The clerk will call the roll. The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Delaware (Mr. BIDEN), the Senator from Connecticut, (Mr. DO DD), the Senator from California (Mrs. Feinstein), the Senator from South Dakota (Mr. JOHNSON), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

Mr. LO TT. The following Senators are necessarily absent: the Senator from Utah (Mr. BENNETT), the Senator from Arizona (Mr. MCCAIN), the Senator from New Hampshire (Mr. SUNUNU), and the Senator from Louisiana (Mr. VITTER).

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

The result was announced—yeas 91, nays 0, as follows:

[Roll Call Vote No. 153 Ex.]

YEAS—91

Abaca
Dorgan
Akaka
Durbin
Allard
Erdmann
Baucus
East
Bayh
Frifeld
Bingaman
Graham
Bond
Grassley
Boxer
Gregg
Brown
Haged
Brownback
Harkin
Bunning
Hatch
Byrd
Inhofe
Cantwell
Inouye
Cardin
Isakson
Carper
Kerry
Casey
Kloebuchar
Chambliss
Kohl
Clinton
Kyl
Colburn
Landrieu
Cochrane
Lastenberg
Coleman
Leahy
Collins
Levin
Conrad
Lieberman
Curker
Lincoln
Curnyn
Lott
Craig
Lugar
Crapo
Martinez
DeMint
McCaskill
Deole
McConnell
Domenici
Menendez

NOT VOTING—9

Bennett
Feinstein
Biden
Johnson
Dodd
Kennedy

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President shall be immediately notified of the Senate’s action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:36 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. CARPER).

PRESCRIPTION DRUG USER FEE AMENDMENTS ACT OF 2007—Continued

The PRESIDING OFFICER. The Senator from Maine is recognized.

Mr. COLLINS. Mr. President, I ask unanimous consent that I be permitted to speak on Senate business for not to exceed 10 minutes.

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

Mr. COLLINS. I ask the Chair. (The remarks of Mr. COLLINS pertaining to the introduction of S. 1329 are located in today’s RECORD under “Statements on Introduced Bills and Joint Resolutions.”)

The PRESIDING OFFICER. The Senator from New York is recognized.

IRAQ

Mr. SCHUMER. Mr. President, this week we in Congress are continuing to work toward a mission—greatly rethought of course in Iraq, that both supports our troops and changes our mission away from policing a civil war to more narrowly focusing on what should be our first and foremost goal—fighting terrorism, counterterrorism, to make sure al-Qaida cannot set up a camp and strike at us.

I rise today because we are beginning. We have said all along that this is going to be a long battle. Because we do not have 61 votes in the Senate, because the President has the veto power and we certainly do not have 68 votes to override a veto in the Senate, we are going to have to continue to bring up resolution and amendment until we persuade our colleagues on the other side of the aisle to do what the American people want, to do what the American people asked for in November of 2006; that is, dramatically change the course in Iraq.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mrs. MURRAY. Mr. President, I yield the floor.

Mr. SCHUMER. I rise today because we are beginning to deal with a very strong reality that both supports our troops and changes the mission. But we know now that we are making progress because our Republican colleagues themselves have been setting timetables, benchmarks, and other types of goals—limitations that are not terribly dissimilar from ours.

We will continue this battle, this struggle to require the President to change course in Iraq. We eagerly await our Republican colleagues joining us.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I thank my colleague from New York. I know my colleague from Illinois, Senator DURBIN, will be here shortly as well to talk about a critical juncture at which we are now in terms of the war in Iraq.

Last week, both the House and Senate sent a very strongly worded bill to the President of the United States supporting our troops, saying we are there for them when they need us, but we also said it is time for a change of course in Iraq, that we can no longer leave our troops in the middle of a civil war. It is disappointing to all of us that the President chose the bill and sent it back to us. But I think it is very important for us to set the context of where we are now as we look at what we are going to send back to the President.

These are the facts. There is increased violence in Baghdad as we speak. There is increased violence outside Baghdad today. In fact, over 100 American soldiers died last month alone, and at least 27 more American troops have been killed this month. In my home State of Washington, we got the sad news yesterday morning that six of our Fort Lewis soldiers were killed over the weekend. These are
families—husbands, children, grand-children—who will be impacted forever and who will not forget.

Months ago, the President said to the American people that he was going to change his course by having a surge of American troops—25,000, 30,000, 40,000 new troops. They are not on the ground in Iraq. What we are seeing is increased violence inside and outside of Baghdad, more American soldiers losing their lives. And what are we looking at? An Iraqi Government that has not yet stood up to mark to care for their own country and make the tough decisions they need to make. The bill we sent to the President was designed to give him the tools to turn to Iraq and say: You need to take on your own battles and make these tough decisions. It is time for Iraqis to stand up. Four years after removing Saddam from Iraq, the Iraqis have still not made the political compromises necessary to bring peace to their own country. In fact, they are on pretty shaky ground, even after the election, as we hear of factions that may pull out.

Most important, what is happening here in our country? Mr. President, 64 percent of Americans and 65 percent of independents support setting a timetable for redeployment.

That is the ground we are now on, as the President vetoed that very important piece of legislation which funded our troops. We had funding for our veterans, coming home and important, critical funding for Katrina and other important causes.

Despite all the facts I just laid out—the increased violence, the soldiers being killed, the Iraqis not standing up for their own Government—we have seen Republicans on the other side of this aisle stubbornly stand with President Bush and refuse to set a timetable for our troops to come home, refuse to set a timeline to force Iraqis to take responsibility for their own future, and refuse to set a timeline to let us know we are not going to be there indefinitely, month after month, year after year, for decades.

Mr. President, what is heartening to me today is that the President vetoed a specific end to this war. It is time for Iraqis to stand up and to know that they will be brought home in a timely manner.

Senator SCHUMER was just here on the Senate floor and spoke of some of our Republican colleagues that they, too, believe we cannot continue to send our troops to Iraq without Iraqis standing up. We are now hearing from many of our Republican colleagues talk about benchmarks. We know benchmarks without consequences are pointless. But unlike the President, our Republican colleagues are starting to realize that Iraq is breaking with the White House.

Senator SUSAN COLLINS said:

Obviously, the President would prefer a straight funding bill with no benchmarks, no conditions, no reporting. Many of us, on both sides of the aisle, don’t see that as viable. I hear that as very promising language from our colleagues on the other side. We are hearing from many others—Senator Voinovich, who spoke out this weekend. We are hearing from House minority whip ROY BLUNT, who says he “can support binding benchmarks on the Iraqi Government tied to a ‘consequences package,’ so long as it would not put restrictions on the military.”

Mr. President, we support our troops. The bill we sent to the President last week supports our troops. Our troops have done everything we have asked them to do and more, and they have done it courageously. It is time now for us to give them the tools they need so the Iraqis will stand up and take control of their own government.

We can no longer simply say: We will stand down when you stand up to the Iraqi people. I hope our Republican colleagues will join with us in standing up as well, now, to send a strong message to the Iraqi people that it is time for our troops to get the support they need and to know that they will be brought home in a timely manner.

It is encouraging to hear the comments we are hearing. I hope they are met by the courage of our colleagues on the other side to stand with us, find some language we can agree on, and send the supplemental to the President. I hope that is what we can do over the next several days. I encourage our colleagues to work with us to do so.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I ask unanimous consent that I be recognized to speak as in morning business.

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

IRAQ SUPPLEMENTAL

Mr. DURBIN. Mr. President, for a long time in Washington, if you talked about a deadline or a timetable, the response from the President, from the administration, even from the Republican colleagues was the same. When you talked about a specific end to this war, they argued: It endangers our troops.

I did not agree with that premise. In fact, I believed this was the only way to convince the Iraqis we were not going to stay forever. If they think the very best military in the world, the American military forces, will stay indefinitely, they see no incentive for them to make the right decisions, the hard decisions to govern their own country.

Well, time has passed at great cost to our Nation. As of this morning, we have lost 3,631 of our best and brightest. The month of April was the deadliest month this year in Iraq; 104 American soldiers lost their lives. I think we all understand now that as each day passes, more American soldiers are in danger and, sadly, more will give their lives. So to wait for a month, two or three or four, is, sadly, to extend that period of time of danger.

Now we find from Republican leaders a new approach. No longer are they rejecting the idea of deadlines or time tables. In fact, they are starting to speak in more specific terms.

This is a quote from the Republican leader of the House, JOHN BOEHNER, who said:

By the time we get to September or October, members are going to want to know how well this is working, and if it isn’t, what’s Plan B?

That, to me, sounds like a deadline of September or October. I ask of course our colleague from Mississippi, Senator LOTT, said:

I do think this fall we have to see some significant changes on the ground, in Baghdad and other surrounding areas.

I think it is an indication that our colleagues on the other side of the aisle are hearing the same thing we hear when we go home: First, an immense pride in our men and women in uniform, pride as well in their families who have stood by them through this long struggle; an understanding of the sacrifices that are being made by our soldiers as well as those who love them so very much but, secondly, an understanding that this is a failed policy that the President is pursuing in Iraq.

This is the fifth year of this war. This war has lasted longer than World War II. It is now only exceeded in cost by the cost of World War II in today’s dollars. It is an extremely expensive undertaking, first, in human life, with over 3,000 Americans dying, and then with thousands coming home injured, some very seriously injured, with traumatic brain injury and amputations.

Senator MURRAY of Washington has been a leader when it comes to the care for our returning soldiers and veterans. We know our system is breaking down and failing behind, increasing the sense of urgency I feel and many feel in Illinois, as I see them on the streets of Chicago and Springfield and all around my State. They understand this is a huge cost we are paying.

When our friends on the Republican side of the aisle say all we need is maybe 4 or 5 more months, I hope they understand that time they are asking...
for is time that will have a heavy price. They want us to buy some time for political purposes but at a heavy price.

We think, and I hope they will come to understand, we need to tell the Iraqis now they have the responsibility to govern. If they fail, American troops are not going to stay there indefinitely. Some worry when American troops leave, there may be an unstable situation in Iraq. That is entirely possible. That can happen if we leave in 10 months, 10 years, or 15 years.

They have to understand the responsibility of the future of Iraq lies in the hands of the Iraqis. We cannot put that burden on American soldiers and their families any longer. I am heartened by this administration has not succeeded and what the next stage will be, regardless of what our plan may be, it is so ordered.

Mr. SESSIONS. The PRESIDING OFFICER. The assistant legislative clerk proceeded to call the roll.

Mr. SESSIONS. Madam President, I want to take this opportunity this afternoon to follow up on my remarks of last evening about concerns I have involving the immigration process that is ongoing in the Senate and what Senator Reid, the Democratic leader, has indicated he plans to do.

I absolutely believe a framework exists for us to develop comprehensive immigration reform that can be worthy of the American people, to create a lawful system of immigration that will work. It will be difficult in a number of areas, but if a framework is being discussed, I know, because I have seen the PowerPoint presentations and some of the other discussions about it. A framework exists that could lead to effective immigration reform. There is no doubt that this Nation needs comprehensive immigration reform. The whole system is broken. Nothing about it works. The legal system is an embarrassment to us as a nation and a source of frustration to the American people. I am concerned about it, and politicians don’t seem to be. That is why we have had a problem for so long, and frustration and anger gets built up. People sometimes call in to radio stations and say things they wouldn’t say that are unkind. A lot of it is a direct response to a failure of the Congress and the executive branch to do what is required to create a lawful system of immigration. For Heaven’s sake, don’t we all agree with that concept, a lawful system of immigration?

