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No. 162

Senate

The Senate met at 9 a.m. and was called to order by the Honorable KEN SALAZAR, a Senator from the State of Colorado.

PRAYER

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

Let us pray:

Almighty and eternal God, thank You for this good land. We are grateful for her hills and valleys, her fertile soil, her trees, her plains, and mountains. We thank You for the brilliant colors of the changing seasons.

Lord, make us a great nation full of truth and righteousness. Lead our leaders to honor Your Name by living with integrity and humility. Teach them to express in words and deeds the spirit of justice, discharging their duties that other nations may respect us.

Give rest to the weary and new vigor to tired hands. Lift us when we fall, and set our feet again on the way everlasting.

Lord, we continue to pray for those facing the challenges of the California fires.

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable KEN SALAZAR led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 24, 2007.

To the Senate:

Under the provisions of rule I, paragraph 3, of the Standing Rules of the Senate, I hereby appoint the Honorable KEN SALAZAR, a Senator from the State of Colorado, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. SALAZAR thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, we are going to immediately return to executive session to continue the consideration of Judge Southwick to be nominated to one of our circuit courts. The debate time until 11 o'clock is equally divided and controlled. The 20 minutes prior to the 11 a.m. vote on the motion to invoke cloture on the nomination will be for the two leaders who will be recognized to speak, with the majority leader controlling the final 10 minutes. That order is already in effect. The consent agreement says if cloture is invoked the Senate would go to confirmation following that cloture vote. Following disposition of the nomination, there will be 20 minutes of debate, equally divided, prior to the vote on the motion to invoke cloture.

MEASURES PLACED ON THE CALENDAR—S. 2216, S. 2217

Mr. REID. Mr. President, there are two bills at the desk due for a second reading.

The ACTING PRESIDENT pro tempore. The clerk will report the bills by title.

The legislative clerk read as follows:

A bill (S. 2216) to amend the Internal Revenue Code of 1986 to extend the Indian employment credit and the depreciation rules for property used predominantly within an Indian reservation.

A bill (S. 2217) to amend the Internal Revenue Code of 1986 to extend the taxable income limit on percentage depletion for oil and natural gas produced from marginal properties.

Mr. REID. I object to any further proceedings with respect to these bills en bloc.

The ACTING PRESIDENT pro tempore. Objection is heard. The bills will be placed on the calendar.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF LESLIE SOUTHWICK TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now proceed to executive session to resume consideration of the following nomination which the clerk will report.

The legislative clerk read the nomination of Leslie Southwick, of Mississippi, to be United States Circuit Judge for the Fifth Circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 11 a.m. shall be equally divided between the two leaders or their designee, with the time from 10:40 to 11 a.m. divided and controlled between the two leaders and with the majority leader controlling the final 10 minutes.

The Senator from Pennsylvania is recognized.

Mr. SPECTER. How much time remains on each side?

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



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S13273

The ACTING PRESIDENT pro tempore. Fifty-seven and a half minutes on the majority side and 58 minutes on the minority side.

Mr. SPECTER. How much again on the Republican side?

The ACTING PRESIDENT pro tempore. Fifty-eight minutes.

Mr. SPECTER. Mr. President, I spoke extensively last night after Senator LEAHY, the chairman, spoke about the nomination. I will make a few comments now, and I will invite my colleagues to come to the floor on the Republican side. For those who are interested in time, we have only a limited amount, but we will apportion it as best we can, obviously equitably. It is my hope that we will move through the cloture vote to cut off debate and then proceed to confirm Judge Leslie Southwick.

As I said yesterday—and, again, I spoke at some length—Judge Southwick comes to this nomination with an outstanding academic, professional, and judicial record. On the Court of Appeals in the State of Mississippi and the intermediate appellate court, Judge Southwick has distinguished himself by participating in some 6,000 cases and writing some 950 opinions. His critics have singled out only two cases against that extraordinary record. I commented yesterday at length about the fact that in neither of the cases in which he has been criticized did he write the opinion, but only concurred, and there were good reasons for the positions he took.

An extraordinary thing about Judge Southwick is that he got a waiver to join the Army Reserve at the age of 42 and then at the age of 53 volunteered to go to Iraq into harm's way to serve on the Judge Advocate General's staff, receiving the commendation of the major general which I put into the RECORD yesterday.

His record shows that he has been very concerned about plaintiffs in personal injury cases, about defendants in criminal cases, and has looked out for the so-called little guy. As I enumerated yesterday, a number of very prominent members of the African-American community from Mississippi have come forward in his support—one young lady who was his law clerk and others who knew him. It is my view that on the merits, there is no question that Judge Southwick should be confirmed.

There has been some concern about the seat he is filling, whether there should be greater diversity on the seat. That really is a matter in the first instance for the President and then in the second instance for the Senate to consider the merits of the individual. It is the American way to consider Judge Southwick on his merits as to what he has done and as to what he stands for.

We have seen this body very badly divided in the past couple of decades along partisan lines. In the final 2 years of the administration of President Reagan when Democrats had con-

trol of the Senate and the Judiciary Committee, President Reagan's nominees were stonewalled to a substantial extent. The same thing happened during the last 2 years of the administration of President George H.W. Bush. Then, Republicans acted in kind during the Clinton administration and refused in many cases to have hearings or to call President Clinton's nominees up for confirmation. I think that was the incorrect approach and said so, in fact, on a number of President Clinton's nominations.

This body had a very tough time 2 years ago when we were considering the so-called nuclear constitutional option which would have taken away the filibuster opportunity to require 60 votes, and we succeeded in a compromise with the so-called Gang of 14. The Judiciary Committee has functioned more smoothly during the course of the past 3 years with Senator LEAHY now the chairman and during the course of the 109th Congress in 2005 to 2006 when I chaired the committee.

So it is my hope that comity will be maintained, that Judge Southwick will be considered as an individual as to whether he is qualified, without any collateral considerations as to the history of nominees to the Fifth Circuit. I think if that is done, Judge Southwick will be confirmed. It would be most unfortunate, in my judgment, if we were to go back to the days of excessive partisanship.

It is an open question as to who the President will be following the 2008 elections, and it would be my hope that however the Presidential election works out and whoever may control the Senate, that we will consider the nominees on their individual merits. To repeat, I think that will lead to the confirmation of Judge Southwick.

I yield the floor.

The PRESIDING OFFICER (Mr. SCHUMER). The Senator from New Jersey is recognized for 10 minutes.

Mr. MENENDEZ. Mr. President, I rise today in opposition to the nomination of Judge Southwick. With a long and consistent history of insensitivity toward discrimination and of siding with the powerful against the powerless, Mr. Southwick is the wrong person to take a seat on the Fifth Circuit Court of Appeals, and he is the wrong person to sit on the Federal bench in the State of Mississippi.

Before I explain why I oppose this nominee, let me say that my concerns are based entirely on Judge Southwick's judicial record. They have absolutely nothing to do with Judge Southwick as a person—whether he is a nice man, a good employer, or a devoted family man. That is not what this confirmation process is all about. This confirmation process is about the kind of judge Leslie Southwick was on the Mississippi State Court of Appeals and what kind of judge he will be if he is confirmed to the Fifth Circuit.

On the basis of Judge Southwick's record on the State court, I have a fair-

ly clear picture of the kind of judge he will be if given a lifetime appointment. He will be the type of judge who consistently rules in favor of big business and corporate interests at the expense of workers' rights and consumer rights. I know this because in 160 out of 180 written decisions, he found a way to achieve that very outcome.

What I do know is that he interprets the law in a way that is not blind to color, blind to race, or blind to sexual orientation, but, in fact, focuses on these factors and sides against them. In fact, his record reveals a long history of discriminating against individuals based on race and sexual orientation, a long history of siding with the powerful over and to the detriment of the powerless.

Finally, what I do know is that when given the opportunity, he stands by those opinions. When asked by my colleagues on the Judiciary Committee, under oath, Judge Southwick was unable to think of a single instance—not even one example—of standing up for the powerless, the poor, minorities, or the dispossessed, not when he was asked during the hearing and not when he was asked for a second time in written followup. This is not the kind of judge we need on the Federal bench.

Remember the circuit this judge was nominated to—the Fifth Circuit. It is the circuit that covers Mississippi, Texas, and Louisiana, the circuit that has the largest percentage of minority residents of any Federal circuit in the United States—44 percent. Let's not forget that he is nominated to take one of the seats within that circuit reserved for a judge from Mississippi—the State with the highest percentage of African Americans in the country.

President Bush made a commitment to the residents of the Fifth Circuit, the people of Mississippi, and the people of this country that he would appoint more African Americans to this circuit. Not only has he gone back on this commitment, he has nominated someone whom the Congressional Black Caucus vehemently opposes on the grounds that he would not provide equal justice in a circuit where racial discrimination has always been the most pronounced. He has nominated someone who the NAACP, the NAACP Legal Defense Fund, the National Urban League, and the Rainbow/PUSH Coalition have all said would fail to protect the civil rights of the millions of minority residents living within the Fifth Circuit. Judge Southwick is an unacceptable nominee to any position on the Federal bench, but he is particularly ill-suited for the Fifth Circuit.

Mr. President, let me give you one example of how Judge Southwick's insensitivity toward racial discrimination affects how he decides cases. In the case of *Richmond v. Mississippi Department of Human Services*, Judge Southwick had to decide whether it was racial discrimination for a White employer to refer to an African American as "a good ole" N word. Reversing

a trial court's finding of discrimination, Judge Southwick joined an opinion stating that the N word was only "somewhat derogatory" and compared it to calling someone a "teacher's pet." A teacher's pet?

Judge Southwick was the deciding vote in the 5-4 decision. He had strong opposition from four dissenting judges who wrote:

The ["N" word] is, and has always been, offensive. Search high and low, you will not find any non-offensive definition for this term. There are some words, which by their nature and definition are so inherently offensive, that their use establishes the right to offend.

It is incomprehensible to me that anyone could disagree with that statement. It is even more incomprehensible that the President of the United States could nominate an individual who does not believe the law sees such a term as offensive to the Federal appellate bench.

The "N" word is one of the most hateful, most denigrating words in the English language. It has no place in our society and certainly should never be tacitly permitted in the workplace.

The fact that Judge Southwick joined the majority opinion—which I should add was reversed by the State supreme court—is not an anomaly. Judge Southwick also has a troubling record in cases reviewing racial bias in the selection of jurors. Of the 59 instances that an African American defendant challenged their conviction on the grounds that the prosecution systematically struck African-American jurors, Mr. Southwick refused the challenge 54 times. That is an over 91 percent refusal rating.

When the color of the juror's skin was different, when African-American defendants challenged their convictions on the grounds that their defense attorneys were prevented from striking Caucasian jurors, Mr. Southwick refused their challenge and allowed the Caucasian juror to remain in the jury 100 percent of the time. So if a defendant claimed an African American was unjustly kept off the jury, Judge Southwick denied his claim. If a defendant claimed a Caucasian was unjustly kept on the jury, Judge Southwick denied his claim. Thus, it seems like Judge Southwick favors keeping Caucasians on juries and keeping African Americans off—even in a State like Mississippi.

One of Judge Southwick's own colleagues criticized this apparent policy because it established a low burden for the state to keep Caucasian jurors on a jury and a high burden for defendants to keep African Americans on a jury. Any double standard of justice, especially one that gives the benefit of the doubt to the Government at the detriment of individual rights, is antithetical to our justice system and its presumption of innocence. It is absolutely unacceptable on a Federal appellate court.

Another area of concern I have involves Judge Southwick's rulings in cases involving discrimination on the basis of sexual orientation. In the case *S.B. v. L.W.*, Judge Southwick joined an opinion that took an 8-year-old child away from her birth mother largely because of the mother's sexual orientation. The fact that Judge Southwick joined this overtly discriminatory opinion is extremely troubling. However, the concurrence he himself authored is even more so.

His concurring opinion stated that homosexuality was a "choice" that comes with consequences. Despite the fact that the American Psychological Association has found that sexual orientation is not a choice, Judge Southwick decided to give his personal opinion, his personal belief, that is was a choice, the weight of the law. Judges must always remember the precedential value of their words and their opinions. That a judge would base a legal judgment on personal opinion is disconcerting. That a judge would base a legal judgment on such misguided personal views regarding sexual orientation is absolutely intolerable.

Before I conclude, I would like to discuss one other problem I have with Judge Southwick's nomination. That is the distinct trend in Judge Southwick's decisions of deciding in favor of big business and against the little guy. In fact, Judge Southwick ruled against injured workers and consumers 89 percent of the time when there was a divided court; 89 percent of the time Judge Southwick put the interests of corporations ahead of average Americans; 89 percent of the time injured workers and injured consumers found they were entitled to no relief in Judge Southwick's eyes.

I understand that the individual is not always right. Big business is not always wrong. But no judge should have such a strongly slanted track record in one direction or another. 89 percent is a very strongly slanted track record.

That is one reason why the UAW has also come out in strong opposition to Judge Southwick's nomination. Another reason the UAW is so strongly opposed is Judge Southwick's opinion that the "employment at will" doctrine, which allows employers to fire workers for any reason, "provides the best balance of the competing interests in the normal employment situation." In other words, he does not believe in protecting job security. It is no wonder that the UAW has serious concerns about his ability to enforce the National Labor Relations Act, title VII of the Civil Rights Act, and other laws that protect employees in the workplace and limit "employment at will." I share those concerns.

Let me give you an example. In *Cannon v. Mid-South X-Ray Co.*, Judge Southwick refused to allow a woman to receive compensation for the debili-

tating injuries she suffered as a result of being exposed to toxic chemicals at work. The majority believed the woman should be able to bring her case to trial. Judge Southwick dissented from the 8-2 decision. He rested his decision on a procedural point—that the statute of limitations had tolled—even though the woman did not experience symptoms of her poisoning until years after initially being exposed. He rested his decision on the fact that she should have brought her case before she experienced any symptoms of poisoning. There was a shadow of a doubt as to when the clock should have begun to run for her case—and he found in favor of big business.

In another case, *Goode v. Synergy Corporation*, Judge Southwick's dissent would have kept a family—whose granddaughter was killed in a propane heater explosion—from receiving a new trial even after it became clear that the company responsible for the heater had provided false information in the original trial. Luckily for the family, the majority opinion felt differently.

Mr. President, our Federal appellate courts are the second most powerful courts in our country, deferring only to the Supreme Court on a relatively small number of cases each year. For the majority of Americans, justice stops there. Now more than ever we need an independent judiciary that respects the rights of all Americans, is dedicated to colorblind justice, and protects workers and consumers from corporate America. We cannot afford to get these nominations "wrong." These are lifetime appointments that cannot be taken away once we grant them.

In many ways, Judge Southwick is exactly what a judge should not be. He brings his personal bias into his decision-making process. He consistently sides with the government over defendants, particularly African-American defendants. He routinely finds in favor of big business at the expense of individual workers and consumers. He does not seem to approach his cases with an open mind.

We cannot place a judge like this on the Federal appellate bench. Therefore, I urge my colleagues to vote against the motion to invoke cloture, and should that succeed, to unanimously vote against the nominee and giving a lifetime appointment to someone who consistently decides against African Americans. In a circuit in which they are such a huge part of the population, it is simply unacceptable.

I ask unanimous consent that letters of opposition and concern from groups concerned about the environment, the Bazelon Center for Mental Health Law, the United Auto Workers, and the African-American Bar Association of Dallas, Texas be printed in the RECORD.

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

COMMUNITY RIGHTS COUNSEL; EARTHJUSTICE; FRIENDS OF THE EARTH; SIERRA CLUB, ENDANGERED HABITATS LEAGUE, LOUISIANA BAYOUKEEPER, INC., LOUISIANA ENVIRONMENTAL ACTION NETWORK, SAN FRANCISCO BAYKEEPER, TEXAS CAMPAIGN FOR THE ENVIRONMENT, VALLEY WATCH, INC.,

JUNE 13, 2007.

Re nomination of Leslie Southwick to a Lifetime Position on the U.S. Court of Appeals for the Fifth Circuit.

Hon. PATRICK J. LEAHY,
Chairman, Senate Committee on the Judiciary,
U.S. Senate, Washington, DC.

Hon. ARLEN SPECTER,
Ranking Member, Senate Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SPECTER: We are writing to express serious concerns with the pending nomination of Mississippi attorney and former Mississippi Court of Appeals Judge Leslie Southwick to a lifetime seat on the United States Court of Appeals for the Fifth Circuit, which decides the fate of federal environmental and other safeguards in Texas, Louisiana, and Mississippi.

Some of these concerns are based upon points made by Judge Southwick in two Mississippi Law Review articles that were published in 2003, while he was on the Mississippi Court of Appeals:

Leslie Southwick, Separation of Powers at the State Level: Interpretations and Challenges in Mississippi Separation of Powers at the State Level, 72 Miss. L.J. 927 (2003). [Hereinafter Separation of Powers]

Leslie Southwick, Recent Trends in Mississippi Judicial Rule Making: Court Power, Judicial Recusals, and Expert Testimony, 23 Miss. C. L. Rev. 1 (2003). [Hereinafter Recent Trends]

JUDGE SOUTHWICK SUPPORTS THE MAJORITY SIDE IN THE SUPREME COURT'S FEDERALISM REVOLUTION AND, POTENTIALLY, THE "CONSTITUTION IN EXILE" MOVEMENT

Between 1990 and 2001, a 5-4 majority of the Supreme Court struck down federal legislation at a rate rivaled only by the discredited "Lochner-era" Court, which blocked the labor reforms of the Progressive Era and the Congressional response to the Depression in the early stages of the New Deal. The Court's rulings, often grouped together under the inaccurate label of "federalism," undermined important laws protecting women, senior citizens, minorities, the disabled, and the environment. These rulings have engendered withering criticism from both sides of the political spectrum. For example, Judge John Noonan, a conservative appointed by President Reagan to the Ninth Circuit, declared that the Rehnquist Court had acted "without justification of any kind" in doing "intolerable injury to the enforcement of federal standards." "The present damage," Judge Noonan warns, "points to the present danger to the exercise of democratic government." As Senator Specter noted in a letter to then Judge John Roberts, these cases represent "the judicial activism of the Rehnquist Court."

Judge Southwick, writing in 2003, had a much more positive view of these cases. Indeed, he analogized the Court's "return to first principles" to a Christian following the Scriptures: "The Court is insisting on obedience to constitutional structural commandments. It is as if the text that is being followed begins along these lines: In the Beginning, the New World was without Form, and void, and the Patriot Fathers said 'Let There Be States.' Behold, there were States, and it was Good." Separation of Powers, at 929. He

noted that the "return by the Supreme Court to the original scripture of federalism, or as some opposed to the outcomes might claim, to the original sin of the constitutional fathers, began in earnest with United States v. Lopez in 1995." Id. at 929. The bulk of his article is devoted to explaining how the model set by the Supreme Court can be employed at the state level by the new conservative majority on the Mississippi Supreme Court.

Even more troubling, at least potentially, is his assertion that "[f]rom 1937 to 1995, federalism was part of a 'Constitution in exile.'" Id. at 930. Judge Southwick's invocation of this term, coined by D.C. Circuit Judge Douglas Ginsburg, and still relatively obscure outside Federalist Society circles in 2003, suggests that he is supportive of efforts by certain scholars in academia and some judges on the federal bench to restore understandings of the Constitution held by a conservative majority of the Supreme Court in the period before the Great Depression and the New Deal. As University of Chicago law professor Cass Sunstein opined in a New York Times Magazine cover story written by Jeffrey Rosen, success of this "Constitution in Exile" movement would mean:

many decisions of the Federal Communications Commission, the Environmental Protection Agency, the Occupational Safety and Health Administration and possibly the National Labor Relations Board would be unconstitutional. It would mean that the Social Security Act would not only be under political but also constitutional stress. Many of the Constitution in Exile people think there can't be independent regulatory commissions, so the Security and Exchange Commission and maybe even the Federal Reserve would be in trouble. Some applications of the Endangered Species Act and Clean Water Act would be struck down as beyond Congress's commerce power.

