortion

''(a) OFFENSE.—

''(1) GENERALLY.—Except as provided in subsection (b), whoever knowingly transports a minor across a State line, with the intent that such minor obtain an abortion, and thereby in fact abridges the right of a parent under a law requiring parental involvement in a minor's abortion decision, in force in the State where the minor resides, shall be fined under this title or imprisoned not more than one year, or both.

''(2) DEFINITION.—For the purposes of this subsection, an abridgement of the right of a parent occurs if an abortion is performed or induced on the minor, in a State or a foreign nation other than the State where the minor resides, without the parental consent or notification, or the judicial authorization, that would have been required by that law had the abortion been performed in the State where the minor resides.

''(b) EXCEPTIONS.—

''(1) The prohibition of subsection (a) does not apply if the abortion was necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself.

''(2) A minor transported in violation of this section, and any parent of that minor, may not be prosecuted or sued for a violation of this section, a conspiracy to violate this section, or an offense under section 2 or 3 based on a violation of this section.

''(c) AFFIRMATIVE DEFENSE.—It is an affirmative defense to a prosecution for an offense, or to a civil action, based on a violation of this section that the defendant—

''(1) reasonably believed, based on information the defendant obtained directly from a parent of the minor, that before the minor obtained the abortion, the parental consent or notification took place that would have been required by the law requiring parental involvement in a minor's abortion decision, had the abortion been performed in the State where the minor resides; or

''(2) was presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence waived any parental notification required by the laws of that State, or otherwise authorized that the minor be allowed to procure an abortion.

''(d) CIVIL ACTION.—Any parent who suffers harm from a violation of subsection (a) may obtain appropriate relief in a civil action unless the parent has committed an act of incest with the minor subject to subsection (a).

''(e) DEFINITIONS.—For the purposes of this section—

''(1) the term 'abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to terminate an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous abortion, accidental trauma or a criminal assault on the pregnant female or her unborn child;

''(2) the term a 'law requiring parental involvement in a minor's abortion decision' means a law—

''(A) requiring, before an abortion is performed on a minor, either—

''(i) the notification to, or consent of, a parent of that minor; or

''(ii) proceedings in a State court; and

''(B) that does not provide as an alternative to the requirements described in subparagraph (A) notification to or consent of any person or entity who is not described in that subparagraph;

''(3) the term 'minor' means an individual who is not older than the maximum age requiring parental notification or consent, or proceedings in a State court, under the law requiring parental involvement in a minor's abortion decision;

''(4) the term 'parent' means—

''(A) a parent or guardian;

''(B) a legal custodian; or

''(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides, who is designated by the law requiring parental involvement in the minor's abortion decision as a person to whom notification, or from whom consent, is required; and

''(5) the term 'State' includes the District of Columbia and any commonwealth, possession, or other territory of the United States, and any Indian tribe or reservation.

''§2432. Transportation of minors in circumvention of certain laws relating to abortion

''Notwithstanding section 2431(b)(2), whoever has committed an act of incest with a minor and knowingly transports the minor across a State line with the intent that such minor obtain an abortion, shall be fined under this title or imprisoned not more than one year, or both. For the purposes of this section, the terms 'State', 'minor', and 'abortion' have, respectively, the definitions given those terms in section 2435.''.

SEC. 3. CHILD INTERSTATE ABORTION NOTIFICATION.

Title 18, United States Code, is amended by inserting after chapter 117A the following:

''CHAPTER 117B—CHILD INTERSTATE ABORTION NOTIFICATION

''Sec

''2435. Child interstate abortion notification

''§2435. Child interstate abortion notification

''(a) OFFENSE.—

''(1) GENERALLY.—A physician who knowingly performs or induces an abortion on a minor in violation of the requirements of this section shall be fined under this title or imprisoned not more than one year, or both.

''(2) PARENTAL NOTIFICATION.—A physician who performs or induces an abortion on a minor who is a resident of a State other than the State in which the abortion is performed must provide, or cause his or her agent to provide, at least 24 hours actual notice to a parent of the minor before performing the abortion. If actual notice to such parent is not possible after a reasonable effort has been made, 24 hours constructive notice must be given to a parent.

''(b) EXCEPTIONS.—The notification requirement of subsection (a)(2) does not apply if—

''(1) the abortion is performed or induced in a State that has, in force, a law requiring parental involvement in a minor's abortion decision and the physician complies with the requirements of that law;

''(2) the physician is presented with documentation showing with a reasonable degree of certainty that a court in the minor's State of residence has waived any parental notification required by the laws of that State, or has otherwise authorized that the minor be allowed to procure an abortion;

''(3) the minor declares in a signed written statement that she is the victim of sexual abuse, neglect, or physical abuse by a parent, and, before an abortion is performed on the minor, the physician notifies the authorities specified to receive reports of child abuse or neglect by the law of the State in which the minor resides of the known or suspected abuse or neglect;

''(4) the abortion is necessary to save the life of the minor because her life was endangered by a physical disorder, physical injury, or physical illness, including a life endangering physical condition caused by or arising from the pregnancy itself, or because in the reasonable medical judgment of the minor's attending physician, the delay in performing an abortion occasioned by fulfilling the prior notification requirement of subsection (a)(2) would cause a substantial and irreversible impairment of a major bodily function of the minor arising from continued pregnancy, not including psychological or emotional conditions, but an exception under this paragraph does not apply unless the attending physician or an agent of such physician, within 24 hours after completion of the abortion, notifies a parent in writing that an abortion was performed on the minor and of the circumstances that warranted invocation of this paragraph; or

''(5) the minor is physically accompanied by a person who presents the physician or his agent with documentation showing with a reasonable degree of certainty that he or she is in fact the parent of that minor.

''(c) CIVIL ACTION.—Any parent who suffers harm from a violation of subsection (a) may obtain appropriate relief in a civil action unless the parent has committed an act of incest with the minor subject to subsection (a).

''(d) DEFINITIONS.—For the purposes of this section—

''(1) the term 'abortion' means the use or prescription of any instrument, medicine, drug, or any other substance or device intentionally to terminate the pregnancy of a female known to be pregnant, with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth, to terminate an ectopic pregnancy, or to remove a dead unborn child who died as the result of a spontaneous abortion, accidental trauma, or a criminal assault on the pregnant female or her unborn child;

''(2) the term 'actual notice' means the giving of written notice directly, in person, by the physician or any agent of the physician;

''(3) the term 'constructive notice' means notice that is given by certified mail, return receipt requested, restricted delivery to the last known address of the person being notified, with delivery deemed to have occurred 48 hours following noon on the next day subsequent to mailing on which regular mail delivery takes place, days on which mail is not delivered excluded;

''(4) the term a 'law requiring parental involvement in a minor's abortion decision' means a law—

''(A) requiring, before an abortion is performed on a minor, either—

''(i) the notification to, or consent of, a parent of that minor; or

''(ii) proceedings in a State court;

''(B) that does not provide as an alternative to the requirements described in subparagraph (A) notification to or consent of any person or entity who is not described in that subparagraph;

''(5) the term 'minor' means an individual who is not older than 18 years and who is not emancipated under State law;

''(6) the term 'parent' means—

''(A) a parent or guardian;

''(B) a legal custodian; or

''(C) a person standing in loco parentis who has care and control of the minor, and with whom the minor regularly resides;

as determined by State law;

''(7) the term 'physician' means a doctor of medicine legally authorized to practice medicine by the State in which such doctor practices medicine, or any other person legally empowered under State law to perform an abortion; and

''(8) the term 'State' includes the District of Columbia and any commonwealth, possession, or other territory of the United States, and any Indian tribe or reservation.''.

SEC. 4. CLERICAL AMENDMENT.

The table of chapters at the beginning of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 117 the following new items:

''117A. Transportation of minors in circumvention of certain laws relating to abortion 2431

''117B. Child interstate abortion notification ..... 2435''.

SEC. 5. SEVERABILITY AND EFFECTIVE DATE.

(a) The provisions of this Act shall be severable. If any provision of this Act, or any application thereof, is found unconstitutional, that finding shall not affect any provision or application of the Act not so adjudicated.

(b) This Act and the amendments made by this Act shall take effect 45 days after the date of enactment of this Act.

AMENDMENT NO. 5090

Mr. BENNETT. Mr. President, on behalf of the majority leader, I move to concur in the amendment of the House and send an amendment to the desk and ask for its immediate consideration.

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

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. FRIST, proposes an amendment numbered 5090 to the House amendment.

Mr. BENNETT. I ask that the reading of the amendment be dispensed with.

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

The amendment is as follows:

On page 12, line 2, strike ''45 days'' and insert ''46 days''

Mr. BENNETT. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 5091 TO AMENDMENT NO. 5090

Mr. BENNETT. Mr. President, on behalf of the majority leader, I send a second-degree amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Utah [Mr. BENNETT], for Mr. FRIST, proposes an amendment numbered 5091 to amendment No. 5090.

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

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

The amendment is as follows:

Strike ''46 days'' and insert ''44 days''.

CLOTURE MOTION

Mr. BENNETT. Mr. President, on behalf of the leader, I send a cloture motion to the desk.

The PRESIDING OFFICER. Without objection, the cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to concur in the House amendment to S. 403: a bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

Bill Frist, John Ensign, Tom Coburn, Craig Thomas, Jim DeMint, Wayne Allard, Mitch McConnell, Trent Lott, Jim Bunning, Conrad Burns, Ted Stevens, Johnny Isakson, John Cornyn, Jeff Sessions, Larry Craig, Mike Crapo, John Thune.

MORNING BUSINESS

Mr. BENNETT. Mr. President, I ask unanimous consent we now return to morning business.

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

ORDERS FOR THURSDAY, SEPTEMBER 28, 2006

Mr. BENNETT. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Thursday, September 28. I further ask consent that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to a period of morning business for up to 30 minutes, with the first 15 minutes under the control of the majority leader or his designee, and the final 15 minutes under the control of the Democratic leader or his designee; further, that following morning business, the Senate resume consideration of S. 3930, as under the previous order.

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

PROGRAM

Mr. BENNETT. Mr. President, today we were able to reach an agreement on the military tribunal legislation. We have disposed of one amendment today. The Levin substitute amendment was defeated this afternoon. The Specter amendment is pending, and there will be some additional debate time on that tomorrow. Under the agreement, we have three other amendments to consider and then final passage of the bill. Therefore, Senators can expect rollcall votes throughout tomorrow's session.

As a reminder, the majority leader has outlined a number of items that we need to complete before we leave for the recess. We will be here until we can get these items finished.

ORDER FOR ADJOURNMENT

Mr. BENNETT. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks made by the Senator from Illinois for up to 10 minutes.

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

Mr. BENNETT. Mr. President, does the Senator from Illinois require more than 10 minutes?

Mr. OBAMA. If I could, I do not think I will need more than 15 minutes. It may be a little more than 10 minutes.

Mr. BENNETT. Mr. President, I amend my request that the Senate stand in adjournment under the previous order following the remarks of the Senator from Illinois for up to 20 minutes.

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

The Senator from Illinois is recognized.

Mr. OBAMA. Mr. President, thank you very much. And I thank my dear friend from Utah.

HABEAS CORPUS—AMENDMENT NO. 5087

Mr. OBAMA. Mr. President, I would like to address the habeas corpus

amendment that is on the floor and that we just heard a lengthy debate about between Senator SPECTER and Senator WARNER.

A few years ago, I gave a speech in Boston that people talk about from time to time. In that speech, I spoke about why I love this country, why I love America, and what I believe sets this country apart from so many other nations in so many areas. I said:

> That is the true genius of America—a faith in simple dreams, an insistence on small miracles; that we can tuck in our children at night and know that they are fed and clothed and safe from harm; that we can say what we think, write what we think, without hearing a sudden knock on the door. . . .

Without hearing a sudden knock on the door. I bring this up because what is at stake in this bill, and in the amendment that is currently being debated, is the right, in some sense, for people who hear that knock on the door and are placed in detention because the Government suspects them of terrorist activity to effectively challenge their detention by our Government.

Now, under the existing rules of the Detainee Treatment Act, court review of anyone's detention is severely restricted. Fortunately, the Supreme Court in Hamdan ensured that some meaningful review would take place. But in the absence of Senator SPECTER's amendment that is currently pending, we will essentially be going back to the same situation as if the Supreme Court had never ruled in Hamdan, a situation in which detainees effectively have no access to anything other than the Combatant Status Review Tribunal, or the CSRT.

Now, I think it is important for all of us to understand exactly the procedures that are currently provided for under the CSRT. I have actually read a few of the transcripts of proceedings under the CSRT. And I can tell you that oftentimes they provide detainees no meaningful recourse if the Government has the wrong guy.

Essentially, reading these transcripts, they proceed as follows: The Government says: You are a member of the Taliban. And the detainee will say: No, I'm not. And then the Government will not ask for proof from the detainee that he is not. There is no evidence that the detainee can offer to rebut the Government's charge.

The Government then moves on and says: And on such and such a date, you perpetrated such and such terrorist crime. And the detainee says: No, I didn't. You have the wrong guy. But again, he has no capacity to place into evidence anything that would rebut the Government's charge. And there is no effort to find out whether or not what he is saying is true.

And it proceeds like that until effectively the Government says, OK, that is the end of the tribunal, and he goes back to detention. Even if there is evidence that he was not involved in any terrorist activity, he may not have any mechanism to introduce that evidence into the hearing.

Now, the vast majority of the folks in Guantanamo, I suspect, are there for a reason. There are a lot of dangerous people. Particularly dangerous are people like Khalid Shaikh Mohammed. Ironically, those are the guys who are going to get real military procedures because they are going to be charged by the Government. But detainees who have not committed war crimes—or where the Government's case is not strong—may not have any recourse whatsoever.

The bottom line is this: Current procedures under the CSRT are such that a perfectly innocent individual could be held and could not rebut the Government's case and has no way of proving his innocence.

I would like somebody in this Chamber, somebody in this Government, to tell me why this is necessary. I do not want to hear that this is a new world and we face a new kind of enemy. I know that. I know that every time I think about my two little girls and worry for their safety—when I wonder if I really can tuck them in at night and know that they are safe from harm. I have as big of a stake as anybody on the other side of the aisle and anybody in this administration in capturing terrorists and incapacitating them. I would gladly take up arms myself against any terrorist threat to make sure my family is protected.

But as a parent, I can also imagine the terror I would feel if one of my family members were rounded up in the middle of the night and sent to Guantanamo without even getting one chance to ask why they were being held and being able to prove their innocence.

This is not just an entirely fictional scenario, by the way. We have already had reports by the CIA and various generals over the last few years saying that many of the detainees at Guantanamo should not have been there. As one U.S. commander of Guantanamo told the Wall Street Journal:

> Sometimes, we just didn't get the right folks.

We all know about the recent case of the Canadian man who was suspected of terrorist connections, detained in New York, sent to Syria—through a rendition agreement—tortured, only to find out later it was all a case of mistaken identity and poor information.

In this war, where terrorists can plot undetected from within our borders, it is absolutely vital that our law enforcement agencies are able to detain and interrogate whoever they believe to be a suspect, and so it is understandable that mistakes will be made and identities will be confused. I don't blame the Government for that. This is an extraordinarily difficult war we are prosecuting against terrorists. There are going to be situations in which we cast too wide a net and capture the wrong person.

But what is avoidable is refusing to ever allow our legal system to correct these mistakes. By giving suspects a chance—even one chance—to challenge the terms of their detention in court, to have a judge confirm that the Government has detained the right person for the right suspicions, we could solve this problem without harming our efforts in the war on terror one bit.

Let me respond to a couple of points that have been made on the other side. You will hear opponents of this amendment say it will give all kinds of rights to terrorist masterminds, such as Khalid Shaikh Mohammed. But that is not true. The irony of the underlying bill as it is written is that someone like Khalid Shaikh Mohammed is going to get basically a full military trial, with all of the bells and whistles. He will have counsel, he will be able to present evidence, and he will be able to rebut the Government's case. The feeling is that he is guilty of a war crime and to do otherwise might violate some of our agreements under the Geneva Conventions. I think that is good, that we are going to provide him with some procedure and process. I think we will convict him, and I think he will be brought to justice. I think justice will be carried out in his case.

But that won't be true for the detainees who are never charged with a terrorist crime, who have not committed a war crime. Under this bill, people who may have been simply at the wrong place at the wrong time—and there may be just a few—will never get a chance to appeal their detention. So, essentially, the weaker the Government's case is against you, the fewer rights you have. Senator SPECTER's amendment would fix that, while still ensuring that terrorists like Mohammed are swiftly brought to justice.

You are also going to hear a lot about how lawyers are going to file all kinds of frivolous lawsuits on behalf of detainees if habeas corpus is in place. This is a cynical argument because I think we could get overwhelming support in this Chamber right now for a measure that would restrict habeas to a one-shot appeal that would be limited solely to whether someone was legally detained or not. I am not interested in allowing folks at Guantanamo to complain about whether their cell is too small or whether the food they get is sufficiently edible or to their tastes. That is not what this is about. We can craft a habeas bill that says the only question before the court is whether there is sufficient evidence to find that this person is truly an unlawful enemy combatant and belongs in this detention center. We can restrict it to that. And although I have seen some of those amendments floating around, those were not amendments that were admitted during this debate. It is a problem that is easily addressed. It is not a reason for us to wholesale eliminate habeas corpus.