What interests should it serve? It should serve the national interest, the American interest. I asked Secretary Chertoff of Homeland Security and Secretary Gutierrez of Commerce at a hearing of the Judiciary Committee not long ago, what should a lawful system of immigration do? Should it not serve the national interest? They said: Yes, sir.

Mr. President, if a handful of Republican Senators will now cross the aisle and join us, we can have a positive impact on changing this failed policy in Iraq. We can finally stand as one in a bipartisan way and say there is a better way; that the Iraqis cannot take long vacation, nor members of their parliament relax as our soldiers risk their lives. We have to tell the Iraqis we are not going to stay indefinitely.

When leaders such as Mr. Boehner of Ohio speak of plan B, just remember what the B stands for. The B stands for bring our soldiers home. That is what we need to start doing in an orderly, sensible way as soon as possible. Mr. President, I yield the floor, and 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. SESSIONS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. McCaskill). Without objection, it is so ordered.

Mr. SESSIONS. I ask unanimous consent to speak as in morning business.

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

Immigration

Mr. SESSIONS. Madam President, I want to take this opportunity this afternoon to follow up on my remarks of last evening about concerns I have involving the immigration process that is ongoing in the Senate and what Senator Reid, the Democratic leader, has indicated he plans to do.

I absolutely believe a framework exists for us to develop comprehensive immigration reform that can be worthy of the American people, to create a lawful system of immigration that will work. It will be difficult in a number of areas, but if a framework is being discussed, I know, because I have seen the PowerPoint presentations and some of the other discussions about it. A framework exists that could lead to effective immigration reform. There is no doubt that this Nation needs comprehensive immigration reform. The whole system is broken. Nothing about it works. The legal system is an embarrassment to us as a nation and a source of frustration to the American people. I am concerned about it, and politicians don’t seem to be. That is why we have had a problem for so long, and frustration and anger gets built up. People sometimes call in to radio stations and say things they wouldn’t say that are unkind. A lot of it is a direct response to a failure of the Congress and the executive branch to do what is required to create a lawful system of immigration. For Heaven’s sake, don’t we all agree with that concept, a lawful system of immigration?

What interests should it serve? It should serve the national interest, the American interest. I asked Secretary
promised my constituents—and every Senator ought to make this commitment—that I am going to read that bill. Just because people have great sounding words, if you don’t read the words carefully and what they will actually accomplish, you will have a disastrous failure. It had no chance of being successful or ever achieving the ideas it purported.

Senator Reid apparently is unhappy. He has the power, as the Democratic leader, to call up any piece of legislation he wants to call up. He has said: I am not happy with the speed of this. He has said he is going to call up, under the power of the majority leader under rule XIV, last year’s bill, and that this will be on the floor. Then he will give the negotiators to go to negotiate, and maybe they will figure out what would be better. Then he might substitute this newly negotiated bill that hasn’t been written yet—nobody has seen a word of it—and then we will vote. That will make everybody happy.

Let me say this, with all sincerity: The American people know immigration is a big issue. It is an important issue; it really is. It says a lot about the nature of this country. Are we going to create an opportunity to vote on what you are going to get. You are going to create a system that will work in the future. We had to do something, so we passed last year was a bad piece of legislation, but it did pass this Senate. People thought it would die in the House, and sure enough, it did die in the House and it was never considered. They wouldn’t even look at it. But I am not sure that is going to happen this time.

But I am worried about it because from what I am hearing, the system seems to be moving in a way that is going to create an opportunity to vote on a completely unseen immigration bill—nobody has read it except a little group—and move it through this Senate. Now, remember, the bill that passed last year was a bad piece of legislation, but it did pass this Senate. People thought it would die in the House, and sure enough, it did die in the House and it was never considered. We are going to have to reach a compromise, but we understand we have a commitment to you, and that commitment is to create a system that will work in the future.

Then we will vote on it. The American people know immigration is a big issue. It is an important issue. It says a lot about the nature of this country. Are we going to create a system that will work in the future. I am worried about it because from what I am hearing, the system seems to be moving in a way that is going to create an opportunity to vote on a completely unseen immigration bill—nobody has read it except a little group—and move it through this Senate. Now, remember, the bill that passed last year was a bad piece of legislation, but it did pass this Senate. People thought it would die in the House, and sure enough, it did die in the House and it was never considered. They wouldn’t even look at it. But I am not sure that is going to happen this time.

So we may have this plan in the works, and it will work something akin to this: Well, we spend 2 or 3 days talking about immigration, burning time, filibustering, filling cloture on a motion to proceed, and we get on the bill for a day or two and then all of a sudden a new bill comes on and in a day or two, it is passed. Hardly anybody knows what is in it or has had a chance to read it. Then it goes to the House of Representatives, where the Democratic majority now has a 15 seat, 16 seat or so majority over there; some of the Republicans would clearly be in favor of public law passed out of the Senate. They don’t have a chance to vote on it, and then we will delay votes over there, so the bill could be brought up and passed, the same bill, without any amendment. That could happen. Then it goes to the President and he signs it and then we will find out 2, 3 or 4 years from now whether it works.

I don’t think it is going to work. I am worried about it. I am worried about it. I am worried about it. I am worried about it. I am worried about it. I am worried about it. I am worried about it. I am worried about it. I am worried about it.
thing on immigration. I firmly believe we will do a better job of writing a bill that will work, a bill that will serve our national interests, that will create a lawful immigration system, if the American people know what is going on, because they know what they want.

The American people have been consistently right on this issue. Their instincts have been right consistently. Oh, there are some nutty folks out here who are mean spirited, there is no doubt about that, but they represent a very small number. The basic feeling of the American people is sound on immigration and has been. It is the Congress and the executive branches that have failed them for 50 years. We don’t have to continue to fail the American people. We have a responsibility to make it work, and I am hopeful that in the discussions for the first time with Secretary Chertoff and Secretary Gutierrez helping behind the scenes to develop some plans that would actually work, we can get them done. There is some possibility. I wouldn’t have believed it, but now I am beginning to think it is possible.

But if at the last minute the special interest groups, who seem to have dominated and gotten their way, we would not be able to pass the bill we can be proud of. We would not pass a bill that will work, and we will be back in 10 years, 15 years, 20 years from now, dealing with another crisis.

So I will not go on anymore about it. I will mention what the framework, as I understood it, contained, that these PowerPoint presentations that were shown around and got leaked to the press, it has real improvement in border enforcement. We need that. That is essential. If you are serious about immigration, you want border enforcement. It set up as a goal a very effective job workplace enforcement, something that could actually work, using biometric cards, helping the businesses and telling them exactly what they need to do so they can’t be prosecuted or sued for doing something wrong. They are told exactly what to do and what will work. We can make the workplace cease to be the magnet for illegal jobs. That is very important, and it can be done. We need to deal compassionately and realistically with the people who are here illegally, but I don’t believe that someone who broke the law is entitled to every single benefit that we give to those who come lawfully. We will have to wrestle with that, and nobody is going to be happy. I am sure, with the way that comes out. That is the way it is with any big piece of legislation.

We need a genuine temporary seasonal worker program that is separate and apart from the program that would allow people to come into the country on a citizenship track. On the basic entry, citizenship entry into the United States, we need to be more similar to Canada, which has a merit-based, skill-based system that evaluates applicants on what they bring to Canada: Do you speak English? Do you have an education? Do you have skills that Canada needs? It is a skill-based point system. It is objective and fair, and it serves the Canadian interests, and they are very happy with it. So is Australia, so is New Zealand, and I think we are moving forward in this direction. A merit-based point system can actually be a framework for success. I understand that is being discussed. We do not need to promote such a framework, and then promote on the one hand the biometric identifying cards, helping the illegal workplace cease to be a magnet for illegal jobs. That is very important, and it can be done. We need to deal with another crisis.

For illegal workers, it has real improvement in border enforcement. We need that. That is essential. If you are serious about immigration, if you are serious about immigration, you would not be able to pass the bill we will not be able to pass the bill. The fine print. That would be a failure.

So those are my concerns, and I will object with every ability I have, I will utilize every tool I have to ensure that whatever bill hits this floor, that Senators and the American people have time to evaluate it and an opportunity to know what is in it. But there are ways that this time and opportunity can be determined and can get the support. We could deny the American people that right, and it would be wrong to do so.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. I ask unanimous consent to speak as in morning business for up to 15 minutes. The PRESIDING OFFICER. Without objection, it is so ordered.

TORNADO IN GREENSBURG, KANSAS

Mr. BROWNBACK. Madam President, I just returned from Greensburg, KS, yesterday, where we had a horrific tornado hit late Friday evening. I want to share with my colleagues some of the damage assessments, some of the pictures of what has taken place, and some of the needs we have for this community. It is a community I have been to a number of times while serving in the Congress. It is a wonderful community, full of community spirit, with people who have been there for a number of years. They have a celebration around a hand-dug well that is kind of an unusual event. It is the world’s largest hand-dug well. You can go to the bottom of it, and I have done that.

Greensburg is a community with a lot of spirit in the middle of the State and in the middle of our country. Now it is experiencing this tremendous devastation. The tornado covered 40 miles in 90 minutes. It was first spotted at 8:24 p.m. last Friday 3 miles south of Sittka, KS, in Clark County.

The tornado tracked through six counties: Comanche, Kiowa, Edwards, Stafford, Pratt, and Barton. At 9:45 p.m., the tornado demolished Greensburg before wrapping north and dissipating before 10 p.m. Fortunately, the National Weather Service and a weather man out of Dodge City spotted the coming storm, and the community had about a 20-minute warning that a tornado was coming and that it was a big one.

When Greensburg was struck, the tornado’s wind forces exceeded 205 miles per hour, falling into the highest category on the Enhanced Fujita Scale, EF-5. The size of the tornado was 1.7 miles in diameter, which, if you know anything about tornadoes, is enormous. The winds were a result of the hot air that is much reduced from the air pressure in the house, and there will be a blowing up of the house, or the wind comes in and hits it. It can be destroyed by the wind.

Thirteen people are still in the hospital, with four of them in critical condition today. There was some good news on Sunday. We found a person still alive underneath the rubble.

Ninety percent of the town has been destroyed, 25 percent of Greensburg to the Northeast, which was hit by multiple tornadoes that were spawned by the same supercell thunderstorm. It is an older community. More than 50 percent of the population is 45 years of age or older, and 25 percent of the population is 65 years of age or older. Primarily, the economic drivers of the community are farming and oil and gas production.

We will need substantial assistance, I want to show pictures from the wreckage that occurred yesterday. I am pleased to note that the President is coming tomorrow. I was there yesterday with the Governor and several members of the congressional delegation. Senator Roberts was there on Saturday. It is devastating to see.

Here you see a structure left standing there, which is a grain elevator. That is really the only structure left standing in the town. The courthouse is standing, but its roof has been ripped off. It is standing, but the courthouse, with four of them in critical condition today. We have 12 inches of rain in northeast Kansas.

You can still see ominous-looking clouds in this photo. It was very dicey over the entire weekend.