JUDGE SOUTHWICK IS A PRO-CORPORATE PARTISAN IN THE MISSISSIPPI TORT WARS

Over the past decade, Mississippi judges have been engulfed in what Judge Southwick calls "never-ending and ever-escalating tort wars being fought out at every level of the Mississippi court system." Recent Trends at * 11. Judge Southwick is clearly a partisan in this war. He criticizes former Mississippi Supreme Court Justice Chuck McRea for "an interest in crafting precedents that were favorable to the interests of plaintiffs in personal injury actions." He calls former Mississippi Governor Ronnie Musgrove "the poster boy for trial lawyer campaign contributions." Separation of Powers at 1027. Judge Southwick is also deeply critical of the litigation against tobacco companies led by former Mississippi Attorney General Michael Moore, favorably quoting another commentator for the proposition that "[i]f the fallout from the state tobacco litigation is not addressed quickly, it will further distort and destabilize a number of areas of law, including the separation of powers within state governments." Separation of Powers at 1032. Finally, Judge Southwick notes that he has been criticized for taking the defendants' side in such cases: "[o]ther appellate judges, including the author of this article, may from time to time also appear to various observers to have brought their background experiences into play in their rulings on the bench." Recent Trends at * 11. Some of these statements—particularly Judge Southwick's pointed depiction of the sitting Mississippi Governor—seem a bit intemperate for a sitting judge.

Moreover, examinations of Judge Southwick rulings by Alliance for Justice and a business advocacy group support a conclusion that Judge Southwick's rulings as a judge favored corporate defendants. In 2004, a

business advocacy group gave Judge Southwick the highest rating of any judge on the Mississippi Court of Appeals, based on his votes in cases involving liability issues. B. Musgrave and T. Wilemon, "Business Group Rates State Justices," The Sun Herald (Mar. 24, 2004). According to an analysis by the Alliance for Justice, "Judge Southwick voted, in whole or in part, against the injured party and in favor of special interests, such as corporations or insurance companies, in 160 out of 180 published decisions involving state employment law and torts cases in which at least one judge dissented." Alliance for Justice, Preliminary Report on the Nomination of Leslie H. Southwick to the Fifth Circuit, at 4-5; [http://independentjudiciary.com/resources/docs/](http://independentjudiciary.com/resources/docs/PreliminaryReportSouthwick.pdf)

PreliminaryReportSouthwick.pdf.

One of the cases included in the Alliance report gives us particular concern because it limits access to courts, which is essential to ensure that Americans have a meaningful right to prevent and redress environmental harms including injury to their health and safety, clean water, clean air, and endangered species. State common law tort, nuisance and other civil remedies often provide invaluable supplementation of limited federal safety, health and environmental statutes. Court rulings that unfairly cut off state common law claims can preclude the most effective or only avenue of relief. Unfortunately, that is what Judge Southwick would have done in his dissent in a case in which the court ruled 8-2 that the statute of limitations did not begin to run until the plaintiff had reason to believe the chemicals that she was exposed to caused her illness. Gannon v. Mid-South X-Ray Co. 738 So. 2d 274 (Miss. Ct. App. 1999).

His record as a judge, combined with Judge Southwick's own words, raise questions about his ability to be a fair and neutral arbiter of environment and other cases that involve the interests of corporate defendants. Concerns about the ability of a judicial nominee to be unbiased go to the heart of the Senate's constitutional advice and consent role. We urge you to carefully consider these concerns, raised by Judge Southwick record, before voting on his proposed nomination to a lifetime position on the Fifth Circuit Court of Appeals.

Sincerely,

Doug Kendall, Executive Director, Community Rights Counsel.

Glenn Sugameli, Senior Judicial Counsel, Earthjustice.

Dr. Brent Blackwelder, President, Friends of the Earth.

Pat Gallagher, Director, Environmental Law Program, Sierra Club.

Dan Silver, Executive Director, Endangered Habitats League.

Tracy Kuhns, Executive Director, Louisiana Bayoukeeper, Inc.

Marylee M. Orr, Executive Director, Louisiana Environmental Action Network.

Sejal Choksi, Baykeeper & Program Director, San Francisco Baykeeper.

Robin Schneider, Executive Director, Texas Campaign for the Environment.

John Blair, President, Valley Watch, Inc.

JUNE 14, 2007.

Hon. PATRICK LEAHY,
Chairman, Senate Judiciary Committee, Russell
Senate Office Building, Washington, DC.

Hon. ARLEN SPECTER,
Ranking Member, Senate Judiciary Committee,
Russell Senate Office Building, Washington,
DC.

DEAR SENATOR LEAHY AND SENATOR SPECTER: I write to express the opposition of the Bazelon Center for Mental Health Law to the nomination of Leslie Southwick to the Fifth Circuit Court of Appeals. The Bazelon Center

is a national nonprofit organization that advocates for the rights of individuals with mental disabilities through litigation, policy advocacy, education and training. The Center previously expressed concern about the nomination; we now feel it is appropriate to express our opposition.

Judge Southwick apparently holds a narrow view of federal power that suggests that he would invalidate portions of critical civil rights legislation if appointed. He has characterized the Supreme Court as returning to the "scripture" of the Constitution by striking down portions of the Violence Against Women Act and Gun Free School Zones Act, and hampering Congress's power to abrogate sovereign immunity to protect Native Americans. Leslie Southwick, Separation of Powers at the State Level, 72 Miss. L. J. 927, 930-31 (2003). Southwick also indicated his apparent support for the "Constitution in exile" movement, a radical ideology that would undo seventy years of Supreme Court rulings, dramatically undermining the federal government's power.

These issues are of paramount concern to the disability community because the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act, and the Individuals with Disabilities Education Act (IDEA) have been the targets of repeated attacks on federalism grounds, and the constitutionality of these laws has been hotly contested in the federal courts.

Southwick's nomination to the Fifth Circuit is especially troubling because that court is already closely divided on the constitutionality of disability rights legislation. See *Pace v. Bogalusa City School Bd.*, 325 F.3d 609 (5th Cir. 2003) (Congress did not validly abrogate state sovereign immunity in the IDEA), *rev'd*, 403 F.3d 272 (5th Cir. 2005) (5 judges dissenting); *McCarthy v. Hawkins*, 481 F.3d 407 (5th Cir. 2004) (upholding ADA's community integration mandate against commerce clause challenge in divided vote); *Neinast v. Texas*, 217 F.3d 275; (5th Cir. 2000) (Congress lacked authority under Fourteenth Amendment Section 5 to enact the ADA's bar on imposing handicapped parking placard surcharges on individuals with disabilities). Southwick's addition to the Fifth Circuit would increase the likelihood that critical disability rights protections would be eliminated in that Circuit.

This lifetime position should be held by someone who respects Congress's authority to enact needed civil rights protections, including protections for individuals with disabilities.

Sincerely,

ROBERT BERNSTEIN,
*Executive Director, Bazelon Center
for Mental Health Law.*

INTERNATIONAL UNION, UNITED
AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA—UAW,

OCTOBER 22, 2007.

DEAR SENATOR: This week the Senate may take up the nomination of Mississippi Judge Leslie H. Southwick to the 5th Circuit Court of Appeals. The UAW urges you to oppose his nomination and to vote against any attempt to invoke cloture on this nomination.

Judge Southwick's record as a judge on the Mississippi Court of Appeals is deeply troubling. He has consistently ruled against workers seeking compensation for injuries suffered on the job. He has also opined that the "employment at will" doctrine, which allows employers to fire workers for any reasons, "provides the best balance of the competing interests in the normal employment situation." This raises serious questions about his ability to enforce the National Labor Relations Act, Title VII of the Civil

Rights Act, and other laws that protect employees in the workplace and limit "employment at will."

Judge Southwick also joined the court's 5-4 decision in *Richmond v. Mississippi Department of Human Services*, upholding the reinstatement of a state social worker who was fired for using a despicable racial epithet in a condescending reference to a co-worker. This decision reveals a disturbing lack of understanding for the negative impact of this language. In addition, a review of Judge Southwick's decisions reveals a disturbing pattern in which he routinely rejects defense claims regarding racially motivated prosecutors who strike African-American jurors, but upholds claims of prosecutors that defense attorneys are striking white jurors on the basis of their race.

For all of these reasons, the UAW believes that Judge Southwick's confirmation would endanger core worker and civil rights protections. Accordingly, we urge you to vote against his nomination and against any attempt to invoke cloture to cut off debate on his nomination.

Thank you for considering our views on this issue.

Sincerely,

ALAN REUTHER,
Legislative Director.

THE AFRICAN-AMERICAN BAR ASSOCIATION OF DALLAS, TEXAS,

June 6, 2007.

Re nomination of Leslie Southwick to the United States Court of Appeals for the Fifth Circuit.

HON. PATRICK LEAHY,
*Chairman, Senate Committee on the Judiciary,
Russell Office Building, U.S. Senate, Washington, DC.*

DEAR SENATOR LEAHY: The J.L. Turner Legal Association ("JLTLA"), the premier organization for African-American attorneys in Dallas, Texas, writes to register its opposition to the nomination of Leslie Southwick to the United States Court of Appeals to the Fifth Circuit. In so doing, we join with Senator Barack Obama, the Magnolia Bar Association, the Alliance for Justice and the National Employment Lawyers Association, among others, in voicing concerns about Judge Southwick's fitness for elevation to a lifetime appointment to the federal appellate bench.

More significantly, the JLTLA is deeply disturbed by the Bush Administration's consistent and highly objectionable pattern of selecting ultra-conservative, non-diverse candidates to serve on the most racially diverse federal circuit in the country. The Fifth Circuit, comprised of Mississippi, Louisiana and Texas, is home to more African-Americans than any other federal circuit, with the possible exception of the Fourth Circuit. Only one African-American judge, Carl Stewart, currently serves on the Fifth Circuit. Bush has, moreover, nominated no African-Americans to the Fifth Circuit. After Charles Pickering and Mike Wallace, Judge Southwick's nomination could only very generously be described as yet another "slap in the face" to the diverse populations of the Fifth Circuit.

Further, this appointment reflects the Bush Administration's clear disregard for the will of the American people given the significantly dynamic change in Congress. The dramatic outcome of the midterm Congressional election signals that Americans are seeking a new landscape rather than leaving an even more conservative footprint on what is now one of the most conservative Circuits in the nation.

Historically, the Fifth Circuit served as the vanguard for the advancement of civil and human rights, particularly with regard

to the implementation of the U.S. Supreme Court's dictates following its historic ruling in *Brown v. Board of Education et al.* The last 20 years, however, have marked a notable retrenchment in the Fifth Circuit's commitment to civil rights. Judge Southwick's elevation to the Fifth Circuit would only strengthen the conservative leanings of this Court, and further alienate the diverse citizens of this Circuit.

We trust that you will call upon all of your colleagues on the Judiciary Committee to reject this nomination, and call on the President to select a consensus nominee that would bring greater balance to the Fifth Circuit.

Very truly yours,

VICKI D. BLANTON, Esq.,
President, JLTLA.

The PRESIDING OFFICER (Mr. CARDIN). The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I rise to make a few brief remarks on this nomination to the United States Court of Appeals for the Fifth Circuit, which serves the residents of Mississippi, Louisiana, and my State of Texas.

Judge Leslie Southwick has served for almost 12 years on the Mississippi Court of Appeals where he has participated in thousands of cases in almost every area of State civil and criminal law. He is, by all accounts—notwithstanding some of the attacks by interest groups that we have heard recounted here today—a respected member of that court and an honorable and decent man. Notably, he took a leave from the bench to volunteer to serve his Nation in Iraq. I ask: What kind of man would give up a cushy job on the Mississippi Court of Appeals to put his life on the line in Iraq?

The American Bar Association has unanimously found Judge Southwick "well qualified" to serve on the Fifth Circuit, which is the highest rating the American Bar Association gives. It is important to point out that the American Bar Association investigates the background of these nominees, talks to litigants who appeared before them, talks to other judges and leaders of the legal community, and they have concluded that instead of the comments we have heard today attacking the integrity of this public servant, that he deserves the highest rating of the American Bar Association.

For whatever reason, this honorable public servant has been dragged through the mud in this confirmation proceeding and, in my opinion, has been slandered by some of his critics. Judge Southwick has been called an "arch-reactionary," a "neocongfederate," "hostile to civil rights," everything but the word "racist," although that has been implied time and time again.

Judge Southwick's nomination was opposed by 9 of the 10 Democrats on the Senate Judiciary Committee. But, to her credit, Mrs. FEINSTEIN, the Senator from California, declined to be strong-armed by the interest groups who are whipping up manufactured hysteria when it comes to opposing

this nominee. Announcing that she found “zero evidence to support the charges against Judge Southwick,” Senator FEINSTEIN joined the nine Republicans on the committee to advance the nomination to the Senate floor.

What was never answered in the Judiciary Committee’s debate over this nomination is why the same panel had, just a year earlier, unanimously approved him for a seat on the Federal District Court bench. I posed this question to my colleagues during the Judiciary Committee debate:

If there is a concern out there that Judge Southwick is not qualified because of some perceived racial problem, why in the world would that opposition deem him acceptable to be a Federal District Court judge?

Think about that a second. The discretion afforded a District Court judge is so much greater than that on the court of appeals—from the start of a trial, through voir dire and juror strikes, through evidentiary rulings, and jury instructions. I trust that my colleagues would never vote for someone with a perceived race problem for life tenure in a role with such enormous discretion. We all know that there was no objection at the time he came before the committee for a Federal District bench because, the fact is, the allegations against him had been manufactured since that time.

There is no legitimate concern about Judge Southwick’s character or record. This is just the latest incarnation of the dangerous game being played with the reputations and lives of honorable public servants.

The Republican leader put it this way:

When do we stop for the sake of the institution, for the sake of the country, and for the sake of the party that may not currently occupy the White House? When do we stop?

The Washington Post’s editorial page, along with the respected legal affairs columnist Stuart Taylor, both lamented the treatment afforded Judge Southwick who has yet to be confirmed by the Senate but hopefully will be today. Stuart Taylor’s column is appropriately titled “Shortsighted on Judges.” He writes:

The long-term cost to the country is that bit by bit, almost imperceptibly, more and more of the people who would make the best judges—liberal and conservative alike—are less and less willing to put themselves through the ever-longer, ever-more-harrowing gauntlet that the confirmation process has become.

The attacks on Judge Southwick, unfortunately, have come to typify the kinds of vicious, gratuitous, personal attacks that are occurring with greater frequency against judicial nominees.

I wonder if there is a Member of this body who doesn’t think we need to improve the tone and rhetoric of the judicial confirmation process. When good men and women decline the opportunity to serve on the Federal bench out of disdain for this unnecessarily hostile process, the administration of justice in this Nation can only be the worst for it.

I urge my colleagues to send a strong message today with this vote that these unwarranted, baseless attacks on

Leslie Southwick are beneath the dignity of the Senate. At some point in time we have to stop it, and I can think of no better time than now with this outstanding public servant.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, after the Senator from Illinois speaks, I would like to yield 7 minutes to the Senator from Arizona, Mr. KYL.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, a few weeks ago, our Nation witnessed one of the largest civil rights rallies in decades. It was a rally to condemn hate crimes and racial disparities in our criminal justice system. It occurred in a town in Louisiana that most of us never heard of, Jena, LA. That small town captured the attention of America. Why? Well, because of an incident that occurred at a high school where there was a tree that White students traditionally gathered under.

School officials came to the conclusion it was time that all students could sit under the tree. In protest for that decision, White students hung nooses from the tree. Nooses, the ancient symbol of hatred and bigotry.

Well, that incident led to other incidents, fights between Black and White students at the school. Three White students who put the nooses in the tree were given a 3-day suspension from the school, a 3-day suspension.

In contrast, the Jena district attorney, who was White, brought criminal charges for attempted murder against six African-American teenagers, the so-called Jena 6.

If convicted on all the charges, the African-American students could have served a combined total of more than 100 years in prison. One hundred years in prison for one group of students, a 3-day suspension for others. It is no wonder this captured the attention of the Nation.

Squabbling, fighting among students, led to serious criminal charges for some and a very slight reprimand for others. This is not the first time America has faced this kind of disparity in justice. Sadly, it is not likely to be the last. Some of us in my age group can recall the struggles of the 1960s when civil rights became a national cause in America, when all of us, Black, White, and brown, North and South, were forced to step back and take a look at the America we live in and make a decision as to whether it would be a different country.

We look back now as we celebrate Dr. Martin Luther King’s birthday and observances with fond remembrance of that era. But I can remember that era, too, as being one of violence and division in America. I can recall when Dr. King decided to come to the Chicago area and lead a march. It was a painful, violent experience in a State I love.

I look back on it because I want to make it clear: discrimination is not a Southern phenomena, it is an Amer-

ican phenomena. But in the course of the civil rights struggle in the 1960s, there were some real heroes, and one of them was a man I dearly love and served with in the House, JOHN LEWIS.

JOHN LEWIS, a young African-American student, decided to engage in sit-ins, and when that did not succeed, he moved on to the next level, the freedom bus rides. He risked his life taking buses back and forth across the South to establish the fact that all people, regardless of their color, should be given a chance.

And then, of course, the historic march in Selma. JOHN LEWIS was there that day. I know because I returned to that town a few years ago with him and he retraced his footsteps. He showed us how he walked over that bridge as a young man. As he was coming down on the other side of the bridge, he saw gathered in front of him a large group of Alabama State troopers. As they approached the troopers, the troopers turned on the marchers and started beating them with clubs, including JOHN.

JOHN was beaten within an inch of his life, knocked unconscious. Thank God he survived. I thought about that because I wanted to be there at that Selma march. I was a student here in Washington at the time and for some reason could not make it and have regretted it ever since.

But as we were driving back from Selma, I recall that JOHN LEWIS said something to me which stuck. He said: You know, there was another hero on that Selma march who does not get much attention; his name was Frank Johnson. Frank Johnson was a Federal district court judge and later a Federal circuit court judge in the Fifth Circuit, which at the time included the State of Alabama. JOHN LEWIS said: If it were not for the courage of Frank Johnson, who gave us the permission to march, there never would have been a march in Selma. Who knows what would have happened to the civil rights movement.

Well, Frank Johnson is a man who has been celebrated in his career as a jurist for his courage. He and his family faced death threats. They were under constant guard for years because of the courageous decisions he made that moved us forward in the civil rights movement.

I had a chance to meet with two prospective nominees to the Supreme Court before their confirmations, Chief Justice Roberts and Justice Alito. I gave both of them this book, “Taming the Storm,” written by Jack Bass—which is a biography of Frank Johnson—hoping that in their busy lives they might take the time to read these words about his courage and his life and be inspired in their own responsibilities.

There are so many things that have been said and written about Frank Johnson’s courage as a judge, a circuit judge in the same circuit we are considering today. One of them was written by a fellow who served in the Senate. I didn’t have the chance to serve

with him, but I heard so many wonderful things about him, Howell Heflin. Senator Howell Heflin of Alabama introduced a bill to name the U.S. courthouse in Montgomery, AL, for Frank Johnson, Jr.

This is what he said: Judge Johnson's courtroom has been a living symbol of decency and fairness to all who come before his bench. It is from this courthouse that the term "rule of law" came to have true meaning; it is from this courthouse that the term "equal protection of the law" became a reality; and it is from this courthouse that the phrase "equal justice under law" was dispensed despite threats to his personal life.

Frank Johnson, circuit judge, Fifth Circuit, had the courage to make history and the power to change America. It is a high standard, and it is not for all of us, whether you are a Member of the Senate or seek to be on the Federal judiciary.

It is particularly an important standard to consider with the nomination of Leslie Southwick. There are so many good things to say about Leslie Southwick, if you read his biography, things he has done in his military service, his service in many respects.

But he is asking to serve on Frank Johnson's circuit court, the Fifth Circuit. I guess many of us believe it is a particularly important circuit for the same reason it was in the time of Frank Johnson.

That Fifth Circuit is still a crucible for civil rights. That Fifth Circuit contains Jena, LA. That is a circuit which many times has been called upon to make important historic decisions about fairness and equality in America.

So, yes, I know we ask more of the nominees for that circuit. We know it has a higher minority population than any other circuit in America. We know the State of Mississippi, the home of Leslie Southwick, has the highest percentage of African Americans.

Yesterday, the Congressional Black Caucus came to meet with the Senate leadership. It is rare that they do that. Congresswomen CAROLYN KILPATRICK and ELEANOR HOLMES NORTON and others came to speak to us.

The depth of emotion in their presentation is something that touched us all. Members of the Senate who have been through a lot of debates and a lot of nominations, many of them were misty-eyed in responding to the feelings, the deep-felt feelings of these African-American Congresswomen about this nomination.

BENNIE THOMPSON of Mississippi, the only Black Congressman from that delegation, talked about what this meant to him, how important it was to have someone who could start to heal the wounds of racism and division in the State he lived in. It touched every single one of us.

I asked Leslie Southwick a question at his nomination hearing under oath; it was as open-ended as I could make it. I asked him:

Can you think of a time in your life or career where you did bend in that direction, to take an unpopular point of view on behalf of those who were voiceless or powerless and needed someone to stand up for their rights when it wasn't a popular position?