Finally, you will hear some Senators argue that if habeas is allowed, it renders the CSRT process irrelevant because the courts will embark on de

novo review, meaning they will completely retry these cases, take new evidence. So whatever findings were made in the CSRT are not really relevant because the court is essentially going to start all over again.

I actually think some of these Senators are right on this point. I believe we could actually set up a system in which a military tribunal is sufficient to make a determination as to whether someone is an enemy combatant and would not require the sort of traditional habeas corpus that is called for as a consequence of this amendment, where the court's role is simply to see whether proper procedures were met. The problem is that the way the CSRT is currently designed is so insufficient that we can anticipate the Supreme Court overturning this underlying bill, once again, in the absence of habeas corpus review.

I have had conversations with some of the sponsors of the underlying bill who say they agree that we have to beef up the CSRT procedures. Well, if we are going to revisit the CSRT procedures to make them stronger and make sure they comport with basic due process, why not leave habeas corpus in place until we have actually fixed it up to our satisfaction? Why rush through it 2 days before we are supposed to adjourn? Because some on the other side of the aisle want to go campaign on the issue of who is tougher on terrorism and national security.

Since 9/11, Americans have been asked to give up certain conveniences and civil liberties—long waits in airport security lines, random questioning because of a foreign-sounding last name—so that the Government can defeat terrorism wherever it may exist. It is a tough balance to strike. I think we have to acknowledge that whoever was in power right now, whoever was in the White House, whichever party was in control, that we would have to do some balancing between civil liberties and our need for security and to get tough on those who would do us harm.

Most of us have been willing to make some sacrifices because we know that, in the end, it helps to make us safer. But restricting somebody's right to challenge their imprisonment indefinitely is not going to make us safer. In fact, recent evidence shows it is probably making us less safe.

In Sunday's New York Times, it was reported that previous drafts of the recently released National Intelligence Estimate, a report of 16 different Government intelligence agencies, describe:

> . . . actions by the United States Government that were determined to have stoked the jihad movement, like the indefinite detention of prisoners at Guantanamo Bay. . . .

This is not just unhelpful in our fight against terror, it is unnecessary. We don't need to imprison innocent people to win this war. For people who are guilty, we have the procedures in place to lock them up. That is who we are as a people. We do things right, and we do things fair.

Two days ago, every Member of this body received a letter, signed by 35 U.S. diplomats, many of whom served under Republican Presidents. They urged us to reconsider eliminating the rights of habeas corpus from this bill, saying:

> To deny habeas corpus to our detainees can be seen as a prescription for how the captured members of our own military, diplomatic, and NGO personnel stationed abroad may be treated. . . . The Congress has every duty to insure their protection, and to avoid anything which will be taken as a justification, even by the most disturbed minds, that arbitrary arrest is the acceptable norm of the day in the relations between nations, and that judicial inquiry is an antique, trivial and dispensable luxury.

The world is watching what we do today in America. They will know what we do here today, and they will treat all of us accordingly in the future—our soldiers, our diplomats, our journalists, anybody who travels beyond these borders. I hope we remember this as we go forward. I sincerely hope we can protect what has been called the ''great writ''—a writ that has been in place in the Anglo-American legal system for over 700 years.

Mr. President, this should not be a difficult vote. I hope we pass this amendment because I think it is the only way to make sure this underlying bill preserves all the great traditions of our legal system and our way of life.

I yield the floor.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate is adjourned until 9:30 a.m.

There being no objection, the Senate, at 7:39 p.m., adjourned until Thursday, September 28, 2006, at 9:30 a.m.

EXTENSIONS OF REMARKS

TRIBUTE TO LONNIE JACKSON

HON. SANFORD D. BISHOP, JR.

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. BISHOP of Georgia. Mr. Speaker, I rise today to honor a great man who led many causes on prominent issues in Columbus, GA. At the age of 77, Mr. Lonnie Jackson died from stomach cancer. He served his community and his country throughout his entire life, all the while, blazing new trails for those who would follow him.

Born in Talladega, Alabama in 1929, Mr. Jackson came into the world the same year as the great Dr. Martin Luther King. The son of a road worker and a domestic worker, Jackson knew nothing but hard work. His parents instilled in him the notion that to accomplish anything you had to work for it. And that he did. Even at an early age, Jackson deemed it necessary to get involved in the issues of the community. He stated, ''We were trained to be a good citizen.''

In 1946 Mr. Jackson, with patriotism at the forefront, entered the army after finishing the tenth grade, and later went on to earn his GED in the military. He served overseas in the Korean War and remained in the service until completion of his two tours in Vietnam in 1972. He credits the army for teaching him leadership, discipline, and patriotism. After retirement, he began a successful civilian career working at Dolly Madison and Swift Textiles. Twenty years after leaving the Army, he earned an associate's degree from Chattahoochee Valley Community College, and later a bachelor's degree in criminal justice from Troy University.

Whether education issues, litter control, voting rights, civil rights, or supporting the military, Jackson was always the front-runner when it came to championing these important issues. For example, while still in the military, he noticed a problem with litter and organized various clean-ups as early as 1961. Voting was another campaign that he held close to his heart. ''Voting is important,'' he said. ''It's the best way to let your voice be heard. And, despite what some might say, it does make a difference.'' Although environmental issues and voting were very important to Lonnie Jackson, nothing compared to his passion for education. He was also responsible for organizing a tutorial program which has helped more than 23,000 children and is still counting. The tutoring sessions are designed to help students keep pace with their classes. Countless students who went through the program went on to make better grades in school and higher scores on standardized tests.

Mr. Lonnie Jackson leaves behind his daughter Lonya Jackson-Sardenas and her son Devarious Jackson, as well as his half-brother, Turner Jackson and his wife of two years, Betty Jackson. When asked what lessons she learned from her father, Lonya replied, ''Always care for others, always follow your dreams, and if something needs to be done, don't sit back and wait for others. Go and do it.''

Today, we thank and honor the late Mr. Lonnie Jackson for his dedication and lifelong commitment to the welfare of others and his community. His lifetime of altruistic care-giving has made him a legend in our community and an inspirational figure for us all.

TRIBUTE TO MR. HERBERT ''HERB'' TEICHMAN

HON. FRED UPTON

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. UPTON. Mr. Speaker, I rise today to pay tribute to Mr. Herbert ''Herb'' Teichman of Eau Claire, Michigan, who will be honored this morning by the National Oceanic and Atmospheric Association, NOAA, and the National Weather Service for his decades of service as a volunteer weather observer. Mr. Teichman is one of 25 individuals across the nation who will receive the John Campanius Holm Award. The award's namesake, John Campanius Holm, was the first known person known to have taken systematic weather observations in 1644 and 1645. Through an act of Congress in the 1890s, the first comprehensive networks of cooperative stations were created consequently establishing the U.S. Weather Bureau.

Weather observation has been a long tradition in the Teichman family. Herb's father, William, established the Eau Claire site in 1923 in order to benefit the family's fruit business. On August 1, 1968, Herb assumed his father's daily duties and continues to serve the NOAA and NWS to this day. Herb's distinguished 38 years of service not only demonstrate his unparalleled commitment, but the fact that he continues to volunteer demonstrates his great character. He has braved severe weather through the decades, from 30 inch snow days to oppressive heat and humidity. His records have been praised for their detail and organization and have been essential for scientists studying floods, droughts, and heat and cold waves. His observations have also played a vital role in supporting economic and national security by the prediction and exploration of weather and climate-related events.

Mr. Teichman is a caring and dedicated servant of Michigan. I would like to extend my thanks to him for all of his good work and wish him congratulations upon receiving this prestigious award. Today, Mr. Teichman joins the illustrious ranks of past Holm awardees, including his father, for his commitment and dedication to weather observation.

IN MEMORY OF CHARLES GAINES

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. BURGESS. Mr. Speaker, I rise today to remember Charles Gaines, the 49 year old Fire Chief for the city of Fort Worth.

I was blessed with meeting the Fire chief several times during his 4 year tenure as Chief of the Fort Worth Fire Department. The commitment and dedication he showed to his profession was evident from the moment we met. Under his leadership, Chief Gaines was accountable for oversight of the 745 Fire fighters that compose the Fort Worth Fire Department. As Fire Chief he also oversaw the department's response to over 57,000 incidences annually in the city of Fort Worth

Before serving as the Fire Chief of Fort Worth, Mr. Gaines served in the United States Air Force as a fire protection specialist. He worked on crash-rescue teams at various Air Force bases until his promotion to Air Force assistant chief. After receiving an honorable discharge from the Air Force in 1980, he continued his career as a member of the Oklahoma City Fire Department in 1981.

During the 1995 bombing of the Murrah Federal Building in Oklahoma City, Chief Gaines served as the fire department's operations safety officer. His service and leadership during this national tragedy ensured that the first responders and civilians were informed and received all medical attention necessary.

His detail-oriented approach to problems within the department ensured that issues were addressed the first time around. After earning his Masters Degree in Business Administration from Oklahoma City University, Chief Gaines incorporated efficient management techniques throughout the Fort Worth Fire Department. This management style allowed him to incorporate and encourage innovation and alternative thinking; Chief Gaines was able to initiate solutions that would more effectively safeguard the citizens of Fort Worth, while saving tax dollars in the process.

His leadership, professionalism and dedication will not be forgotten in the City of Fort Worth or Oklahoma City. Mr. Gaines' devotion to his career and his fellow officers was absolute, and his service to the Fort Worth community will be deeply missed.

CONGRATULATING MR. DENNIS HAHN

HON. W. TODD AKIN

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. AKIN. Mr. Speaker, I rise today to recognize and honor one of my constituents, Mr. Dennis Hahn, who has received a Certificate

of Merit from the Freedoms Foundation. The Freedoms Foundation is a non-profit organization dedicated to teaching young people the principles upon which our nation was founded. They work to convey the close link between the rights and the responsibilities of citizens in society.

Among other things, Dennis was recently nominated for the Freedoms Foundation ''George Washington Honor Medal'' because of his love of history in general and admiration for President Washington specifically. In a letter endorsing Dennis, James Cale, Superintendent for the City of St. Charles School District, summed up this way why he should be considered for the award:

''[T]he highest compliment I am able to pay Mr. Hahn and to his consideration for the George Washington Honor Medal is a simple one. I would like to be more like Dennis. His level of personal commitment, his ability to focus on service to others . . .'' and the way ''he leads his life with a total aura of personal humility'' is a ''model to my children, my friends and me.''

Elected in 1999, Dennis is currently the Board of Education President for the City of St. Charles School District located in my congressional district. His wife, Shirley, is a teacher in St. Charles.

I am honored to have the opportunity to recognize Dennis Hahn and congratulate him for receiving this Certificate of Merit from the Freedoms Foundation.

IN HONOR OF MRS. BETTY J. ALLEN—ON HER RETIREMENT

HON. SANFORD D. BISHOP, JR.

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. BISHOP of Georgia. Mr. Speaker, I rise today to honor a great public servant from the State of Georgia, on her retirement after 40 years of service in the Internal Revenue Service—Mrs. Betty J. Allen. Mrs. Allen oversees the Taxpayer Advocate Service for Georgia, providing assistance to our residents who may have problems with their tax filings.

Mrs. Allen and I have known each other for many years. We have worked together as recently as last year when she provided advice and assistance to my office in holding a series of town hall meetings on the Earned Income Tax Credit and the Child Tax Credit.

A Georgia native, Mrs. Allen attended Clark College, then assumed her initial position with the IRS in 1967. Throughout her four decades at the IRS, she has worked in a variety of capacities—including as a Management Analyst, a Problem Resolution Officer, and as the national coordinator for the Case Resolution Program. Mrs. Allen has also served on several special assignments, including the Service Center, Regional and National Office Task Forces, as Instructor for special training classes, on Quality Improvement Teams, and as Advisor to the District Director's Liaison Committee.

Throughout her career, she has served the IRS and the American people admirably and with distinction. We wish her well, and know that she moves into retirement, and on to other productive and fulfilling endeavors.

TRIBUTE TO MR. ROY JOHNSON

HON. FRED UPTON

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. UPTON. Mr. Speaker, I rise today to pay tribute to the illustrious career of Mr. Roy Johnson, who is retiring from the Federal Bureau of Investigations after serving 23 years with great distinction. Mr. Johnson first came to our corner of Michigan in 1985 when he was assigned to the Federal Bureau of Investigation's Detroit Division in St. Joseph, Michigan. During his initial years of service, he was responsible for a wide range of investigative duties ranging from abductions and bank fraud-embezzlements to homicide and Presidential appointment research.

In 1986, Special Agent Johnson was appointed to manage, direct, and coordinate participation throughout Michigan with the National Center for the Analysis of Violent Crime. This unit has received worldwide praise for its excellence in crime scene assessment/profiling and threat analysis. Special Agent Johnson's vision has extended beyond his assigned duties and I commend him for establishing multiagency partnerships which have allowed for various resources to be shared during complex investigations.

Roy has continually gone above the call of duty and acted for the betterment of our community. He has taught numerous law enforcement programs and lectured to public and civic organizations throughout the state of Michigan.

Johnson's knowledge and professionalism have led others to call on him to testify before Federal and State courts, Federal Grand Juries, and Congressional committees. Moreover, he has received various Congressional, regional, and departmental awards for his investigations and service.

I am proud to call Roy Johnson a friend and thank him for his many years of selfless service. His contributions to law enforcement have made community and great national a safer place. We are all better off for Roy's distinguished career in the FBI.

CONGRATULATING MRS. JUNE LANZ

HON. W. TODD AKIN

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. AKIN. Mr. Speaker, I rise today to recognize and honor one of my constituents, Mrs. June Lanz. June has been selected as the 2006–2007 Freedoms Foundation—Missouri (St. Louis) Chapter ''Spirit of '76—Patriot''. The Freedoms Foundation is a non-profit organization dedicated to teaching young people the principles upon which our Nation was founded. They work to convey the close link between the rights and the responsibilities of citizens in society.

June is a thirty-nine-year member of the National Society Daughters of the American Revolution, DAR. As State Regent of the Missouri State Society DAR, June successfully placed the 1809 Cold Water Cemetery on the U.S. Department of the Interior's Register of Historic Places and restored and rededicated the Madonna of the Trail Statue in Lexington, Missouri.

June is a member of the Missouri Historical Society, the Freedoms Foundation of Valley Forge and a Friend of the St. Louis Art Museum. She has published a history of Missouri State Society Daughters of the Revolution, which includes American Revolutionary Patriots reported buried in Missouri. She has provided this to the National Society DAR and other research facilities.

Married fifty-five years, June and her husband, George Lanz, have four daughters and seven grandchildren.

As one who has a deep and abiding love for American history and the Patriots who have gone before us, I want to thank June Lanz for her commitment to preserving our history and congratulate her for being selected 2006–2007 ''Spirit of '76—Patriot''.

RECOGNIZING THE DENTON COMMUNITY SYMPOSIUM ON HIV/AIDS

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. BURGESS. Mr. Speaker, I rise today to recognize participants and sponsors of the Community Symposium on ''The Silent Killer in African American Families'' in Denton, TX.

This event explores several topics regarding the HIV/AIDS epidemic in African American communities. It provides citizens with answers concerning HIV/AIDS and presents support networks for families struggling with this terrible disease.

The effects of HIV and AIDS can be devastating to communities. To prevent further infection among our citizens, it is vital that programs such as this community symposium exist. With Congress's recent reauthorization of the Ryan White Care Act, funding for both treatment and prevention programs can continue.

Mr. Speaker, I am pleased to recognize the Community Symposium for HIV/AIDS awareness in Denton County for their continuing commitment to AIDS prevention and treatment. The participants and sponsors that provide support to the AIDS/HIV symposium are crucial components in the fight against this worldwide epidemic.

FISHING REGULATION CALLS FOR BETTER DATA, NOT MORE RIGIDITY

HON. BARNEY FRANK

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. FRANK of Massachusetts. Mr. Speaker, as we prepare in the post-election session to deal with legislation involving the management of our fisheries, particularly the bill cosponsored by the gentleman from California, the chairman of the Natural Resources Committee, Mr. POMBO, and myself, it is important for Members to get information on these issues from people who fully understand them.

I know of no one in the country who is better informed or has better judgment on how to proceed than Dr. Brian Rothschild. He is the Montgomery Charter Professor of Marine Science at the University of Massachusetts at Dartmouth, and the former head of the school's School of Marine Science and Technology. Indeed, UMass lost a little bit of his time and his administrative leadership of that school when the newly elected mayor of New Bedford, Scott Lang, understandably prevailed upon Dr. Rothschild to come to work for him as a policy advisor. Mayor Lang is an energetic and thoughtful mayor dedicated to among other things, protecting the important fishing industry in that city, and it is for that reason that he wisely chose Dr. Rothschild as his advisor.

In my own work on fishing I have relied heavily on his advice because it has proven accurate in a number of cases. He points out here that better information is an essential element in sensible regulation. As Dr. Rothschild says in the article recently published by him on this subject in the New Bedford Standard Times, we need significant improvements in the data we gather about fish, in part to "send a signal to Congress that the real conservation and management of fishery stocks lies in developing the technical underpinnings to determine major uncertainties that we have on how fish interact with fishing and the changing ocean environment. This would be so much better than the cant characterizations of the fishing industry by some conservation groups. And finally, consideration of uncertainty points toward the need of investing fishery management regulations with the flexibility contemplated in the Pombo-Frank bill."

Mr. Speaker, Brian Rothschild's experience, wisdom and judgment are greatly needed as we prepare to return in November to debate the important issues involved in the fishing legislation, and I ask that his thoughtful analysis be printed here. It originally appeared in the New Bedford Standard Times, which has done a very good job of covering these issues, on September 21.