This was one of the more stable houses that remained standing in the area. I went into a house that was somewhat like this, which was built almost 100 years ago. I talked with the
The 100-year anniversary for the house, owner. They were going to celebrate huge areas. This is a county that has communities drained in the High plains. As I said, it is a bill called the New Dakota and I have been pushing for economy was destroyed. There is no FEMA funds. The entire town and their move the 25-percent local match for facilities: city hall, fire stations, hospitals, and gas and diesel generators. The community lacks the resources to respond to our situation, to our devastation. We are going to watch and make sure all of their needs are met. I will ask my colleagues for assistance as well. This is a small, older community. It lacks much in the way of resources. We need help in this particular situation. We are going to be pushing—Senator Roberts and I—for 100-percent coverage on public assistance and on matters such as debris removal and repair and rebuilding public facilities: city hall, fire stations, hospitals, water/wastewater, city powerplant, and gas and diesel generators. The community lacks the resources to meet these needs. We will look to remove the 25-percent local match for FEMA funds. The entire town and their economy was destroyed. There is no way Greensburg can come up with the match of funds that is necessary in this community. I also want to try something innovative. This is a community in the High Plains. The New Homestead Act is a bill that Senator Dorgan from North Dakota and I have been pushing for some time. I have been a lead cosponsor. As I said, it is a bill called the New Homestead Act that can help annual homestead accounts to help people save for their first home and set up individual tuition loans for people who move back to Main Street America through a rural venture capital fund. I think these are things we can look at and say let’s try this here and let’s see it work. Let’s see what we can model off of to help many places in the High Plains that have experienced this depopulation. We will be pushing also for an enhanced USDA rural development package.

There has been a controversy coming up that I think is unfortunate. That has been the question about whether there has been enough equipment from the National Guard—the Kansas National Guard, on the ground in Greensburg to take care of this atrocity, this devastation and difficulty. We will be asking—again, I want to think about how to rebuild. It is beautiful to see that. We mourn their losses. The people of Greensburg and Kansas are thankful for all the prayers people have given for that community, in all of their travail and difficulty. They will go back and they will rebuild and they will go forward and raise the next generation of families in Greensburg and Kiowa County.

The country is going to help out, and I think the country will help in a powerful, positive way, and we will celebrate as Greensburg comes back. I yield the floor and suggest the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll. The legislative clerk proceeded to call the roll. Mr. REID. Madam President, I ask unanimous consent that the order for the quorum call be rescinded. Without objection, it is so ordered. IRAQ Mr. REID. Madam President, today is a somber day in Nevada. Last night, a helicopter crashed in Austin, NV, killing all five crew members on board. It is believed the flight was from Fallon Naval Air Station. Also yesterday, Nevada lost another soldier in Iraq—25-year-old SGT Coby Schwab—to an improvised explosive device. Our State and our Nation mourn the loss of all six servicemembers who served with honor and courage. Our hearts and our prayers are with the families. While one wants success in Iraq more than we in the Senate. I can think of no greater tribute we can pay to those six servicemembers and the more than 3,300 others who have lost their lives in Iraq than to reach a responsible and successful end to the war which has cost so much in so many different ways. The Washington Post this morning ran an article entitled ‘The Cost of
Mr. INHOFE. Madam 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. INHOFE. Madam President, I suggest the absence of a quorum.

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

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

The PRESIDING OFFICER (Mr. SALAZAR). Without objection, it is so ordered.

Mr. ISAKSON. Mr. President, I will address the Senate as in morning business for a few minutes on two points of great personal privilege for me.

The first is, I read last week of the retirement of Susan Gordon, executive secretary and office manager of the Office of Legislative Counsel in the Georgia General Assembly. That might seem an odd thing for me to come to the Senate floor and talk about, but for Susan is emblematic of all of the people who make us look good in this job of public service.

For 31 years, she served the people of Georgia and the Office of Legislative Counsel for the Georgia General Assembly. In my 17 years in that Assembly, I think of hundreds of times where Susan stayed late or went the extra mile to see to it that legislation was drafted, perfected, and got to the floor within the constraints of the general assembly. She never played Republicans over Democrats or Democrats over Republicans, and she loves the State of Georgia.

When I learned of Susan's retirement, it only seemed appropriate for me to memorialize on the Senate floor the appreciation for all she has done for me, and countless other legislators who have gone before me in Georgia would say precisely the same thing.

In particular, I thank the Susan Gordon of Atlanta, GA. I memorialize you and thank you for her 31 great years of service to me and the people of Georgia.

Mr. President, on a second point of personal privilege, at 4:33 p.m. on Sunday afternoon, my daughter, Julie, gave birth to Cecilia Gay Mitchell, my seventh grandchild.

Without objection, 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. INHOFE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. INHOFE. Madam President, I suggest the absence of a quorum.
Gay—a fifth generation of Gays, all ladies, all but one a mother, all close and treasured by me.

I will never claim to be the equal of ROBERT BYRD in terms of his great Mother’s Day speech, which I think we will all hear on Friday, but for me on the day when we observe the birth of a seventh grandchild and the fifth-generation Gay in our family and the Davison family and the Isakson family, I pay tribute to my daughter Julie, her husband Jay, and my expression of thanks to them on behalf of Dianne and me for the greatest present that could ever be given to a parent—that is the gift of a grandchild, especially a fifth-generation Gay.

I yield the floor. Mr. President, I suggest the absence of a quorum.

THE PRESIDENT. The clerk will call the roll.

Mr. DURBIN. I ask unanimous consent that the order for the quorum call be rescinded.

Mr. DURBIN. I ask unanimous consent to speak in morning business.

THE PRESIDENT. Without objection, it is so ordered.

Mr. DURBIN. I ask unanimous consent to speak in morning business.

THE PRESIDENT. Without objection, it is so ordered.

IMMIGRATION REFORM

Mr. DURBIN. Mr. President, in the coming weeks the Senate will again consider legislation to reform our broken immigration system. The Presiding Officer has been personally and deeply involved in this issue since coming to the Senate. I thank him for his leadership.

I think we all understand the challenge is substantial. If we want to solve the problem, we need a comprehensive approach that is tough but fair. We should improve border security by increasing manpower and deploying new technology to import computer engineers and programmers.

I can’t tell you how many leaders in industry, including one this afternoon, coming into my office and say: We absolutely need H-1B visas. We can’t find enough people with specialized education and training. If you won’t allow us to bring these workers in from overseas, we are going to be facing the possibility of taking our production facilities overseas where they live.

It is a compelling argument. I understand that employers who are hiring over from these countries, they have to pay a lot more money and they are going to have to pay a lot more for the workers.

Supporters claim the goal of the H-1B program is to help the American economy by allowing U.S. companies to hire needed foreign workers. The reality is that H-1B visas are being used to facilitate the outsourcing of American jobs to other countries. It seems counterintuitive that a visa that allows people to come into the United States could lead to jobs being outsourced overseas, but when you hear my illustrations, you will understand the conclusion.

A recent expose by the International Herald Tribune disclosed that 8 of the top 10 H-1B visa applicants last year were outsourcing firms with major operations in one country—India. So in many cases it wasn’t the American high tech company using the H-1B visa that was outsourcing, but, rather, a firm, more likely in India than any other country, that was given the authority to use H-1B visas to send workers into the United States. The Herald Tribune concluded:

As Indian outsourcing companies have become the leading consumers of the H-1B visa, they have used it to further their primary mission, which is to gain the expertise necessary to take on critical tasks performed by companies in the United States and perform them in India at a fraction of the cost.

According to this report, the Indian Government has been lobbying hard for the United States Government to increase the number of H-1B visas.

That is a very candid statement by this commerce minister in India. It shows us pause as we think about this program, what it was designed to do and what it is actually doing.

In other words, the Indian Government wants more H-1B visas so Indian companies can outsource more American jobs to India.

Let me be clear. India is a valuable American partner in commerce, diplomacy, and many other endeavors. Indians who have come to the United States have made immeasurable contributions to the benefit of our country in so many ways. I trust them as great friends. But some in India today understand that we have a weakness in our visa system and are using it for their own economic advantage.

It is not surprising the Indian Government is advocating on behalf of Indian companies. The American Government should advocate on behalf of American companies. I don’t criticize the Indian Government for doing that. But we should expect the same from our Government for our workers. We need to stand up to make sure American workers don’t lose their jobs to outsourcing because of H-1B visas.

H-1B supporters claim we need more H-1B visas to stop American jobs from being outsourced. That was the logic behind H-1B visas. It appears the opposite is true. Under the current system, more H-1B visas will mean more outsourcing.

Let me give an example. Indian outsourcing company Wipro was No. 2 on the list of top applicants for H-1B visas in the year 2006. Wipro has more than 80,000 employees. United States, and approximately 2,500 of them are here on H-1B visas. It is pretty clear that when it comes to Wipro’s American operation, the majority of the workers are here on H-1B visas.

Every year Wipro brings in 1,000 temporary workers here from India, while they send another 1,000 U.S. trained workers back to India. This is essentially an outsourcing factory.

Here is what the Herald Tribune concluded:

Rather than building a thriving community of experts and innovators in the United States, the Indian firms seek to funnel work—and expertise—away from the country.

It is hard to believe, but it is perfectly legal to use the H-1B visa program for outsourcing. A foreign outsourcing company with a U.S. office can hire an H-1B visa holder as a temporary worker. The worker from their home country, train the workers in the United States, and then outsource them back to their home country to populate businesses competing with the United States. They are not required to make any efforts to recruit American workers for these jobs. In fact, they can explicitly discriminate against American workers who apply for the same jobs by recruiting and hiring only workers from their home country.

Here is what the Labor Department says about the current law:

H-1B workers may be hired even when a qualified U.S. worker wants the job, and a U.S. worker can be displaced from the job in favor of a foreign worker.

Is that what we want to do with H-1B visas? That certainly wasn’t the way it was explained to me. In fact, under current law, only employers who employ 50 or more workers with a large percentage of their U.S. workforce are required to attempt to recruit American workers before bringing in foreign workers.
Senator Grassley and I have taken a look at this system. We both reject the notion that what is wrong with the H-1B program is that we need more visas. We have to look at the system that generates these visas and the way they are used. We must find how we have introduced would overhail the H-1B program, protecting American workers first, and stopping H-1Bs from being exploited as outsourcing visas.

Here are the highlights. First and foremost, we would require all employers who want to hire an H-1B worker to attempt to hire an American worker first. Employers would also be prohibited from using H-1B visas to displace American workers. You can’t fire an American and turn around and appeal to our Government for an H-1B visa to bring someone in from overseas to replace that worker.

This is an important principle. We have to make it clear that companies doing business in the United States have to give first priority to American workers.

Our bill would require that before an employer may hire an H-1B worker, the employer must first advertise the job opening to American workers for 30 days on the Department of Labor Web site.

Some companies that abuse the H-1B visa program are so brazen, they say “no Americans need apply” in their job advertisements. Hundreds of such ads have been posted on line. They say things such as “H-1B visa holders only” or “we require candidates for H-1B visa from India.”

Is that what we have in mind, to create this perverse discrimination against American workers? That isn’t the way it was explained to me. Our H-1B reform bill would prohibit this blatant discriminatory practice.

There is another serious problem with the H-1B visa program. Federal oversight is virtually nonexistent. Under current law there are many roadblocks to mandatory Government enforcement. For example, the Department of Labor does not have the authority to open an investigation of an employer suspected of abusing the H-1B program unless the Department receives a formal complaint, even if the employer’s application is clearly fraudulent. Even if there is a complaint, the Labor Secretary—and this is something that is almost unique in our law—must personally authorize the opening of an investigation.

These restrictions in the law are aggravated by lax Government enforcement. According to the Department of Homeland Security’s own Inspector General, Homeland Security has violated the law by approving thousands of H-1B applications in excess of the annual cap of 65,000. The Government Accountability Office found that the Labor Department approves over 99.5 percent of H-1B petitions it receives, including those that on their face clearly violate the law.