Judge Southwick responded:

I hope that a careful look—and the answer is, no, I cannot think of something now. But if I can give you this answer. I cannot recall my opinions, and I don't think of them in those terms.

By every standard that was a softball question. I asked this man to reflect on his personal and professional life and talk about a Frank Johnson moment, when he stood up to do something that was unpopular but right for someone who did not have the power in his courtroom.

I even sent him a followup written question because I wanted to be fair about this. And he still could not come up with anything. It is troubling. I hope that if the Senate rejects this nomination, the Senators in the Fifth Circuit, particularly from Mississippi, will bring us a nominee for this circuit who can start to heal the wounds, who can bring us back together, who can give hope to the minorities and dispossessed in that circuit that they will get a fair shake if their cases come to court.

I hope they can reach back and find us a Frank Johnson, someone in that mold, someone who can answer that open-ended question in a very positive way.

Today, I will vote against cloture and oppose the nomination of Leslie Southwick.

I yield the floor.

Mr. SPECTER. Mr. President, how much time remains on the Republican side?

The PRESIDING OFFICER. There is 45 minutes 17 seconds.

Mr. SPECTER. Mr. President, I yield 7 minutes to the Senator from Arizona. I will yield 10 minutes jointly to the senior Senator from Arizona, Mr. MCCAIN, and Senator GRAHAM, which will come in sequence after we alternate with the Democrats.

Mr. WHITEHOUSE. Mr. President, it is my understanding that Senator SCHUMER of New York wishes to be recognized for 10 minutes at 10 o'clock, which just about coincides with what the Senator from Pennsylvania has indicated.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. KYL. Mr. President, I rise in support of Judge Southwick. There is no question that the nominee is qualified to serve. I do not need to repeat his qualifications. Senators SPECTER and FEINSTEIN did that very well last night. There is no question that he has had an impressive life of service.

Nobody can question the service of a man who joins the Army Reserves at age 42 and then requests duty in a war zone when he is past the age of 50. I will suggest, by the way, that might have been a good answer to the question that Senator DURBIN proposed a

moment ago. His life is a life of service, and I believe we should honor him for that.

There is no question the Nation would be well served by his service on the bench. There is also no question the questions about him have been contrived, and there is no question there is more at stake today than the confirmation of Judge Leslie Southwick.

My colleagues should think long and hard about voting against cloture and about what has happened to this nomination. Until the year 2003, no circuit court nominee has been denied confirmation in this body due to a filibuster. Only Abe Fortas faced a real filibuster attempt, and obviously he had ethics issues which caused him to withdraw after it was clear he lacked even majority support.

Since that time, the convention throughout the 1970s and 1980s and 1990s was to reject this path of filibustering nominees. Senators did not like some nominees, but they did not require cloture. When a few Senators tried to impose a cloture standard, the Senate united, on a bipartisan basis, to reject that 60-vote standard.

In fact, then-Majority Leader LOTT and then-Judiciary Chairman HATCH led the fight against requiring cloture in 2000 when we voted on Clinton nominees Paez and Berzon. The vast majority of Republicans rejected any filibuster of judicial nominees.

But in 2003 things began to change. Liberal activist groups pursued many Democrats to apply a different standard. From 2003 to 2005, Democrats actively filibustered several nominees.

I recall the Senator from Nevada saying: "This is a filibuster."

Well, it was a brandnew world, and many realized it was not good. A group of Senators, seven from both parties, got together and worked out an arrangement which would preclude this from happening in the future because it was not good and was setting a very bad precedent in the Senate.

In 2005, most of the people on both sides of the aisle backed down from this precipice and the Democrats agreed that in light of the opposition to what they had been doing, their obstructionism, that they would no longer do that.

Unfortunately, today we are seeing a rise, a rejuvenation of those earlier efforts. It strikes me as exceedingly shortsighted and needs to stop. Senator FEINSTEIN's thoughtful speech last night set the standard.

She concluded the speech with the following words, relating to Judge Southwick:

He is not outside the judicial mainstream. That's the primary criterion I use when evaluating an appellate nominee. And I expect future nominees of Democratic Presidents to be treated the same way.

Well, that is the real question, Mr. President: Will Senator FEINSTEIN's expectation become the reality? I wish I could say yes, but it may not occur that way if cloture is not granted to

Judge Southwick, and that is the large question.

Until now, my Republican colleagues and I have been clear that we think judicial filibusters are inappropriate. I suggest today's vote is a watershed. If Senate Democrats decide to filibuster Judge Southwick today, a clearly qualified nominee, they should not be surprised if they see similar treatment for Democratic nominees. This cannot be a one-sided standard. So this isn't just a vote about Judge Southwick; it is about the future of the judicial nomination process. If Leslie Southwick can't get an up-or-down vote, then I suspect no Senator should expect a future Democratic or Republican President to be able to count on their nominees not to be treated in the same fashion. Any little bit of controversy could be created to create the kind of hurdles Judge Southwick is facing today.

Senator SPECTER and Senator FEINSTEIN have made clear there is nothing to these supposed controversies that have been generated around Leslie Southwick. They are largely inventions of the activist left and don't hold up in the light of scrutiny.

So what of the future? If a Republican wants to block a Democratic President's nominee, all one would need would be the allegation of a controversy. Pick out a case. Raise questions about motivation. Ignore the plain language of a court opinion. Speculate. Ignore the man's character.

The Senator from Illinois spoke movingly a little while ago about civil rights, JOHN LEWIS, Frank Johnson, Martin Luther King, all of which are very important to any debate, but very little of Leslie Southwick—no evidence that he would not apply the same standard in judging civil rights matters, just an insinuation because he didn't answer a question about whether he had ever done something unpopular but right. Well, that is not a disqualification from serving on the court.

So think about the nominees whom you might want to recommend. Could an activist group gin up a controversy about your nominee? Is there anything in his or her past that could be misconstrued, distorted, or painted in an unfair light?

Senator FEINSTEIN asked for a system in which we simply asked whether nominees are in the mainstream and, obviously, are they qualified? She asks that we apply that standard in the future. That is the standard we should be applying on both sides. But if things go badly today and Judge Southwick is treated as poorly as he has been treated so far, then I would have to say that nobody can count on what that standard could be in the future.

Vote for cloture today, my friends, because Judge Southwick is an American patriot who has devoted his life to service. Vote for cloture because he is qualified to serve on the bench. But if that isn't enough, vote for cloture to save future nominees from the same kind of problem that has been attend-

ant to this nominee and the potential that a different standard will be applied in the future with respect to confirming our nominees. That would take us down the wrong path.

Senator FEINSTEIN is right. We should confirm this nominee.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. President, I have a brief unanimous consent request that the Senator from Arizona has given me the courtesy of propounding before he speaks.

Mr. President, I ask unanimous consent to have printed in the RECORD letters of opposition from People For the American Way, the West Texas Employment Lawyers Association, the National Gay and Lesbian Task Force, and the National Council of Jewish Women.

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

PEOPLE FOR THE AMERICAN WAY,
Washington, DC, May 30, 2007.

Re Leslie Southwick.

Hon. PATRICK LEAHY,

Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. ARLEN SPECTER,

Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY AND SENATOR SPECTER: I am writing on behalf of People For the American Way and our more than 1,000,000 members and supporters nationwide to express our strong opposition to the confirmation of Mississippi lawyer and former state court judge Leslie Southwick to the United States Court of Appeals for the Fifth Circuit. Apart from the fact that much of Judge Southwick's record has not yet been provided to the Committee for its consideration, what is known of that record is disturbing, particularly in connection with the rights of African Americans, gay Americans, and workers. Moreover, given that the states within the jurisdiction of the Fifth Circuit (Mississippi, Louisiana, and Texas) have the highest percentage of minorities in the country, we deem it of great significance that the NAACP of Mississippi and the Congressional Black Caucus are among those opposing Southwick's confirmation.

As you know, Judge Southwick has been nominated by President Bush to fill a seat on the Fifth Circuit that the President has previously attempted to fill with Charles Pickering and then with Michael Wallace, both of whose nominations were met with substantial opposition, in large measure because of their disturbing records on civil rights. As you will recall, on May 8, 2007, jointly with the Human Rights Campaign (which has since announced its opposition to Southwick's confirmation), we sent the Committee a letter expressing our very serious concerns about Judge Southwick's nomination, observing that, once again, President Bush had chosen a nominee for this seat who appeared to have a problematic record on civil rights. In particular, our letter discussed in detail the troubling decisions that Judge Southwick had joined in two cases raising matters of individual rights that strongly suggested he may lack the commitment to social justice progress to which Americans are entitled from those seeking a lifetime appointment to the federal bench. Those decisions take on added significance because the intermediate state appellate court on which Judge Southwick sat does

not routinely consider the types of federal constitutional and civil rights matters that would shed a great deal of light on a judge's legal philosophy concerning these critical issues. As further discussed below, Judge Southwick's confirmation hearing on May 10 did not allay the concerns raised by these decisions or by other aspects of his record.

In one of the cases discussed in our earlier letter, *Richmond v. Mississippi Department of Human Service*, 1998 Miss. App. LEXIS 637 (Miss. Ct. App. 1998), reversed, 745 So. 2d 254 (Miss. 1999), Judge Southwick joined the majority in a 5-4 ruling that upheld the reinstatement with back pay of a white state employee who had been fired for calling an African American co-worker a "good ole nigger." The decision that Judge Southwick joined effectively ratified a hearing officer's opinion that the worker's use of the racial slur "was in effect calling the individual a 'teachers pet.'" 1998 Miss. App. LEXIS 637, at *19. The hearing officer considered the word "nigger" to be only "somewhat derogatory," felt that the employer (the Mississippi Department of Human Services no less) had "overreacted" in firing the worker, and was concerned that other employees might seek relief if they were called "a honkie or a good old boy or Uncle Tom or chubby or fat or slim." Id. at *22-23.

Four of Judge Southwick's colleagues dissented. Two would have upheld the decision by DHS to fire the worker. Two others, also joined by one of the other dissenters, objected to the Employee Appeals Board's failure to impose any sanctions at all on the worker, noting a "strong presumption that some penalty should have been imposed." Id. at *18. The three judges issued a separate dissent and would have remanded the case so that the board could impose "an appropriate penalty or produce detailed findings as to why no penalty should be imposed." Id. at *18. Significantly, Judge Southwick chose not even to join this three-judge dissent that would have remanded the case so that some disciplinary action short of firing the worker could have been imposed on her for having referred to a co-worker by a gross racial slur, "in a meeting with two of the top executives of DHS." Id. at *28.

As we discussed in our earlier letter, the Mississippi Supreme Court unanimously reversed the ruling that Southwick had joined. The Supreme Court majority ordered that the case be sent back to the appeals board to impose a penalty other than termination or to make detailed findings as to why no penalty should be imposed—the position taken by three of Judge Southwick's colleagues. Some of the justices on the Supreme Court would have gone even further and reinstated the decision by DHS to fire the worker. But all of the Supreme Court justices rejected the view of the Court of Appeals majority (which included Southwick) that the board had not erred in ordering the worker's reinstatement without imposition of any disciplinary action.

In the second case that we discussed in our May 8 letter, *S.B. v. L.W.*, 793 So. 2d 656 (Miss. Ct. App. 2001), Judge Southwick joined the majority in upholding—over a strong dissent—a chancellor's ruling taking an eight-year-old girl away from her bisexual mother and awarding custody of the child to her father (who had never married her mother), in large measure because the mother was living with another woman in "a lesbian home." In addition to the disturbing substance of the majority's ruling, its language is also troubling, and refers repeatedly to what it calls the mother's "homosexual lifestyle" and her "lesbian lifestyle."

Judge Southwick not only joined the majority opinion upholding the chancellor's ruling, but alone among all the other judges in

the majority, he joined a concurrence by Judge Payne that was not only gratuitous, but gratuitously anti-gay. As we have previously observed, the concurrence appears to have been written for the sole purpose of underscoring and defending Mississippi's hostility toward gay people and what it calls "the practice of homosexuality" (id. at 662), in response to the position of the dissenters that the chancellor had erred. (The word gay is not used; the concurrence refers repeatedly to "homosexuals" and "homosexual persons.") Among other things, the concurrence suggests that sexual orientation is a choice, and explicitly states that while "any adult may choose any activity in which to engage," that person "is not thereby relieved of the consequences of his or her choice." Id. at 663. In other words, according to Judge Southwick, one consequence of being a gay man or a lesbian is possibly losing custody of one's child.

In addition, and as we noted in our May 8 letter, the concurrence claimed that "[u]nder the principles of Federalism, each state is permitted to set forth its own public policy guidelines through legislative enactments and through judicial renderings. Our State has spoken on its position regarding rights of homosexuals in domestic situations." Id. at 664. Thus, according to the separate concurrence that Southwick chose to join, the states' rights doctrine gave Mississippi the right to treat gay people as second-class citizens and criminals. The views expressed in this concurrence strongly suggest that Judge Southwick is hostile to the notion that gay men and lesbians are entitled to equal treatment under the law.

Unfortunately, Judge Southwick's testimony at his May 10 hearing and his response to post-hearing written questions did not resolve and in fact underscored the very serious concerns that we and others had raised about his record and in particular his decisions in these cases. For example, in response to Senator Kennedy's post-hearing question about why, in the Richmond case, Judge Southwick had "accept[ed] the employee's claim that [the racial slur] was not derogatory," Judge Southwick stated that while the word is derogatory, "there was some evidence that [the worker] had not been motivated by hatred or by animosity to an entire race," and further stated that the opinion he joined had recounted evidence that the employee's use of the racial slur "was not motivated by a desire to offend." Judge Southwick's answers reflect far too cramped an appreciation of the magnitude of the use of this gross racial slur anywhere, let alone to refer to a co-worker in Mississippi.

Senator Kennedy also asked Judge Southwick why, "[e]ven if you did not think a worker should be fired for using a racial slur—why not at least let the employer impose some form of discipline?" Southwick replied that "[n]either party requested that any punishment other than termination be considered." However, as noted above, three of Judge Southwick's dissenting colleagues and the state Supreme Court found no impediment to concluding that even if termination were not warranted by the use of this offensive racial slur, the case should have been sent back so that some form of lesser punishment could be considered.

The custody case was also the subject of much questioning at Judge Southwick's hearing and in post-hearing questions. When Judge Southwick was asked at his hearing about his decision to uphold the chancellor's ruling to deprive the mother of custody of her daughter, in large measure because of her sexual orientation, Judge Southwick repeatedly insisted that a parent's "morality" was a relevant factor in a Mississippi custody case, the clear implication being that

Southwick considers gay men and lesbians to be immoral. And he also observed that *Bowers v. Hardwick*, 478 U.S. 186 (1986), upholding anti-gay "sodomy" laws, was then good law (not yet having been overturned by the Supreme Court in *Lawrence v. Texas*, 539 U.S. 558 (2003)).

However, when Senator Durbin in his post-hearing questions expressly asked Judge Southwick whether he would have voted with the majority or the dissent in *Lawrence* (which, as noted, overruled *Bowers*), Judge Southwick did not answer this question, instead giving what appears to have become the rote answer of all nominees to lower courts—that if confirmed they will be "bound to" and will follow precedent. Particularly in light of Judge Southwick's reliance on the much-discredited and since overruled *Bowers v. Hardwick*, his refusal to answer Senator Durbin's question is quite disturbing, and further calls into question whether he can apply the law fairly to all Americans.

Judge Southwick's decisions in Richmond and in S.B. raise enormous red flags about his legal views. These are the types of cases that draw back the curtains to reveal critical aspects of a judge's legal philosophy and ideology. We simply cannot conceive of any situation in which calling an African American by the racial slur used in the Richmond case would be akin to calling her "a teacher's pet," and we cannot fathom describing that slur as only "somewhat" derogatory, as the hearing officer did in an opinion essentially ratified by Judge Southwick. As America's recent experience with the racially offensive remarks leveled at the young women of the Rutgers University basketball team has shown, most of our country has progressed beyond racial slurs and recognizes the right of every individual to be treated with dignity regardless of race.

And we agree with the Human Rights Campaign, which stated in its May 23, 2007 letter to the Committee opposing Judge Southwick's confirmation, that if Judge Southwick "believes that losing a child is an acceptable 'consequence' of being gay, [he] cannot be given the responsibility to protect the basic rights of gay and lesbian Americans." Every American, regardless of his or her sexual orientation, should likewise be accorded equality of treatment and dignity under the law.

Unfortunately, Judge Southwick's decisions in Richmond and S.B. call into serious question his understanding of and commitment to these fundamental principles. Moreover, these decisions are far from the only troubling aspects of his record. As the Mississippi State Conference of the NAACP has observed in connection with Judge Southwick's rulings on race discrimination in jury selection, "[d]ozens of such cases reveal a pattern by which Southwick rejects claims that the prosecution was racially motivated in striking African-American jurors while upholding claims that the defense struck white jurors on the basis of their race." Indeed, in one such case, three other judges on Southwick's court harshly criticized him in a dissent, accusing the majority opinion written by Southwick of "establishing one level of obligation for the State, and a higher one for defendants on an identical issue." *Bumphis v. State*, No. 93-KA-01157 COA (Miss. Ct. App., July 2, 1996).

During his time on the state court of appeals, Judge Southwick also compiled a strikingly pro-business record in divided rulings. According to an analysis by the Alliance for Justice, "Judge Southwick voted, in whole or in part, against the injured party and in favor of special interests, such as corporations or insurance companies, in 160 out of 180 published decisions involving state em-

ployment law and torts cases in which at least one judge dissented. In 2004, a business advocacy group gave Judge Southwick the highest rating of any judge on the Mississippi Court of Appeals, based on his votes in cases involving liability issues.

In one case heard by his court involving an alleged breach of an employment contract, Judge Southwick went out of his way in a dissenting opinion to praise the doctrine of employment-at-will, which allows an employer to fire an employee for virtually any reason. Despite the fact that neither the existence nor merits of the at-will doctrine were at issue in the case, Judge Southwick wrote, "I find that employment at will, for whatever flaws a specific application may cause, is not only the law of Mississippi but it provides the best balance of the competing interests in the normal employment situation. It has often been said about democracy, that it does not provide a perfect system of government, but just a better one than everything else that has ever been suggested. An equivalent view might be seen as the justification for employment at will."

Dubard v. Biloxi H.M.A., 1999 Miss. App. LEXIS 468, at *16 (Miss. Ct. App. 1999), rev'd 778 So. 2d 113, 114 (Miss. 2000). The National Employment Lawyers Association has cited this case in particular in explaining its opposition to Judge Southwick's confirmation. According to NELA, "[t]hat Mr. Southwick would use the case as a platform to propound his views, rather than as a vehicle to interpret laws is problematic and suggests that he may be unable to separate his own views from his judicial duty to follow the law." Indeed, when asked about this case at his May 10 hearing, Judge Southwick admitted that he had put his personal "policy" views into a decision, but claimed to regret having done so.

Finally, we note that not all of Judge Southwick's record has been provided to the Committee, including more than two years' worth of unpublished decisions by the Mississippi Court of Appeals in cases on which he voted but in which he did not write an opinion. As the Richmond and S.B. cases underscore, the opinions that a judge chooses to join, or elects not to, can be just as revealing of his judicial philosophy as those that he writes. Particularly given what is known about Judge Southwick's record, the notion of proceeding with his nomination on less than a full record would be grossly irresponsible.

With a lifetime position on what is essentially the court of last resort for most Americans at stake, Judge Southwick has failed to meet the heavy burden of showing that he is qualified to fill it. The risks are simply too great to put someone with Judge Southwick's legal views on a federal Court of Appeals for life.

In this regard, we were particularly struck by a very telling moment at Judge Southwick's May 10 hearing. Senator Durbin, in questioning Judge Southwick, noted the great personal courage of federal Judge Frank Johnson of Alabama, whose landmark civil rights rulings were so critical to advancing the legal rights of African Americans in the south. Senator Durbin then asked Southwick, looking back on his career in public service, to cite an instance in which he had "stepped out" and taken an unpopular view on behalf of minorities. Judge Southwick could not identify one single instance in response to this question, even when Senator Durbin asked it a second time.

As more than 200 law professors wrote to the Senate Judiciary Committee in July 2001, no federal judicial nominee is presumptively entitled to confirmation. Because federal judicial appointments are for life and significantly affect the rights of all Americans, and because of the Senate's co-equal

role with the President in the confirmation process, nominees must demonstrate that they meet the appropriate criteria. These include not only an "exemplary record in the law," but also a "commitment to protecting the rights of ordinary Americans," and a "record of commitment to the progress made on civil rights, women's rights, and individual liberties." Judge Southwick has failed to meet his burden of showing that he should be confirmed.