The fisheries of Massachusetts are economic engines for the ports of New Bedford, Gloucester and Cape Cod. New Bedford is the number one port in the nation. In this respect, the future is bright.

Yet clouds loom on the horizon. While many stocks are increasing in abundance or are at historically high levels, other stocks have declined. The management actions undertaken to conserve the stocks seem lax to some, but to others the actions seem overly stringent and difficult to understand. There is no question that regulations are generating economic hardship (losses of tens of millions of dollars) and waste, even in the number one port in the nation. Evidently, no stock is optimally fished. Stocks are either overfished or underfished and a substantial bycatch is thrown overboard because of regulations that mandate waste.

Improving management decisions, building confidence in regulations, and reducing bycatch in a biological and economically sustainable way require better information on the status of the stocks. At least three areas require significant improvement:

(1) understanding the interactions among species or stocks, (2) understanding the role of the ocean environment in causing fish stock fluctuations, and (3) systems technology to develop new sensors for counting fish and accelerating the flow of data.

Regarding the interactions among species, all fisheries are in a sense multi-species fisheries. The groundfish or dragger fishery encounters perhaps fifty species of fish. It is not unusual to have ten species on deck in a single tow. The scallop fishery appears to be a single species fishery, but in reality scallop fishery is regulated to some extent by the amount of yellowtail flounder taken in the scallop dredges. Haddock appear occasionally in herring nets. Some scientists believe that herring eat cod eggs. Rebuilding predatory species like striped bass affects their prey species. Interactions such as these need to be better understood. Until we do, our options for management will be limited as we continue to assume that all species can be rebuilt to their historical maximum abundance at the same time, which flies in the face of standard ecological theory.

The effects of the environment are ignored in developing management decisions. It is clear from the historical record that the ocean environment plays a powerful role in modulating the abundance of fish populations. Ignoring this leads to the mistaken notion that any time a stock decreases, the cause is overfishing, while any time a stock increases, the cause is successful management. The role of the environment is typically ignored in fishery stock assessments. Without such understanding, it is misleading to set rebuilding schedules and to think about mid- to long-term management strategies that match the scale of capital investment time horizons used in the fishing industry. There is even a greater imperative now that climate variability must be affecting the population of stocks even though we do not understand, even in an approximate way, the nature of this impact.

Given the substantial shortfalls in scientific understanding, the present system for obtaining data from the fishing fleets and the technology used to measure the abundance of fish is archaic. New systems need to be developed to deliver data to scientists and managers as well as the development of techniques to measure fish abundance that depend on electronics and optics rather than outmoded prone-to-error fishing nets.

The articulation of these concerns has a function beyond catharsis. It identifies areas that National Oceanic and Atmospheric Administration Fisheries needs to address to improve fisheries management as NOAA and 21 other federal agencies move forward in an attempt to develop a coherent ocean plan for the nation. The articulation also sends a signal to Congress that the real conservation and management of fishery stocks lies in developing the technical underpinnings to determine major uncertainties that we have on how fish interact with fishing and the changing ocean environment. This would be so much better than the cant characterizations of the fishing industry by some conservation groups. And finally, consideration of uncertainty points toward the need of investing fishery management regulations with the flexibility contemplated in the Pombo-Frank bill.

Having said all of this, it is important to remember that the regulation of fisheries is not analogous to designing a better governor for a gasoline engine or a valve to regulate water flow. A critical element is the livelihood and well being of the men and women that catch and process the fish. It is important to them of course, but it is as important to the welfare of the entire community.

Significant steps forward are being made in developing the ideas of cooperative research. The UMass Dartmouth School for Marine Science and Technology has pioneered cooperative work with the fishing industry on cod tagging, scallop stock assessments, and study fleets all with incredibly strong support from the fishing industry. These efforts are now bearing fruit at the Massachusetts Marine Fisheries Institute that includes the partnership between the University of Massachusetts, principally SMAST, the state Division of Marine Fisheries, and NOAA Fisheries. Fostering the next generation of fishery scientists in an educational environment of cooperative research will promote the advancement of our science through collaboration with fishermen.

IN RECOGNITION OF SPECIALIST CONRAD STREETER

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. BURGESS. Mr. Speaker, I rise today to commend Specialist Conrad Streeter, Texas Army National Guard, for receiving Soldier of the Year award. He has also received awards for Soldier of the year for the 1st Battalion, 71st Brigade, and 36th Infantry Division.

To receive the award, Specialist Streeter competed in several events including; an M–16 rifle marksmanship event, a physical fitness test, completing land map day and night courses, and a written test comprised of 50–70 questions.

Specialist Streeter has served with the Texas Army National Guard for the past 4½ years. His job as a personnel Sergeant is a vital component to ensure deploying troops have the things they need before heading oversees. Specialist Streeter has also been serving and deployed to Romania and the Louisiana coast line to help in the aftermath of Hurricane Katrina.

In civilian life Specialist Streeter works for the Lewisville Independent School District teaching both science and mathematics. The State of Texas is blessed to have an individual such as Specialist Streeter serving not only in our armed forces, but as a teacher in our community.

I extend my sincere congratulations to Specialist Conrad Streeter for receiving the Soldier of the Year Award for the Texas Army National Guard. His contributions and service are a shining example to us all, and I am honored to be his representative in Washington.

COMMENDING THE VILLAGE OF MINEOLA, NY ON THE ONE HUNDREDTH ANNIVERSARY OF ITS INCORPORATION

HON. CAROLYN McCARTHY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mrs. McCARTHY. Mr. Speaker, I rise today to commemorate the one hundredth anniversary of the incorporation of Mineola, NY, my hometown.

I've lived in Mineola for over 50 years and I am proud to be a part of its centennial celebration.

The Village of Mineola was originally part of the land claimed by Henry Hudson for the Dutch East India Tea Company in 1609 and was settled by farmers in 1637. On June 12, 1858, the area was first called "Mineola," derived from the Algonquin word

"Meniolagamika" which means "a friendly or pleasant village."

Mineola has been the proud home of Nassau County's government since 1900, when New York Governor Theodore Roosevelt laid the comer stone of the county courthouse on the comers of Old Country Road and Franklin Avenue.

Since its incorporation, Mineola has been a center of culture and commerce for people from all of Long Island throughout its history. Today, Mineola is home to more than 20,000 residents, a thriving local economy and a strong sense of history and community.

Mineola has changed since my family arrived, but progress hasn't changed the spirit of its people. The fact that so many who grew up in Mineola end up raising their own children there is a testament to what a special place my hometown is.

Mr. Speaker, I ask that the entire House join me in congratulating the Village of Mineola on its first 100 years of incorporation. Happy Birthday, Mineola.

PERSONAL EXPLANATION

HON. RICHARD W. POMBO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. POMBO. Mr. Speaker, I was unable to vote today on the House floor. I take my responsibility to vote very seriously.

Had I been present, I would have voted "yea" on Rollcall No. 454.

RECOGNIZING HAYWOOD HARRIS AND GUS MANNING FOR THEIR DEDICATION TO TENNESSEE FOOTBALL

HON. JOHN J. DUNCAN, JR

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. DUNCAN. Mr. Speaker, Haywood Harris and Gus Manning, two longtime friends of mine, host what is now the longest-running continuous sports radio program in America.

Their program is called "The Locker Room" and gives a scouting report on Tennessee's football opponent and a rundown of the day's other Southeastern Conference football games.

"The Locker Room" has been on the air since 1961, and Gus and Haywood now have a combined 100 years covering Tennessee football.

Both men are members of the Tennessee Sports Writers Hall of Fame. Haywood Harris and Gus Manning are two of the most popular, most respected men in Tennessee.

I would like to call to the attention of my colleagues and other readers of the RECORD the story about "The Locker Room" that was published in the Knoxville News Sentinel on August 29.

STILL TALKING UP VOLS

(By Mike Strange)

A time traveler from the 1960s would be astounded at the changes in college football.

The size and speed of the players, not to mention their ethnicity. Their Star Wars-like equipment. (I know, ''Star What?'' our traveler would ask).

The doubledecked, bowled-in stadiums with luxury boxes. And let's not even get started with the media blitz.

How comforted, then, our traveler would be to turn on the radio a couple of hours before kickoff in Knoxville and find two familiar friends.

The world around it may have exploded, but ''The Locker Room'' has stayed virtually the same for all of its 45 years.

While Andy, Barney and Aunt Bee live on in ageless, endless black-and-white reruns, Gus Manning and Haywood Harris remain real-life icons of Tennessee football.

Their game-day radio show ''The Locker Room'' is billed (by them) as the longest-running continuous sports radio program. in America.

''And who's to dispute it?'' Harris said.

The format hasn't deviated noticeably since it first aired in 1961. Manning and Harris give a scouting report on Tennessee opponent. The opponent's publicity director is always the guest. Manning reviews the day's SEC games.

Manning, 83, has been at UT since 1951, when he was hired by General Robert Neyland to handle publicity. In 1961, Manning recruited Harris to the publicity office.

Ever since, they've been radio partners, co-authors and walking encyclopedias of Tennessee football.

Manning had a streak of attending 608 consecutive UT football games until he slipped on some ice en route to the 2003 Kentucky game and had to go back home.

He and Harris, who allegedly retired in 2000 but still works the press box on game day, were recently among the initial class of inductees to the Tennessee Sports Writers Association Hall of Fame.

Manning already had a radio show when the idea of ''The Locker Room'' was born. Harris says they were ''talked into it'' by the station WROL. After a couple of years, it switched over to WIVK and has stayed there ever since.

''We've got good listenership partially because we've got a captive audience,'' Harris said.

Focusing on the opponent makes sense. By Saturday, everything that could possibly be said about the Vols has long since bee run into the ground. Never has a visiting publicist refused to do the show. Of course they haven't. Not even Osama bin Laden would turn down Gus and Haywood.

''They know who their studs are,'' Manning said. ''We tell (the audience) what to look for and then it actually happens.''

The dean of guests is Claude Felton of Georgia.

''Two great things have happened in my career,'' said Felton. ''Georgia winning the national championship in 1980 and being invited to be on 'The Locker Room'.''

The show is actually taped on Thursday afternoon at WIVK. However, Manning, Harris and their guests maintain the illusion that broadcast is coming live on Saturday from the actual locker room.

''I got 'em one year,'' said Kentucky's Tony Neely. ''I said, 'Hey, Gus, you all have done a great job remodeling the locker room. New paneling, new paint, it smells great.'

''I went on and on about how nice it was and they finally started laughing. It was hard to get back on track.''

Manning snorts at the notion that the show requires any preparation. But don't believe him.

Harris lines up all the guests long before the opening kickoff. And Manning comes armed with stats.

''He asks some very good questions,'' Harris said.

Here's a question. Not even these venerable hosts can go on forever. Does ''The Locker Room'' have a long-range future?

''There's a lot of people would like to take it over,'' said Harris, ''but Gus and I won't give 'em a chance 'til we have to.''

That's comforting to hear. So hear them while you can.

CONGRATULATING DONALD ELEMENTARY SCHOOL, NO CHILD LEFT BEHIND BLUE RIBBON SCHOOL

HON. MICHAEL C. BURGESS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. BURGESS. Mr. Speaker, I rise today to recognize Donald Elementary School located in Lewisville for being named a No Child Left Behind Blue Ribbon School of 2006. Only 26 schools in Texas will receive this award certificate.

The No Child Left Behind Blue Ribbon Schools program recognizes schools that make significant progress in closing the achievement gap or whose students achieve at very high levels. Schools must make adequate yearly progress in reading, language arts and mathematics.

The No Child Left Behind Act is the bipartisan landmark education reform law designed to change the culture of America's schools by closing the achievement gap, offering more flexibility to States, giving parents more information and options and teaching students based on what works. Under the law's strong accountability provisions, States must describe how they will close the achievement gap and make sure all students, including those with disabilities, achieve academically.

I extend my sincere congratulations to Donald Elementary School for receiving this award. This school's contribution and services should serve as inspiration to us all.

TRIBUTE TO LCPL RENE MARTINEZ

HON. MARIO DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. MARIO DIAZ-BALART of Florida. Mr. Speaker, I rise today in honor of LCpl Rene Martinez, who was killed in action fighting enemy forces in Iraq on September 24, and extend my deepest condolences to his family for their loss. You have this Nation's most sincere appreciation for your son.

As a U.S. Marine, LCpl Martinez represented the best our Nation has to offer. He served with great distinction in the 2nd Marine Division. According to a spokesman for his unit he was a "well decorated Marine for his age" having earned medals for combat action, overseas deployment and global terrorism service.

The U.S. Marine Corps motto is semper fidelis—"ever faithful." LCpl Rene Martinez exemplified this commitment. He was faithful to God, country, family and the Corps. He gave the ultimate sacrifice for this great Nation so that his family and country could live in freedom. All that we hold dear only exists thanks

to our military and marines like Rene Martinez. His selfless service to his country and community is a model for all of us to emulate.

As President Ronald Reagan once said, "Some people spend an entire lifetime wondering if they made a difference in the world. But, the Marines don't have that problem." LCpl Rene Martinez made a difference in this world. And his country will forever be grateful.

TRIBUTE TO PRISON FELLOWSHIP

HON. MIKE PENCE

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. PENCE. Mr. Speaker, 30 years ago, this year, former White House aide Chuck Colson launched Prison Fellowship, now the world's largest Christian outreach to prisoners and their families.

While serving 7 months in a federal prison for a Watergate-related offense, Colson was appalled by the humiliation, drudgery, and hopelessness experienced by his fellow prisoners. After he was released from prison, Colson decided he could not turn his back on the men he left behind. So, in 1976, inspired by his own prison experience and his faith in Christ, Colson began Prison Fellowship.

Since then, Prison Fellowship has become a movement of like-minded citizens who are touching the lives of millions of prisoners and their families here in America and in 114 countries around the world. Prison Fellowship has helped maintain the bonds between prisoners and their families through the amazing Angel Tree program, in which some 7 million children of prisoners have received Christmas gifts on behalf of their incarcerated parent. At the state and national level, Prison Fellowship has also been at the forefront of criminal justice reform, helping states cope with prison overcrowding, fostering victims' rights, combating prison rape, promoting reentry programs, and so much more. By launching the InnerChange Freedom Initiative, Prison Fellowship has helped corrections systems reduce recidivism by working to transform prisoners from the inside out and linking them to mentors and communities of faith once they leave prison.

Clearly, by reaching out to the very men and women our society would like to forget, Prison Fellowship has not only helped former prisoners become productive members of society, it has also made our communities safer places to live.

Mr. Speaker, the Good Book reads "I was in prison, and you came to visit me . . . I tell you the truth, whatever you did for one of the least of these brothers of mine, you did for me."

I find it appropriate today to recognize and celebrate the incredible service that Chuck Colson and Prison Fellowship have rendered not only to prisoners and their families, but also to our communities, our Nation and our world.

Mr. Speaker, all Americans concerned with the reduction of crime and the restoration of lives celebrate both the man and the ministry on the 30th anniversary of Prison Fellowship.

PERSONAL EXPLANATION

HON. JOHN R. CARTER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. CARTER. Mr. Speaker, on September 21, 2006, I inadvertently failed to cast my vote for rollcall vote 468 due to the shortened period (2 minutes) between votes that evening.

On rollcall vote 468 (H.R. 6095), had I cast my vote, I would have voted, "aye".

URGING THE PRESIDENT TO APPOINT A PRESIDENTIAL SPECIAL ENVOY FOR SUDAN

SPEECH OF

HON. JANICE D. SCHAKOWSKY

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 25, 2006

Ms. SCHAKOWSKY. Mr. Speaker, I rise in strong support of H.R. 3127, the Darfur Peace and Accountability Act, H. Res. 723, which calls on President Bush to take immediate steps to help improve the security situation in Darfur, and H. Res. 992, which urges the President to appoint a Presidential Special Envoy for Sudan. I am proud to be a cosponsor of all three bills.

Congress must act now to address what I believe to be the most disastrous humanitarian situation on the planet. We must make it an immediate priority—not just a legislative priority but a priority of conscience—to protect the lives of the men, women, and children who are suffering every day in Darfur, and in refugee camps just over the Sudanese border in Chad.

The situation in Darfur has become exceedingly dire. In direct violation of the Darfur Peace Agreement (DPA) and numerous UN Security Council resolutions, the Sudanese government has begun to deploy some 26,000 troops to the Darfur region. This has coincided with a sharp increase in attacks on civilians and humanitarian aid workers, renewed aerial bombardment, and the all but complete deterioration of the fragile DPA. The Congress must use every tool at our disposal to end the horror that continues in Darfur.

The American people want us to act. From coast to coast, we have seen massive demonstrations on behalf of peace in Darfur. American Jewish groups, faith groups of all denominations, the Save Darfur Coalition and others are far beyond this Congress in their awareness and attention to this critical situation. We must honor their hard work by passing H.R. 3127, H. Res. 723, and H. Res. 992 today.

I was one of several members of Congress who worked to have the situation in Darfur officially classified a "genocide" by the United States Congress. I visited Darfur and I have seen the situation with my own eyes. I carry my experience in Darfur with me every day.

The people of Darfur have suffered for far too long. After each genocide of the last century, Rwanda being the most recent, we vowed "never again." Yet, we have become witness to another genocide. The time to act is now.

I encourage all of my colleagues to support H.R. 3127, H. Res. 723, and H. Res. 992.