There is virtually no Government oversight of potential abuse in this system. The Labor Department’s inspector general has concluded that the H-1B program is “highly susceptible to fraud.” Remember, this program was designed to help the American economy, to help create jobs and prosperity in our country. Our Government is not even watching to make sure that fraud isn’t being perpetrated.

The bill Senator Grassley and I are proposing would give the Government more authority to conduct employer investigations and streamline the investigative process. Currently, the Labor Department is only authorized to review applications for “complete-ness and obvious inaccuracies.” Our bill would give the Labor Department more authority to review employers’ H-1B applications for “clear indicators of fraud or misrepresentation of material fact.”

Our bill would authorize the Labor Department to conduct random audits of any company that uses the H-1B program and to require the Department of Labor to conduct annual audits of companies that employ large numbers of H-1B workers. We would also increase the penalties for companies that violate H-1B visa rules and authorize the hiring of 200 additional Government investigators to oversee and enforce the H-1B program.

Last month, the government began accepting H-1B visa petitions for Fiscal Year 2008. In the first 24 hours, the government received 150,000 petitions for 65,000 slots, supposedly for the whole year. Based on last year’s statistics, it is likely that the top petitioners for visas were companies from India. They understand the system. They understand how to make this profitable. But this is not the way it has been described to most Members of Congress. It certainly isn’t consistent with our intent.

There is another program I wish to mention. The L-1 visa allows companies to transfer certain employees from foreign facilities to the United States for up to 7 years. Experts have concluded that some employers use the L-1 program to evade restrictions on the H-1B program, because the L-1 program does not have an annual cap and doesn’t include even minimal protections for American workers. As a result, efforts to reform the H-1B program are unlikely to succeed if the L-1 program is not overhauled at the same time.

The bill Senator Grassley and I have prepared would reform the L-1 program. We would establish for the first time whistleblower protections for those who call attention to employer abuses of this program, and for the first time we would authorize the Government to investigate and audit L-1 employers suspected of violating the law.

Before we are persuaded to increase the number of H-1B visas, we have to reform the program to protect American workers first and to stop H-1Bs from being used as outsourcing visas that send jobs and business away from America. That is what our bill would do, and that is what Senator Grassley and I will be pushing for as the Senate considers comprehensive immigration reform legislation.

I have said this immigration debate is contentious, controversial, and some think it is politically dangerous, but it is long overdue. The current immigration system in America has failed us.

We now have upwards of 800,000 undocumented immigrants who come across the borders each year. That has to change. We have to reach a point where we have control of our borders. Some of the measures that have been suggested during the course of the debate I think are extreme. We don’t have to move in that direction.

I recently met with Senators from Mexico who were visiting the Capital last week and encouraged them to join with us in a joint effort between the United States and Mexico to police the border so we can try to reduce the less exploitation of people who are coming across for jobs or for moving drugs or contraband—whatever the reason may be, I think more cooperation would go a long way between our two countries.

We also need to be sensitive and cognizant of the burden facing many employers in this country. If someone presents themselves, in downstate Illinois in a meat-packing plant, with a name and a Social Security number and a local address, what is the responsibility of the employer today? It certainly isn’t to launch a full-scale investigation. If the papers presented to that employer appear to be legal on their face, most employers will hire the person. They may learn later on that the documents were fraudulent.

How can we change that system? I think we need to move toward some form of identification that is reliable because no one person can carry who is here in a legal and temporary employment status can prove their identity to the employer, so that the system is able to police itself more.

We also need to deal with the reality of 12 million undocumented people currently here. I know all about these folks because almost 90 percent of our casework in our Senate office deals with immigration. I have met many of them and their families. We need to find a fair way to a path to citizenship, an accountable, to make certain that over a period of time they can earn their way into legal status. They have to have a job and no criminal record; they have to pay a fine, pay their taxes, learn English, whatever it takes, to make sure that over a period of time, it is clear they have every intention to be a citizen of this country, and a good one. In that way, they can earn their way, over many years, into a position of citizenship or permanent legal status.

This country is great because of the immigrants who came here. My mother was one of them. I am very proud of that fact and happy to serve in a State
that would elect me and in a State that has so many immigrants who can tell the same story I have to tell.

I think the immigrant spirit is something that has made America a unique country. I think of people who, in their foreign land, get up one day and say: We are not going to take it anymore. We are coming to America. We have a better chance. That is the kind of get-up-and-go we like to see that has made this a much better country.

I therefore capture that spirit in real, comprehensive immigration reform and avoid abuses such as those I have just described with the H-1B program and at the end of the day have a program and a law supported by both political parties that will really move us forward as a Nation.

Mr. DURBIN. Mr. President, I yield the floor, and 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. NELSON of Florida. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. BROWN. 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. NELSON of Florida. Mr. President, in the month of April, 16 children in this country have been backed over and killed by an automobile backing out of a driveway. Each of us can visualize what I am saying right now because we have a car in the garage or in our home driveway, we walk around to make sure there are no obstructions and then get into our car, and we really don’t know that a small child may, in fact, have gotten in the way.

Last year, over 200 children in this country—in the United States alone—over 200 children were killed by these kinds of accidents. Last month, of the 16 who were killed nationwide, 3 of them were in Florida. I have had come to me moms and dads who have agonized and who have gone through the grieving of losing a child. A couple from Boca Raton, FL, who have spurned a national effort, came to me. Their child was only 5 feet in front of the mom, and out backs a car as they are walking down the sidewalk and it was too late; that child is gone.

It is so easily fixable with our technology and an Avis rent-a-car and it is a high-end car, it already has a built-in device that has a sensor in the back. Higher end automobiles such as the Lexus have a television screen with a little camera mounted in the rear. The sensor emits a beep, and the frequency of the beep increases as you get closer and closer to an object. It is estimated that such a device may cost in the range of $50.

So the question is, Are we going to encourage the automobile manufacturers to include this to stop these kinds of needless deaths? Increasingly, the Members of the Senate are going to hear from moms and dads who have gone through the grief of losing a child that could have been prevented. So it is my hope we will get some action.

I now bring to the attention of the Senate that it is my understanding that we are getting ready to be put on the calendar in the House of Representatives for it. In my understanding we would consider this under unanimous consent here in the Senate, and we could then save some children’s lives; otherwise, their parents will grieve forever.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN. 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. BROWN. Mr. President, our trade policy is fundamentally flawed. Years of wrongheaded trade pacts have sent millions of jobs overseas and have devastated far too many of our communities and have opened our Nation to new and serious homeland security concerns.

When we open our borders to trade, as we should, we open them to national security threats. Congress must assure the American people that we have done everything within our power to protect their safety, health, and welfare while promoting trade.

It is estimated that less than 10 percent of foreign cargo is inspected before entering our country—only 10 percent.

We must both ensure our ports are operating securely and with clear lines of accountability—not just the deal to transfer ownership of six U.S. ports to a State-owned company controlled by the United Arab Emirates that this administration approved about a year ago.

The decision to allow a UAE-controlled company had significant national security implications, including warnings that the UAE was a financial and travel outlet for known terrorists. It took leaders of both political parties, here and in the House of Representatives, to call attention to this enormous blunder.

Some change may be happening. This administration has recently signed a free-trade deal with South Korea and will soon ask this Congress to approve it under fast track, or trade promotion authority. One of the major goals South Korea sought in these negotiations was securing special treatment for products made in the Kaesong Industrial Complex, located in North Korea.

In Kaesong, South Korea, companies employ more than 11,000 North Korean workers. South Korea intends to expand the complex over the next few years and will employ close to 70,000—70,000—North Koreans by the end of this year, according to a Congressional Research Service report. U.S. negotiators had vehemently opposed including the Kaesong complex in the trade deal. But then, in a rush to sign a deal, our trade negotiators backed off—as they too often do when it comes to representing national security interests.

This is a dangerous precedent, and it opens this agreement to a series of national security questions. South Korea, for example, does this Kaesong complex currently provide the North Korean Government? How much income can we anticipate it providing North Korea under its expansion plans? How are these North Korean workers treated? Under a fair trade agreement, would our government’s actions be no different than the repressive North Korean Government?

Free-trade agreements, as currently written, live well beyond political administrations. We can’t predict the future decisions and intentions of the South Korean Government, nor any other trading partners. As national security concerns continue to accompany efforts to promote trade, Congress must take proactive steps to ensure our homeland security needs are secured every bit as much as our economic well-being.

Last week, Senator Dorgan of North Dakota and I introduced the Trade-Related American National Security Enhancement and Accountability—TRANSEA—Act. This act requires the Office of U.S. Trade Representative, in collaboration with the Department of State, the Department of Justice, the Department of Homeland Security, and the Department of Agriculture to submit a report to Congress detailing the national security considerations of proposed trade agreements prior to commencing negotiations and the trade agreement is, once again after concluding the trade negotiations.

The bill also requires future trade agreements negotiated by the administration to include a national security waiver that allows the President to suspend any terms of the agreement should it be required in the interests of United States national security.

Lastly, as a final safeguard, the legislation creates a new Congressional Executive Commission on Trade Security, which requires the appointment of Commissioners by both political parties in both Chambers of this Congress. The Commissioners will be charged with annually certifying that the terms of the free-trade agreement do not pose a threat to U.S. national security interests.

Should the Commission find that compliance with the agreement would pose a threat, the President would be obligated to exercise his or her waiver to the extent necessary to ensure the security and security of the United States.

In a post-9/11 world, U.S. economic policy can no longer be simply viewed
in a vacuum of bottom lines and profit margins. Homeland Security Secretary Michael Chertoff said in 2006:

We have to balance the paramount urgency of security against the fact that we still want to have a robust global trading system. It is the responsibility of the Senate to ensure that while opening markets for our exporters—again, as we should—our first priority remains the safety and the security of the American people.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BROWN. 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. BROWN. Mr. President, I, first, thank Senator ENZI, the distinguished Senator from Wyoming, for his terrific work, both as the ranking member of the Health, Education, Labor and Pension Committee, but more precisely today and yesterday for the work he has done on this legislation in working out agreements on a set of very complex issues.

His staff has been terrific in explaining some of the more archaic parts of this legislation, and I am very appreciative. I know Senator KENNEDY is very appreciative, and I know Members on both sides of the aisle are as well. So I thank him for his leadership and his responsiveness in helping us to move forward in a particularly important way on this very important bill.

UNANIMOUS-CONSENT AGREEMENT

Mr. President, I ask unanimous consent that it be in order for the Senate to consider, en bloc, the following list of amendments that has been cleared by both managers; that the amendments, if modified, be considered and agreed to, the motions to reconsider be laid upon the table:

Amendments Nos. 985, 987, 1006, 1005, 1004, 1011, 1019, 1053, 1050, 1049, 1047 and 1056; and that amendments Nos. 993 and 998 be withdrawn; that a colloquy between Senators GREGG and KENNEDY be entered into the CONGRESSIONAL RECORD and then amendment No. 993 be withdrawn; further that any statements relating to agreements that be inserted in the RECORD; that when the Senate resumes consideration of S. 1082 tomorrow, Wednesday, May 9, the only amendments remaining in order be the following:

Grassley amendment No. 1039, a Grassley amendment No. 998, and a Durbin amendment No. 1034; that at the close of morning business, the Senate resume S. 1082, and there be a total of 60 minutes of debate remaining, to run concurrently on the bill and remaining amendments; with 10 minutes under the control of Senator GRASSLEY or his designee; 5 minutes under the control of Senator DURBIN or his designee; and the remaining time equally divided and controlled between the chairman and ranking member or their designees; that upon the use or yielding back of that time, there be 2 minutes of debate equally divided and controlled pendants to a vote in relation to the Grassley amendment No. 1039; that upon disposition of that amendment, there be 2 minutes of debate prior to a vote in relation to the Grassley amendment No. 998; that upon disposition of that amendment, the committee substitute, as modified and amended, be agreed to, and the motion to reconsider be laid upon the table; the bill be read for a third time; the Senate proceed to vote on passage of the bill; with the above occurring without further intervening action or debate; that upon passage the motion to reconsider be laid upon the table, and the title amendment, which is at the desk, be agreed to and the motion to reconsider be laid upon the table; further, that the cloture motion on the bill be withdrawn.