We had hoped that after the failed nominations of Charles Pickering and Michael Wallace, the President would nominate someone for this lifetime judicial position in the tradition of Frank Johnson, or at the least someone whose record did not reflect resistance to social justice progress in this country. Unfortunately, the President has not done so. We therefore strongly urge the Judiciary Committee to reject Leslie Southwick's confirmation to the Fifth Circuit.

Sincerely,

RALPH G. NEAS,
President.

WEST TEXAS EMPLOYMENT
LAWYERS ASSOCIATION,
El Paso, TX, May 22, 2007.

Hon. PATRICK LEAHY,
Senate Judiciary Committee,
Washington, DC.

DEAR SENATOR LEAHY: I write on behalf of the West Texas Employment Lawyers' Association. Collectively, the members of our group have represented thousands of employees, workers and average folk in matters ranging from employers' failures to pay our clients a minimum wage for work performed, sexual harassment claims, as well as age, race, disability and sex discrimination claims. We routinely practice in front of the Fifth Circuit Court of Appeals and we are very proud of the work we perform on behalf of the hardworking men and women of our nation, vindicating their right to be free from discrimination.

As an organization, we felt it necessary to go on record to oppose Leslie Southwick's nomination to the Fifth Circuit. Please oppose the nomination of Leslie Southwick to the Fifth Circuit. As civil rights and employment discrimination lawyers, it is our humble opinion that Leslie Southwick would do grievous and long-term harm to ordinary workers, and normal Americans whose last names are not "Inc." or "Ins. Co."

Please, for the sake of our civil liberties and the average working American, do all in your power to prevent Leslie Southwick's nomination.

Sincerely,

ENRIQUE CHAVEZ, Jr.,
President.

NATIONAL GAY AND LESBIAN
TASK FORCE,
Washington, DC, May 29, 2007.

Senator PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S.
Senate, Washington, DC.

Hon. ARLEN SPECTER,
Ranking Member, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY AND SENATOR SPECTER: On behalf of the National Gay and Lesbian Task Force, Inc. a non-partisan civil rights and advocacy group organizing nationwide to secure lesbian, gay, bisexual, and transgender (LGBT) equality, I urge you to oppose the nomination of Leslie Southwick to the United States Court of Appeals for the Fifth Circuit. Judge Southwick has a disturbing record on LGBT rights. His statements during his confirmation hearing and written responses do not allay our concerns about how he would approach cases involving

the rights of gay, lesbian, bisexual, and transgender Americans.

While on the Mississippi Court of Appeals, Judge Southwick joined an opinion removing an eight-year-old child from the custody of her mother, citing in part that the mother had a lesbian home. This decision was based on a negative perception about the sexual orientation of the biological mother and ignored findings by the American Psychological Association, along with every other credible psychological and child welfare group that lesbian and gay people are equally successful parents as their heterosexual counterparts.

Further, Judge Southwick was the only judge in the majority to join a deeply troubling concurrence written by Judge Payne. The concurrence asserts that sexual orientation is a choice and an individual who makes that choice must accept the negative consequences, including loss of custody. This statement underscores Judge Southwick's disregard for commonly accepted psychiatric and social science conclusions that sexual orientation is not a choice. Regardless, it also demonstrates Judge Southwick's callous disregard for the rights of LGBT families.

A nominee to the federal bench bears the burden of demonstrating a commitment to rigorously enforce the principles of equal protection and due process for all Americans. The judicial record of Judge Southwick makes clear that he cannot meet that burden. It also makes clear that the individual and equal protection rights of LGBT families would be in real jeopardy if he were confirmed.

We therefore oppose his nomination and request that you vote against his confirmation. It would be unconscionable for this Senate to confirm any judge who has illustrated such a clear anti-LGBT bias to a lifetime seat on the federal bench.

Sincerely,

MATT FOREMAN,
Executive Director.

NATIONAL COUNCIL OF JEWISH WOMEN,
New York, NY, June 5, 2007.

Hon. PATRICK LEAHY,
Chairman, Senate Judiciary Committee,
Washington, DC.

DEAR CHAIRMAN LEAHY: On behalf of the 90,000 members and supporters of the National Council of Jewish Women (NCJW), I am writing to urge the Judiciary Committee to reject the nomination of Judge Leslie H. Southwick to the 5th Circuit Court of Appeals. Much of Judge Southwick's record remains unknown because the opinions in which he concurred were rarely published, but what we do know is deeply troubling. It does not appear that Judge Southwick will uphold federal law, including laws against discrimination on the basis of race, sex, national origin, and religion.

To the contrary, Judge Southwick joined a majority of the Mississippi appeals court in ruling that a state employee's dismissal for referring to a co-worker as "a good ole n****" was unwarranted, a ruling unanimously reversed by the Mississippi Supreme Court. In another case Judge Southwick wrote a concurring opinion positing that a "homosexual lifestyle" could be used to deprive a parent of custody of her own child.

Historically, the 5th Circuit Court of Appeals has served as a bulwark for the protection of civil rights. Sadly in recent years that record has evaporated. President Bush has twice nominated candidates perceived to be hostile to civil rights that fortunately were never confirmed. Judge Southwick appears to follow in the footsteps of his predecessor nominees in his apparent hostility to civil rights. It is also disappointing that President Bush again failed to take advan-

tage of an opportunity to appoint an African American lawyer to the Mississippi seat on the 5th Circuit Court.

The Judiciary Committee's hearing of May 10, 2007, did not reverse the clear impression that Judge Southwick is unable to serve as an impartial judge on the 5th circuit, and much of his record still remains unavailable for analysis. The committee should reject his nomination and urge the President to submit a consensus nominee committed to respect for fundamental constitutional rights.

Sincerely,

PHYLLIS SNYDER,
NCJW President.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. McCAIN. Mr. President, I am pleased the Senate will vote today on Judge Southwick's nomination. I hope my colleagues will join me in voting to confirm this dedicated public servant and courageous soldier.

Judge Southwick has many impressive credentials. Most impressive to me and most revealing of his character is his military service. In 1992, almost 20 years after graduating from law school, Judge Southwick interrupted his successful career as an attorney in private practice and obtained an age waiver to join the U.S. Army Reserves Judge Advocate General's Corps. Ten years later, at age 53, Judge Southwick volunteered to transfer to the 155th Brigade Combat Team of the Mississippi National Guard, a line combat unit that was deployed to Iraq in 2005. Judge Southwick's decision to join the Army is a model of self-sacrifice, and his actions helped to provide equal justice not only to American soldiers but also to the numerous Iraqi civilians whose cases he heard while he was stationed in Iraq. That is the kind of service this individual has provided to his country.

Most disappointing is that some Members of the Senate have questioned Judge Southwick's character by stating that "He has an inclination toward intolerance and insensitivity." That is an interesting criteria that we should set for the confirmation of judges.

It is interesting that we are now going to have, for the first time in a long time, a requirement for 60 votes to move forward. As my colleagues might recall, a couple of years ago there was a proposal from some on this side of the aisle and some others that we should change the rules of the Senate so that only 51 votes would be necessary to confirm a nominee. At that time, I opposed that idea because I thought that it would then put us on a slippery slope to other requirements, other further erosion of the 60 votes upon which this body operates and which separates us from the House of Representatives. So a group of us, who were given the nickname of the "Gang of 14," got together and agreed that we would not filibuster or require 60 votes unless there were "extraordinary circumstances." As a result of that, Justices Roberts, Alito, and many other judges were confirmed by this body.

I think it is pretty obvious that agreement has broken down. I would

like to remind my colleagues that not that many years ago the benefit of the doubt went to the President and his nominees and that elections have consequences. Among those consequences are the appointments of judges—in some respects, perhaps the most important consequence of elections because, as we all know, these are lifetime appointments, and some of us on the conservative side have viewed over the years legislating from the bench in certain kinds of judicial activism as very harmful not only to our principles and philosophy and our view of the role of Government and the various branches of Government but the effects of some of that judicial activism.

So here we are now with a person who is clearly qualified, served in the military, and is now being accused of perhaps having an “inclination toward intolerance or insensitivity.” I can assure my colleagues there are some people living in Iraq today who don’t believe Judge Southwick has an inclination toward intolerance and insensitivity. In fact, he has earned their gratitude for his efforts in installing the fundamental effects of democracy, and that is the rule of law.

I hope, Mr. President, once we get this over with, perhaps we can sit down again, Republicans and Democrats alike, and try to have a process where we could move forward with these judicial nominations. As we know, there are more vacancies every day. And I would even agree to give them a pay raise, which they seem to feel is rather important.

This is an important decision right now, which I think is larger than just the future of this good and decent man. Will others who want to serve on the bench be motivated to serve or not serve as they watch this process where someone accused of an inclination toward intolerance and insensitivity seems to be a new criteria?

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM. Mr. President, I would like to echo the sentiments of Senator MCCAIN and add my two cents’ worth to this debate. In this regard, there will be some good news today. I anticipate that this fine man will have a vote on the floor of the Senate, that the cloture motion will pass, and we will allow an up-or-down vote and he will get confirmed.

To my two colleagues from Mississippi: Well done. You have sent to the Senate an unusually well-qualified candidate by any standard you would like to apply to a person in terms of his humanity, his intellect, and his judicial demeanor. It is one of the best selections I have had the privilege of reviewing since I have been in the Senate.

The unfortunate news is that we are having to go through this particular exercise to get 60 votes. Quite frankly, I think the accusations being made against Judge Southwick are un-

founded and just political garbage, to be honest with you.

He has received the highest qualified rating from the American Bar Association. Everyone who has ever served with Judge Southwick, in any capacity, whether it be as a judge, a lawyer, or private citizen, has nothing but glowing things to say about the man. And really, we are trying to use two legal events to cast doubt over the man. Six hundred cases he has sat in judgment upon, and the American Bar Association has reviewed all these cases, I would assume, and come to the conclusion that he is at their highest level in terms of judicial qualification.

Judge Southwick has done things as a person that have really been beneficial to Mississippi. He has tried to bring out the best in Mississippi. These are the types of people you would hope to represent the State of Mississippi—or any other State, for that matter—in terms of their demeanor, their tolerance, their willingness to work together with all groups to move their State forward.

Now, the two cases in question are just complete garbage—the idea that the term “homosexual lifestyle” was used in an opinion that he concurred in involving a custody case. That term, if you research it in the law, has been used in hundreds of different cases—over 100 cases. President Clinton mentioned it in 1993 when he was talking about his policy regarding the military. It is a term that was used in the Mississippi court cases that were the precedent for the case involved. And to say that he concurred in an opinion where the authoring judge used that term has somehow tainted him means you better go through the records and throw a bunch of judges off, Democrats and Republicans. That is ridiculous, completely ridiculous, and if applied in any fair way would just be—it would be chaos. You would have politicians, you would have judges, you would have people from all over the country who somehow, because of that term having been used in a judicial opinion, couldn’t sit in judgment of others. That is ridiculous. Just go search the record of how this term has been used. To suggest that it means something in Judge Southwick’s case but no one else’s has a lot to say about this body, not Judge Southwick.

Now, the other case, he was sitting in judgment of an administrative board that decided not to dismiss an employee who used a racial slur in the workplace. To suggest that by somehow giving deference to the administrative board, whether or not their decision was capricious and arbitrary—the review standard at the appellate level—he embraces this term or is intolerant is equally ridiculous. I have an administrative board in the State of Mississippi that is an expert in the area of employment discrimination law, hiring and firing practices. The case is decided at the administrative level, and it comes up to appeal, and

every judge involved says this is a terrible word to use but, as a matter of law, the board’s finding it was an isolated incident did not justify a complete dismissal was the issue in the case.

Now, do we really want to create a situation in this country where the judges who want to get promoted will not render justice or apply the law, that they will be worried about themselves and what somebody may say about the context of the case? Are we going to get so that you cannot represent someone? What about the person who was being accused of the racial slur? What if you had represented them? Would we come here on the floor of the Senate saying: My God, you represented someone who said a terrible thing; therefore, you can’t be a judge? I don’t know about you, but as a lawyer, I have represented some pretty bad people. It was my job. And judges have to apply the law and use their best judgment.

So I hope this man will get an up-or-down vote and that this garbage we are throwing at our nominees will stop.

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

Mr. SCHUMER. Mr. President, could you tell me how much time we have remaining on our side?

The PRESIDING OFFICER. Thirty-three minutes 45 seconds, including the—

Mr. SCHUMER. The 10 minutes, yes. And how about on the other side?

The PRESIDING OFFICER. Twenty-seven minutes.

Mr. SCHUMER. Mr. President, I yield myself 10 minutes.

This is, indeed, an important debate, and I think you can look at it at two different levels.

First, I wish to argue strongly against the confirmation of Leslie Southwick to the Fifth Circuit Court of Appeals. We do not assess judicial nominees in a vacuum. In addition to the particular record of the nominee, there are a number of factors that figure into a Senator’s proper evaluation of a candidate. We may consider, among other things, the history behind the seat to which the candidate has been nominated; the ideological balance within the court to which the nominee aspires; the diversity of that court; the demographics of the population living in that court’s jurisdiction; the legacy of discrimination, injustice, and legal controversy in that jurisdiction. In this case, the context and circumstances of the nomination require us to view it with particular scrutiny. In this case doubt must be construed not for the nominee, as some of my colleagues—the Senator from Arizona and the Senator from South Carolina—have argued, but, rather, against the nominee.

The Fifth Circuit is perhaps the least balanced and least diverse in the country. The circuit has deservedly earned a reputation as being among the most conservative in the Nation. It has 15

judges, 11 filled by Republican Presidents. It has a large African-American population. There is only one African-American judge serving on it. The circuit has three seats traditionally reserved for Mississippians. That honor has never gone to an African American, even though Mississippi's population is more than one-third African American. Of course, the Fifth Circuit services areas that still suffer the scars and effects of decades of deep racial inequality and discrimination.

So you have to put things in context. We have had two other nominees who were extremely unsuitable candidates: Judge Pickering, whom this body rejected, and Michael Wallace, whom many, when you speak to them in Mississippi and in the African-American community there, said an African American might not get a fair trial in Michael Wallace's court. But they were nominated. The exact same reasoning could have been used for them. Those were the two previous nominees. We have to evaluate Judge Southwick against this backdrop.

When we do so, we cannot have confidence that he is a moderate jurist who will apply the law evenhandedly. Most disturbingly, Judge Southwick's judicial record provides no comfort that he understands or can wisely adjudicate issues relating to race, discrimination, and equal treatment. In this circuit above all, that should be a criterion. Whether you are from Mississippi or Arizona or South Carolina or New York, we should all care about that.

Let's go over some of the record. There is the Richmond case. The majority opinion in the Richmond case reflects an astonishingly bad decision. In that case, Judge Southwick joined a 5-to-4 ruling that essentially ratified the bizarre finding of a hearing officer who reinstated a State worker who had insulted a fellow worker by using the worst racial slur, the "n" word. To join that wrongheaded decision was to ignore history and common sense and common decency, to find a basis for excusing the most deeply offensive racial slur in the language. As the dissenters in Richmond pointed out, and there were four of them, the term "is and always has been offensive. Search high and low, you will not find any non-offensive definition for this term. There are some words which by their nature and definition are so inherently offensive their use establishes the intent to offend."

Of course, the Mississippi Supreme Court, the highest court in Mississippi, unanimously reversed. The Richmond case cannot be dismissed, as some would like, as just one case that Judge Southwick merely joined. He could have joined the very vocal dissent. He could have written a separate concurrence. He did neither. It is fair and proper to ascribe to Judge Southwick every word of the Richmond majority opinion—and the case is a touchstone, the case is a benchmark. It is a pre-

dictor and it is all the more important because there is little or nothing in the record to offset the impression it gives about Judge Southwick's jurisprudence.

Judge Southwick, at his hearing, said some of the hearing officer's analysis "does not now seem convincing to me," even though he endorsed it only 9 years ago. This mild attempt at backtracking at his confirmation hearing does not provide comfort. In fact, it smacks of a nominee trying in some small way to please Senators who will decide his fate.

Beyond this defining case, moreover, Judge Southwick has shown over more than a decade of adjudicating cases that we should be concerned about his legal philosophy in so many areas: consumer rights, workers' rights, race discrimination in jury selection. He has shown a bias. I am not going to get into those cases, but, again, I would say there is a special onus on us all here.

Most of my colleagues—some on this side of the aisle—have said: Well, he issued thousands of opinions and only made one mistake. First, I am not sure that is true. When you look at his opinions, there are more mistakes than that. But let's even say he made this one mistake. Normally that would be a good argument. We all make mistakes. None of us before God is flawless, is perfect. Of course we are human beings. But certain mistakes are not forgivable. They may be forgivable of a person as a man or a woman, but not forgivable when you are elevating someone to the Fifth Circuit.

We have had a poison in America since the inception of this country. This is a great country. I am a patriot. I love this country dearly. It is in my bones. But the poison in this country, the thing that could do us in, is race and racism. Alexis de Tocqueville, the great French philosopher, came here in the 1830s. He made amazing predictions about this country. We were a tiny nation of farmers, not close to the power of Britain or France or Russia, the great European nations. De Tocqueville comes from France and says this country, America—this is in the 1830s—this country is going to become the greatest country in the world. He was right. Then he said one thing could do us in—race, racism and its poison. He was right again.

When it comes to the area of race and racism, we have to bend over backwards. The African-American community in Mississippi, in the country, is strongly against the Southwick nomination. They know this discrimination, this poison of America, better than anybody else. They know, even in 2007, the little winks and gestures that indicate a whole different subplot. When you condone using the "n" word, you are doing just that. Unfortunately, Judge Southwick—he may be a good man and I certainly don't think he is a racist, but his words have to be seen in context. Like it or not, when he is

nominated to the Fifth Circuit he is carrying 200-some-odd years of bigotry that has existed in this country, and particularly in this circuit, on his back. That is the issue here. This is not just any mistake; this is not just any flaw. This comes in a whole subcontext.

Then I heard yesterday that Judge Southwick has not met with the one African Member of the Mississippi delegation, BENNIE THOMPSON. He has not met with, I believe it was called the Magnolia Bar Society, the African-American bar society in Mississippi. Should not Judge Southwick, after these allegations, have gone out of his way? He called yesterday, after BENNIE THOMPSON, Congressman THOMPSON, presented this to us. Shouldn't he have been camped out at BENNIE THOMPSON's door to try to explain what he did? It is the same kind of attitude. It is the same kind of subtext that, frankly, unless you are African American, you don't see.

JOHN MCCAIN is right. Elections have consequences. I do not expect our President to nominate to the Fifth Circuit somebody who has my views or the views of other Members of this side. Elections do have consequences. But on the issue of race, the poison of America, where the Fifth Circuit has been a cauldron, I do expect the President to nominate someone who is above reproach. Because we are not just judging a man or a woman as he or she treads on this Earth. We are judging somebody to go to the second highest court in the land. There must be—there must be—thousands of jurists of every race who meet the President's views but do not have this unfortunate, serious, and irremovable blemish upon them.

This one to me is not an ordinary situation. It is not one mistake out of 7,000 opinions. It is not judging whether Judge Southwick is a good man. Let's assume he is. It goes far deeper than that. It is not saying, as so many of my colleagues have said: We may have a Democratic President and we need, next time out, to make sure we come together on judges. I wish to do that. You know, when you vote for 90-some-odd percent of the President's nominees, almost every one of whom you disagree with philosophically, you are doing that. I have done that. Most Members on this side have done that. But that does not forgive this—again, in the context, not of somebody as a person but in the context of something to be elevated to the Fifth Circuit.

In conclusion, we have to make every effort to bend over backwards on the issue of race and racism in the Fifth Circuit and in the other circuits as well. We have not done that here. We are sort of casting it aside, finding an excuse, pushing it under the rug. Again, I do not believe Judge Southwick is a racist, but I do believe when it comes to the issue of race, one on the Fifth Circuit must be exemplary. This case shows he is not. He has failed

that standard. I urge my colleagues, every one of them on both sides of the aisle, to look into their hearts when they cast this important vote.

Mr. President, I ask unanimous consent that several letters regarding this Nomination be printed in the RECORD.

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

MAY 8, 2007.