STATEMENT IN SUPPORT OF NAIS

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. PAUL. Mr. Speaker, I recently become a cosponsor of H.R. 6042, offered by my colleague Mrs. Emerson. This bill prohibits the federal government from implementing the National Animal Identification System (NAIS). It also provides some privacy protections for framers and ranchers who choose to participate in a voluntary identification system. I hope all of my colleagues join me in supporting this bill.

NAIS is a proposal to force all farmers and ranchers to "tag" their livestock with a radio frequency identification device tag (RFID) or a similar item so information on the animals' locations can be stored in a federal database. The United States Department of Agriculture (USDA) is currently implementing the program through state premise registration plans. Participation in the NAIS is currently voluntary, but my office has been informed that the USDA will likely make NAIS mandatory by 2009.

Small, family farmers and ranchers will be forced to spend thousands of dollars, as well as comply with new paperwork and monitoring regulations, to implement and operate NAIS. These farmers and ranchers will be paying for a massive assault on their property and privacy rights as NAIS forces farmers and ranchers to provide detailed information about their private property to the government. In addition, the NAIS system empowers the Federal government to enter and seize property from farmers and ranchers without a warrant. Mr. Speaker, this is a blatant violation of the Fourth Amendment-protected right to be free of arbitrary searches and seizures.

NAIS is unnecessary since most states already have identification systems to identify and track animals and virtually all stockyards issue a health certification for each animal that is sold. Furthermore, the NAIS "trace back" procedures only begin after an incident has been reported, which could be days, weeks, or even months after the harm has occurred. Since most contamination happens after the animal has left the farm or ranch and entered the food chain, tracing animals back to the farm will not help identify the source of the problem—although farmers and ranchers could be held legally liable if any of their animals becomes diseased after leaving their possession. According to a 1998 Harvard study, preventive measures already in place can protect the American people from dangers such as mad cow disease.

Bell Bellinger, vice-chairman of the Australian Beef Association, said of Australia's National Livestock Identification System that "Financial costs like the NLIS . . . are seriously eroding our competitive advantage supplying an increasing contested world beef market."

Dairy Farmer and Rancher Bob Parker best stated the case against NAIS: "We currently have the systems in place to track animals, as has just happened with the recent 'mad cow' in Alabama. Sacrificing our freedoms for security is not a good trade off, in my opinion. Our Founding Fathers knew the dangers of Government becoming too big. This plan is too intrusive, to costly, and will be devastating to

small farmers and ranchers.'' I urge my colleagues to listen to Mr. Parker and protect America's small farmers and ranchers from being burdened with a costly, intrusive and unnecessary NAIS program by cosponsoring H.R. 6042.

SC JOHNSON

HON. PAUL RYAN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. RYAN of Wisconsin. Mr. Speaker, I rise today to introduce legislation on behalf of SC Johnson, a company located in Racine, Wisconsin, who manufactures a broad range of well known consumer household brands including Windex, Raid, Glade, Pledge, Edge shaving gel, Ziploc and Scrubbing Bubbles. I am proud that SC Johnson has its headquarters in my congressional district and employs over 2,500 hard-working Wisconsinites.

I believe that Congress must do all that it can to help companies like SC Johnson remain competitive in the global marketplace so that good, high-paying manufacturing jobs are retained in. Wisconsin and throughout the United States. Over the past few years, our state has lost thousands of manufacturing jobs. We must bring down the cost of manufacturing at home so that we can stem the job loss and create new opportunities for the state's workers.

The bill that I am introducing will help achieve this purpose by reducing the import tariff on bath and shower cleaning appliances from 4.2 percent to 2.1 percent. No comparable products are produced in this country. Reducing these tariffs will bring down SC Johnson's costs of doing business at home and benefit the SC Johnson employees who live and work at the company's world headquarters in Racine and at other locations throughout the United States.

I look forward to working with my colleagues in Congress to pass this legislation.

CONGRATULATING THE INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS LOCAL 1781 ON THEIR 60TH ANNIVERSARY

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. LANTOS. Mr. Speaker, I rise today to congratulate the International Association of Machinists and Aerospace Workers Local 1781 on their 60th anniversary. Since their establishment as the union representing machinists and aerospace workers for United Airlines, Local 1781 has continued to exhibit a pluck and tenacity that has insured their members better wages, benefits and working conditions. I commend Local 1781 on their sustained commitment to their members, and I am proud that this union resides in my congressional district.

Since its formation, the International Association of Machinists (IAM) Local 1781 has made a significant difference in the lives of its members. In 1946, IAM secured the 40-hour workweek for its members and a one-third increase in wages from $.90 per hour to $1.20 per hour. Through the 1950s, IAM continued to expand their membership and consequently their bargaining leverage.

This proved essential in the 1960s as United Airlines became one of the most profitable airlines in the country but was unwilling to share their bounty with the highly-skilled workers of IAM Local 1781. Resistance began with picketing in March 1963 and culminated in a 43-day strike in the summer of 1966 in which the unions of all five major airline carriers struck in unison, grounding over 60% of air traffic in the United States. Due to the success of this strike, IAM Local 1781 negotiated big gains for its members in 1969.

Despite massive layoffs in 1971, the 1970s witnessed IAM's continued success in pushing for a fair share of United Airlines' profits. The union's assertiveness forced them to strike for two weeks in 1975 and to sustain the longest strike in their history when members held out for 58 days in 1979. The benefits of this action proved considerable: an over 30 percent pay raise, a 37.5 hour workweek and paid lunch for all work shifts.

The early 1980s were extremely difficult for the members of Local 1781: the grounding of DC10s coupled with the air traffic controller strike and a deep recession caused massive layoffs. However, by 1984 almost all of the employees were recalled and United Airlines continued to grow and prosper with the purchase of Pan American Airlines Pacific Division.

But unfortunately the profitability of United Airlines and the prosperity of its workers began to experience hard times in the early 1990s. The tragedy of September 11, 2001, caused a severe downturn in the airline industry which contributed to the United Airlines bankruptcy. This had a particularly negative impact on the members of Local 1781. Within two years, tensions in the union hit a breaking point with many machinists changing their membership to the Aircraft Mechanics Fraternal Organization (AMFA). This drop in membership caused a substantial loss in financial resources. Despite this major setback for Local 1781, the union continues to be viable and continues to fight the good fight on behalf of its members. Their recent reorganization efforts have ensured that Local 1781 will continue to effectively represent the best interests of its members.

Mr. Speaker, I invite my colleagues to join me in congratulating IAMAW Local 1781 on the occasion of their 60th anniversary. I am truly delighted that Local Lodge 1781 continues to effectively advocate on behalf of its members for the quality of life they deserve commensurate with the vital role they play everyday in the safe and efficient operation of our airline industry.

HONORING JACQUELIN ''JIM'' SMITH HOLLIDAY II

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. FARR. Mr. Speaker, I rise today to honor the life of one of California's most distinguished historians, Mr. Jacquelin ''Jim'' Smith Holliday II. Jim Holliday was a teacher and author, and was much sought after as a lecturer throughout the State of California.

Jim was born in Indianapolis, Indiana, in 1924. He attended Midshipman School at Northwestern University and was commissioned as an officer in the Naval Reserve. During World War II he served aboard the escort carrier USS *Santee* in the Pacific theater. After the war he attended Yale University, graduating in 1948 with a major in history. Graduate school at the University of California at Berkeley brought him to California, where he received his Ph.D. in 1959.

His professional career was rich and varied. He was a research fellow at the Henry E. Huntington Library in San Marino, assistant director of the Bancroft Library in Berkeley, executive director of the Oakland Museum of California, associate professor of history at San Francisco State University, associate editor of American West magazine, and lectured at Monterey Peninsula College. As executive director of the California Historical Society, one of his most notable accomplishments was the creation of a large traveling photographic exhibit depicting the story of 110,000 Japanese Americans in internment camps during World War II.

Jim is remembered especially for his books on the California Gold Rush. The World Rushed In, published in 1981, and Rush for Riches: Gold Fever and the Making of California, published in 1999, helped Americans to understand the complex drama of the gold rush and its effect on a later urban, industrial America. PBS film producer, Ken Burns, stated, ''No one writes better of California's irresistible past; I am a huge fan.'' I hosted Jim's talks on his books at the Library of Congress.

Jim was also prominent in local activities. As a resident of Carmel, California, my own home town, Jim served on the Forestry Commission and was a trustee of the Robinson Jeffers Tor House Foundation. He was one ofthe founders of the Carmel Residents Association, and in 2001 was named Carmel's ''Citizen of the Year.''

Jim was married twice; his first wife was Nancy Adams, with whom he had three children: Timothy, Martha, and William. He is survived by his second wife, Belinda Vidor Jones.

Jim Holliday was often controversial; his opponents remember him as fierce and outspoken. His friends remember his great energy, generosity, and loyalty to principles and friendship. It can be said of him that he made an art of life—and of history.

I recall Jim being one of the persons who symbolized the California saying: ''Bring the Men to Match My Mountains.'' His voice was deep and strong, like the California ocean. His choice of words, big and bold like our Redwoods and his passion for life, universal like thunder.

Mr. Speaker, Jim Holliday lit up the room whenever he walked in—his passing will leave a void, but his works, will fill the gap. We are proud to call him our friend and will sorely miss him.

PERSONAL EXPLANATION

HON. LUIS V. GUTIERREZ

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. GUTIERREZ. Mr. Speaker, I was unavoidably absent from this chamber on May 22, 2006. I would like the record to show that, had I been present, I would have voted "yea" on rollcall vote No. 177, a motion to suspend the rules and pass S. 1235, the Veterans Benefits Improvement Act, and "yea" on rollcall vote No. 178, a motion to suspend the rules and pass H.R. 3858, the Pets Evacuation and Transportation Standards Act.

TRIBUTE TO PALOMAR COLLEGE

HON. DARRELL E. ISSA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. ISSA. Mr. Speaker, I rise today to congratulate Palomar College on their 60th anniversary.

Palomar College is one of the most comprehensive community colleges in the United States, offering North County, San Diego residents more than 300 degree and certificate programs for transfer to four-year universities, job training, and personal enrichment. Its commitment to lifelong learning and its status as a cultural center for northern San Diego County make Palomar College a tremendous educational asset to California and the Nation.

Palomar began with only 100 students; the first classes were held on September 23, 1946, on the campus of Vista High School in Vista, California. It has since grown to become one of our State's largest community colleges. Palomar College now has an enrollment of over 30,000 students and is widely respected for its excellent programs, faculty, administration, the success of its students, and the service it provides to the communities of northern San Diego County.

Mr. Speaker, because of Palomar College's dedication to education and the improvement of individuals, I want to recognize and honor this institution of higher learning. I congratulate and applaud Palomar College upon the observance of its 60th anniversary and for the valuable contribution it makes to our society and to the future of its students.

A TRIBUTE TO PRIVATE ERIC M. KAVANAGH

HON. C.A. DUTCH RUPPERSBERGER

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. RUPPERSBERGER. Mr. Speaker, I rise before you today to honor the life of a Maryland soldier who died honorably serving his country in support of Operation Iraqi Freedom. Private Eric M. Kavanagh from Glen Burnie, Maryland was a dedicated and loyal serviceman. His courage enabled him to be a leader among his peers.

The 20-year-old private was trained as a Bradley tank driver. He was assigned to the 1st Battalion, 26th Infantry Regiment, 2nd Brigade Combat team, 1st Infantry Division, Schweinfurt, Germany. After his training, he was stationed in Iraq for 5 weeks.

I commend Private Kavanagh for his courage to serve our country and to fight for freedom in an unsettled world. Without doubt, his bravery gives his parents, Mr. Kelvin T. Kavanagh and Ms. Rhonda Kavanagh great pride. Private Kavanagh was the oldest of three children. He is remembered for being not only a magnanimous and compassionate soldier but also an incredible brother and son.

Prior to joining the Army, Private Kavanagh worked for a weekly shopping publication, the Pennysaver. Co-workers said he was always happy and smiling. He attended Folger McKinsey Elementary School, Severna Park Middle School, and Chesapeake High School.

Mr. Speaker, I ask that you join with me today to honor the patriotism of Private Eric M. Kavanagh. His love of country and willingness to serve his country will forever last in our hearts and minds. He made the ultimate sacrifice for the United States of America and he will always be remembered as a hero from Maryland.

IN HONOR OF DAN ALBERT

HON. SAM FARR

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. FARR. Mr. Speaker, I rise today to honor the achievements of Dan Albert, who is retiring this year after serving as the mayor of Monterey since 1986. His long career represents success, accomplishment, and community service. Dan served on the City of Monterey Parks and Recreation Commission for several years. He is a former member and Chair of the Local Agency Formation Commission (LAFCO), the one local position that he and I have both held. He was elected to the City Council in 1979 and elected Mayor in 1986, and is now in his tenth term.

But length of service is not everything. When first elected to the City Council, Monterey was in the economic doldrums. The fishing industry was depressed, the tourism industry was moribund and local military economic activity was under constant threat. What a difference 26 years of real leadership makes. Last year the BRAC Commission reaffirmed the indispensable role that Monterey plays in supporting the Defense Language Institute and Naval Postgraduate School. Monterey is the center of a thriving regional tourism economy. Its convention center, its Window on the Bay Park, aquarium, and coastal recreation trail all draw and enrich visitors from at home and abroad. The City of Monterey is a national model for the participation of its citizens in neighborhood preservation and enhancement. All of these trends, and many others, have Dan Albert's quiet leadership at their center. It is a legacy that has made a permanent mark on Monterey.

Dan's previous career spanned 37 years as a teacher at Monterey High School, where he coached the varsity football team for 23 of those years. He and his wife, Joanne, are lifetime residents of the city and both attended Monterey High School. They have four grown children and ten grandchildren.

Mr. Speaker, I am certain that I have not heard the last from Dan, as I expect he will remain an active member of the community, but I do want to wish him and his family the best as they enter this exciting new chapter. On behalf of the United States Congress, I would like to congratulate the accomplishments of Dan Albert and express my sincere gratitude for his commitment to the community.

PERSONAL EXPLANATION

HON. LUIS V. GUTIERREZ

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. GUTIERREZ. Mr. Speaker, I was unavoidably absent from this chamber on September 19 and 25, 2006. I would like the record to show that, had I been present, I would have voted "yea" on rollcall vote Nos. 451, 452, 453 and 473 and "no" on rollcall vote Nos. 471 and 472.

RECOGNIZING THE CAREER OF MR. THEODORE F. GUNDLACH

HON. JERRY F. COSTELLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. COSTELLO. Mr. Speaker, I rise today to ask my colleagues to join me in recognizing the distinguished career and extensive community involvement of Mr. Theodore F. (Ted) Gundlach of Belleville, Illinois.

Ted Gundlach was born, along with his twin brother, Joseph, on January 11, 1924, in Belleville, Illinois. Ted's father, T.J. Gundlach had, the year before, opened a small machine shop to provide tools and equipment for the local mines and factories.

After college, where he earned a degree in mechanical engineering, Ted accepted an appointment to the U.S. Naval Reserves in 1943 and served for the duration of World War II. He was discharged in 1946 with the rank of Lieutenant J.G.

Returning home to Belleville, Ted entered the family business, T.J. Gundlach Machine Co. and J.M.J. Industries, Inc. Starting as General Manager, Ted would become President and CEO and expand the Gundlach Machine Co. market reach to six continents.

As much as Ted poured his energy into his business, he also found time to be personally involved in his community. Ted has served on 16 different boards of directors, been a member of numerous fraternal, business and civic organizations and helped to steer many community and charitable projects. He has received a number of awards from business, professional, educational and civic organizations, recognizing his contributions and leadership.

While Ted built his company into a position of international leadership in their marketplace and has performed outstanding service to his community, he has always been devoted to his family. Ted and his wife, Patricia, live in Belleville, Illinois and have two children, Mary Barbara Compton and Laurie Ann Frillman. They have three grandchildren, Amanda, Molly and Lucas.

Mr. Speaker, I ask my colleagues to join me in an expression of appreciation to Mr. Theodore Gundlach for his years of service to his community and to wish he and his family the very best in the future.

WELCOME TO PRESIDENT NURSULTAN NAZARBAYEV

HON. EDOLPHUS TOWNS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. TOWNS. Mr. Speaker, it gives me great pleasure to welcome to the United States, our true friend and strong ally, the President of Kazakhstan, His Excellency Nursultan Nazarbayev.

Since gaining independence in 1991, Kazakhstan has overcome numerous obstacles and challenges to emerge as one of the world's most dynamic and promising nations. Much of the credit for that should go to President Nazarbayev who led his country through difficult and painful reforms which brought about strong economic and democratic change.

Economically, Kazakhstan is accelerating beyond neighboring countries and most other countries in the world. It is evident that citizens of Kazakhstan are being offered a better tomorrow because the leadership remains committed in investing in its people and country.

Democratically, the ongoing economic liberalization inspired by President Nazarbayev would not be possible without the establishment of democratic institutions coupled with a civil society unique to the social-political nature of Kazakhstan and its people. The creation of over 5,000 NGO's, the founding of an independent judiciary, and the institutionalizing of a pluralistic, multi-party system are just a few examples of the impressive ''resume of freedom'' that this nation has built over the last decade. Kazakhstan is setting a noble example of what can be accomplished through democracy.

Democratization and domestic initiatives are intricately linked to foreign policy. Kazakhstan's dedication to the war on terror is admirable and deeply appreciated by the United States. It is important that the United States and Kazakhstan continue to work together to defeat those who want to destroy our most treasured values.