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

The amendments were agreed to, as follows:

AMENDMENT NO. 985, AS MODIFIED

At the appropriate place, insert the following:

SEC. 524. PRIORITY REVIEW TO ENCOURAGE TREATMENTS FOR TROPICAL DISEASES.

Subchapter A of chapter V of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355 et seq.) is amended by adding at the end the following:

SEC. 524. PRIORITY REVIEW TO ENCOURAGE TREATMENTS FOR TROPICAL DISEASES.

(a) Definitions.—In this section:

(1) AIDS.—The term ‘AIDS’ means the acquired immune deficiency syndrome.

(2) AIDS Drug.—The term ‘AIDS drug’ means a drug indicated for treating HIV.

(3) HIV.—The term ‘HIV’ means the human immunodeficiency virus, the pathogen that causes AIDS.

(4) Neglected or Tropical Disease.—The term ‘neglected or tropical disease’ means—

(A) HIV, tuberculosis, and related diseases; or

(B) any other infectious disease that disproportionately affects poor and marginalized populations, including diseases targeted by the Special Programme for Research and Training in Tropical Diseases cosponsored by the United Nations Development Programme, UNICEF, the World Bank, and the World Health Organization.

(5) Priority Review.—The term ‘priority review’ with respect to a new drug application described in paragraph (6), means review and action by the Secretary on such application not later than 180 days after receipt by the Secretary of such application, pursuant to the Manual of Policies and Procedures of the Food and Drug Administration.

(6) Priority Review User Fee.—The term ‘priority review user fee’ means a fee determined under this section.

(b) Priority Review Voucher.—

(1) In General.—The Secretary shall establish a priority review voucher program under which the Secretary or its designee may issue one priority review voucher to the sponsor of a tropical disease product upon approval by the Secretary of such tropical disease product.

(2) Transferability.—A sponsor of a tropical disease product that receives a priority review voucher under this section may transfer (including by sale) the entitlement to such voucher to a sponsor of a new drug for which an application under section 505(b)(1) will be submitted after the date of the approval of the tropical disease product.

(3) Limitation.—A sponsor of a tropical disease product may not receive a priority review voucher under this section if the tropical disease product was approved by the Secretary prior to the date of enactment of this section.

(4) Priority Review User Fee.—

(1) In General.—The Secretary shall establish a user fee program under which a sponsor of a drug that is the subject of a priority review voucher shall pay to the Secretary a fee determined under paragraph (2). Such fee shall be in addition to any fee required to be submitted by the sponsor under chapter VII.

(2) Fee Amount.—The amount of the priority review user fee shall be determined each fiscal year by the Secretary and based on the anticipated costs to the Secretary of implementing this section.

(3) Annual Fee Setting.—The Secretary shall establish, before the beginning of each fiscal year beginning after September 30, 2007, for that fiscal year, the amount of the priority review user fee.

(4) Payment.—

(A) In General.—The fee required by this subsection shall be due upon the filing of the new drug application under section 505(b)(1) for which the voucher is used.

(B) Complete Application.—An application referred to in paragraph (A) for which the sponsor requests the use of a priority review voucher shall be considered incomplete if the fee required by this subsection is not included in such application.

(5) Offsetting Collections.—Fees collected pursuant to this subsection for any fiscal year shall be deposited and credited as offsetting collections to the account providing appropriations to the Food and Drug Administration; and

(B) shall not be collected for any fiscal year except to the extent provided in advance in appropriation Acts.

AMENDMENT NO. 1011, AS MODIFIED

At the appropriate place, insert the following:

SEC. . . . CITIZENS PETITIONS AND PETITIONS FOR STAY OF AGENCY ACTION.

Section 506 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), as amended by this Act, is amended by adding at the end the following:

(CITIZEN PETITIONS AND PETITIONS FOR STAY OF AGENCY ACTION.—)

(1) In General.—

(A) No Delay of Consideration or Approval.—

In General.—With respect to a pending application submitted under subsection (b)(2) or (j), if a petition is submitted to the
Secretary that seeks to have the Secretary take, or refrain from taking, any form of action relating to the approval of the application, including a delay in the effective date of the application, clauses (ii) and (iii) shall apply:

(ii) No delay of consideration or approval.—Except as provided in clause (iii), the Secretary shall not delay consideration or approval of an application submitted under subsection (b)(2) or (j).

(iii) Determination without delay.—The Secretary shall not delay approval of an application submitted under subsection (b)(2) or (j) while a petition described in clause (i) shall not delay consideration or approval of an application submitted under subsection (b)(2) or (j) unless the Secretary determines, not later than 25 business days after the submission of the petition, that a delay is necessary to protect the public health.

(2) Determination of delay.—With respect to a determination by the Secretary under subparagraph (A)(ii) that a delay is necessary to protect the public health the following shall apply:

(i) Not later than 5 days after making such determination, the Secretary shall publish on the Internet website of the Food and Drug Administration a detailed statement providing the reasons underlying the determination. The detailed statement shall include a summary of the petition and comments, any clarifications and additional data that is needed by the Secretary to promptly review the petition.

(ii) Not later than 10 days after making such determination, the Secretary shall provide notice to the sponsor of the pending application submitted under subsection (b)(2) or (j) and any additional information that has been reviewed and the specific substantive issues that the petition raises which need to be considered prior to approving a pending application submitted under subsection (b)(2) or (j), and any clarifications and additional data that is needed by the Commissioner to discuss the determination.

(3) Timings of final agency action on petitions.—

(A) In general.—Notwithstanding a determination by the Secretary under paragraph (2), the Secretary shall take final agency action with respect to a petition not later than 180 days of submission of the petition unless the Secretary determines, not later than 25 business days after the submission of the petition, that a delay is necessary to protect the public health.

(B) Supplemental information.—The Secretary shall not act upon any supplemental information or comments on a petition unless the party submitting such information or comments does so in writing and the submission is signed and contains the following verification: I certify that, to my best knowledge and belief: (a) I have not intentionally delayed submission of the petition; and (b) the information upon which I have based the action requested herein first became known to me on or about __________.

(I) received or expect to receive payments, including cash and other forms of consideration, from the following persons or organizations to file this petition: __________.

(II) I verify under penalty of perjury that the foregoing is true and correct. __________ with the date of the filing of such petition and the signature of the petitioner inserted in the first and second blank space, respectively.

(4) Annual report on delays in approvals per petition.—The Secretary shall annually submit to the Congress a report that specifies—

(A) the number of applications under subsection (b)(2) and (j) that were approved during the preceding 1-year period;

(B) the number of petitions that were submitted during the preceding 1-year period; and

(C) the number of applications whose effective dates were delayed by petitions during such period and the number of days by which the applications were delayed; and

(D) the number of petitions that were filed under this subsection that were deemed by the Secretary under paragraph (1)(A)(iii) to have applications under subsection (b)(2) or (j) and the number of days by which the applications were so delayed.

(5) Exception.—This subsection does not apply with respect to an application for, with respect to the drug, the 3-year exclusivity period referred to under clauses (ii) and (iv) of subsection (c)(3)(E) and under clauses (ii) and (iv) of subsection (j)(5)(F), subject to the requirements of such clauses, as applicable; and

(II) the 5-year exclusivity period referred to under clause (ii) of subsection (c)(3)(E) and under clause (ii) of subsection (j)(5)(F), subject to the requirements of such clauses, as applicable; or

(ii) A patent term extension under section 5 of title 35, United States Code, subject to the requirements of such section.

(B) Application; antibiotic drug descriptions.—

(i) Application.—An application described in this clause is an application for marketing submitted under this section after the date of enactment of this subsection in which the drug that is the subject of the application contains an antibiotic drug described in clause (i).

(ii) Antibiotic drug description.—An antibiotic drug described in this clause is an antibiotic drug that was the subject of an application approved by the Secretary under section 507 of this Act (as in effect before November 21, 1997).
an approved application described in subparagraphs (1)B)(i) or (2)B)(i), as applicable, to any market exclusivities or patent extensions other than those exclusivities or extensions described in subparagraphs (1)A)(i) or (2)A)(i), as applicable, was approved before the date of enactment of this subsection.

(4) APPLICATION OF CERTAIN PROVISIONS.—Notwithstanding section 129, or any other provision, of the Food and Drug Administration Modernization Act of 1997, or any other provision of law, and subject to the limitations of subsections (2) and (3), the provisions of the Drug Price Competition and Patent Term Restoration Act of 1984 shall apply to any drug subject to paragraph (1) or any drug with respect to which an election is made under paragraph (2)(A).

(b) TRANSITION RULE.—With respect to a patent issued on or before the date of enactment of this Act, any patent information required to be filed with the Secretary under subsection (b)(1) or (c)(2) of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355), a raceemic drug on a drug label for which subsection (e)(1) of section 505 (as added by this section) applies shall be filed with the Secretary not later than 60 days after the date of enactment of this Act.

SEC. 2. ANTIBIOTICS AS ORPHAN PRODUCTS.

(a) PUBLIC MEETING.—The Commissioner of Food and Drugs shall convene a public meeting and, if appropriate, issue guidance regarding which serious and life-threatening infectious diseases, such as diseases due to gram-negative bacteria and other diseases due to anti-infectant bacteria potentially qualify for available grants and contracts under this section, the term "antibiotics" means a therapeutic category identified in the list described in subchapter II of chapter 5 of the Orphan Drug Act (21 U.S.C. 360c) or any other grant or contract authorized under this section.

(b) GRANTS AND CONTRACTS FOR THE DEVELOPMENT OF ORPHAN DRUGS.—Subsection (c) of section 5 of the Orphan Drug Act (21 U.S.C. 360e(c)) is amended to read as follows:

"(c) For grants and contracts under subsection (a) there are authorized to be appropriated—"(1) such sums as are already appropriated for fiscal year 2007; and (2) $35,000,000 for each of fiscal years 2008 through 2012."

SEC. 2. IDENTIFICATION OF CLINICALLY SUSCEPTIBLE CONCENTRATIONS OF ANTIMICROBIALS.

(a) DEFINITION.—In this section, the term "clinically susceptible concentration" means specific values which characterize bacteria as clinically susceptible, intermediate, or resistant to the drug (or drugs) tested.

(b) IDENTIFICATION.—The Secretary of Health and Human Services (referred to in this section as the "Secretary"), through the Commissioner of Food and Drugs, shall identify and periodically update clinically susceptible concentrations.

(c) PUBLIC AVAILABILITY.—The Secretary, through the Commissioner of Food and Drugs, shall make such clinically susceptible concentrations publicly available within 30 days of the date of identification and any update under this section.