Re Leslie Southwick

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.
Hon. ARLEN SPECTER,
Ranking Member, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY AND SENATOR SPECTER: We are writing on behalf of People for the American Way and the Human Rights Campaign and our combined grassroots force of more than 1,700,000 members and other supporters nationwide to express our serious concerns regarding the nomination of Mississippi lawyer and former state court judge Leslie Southwick to the United States Court of Appeals for the Fifth Circuit. As you know, Judge Southwick has been nominated by President Bush to fill a seat on the Fifth Circuit that the President has previously attempted to fill with Charles Pickering and then with Michael Wallace, both of whose nominations were met with substantial opposition, in large measure because of their disturbing records on civil rights. Now, with Judge Southwick, President Bush once again appears to have chosen a nominee for this seat who has a problematic record on civil rights, as further discussed below. And once again the President has passed over qualified African Americans in a state with a significant African American population that has never had an African American judge on the Fifth Circuit.

At the outset, we are constrained to note that there are significant concerns regarding the insufficient time provided to the Judiciary Committee to consider Judge Southwick's record in the careful manner required by the Senate's constitutional responsibilities in the confirmation process, as well as concerns raised by the fact that Judge Southwick's complete record does not appear to have been provided to the Committee. The confirmation hearing for Judge Southwick was scheduled with only a week's notice to the Committee, providing insufficient preparation time for the consideration of a controversial appellate court nominee. In addition, there has not been sufficient time since Judge Southwick submitted his responses to the Committee's questionnaire, in late February, for his entire judicial record to be reviewed; indeed, it appears that some of his record has not yet even been provided to the Committee.

Leslie Southwick served as a judge on the Mississippi Court of Appeals from 1995–2006. The number of cases in which he participated during that time is voluminous, well in excess of 7,000 by his own estimation. Moreover, according to Judge Southwick, many of the court's decisions during that time were not published at all (including all of the court's rulings—some 600 cases a year according to Southwick—issued over a period of approximately two and a half years during his tenure). While Judge Southwick in late February provided to the Committee a compact disc containing thousands of pages of his own unpublished opinions, to the best of our knowledge he has not provided copies of the court's unpublished opinions as to which he voted but that he did not write. As the cases discussed below underscore, it is crit-

ical that the Committee examine those rulings as well, for the opinions that a judge chooses to join, or elects not to, can be just as revealing of his judicial philosophy as those that he writes.

In addition, and to our knowledge, the Committee also has not been provided with Department of Justice records relevant to Southwick's tenure as a Deputy Assistant Attorney General during the administration of the first President Bush. These records would shed additional light on Southwick's legal philosophy and views, particularly on federal law issues that simply did not come before him while he served on the Mississippi Court of Appeals but that likely would if he were confirmed to a federal Court of Appeals. It is axiomatic that the Committee should not consider any judicial nominee without the nominee's full record or adequate time in which to review it.

Apart from these significant procedural issues, a preliminary review of Judge Southwick's record raises serious concerns about his record on civil rights. As an intermediate state appellate court, the Mississippi Court of Appeals hears appeals in state law criminal cases and typical state law civil cases such as contract disputes, tort claims, workers compensation matters, trusts and estates matters, and the like. It does not routinely consider the types of federal constitutional and civil rights matters that would shed a great deal of light on a judge's legal philosophy concerning these critical issues. Nonetheless, Judge Southwick's positions in two cases before that court during his tenure raising matters of individual rights are highly disturbing, and strongly suggest that Southwick may lack the commitment to social justice progress to which Americans are entitled from those seeking a lifetime appointment to the federal bench. We discuss each of these cases below.

Richmond v. Mississippi Department of Human Services, 1998 Miss. App. LEXIS 637 (Miss. Ct. App. 1998), *reversed*, 745 So. 2d 254 (Miss. 1999)

In Richmond, Judge Southwick joined a 5–4 ruling upholding the reinstatement of a white state social worker, Bonnie Richmond, who had been fired for referring to an African American co-worker as “a good ole nigger” at an employment-related conference. Richmond worked for the Mississippi Department of Human Services (“DHS”), which terminated her employment after other employees raised concerns about her use of the racial slur. The ruling that Southwick joined was unanimously reversed by the Supreme Court of Mississippi. The facts are as follows.

After she was fired, Richmond appealed her termination to the state Employee Appeals Board (“EAB”), which ordered her reinstatement. The hearing officer opined that Richmond's use of the racial slur “was in effect calling the individual a ‘teachers pet’.” 1998 Miss. App. LEXIS 637, at *19. He considered the word “nigger” only “somewhat derogatory,” felt that DHS had “overreacted,” and was concerned that other employees might seek relief if they were called “a honkie or a good old boy or Uncle Tom or chubby or fat or slim.” Id. at *22–23.

The opinion that Southwick joined upheld the EAB's reinstatement of Richmond, essentially ratifying the astonishing findings and conclusions of the hearing officer. Moreover, the opinion that Southwick joined accepted without any skepticism Richmond's testimony that her use of the racial slur was “not motivated out of racial hatred or animosity directed at her co-worker or toward blacks in general, but was, rather, intended to be a shorthand description of her perception of the relationship existing between the [co]-worker and [a] DHS supervisor.” Id. at *9–10 (emphasis added).

There was a strong dissent by two judges who were obviously appalled by the hearing officer's findings and opinion. Unlike the majority, they openly criticized the hearing examiner's findings and also criticized the majority for presenting a “sanitized version of [those] findings.” Id. at *29. According to the dissenters,

The hearing officer's ruling that calling [the co-worker] a ‘good ole nigger’ was equivalent to calling her ‘teacher's pet’ strains credibility. . . . The word ‘nigger’ is, and has always been, offensive. Search high and low, you will not find any nonoffensive definition for this term. There are some words, which by their nature and definition are so inherently offensive, that their use establishes the intent to offend.

Id. at *26.

The dissenters would have held that the EAB's actions were not supported by substantial evidence, and would have upheld the decision by DHS to fire Richmond. Another judge wrote a separate dissent, joined by two other judges, in which he would have remanded the case to the EAB so that some penalty could be imposed on Richmond, or detailed findings made as to why no penalty was appropriate.

DHS appealed the ruling of Southwick's court to the Mississippi Supreme Court, which unanimously reversed. The Supreme Court majority ordered that the case be sent back to the EAB to impose a penalty other than termination or to make detailed findings as to why no penalty should be imposed. Some of the justices on the court would have gone even further and reinstated the decision by DHS to fire Richmond. But all of the Supreme Court justices rejected the view of the Court of Appeals majority (which included Southwick) that the EAB had not erred in ordering Richmond's reinstatement.

S.B. v L.W., 793 So. 2d 656 (Miss. Ct. App. 2001).

In this case, Judge Southwick joined a decision by the Mississippi Court of Appeals, upholding—over a strong dissent—a chancellor's ruling taking an eight-year-old girl away from her bisexual mother and awarding custody of the child to her father (who had never married her mother). The mother was living at the time with another woman, and in awarding custody to the father, the chancellor was plainly influenced by the mother's sexual orientation and his obvious concern about having the girl continue to live in what he called “a lesbian home.” Judge Southwick not only joined the majority opinion upholding the chancellor's ruling, but alone among all the other judges in the majority, he joined a concurrence by Judge Payne that was not only gratuitous, but gratuitously anti-gay.

In taking the girl away from her mother (with whom she lived), the chancellor cited a number of factors that he claimed weighed in favor of the father, but it is clear that he was heavily influenced by the mother's sexual orientation. For example, the chancellor stated that the factor of “[s]tability of the home environment” weighed in favor of the father, because “he is in a heterosexual environment. Has a home there that is an average American home.” 793 So. 2d at 666. Meanwhile, the chancellor said, “[t]o place the child with [the mother], the child would be reared in a lesbian home, which is not the common home of today. To place a child with [the father], the child would be reared in a home which is considered more common today.” Id.

The mother appealed to the Court of Appeals which, as noted above, upheld the chancellor's ruling taking her daughter away from her. The majority opinion, which Southwick joined, held that the chancellor had not erred in taking the mother's sexual

orientation into consideration as what it viewed as one factor in his ruling. In addition to the disturbing substance of the majority's ruling, its language is also troubling, and refers repeatedly to what it calls the mother's "homosexual lifestyle" and her "lesbian lifestyle."

Not only did Southwick sign on to the majority opinion, but he also made an affirmative decision to join a concurrence by Judge Payne that was gratuitously anti-gay—and was the only other judge in the majority to do so. The concurrence appears to have been written for the sole purpose of underscoring and defending Mississippi's hostility toward gay people and what it calls "the practice of homosexuality" (id. at 662), in response to the position of the dissenters (see below) that the chancellor had erred. (The word gay is not used; the concurrence refers repeatedly to "homosexuals" and "homosexual persons.") The concurrence begins by stating that the Mississippi legislature has "made clear its public policy position relating to particular rights of homosexuals in domestic relations settings." Id. at 662. It then proceeds to note that Mississippi law prohibits same-sex couples from adopting children—although this law had nothing to do with the case, since the mother was the birth mother—and also notes that state law makes "the detestable and abominable crime against nature"—which it says includes "homosexual acts"—a ten-year felony. Id.

Finally, the concurrence takes a huge and troubling states' rights turn, claiming that "[u]nder the principles of Federalism, each state is permitted to set forth its own public policy guidelines through legislative enactments and through judicial renderings. Our State has spoken on its position regarding rights of homosexuals in domestic situations." Id. at 664. In other words, according to the separate concurrence that Southwick chose to join, federalism gives Mississippi the right to treat gay people as second-class citizens and criminals. The views expressed in this concurrence strongly suggest that Judge Southwick is hostile to the notion that gay men and lesbians are entitled to equal treatment under the law.

Two judges dissented, and in particular noted that there had been no finding that there was any conduct harmful to the child, and that "it is the modern trend across the United States of America to reject legal rules that deny homosexual parents the fundamental constitutional right to parent a child." Id. at 668.

As more than 200 law professors wrote to the Senate Judiciary Committee in July 2001, no federal judicial nominee is presumptively entitled to confirmation. Because federal judicial appointments are for life and significantly affect the rights of all Americans, and because of the Senate's co-equal role with the President in the confirmation process, nominees must demonstrate that they meet the appropriate criteria. These include not only an "exemplary record in the law," but also a "commitment to protecting the rights of ordinary Americans," and a "record of commitment to the progress made on civil rights, women's rights, and individual liberties."

The burden is on Judge Southwick to demonstrate that he satisfies these important criteria for confirmation. In addition to addressing the serious concerns raised by the matters discussed herein and those that have been raised by others, Judge Southwick must also make his full record available, and the Committee must have a reasonable opportunity to examine it. Because the Supreme Court hears so few cases, the Courts of Appeals really are the courts of last resort in most cases and for most Americans. It is therefore imperative that the Committee not

engage in a rush to judgment over anyone seeking a lifetime seat on a federal appellate court, and that it insist upon being provided with the nominee's complete legal record.

It is critical that the Committee closely scrutinize Judge Southwick's full record and his jurisprudential views and legal philosophy, particularly with respect to matters critical to individual rights and freedoms. Until the Committee has the opportunity to do that, and unless the significant questions raised to date by Judge Southwick's record are resolved satisfactorily, the Committee should not proceed with consideration of Judge Southwick's nomination.

Sincerely,

JOE SOLMONESE,
President, *Human Rights Campaign.*

RALPH G. NEAS,
President, *People For the American Way.*

MAGNOLIA BAR
ASSOCIATION, INC.,
Jackson, Mississippi, May 30, 2007.

Re Nomination of Leslie Southwick

HON. PATRICK LEAHY,
Chairman, *United States Senate, Committee on the Judiciary, U.S. Senate, Washington, DC.*

DEAR SENATOR LEAHY: The Magnolia Bar Association, Inc. opposes the nomination of Leslie Southwick to the United States Court of Appeals for the Fifth Circuit.

Founded in 1955, the Magnolia Bar was formed as all organization of African-American lawyers in Mississippi at a time when the Mississippi Bar was only open to white attorneys. The Magnolia Bar, an affiliate of the National Bar Association, is now a biracial organization whose membership is committed to the same ideals of racial equality that drove our founders to form the Magnolia Bar in the first place.

A federal judgeship is a lifetime position. Any time there is an opening, there are a number of people who could be considered, and no one is necessarily entitled to such an appointment. While the President has a right to nominate, the Senate and its Judiciary Committee must insure that the nominations do not form a pattern that is racially discriminatory in purpose or effect. President Bush has demonstrated an absolute disdain for appointing African-Americans to the federal judiciary; particularly within the states representing the Fifth Circuit. Of his seven nominations to the Fifth Circuit Court of Appeals and his 32 nominations to the district courts, not one nominee is an African-American. This is particularly painful as African-Americans comprise 37% of the population of Mississippi according to the most recent census. This is the highest of the fifty states. Louisiana is the second highest while Texas also has a high African-American population percentage. Confirmation should focus not simply on the nominee, but on the impact the person's appointment will have on the federal judiciary and the interpretation of the law.

Leslie Southwick's nomination continues a stark pattern of racial discrimination and racial exclusion in appointments by President Bush to the Fifth Circuit and to the federal judiciary from Mississippi. If the Senate Judiciary Committee approves this nomination, it will perpetuate this pattern of exclusion and will, in our view, bear equal responsibility for it. Moreover, Judge Southwick's record as a state court of appeals judge in Mississippi suggests that he is not the right person for the Fifth Circuit Court of Appeals at this time in our history, and that his presence there could lead to an improperly narrow interpretation of the constitution and

the civil rights laws. There are many others from Mississippi who would make good federal judges, some of whom are African-American. We ask that you not approve this nomination, but instead allow President Bush to reconsider and perhaps nominate someone who will add to the Fifth Circuit's stature, diversity, and sensitivity to the need to enforce fully the civil rights laws.

Despite an ever-growing pool of highly qualified candidates from which to choose, all seventeen Mississippi nominees for federal judgeships the past twenty-two years have been white. The only appointment of an African-American federal judge in the history of Mississippi, the twentieth state to join the union, was when Judge Henry Wingate was appointed by President Reagan to the district court in 1985. Of the sixteen active and senior judges from Mississippi on the federal district courts and court of appeals, only one is African-American. Of the nineteen active and senior judges on the Fifth Circuit, only one is African-American—Carl Stewart of Louisiana, who was appointed by President Clinton. Incidentally, Judge Stewart is only the second African-American to have been appointed to the Fifth Circuit since the court was created by the Judiciary Act of 1869.

Having an appreciation of Mississippi's long history of racial apartheid, disenfranchisement, interposition and massive resistance, it is scandalous that President Bush has not seen fit to nominate not one African-American from our state to the federal judiciary.

Fortunately, the Senate Judiciary Committee has not ratified all of these nominees. It did not approve the earlier nominations of Charles Pickering and Mike Wallace to this seat. Yet, President Bush continues his pattern of racial exclusion by submitting only white people for these appointments, and submitting those who have not shown a sufficient appreciation of the need for racial progress in Mississippi. It is vitally important for the Senate Judiciary Committee to stand firm and not ratify President Bush's brazen disregard of the need to integrate the federal judiciary and to nominate those who have demonstrated they will fully enforce the civil rights laws. If President Bush is unwilling to help create a racially integrated federal judiciary that is his prerogative. The Senate, however, should not be an accomplice to this unjustifiable behavior. It should keep the seats open until he is willing to do so or until we have a new President who will have a fresh opportunity to do so.

Several organizations have already expressed concern about the decisions of Judge Southwick and whether he will fairly and properly interpret the law with respect to the civil rights of all. We share those concerns. Particularly troubling is the decision Judge Southwick joined in the case of *Richard v. Mississippi Department of Human Services*. The Mississippi Court of Appeals does not review many cases involving racial issues in employment. This is not a situation where this decision is an outlier in what otherwise is a progressive record on issues of race in the workplace. Judge Southwick and his colleagues in the 5-4 majority basically held that the Mississippi Department of Human Services—an agency of the State of Mississippi—could not discipline this worker who called a co-worker a "good ole nigger." This decision was the subject of publicity in Mississippi, *Clarion Ledger*, August 5, 1998, and seemed to send a message that the Court of Appeals majority did not believe state officials should have the power to eliminate this sort of behavior from the workplace.

In written questions by Senator Durbin, Judge Southwick was asked why he believed

that the hearing officer was not acting arbitrarily and capriciously when he (the hearing officer) concluded that the use of the word "nigger" was similar to the terms "good old boy or Uncle Tom or chubby or fat or slim." Judge Southwick responded by saying that "[i]t was the EAB's [Employee Appeals Board] decision, though, not that of the hearing officer, that was subject to our analysis . . ." But that statement is misleading. The Richmond majority opinion, which Judge Southwick joined, states: "The hearing officer's findings, subsequently adopted by the full Board, address two separate aspects of the matter under consideration." 1998 Miss. App. LEXIS 637 *4. The opinion adds: "In order to reverse the EAB, we must determine that there was not substantial evidence in the record to support the findings made by the hearing officer and ratified by the full board." Id. *7. As explained by the dissent of Judge King (a distinguished African-American from Mississippi who is now Chief Judge of the Mississippi Court of Appeals having been appointed as Chief by the Chief Justice of the Mississippi Supreme Court and who would make an excellent federal appellate judge): "Because the EAB made no findings of its own, we can only conclude that it incorporated by reference and adopted the findings and order of the hearing officer." Id. * 19. As Judge King later said: "The majority opinion is a scholarly, but sanitized version of the hearing officer's findings and is subject to the same infirmities found in that opinion." Id. *28-29.

Moreover, we agree with Judge King, that one can "[s]earch high and low, [and] you will not find any non-offensive definition for [the] term [nigger], and it 'is so inherently offensive that it is not altered by the use of modifiers, such as 'good ole.'" Id. at 26-27 Having used the term, which has always been offensive, within a 60% black division of a state agency with more than 50% black employees demonstrated a gross lack of judgment that the agency should have dismissed the employee. As Justice Fred Banks, the African-American member of the Supreme Court at the time, explained in his concurring opinion:

[I]t is clear [the Department of Human Services] had an interest in terminating Bonnie Richmond because not to have taken some sort of action regarding the comment made by her, could possibly have subjected the agency to a claim of racially hostile environment claim under federal law, and therefore retaining Bonnie Richmond could constitute negligence. *Richmond v. Mississippi Dept. of Human Services*, 745 So.2d 254, 260 (Miss. 1999)(Banks, J., concurring)(joined by Sullivan, P.J., and Smith, J.)

We are also troubled by the other decisions and positions cited in the various questions propounded by members of the Judiciary Committee and in the statements issued by other organizations expressing concern over this nomination. We question whether Judge Southwick will properly enforce the law when it comes to the rights of those who are unpopular and who are marginalized by the political process. The Fifth Circuit needs a moderating influence at this point in history, but it appears this appointment will have the opposite effect.

As Senator Durbin pointed out at the hearing on Judge Southwick's nomination, the Fifth Circuit Court of Appeals was once a collection of several heroic judges who steadfastly enforced the civil rights of African-Americans and other dispossessed groups even though many white people in the South were quite hostile to the notion of equal rights under the law. Unfortunately, the present-day Fifth Circuit has often retreated from that legacy by applying a narrow and

overly technical interpretation of the constitution and the civil rights laws. Moreover, at a time when the bars of Mississippi, Louisiana, and Texas have become racially integrated, and when many governmental bodies in those states have achieved significant racial diversity, the Fifth Circuit presently stands as an almost all-white judicial body in the heart of the Deep South. This is a sad legacy and the Senate Judiciary Committee should do everything it can to end that legacy rather than perpetuate it.

Thank you for your consideration.

Sincerely,

CARLTON W. REEVES,
President,
Magnolia Bar Association, Inc.

NATIONAL EMPLOYMENT
LAWYERS ASSOCIATION,
San Francisco, California, May 30, 2007.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary,
Washington, DC.

Hon. ARLEN SPECTER,
Ranking Member, Committee on the Judiciary,
Washington, DC.

DEAR SENATORS LEAHY AND SPECTER: I am writing to you as President of the National Employment Lawyers Association (NELA) to express our strong opposition to the nomination of Leslie Southwick to the Fifth Circuit Court of Appeals. After reviewing Mr. Southwick's background and legal experience, we believe he is not qualified to be appointed to the federal bench.

Mr. Southwick has been nominated to the same Fifth Circuit seat that has been steeped in controversy: President Bush recess appointed Charles Pickering to the seat in January 2004 and nominated Michael Wallace to the seat in 2006. NELA strongly opposed both of those nominees and takes a similar position on Mr. Southwick's nomination.