Today, Kazakhstan is a strong promoter of global peace and stability and I commend President Nazarbayev for taking concrete steps to bring together people of different religions by initiating the Congress of World and Traditional Religions which has become a respected forum where believers of all faiths can work in partnership to find better ways for a better future.

Additionally, Kazakhstan continues to serve as a model to the global community in its leadership on nonproliferation by voluntarily disarming what was once the world's fourth largest nuclear arsenal.

Mr. Speaker, Kazakhstan has a rich cultural heritage and a bright future. The people of Kazakhstan should be proud of their achievements and their leader. It is my hope that the United States and Kazakhstan will continue to build bridges, share ideas, and work closely together for years to come. I am confident that President Nazarbayev's visit to Washington is a strong testament of our growing strategic partnership, and I join many of my colleagues in wishing him a joyful and productive stay in our Nation's Capital.

THANKING MR. RON KURTZ FOR HIS SERVICE TO THE HOUSE

HON. VERNON J. EHLERS

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. EHLERS. Mr. Speaker, on the occasion of his retirement in September 2006, we rise to thank Mr. Ron Kurtz for 26 years of outstanding service to the U.S. House of Representatives.

Ron began his career at the House working as a Systems Programmer. In that capacity, Ron has served this great institution for the last 26 years as a valuable employee of House Information Resources (HIR) within the Office of the Chief Administrative Officer. Ron has made significant contributions in the implementation and management of the mainframe computing environment and, more recently, as a key member of the Storage Area Network (SAN) team. Ron's impeccable management of the mainframe computing environment, through emergencies such as the anthrax contamination event, was key to maintaining continuity of such essential House applications as payroll, the Legislative Information Management Systems (LIMS) and Committee Calendars (CCALS). Additionally, Ron has expertly managed the mainframe environment through numerous advances in technology to include integration with a Storage Area Network as part of the overall HIR business continuity efforts.

On behalf of the entire House community, we extend congratulations to Ron for his many years of dedication and outstanding contributions to the U.S. House of Representatives. We wish Ron many wonderful years in fulfilling his retirement dreams.

ENHANCING THE GLOBAL FIGHT TO END HUMAN TRAFFICKING

HON. CHRISTOPHER H. SMITH

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. SMITH of New Jersey. Mr. Speaker, today I chaired a briefing and hearing of the House International Relations Committee to examine means to enhance the global fight to end human trafficking.

When I held the first hearing on trafficking as chairman of the Subcommittee on International Operations and Human Rights back in 1999, only a handful of countries had laws explicitly prohibiting the practice of human trafficking. Individuals who engaged in this exploitation did so without fear of legal repercussions. Victims of trafficking were treated as criminals and illegal immigrants, and had no access to assistance to escape the slavery-like conditions in which they were trapped. Few seemed to even be aware that this modem form of slavery was taking place, and those who did failed to recognize it as a violation of fundamental human rights.

However, the situation has changed markedly over the past 6 years. Significant credit for improvements must be attributed to the enactment of the trafficking Victims Protection Act of 2000, together with two reauthorizations of that Act in 2003 and 2005, all of which I sponsored. These three laws created a comprehensive framework for combating trafficking in persons abroad, as well as the trafficking of American girls and young women within the U.S. As a result of these three laws, our government has been a leader in addressing this serious human rights violation and encouraging other governments to do the same.

Just this past weekend, I experienced the impact of this leadership during a trip to Iraq. Millions of people who lack job opportunities are misled by ads for well-paying jobs and leave their countries for what is presented to them to be the chance of a lifetime. Last year, the Chicago Tribune did a series of articles detailing a practice by employment brokers and subcontractors to bring laborers into Iraq through fraud or coercion. The seizure of the workers' passports and recruitment ''fees'' made it diffIcult for them to escape employment in a war zone. After the State Department trafficking report confirmed this practice, my Subcommittee held a hearing in which Colonel Robert Boyles testifled that the military had issued an order that all contracts include a clause allowing termination without penalty, prohibits the use of unlicensed employment brokers, and ends the practice of confiscating worker passports.

With the compliance inspections set to begin this month, one of the major objectives of my visit to Iraq was to ensure that the order on labor trafficking would be enforced. Major General Bruce Moore, the Chief of Staff for our military in Iraq, assured me that compliance was being checked on this. As of the time of our subcommittee hearing, 90 percent of the contracts had been modified, and the military is ensuring that the other 10 percent will be modified and that implementation of the order will be complete.

Also on my trip this weekend, I spoke with State Department officials about trafficking in Kuwait and Germany. According to reports earlier this year, more than 40 Indian youth had been stranded in Kuwait when their passports had been confiscated by unscrupulous job brokers and had been penalized by Kuwaiti police. State Department officials told me that they have launched an aggressive program entitled FALCON for Fostering Awareness of Labor Conditions to let foreign workers know their rights. In Germany, State Department officials described efforts to discourage patronage of brothels during the World Cup earlier this year in which women and girls were coerced into prostitution. Efforts were especially concentrated on ensuring that the U.S. military did not patronize such establishments. Since the end of the World Cup, the U.S. has continued to work with the German government to ensure that coerced prostitution is ended to the extent possible and facilities are established to help prostitutes who want to escape that life.

One of the key components of the 2000 Act is the requirement that the Secretary of State provide Congress with a list of those countries whose governments are not fully complying with minimum standards to eliminate trafficking

and are not making significant efforts to do so. These countries, designated as ''Tier 3,'' may be subject to certain sanctions, including the withholding of non-humanitarian, non-trade-related assistance. These sanctions can be waived if the government makes significant efforts to comply with the minimum standards, or pursuant to a determination by the President that the provision of assistance would promote the purposes of the statute or is otherwise in the national interest of the United States. The President is to submit a notification to Congress no later than 90 days from the submission of the annual report as to the determination made for each Tier 3 country. I have received numerous reports from our government representatives and non-governmental organizations as to how the implementation of this tier ranking and the consequent threat or imposition of sanctions have dramatically impacted the trafficking practices in the relevant countries.

The determinations for 2006 were due on September 1st and it was the intention of the Committee to examine those determinations at the hearing. It was therefore deeply disappointing that the determinations still had not been provided by the President three weeks later. This raises grave concerns that were examined later in the hearing, including whether the Administration is giving due priority to its stated commitment to combat human trafficking. This delay past the legislative mandate sends the wrong message to these Tier 3 countries as to the urgency with which this serious human rights violation needs to be addressed. And in this instance, it was a missed opportunity to apply additional pressure on these countries through the attention that would have been focused on them at this important hearing.

We did, however, have the opportunity to inquire about the implementation of the Department of Health and Human Services' assistance program as mandated by the 2000 Act. The purpose of such programs is to expand benefits and services to trafficking victims in the United States without regard to the victim's immigration status. Unfortunately, evidence of the need for such assistance within our own country is growing. Just this month, it was reported that a woman from my home state of New Jersey pled guilty to being part of a smuggling ring that brought in more than 20 young women and teenagers from Honduras to work in a bar. These women were virtually imprisoned in apartments, and are alleged to have been beaten, raped, and subjected to forced abortions.

Such horrific stories make us all too aware that this modern form of slavery has silently infiltrated and poisoned the fabric not only of the U.S., but of virtually every society around the world. It is extremely important that this awareness be amplified, so that public outrage will further motivate those of us in government, shame those who are creating the demand for trafficking victims, and ultimately stop those responsible for perpetrating these human rights violations. We were privileged to have with us at the hearing a prominent public figure who is using his position on the world stage to publicize the reality and prevalence of human trafficking. Not only has Ricky Martin given his time and talent to promote the cause as a goodwill ambassador for the United Nations Children's Fund, but he has also established a foundation that is engaged in numerous activities on behalf of trafficking victims and children. As just one indication of his personal commitment to the most vulnerable among us, he visited the affected areas in Thailand following the 2004 tsunami. In April 2005, he entered into a partnership with Habitat for Humanity to construct over 220 homes to provide shelter and safety, particularly for those children orphaned by the disaster.

All three of our witnesses provided the Committee with valuable information and perspectives with which we can indeed enhance our global fight to end human trafficking.

CELEBRATING THE THIRD ANNUAL PRINCE GEORGE'S CLASSIC WEEKEND

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. CARDIN. Mr. Speaker, I am pleased to rise today to welcome visitors from around the country to Maryland for the Third Annual Prince George's Classic Weekend.

Hosted by the Prince George's Black Chamber of Commerce (PGBCC), this weekend celebrates black college football, educational achievement, tradition, community pride, and unity. On Saturday, September 30, 2006 at Bulldog Stadium, the Bowie State University Bulldogs will face the North Carolina Central University Eagles. These are two of the top teams in the Central Intercollegiate Athletic Association (CIAA), the Nation's oldest black athletic conference, and the game promises to be a first-rate contest.

Mr. Speaker, the Classic comprises much more than one football game, as an entire weekend of events throughout Prince George's County is planned, beginning tomorrow evening—including a Welcome Reception, services at Ebenezer AME Church in Fort Washington, a Black College Showcase, a Battle of the Bands, the Harlem Renaissance Golf Classic, a Fashion Show featuring the work of local and national couture designers, and a Comedy Show.

This exciting weekend would not be possible without the support of numerous individuals and organizations, and I especially want to acknowledge the new President of Bowie State University, Dr. Mickey Burnim; Dr. Calvin Lowe, BSU President emeritus, BSU Coach Mike Lynn, Jr., PCBCC President Hubert ''Petey'' Green, and Mike Little, President of the Prince George's Classic.

I want to welcome all participants to our state for the Third Annual Prince George's Classic weekend, and I urge my colleagues to join me in wishing them a wonderful celebration.

PERSONAL EXPLANATION

HON. MARK STEVEN KIRK

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. KIRK. Mr. Speaker, on Monday September 25, 2006, I missed the following votes: Rollcall No. 471: H.R. 5059, To designate the Wild River Wilderness in the White Mountain National Forest in the State of New Hampshire, and for other purposes.; Rollcall No. 472: H.R. 5062, To designate as wilderness certain National Forest System land in the State of New Hampshire; and Rollcall No. 473: H. R. 6102, To designate the facility of the United States Postal Service located at 200 Lawyers Road, NW in Vienna, Virginia, as the 'Captain Christopher P. Petty and Major William F. Hecker, III Post Office Building'. Had I been present, I would have voted ''yea'' on Rollcall No. 471, Rollcall No. 472, and Rollcall No. 473.

IN HONOR OF THE 2ND BATTALION, 127TH INFANTRY

HON. MARK GREEN

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. GREEN of Wisconsin. Mr. Speaker, it is my honor and privilege to recognize before this House the courageous men and women of the Wisconsin National Guard's 2nd Battalion, 127th Infantry who recently returned from their deployment overseas.

For over a year, the 127th Infantry was based at Camp Navistar on the border of Kuwait and Iraq. The vast majority of their missions were near Camp Cedar, otherwise known as the ''Cedar Run,'' where they served under perilous conditions as escorts for military and civilian convoys in armored trucks. The infantry was also called on to take longer missions into war-torn Baghdad, battling deadly roadside bombs and surprise enemy attacks. These brave men and women put their lives on the line each and every day to fight for democracy and freedom. But their commitment wasn't without heartache. Three courageous members of the 127th Infantry lost their lives carrying the torch of liberty in Iraq and their service will always be remembered.

Mr. Speaker, there's no question the 127th Infantry helped nourish the seeds of liberty in Iraq, and their service and sacrifice are to be commended. It is my honor to recognize their brave efforts today, and on behalf of the citizens of Wisconsin's Eighth Congressional District, I say thank you and welcome home. You truly are our heroes.

RECOGNIZING OCTOBER AS DOMESTIC VIOLENCE AWARENESS MONTH

HON. JERRY MORAN

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. MORAN of Kansas. Mr. Speaker, today I rise to recognize the month of October as national domestic violence awareness month. Though we have made great strides in bringing attention to the tragedy of domestic violence, more than 4 million Americans continue to find themselves victims of physical, psychological and sexual abuse. Domestic violence crosses every line of ethnicity, geography, and income. Abuse occurs in every single community in our country—every community—and it must be fought in every community.

It wasn't very long ago that family violence was considered just that—a family matter. A

battered woman was forced to suffer the cuts and bruises and the terror and tears in silence. In my parents' generation, many folks whispered and had suspicions about what was going on next door. Seeing bruised children or watching a wife cower when her husband spoke to her caused speculation on what was taking place in the home. Unfortunately, no one intervened because that was a family matter and none of their business.

Domestic violence rarely made the headlines then and rarely makes the headlines now, primarily because most of the abuse occurs behind closed doors. In most instances, the victim knows the attacker. More than 50 percent of victims are battered by a boyfriend or girlfriend. More than 30 percent are assaulted by spouses, while 15 percent are attacked by ex-spouses. Many victims are reluctant to report these incidents to anyone because they fear this will only make things worse.

Society tends to misplace the blame for continued abuse, focusing on the victim and criticizing him or her for not leaving the abuser. In many cases victims simply do not have the physical or financial resources to get out of the relationship. They often stay until things hit rock bottom.

Every year, domestic violence results in approximately 100,000 days of hospitalization and more than 28,000 visits to emergency rooms. In these cases, major medical treatment is often required. Furthermore, the possibility of being murdered by an abuser increases to 75 percent if the woman attempts to leave on her own.

Today, domestic violence is still causing terror and tears. But the story and its ending isn't quite the same. Thankfully, many of the calls for help are now answered. I would like to commend those who work every day to help victims of domestic violence, especially those who work in the nine service areas of my 69 county district—Dodge City, Emporia, Garden City, Great Bend, Hays, Hutchinson, Liberal, Salina, and Ulysses. They are the unsung heroes battling the culture of darkness that domestic violence victims are caught up in.

Proximity to a safe facility can mean the difference between life and death. Though progress has been made in accessing services, many victims in central and western Kansas and other rural areas remain hundreds of miles away from the closest shelter. Ensuring safe havens for victims who leave abusive environments must continue to be a priority.

Most domestic violence centers rely primarily on grants and local donations. Federal grants made under the Violence Against Women Act provided essential funds for shelter operations and support services. That program has been credited with substantially reducing the levels of violence committed against women and children. We must continue to ensure that our shelters and crisis centers receive adequate funding.

As National Domestic Violence Awareness Month begins, we are reminded that domestic violence is an issue that must be addressed all year long. Only through funding, education and support can America hope to end this terrible crime.

TRIBUTE TO ST. LEO THE GREAT'S CHURCH

HON. BENJAMIN L. CARDIN

OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. CARDIN. Mr. Speaker, I rise today to pay special tribute to St. Leo the Great's Church on its 125th anniversary of service to Baltimore City's Little Italy neighborhood.

Located at Stiles and Exeter Streets, the heart of Baltimore's Italian-American community, St. Leo's served as the first worship and community center for Italian immigrants arriving in Baltimore. One of the many immigrant families to worship at St. Leo's was the D'Alesandro family, whose members would serve as mayors, members of Congress and as the first woman Majority Leader of the U.S. House of Representatives.

Over the years, St. Leo's provided spiritual renewal as well as community social activities and education. During the Great Baltimore Fire in 1904, the congregation at St. Leo's prayed for the fire to spare their homes and their church. Their prayers to St. Anthony were answered when, after raging for 31 hours and destroying most of downtown Baltimore, the fire stopped just short of Little Italy. Each year, the St. Anthony Society holds a festival to celebrate their good fortune and the power of faith.

After World War II, as many Italian-American families of Little Italy moved to the suburbs, St. Leo's was forced to close its school and fell on hard times, as did many of the City's older neighborhoods. But the congregation at St. Leo's was loyal and inventive and today St. Leo's and the surrounding neighborhood have been rejuvenated.

In Italy, the church was the locus of the village. St. Leo the Great's Church in Little Italy has enabled the Baltimore Italian-American community to continue that tradition. Today, St. Leo's primary school has been transformed into the The Rev. Oreste Pandola Cultural Learning Center. Thanks to the efforts of congregant Rosalie Ranieri, the Center offers classes and clubs to neighbors and former residents now scattered across the region.

I hope my colleagues in the U.S. House of Representatives will join me in saluting the contributions of St. Leo the Great's Church to the Italian-American community of Baltimore as well as to our Nation. I also ask that they join me in sending best wishes for many more years of service to the community. Congratulazioni.

SUPPORTING LEGISLATION TO END THE GENOCIDE IN DARFUR

SPEECH OF

HON. MARK STEVEN KIRK

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Monday, September 25, 2006

Mr. KIRK. Mr. Speaker, I would like to express my strong support for the three bills under consideration this week relating to the crisis in Darfur, Sudan. These bills, H.R. 3127, the Darfur Peace and Accountability Act of 2006 conference report, H. Res. 723, which calls on the President to take immediate steps to improve the security situation in Darfur, and H. Res. 992, which urges the President to appoint a Presidential Special Envoy for Sudan, all take concrete steps towards ending the genocide in Darfur.

The situation in Darfur, Sudan is increasingly concerning. Nearly three million Sudanese citizens will require emergency assistance in the next year. Sudanese government forces support Janjaweed Arab militias that commit crimes against humanity, including genocide. More than one million people were driven from their homes since February 2003, while over 150,000 people took refuge in neighboring Chad. The hundreds of thousands of displaced people who remain in the Darfur region are confined to government controlled camps. Using Sudanese government resources, the Janjaweed militias rape, attack and prey upon these helpless victims.