(d) EFFECT.—Nothing in this section shall be construed to restrict, in any manner, the prescribing of antibiotics by physicians, or to limit the practice of medicine, including for diseases such as Lyme and tick-borne diseases.

SEC. 2. EXCLUSIVITY OF CERTAIN DRUGS CONTAINING SINGLE ENANTIOMERS.

Section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S. C. 355), as amended by this subtitle, is amended by adding at the end the following:

"(t) CERTAIN DRUGS CONTAINING SINGLE ENANTIOMERS.

(1) IN GENERAL.—For purposes of subsections (c)(3)(E)(ii) and (j)(6)(F)(ii), if an application is submitted under subsection (b) for a non-racemic drug containing an active ingredient in a single enantiomer that is contained in a racemic drug approved in another application under subsection (b), the Secretary, in light of the need for such a non-racemic drug, elect to have the single enantiomer not be considered the same active ingredient as that contained in the approved racemic drug.

(II) the single enantiomer has not been previously approved except in the approved racemic drug; and

(ii) the application submitted under subsection (b) for such non-racemic drug—

"(D) EFFECT.

(2) prevented or delayed timely generic drug entry into the market.

AMENDMENT NO. 198, AS MODIFIED

At the appropriate place, insert the following:

SEC. 3. PUBLICATION OF ANNUAL REPORTS.

(a) IN GENERAL.—The Commissioner on Food and Drugs shall annually submit to Congress and publish on the Internet website of the Food and Drug Administration a report concerning the results of the Administration’s pesticide residue monitoring program, that includes—

(1) information and analysis similar to that contained in the report entitled "Food and Drug Administration Pesticide Program Residue Monitoring 2003" as released in June of 2005;

(2) based on an analysis of previous samples, an identification of products or countries (for imports) that require special attention and additional study based on a comparison with equivalent products manufactured, distributed, or sold in the U.S. (including details on the plans for such additional studies), including in the initial report (and subsequent reports as determined necessary) the results and analysis of the Ginseng Dietary Supplements Special Verification Program, as described in the report entitled "Food and Drug Administration Pesticide Program Residue Monitoring 2003";

(3) information on the relative number of investigations and import samples of each tested commodity that were sampled, including recommendations on whether sampling is statistically significant, provides confidence intervals or other related statistical information, and whether the number of samples should be increased and the details of any plans to provide for such increase; and

(4) a description of whether certain commodities are being improperly imported as another commodity, including a description of additional steps that are being planned to prevent such smuggling.

(b) INITIAL REPORTS.—Annual reports under subsection (a) for fiscal years 2004 through 2006 may be combined into a single report, by not later than June 1, 2006, for purposes of publication under subsection (a).

Thereafter such reports shall be completed by June 1 of each year for the data collected for the year that is comparable to the year in which the report is published.

(c) MEMORANDUM OF UNDERSTANDING.—The Commissioner of Food and Drugs and the Administrator of the Food Safety and Inspection Service, the Department of Commerce, and the head of the Agricultural Marketing Service shall enter into a memorandum of understanding to permit inclusion of data in the reports under subsection (a) relating to testing carried out by the Food Safety and Inspection Service and the Agricultural Marketing Service on meat, poultry, eggs, and certain raw agricultural products, respectively.

AMENDMENT NO. 97, AS MODIFIED

At the appropriate place, insert the following:

SEC. 4. HEAD START ACT AMENDMENT IMPOSING PARENTAL CONSENT REQUIREMENT FOR NONEMERGENCY INTRUSIVE PHYSICAL EXAMINATIONS.

The Head Start Act (42 U.S.C. 9301 et seq.) is amended by adding at the end the following:

"(a) IN GENERAL.—A Head Start agency shall obtain written parental consent before administration of any nonemergency intrusive physical examination (2) performed in connection with participation in a program under this subchapter."
AMENDMENT NO. 1053, AS MODIFIED
The Senate finds that parents of children suffering from rare genetic diseases known as orphan diseases face multiple obstacles in obtaining safe and effective treatment for their children due mainly to the fact that many Food and Drug Administration-approved drugs used in the treatment of orphan diseases in children may not be approved for pediatric indications.

Purpose: To modify provisions related to pediatric testing and medical products.

On page 226, line 4, strike “later” and insert “if the determination made under subsection (d)(3) is made less than 2 years after the date on which the Secretary entered into such contract.”

On page 228, line 3, strike “later” and insert “if the determination made under subsection (d)(3) is made less than 2 years after the date on which the Secretary entered into such contract.”

On page 233, lines 18 and 19, insert the following:

AMENDMENT NO. 1054
The Senate finds that parents of children suffering from rare genetic diseases known as orphan diseases face multiple obstacles in obtaining safe and effective treatment for their children due mainly to the fact that many Food and Drug Administration-approved drugs used in the treatment of orphan diseases in children may not be approved for pediatric indications.

Purpose: To express the sense of the Senate concerning orphan disease treatment in children.

At the appropriate place, insert the following:

SEC. 5. ORPHAN DISEASE TREATMENT IN CHILDREN.
(a) FINDING.—The Senate finds that parents of children suffering from rare genetic diseases known as orphan diseases face multiple obstacles in obtaining safe and effective treatment for their children due mainly to the fact that many Food and Drug Administration-approved drugs used in the treatment of orphan diseases in children may not be approved for pediatric indications.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Food and Drug Administration should enter into a contract with the Institute of Medicine to conduct a study concerning measures that may be taken to improve the likelihood that Food and Drug Administration-approved drugs used in the treatment of children with orphan diseases are made available and affordable for pediatric indications.

AMENDMENT NO. 1055
The Senate finds that parents of children suffering from rare genetic diseases known as orphan diseases face multiple obstacles in obtaining safe and effective treatment for their children due mainly to the fact that many Food and Drug Administration-approved drugs used in the treatment of orphan diseases in children may not be approved for pediatric indications.

Purpose: To modify provisions related to pediatric testing and medical products.

On page 226, line 4, strike “later” and insert “if the determination made under subsection (d)(3) is made less than 2 years after the date on which the Secretary entered into such contract.”

On page 228, line 3, strike “later” and insert “if the determination made under subsection (d)(3) is made less than 2 years after the date on which the Secretary entered into such contract.”

On page 233, lines 18 and 19, insert the following:

AMENDMENT NO. 1054
The Senate finds that parents of children suffering from rare genetic diseases known as orphan diseases face multiple obstacles in obtaining safe and effective treatment for their children due mainly to the fact that many Food and Drug Administration-approved drugs used in the treatment of orphan diseases in children may not be approved for pediatric indications.

Purpose: To express the sense of the Senate concerning orphan disease treatment in children.

At the appropriate place, insert the following:

SEC. 5. ORPHAN DISEASE TREATMENT IN CHILDREN.
(a) FINDING.—The Senate finds that parents of children suffering from rare genetic diseases known as orphan diseases face multiple obstacles in obtaining safe and effective treatment for their children due mainly to the fact that many Food and Drug Administration-approved drugs used in the treatment of orphan diseases in children may not be approved for pediatric indications.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Food and Drug Administration should enter into a contract with the Institute of Medicine to conduct a study concerning measures that may be taken to improve the likelihood that Food and Drug Administration-approved drugs used in the treatment of children with orphan diseases are made available and affordable for pediatric indications.
On page 260, line 17 through 19, strike “of a letter, or a written request under section 505A that was declined by the sponsor or holder” and insert “of a written request under section 505A that was declined by the sponsor or holder, or a letter referencing such declined written request.”

On page 261, line 3, strike “appropriate” and insert “suitable,” for the labeled indication or indications.”.

On page 263, between lines 19 and 20, insert the following and redesignate the remaining paragraphs accordingly:

“(2) ACTION BY THE COMMITTEE.—The committee established under paragraph (1) may perform a function under this section using appropriate members of the committee under paragraph (1) and need not convene all members of the committee under paragraph (1) in order to perform a function under this section.

“(3) DOCUMENTATION OF COMMITTEE ACTION.—For each drug or biological product, the committee established under this paragraph shall document for each function performed under paragraph (4) or (5), which members of the committee participated in such function.

On page 265, between lines 18 and 19, insert the following:

“(7) COMMITTEE.—The committee established under paragraph (1) is the committee established under section 505A(c)(1).

On page 268, strike “SURVEILLANCES” and insert “POSTMARKET SURVEILLANCES”.

On page 269, line 17, strike “SURVEILLANCE AND hydroxychloroquine incorporation.”

On page 290, strike lines 9 through 12 and insert the following:

“(iii) that is intended to be—

“(I) associated in the human body for more than 1 year; or

“(II) a life-sustaining or life-supporting device used outside a device user facility.

On page 290, line 15, strike “of an” and all that follows through “section 510(k) only for” on line 19, and insert “or clearance of”.

AMENDMENT NO. 1690

(Purpose: To provide for color certification reports)

At the end of the bill, add the following:

SEC. __.____COLOR CERTIFICATION REPORTS.

Section 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 379e) is amended by adding after subsection (e), subsection (f):

“(g) COLOR CERTIFICATION REPORTS.—Not later than—

“(1) 90 days after the close of a fiscal year in which color certification fees are collected, the Secretary shall submit to Congress a performance report for such fiscal year on the number of batches of color additives approved, the average turn around time for approval, and quantifiable goals for improving laboratory efficiencies; and

“(2) 120 days after the close of a fiscal year in which color certification fees are collected, the Secretary shall submit to Congress a financial report for such fiscal year that includes all fees and expenses of the color certification program, the balance remaining in the fund at the end of the fiscal year, and anticipated costs during the next fiscal year for equipment needs and laboratory improvements of such program.”

AMENDMENT NO. 1693, AS MODIFIED

Beginning on page 184, strike line 23 and all that follows through line 14 on page 165 and insert the following:

“(II) the amount equal to one-fifth of the excess amount in item (bb), provided that—

“(aa) the amount of the total appropriation for the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) exceed the amount of the total appropriation for the Food and Drug Administration for fiscal year 2006 (excluding the amount of fees appropriated for such fiscal year), adjusted as provided under subsection (c)(1); and

“(bb) the amount of the total appropriations for human drug review at the Food and Drug Administration for such fiscal year (excluding the amount of fees appropriated for such fiscal year) exceed the amount of fees appropriated for such fiscal year, adjusted as provided under subsection (c)(1).

In making the adjustment under clause (II) for any fiscal year 2006 through 2012, subsection (c)(1) shall be applied by substituting ‘2007’ for ‘2008’.”.

At the appropriate place, insert the following:

SEC. __.____PROHIBITION ON IMPORTATION FROM A FOREIGN FOOD FACILITY THAT DENIES ACCESS TO FOOD INSPECTORS.

Notwithstanding any other provision of law, no food imported into the United States that is the product of a foreign facility registered under section 415 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 350e) may be imported into the United States, unless the Secretary of Health and Human Services, upon request, to inspect such facility or that unduly delays access to United States inspectors.

At the appropriate place, insert the following:

SEC. __.____COUNTERFEIT-RESISTANT TECHNOLOGIES.