Like Pickering and Wallace, Mr. Southwick has espoused extreme views reflecting a lack of commitment to equality and justice in the workplace. For example, Mr. Southwick joined a troubling 5-4 decision from the Mississippi Court of Appeals that excused the use of a racial slur by a white state employee. In *Richmond v. Mississippi Dep't of Human Services*, Bonnie Richmond, an employee with the Mississippi Department of Human Services (DHS), was terminated when she referred to an African-American co-worker as a "good ole n*****" at a meeting that included agency executives. Richmond appealed her termination to the Mississippi Employee Appeals Board (EAB). A hearing was conducted by one member of the EAB who had been designated to act as hearing officer.

Among other things, the hearing officer concluded that the "DHS overreacted" to Richmond's comments, because the term "was not a racial slur, but instead was equivalent to calling [the African American employee] 'teacher's pet.'" The hearing officer stated, "I understand that the term 'n*****' is somewhat derogatory, but the term has not been used in recent years in the conversation that it was used in my youth, and at that point—at that time it was a derogatory remark . . . I think that in this context, I just don't find it was racial discrimination."

The majority, which included Mr. Southwick, affirmed the EAB hearing officer's decision without reservation. They found that, taken in context, the slur was an insufficient ground to terminate Richmond's employment in part because it "was not motivated out of racial hatred or racial animosity directed toward a particular co-worker or towards blacks in general." The dissent, rightly disturbed by the majority's failure to ac-

knowledge the inherent offensiveness of the epithet, stated that "the hearing officer and the majority opinion seem to suggest that absent evidence of a near race riot, the remark is too inconsequential to serve as a basis of dismissal."

When Judiciary Committee member Senator Russ Feingold, at Mr. Southwick's hearing earlier this month, characterized the argument relied upon by Mr. Southwick in the case as "a pretty shocking piece of analysis," Mr. Southwick even admitted that the reasoning "does not now seem convincing to me." However, his backpedaling comes too late and fails to allay NELA's concerns that Mr. Southwick, if confirmed to the Fifth Circuit, will turn a blind eye to discrimination in the workplace.

Indeed, NELA is troubled by Mr. Southwick's views on other workplace issues, particularly his zealous support for the employment-at-will doctrine, a doctrine which provides that employers can fire employees for virtually any reason. In *Dubard v. Biloxi, H.M.A.*, the court addressed the issue, among others, of whether there was sufficient evidence to show that the defendant did not breach the plaintiff's employment contract or that the defendant did not wrongfully discharge the plaintiff. In a dissenting opinion that focused less on the merits of the case and more on the virtues of the employment-at-will doctrine, Mr. Southwick went to great lengths to justify a legal theory that has been the subject of intense legal, judicial and academic controversy. He wrote: "I find that employment at will, for whatever flaws a specific application may cause, is not only the law of Mississippi but it provides the best balance of the competing interests in the normal employment situation. It has often been said about democracy, that it does not provide a perfect system of government, but just a better one than everything else that has ever been suggested. An equivalent view might be seen as the justification of employment at will."

Mr. Southwick casually, and without any supporting citations, equated the doctrine of employment at will with democracy. In fact, it is its polar opposite. That doctrine is often used to justify employers' decisions to discharge employees who have engaged in pro-union activities or in other conduct protected by anti-discrimination, minimum wage and overtime, occupational safety and health, family and medical leave, whistleblower protection, and other federal and state statutes. An employer can cause devastating financial and emotional harm to an employee; an individual employee rarely has that same power. Mr. Southwick's endorsement of that doctrine calls into question his willingness to vigorously enforce federal legislation that imposes restrictions on an employers ability to fire employees without a good reason or, for that matter, without any reason.

Based on his demonstrated insensitivity to race issues, combined with his apparent inability to divorce his views from his judicial obligation to be fair and independent, NELA believes that Mr. Southwick would be in the mold of previous nominees like Charles Pickering and Michael Wallace who had never been friendly to employee rights. As such, NELA is strongly opposed to Mr. Southwick's nomination to the Fifth Circuit Court of Appeals and believes he should not be confirmed by the Senate.

Thank you for your consideration. If you have any questions, please feel free to contact NELA Program Director Marissa Tirona.

Sincerely,

KATHLEEN L. BOGAS,
President,
National Employment Lawyers Association.

Mr. WARNER. Mr. President, I rise today in support of the nomination of Judge Leslie Southwick to serve on the U.S. Circuit Court of Appeals for the Fifth Circuit.

Article II, section 2 of the U.S. Constitution explicitly provides the responsibilities of the executive branch of Government and the Senate with respect to judicial nominations. Article II, section 2 of the Constitution reads, in part, that the President “shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the Supreme Court and all other Officers of the United States . . .”

Thus, the Constitution provides the President of the United States with the responsibility of nominating individuals to serve on our Federal bench.

The Constitution provides the Senate with the responsibility of providing advice to the President on those nominations and with the responsibility of providing or withholding consent on those nominations.

In this respect, article II, section 2 of our Constitution places our Federal judiciary—a coequal branch of Government—in a unique posture with respect to the other two co-equal branches of our Federal Government. Unlike the executive branch and unlike the Congress, the Constitution places the composition and continuity of our Federal judiciary entirely within the coordinated exercise of responsibilities of the other two branches of Government. Only if the President and the Senate fairly, objectively, and in a timely fashion exercise these respective constitutional powers can the judicial branch of Government be composed and maintained so that our courts can function and serve the American people.

For this reason, in my view, a Senator has no higher duty than his or her constitutional responsibilities under article II, section 2—the advice and consent clause.

During the course of my 28 years in the Senate, I have always tried to fairly and objectively review a judicial nominee’s credentials prior to deciding whether I will vote to provide consent on a nomination. I look at a wide range of factors, primarily character, professional career, experience, integrity, and temperament for lifetime service on our courts. While I certainly recognize political considerations, it is my practice not to be bound by them.

Having reviewed Judge Southwick’s nomination, in my view, he is eminently qualified to serve on the Federal bench. I note that the American Bar Association, often cited as the “gold standard” of review of judicial nominees, agrees with me as it has given Judge Southwick its highest rating of “well-qualified.”

Judge Southwick’s credentials are well-known but worth repeating. He received his bachelor’s degree, cum laude, from Rice University and then proceeded to law school at the University of Texas.

Subsequent to his law school graduation, he served as a law clerk for two jurists: a judge on the U.S. Court of Appeals for the Fifth Circuit—the court for which he now has been nominated—and for a judge on the Texas Court of Criminal Appeals.

Upon completing his clerkships, Mr. Southwick entered private practice with a law firm in Mississippi, starting as an associate but rising to the level of partner 6 years later. After 12 years of private practice, he joined the U.S. Department of Justice in the George H. W. Bush administration, working as Deputy Assistant Attorney General for the Civil Rights Division.

From 1995 until 2006, Leslie Southwick served as a member of the Mississippi Court of Appeals. During this time, Judge Southwick also served his country in uniform.

From 1992 through 1997, he was a member of the Judge Advocate General’s Corps in the U.S. Army Reserve. In 2003, he volunteered to serve in a line combat unit, the 155th Separate Armor Brigade. In 2004, he took a leave of absence from the bench to serve in Iraq with the 155th Brigade Combat Team of the Mississippi National Guard.

Mr. President, Judge Southwick is obviously very well qualified to serve on the Federal bench. Not only does he meet the requisite academic requirements, he also has real world experience in private practice and a dedication to public service.

In my view, he deserves to be confirmed to the Federal bench. I urge my colleagues to support this eminently qualified nominee.

Mr. HATCH. Mr. President, I strongly support the nomination of Judge Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit. His confirmation is compelling for two reasons. Judge Southwick should be confirmed because of his merits, and Judge Southwick should be confirmed because of the traditions of this body.

Judge Southwick’s merits are obvious. He is a good man and a good judge. Leslie Southwick has long been active serving his community, his church and his country. He is a man of character and integrity.

Our colleagues from Arizona, South Carolina, and Virginia, Senators MCCAIN, GRAHAM, and WARNER, have spoken forcefully and eloquently from their perspective as veterans about Judge Southwick’s military service. He volunteered for service in Iraq when he was old enough to have children serving in Iraq. He did not have to do that, he offered to do that. It seems to me that we want men and women on the Federal bench who have this selfless commitment to serving others.

Leslie Southwick is also a good judge. What could be more directly relevant to a Federal appeals court nomination than 12 years of State appeals court service? During that time, he participated in more than 7,000 cases and wrote nearly 1,000 opinions.

Earlier this year, the Congressional Black Caucus said that, in deciding whether to confirm Judge Southwick, we should consider how often his majority and concurring opinions were reversed on appeal. I do think that is a legitimate factor to consider. I thought I would find an unusually high number, that he has been repeatedly rebuked, rebuffed, and reversed, that Mississippi Supreme Court had to routinely put him in his judicial place. I found just the opposite. Only 21 of Judge Southwick’s majority or concurring opinions were reversed or even criticized by the Mississippi Supreme Court. That is less than 2 percent. I am indeed impressed by that low figure because it shows that Judge Southwick’s work as a judge stands up under scrutiny. If that is an appropriate standard for evaluating his nomination, we should confirm him immediately.

Judge Southwick’s critics suggest that he is supposedly out of the mainstream. That is the phrase liberals invented 20 years ago to attack judicial nominees who they predict will not rule a certain way on certain issues. This is a completely illegitimate standard for evaluating judicial nominees and is based on a tally of winners and losers, as if judges are supposed to decide winners and losers by looking at the parties rather than at the law and the facts. Perhaps my liberal friends could publish a confirmation rate card, telling us how often judges are supposed to rule for one party or another in certain categories of cases. But the case against Judge Southwick is even more ridiculous than that. The case against Judge Southwick’s nomination rests on just two, of the 7,000 cases in which he participated. It rests on two opinions, just two, that he did not even write. No one has argued that those cases were wrongly decided. No one has argued that the court ignored the law. No one is making that argument because no one can. In fact, the Washington Post editorialized that Judge Southwick should be confirmed and said that while they might not like the results in these two cases, they could not argue with what the Post admitted was a “legitimate interpretation of the law.”

I ask my colleagues a very important, perhaps the most important, question: Are judges supposed to be legally correct or politically correct? Are judges supposed to decide cases based on legitimate interpretation of the law or based on which side wins or loses? Are judges supposed to apply the law or ignore the law? That question of what judges are supposed to do lies at the heart of every conflict over a judicial nominee, including the one before us today.

The case against Judge Southwick is that, in just two cases with opinions he did not write, the court was legally correct instead of being politically correct. The case against Judge Southwick is that, in just two cases, the court did not ignore the law. What

kind of crazy, topsy-turvy argument is this, that Judge Southwick should not be confirmed because as a state court judge he stuck to the law? I think that exposing the real argument against him is enough to show that there is no real argument against him at all. I thought we wanted judges on the Federal bench who would rule based on the law, who would be committed to equal justice for every litigant coming before them.

When it comes to evaluating Judge Southwick's record, whom should we believe—partisan and ideological critics here in Washington or lawyers and judges who have worked with Judge Southwick for many years? That is not even a close call. Everyone who actually knows him, everyone who has actually worked with him, says that Judge Leslie Southwick is fair, decent, hard-working, and committed to equal justice under law. You would have to twist and contort his record into something else entirely to conclude otherwise.

The American Bar Association also looked at Judge Southwick's fitness for the Federal bench. They evaluated his qualifications and record not once but twice, last year when he was nominated to the U.S. District Court and again this year after his nomination to the U.S. Court of Appeals. I must be candid with my colleagues regarding the ABA's two ratings of Judge Southwick. In the interest of full disclosure, I must be honest that the ABA's two ratings of Judge Southwick are not the same and, quite frankly, I think this must be considered when we vote. The ABA's rating for Judge Southwick's current appeals court nomination is higher than their rating for his district court nomination. The ABA says that it looks specifically at a nominee's compassion, freedom from bias, open-mindedness and commitment to equal justice under law. The ABA's highest "well qualified" rating means Judge Southwick receives the highest marks for these qualities. I thought we wanted judges on the Federal bench who are compassionate, free from bias, open-minded, and committed to equal justice under law. Judge Southwick's critics have offered nothing, absolutely nothing, to rebut this conclusion. Nothing at all.

I think the record, the evidence, and the facts are clear. Judge Southwick is a good man and a good judge, and, based on his merits, he should be confirmed.

Judge Southwick should also be confirmed because of the traditions of this body. Traditionally, the Senate has respected the separation of powers when it comes to the President's appointment authority. Under the Constitution, the President has the primary appointment authority. We check that authority, but we may not hijack it. We may not use our role of advise and consent to undermine the President's authority to appoint judges. That is why, as I have argued on this floor

many times, it is wrong to use the filibuster to defeat judicial nominees who have majority support, who would be confirmed if only we could vote up or down. That is why I have never voted against cloture on a judicial nomination. That is why I argued against filibusters of even President Clinton's most controversial judicial nominees. And believe me, the case against some of those nominees was far greater, far more substantial, by orders of magnitude, than the nonexistent case against Judge Southwick.

Traditionally, the Senate has not rejected judicial nominees based on such thin, trumped-up arguments. We have not rejected nominees who received the ABA's unanimous highest rating. In fact, I remember when this body confirmed judicial nominees of the previous President whom the ABA said were not qualified at all. We have not rejected judicial nominees who received such uniform praise from those who know them and worked with them. We have not rejected judicial nominees for refusing to ignore the law.

Traditionally, the Senate has respected the views of home-state Senators. Our colleagues from Mississippi, Senators COCHRAN and LOTT, are respected and senior members of this body. They strongly support Judge Southwick, and we should respect their views. Such home-state support was an important factor in moving even the most controversial Clinton judicial nominees to this floor and onto the Federal bench.

So I say to my colleagues that Judge Southwick's merits and our traditions mean that he should be confirmed. Judge Southwick is a good man and a good judge. Our traditions respect the separation of powers, respect the obvious merits of nominees, and respect the views of home-state Senators. I urge my colleagues not to veer from that path, but to support this fine nominee and keep the confirmation process from slipping further into the political mire.

I urge my colleague to vote for cloture and to vote for confirmation.

Mr. FEINGOLD. Mr. President, I will vote against the nomination of Judge Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit. I believe he should not be confirmed.

The context for this nomination is important, so I want to turn to that first.

During the last 6 years of the Clinton administration, this committee did not report out a single judge to the Fifth Circuit Court of Appeals. And, as we all know, that was not for lack of nominees to consider. President Clinton nominated three well-qualified lawyers to the court of appeals. None of these nominees even received a hearing before this committee. When Chairman LEAHY held a hearing in July 2001 on the nomination of Judge Edith Brown Clement, only a few months after she was nominated, it was the first hearing for a Fifth Circuit nominee since Sep-

tember 1994. Judge Clement was quickly confirmed. We have also confirmed two other Fifth Circuit nominees during this administration, Edward Prado and Priscilla Owen.

So there is a history here. Some may think it is ancient history, but the fact is that nominees to this circuit were treated particularly unfairly during the Clinton administration, and there was a special burden for the current administration to work with our side on nominees for it. To ignore this history would be to simply reward the behavior of the Republicans during the last 6 years of the Clinton administration. And the numbers tell a very clear tale—three judges confirmed for this circuit during the first 6 years of this administration, versus none in the last 6 years of President Clinton's term.

President Bush did not act in a bipartisan way, of course, in the case of the seat for which Judge Southwick has been nominated. First, he nominated Judge Charles Pickering, leading to one of the most contentious floor fights of his first term. Judge Pickering was never confirmed by the Senate, but in a further slap to this institution, the President put him on the court through a recess appointment. Then, when Judge Pickering retired, the President nominated Michael Wallace, whom the ABA judicial nominations screening committee unanimously gave a rating of "not qualified" based on comments from judges and lawyers in his own State concerning his temperament and commitment to equal justice. Mr. Wallace ultimately withdrew his nomination when it became clear he could not be confirmed.

Another important part of the context of this nomination is that except for the DC Circuit, the Fifth Circuit has the largest percentage of residents who are minorities of any circuit—over 40 percent. Thirty-seven percent of the residents of Mississippi are African American. Yet only 1 of the 19 seats on the circuit is currently held by an African American judge. The Fifth Circuit is a court that during the civil rights era issued some of the most significant decisions supporting the rights of African-American citizens to participate as full members of our society. It is a circuit where cases addressing the continuing problems of racism and discrimination in our country will continue to arise.

In this context, as we come to the end of this President's term, I wanted very much to see, if not an African-American nominee, at least a nominee whose commitment to equal rights for all Americans and equal justice under law is unassailable. Judge Southwick is not that nominee. While the record we have been able to review is not extensive, two decisions he made as a judge raise real red flags.

In the Richmond case, Judge Southwick joined the majority in a split decision upholding a hearing examiner's decision that an employee's use of the most offensive racial slur in our Nation's history was not adequate

grounds for dismissal. That hearing examiner said that the slur was "some-what derogatory, but the term has not been used in recent years in the conversation that it was used in my youth, and at that point—at that time it was a derogatory remark. I think that in this context, I just don't find it was racial discrimination."

A unanimous Mississippi Supreme Court reversed the decision that Judge Southwick joined. Mr. Chairman, in the year 2007, in a State where 37 percent of the residents are African Americans, we need a judge on the Fifth Circuit who recognizes that such a decision had to be overturned.

I am also disturbed by Judge Southwick's role in the child custody case, *S.B. v. L.W.*, and particularly by his joining a stridently antigay opinion concurring in the decision to take a woman's child away from her and give custody to the unmarried father of the child. I found Judge Southwick's explanation of his reasoning in joining this opinion, and his assurances that he harbors no bias against gay Americans, unconvincing. I am simply not convinced by his assurances that he will give all litigants who come before him a fair hearing.

Mr. President, it gives me no pleasure to vote against this nominee. As my colleagues know, I do not start with a predisposition against the President's choices. I have supported well over 200 of the President's judicial nominees. But no one is entitled to a lifetime appointment to our powerful Federal courts, and Judge Southwick has not demonstrated that he is the right nominee for this vacancy. I will vote no.

I ask unanimous consent that letters of opposition and concern from the Congressional Asian Pacific American Caucus, the National Partnership for Women and Families, the California State Conference of the National Association for the Advancement of Colored People, the Congressional Black Caucus, and the NAACP be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,
Washington, DC, July 25, 2007.

Re Jude Leslie Southwick nomination.

Hon. PATRICK LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

Hon. ARLEN SPECTER,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY AND SENATOR SPECTER: On behalf of the Congressional Asian Pacific American Caucus (CAPAC), we write to express our strong opposition to the nomination of Judge Leslie Southwick to the United States Court of Appeals for the Fifth Circuit.

The Southwick nomination fails to address the lack of diversity on Mississippi's federal branch. As you know, the Fifth Circuit presides over the largest percentage of minority residents (44%) of any circuit. Mississippi has the highest African American population (36%) of any state in the country. Yet, out of

the seventeen seats on the Fifth Circuit, only one is held by an African-American. Additionally, the Fifth Circuit has issued decisions important to minority communities such as employment discrimination, voting rights and affirmative action. The lack of diversity of the Fifth Circuit, compounded with Judge Southwick's flawed record on race, further exemplifies the unacceptability of Southwick's nomination.

Judge Southwick's record as a judge on the Mississippi State Court of Appeals clearly demonstrates that he is an objectionable nominee for the Fifth Circuit. In the case of *Richmond v. Mississippi Department of Human Services*, Judge Southwick joined a 5-4 decision that upheld the reinstatement of a white state social worker, Bonnie Richmond, who had been fired for calling an African American co-worker a "good ole n*****" at a meeting that included top agency executives. The ruling that Southwick joined was unanimously reversed by the Supreme Court of Mississippi.

CAPAC is furthered disturbed by Judge Southwick's rulings against consumers and workers in divided torts and employment cases and worker rights. In 160 out of 180 published decisions, Judge Southwick votes against the injured party and in favor of business interests, such as corporations or insurance companies.

With the lifetime judicial position at stake, Southwick's record has failed to reflect the values of social justice, fairness and equality in this country. We strongly urge the Judiciary Committee to reject Leslie Southwick's confirmation to the Fifth Circuit.

Sincerely,

MICHAEL M. HONDA,
Chair, CAPAC.
BOBBY SCOTT,
Chair, CAPAC Civil Rights Task Force.

NATIONAL PARTNERSHIP
FOR WOMEN & FAMILINES,
Washington, DC, June 21, 2007.

Re nomination of Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit.

Hon. PATRICK J. LEAHY,
Chair, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

Hon. ARLEN SPECTER,
Ranking Member, Senate Judiciary Committee, Hart Building, Washington, DC.