We must hold the Sudanese government accountable. I commend Representative HENRY HYDE (R–IL) for introducing the Darfur Peace and Accountability Act of 2005. I am a cosponsor of this important bill that intensifies sanctions on the Government of Sudan, particularly targeting those responsible for genocide, war crimes, or crimes against humanity.

The United States should do more to end the brutal killing and ethnic cleansing of civilians. We must bring war criminals to justice. I was glad to see H.R. 3127, the Darfur Peace and Accountability Act conference report pass the House of Representatives yesterday by voice vote. I urge President Bush to sign this important bill which takes significant measures to bring a lasting peace to this war-stricken region.

I am also a firm supporter and cosponsor of House Resolution 992, which urges President Bush to appoint a Special Envoy for Sudan. I joined Representative FRANK WOLF (R–VA) in sending a letter to the President requesting he appoint a Special Envoy earlier this summer. I was pleased to hear President Bush declare in his speech to the United Nations General Assembly that he is appointing former USAID Administrator Andrew Natsios to be the new Presidential Special Envoy for Sudan. Earlier in my career I worked closely with Mr. Natsios to tackle one of the worst humanitarian crises of the 1990's. Natsios coordinated food aid during the North Korea famine which saved tens of thousands of lives. Mr. Natsios is an experienced diplomat, and I am confident in his ability to coordinate American policy in the region to resolve this conflict.

Despite the sincere efforts of our government, which has led the international community in providing nearly $440 million in emergency supplemental aid this year, millions of victims continue to live in camps under horrible conditions. Murderous militias continue to slaughter innocent civilians. We have a duty to bring an end to this humanitarian crisis. I urge my colleagues to join me in supporting these bills that demonstrate America's leadership in defense of those who need our help the most.

ROUNDING UP MEXICO'S MOST WANTED

HON. TED POE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. POE. Mr. Speaker, it's a big day in the U.S. when we catch someone on our Most

Wanted List. Shouldn't it be an even bigger day when we catch someone on Mexico's Most Wanted List?

In Ohio, that's right Ohio. It's a long way from our southern border with Mexico.

Julio Ernesto Cobian-Ariaza is just 27 and this Mexican citizen is already a career criminal alien. This illegal is wanted back home in Mexico for his connection to two murders and two more attempted murders.

But his list of offenses here in the U.S. is much longer. He's been convicted of attempted murders, assault with a firearm and street terrorism, in plain english—gang activity.

We've caught him twice before and sent him home. First in 1999 when he was just 20. And again in September of 2001. This time as an aggravated felon at the tender age of 22.

Just sneaking back into the country from Mexico once is a felony punishable by 20 years in prison. So his laundry list of crimes in the U.S. alone should have him locked up in the penitentiary for decades.

But an even more disturbing part of this story is Ariaza isn't alone. His arrest is just one of more than 3 thousand gang members in just a few years.

A crackdown on gangs with foreign born and illegal members.

He's among many alien gang members representing almost 400 different gangs across the United States.

People mock our country and say we are the world's police. But the truth is our open borders make us just that.

We can't clear our own top ten most wanted list but we're making a dent in some others.

These international outlaws are targeting Americans on our own streets and we'll keep rounding up these murderous illegals until we shut down our borders.

If we could do that we would have a good shot at clearing at least one name of our own most wanted list.

Jorge Alberto Lopez-Orozco is number 2 on the infamous FBI lineup. Born in Mexico he's just 30 and he's already accused of brutally murdering his girlfriend and her 2 young sons. Friends suspect she found out he was already married with his own children and tried to break it off. The family went missing for days. Until a few fishing buddies riding ATVs stumbled on their burned out car and what looked like a charred body. The police ruled it was actually three bodies. Orozco's girlfriend and her two young sons ages 2 and 4 were all gunned down. Shot in the head or chest and their bodies set ablaze.

Jorge Alberto Lopez-Orozco is still out there and thanks to our virtually open borders he could be living on any American street as we speak.

And that American street may have been made much more dangerous by Diego Leon Montoya Sanchez from Colombia also topping our 10 Most Wanted. He's one of the leaders of the most powerful and violent drug cartels in Colombia and he's accused of pumping tons of cocaine into the U.S.—tons of cocaine that could be sold to the same foreign-born gang that Mexico's Most Wanted Julio Ernesto Cobian-Ariaza was running in when he got caught in Ohio.

The moral of this story is maybe we should stop accepting the world's most dangerous criminals so we can get back to ours.

Seal the borders protect Americans and let the rest of the world deal with their own criminals on their own soil. That's just the way it is.

THE BELLS OF BALANGIGA MUST RING AGAIN!

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. FILNER. Mr. Speaker, I urge all Members to support H. Con. Res. 481, legislation that I have just introduced, which urges the President to authorize the return of two church bells, currently on display at F.E. Warren Air Force Base in Wyoming, to the people of the Philippines.

The New York City Council is expected to pass a resolution in support of this legislation on September 28th, 2006, the anniversary of a 1901 battle between Filipino and American soldiers in the town of Balangiga on the island of Samar, Philippines.

As a result of this conflict between Filipino and American troops, the bells in the church were taken to the United States as war trophies and have been on display ever since at F.E. Warren Air Force Base. I am introducing as a result of a vote by the Wyoming Veterans Commission to return the bells to the church in Balangiga.

The citizens of Balangiga have erected a memorial that includes the names of the Filipino and American soldiers who lost their lives in the 1901 incident, and the town honors these war dead on September 28th each year. The Filipino people have requested the return of the bells to the original setting in the Balangiga Parish where they could ring again, after 105 years of muteness, as a symbol of this bond.

The acts of conflict that surrounded the bells of Balangiga are not consistent with the friendship that is an integral part of the relationship between the Republic of the Philippines and the United States. Filipino soldiers have fought side by side with American troops in World War II, Korea, and Vietnam, and the bells should more properly serve as a symbol of friendship and not of conflict.

I urge support of this resolution.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, September 28, 2006 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

SEPTEMBER 29

9:30 a.m.

Judiciary

Business meeting to consider pending calendar business.

SD–226

Daily Digest

HIGHLIGHTS

The House agreed to H. Con. Res. 483, providing for the conditional adjournment of the House and conditional adjournment or recess of the Senate.

Senate

Chamber Action

Routine Proceedings, pages S10223–S10348

Measures Introduced: Seventeen bills and three resolutions were introduced, as follows: S. 3946–3962, S. Res. 588, and S. Con. Res. 119–120. **Page S10288**

Measures Reported:

S. 1848, to promote remediation of inactive and abandoned mines, with an amendment in the nature of a substitute. (S. Rept. No. 109–351)

S. 3630, to amend the Federal Water Pollution Control Act to reauthorize a program relating to the Lake Pontchartrain Basin. (S. Rept. No. 109–352)

H.R. 3929, to amend the Water Desalination Act of 1996 to authorize the Secretary of the Interior to assist in research and development, environmental and feasibility studies, and preliminary engineering for the Municipal Water District of Orange County, California, Dana Point Desalination Project located at Dana Point, California, with an amendment. (S. Rept. No. 109–353) **Page S10287**

Measures Passed:

Congressional Tribute: Committee on Banking, Housing, and Urban Affairs was discharged from further consideration of S. 2250, to award a congressional gold medal to Dr. Norman E. Borlaug, and the bill was then passed. **Pages S10343–44**

Byron Nelson Congressional Gold Medal Act: Committee on Banking, Housing, and Urban Affairs was discharged from further consideration of S. 2491, to award a Congressional gold medal to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator, and the bill was then passed. **Pages S10344–45**

Military Commissions Act: Senate began consideration of S. 3930, to authorize trial by military commission for violations of the law of war, taking action on the following amendments proposed thereto: **Pages S10243–75**

Adopted:

Frist Amendment No. 5085, in the nature of a substitute. (By unanimous consent, the amendment will be considered as original text for the purpose of further amendment.) **Pages S10242–43**

Rejected:

By 43 yeas to 54 nays (Vote No. 254), Levin Amendment No. 5086, in the nature of a substitute. **Pages S10246–63**

Pending:

Specter Amendment No. 5087, to strike the provision regarding habeas review. **Pages S10263–74**

A unanimous-consent-time agreement was reached providing for further consideration of the bill at approximately 10 a.m., on Thursday, September 28, 2006; providing for the consideration of certain additional amendments, and following disposition of these amendments, and the use, or yielding back of time, the bill be read a third, and the Senate vote on passage of the bill. **Page S10346**

Secure Fence Act: A unanimous-consent agreement was reached providing that the cloture motion with respect to Frist Amendment No. 5036, to H.R. 6061, to establish operational control over the international land and maritime borders of the United States, be withdrawn; provided further, that on Thursday, September 28, 2006, following the disposition of S. 3930, Military Commissions Act (listed above), Senate resume consideration of the bill, with a vote on the motion to invoke cloture thereon. **Page S10346**

Child Custody Protection Act—House Message: Senate concurred in the amendment of the House to S. 403, to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of

parents in abortion decisions, with the following amendments: **Pages S10345–46**

Bennett (for Frist) Amendment No. 5090 (to the House Amendment), of a technical nature. **Page S10346**

Bennett (for Frist) Amendment No. 5091 (to Amendment No. 5090), of a technical nature. **Page S10346**

A motion was entered to close further debate on the motion to concur in the amendment of the House to the bill and, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Friday, September 29, 2006. **Page S10346**

Messages From the House: **Pages S10285–86**

Measures Placed on Calendar: **Pages S10286, S10343**

Measures Read First Time: **Pages S10286, S10342**

Enrolled Bills Presented: **Page S10286**

Executive Communications: **Pages S10286–87**

Executive Reports of Committees: **Pages S10287–88**

Additional Cosponsors: **Pages S10288–89**

Statements on Introduced Bills/Resolutions: **Pages S10289–S10308**

Additional Statements: **Pages S10282–85**

Amendments Submitted: **Pages S10309–41**

Authorities for Committees to Meet: **Pages S10341–42**

Privileges of the Floor: **Page S10342**

Record Votes: One record vote was taken today. (Total—254) **Page S10263**

Adjournment: Senate convened at 9:30 a.m., and adjourned at 7:39 p.m., until 9:30 a.m., on Thursday, September 28, 2006. (For Senate's program, see the remarks of the Acting Majority Leader in today's Record on page S10346.)

Committee Meetings

(Committees not listed did not meet)

RIOT CONTROL AGENTS

Committee on Armed Services: Subcommittee on Readiness and Management Support concluded open and closed hearings to examine United States policy and practice with respect to the use of riot control agents by the U.S. Armed Forces, after receiving testimony from Joseph A. Benkert, Principal Deputy Assistant Secretary of Defense for International Security Policy; and Brigadier General Otis G. Mannon, USAF, Deputy Director for Special Operations, J–3, The Joint Staff.

NOMINATIONS

Committee on Banking, Housing, and Urban Affairs: Committee concluded a hearing to examine the nominations of Christopher A. Padilla, of the District of Columbia, to be an Assistant Secretary of Commerce for Export Administration, and Bijan Rafiekian, of California, to be a Member of the Board of Directors of the Export-Import Bank of the United States, after the nominees testified and answered questions in their own behalf.

BUSINESS MEETING

Committee on Commerce, Science, and Transportation: Committee ordered favorably reported the following business items:

S. 3718, to increase the safety of swimming pools and spas by requiring the use of proper anti-entrapment drain covers and pool and spa drainage systems, by establishing a swimming pool safety grant program administered by the Consumer Product Safety Commission to encourage States to improve their pool and spa safety laws and to educate the public about pool and spa safety, with an amendment in the nature of a substitute;

H.R. 3675, to amend the Federal Trade Commission Act to increase civil penalties for violations involving unfair or deceptive acts or practices that exploit popular reaction to an emergency or major disaster, and to authorize the Federal Trade Commission to seek civil penalties for such violations in actions brought under section 13 of that Act;

S. 2751, to strengthen the National Oceanic and Atmospheric Administration's drought monitoring and forecasting capabilities;

S. 529, to designate a United States Anti-Doping Agency, with an amendment;

The nominations of David H. Pryor, of Arkansas, to be a Member of the Board of Directors of the Corporation for Public Broadcasting, Charles Darwin Snelling, of Pennsylvania, to be a Member of the Board of Directors of the Metropolitan Washington Airports Authority, Chris Boskin, of California, to be a Member of the Board of Directors of the Corporation for Public Broadcasting, Cynthia A. Glassman, of Virginia, to be Under Secretary of Commerce for Economic Affairs, Sharon Lynn Hays, of Virginia, to be an Associate Director of the Office of Science and Technology Policy, Calvin L. Scovel, of Virginia, to be Inspector General, Department of Transportation, Collister Johnson, Jr., of Virginia, to be Administrator of the Saint Lawrence Seaway Development Corporation, and certain promotion and routine lists in the Coast Guard.

LANDS LEGISLATION

Committee on Energy and Natural Resources: Subcommittee on Public Lands and Forests concluded a hearing to examine S. 3000, to grant rights-of-way for electric transmission lines over certain Native allotments in the State of Alaska, S. 3599, to establish the Prehistoric Trackways National Monument in the State of New Mexico, S. 3794, to provide for the implementation of the Owyhee Initiative Agreement, S. 3854, to designate certain land in the State of Oregon as wilderness, H.R. 3603, to promote the economic development and recreational use of National Forest System lands and other public lands in central Idaho, to designate the Boulder-White Cloud Management Area to ensure the continued management of certain National Forest System lands and Bureau of Land Management lands for recreational and grazing use and conservation and resource protection, to add certain National Forest System lands and Bureau of Land Management lands in central Idaho to the National Wilderness Preservation System, and H.R. 5025, to protect for future generations the recreational opportunities, forests, timber, clean water, wilderness and scenic values, and diverse habitat of Mount Hood National Forest, Oregon, after receiving testimony from Senator Crapo; Representatives Simpson, Blumenauer, and Walden; Chad Calvert, Principal Deputy Assistant Secretary of the Interior for Land and Minerals Management; Mark Rey, Under Secretary of Agriculture for Natural Resources and Environment; Adrian P. Hunt, New Mexico Museum of Natural History and Science, Albuquerque; Fred Huff, Las Cruces Four Wheel Drive Club, Las Cruces, New Mexico; Rick Johnson, Idaho Conservation League, Grant Simonds, Idaho Outfitters and Guides Association, Brett William Madron, Idaho Trail Machine Association, and Russ Heughins, Idaho Wildlife Federation, all of Boise; Cliff Hansen, Custer County, Carole King, and Amanda Mathews, all of Stanley, Idaho; Fred Kelly Grant, Owyhee Initiative Working Group, Nampa, Idaho; Mike Webster, Idaho Cattle Association, Roberts; Brian Maguire, Backcountry Hunters and Anglers, and Jay Ward, Oregon Natural Resources Council, both of Portland, Oregon; and Jill Van Winkle, International Mountain Bicycling Association, Hood River, Oregon, on behalf of the Oregon Mountain Bike Alliance.

NOMINATIONS

Committee on Finance: Committee ordered favorably reported the nominations of John K. Veroneau, of Virginia, to be a Deputy United States Trade Representative, with the Rank of Ambassador, and Robert K. Steel, of Connecticut, to be an Under Secretary of the Department of the Treasury.

NOMINATIONS

Committee on Foreign Relations: Committee concluded a hearing to examine the nominations of Frank Baxter, of California, to be Ambassador to the Oriental Republic of Uruguay, who was introduced by Senator McConnell, and Charles L. Glazer, of Connecticut, to be Ambassador to the Republic of El Salvador, who was introduced by Senator Allen, after the nominees testified and answered questions in their own behalf.

DIABETES CARE

Committee on Homeland Security and Governmental Affairs: Committee concluded a hearing to examine new technologies to improve care for people with diabetes and reduce the burden on the health care system, focusing on the development of an artificial pancreas, including biomedical research and other issues that are important to diabetes patients and their families, after receiving testimony from Griffin P. Rodgers, Acting Director, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, Department of Health and Human Services; Chris Dudley, The Dudley Foundation, Portland, Oregon; Arnold W. Donald, Juvenile Diabetes Research Foundation International, New York, New York; and Caroline K. Sweeney, Gray, Maine.

U.S. REFUGEE POLICY

Committee on the Judiciary: Subcommittee on Immigration, Border Security and Citizenship concluded an oversight hearing to examine United States refugee admissions and policy, after receiving testimony from Ellen Sauerbrey, Assistant Secretary of State for Bureau of Population, Refugees and Migration; Jonathan R. Scharfen, Deputy Director, United States Citizenship and Immigration Services, Department of Homeland Security; and Michael J. Horowitz, Hudson Institute, and Father Kenneth Gavin, Refugee Council USA and Jesuit Refugee Service/USA, both of Washington, D.C.

NOMINATION

Committee on Veterans Affairs: Committee ordered favorably reported the nomination of Robert T. Howard, of Virginia, to be Assistant Secretary of Veterans Affairs for Information and Technology.

INTELLIGENCE

Select Committee on Intelligence: Committee met in closed session to receive a briefing on certain intelligence matters from officials of the intelligence community.