Notwithstanding any other provision of this Act, the requirement that the Secretary of Health and Human Services certify that the importation of prescription drugs will not cause any increased risk to the public health and safety and will result in a significant reduction in the cost of covered products to the American consumer shall not apply to the requirement that the Secretary require that the packaging of any prescription drug incorporates—

(1) not later than 18 months after the date of enactment of this Act, a standardized numerical identifier that is unique and extensible, shall be harmonized with international consensus standards for such an identifier, unique to each package of such drug, and not be subject to manufacturing and repackaging (in which case the numerical identifier shall be linked to the numerical identifier applied at the point of manufacture); and

(2) not later than 24 months after the date of enactment of this Act for the 50 prescription drugs with the highest dollar volume of sales in the United States, based on the calendar year that ends December 31, 2007, and, not later than 30 months after the date of enactment of this Act for all other prescription drugs—

(A) overtly optically variable counterfeit-resistant technologies that—

(i) are visible to the naked eye, providing for visual identification of product authenticity without the need for readers, microscopes, lighting devices, or scanners;

(ii) are similar to that used by the Bureau of Engraving and Printing to secure United States currency;

(iii) are manufactured and distributed in a highly secure, tightly controlled environment; and

(iv) incorporate additional layers of non-visible convert security features up to and including tamper evident.

(B) technologies that have a function of a security comparable to that described in subparagraph (A), as determined by the Secretary.

At the appropriate place, insert the following:

SEC. __.____ENHANCED AQUACULTURE AND SEAFOOD INSPECTION.

(a) FINDINGS.—Congress finds the following:

(1) In 2007, there has been an overwhelming increase in the volume of aquaculture and seafood that has been found to contain substances that are not approved for use in food in the United States.

(2) As of May 2007, inspection programs are not able to satisfactorily accomplish the task of ensuring the food safety of the United States.

(3) To protect the health and safety of consumers in the United States, the ability of the Secretary of Health and Human Services to perform inspection functions must be enhanced.

(b) HIGHER-TECHNOLoGIES.—The Secretary of Health and Human Services (referred to in this section as the “Secretary”) is authorized to, by regulation, enhance, as necessary, the inspection regime of the Food and Drug Administration for the importation of aquaculture and seafood, consistent with obligations of the United States under international agreements and United States law.

(c) REPORT TO CONGRESS.—Not later than 90 days after the date of enactment of this Act, the Secretary shall submit to Congress a report that—

(1) describes the specifics of the aquaculture and seafood inspection program;

(2) describes the feasibility of developing a traceability system for all catfish and seafood products, both domestic and imported, for the purpose of identifying the processing plant of origin of such products; and

(3) provides for an assessment of the risks associated with particular contaminants and banned substances.

(d) PARTNERSHIPS WITH STATES.—Upon the request by any State, the Secretary may enter into partnership agreements, as soon as practicable after the request is made, to implement inspection programs regarding the importation of aquaculture and seafood.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

At the appropriate place, insert the following:

SEC. __.____SENATE REGARDING CERTAIN PATENT INFRINGEMENTS.

(a) FINDINGS.—The Senate makes the following findings:

(1) Innovation in developing life-saving prescription drugs saves millions of lives around the world each year.

(2) The responsible protection of intellec-
tual property is vital to the continued develop-
ment of new and life-saving drugs and fu-
ture growth of the United States economy.

(3) In order to maintain the global com-
petitiveness of the United States, the United States Trade Representative’s Office of In-
tellectual Property and Innovation develops and implements trade policy in support of vital American innovations, including innov-
ation in the pharmaceutical and medical technology industries.

(4) The United States Trade Representative also provides trade policy leadership and ex-
pertise across the full range of interagency initiatives to enhance protection and en-
forcement of intellectual property rights.

(5) Strong and fair intellectual property pro-
tection, including patent, copyright, trademark, and data protection plays an in-
tegral role in fostering economic growth and competitiveness, and ensures access to the most effective medicines around the world.
(6) There are concerns that certain countries have engaged in unfair price manipulation and abuse of compulsory licensing. Americans bear the majority of research and development costs in the world, which could undermine the value of existing United States pharmaceutical patents and could impede access to important therapies.

(7) Addressing the global threat of counterfeit medicines and increased need for the United States Trade Representative and other United States agencies to use available trade policy measures to strengthen laws and enforcement abroad to prevent harm to United States patients and patients around the world.

(a) | BILATERAL ENGAGEMENT. — It is the sense of the Senate that—

(1) the United States Trade Representative should use all the tools at the disposal of the United States that the Secretary determines that advertising a prescription drug under paragraph (3) shall be required to include a specific disclosure about a serious risk listed in the labeling of the drug or about a protocol to ensure safe use described in the labeling of the drug would be false or misleading, the risk evaluation and mitigation strategy for the drug may require that the applicant include in advertisements of the drug such disclosure.

(ii) Date of Approval. —If the Secretary determines that advertisements lacking a specific disclosure of the date a drug was approved, if a serious risk would be false or misleading, the risk evaluation and mitigation strategy for the drug may require that the applicant include in advertisements of the drug such disclosure.

(iii) Specification of Advertisements. — The Secretary may specify the advertisements required to include a specific disclosure about a prescription drug under paragraph (2) for such advertisement.

(iv) Required Safety Surveillance. — If the approved risk evaluation and mitigation strategy for a drug requires the specific disclosure described in paragraph (3) and the routine active surveillance required to monitor the drug has not been adequately identified and assessed; and

(v) Consider whether a specific disclosure under clause (i) should be required.

(b) | TRANSPARENCY AND BALANCE. — Special Section 303 (ii) review and reviews of compliance with the reporting requirements of that section; and

(c) | BILATERAL ENGAGEMENT. — It is the sense of the Senate that—

(1) the United States Trade Representative should use all the tools at the disposal of the United States that the Secretary determines that advertising a prescription drug under paragraph (3) shall be required to include a specific disclosure about a serious risk listed in the labeling of the drug or about a protocol to ensure safe use described in the labeling of the drug would be false or misleading, the risk evaluation and mitigation strategy for the drug may require that the applicant include in advertisements of the drug such disclosure.

(ii) Date of Approval. —If the Secretary determines that advertisements lacking a specific disclosure of the date a drug was approved, if a serious risk would be false or misleading, the risk evaluation and mitigation strategy for the drug may require that the applicant include in advertisements of the drug such disclosure.

(iii) Specification of Advertisements. — The Secretary may specify the advertisements required to include a specific disclosure about a prescription drug under paragraph (2) for such advertisement.

(iv) Required Safety Surveillance. — If the approved risk evaluation and mitigation strategy for a drug requires the specific disclosure described in paragraph (3) and the routine active surveillance required to monitor the drug has not been adequately identified and assessed; and

(v) Consider whether a specific disclosure under clause (i) should be required.

(c) | CONSULTATION REGARDING GENETICALLY ENGINEERED SEAFOOD PRODUCTS. — The Commissioner of Food and Drugs shall consult with the Assistant Administrator of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration to produce a report on any environmental risks associated with genetically engineered seafood products, including the impact of such products on wild fish stocks.

At the appropriate place, insert the following:

SEC. 2. CONSULTATION REGARDING GENETICALLY ENGINEERED SEAFOOD PRODUCTS.

The Commissioner of Food and Drugs shall consult with the Assistant Administrator of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration to produce a report on any environmental risks associated with genetically engineered seafood products, including the impact of such products on wild fish stocks.

At the appropriate place, insert the following:

SEC. 3. REPORT ON THE MARKETING OF CEREAHY-ENGINEERED SEAFOOD PRODUCTS.

Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services, in consultation with the Secretary of Commerce, shall submit to the Health, Education, Labor, and Pensions Committee and the Committee on Commerce, Science, and Transportation of the Senate a report on the differences between the taxonomy of species of lobster in the subfamily Nephropinae, and species of langostino, specifically from the infraspecies Caridea cornicki. This report shall also describe the differences in consumer perception of such species, including such factors as taste, quality, and value of the species.
the Attorney General shall recover the amount assessed (plus interest at currently prevailing rates from the date of the expiration of the 60-day period referred to in paragraph (c) of this subsection) for any civil penalty unless the Secretary thereafter enters an order setting the matter at issue.‘’. (b) DIRECT-TO-CONSUMER ADVERTISEMENTS.— (1) IN GENERAL.—Section 502(n) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(n)) is amended by inserting after the fourth sentence of subsection (a) the following: ‘‘The use of such devices pose for the determination to consumers regarding the risks of indoor tanning devices and skin, including skin cancer; and (2) whether the labeling requirements for indoor tanning devices, including labeling changes as approved under section 502(f) of this title, are capable of adequately communicating any other additional warning, would communicate the risks of indoor tanning more effectively; or (B) whether there is no warning that would be capable of adequately communicating such risks. (c) CONSUMER TESTING.—In making the determinations under subsection (a), the Secretary shall conduct appropriate consumer testing, using the best available methods for determining consumer understanding of labeling requirements for indoor tanning devices. (d) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall report to the Congress a report that provides the determinations under subsection (a). In addition, the Secretary shall include in the report the measures being taken by the Secretary to significantly reduce the risks associated with indoor tanning devices. (Purpose: To require the FDA to conduct consumer testing to determine the appropriate labeling requirements for indoor tanning devices) At the appropriate place, insert the following: SEC. 2. REPORT BY THE FOOD AND DRUG ADMINISTRATION REGARDING LABELING REQUIREMENTS FOR INDOOR TANNING DEVICES AND DEVELOPMENT OF SKIN CANCER OR OTHER SKIN DAMAGE. (a) IN GENERAL.—The Secretary of Health and Human Services shall by regulation establish standards for determining whether a major statement, relating to side effects, contraindications, and effectiveness referred to in the previous sentence shall be stated in a clear and conspicuous (neutral) manner.’’. (2) REGULATIONS TO DETERMINE NEUTRAL MANNER.—The Secretary of Health and Human Services shall by regulation establish standards for determining whether a major statement, relating to side effects, contraindications, and effectiveness of a drug, described in section 502(n) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(n)) (as amended by paragraph (1)) is presented in the manner required under such section. AMENDMENT NO. 1066 (Purpose: To require the FDA to conduct consumer testing to determine the appropriate labeling requirements for indoor tanning devices) At the appropriate place, insert the following: SEC. 2A. REPORT BY THE FOOD AND DRUG ADMINISTRATION REGARDING LABELING REQUIREMENTS FOR INDOOR TANNING DEVICES AND DEVELOPMENT OF SKIN CANCER OR OTHER SKIN DAMAGE. (a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ‘‘Secretary’’), acting through the Commissioner of Food and Drugs, shall determine— (1) whether the labeling requirements for indoor tanning devices, including labeling changes as approved under section 502(f) of this title, are capable of adequately communicating any other additional warning, would communicate the risks of indoor tanning more effectively; or (B) whether there is no warning that would be capable of adequately communicating such risks. (b) CONSUMER TESTING.—In making the determinations under subsection (a), the Secretary shall conduct appropriate consumer testing, using the best available methods for determining consumer understanding of labeling requirements for indoor tanning devices. (c) PUBLIC HEARINGS—PUBLIC COMMENT.— The Secretary shall hold public hearings and solicit comments from the public in making the determinations under subsection (a). (d) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to the Congress a report that provides the determinations under subsection (a). In addition, the Secretary shall include in the report the measures being taken by the Secretary to significantly reduce the risks associated with indoor tanning devices. (a) IN GENERAL.—Subchapter B of chapter VII of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 et seq.) is amended by inserting at the end the following: SEC. 712. CONFLICTS OF INTEREST. (b) DEFINITIONS.—For purposes of this section: (1) ADVISORY COMMITTEE.—The term ‘‘advisory committee’’ means an advisory committee as defined in section 202(f) of this title, or an advisory committee established or maintained by the Secretary of Health and Human Services that is subject to the Ethics in Government Act of 1978, to the Ethics in Government Act of 1993, or to the Standards of Ethical Conduct for Federal Employees, in the case of employees of the Food and Drug Administration. (2) FINANCIAL INTEREST.—The term ‘‘financial interest’’ means a financial interest under section 203(a) of title 18, United States Code. (b) APPOINTMENTS TO ADVISORY COMMITTEES.— (1) RECRUITMENT.— (A) IN GENERAL.—Given the importance of advisory committees to the review process at the Food and Drug Administration, the Secretary, through the Office of Women’s Health, the Office of Orphan Product Development, the Office of Pediatric Therapeutics, and other offices within the Food and Drug Administration with relevant expertise, shall develop and implement strategies on effective outreach to potential members of advisory committees from universities, colleges, other academic research centers, professional and medical societies, and patient and consumer groups. The Secretary shall seek input from professional and scientific societies to determine the most effective informational and recruitment activities. The Secretary shall also take into account the advisory committees with the greatest number of vacancies. (B) RECRUITMENT ACTIVITIES.—Given the importance of advisory committees to the review process at the Food and Drug Administration, the Secretary, through the Office of Women’s Health, the Office of Orphan Product Development, the Office of Pediatric Therapeutics, and other offices within the Food and Drug Administration with relevant expertise, shall develop and implement strategies on effective outreach to potential members of advisory committees from universities, colleges, other academic research centers, professional and medical societies, and patient and consumer groups. The Secretary shall seek input from professional and scientific societies to determine the most effective informational and recruitment activities. The Secretary shall also take into account the advisory committees with the greatest number of vacancies. (c) GIFTING AND DISCLOSURE OF WAIVER.— (1) ADVISORY COMMITTEE.— (A) IN GENERAL.—Notwithstanding any other provision of this section, an individual may be allowed to participate in a meeting of an advisory committee to which the individual is not appointed if the individual is a member of a group that the Secretary determines has particular expertise required for the meeting. The Secretary may be allowed to participate in a meeting of an advisory committee to which the individual is not appointed if the individual is a member of a group that the Secretary determines has particular expertise required for the meeting. (B) IN GENERAL.—Notwithstanding any other provision of this section, an individual may be allowed to participate in a meeting of an advisory committee to which the individual is not appointed if the individual is a member of a group that the Secretary determines has particular expertise required for the meeting. (C) IN GENERAL.—Notwithstanding any other provision of this section, an individual may be allowed to participate in a meeting of an advisory committee to which the individual is not appointed if the individual is a member of a group that the Secretary determines has particular expertise required for the meeting. (2) FINANCIAL INTEREST.—The term ‘‘financial interest’’ means a financial interest under section 203(a) of title 18, United States Code.
the committee who is a full-time Government employee or special Government employee shall disclose to the Secretary financial interests in accordance with subsection (b) of such section.