DEAR SENATORS LEAHY AND SPECTER: We write to urge you to reject the nomination of Leslie Southwick for a seat on the United States Court of Appeals for the Fifth Circuit. As an organization committed to protecting and promoting women's rights and eradicating discrimination in the workplace, the National Partnership for Women & Families is troubled by Judge Southwick's record and its implications for rights that are vital to ensuring equal opportunity and access to justice. Judge Southwick's failure to produce significant portions of his record—effectively thwarting the thorough, comprehensive review every federal appellate nomination deserves and demands—only exacerbates these concerns.

INCOMPLETE RECORD

For the committee to consider fairly any nominee for a lifetime appointment to a seat on the federal court of appeals—the court of last resort in the vast majority of cases—the nominee's entire record must be fully reviewed and evaluated. Judge Southwick's failure to produce unpublished opinions in which he participated and joined during his first two years on the Mississippi Court of Appeals makes such review impossible. These gaps in Judge Southwick's record

alone should give the committee pause in moving Judge Southwick's nomination forward.

A SETBACK FOR CIVIL RIGHTS

A review of Judge Southwick's record calls into question his commitment to the full enforcement of rights critical to ensuring fair workplaces and access to justice. In *Richmond v. Mississippi Department of Human Services*, 1999 Miss. App. LEXIS 468 (Miss. Ct. App. 1999), Richmond, a social worker, was terminated by the Mississippi Department of Human Services for using a derogatory racial epithet. Richmond appealed the decision and was reinstated by the state Employee Appeals Board (EAB). A sharply divided Mississippi Court of Appeals affirmed the EAB ruling. Judge Southwick joined the Court of Appeals's 5-4 decision, which credited Richmond's testimony that "her remark was not motivated out of racial hatred or animosity directed toward her co-worker or toward blacks in general." The Mississippi Supreme Court was unanimous in reversing the Court of Appeals, holding instead that the EAB should either impose some penalty on Richmond or make detailed findings why no penalty should be imposed. *Richmond v. Mississippi Department of Human Services*, 778 So. 2d 113, 114 (Miss. 2000). Three justices would have gone further by reversing the EAB's reinstatement decision and upholding Richmond's termination.

Judge Southwick's decision to join the majority in this case is deeply troubling. The EAB's written decision is limited and provides little explanation of its reasoning. The primary record about the incident at issue consists of the hearing officer's findings. The hearing officer found that the racial epithet used by Richmond—referring to an employee as a "good ole n*****"—was once considered "derogatory," but was no longer evidence of racial discrimination. Instead, he characterized the phrase as akin to calling someone a "teacher's pet," "chubby," or "slim." These statements indicate a failure to take this incident seriously and are wildly out of touch with the deeply offensive and charged nature of racial slurs. The hearing officer's findings should have raised a red flag, particularly in light of the diversity of the agency where Richmond worked, where more than half of the employees were African American, and the undoubtedly very diverse client base the agency served—all factors that further heightened the need for sensitivity to issues of race.

Although Judge Southwick's ability to alter the outcome in this case may have been constrained by the posture of the case and the deferential standard of review, he still had every opportunity to object to the use of the epithet and demand a fuller explanation of why Richmond was reinstated by writing a separate concurring opinion or working with the authoring judge to modify the opinion. Judge Southwick did neither of these things. That the dissenting judges on his own court and each of the justices on the Mississippi Supreme Court recognized the gravity of this incident while Judge Southwick did not makes plain that Judge Southwick is out of step with his peers on issues of racial justice. If the opinion Judge Southwick joined had been the final word in this case, Richmond would have been reinstated without any discipline and would have faced no consequences for using a horrible racial slur. Moreover, the underlying record and the questionable assessment of the hearing officer would have been left unrebuted, perhaps influencing the outcome of future cases. Judge Southwick's deference to the decision of the EAB despite the suspect findings on which that decision was based calls into question his ability to apply the law to ensure that workplaces in the Fifth Circuit—

the circuit with the largest minority population—are free of discrimination.

Judge Southwick displayed similar insensitivity to the rights of minorities in *S.B. v. L.W.*, 793 So. 2d 656 (Miss. Ct. App. 2001), a case in which the Mississippi Court of Appeals granted custody of a child to the child's father based on a number of factors, including the mother's sexual orientation. Not content simply to review the lower court's application of the custody standard and explain why the application was or was not correct, Justice Southwick joined a separate opinion to emphasize the immorality of the mother's "choice" to engage in a "homosexual lifestyle." His decision to join an opinion that injected personal views and divisive rhetoric into the legal analysis raises concerns about whether he will apply the law without prejudice to all who may come before him as a judge on the Fifth Circuit Court of Appeals.

HURDLES FOR INJURED PARTIES

Judge Southwick's ability to apply the law fairly is also called into question by his lopsided record favoring business interests over individuals and his tendency to deny plaintiffs their right to have their cases decided by a jury of their peers. According to published reports, Judge Southwick voted, in whole or in part, against the injured party and in favor of the defendant, in 160 out of 180 non-unanimous published decisions involving state employment and tort law. In a troubling number of cases, Judge Southwick voted to prevent an injured party's case from being heard by a jury based on cramped legal interpretations that erect unreasonable barriers to pursuing one's day in court. See, e.g., *Cannon v. Mid-South X-Ray Co.*, 738 So. 2d 274 (Miss. Ct. App. 1999).

CURTAILING CIVIL RIGHTS PROTECTIONS

Finally, Judge Southwick's view of the "federalism revival" raises doubts about his commitment to civil rights laws that have been essential to advancing equal employment opportunities. In a 2003 article, Judge Southwick indicated that he approved of the Supreme Court's recent limitations on Congress's ability to pass civil rights legislation under its commerce power, and on Congress's power to abrogate state immunity and allow state employees to sue to vindicate their rights under federal law. See Judge Leslie Southwick, *Separation of Powers at the State Level: Interpretations and Challenges in Mississippi*, 72 Miss. L. J. 927 (2003). This narrow view of Congress's authority to combat and remedy domestic violence and workplace discrimination raises significant concerns for those who have looked to Congress to ensure that crucial rights and protections extend to every American.

CONCLUSION

It is critical to ensure that judges elevated to the federal appellate bench inspire confidence that the law is being administered fairly, consistently, and without bias. Because of the concerns outlined above, we urge the committee to reject Judge Southwick's nomination.

Sincerely,

DEBRA NESS,
President.

CALIFORNIA STATE CONFERENCE OF
THE NATIONAL ASSOCIATION FOR
THE ADVANCEMENT OF COLORED
PEOPLE,

Sacramento, CA, June 13, 2007.

Re California State Conference of the NAACP opposition to the nomination of Lesley Southwick to the 5th Circuit U.S. Court of Appeals.

Senator PATRICK LEAHY,
Chairman, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR: The California State Conference of the National Association for the Advancement of Colored People (NAACP), our nation's oldest, largest and most widely recognized grassroots civil rights organizer for stands in strong opposition to the nomination of Lesley Southwick to the U.S. Court of Appeals for the 5th Circuit. After thoughtful review and careful analysis of Judge Southwick's record, it is clear that Judge Southwick has a disdain for civil rights, evidenced by a substantial sentencing disparity on the basis of ethnic identity where African Americans are overwhelmingly incarcerated. It is equally important to note that the 5th Circuit, which covers Louisiana, Mississippi and Texas, has the highest concentration of racial and ethnic minorities in the country.

Judge Southwick's record as a jurist on the Mississippi State Court of Appeals clearly demonstrates that he is an inappropriate nominee for the U.S. Court of Appeals for the 5th Circuit. In the case of *Richmond v. Mississippi Department of Human Services*, 1998 Miss. App. LEXIS 637 (Miss. Ct. App. 1998), reversed, 745 So. 2d 254 (Miss. 1999). Judge Southwick joined a 5-4 ruling upholding the reinstatement of a white state social worker, Bonnie Richmond, who had been fired for referring to an African American co-worker as "a good ole nigger" at an employment-related conference. Richmond worked for the Mississippi Department of Human Services ("DHS"), which terminated her employment after other employees raised concerns about her use of the racial slur. The ruling that Southwick joined was unanimously reversed by the Supreme Court of Mississippi.

The California State Conference of the NAACP is further disturbed by Judge Southwick's rulings on race discrimination in jury selection. His rulings demonstrate a clear lack of support for or even understanding of the basis for civil rights for African Americans in the American legal system. Dozens of cases in this area reveal a pattern in which Judge Southwick rejected the claims that the prosecution was racially motivated in striking African American jurors while upholding claims that the defense struck white jurors on the basis of their race. In *Bumphis v. State*, and appellate colleague accused Judge Southwick of "establishing one level of obligation for the State, and a higher one for defendants on an identical issue."

The 5th Circuit Court of Appeals has a history of protecting and even promoting the civil rights of the racial and ethnic minorities living within its jurisdiction. The current court, however, does not appear to be following this trend; indeed they appear more interested in curbing civil rights and retarding civil liberties. Given Judge Southwick's record, we believe he would only perpetuate this discriminatory trend if he were confirmed. Therefore the California State Conference of the NAACP must oppose Judge Southwick's nomination to the 5th Circuit Court of Appeals and urge you to do the same when his nomination is considered by the Senate Judiciary Committee.

On behalf of the California State Conference of the NAACP, I want to thank the

Senate Judiciary Committee for its consideration of our letter of opposition to the Southwick nomination. Should you have any questions, please do not hesitate to contact me.

Sincerely,

ALICE A. HUFFMAN,
President.

CONGRESSIONAL BLACK CAUCUS
OF THE 110TH UNITED STATES CONGRESS,
Washington, DC, May 24, 2007.

Hon. GEORGE W. BUSH,
President, *United States of America, The White House, Washington, DC.*

MR. PRESIDENT: On behalf of the nearly forty million Americans we represent, including those in Louisiana, Mississippi and your home state of Texas, we urge you to withdraw the nomination on Leslie Southwick to the U.S. Court of Appeals, Fifth Circuit. To say that our opposition to Mr. Southwick is strong and unequivocal would be an understatement.

As you know, the Fifth Circuit presides over the largest percentage of minority residents (44%) of any circuit. It has issued seminal decisions on voting rights, affirmative action, employment discrimination, discriminatory jury selection, and the death penalty.

The Southwick nomination fails to remedy the egregious problem with the lack of diversity on Mississippi's federal bench. It bears noting that Mississippi has the highest African-American population (36%) of any state in the country. Yet, you have nominated ten individuals to the federal bench in Mississippi, none of whom has been African-American. While you have nominated three individuals to the Fifth Circuit, none of them has been approved. The Southwick nomination would compound the absence of diversity with a nominee with an unacceptable record on race.

Please consider Mr. Southwick's judicial record in the following cases:

In *Richmond v. MS Dep't of Human Services*, 1998 Miss. App. LEXIS 637 (Miss. App. Ct. 1998), Southwick joined a decision reinstating the job of a white employee who had used the word "nigger" toward an African-American coworker.

At an employment related conference, the white employee had called the black employee "a good ole nigger," and then used the very same term toward the employee the next day back at the office. The white employee was fired.

The opinion joined by Southwick was reversed by the Mississippi Supreme Court. 745 So. 2d 254 (Miss. 1999). No one on the Supreme Court thought that the ruling of Southwick's court was correct. They reversed and remanded the case on the nature of the penalty or to make detailed findings on the record why no penalty should be imposed. Some members of the Supreme Court would not only have reversed, but would have reinstated the judgment of the Circuit Court upholding the termination.

In *Brock v. Mississippi*, No. 94-LA-00634 (Miss. App. Ct. Dec. 2, 1997), Southwick authored an opinion upholding a conviction where the defendant had challenged the prosecution's strike of an African-American juror.

The prosecution had responded by stating that the juror was struck because he lived in a high crime area.

Southwick held that "striking a juror based upon residency in a high crime area is a race neutral explanation." Another Court of Appeals judge disagreed with such a broad holding: "While [another state] has adopted the position that being a resident of a high crime area is automatically a race neutral reason to strike a potential juror, I am not

prepared to do so. Given existing housing patterns and common sense, there are generally, common racial characteristics shared by persons, who reside in so-called high crime areas. To accept without reservation, a strike which on its face, appears geared toward a racially identifiable group, has the potential for great mischief." (King, J., concurring in result).

It is clear from this record that Mr. Southwick is not properly suited to serve on the Fifth Circuit. In 160 out of 180 published decisions on state employment law or torts in which one judge dissented, Southwick voted in favor of the corporate defendant, in whole or in part.

Mr. Southwick's intolerant racial views and his fixed right-wing worldview make support for him a vote against everything the CBC and African-Americans are striving for in 2007. Your continued support of Mr. Southwick would make a bad Fifth Circuit problem worse. We trust that your reconsideration of this nomination will result in a fairer Fifth Circuit that is truly representative of the diverse populations served by the Circuit.

Sincerely,

CAROLYN CHEEKS
KILPATRICK,

Chair, Congressional Black Caucus.

BENNIE THOMPSON,

Member, Congressional Black Caucus.

WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,

Washington, DC, August 1, 2007.

Re NAACP reiteration of strong opposition to the nomination of Lesley Southwick to the 5th Circuit U.S. Court of Appeals.

MEMBERS,

U.S. Senate, Committee on the Judiciary, Washington, DC.

DEAR SENATORS: On behalf of the National Association for the Advancement of Colored People (NAACP), our nation's oldest, largest and most widely-recognized grassroots civil rights organization, I am writing to reiterate our organization's strong opposition to the nomination of Lesley Southwick to the U.S. Court of Appeals for the 5th Circuit. Our opposition comes after a careful and thorough review of Judge Southwick's record, and our resulting dismay with his dismal record on civil rights. Our opposition to his nomination is amplified by the fact that the 5th Circuit, which covers Louisiana, Mississippi and Texas has the highest concentration of racial and ethnic minority Americans in our country.

Judge Southwick's record as a judge on the Mississippi State Court of Appeals clearly demonstrates that he is an inappropriate nominee for the U.S. Court of Appeals for the 5th Circuit. In the case of *Richmond v. Mississippi Department of Human Services*, 1998 Miss. App. LEXIS 637 (Miss. Ct. App. 1998), reversed, 745 So. 2d 254 (Miss. 1999), Judge Southwick joined a 5-4 ruling upholding the reinstatement of a white state social worker, Bonnie Richmond, who had been fired for referring to an African American co-worker as "a good ole nigger" at an employment-related conference. Richmond worked for the Mississippi Department of Human Services ("DHS"), which terminated her employment after other employees raised concerns about her use of the racial slur. The ruling that Southwick joined was unanimously reversed by the Supreme Court of Mississippi.

The NAACP is further disturbed by Judge Southwick's rulings on race discrimination in jury selection. They demonstrate a clear lack of support for, or even understanding of the basic civil rights of African Americans in the American legal system. Dozens of cases

in this area reveal a pattern in which Judge Southwick rejected the claims that the prosecution was racially motivated in striking African American jurors while upholding claims that the defense struck white jurors on the basis of their race. In *Bumphis v. State*, an appellate colleague accused Judge Southwick of "establishing one level of obligation for the State, and a higher one for defendants on an identical issue."

The 5th Circuit Court of Appeals has a history of protecting and even promoting the civil rights of the racial and ethnic minorities living within its jurisdiction. The current court, however, does not appear to be following this trend; indeed they appear more interested in curbing civil rights and retarding civil liberties. Given Judge Southwick's record, we believe he would only perpetuate this sad trend if he were confirmed. Thus, the NAACP must oppose Judge Southwick's nomination to the 5th Circuit Court of Appeals and urge you to do the same when his nomination is considered by the Senate Judiciary Committee.

Finally, given Mississippi's long history of racial apartheid, disenfranchisement, interposition, nullification and massive resistance, it is unfathomable that President Bush has not nominated a single African American to serve on the Court of Appeals for the 5th Circuit or any of the district courts during his tenure in office. This is especially mind-boggling, given that 37% of Mississippi's population is African American, the highest percentage of all 50 states. While it certainly is the President's prerogative to nominate the individuals of his choice to the federal judiciary, and while the NAACP does not advocate the nomination of unqualified individuals simply because of the color of his or her skin, we unequivocally reject the notion that there are no qualified African Americans to fill this vacancy on the 5th Circuit. Lesley Southwick's nomination continues a stark pattern of racial discrimination and racial exclusion in appointments by President Bush in a state and a region that continues to need integration. The Senate Judiciary Committee must defeat Lesley Southwick's nomination based on his clear lack of qualifications and merit. This will provide President Bush with the opportunity to nominate a well-qualified racial or ethnic minority individual with the appropriate judicial temperament to dispense justice as intended by our Constitution.

Thank you in advance for your attention to the NAACP's strong opposition to the Southwick nomination. Please do not hesitate to contact me if there is any more information I can provide you on our position, or if you have any questions or comments.

Sincerely,

HILARY O. SHELTON,

Director.

Mr. LEVIN. Mr. President, I will oppose the nomination of Leslie Southwick to the Fifth Circuit Court of Appeals because I have serious questions about his ability to be an impartial jurist.

I am concerned that Judge Southwick's views of racial discrimination in jury selection reflect a lack of adequate respect for Supreme Court precedent. In *Batson v. Kentucky*, the Supreme Court ruled against preemptory dismissal of jurors without stating a valid cause for doing so may not be used to exclude jurors based solely on their race.

The contrast between Judge Southwick's votes in jury challenge cases is particularly troubling. In the

majority of cases where African-American defendants have challenged their convictions on the ground that the prosecution used preemptory challenges to strike African-American jurors, Judge Southwick voted against the defendant's challenge. Further, in the majority of cases where African-American defendants challenged their convictions on the ground that the prosecution had unfairly prevented them from using their preemptory challenges to exclude White—or in one case Asian American—jurors, the defendants, with Judge Southwick joining the majority, lost the challenges.

There is other evidence of racial insensitivity that concerns me. In *Richmond v. Mississippi Department of Human Services*, Judge Southwick joined a 5-4 ruling upholding the reinstatement of a White State social worker who had been fired for referring to an African-American co-worker as a "good ole n*****" during a meeting with high level company officials. After she was fired, Richmond appealed her termination to the State Employee Appeals Board, EAB, which ordered her reinstatement. The hearing officer opined that Richmond's use of the racial slur "was in effect calling the individual a 'teacher's pet.'" On appeal, Judge Southwick joined a majority that held that the use of the racial slur was "not motivated out of racial hatred or animosity directed at her co-worker or toward blacks in general, but was, rather, intended to be a shorthand description of her perception of the relationship existing between the [co-]worker and [a] DHS supervisor."

In dissent, two judges criticized the hearing officer and majority opinion for having a "sanitized version" of the facts and for suggesting that "absent evidence of a near race riot, the remark is too inconsequential to serve as a basis of dismissal." The dissent found that the racial epithet of "n*****" is "inherently offensive, and [its] use establishes the intent to offend."

The ruling Judge Southwick joined was unanimously reversed and remanded on appeal by the Mississippi Supreme Court.

Further, in *Brock v. Mississippi*, a case which upheld a criminal conviction where the prosecution used a preemptory challenge against an African-American juror purportedly because he lived in a high crime area, the dissenting judge criticized Judge Southwick's opinion for accepting the action of the prosecutor, which, "on its face appears geared toward a racially identifiable group."

Some have tried to make the point that Judge Southwick did not write most of these opinions; rather that he merely signed on to them. If Judge Southwick did not agree with those opinions, he could have dissented. If he agreed with the holding but not the reasoning, he could have written a separate concurrence. To the contrary, he simply voted with the majority and supported their opinions.

Because I do not believe that his record reflects the objectivity and even-handedness necessary to serve in a lifetime appointment on the Federal bench, I cannot vote to confirm his nomination.

Mr. COBURN. Mr. President, today the Senate has a golden opportunity to take a big stride forward in working its way out of this judicial nomination mess we are in. At some point we as a body are going to have to take partisanship out of this judicial nomination process if we hope to continue to attract great candidates to the Federal bench. We have seen other great nominees withdraw because of the stress and difficulty of this process. Fortunately, Judge Southwick has stood firm so that the Senate has a chance to confirm him.

Leslie Southwick is an Iraq veteran and has already demonstrated that he is a great jurist. From the testimonials of people in Mississippi, regardless of political or cultural differences, he is fairminded, not biased, and is an outstanding pick for this seat.

It is incredible to observe the vitriolic opposition to this nomination that is built wholly on two written opinions in question that Judge Southwick did not even write. How can the Senate seriously say that those two opinions, in a vacuum, show that Judge Southwick is racist or insensitive to minority litigants? The support from African-Americans in Mississippi exposes that the opposition is politically motivated.