House of Representatives

Chamber Action

Public Bills and Resolutions Introduced: 29 public bills, H.R. 6196–6224; and 10 resolutions, H. Con. Res. 483–486; and H. Res. 1043–1044, 1048–1051 were introduced. **Pages H7673–75**

Additional Cosponsors: **Pages H7675–76**

Reports Filed: Reports were filed today as follows:

H. Res. 985, directing the Secretary of State to provide to the House of Representatives certain documents in the possession of the Secretary of State relating to the report submitted to the Committee on International Relations of the House of Representatives on July 28, 2006, pursuant to the Iran and Syria Nonproliferation Act (H. Rept. 109–689);

H. Res. 1045, providing for consideration of motions to suspend the rules (H. Rept. 109–690);

H. Res. 1046, waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 109–691); and

H. Res. 1047, providing for consideration of H.R. 4772, to simplify and expedite access to the Federal courts for injured parties whose rights and privileges under the United States Constitution have been deprived by final actions of Federal agencies or other government officials or entities acting under color of State law (H. Rept. 109–692). **Page H7673**

Chaplain: The prayer was offered by the guest Chaplain, Rev. Anthony George, Pastor, Aloma Baptist Church, Winter Park, Florida. **Page H7499**

Conditional Adjournment Resolution: The House agreed to H. Con. Res. 483, providing for the conditional adjournment of the House and conditional adjournment or recess of the Senate, by a yea-and-nay vote of 227 yeas to 194 nays, Roll No. 487. **Page H7520**

Discharge Petition: Representative Lowey moved to discharge the Committee on Rules from the consideration of H. Res. 1007, providing for consideration of H.R. 5147, to amend part B of title XVIII of the Social Security Act to repeal the income-related increase in part B premiums that was enacted as part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173) (Discharge Petition No. 17).

Military Commissions Act of 2006: The House passed H.R. 6166, amended, to amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, by a recorded vote of 253 ayes to 166 noes, Roll No. 491. **Pages H7522–61**

Pursuant to the rule, the amendment printed in H. Rept. 109–688, shall be considered as adopted. **Page H7522**

Rejected the Skelton motion to recommit the bill to the Committee on Armed Services with instructions to report the same back to the House forthwith with an amendment, by a recorded vote of 195 ayes to 228 noes, Roll No. 490, after ordering the previous question. **Pages H7558–60**

Agreed that the Clerk be authorized to make technical and conforming changes in the engrossment of the bill to reflect the actions of the House. **Page H7561**

H. Res. 1042, the rule providing for consideration of the bill was agreed to by a recorded vote of 222 ayes to 194 noes, Roll No. 489, after agreeing to order the previous question by a yea-and-nay vote of 225 yeas to 191 nays, Roll No. 488. **Pages H7508–20, H7520–22**

Suspensions: The House agreed to suspend the rules and pass the following measures:

Nonadmitted and Reinsurance Reform Act of 2006: H.R. 5637, amended, to streamline the regulation of nonadmitted insurance and reinsurance, by a ⅔ yea and nay vote of 417 yeas with none voting "nay", Roll No. 492; **Pages H7561–65, H7592**

Credit Rating Agency Reform Act of 2006: S. 3850, to improve ratings quality for the protection of investors and in the public interest by fostering accountability, transparency, and competition in the credit rating agency industry—clearing the measure for the President; **Pages H7565–71**

Mark-to-Market Extension Act of 2006: H.R. 6115, to extend the authority of the Secretary of Housing and Urban Development to restructure mortgages and rental assistance for certain assisted multifamily housing, by a ⅔ yea and nay vote of 416 yeas to 1 nay, Roll No. 493; **Pages H7571–73, H7592–93**

Financial Services Regulatory Relief Act of 2006: S. 2856, amended, to provide regulatory relief and improve productivity for insured depository institutions Financial Services Regulatory Relief Act of 2006, by a ⅔ yea and nay vote of 417 yeas with none voting "nay", Roll No. 494; **Pages H7573–88, H7593**

HOPE VI Reauthorization Act of 2006: H.R. 5347, amended, to reauthorize the HOPE VI program for revitalization of public housing projects; **Pages H7588–91**

FHA Multifamily Loan Limit Adjustment Act of 2006: H.R. 5503, to amend the National Housing Act to increase the mortgage amount limits applicable to FHA mortgage insurance for multifamily housing located in high-cost areas; **Pages H7594–96**

Hedge Fund Study Act: H.R. 6079, amended, to require the President's Working Group on Financial Markets to conduct a study on the hedge fund industry; **Pages H7596–98**

Financial Netting Improvements Act of 2006: H.R. 5585, amended, to improve the netting process for financial contracts; **Pages H7598–H7601**

Community Development Investment Enhancements Act of 2006: H.R. 6062, to enhance community development investments by financial institutions; **Pages H7601–04**

Financial Services Regulatory Relief Amendments Act of 2006: H.R. 6072, to amend the Federal Deposit Insurance Act to provide further regulatory relief for depository institutions and clarify certain provisions of law applicable to such institutions; **Pages H7604–05**

Third Higher Education Extension Act of 2006: H.R. 6138, amended, to temporarily extend the programs under the Higher Education Act of 1965; **Pages H7605–09**

Native American Languages Preservation Act of 2006: H.R. 4766, amended, to amend the Native American Languages Act to provide for the support of Native American language survival schools; **Pages H7609–13**

Agreed to amend the title so as to read: "To amend the Native American Programs Act of 1974 to provide for the revitalization of Native American languages through Native American language immersion programs; and for other purposes.". **Page H7613**

Extending the waiver authority for the Secretary of Education under title IV, section 105, of Public Law 109–148: H.R. 6106, to extend the waiver authority for the Secretary of Education under title IV, section 105, of Public Law 109–148; **Pages H7613–15**

Expressing the sense of the House of Representatives supporting the establishment of September as Campus Fire Safety Month: H. Res. 295, to express the sense of the House of Representatives supporting the establishment of September as Campus Fire Safety Month; **Pages H7615–16**

Supporting efforts to promote greater public awareness of effective runaway youth prevention programs and the need for safe and productive alternatives, resources, and supports for homeless youth and youth in other high-risk situations: H. Res. 1009, to support efforts to promote greater public awareness of effective runaway youth prevention programs and the need for safe and productive alternatives, resources, and supports for homeless youth and youth in other high-risk situations; **Pages H7616–20**

Supporting the goals and ideals of "Lights On Afterschool!", a national celebration of after-school programs: H. Con. Res. 478, to support the goals and ideals of "Lights On Afterschool!", a national celebration of after-school programs; **Pages H7620–21**

Railroad Retirement Disability Earnings Act: H.R. 5483, to increase the disability earning limitation under the Railroad Retirement Act and to index the amount of allowable earnings consistent with increases in the substantial gainful activity dollar amount under the Social Security Act; **Pages H7621–22**

Dam Safety Act of 2006: H.R. 4981, amended, to amend the National Dam Safety Program Act; **Pages H7622–24**

Designating the Federal courthouse to be constructed in Greenville, South Carolina, as the "Carroll A. Campbell, Jr. Federal Courthouse": H.R. 5546, amended, to designate the Federal courthouse to be constructed in Greenville, South Carolina, as the "Carroll A. Campbell, Jr. Federal Courthouse"; **Pages H7624–25**

Agreed to amend the title so as to read: "To designate the United States courthouse to be constructed in Greenville, South Carolina, as the "Carroll A. Campbell, Jr. United States Courthouse".". **Page H7625**

Designating the Federal building and United States courthouse located at 221 and 211 West Ferguson Street in Tyler, Texas, as the "William M. Steger Federal Building and United States Courthouse": H.R. 5606, to designate the Federal building and United States courthouse located at 221 and 211 West Ferguson Street in Tyler, Texas, as the "William M. Steger Federal Building and United States Courthouse"; **Pages H7625–26**

Designating the Investigations Building of the Food and Drug Administration located at 466 Fernandez Juncos Avenue in San Juan, Puerto Rico, as the "Andres Toro Building": H.R. 5026, to designate the Investigations Building of the Food and Drug Administration located at 466 Fernandez Juncos Avenue in San Juan, Puerto Rico, as the "Andres Toro Building"; **Pages H7626–27**

Designating the Federal building located at 2 South Main Street in Akron, Ohio, as the "John F. Seiberling Federal Building": H.R. 6051, amended, to designate the Federal building located at 2 South Main Street in Akron, Ohio, as the "John F. Seiberling Federal Building"; **Pages H7627–28**

Agreed to amend the title so as to read: "To designate the Federal building and United States courthouse located at 2 South Main Street in Akron, Ohio, as the "John F. Seiberling Federal Building and United States Courthouse".". **Page H7628**

Designating a parcel of land located on the site of the Thomas F. Eagleton United States Courthouse in St. Louis, Missouri, as the "Clyde S. Cahill Memorial Park": H.R. 1556, to designate a parcel of land located on the site of the Thomas F. Eagleton United States Courthouse in St. Louis, Missouri, as the "Clyde S. Cahill Memorial Park"; **Pages H7628–30**

Designating the Federal building located at 320 North Main Street in McAllen, Texas, as the "Kika de la Garza Federal Building": H.R. 2322, to designate the Federal building located at 320 North Main Street in McAllen, Texas, as the "Kika de la Garza Federal Building"; **Pages H7630–32**

Marine Debris Research, Prevention, and Reduction Act: S. 362, amended, to establish a program within the National Oceanic and Atmospheric Administration and the United States Coast Guard to help identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety, in coordination with non-Federal entities; **Pages H7632–35**

Stevens-Inouye International Fisheries Monitoring and Compliance Legacy Act of 2006: H.R. 5946, amended, to amend Magnuson-Stevens Fishery Conservation and Management Act to authorize activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements; **Pages H7635–42**

Agreed to amend the title so as to read: "To amend the Magnuson-Stevens Fishery Conservation and Management Act to authorize activities to promote improved monitoring and compliance for high seas fisheries, or fisheries governed by international fishery management agreements, and for other purposes.". **Page H7642**

Authorizing the Secretary of the Interior, acting through the Bureau of Reclamation, to improve California's Sacramento-San Joaquin Delta and water supply: H.R. 6014, amended, To authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to improve California's Sacramento-San Joaquin Delta and water supply; **Page H7643**

New Mexico Water Planning Assistance Act: H.R. 1711, amended, to provide assistance to the State of New Mexico for the development of comprehensive State water plans; **Pages H7643–44**

Long Island Sound Stewardship Act of 2006: H.R. 5160, amended, to establish the Long Island Sound Stewardship Initiative; **Pages H7644–48**

Utah Recreational Land Exchange Act of 2005: H.R. 2069, amended, to authorize the exchange of certain land in Grand and Uintah Counties; **Pages H7648–51**

Pueblo of Isleta Settlement and Natural Resources Restoration Act of 2006: H.R. 5842, to compromise and settle all claims in the case of Pueblo of Isleta v. United States, to restore, improve, and develop the valuable on-reservation land and natural resources of the Pueblo; **Pages H7651–53**

Requiring the Secretary of the Interior to convey certain public land located wholly or partially within the boundaries of the Wells Hydroelectric Project of Public Utility District No. 1 of Douglas County, Washington, to the utility district: H.R. 4789, amended, to require the Secretary of the Interior to convey certain public land located wholly or partially within the boundaries of the Wells Hydroelectric Project of Public Utility District No. 1 of Douglas County, Washington, to the utility district; **Pages H7653–54**

Arthur V. Watkins Dam Enlargement Act of 2005: H.R. 3626, amended, to authorize the Secretary of the Interior to study the feasibility of enlarging the Arthur V. Watkins Dam Weber Basin Project, Utah, to provide additional water for the Weber Basin Project to fulfill the purposes for which that project was authorized; **Page H7654**

Lower Republican River Basin Study Act: H.R. 4750, amended, to authorize the Secretary of the Interior to conduct a study to determine the feasibility of implementing a water supply and conservation project to improve water supply reliability, increase the capacity of water storage, and improve water management efficiency in the Republican River Basin between Harlan County Lake in Nebraska and Milford Lake in Kansas; **Pages H7654–55**

Las Cienegas Enhancement Act: H.R. 5016, amended, to provide for the exchange of certain Bureau of Land Management land in Pima County, Arizona; **Pages H7655–56**

Columbia Space Shuttle Memorial Study Act: H.R. 5692, amended, to direct the Secretary of the

Interior to carry out a study to determine the suitability and feasibility of establishing memorials to the Space Shuttle Columbia on parcels of land in the State of Texas; **Pages H7656–57**

Agreed to amend the title so as to read: ''To direct the Secretary of the Interior to conduct a special resource study to determine the feasibility and suitability of establishing a memorial to the Space Shuttle Columbia in the State of Texas and for its inclusion as a unit of the National Park System.''. **Page H7657**

Rio Grande Natural Area Act: S. 56, to establish the Rio Grande Natural Area in the State of Colorado—clearing the measure for the President; **Pages H7657–59**

Great Lakes Fish and Wildlife Restoration Act of 2006: S. 2430, amended, to amend the Great Lakes Fish and Wildlife Restoration Act of 1990 to provide for implementation of recommendations of the United States Fish and Wildlife Service contained in the Great Lakes Fishery Resources Restoration Study; **Pages H7659–61**

Ouachita National Forest Boundary Adjustment Act of 2006: H.R. 5690, to adjust the boundaries of the Ouachita National Forest in the States of Oklahoma and Arkansas; **Pages H7661–62**

Ratifying a conveyance of a portion of the Jicarilla Apache Reservation to Rio Arriba County, State of New Mexico, pursuant to the settlement of litigation between the Jicarilla Apache Nation and Rio Arriba County, State of New Mexico, to authorize issuance of a patent for said lands, and to change the exterior boundary of the Jicarilla Apache Reservation accordingly: H.R. 4876, to ratify a conveyance of a portion of the Jicarilla Apache Reservation to Rio Arriba County, State of New Mexico, pursuant to the settlement of litigation between the Jicarilla Apache Nation and Rio Arriba County, State of New Mexico, to authorize issuance of a patent for said lands, and to change the exterior boundary of the Jicarilla Apache Reservation accordingly; **Pages H7662–63**

Allowing for the renegotiation of the payment schedule of contracts between the Secretary of the Interior and the Redwood Valley County Water District: H.R. 5516, to allow for the renegotiation of the payment schedule of contracts between the Secretary of the Interior and the Redwood Valley County Water District; **Page H7663**

Modifying a land grant patent issued by the Secretary of the Interior: H.R. 3606, to modify a land grant patent issued by the Secretary of the Interior; **Pages H7663–64**

Commission to Study the Potential Creation of a National Museum of the American Latino Community Act of 2005: H.R. 2134, amended, to establish the Commission to Study the Potential Creation of a National Museum of the American Latino Community to develop a plan of action for the establishment and maintenance of a National Museum of the American Latino Community in Washington, DC; **Pages H7664–67**

Agreed to amend the title so as to read: ''To establish the Commission to Study the Potential Creation of a National Museum of American Latino Heritage to develop a plan of action for the establishment and maintenance of a National Museum of American Latino Heritage in Washington, DC, and for other purposes.''. **Page H7666**

Upper Mississippi River Basin Protection Act: H.R. 5340, amended, to promote Department of the Interior efforts to provide a scientific basis for the management of sediment and nutrient loss in the Upper Mississippi River Basin; **Pages H7667–69**

Rio Arriba County Land Conveyance Act: S. 213, to direct the Secretary of the Interior to convey certain Federal land to Rio Arriba County, New Mexico—clearing the measure for the President; and **Pages H7669–70**

Colorado Northern Front Range Mountain Backdrop Protection Study Act: H.R. 2110, amended, to provide for a study of options for protecting the open space characteristics of certain lands in and adjacent to the Arapaho and Roosevelt National Forests in Colorado. **Pages H7670–71**

Quorum Calls—Votes: Five yea-and-nay votes and three recorded votes developed during the proceedings today and appear on pages H7520, H7521, H7521–22, H7558–60, H7560, H7592, H7592–93, and H7593. There were no quorum calls.

Adjournment: The House met at 10 a.m. and adjourned at 12:03 a.m. on Thursday, September 28th.

Committee Meetings

G.I. BILL FOR SELECTED RESERVE

Committee on Armed Services: Subcommittee on Military Personnel and the Subcommittee on Economic Opportunity of the Committee on Veterans' Affairs held a joint hearing on the Montgomery G.I. Bill for Members of the Selected Reserve. Testimony was heard from Senator Lincoln; Michael Dominguez, Principal Deputy Under Secretary, Personnel and Readiness, Department of Defense; Keith Wilson, Education Service Director, Veterans Benefits Administration, Department of Veterans Affairs; and public witnesses.

IRREGULAR WARFARE ROADMAP

Committee on Armed Services: Subcommittee on Terrorism, Unconventional Threats and Capabilities held a hearing on the Irregular Warfare Roadmap. Testimony was heard from the following officials of the Department of Defense: Mario Mancuso, Deputy Assistant Secretary, Special Operations and Combating Terrorism, Office of the Assistant Secretary, Special Operations and Low-Intensity Conflict; VADM Eric Olson, USN, Deputy Commander, U.S. Special Forces Command; and BG O.G. Mannon, USAF, Deputy Director, Special Operations, Joint Staff.

EARLY CHILDHOOD HOME VISITATION PROGRAMS

Committee on Education and the Workforce: Subcommittee on Education Reform held a hearing on Perspectives on Early Childhood Home Visitation Programs. Testimony was heard from public witnesses.

MISCELLANEOUS MEASURES

Committee on Energy and Commerce: Ordered reported, as amended, the following bills: H.R. 5782, Pipeline Safety and Improvement Act of 2006; and H.R. 5472, National Breast and Cervical Cancer Early Detection Program Reauthorization Act of 2006.