(2) FINANCIAL INTEREST OF ADVISORY COMMITTEE MEMBER OR FAMILY MEMBER.—No member of an advisory committee may vote with respect to anything considered by such advisory committee if such member (or an immediate family member of such member) has a financial interest that could be affected by the advice or recommendations given by the advisory committee with respect to such matter, excluding interests exempted in regulations issued by the Director of Government Affairs as too remote or inconsequential to affect the integrity of the services of the Government officers or employees to which such regulations apply.

(3) WAIVER.—The Secretary may grant a waiver of the prohibition in paragraph (2) if such waiver is necessary to afford the advisory committee essential expertise.

(4) LIMITATIONS.—

(A) WAIVER — (i) the type, nature, and magnitude of the financial interests of the advisory committee; (ii) with respect to such determination, certification, or waiver applications; and (iii) the reasons of the Secretary for such determination, certification, or waiver.

(B) LESS THAN 30 DAYS IN ADVANCE.—In the case of a financial interest that becomes known to the Secretary less than 30 days prior to a meeting of an advisory committee to which such financial interest relates, the Secretary shall not grant more than 1 waiver under paragraph (3) per meeting.

(5) WAIVER.—The Secretary shall disclose (other than information exempted from disclosure under section 552 of title 5, United States Code, and section 552a of title 5, United States Code (popularly known as the Freedom of Information Act and the Privacy Act of 1974, respectively)) on the Internet website of the Food and Drug Administration—

(i) the type, nature, and magnitude of the financial interests of the advisory committee to which such financial interest relates; (ii) with respect to such determination, certification, or waiver applications; and (iii) the reasons of the Secretary for such determination, certification, or waiver.

(c) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 2007.

The PRESIDING OFFICER. The amendments are set aside.

The Senator from Wyoming is recognized.

Senator Enzi. Mr. President, I congratulate everybody on reaching the point where we just reached with the unanimous consent agreement that was done. I thank the Senator from Ohio for his tremendous work on the committee and then on the floor, and on working through some of these amendments.

I particularly thank Senator Kennedy for his efforts. He is having a tough job because he really does not want to let the F D A in, but if the F D A is probably on a plane again now. He represented the United States at the unification treaty signing in Ireland today. He left as soon as we finished voting last night, traveled through the night, attended that ceremony, and will travel virtually through the night tonight to get back again so he will be here for tomorrow morning’s vote. That is just the kind of tireless dedication that he puts in on international issues, as well as the issues that come before the committee and is very impressed with the stamina he has and the capability he has to do all these things.

This has been a long road and it has had a few bumps in it, but there has been cooperation on both sides. The staff people who have worked on this have gone into excruciating detail on every amendment to make sure it would do what people said it would do. But for those times it is needed, it will be an important tool. This amendment provides a succinct and direct legal basis for the FDA to seek access and inspect foreign food facilities on demand. If a foreign exporter to the United States delays access for FDA inspectors unnecessarily, the FDA can stop all food imports from that firm immediately thereby denying them access to our markets. If an exporter to the United States delays access for FDA inspectors unnecessarily, the FDA can stop all food imports from that firm immediately thereby denying them access to our markets. If an exporter to the United States delays access for FDA inspectors unnecessarily, the FDA can stop all food imports from that firm immediately thereby denying them access to our markets. If an exporter to the United States delays access for FDA inspectors unnecessarily, the FDA can stop all food imports from that firm immediately thereby denying them access to our markets.

I think we have progressed to a point where we can do three votes and then final passage tomorrow and have this done in a way to have the Food and Drug Administration reformed so they have more tools in the toolbox and can get the job done that we have always been expecting, and have more confidence that our food and drug supply in the United States will be safe.

Everybody has been tremendously cooperative. We look forward to finishing in the morning.

I yield the floor.
Mr. REID. Mr. President, I rise today to recognize the contributions of Tom Clewell to Sparks, NV. After serving the city of Sparks for more than 36 years, Tom retired from his 3-year post as fire chief on May 4, 2007.

Tom is a native Nevadan, attending school in Reno and raising a family in Sparks. He joined the Sparks Fire Department as a temporary firefighter in April 1971, and eventually climbed the ranks to become the city’s 10th fire chief in its history. He served in many roles within the department, including as the operator of the Sparks Fire Department including operator, captain, battalion chief, and division chief.

Throughout his 36 years, Tom led the fire department through many changes and challenges. He reorganized the department creating four division chiefs. Tom also encouraged greater training of firefighters in Sparks. He also managed the rapid growth surrounding Sparks and introduced fire prevention measures as housing developments began heading toward the foothills.

Upon his retirement, the city manager of Sparks said, “Tom has been one of the greatest leaders I have ever been associated with. He speaks volumes about Tom’s leadership. I have known Tom for many years. His professional accomplishments are numerous, but I think Tom would likely describe himself as his greatest honor. He is the proud father to Angela and Lindsey. He shares in this joy with his wife Francine.

I am privileged to have the opportunity to honor Tom Clewell before the United States Senate today. I am certain that this moment will in fact and in spirit continue to serve the citizens of Sparks with the dedication he has shown over the past 36 years and I wish him well on his future endeavors.

GENOCIDE ACCOUNTABILITY ACT

Mr. DURBIN. Mr. President, S. 888, the Genocide Accountability Act, is the first legislation produced by the Senate Judiciary Committee’s new Subcommittee on Human Rights and the Law, which I chair. It is a bipartisan legislation that I introduced with Senator Tom Coburn, ranking member of the Human Rights and the Law Subcommittee, Senator Patrick Leahy, chairman of the Judiciary Committee, and Senator John Cornyn.

The Genocide Accountability Act would close a legal loophole that prevents the U.S. Justice Department from prosecuting individuals who have committed genocide under current law, genocide is only a crime if it is committed within the United States or by a U.S. national outside the United States. The Genocide Accountability Act would amend 18 U.S.C. 1891, the Genocide Convention Implementation Act, to allow prosecution of non-U.S. nationals who are brought into or found in the United States for genocide committed outside the United States.

I recently received a letter from David Scheffer, U.S. Ambassador at Large for War Crimes from 1997 to 2001, which makes clear the impact that the Genocide Accountability Act could have. Ambassador Scheffer’s letter explains that the loophole in our genocide law hindered the U.S. Government’s efforts to secure the apprehension and prosecution of former Cambodian dictator Pol Pot, one of the worst war criminals of the 20th century. If the Genocide Accountability Act had been law when Pol Pot was alive and at large, maybe the United States would have been able to bring him to justice.

The Genocide Accountability Act recently passed the Senate unanimously. I urge my colleagues in the House of Representatives will pass it and the President will sign it into law.

The United States should have the ability to bring to justice individuals who commit genocide, regardless of where their crime takes place and regardless of whether they are a U.S. national. The Genocide Accountability Act would end this immunity gap in U.S. law.

Mr. President, I ask unanimous consent to have Ambassador Scheffer’s letter to which I referred printed in the RECORD.

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

CENTER FOR INTERNATIONAL HUMAN RIGHTS, April 6, 2007.

Re lost opportunities to achieve international justice.

Senator Richard Durbin, Chairman, Subcommittee on Human Rights and the Law, Committee on the Judiciary, U.S. Senate, Washington, DC.

Dear Senator Durbin: you have asked me to recount how limitations in U.S. federal law during the 1990’s prevented the Clinton Administration, in which I served as U.S. Ambassador at Large for War Crimes issues (1997-2001), from ensuring the speedy apprehension and prosecution of the former Cambodian leader, Pol Pot, on charges of genocide, crimes against humanity, or war crimes (“atrocity crimes”) prior to his death in March 1998. Because such limitations in U.S. law remain, particularly with respect to the crime of genocide, it may be useful for Members of Congress to consider how devastating was this lost opportunity to achieve some measure of justice for the deaths of an estimated 1.7 million Cambodians under Poel Pot’s rule from 1975 to 1979.

In June 1997 the then two co-prime ministers of Cambodia, Hun Sen and Norodom Ranariddh, sent a letter to the Secretary-General of the United Nations seeking assistance to establish an international criminal tribunal that would prosecute senior Khmer Rouge leaders, none of whom had been prosecuted with the sole exception of a highly dubious in absentia trial of Pol Pot and his foreign minister, Ieng Sary, in a Cambodia in 1979 shortly after the fall of the Khmer Rouge regime. The jointly-signed letter in June 1997 opened two pathways of action by the Clinton Administration: the first continues to this day, namely how to investigate and prosecute surviving senior Khmer Rouge leaders and bring them to justice before any credible court of proper jurisdiction; the second interrelated issue dealt with effective measures to apprehend and hold suspects in custody until they could be brought to trial.

Since no international criminal tribunal existed in 1997 that was specially designed to...