INTERNET SEXUAL EXPLOITATION OF CHILDREN

Committee on Energy and Commerce: Subcommittee on Oversight and Investigations continued hearings entitled ''Sexual Exploitation of Children Over the Internet: Follow-up Issues to the Masha Allen Adoption.'' Testimony was heard from public witnesses.

CATASTROPHIC TERRORISM RISK

Committee on Financial Services: Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, and the Subcommittee on Oversight and Investigations held a joint hearing entitled ''Protecting Americans From Catastrophic Terrorism Risk.'' Testimony was heard from public witnesses.

REBALANCING THE CARBON CYCLE

Committee on Government Reform: Subcommittee on Energy and Resources held a hearing entitled ''Rebalancing the Carbon Cycle.'' Testimony was heard from John B. Stephenson, Director, Natural Resources and Environment, GAO; the following officials of the Department of Energy: Roger C. Dahlman, Co-Chair, Interagency Carbon Cycle Working Group, Climate Change Science Program; and Stephen D. Eule, Director, U.S. Climate Change Technology Program; and public witnesses.

OPEN GOVERNMENT ACT; BANKS IN REAL ESTATE

Committee on Government Reform: Subcommittee on Government Management, Finance and Accountability approved for full Committee action, as amended, H.R. 867, OPEN Government Act of 2005.

The Subcommittee also held a hearing entitled ''Banks in Real Estate: A Review of the Office of the Comptroller of the Currency's December 2005 Rulings.'' Testimony was heard from Julie L. Williams, Chief Counsel, Office of the Comptroller of the Currency, Department of the Treasury; and public witnesses.

INFORMATION TECHNOLOGY IN THE HOUSE

Committee on House Administration: Held a hearing on the IT Assessment: A Ten-Year Vision for Information Technology in the House. Testimony was heard from the following officials of the House of Representatives: Jim Cornell, Inspector General; Wilson S. Livingood, Sergeant at Arms; Karen L. Haas, Clerk; Pope Borrow, Legislative Counsel and James M. Eagen, Chief Administrative Officer; and public witnesses.

U.S.-REPUBLIC OF KOREA RELATIONS

Committee on International Relations: Held a hearing on the United States-Republic of Korea Relations: An Alliance at Risk? Testimony was heard from Christopher R. Hill, Assistant Secretary, Bureau of East Asian and Pacific Affairs, Department of State; Richard P. Lawless, Deputy Under Secretary, International Security Affairs-Asia Pacific, Department of Defense; and public witnesses.

MISCELLANEOUS MEASURES

Committee on the Judiciary: Ordered reported, as amended, the following bills: H.R. 4997, Physicians for Underserved Areas Act; and H.R. 5219, Judicial Transparency and Ethics Enhancement Act of 2006.

PROVIDING FOR CONSIDERATION OF MOTIONS TO SUSPEND THE RULES

Committee on Rules: Granted, by voice vote, a rule providing that suspensions will be in order at any time through the legislative day of September 29, 2006. The rule provides that the Speaker or his designee will consult with the Minority Leader or her designee on any suspension considered under the rule.

WAIVING A REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO THE SAME DAY CONSIDERATION OF CERTAIN RESOLUTIONS REPORTED BY THE RULES COMMITTEE

Committee on Rules: Granted, by voice vote, a rule waiving clause 6(a) of rule XIII (requiring a two-thirds vote to consider a rule on the same day it is reported from the Rules Committee) against certain resolutions reported from the Rules Committee. The rule applies the waiver to any special rule reported on the legislative day of September 28, 2006, providing for consideration or disposition of any of the following measures: (1) a bill to authorize trial by military commission for violations of the law or war, and for other purposes; (2) a bill to update the Foreign Intelligence Surveillance Act of 1978; (3) a conference report to accompany the bill (H.R. 5441) making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2007, and for other purposes. Finally, the rule provides that House Resolutions 654 and 767 are laid upon the table.

PRIVATE PROPERTY RIGHTS IMPLEMENTATION ACT OF 2006

Committee on Rules: Granted, by voice vote, a closed rule providing 1 hour of debate in the House on H.R. 4772, to simplify and expedite access to the Federal courts for injured parties whose rights and privileges under the United States Constitution have been deprived by final actions of Federal agencies or other government officials or entities acting under color of State law, and for other purposes, equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. The rule waives all points of order against consideration of the bill. The rule provides that the amendment in the nature of a substitute as reported by the Committee on the Judiciary shall be considered as adopted. Finally, the rule provides one motion to recommit with or without instructions.

ADVANCING PORT SECURITY AND COMMERCE

Committee on Small Business: Held a hearing entitled "Advancing Security and Commerce at Our Nation's Ports: The Goals Are Not Mutually Exclusive." Testimony was heard from the following officials of the Department of Homeland Security: ADM Brian Salerno, USCG, Assistant Commandant, Inspection and Compliance, U.S. Coast Guard; and Steve Sadler, Director, Maritime and Surface Credentialing, Transportation Security Administration; and public witnesses.

OVERSIGHT—AIR TRANSPORTATION SYSTEM FINANCING OPTIONS

Committee on Transportation and Infrastructure: Subcommittee on Aviation held an oversight hearing on Next Generation Air Transportation System Financing Options. Testimony was heard from Gerald L. Dillingham, Director, Civil Aviation Issues, GAO; Donald B. Marron, Acting Director, CBO; R. John Hansman, Chairman, FAA's Research, Engineering and Development Advisory Committee; and a public witness.

OVERSIGHT—VA PENSION PROGRAM

Committee on Veterans' Affairs: Subcommittee on Disability Assistance and Memorial Affairs held an oversight hearing on the administration of the VA Pension Program. Testimony was heard from Jack McCoy, Associate Deputy Secretary, Policy and Program Management, Veterans Benefits Administration, Department of Veterans Affairs.

HEALTH OPPORTUNITY PATIENT EMPOWERMENT ACT OF 2006

Committee on Ways and Means: Ordered reported, as amended, H.R. 6134, Health Opportunity Patient Empowerment Act of 2006.

DNI'S PERSPECTIVE ON STATE OF INTELLIGENCE REFORM

Permanent Select Committee on Intelligence: Met in executive session to hold a hearing on the DNI's Perspective on State of Intelligence Reform. Testimony was heard from John D. Negroponte, Director of National Intelligence.

Joint Meetings

SHANGHAI COOPERATION ORGANIZATION

Commission on Security and Cooperation in Europe (Helsinki Commission): On Tuesday, September 26, 2006, Commission concluded a hearing to examine the Shanghai Cooperation Organization and its impact on United States interests in Central Asia, after receiving testimony from Richard Boucher, Assistant Secretary of State for South and Central Asian Affairs; Steven Blank, U.S. Army War College; and Martha Olcott, Carnegie Endowment for International Peace, and Sean R. Roberts, Georgetown University, both of Washington, D.C.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, *p. D1028)*

S. 2590, to require full disclosure of all entities and organizations receiving Federal funds. Signed on September 26, 2006. (Public Law 109–282).

H.R. 5684, to implement the United States-Oman Free Trade Agreement. Signed on September 26, 2006. (Public Law 109–283).

COMMITTEE MEETINGS FOR THURSDAY, SEPTEMBER 28, 2006

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Armed Services: to hold hearings to examine issues relating to military voting and the Federal Voting Assistance Program, 9:30 a.m., SH–216.

Committee on the Budget: to hold hearings to examine the state of the economy, 10 a.m., SD–608.

Committee on Commerce, Science, and Transportation: Subcommittee on Aviation, to hold hearings to examine new aircraft in the National Airspace System, 10 a.m., SR–253.

Committee on Environment and Public Works: Subcommittee on Superfund and Waste Management, to hold hearings to examine S. 3871, to amend the Solid Waste Disposal Act to direct the Administrator of the Environmental Protection Agency to establish a hazardous waste electronic manifest system, 9:30 a.m., SD–406.

Committee on Finance: Subcommittee on Long-term Growth and Debt Reduction, to hold hearings to examine America's public debt, 2:30 p.m., SD–215.

Committee on Homeland Security and Governmental Affairs: Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, to resume hearings to examine the National Capital Region's strategic security plan, focusing on the ability of the responsible Federal, state and local government agencies of the National Capital Region to respond to a terrorist attack or natural disaster, including the coordination efforts within the region, 10 a.m., SD–342.

Committee on the Judiciary: business meeting to consider the nominations of Terrence W. Boyle, of North Carolina, and William James Haynes II, of Virginia, each to be United States Circuit Judge for the Fourth Circuit, Peter D. Keisler, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit, William Gerry Myers III, of Idaho, to be United States Circuit Judge for the Ninth Circuit, Nora Barry Fischer, to be United States District Judge for the Western District of Pennsylvania, Gregory Kent Frizzell, to be United States District Judge for the Northern District of Oklahoma, Marcia Morales Howard, to be United States District Judge for the Middle District of Florida, and Lisa Godbey Wood, to be United States District Judge for the Southern District of Georgia, S. 2831, to guarantee the free flow of information to the public through a free and active press while protecting the right of the public to effective law enforcement and the fair administration of justice, S. 155, to increase and enhance law enforcement resources committed to investigation and prosecution of violent gangs, to deter and punish violent gang crime, to protect law-abiding citizens and communities from violent criminals, to revise and enhance criminal penalties for violent crimes, to reform and facilitate prosecution of juvenile gang members who commit violent crimes, to expand and improve gang prevention programs, S. 1845, to amend title 28, United States Code, to provide for the appointment of additional Federal circuit judges, to divide the Ninth Judicial Circuit of the United States into 2 circuits, S. 3880, to provide the Department of Justice the necessary authority to apprehend, prosecute, and convict individuals committing animal enterprise terror, S. 2644, to harmonize rate setting standards for copyright licenses under sections 112 and 114 of title 17, United States Code, and S. 3818, to amend title 35, United States Code, to provide for patent reform, 9:30 a.m., SD–226.

Select Committee on Intelligence: to hold closed hearings to examine intelligence matters, 2:30 p.m., SH–219.

House

Committee on Agriculture, Subcommittee on Conservation, Credit, Rural Development, and Research, hearing to review the EPA pesticide program, 10 a.m., 1300 Longworth.

Committee on Education and the Workforce, Subcommittee on Employer-Employee Relations, hearing entitled "Examining Whether Combining Guards and Other Employees in Bargaining Units Would Weaken National Security," 10:30 a.m., 2175 Rayburn.

Committee on Energy and Commerce, Subcommittee on Health, hearing entitled "Medicare Physician Payments: 2007 and Beyond," 2 p.m., 2322 Rayburn.

Subcommittee on Oversight and Investigations, hearing entitled "Hewlett-Packard's Pretexting Scandal," 10 a.m., 2123 Rayburn.

Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit, hearing entitled "Improving Financial Literacy: Working Together To Develop Private Sector Coordination and Solutions," 10 a.m., 2128 Rayburn.

Committee on Government Reform, hearing entitled " Acquisition Under Duress: Reconstruction Contracting in Iraq," 10 a.m., 2154 Rayburn.

Committee on Homeland Security, Subcommittee on Economic Security, Infrastructure Protection and Cybersecurity, hearing entitled "Front-Line Defense: Security Training for Mass Transit and Rail Employees," 10 a.m., 311 Cannon.

Committee on House Administration, hearing on Electronic Voting Machines: Verification, Security, and Paper Trails, 10 a.m., 1310 Longworth.

Committee on International Relations, Subcommittee on Africa, Global Human Rights and International Operations, hearing on The Role of Faith-Based Organizations in United States Programming in Africa, 2 p.m., 2200 Rayburn.

Subcommittee on International Terrorism and Nonproliferation and the Subcommittee on Middle East and Central Asia, joint hearing on Hezbollah's Global Reach, 10:30 a.m., 2172 Rayburn.

Subcommittee on Western Hemisphere, hearing on Moving Forward in Haiti: How the U.S. and the International Community Can Help, 2 p.m., 2172 Rayburn.

Committee on Resources, Subcommittee on National Parks, hearing on the following bills: H.R. 1344, Lower Farmington River and Salmon Brook Wild and Scenic River Study Act; H.R. 4529, Kalaupapa Memorial Act of 2005; H.R. 5195, Journey Through Hollowed Ground National Heritage Area Designation Act of 2006; H.R. 5466, Captain John Smith Chesapeake National Historic Designation Act; H.R. 5665, American Falls Reservoir District Number 2 Conveyance Act; and H.R. 5817, Bainbridge Island Japanese American Monument Act of 2006, 10 a.m., 1324 Longworth.

Committee on Science, hearing on Implementing the Vision for Space Exploration: Development of the Crew Exploration Vehicle, 2 p.m., 2318 Rayburn.

Committee on Transportation and Infrastructure, Subcommittee on Railroads, oversight hearing on New Hands on the Amtrak Throttle, 10 a.m., 2167 Rayburn.

Committee on Veterans' Affairs, Subcommittee on Health, oversight hearing on Post Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI): Emerging trends in force and veteran health, 10 a.m., 334 Cannon.

Permanent Select Committee on Intelligence, executive, briefing on Global Updates/Hotspots, 9 a.m., H–405 Capitol.

Next Meeting of the SENATE

9:30 a.m., Thursday, September 28

Senate Chamber

Program for Thursday: After the transaction of any morning business (not to extend beyond 30 minutes), Senate will continue consideration of S. 3930, Military Commissions Act, with votes expected on certain amendments, to be followed by a vote on final passage of the bill. Also, Senate expects to resume consideration of H.R. 6061, Secure Fence Act, with a vote on the motion to invoke cloture on the bill.

Next Meeting of the HOUSE OF REPRESENTATIVES

10 a.m., Thursday, September 28

House Chamber

Program for Thursday: To be announced.

Extensions of Remarks, as inserted in this issue

HOUSE

Akin, W. Todd, Mo., E1841, E1842
Bishop, Sanford D., Jr., Ga., E1841, E1842
Burgess, Michael C., Tex., E1841, E1842, E1843, E1844
Cardin, Benjamin L., Md., E1849, E1850
Carter, John R., Tex., E1845
Costello, Jerry F., Ill., E1847
Diaz-Balart, Mario, Fla., E1844
Duncan, John J., Jr., Tenn., E1844
Ehlers, Vernon J., Mich., E1848
Farr, Sam, Calif., E1846, E1847
Filner, Bob, Calif., E1851
Frank, Barney, Mass., E1842
Green, Mark, Wisc., E1849
Gutierrez, Luis V., Ill., E1847, E1847
Issa, Darrell E., Calif., E1847
Kirk, Mark Steven, Ill., E1849, E1850
Lantos, Tom, Calif., E1846
McCarthy, Carolyn, N.Y., E1843
Moran, Jerry, Kans., E1849
Paul, Ron, Tex., E1845
Pence, Mike, Ind., E1845
Poe, Ted, Tex., E1850
Pombo, Richard W., Calif., E1844
Ruppersberger, C.A. Dutch, Md., E1847
Ryan, Paul, Wisc., E1846
Schakowsky, Janice D., Ill., E1845
Smith, Christopher H., N.J., E1848
Towns, Edolphus, N.Y., E1848
Upton, Fred, Mich., E1841, E1842

Congressional Record

The *Congressional Record* (USPS 087–390). The Periodicals postage is paid at Washington, D.C. The public proceedings of each House of Congress, as reported by the Official Reporters thereof, are printed pursuant to directions of the Joint Committee on Printing as authorized by appropriate provisions of Title 44, United States Code, and published for each day that one or both Houses are in session, excepting very infrequent instances when two or more unusually small consecutive issues are printed one time. ¶Public access to the *Congressional Record* is available online through *GPO Access*, a service of the Government Printing Office, free of charge to the user. The online database is updated each day the *Congressional Record* is published. The database includes both text and graphics from the beginning of the 103d Congress, 2d session (January 1994) forward. It is available through *GPO Access* at www.gpo.gov/gpoaccess. Customers can also access this information with WAIS client software, via telnet at swais.access.gpo.gov, or dial-in using communications software and a modem at 202–512–1661. Questions or comments regarding this database or *GPO Access* can be directed to the *GPO Access* User Support Team at: E-Mail: gpoaccess@gpo.gov; Phone 1–888–293–6498 (toll-free), 202–512–1530 (D.C. area); Fax: 202–512–1262. The Team's hours of availability are Monday through Friday, 7:00 a.m. to 5:30 p.m., Eastern Standard Time, except Federal holidays. ¶The *Congressional Record* paper and 24x microfiche edition will be furnished by mail to subscribers, free of postage, at the following prices: paper edition, $252.00 for six months, $503.00 per year, or purchased as follows: less than 200 pages, $10.50; between 200 and 400 pages, $21.00; greater than 400 pages, $31.50, payable in advance; microfiche edition, $146.00 per year, or purchased for $3.00 per issue payable in advance. The semimonthly *Congressional Record Index* may be purchased for the same per issue prices. To place an order for any of these products, visit the U.S. Government Online Bookstore at: bookstore.gpo.gov. Mail orders to: Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954, or phone orders to 866–512–1800 (toll free), 202–512–1800 (D.C. area), or fax to 202–512–2250. Remit check or money order, made payable to the Superintendent of Documents, or use VISA, MasterCard, Discover, American Express, or GPO Deposit Account. ¶Following each session of Congress, the daily *Congressional Record* is revised, printed, permanently bound and sold by the Superintendent of Documents in individual parts or by sets. ¶With the exception of copyrighted articles, there are no restrictions on the republication of material from the *Congressional Record*.

POSTMASTER: Send address changes to the Superintendent of Documents, *Congressional Record*, U.S. Government Printing Office, Washington, D.C. 20402, along with the entire mailing label from the last issue received.