The Senate and the Judiciary Committee must step away from the politically based litmus tests that currently control the nominations process. We must also stop focusing purely on the results of cases, without any context to the facts and law at issue, as the sole indicator of a nominee's judicial philosophy.

I ask my colleagues to seriously reconsider our current course and let Judge Southwick have a fair up-or-down vote.

When we are reviewing judicial nominees, we should ask ourselves three questions:

First, does the nominee have the basic qualifications to be a good judge?

In this case, the answer is yes. The American Bar Association twice rated Judge Southwick "well qualified," with the ABA actually increasing their rating to "unanimously well qualified" when he was nominated to the Fifth Circuit vacancy.

Second, does the nominee possess the appropriate judicial temperament so that every litigant will be treated fairly when they come before this nominee?

The answer again is yes. If you read the many letters from lawyers and judges in the Mississippi legal community, they clearly believe litigants are treated fairly and impartially before Judge Southwick.

Third, does the nominee respect the proper constitutional role of a judge to not create law from the bench?

Again the answer is yes. The record clearly demonstrates that Judge Southwick is and will be a restrained jurist.

As Congress we should be thrilled when a judge shows that he will be restrained in his rulings from the bench. We write the laws, and we should be grateful that a judge knows he is not a Member of Congress and will defer to us in the task of writing law.

Again, I ask my colleagues to move beyond petty partisanship with quality nominees like Judge Southwick, and let's give him a vote.

I yield the floor.

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

The PRESIDING OFFICER. There remain 27 minutes, including leadership time.

Mr. SPECTER. Is that 27 minutes on the Republican side?

The PRESIDING OFFICER. Correct.

Mr. SPECTER. How much on the Democratic side?

The PRESIDING OFFICER. Twenty minutes.

Mr. SPECTER. I thank the Chair.

Might I inquire of the senior Senator from Mississippi how much time he would like?

Mr. COCHRAN. Mr. President, I would be happy to speak for up to 10 minutes.

Mr. SPECTER. I yield 10 minutes to the Senator from Mississippi.

The PRESIDING OFFICER. The Senator from Mississippi is recognized.

Mr. COCHRAN. Mr. President, it is very difficult to listen to the criticism of those who have not known Leslie Southwick in the context and with the experiences of those, obviously, who have worked with him, observed him in close range as a fellow lawyer, seen him take positions of public support for candidates who were running for office in Mississippi, being active in our Republican Party in Mississippi; being admired widely by all who have come to know him, practicing law with him, observing him as a lecturer at the Mississippi College School of Law, observing him serving voluntarily as an officer in the Mississippi National Guard, the U.S. Army Reserves, being deployed to Iraq, volunteering for duty to serve as a judge advocate, and accompanying Mississippi soldiers who were deployed to that region in time of war.

He didn't have to do that. He is way beyond the age of most of those who were engaged in that operation and in that responsibility to protect the security interests of our country.

It is so inconsistent—all of that—to those of us who know this nominee compared with the harsh, shrill pronouncements being made on this floor of the U.S. Senate by leaders of the opposition to this nomination. I am not going to criticize their right to disagree with those of us who support Judge Southwick, but I do want to point out that I hope Senators will look at the record that has been accumulated in the Senate as a result of

statements made by Senator LOTT, me, and others who have known Judge Southwick and others who are the most respectable and trustworthy people in our State and Nation who have a totally different view of him as a person and of his record as an appellate judge, as a lawyer, and as a professor of law.

I hope Senators will take a look at who is saying what and base a judgment on this nomination on the things that have been said and the information that has been made available to the Senate from those who have spent time with Judge Southwick, who know him, or whether that will be outweighed by the harsh and shrill blandishments and criticisms and hyperbole and exaggerations and inaccuracies in the description of this person as a lawyer, as an individual, as a citizen who is here being subjected to totally unfounded criticism.

I hope those words aren't too harsh. I believe they are just as true and accurate as can be. And it would be a disgrace on this body to block the confirmation, to vote against invoking cloture which, in effect, would kill the nomination. We are going to vote on whether to invoke cloture. It will take 60 votes to shut off debate so we can get to a vote on the confirmation.

I have spoken on the floor on two or three occasions on this subject, back in June, I think, the first time. I have been reading the RECORD and looking at what I said July 19, 2007. I included after my remarks letters that I had received from lawyers, judges, and acquaintances of Leslie Southwick over the past 30 years of his life. I am not going to burden the RECORD by putting all those letters in or reading them, but these are some of the finest people, and some of them are liberal Democrats. Some of them are active today as elected officials in our State. Others are just fellow lawyers, people who have worked with him closely, a State supreme court justice. Former Gov. William Winter is an example.

This morning, I found on my desk in my office when I came to work a letter that had been faxed to me, I guess, this morning. At 9:01 a.m. it was received in my office. It is from the Secretary of State of Mississippi, Eric Clark. And because this is a new letter, I think I will read it. It is actually addressed to me and Senator LOTT:

Dear Senator Cochran and Senator Lott:

I sat at home last night and listened on C-SPAN to the debate on Judge Leslie Southwick, and I feel compelled to write you this letter.

I am the senior Democratic elected official in Mississippi. I have been elected to office eight times as a Democrat. I am retiring from politics in January, so I have no ax to grind by commenting on this debate. During my entire career in public service, I have aggressively promoted the inclusion of all Mississippians, and particularly African-Americans, at the decision-making table in Mississippi. I take a back seat to no one in promoting inclusion in our state.

It has been my pleasure to know Leslie Southwick for more than twenty years. If I had to name one person who is kind, fair, smart, thoughtful, and open-minded, it would be Leslie Southwick. For any Senators who have been told or who have concluded otherwise, that is wrong—as wrong as it can be.

We in Mississippi are quite accustomed to being the objects of negative stereotyping. Of course, it is much easier to believe a stereotype about someone than to make the effort to get to know that person. It is perfectly clear to me that this is what is happening to Judge Southwick.

It seems to me that what is being decided in this case is not whether Leslie Southwick would be a good and fair judge—we could not have a better or fairer one. What is being decided, I think, is whether the United States Senate considers judicial nominees based on truth and merit, or based on politics and partisanship.

Let me make my point as plainly as I can: Leslie Southwick is the polar opposite of an ignorant and bigoted judge—the polar opposite of that stereotype. I hope that the Senate passes the test of recognizing the truth and acting accordingly.

Thank you. Sincerely, Eric Clark, Secretary of State of Mississippi.

THE PRESIDING OFFICER. The Senator's time has expired.

MR. COCHRAN. I yield the floor.

MR. SPECTER. Mr. President, how much time remains on the Republican side?

THE PRESIDING OFFICER. There is 16½ minutes remaining, including the leadership time.

MR. SPECTER. I see the distinguished Senator from Mississippi, Mr. LOTT, on the Senate floor. How much time would Senator LOTT like?

MR. LOTT. Just a couple minutes.

MR. SPECTER. Senator LOTT can have as much time as he wants. It sounds as if he wants 5 minutes. I yield to Senator LOTT.

THE PRESIDING OFFICER. The Senator from Mississippi is recognized.

MR. LOTT. Mr. President, I don't want to repeat everything that has been said. I was going to read this letter from our secretary of state, Eric Clark. My senior colleague just read it, and I am glad he did. I appreciate how he feels.

I do feel hurt in some ways by what has happened in this particular case. This is a good and honorable man, qualified by education, by experience, by temperament. He deserves to have an up-or-down vote. We should vote for cloture, and then we should have an up-or-down vote on this judge for a position that is a judicial emergency for the Fifth Circuit Court of Appeals, which is a very broad-based circuit court of appeals. He will be a fine addition to that court.

I want to end on a positive note because Judge Southwick has waited a long time, has been open and available to anybody who was willing to meet with him, not just the Judiciary Committee members but others, including House Members.

We are here because Senator DIANNE FEINSTEIN showed unbelievable courage by voting to report this nominee out of

the Judiciary Committee after very careful analysis, looking at the cases, meeting with the nominee. I will always be indebted to her and appreciative of what she did.

I have to acknowledge that the Judiciary Committee, in this case led by the very aggressive support of Senator SPECTER, has done its job, and has done it well, and we have reached a point of final determination.

I also thank the majority leader and the Republican leader for working together to find time to make this happen. I know from experience, majority leaders do not have to allow votes such as this to occur, and I suspect the majority leader has been criticized for it.

I do believe that this is a moment in time—I hope it is not fleeting—where we can return to some modicum, some small amount of bipartisanship, non-partisanship, and civility. I think Senator REID, Senator MCCONNELL, Senator FEINSTEIN, and Senator SPECTER have made the right steps to make that possible.

I urge my colleagues to vote for cloture and vote for this nominee. He will be a credit to the court on which he will serve, the Fifth Circuit Court of Appeals. He will exhibit the character and the positions that I believe the people in the Senate will think are appropriate for the rest of his life.

I believe confirmation of this judge will reflect well on the Senate and will pay dividends in many ways not visible at this moment.

I thank Senator SPECTER for yielding this time.

I yield the floor.

MR. SPECTER. How much time remains, Mr. President?

THE PRESIDING OFFICER. There is 12½ minutes remaining.

MR. SPECTER. Mr. President, we only have the Senators from Mississippi and myself on the floor. For any other Republicans who wish to speak, now would be a good time to come to the floor. I know our leader, Senator MCCONNELL, will be speaking shortly, at 10:40 a.m., but there is still 11 minutes remaining.

I yield 10 minutes to the distinguished Senator from Florida, Mr. MARTINEZ.

MR. MARTINEZ. Mr. President, that will take us right up to 10:40 a.m., at which time it is my understanding there is an order for the two leaders to speak. I yield 10 minutes now to Senator MARTINEZ.

THE PRESIDING OFFICER. Without objection, the Senator from Florida is recognized for 10 minutes.

MR. MARTINEZ. Mr. President, I thank the Senator from Pennsylvania. I am very pleased to speak on behalf of a good man to occupy a very important position. The Fifth Circuit is a very important court. I want to talk about this nomination as a person who practiced law for a quarter of a century. Twenty-five years of my life I spent in courtrooms in Florida. As a result of that experience, I have a great and abiding respect for our judicial system

and for what it does for people to reasonably and in an orderly way settle disputes, and also for those who run afoul of the law to be brought through a justice system that is fair, that is just, and that works for all Americans.

At the pinnacle of all that, at the very centerpiece of the judicial system that functions is the judiciary. And in the judiciary, we need to have the best. We need to have people of dedication. We need to have people of competence and people with impeccable credentials. That is the kind of judge Judge Southwick is and the kind of person he will make as a judge on the Fifth Circuit.

I wish to talk about the process. It is a process that has become much too poisoned. It has become much too divisive and increasingly hostile. What occurs then is that between the inadequate salaries judges in the Federal judiciary now make in comparison to what they could easily be making in the private sector, as well as the difficult gauntlet they must run in order to be confirmed and to then have the opportunity of serving their Nation as a member of the judiciary, I do believe it is very important that judicial candidates be given a fair and timely hearing, that they be given fair and timely consideration.

I believe all too often we allow dissident groups to gain our attention, not mine but some of those who do pay attention to the outside noise when it comes to judicial candidates. I don't believe it is appropriate that we should allow for outside influences to steer us in different directions that become more and more divisive.

When it comes to judicial candidates, we ought to look for qualifications. We ought to look for experience. We ought to look for those things we could consider. I always think, is this the kind of judge I would like to try a case in front of, is this the kind of judge I would like to take my clients' affairs in front of to have a fair, impartial, and reasoned disposition of the matter I bring before the judge? If he or she is that kind of person, they should be given confirmation. To allow outside and distracting political debates to be a part of the confirmation process is simply wrong.

I was pleased when Chief Justice Roberts was going through the process and he used language in his confirmation hearing that ought to ring true with all of us. He said he viewed his role as a judge as that of an umpire. He viewed his role as someone who could come into the courtroom and call it as he sees it, call balls and strikes. For the vast majority of what a judge does, that is what it is about. It is about calling balls and strikes. It is not about pitching. It is not about catching, not about hitting. It is about calling balls and strikes. That is the role of the judge. That is the role of the judiciary. We honor that role when we accept a judicial candidate who is otherwise qualified, who has an impeccable record. I used to be called from

time to time by the ABA committee, the American Bar Association, that looks at candidates and they would ask: What kind of judge would he make? Would he have the right judicial temperament? These are the things we want to know. Is he knowledgeable of the law? Would he be a fair and impartial judge? Does he have the ethical considerations to be the kind of person who is going to set higher standards for those on the bar, who is going to be the kind of person society will accept when he makes a difficult ruling that sometimes has to come from the court?

It is with great pleasure that I support this nominee. I hope my colleagues will do so as well. It is important we restore a certain normalcy to the confirmation process. I say this fully understanding that in about a year and some months, there could very well be someone of a different party who has a very different philosophy about who should be on the bench than the current President. At that time, I will be prepared to live by the standard I have laid out today, which is a standard of qualifications, a standard that puts aside political considerations, a standard that looks at a judicial nominee, as we have done for most of the history of our country. The departure we have had over the last several years is not a healthy one. It is not positive for the judicial system and for the admission of justice. This is a standard I will be prepared to live with, even if someone from a different party than mine is making judicial nominations. I will look to their qualifications, experience, ethical standing. Is this the kind of judge I would have been happy to have my client take matters before.

I would expect a fair and impartial judge to make a learned and reasonable decision based on the facts, the evidence, and the law. That is what judges are about, analyzing facts and law and making a judicial determination of how to rule in a given case. It is not about politics that more belong in a body such as ours and not on the bench.

How much time remains?

The PRESIDING OFFICER. There remains 5½ minutes before leadership time.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The Republican leader is recognized.

Mr. McCONNELL. Mr. President, shortly we will have an extremely important vote in terms of our ability to deal with judicial confirmations in the future. There has been widespread bipartisan concern that the confirmation process has descended to a point with

which most of the Members on both sides of the aisle are uncomfortable. We will have an interesting test shortly as to whether the Senate can use cloture not to defeat a judge but to move a nomination forward. That is the way it has been done in the past. We have had controversial judicial nominations from time to time over the years, controversial with a few but not all of the Senate. The way cloture was used in those situations was to advance a nomination, not to stop it. I am reminded when Senator LOTT was the majority leader, there were a couple of controversial nominations from California. His view was they were entitled to an up-or-down vote. We invoked cloture on the nomination. I remember voting for cloture because I believed judges were entitled to an up-or-down vote and then not supporting the judge on final passage.

We have before us the nomination of a Mississippi lawyer named Leslie Southwick. He wanted to serve his country in the Armed Forces. At 42, he was too old to do so. But service to others is a duty Leslie Southwick has always taken very seriously, whether in the Justice Department or on the State bench or with Habitat for Humanity or in doing charity work for inner-city communities. So in 1992, 42-year-old Leslie Southwick sought an age waiver to join the U.S. Army Reserves. The country had the good sense and the good fortune to grant this request.

Leslie Southwick continued to serve in the Armed Forces after he was elected to the State court of appeals in 1994. He conscientiously performed his military and judicial duties, even using his vacation time from the court to satisfy the required service period in the Mississippi National Guard.

In 2003, LTC Southwick volunteered for a line combat unit, the 155th Separate Armor Brigade. His commanding officer, MG Harold A. Cross, notes that his decision "was a courageous move; as it was widely known at the time that the 155th was nearly certain to mobilize for overseas duty in the near future." Colleagues such as attorney Brian Montague were not surprised. "Despite the love of wife and children," Leslie Southwick volunteered for a line combat unit over a safer one "because of a commitment to service to country above self-interest."

In August of 2004, Leslie Southwick's unit mobilized in support of Operation Iraqi Freedom. His commanding officer states he distinguished himself at forward bases near Najaf. Another officer, LTC Norman Gene Hortman, Jr., described Leslie Southwick's service in Iraq as follows:

Service in a combat zone is stressful and challenging, often times bringing out the best or the worst in a person. Leslie Southwick endured mortar and rocket attacks, travel through areas plagued with IEDs, extremes in temperature, harsh living conditions . . . —the typical stuff of Iraq. He shouldered a heavy load of regular JAG Officer duties which he performed excellently. He also

took on the task of handling the claims of numerous Iraqi civilians who had been injured or had property losses due to accidents involving the U.S. military . . .

Leslie always listened to these Iraqi claimants patiently and treated them with the utmost respect and kindness. He did this not just out of a sense of duty but because he is a genuinely good and caring person. His attitude left a very positive impression on all those that Leslie came in contact with, especially Iraqi civilians he helped. This in turn helped ease tensions in our unit's area of operations . . . and ultimately, saved American lives.

Lieutenant Colonel Hortman concludes that Leslie Southwick "has the right stuff"—the right stuff—for the Fifth Circuit Court of Appeals: "profound intelligence, good judgment, broad experience, and an unblemished reputation." He adds:

I know him and can say these things without reservation. Anyone who says otherwise simply does not know him.

Stuart Taylor writes in the National Journal that Leslie Southwick "wears a distinctive badge of courageous service to his country," and that he "is a professionally well-qualified and personally admirable" nominee to the Fifth Circuit.

Judge Southwick does not seek thanks or notoriety or charity for his military and other civic service. He asks to be judged fairly—to be judged on the facts, to be judged on his record. It is the same standard he has applied to others as a judge, a military officer, and a teacher. It is a standard for which he is well known and admired. By that standard, he is superbly fit to continue serving his country, this time on the Fifth Circuit. Senators COCHRAN and LOTT, his home State Senators, know this. They are strongly behind him. As everyone knows, his peers on the State bar know this. They honored him as one of the State's finest jurists, saying he is "an example of judicial excellence; a leader in advancing the quality and integrity of justice; and a person of high ideals, character and integrity."

The American Bar Association knows this. It has twice given him its highest rating: "well-qualified." In doing so, the ABA found him to be exemplary in the areas of "compassion," "open-mindedness," "freedom from bias and commitment to equal justice under law."

Democrats on the Judiciary Committee knew this too. Last fall all of them—every single one—looked at his record and approved him for a lifetime position to the district court. Congress adjourned before he could be confirmed, and Judge Southwick was re-nominated to fill a judicial emergency on the Fifth Circuit. Two things then occurred. First, the ABA increased his rating—increased his rating—from "well-qualified" to "unanimously well-qualified." In other words, not a single person on the ABA committee found him anything other than the most qualified nominee possible. Second, in August, the committee favorably reported his nomination to the floor with bipartisan support.

Unfortunately, some of our colleagues on the other side who had supported his nomination to the Federal bench last fall seem to have changed their mind. Since there is no material change in Judge Southwick's credentials other than the ABA actually giving him an even higher rating for the circuit bench than they gave him for the district bench, the sudden change is indeed puzzling.

Critics now point to two cases out of 7,000, neither of which Judge Southwick wrote, and both of which existed when the committee unanimously approved him last fall. One of our colleagues even asserts that because these two cases create a perception among some outside groups about potential unfairness, this "perceived fairness" standard should determine our vote on Judge Southwick.

That is a standard I would say I would hate to have applied to nominations by a Democratic President by Republican Senators. And remember, we are setting a standard here that will apply not only to this nomination but to other nominations in the future.

The notion that mere perception, not reality, should determine whether someone is confirmed is troubling, to say the least. We expect the judges we confirm to rule based on the facts. We should not judge their fitness for office based on perception rather than the facts. In the case of Judge Southwick, the sudden "perception" about his fairness is driven by those who do not even know him, and it is amply disproven by his long record and by those who know him very well.

But more broadly, if we start opposing well-qualified nominees because outside groups have manufactured an unfair perception of them, then we will have established a precedent that will affect us all, as I indicated a minute ago, and for the worse—regardless of who is in the White House and which home State Senators support a nomination. Is the standard going to be around here the perception created by some outside group? I think that is a standard that would be very dangerous, no matter who is in the White House.

I urge my colleagues not to undo the good work and goodwill that brought us back from the precipice we had almost descended into a few years ago on judicial confirmations. I urge them to think hard about the ramifications of their vote for the future, and to vote for cloture on the Southwick nomination.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. REID. Mr. President, I ask unanimous consent that letters of opposition and concern from numerous organizations regarding the nomination now before the Senate be printed in the RECORD.

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

NATIONAL FAIR HOUSING ALLIANCE,
Washington, DC, June 6, 2007.

Hon. PATRICK LEAHY,
Chairman, U.S. Senate Judiciary Committee,
Washington, DC.

DEAR CHAIRMAN LEAHY: The National Fair Housing Alliance (NFHA) is strongly opposed to the nomination of Leslie Southwick to the Fifth Circuit Court of Appeals.

NFHA is dedicated to ending housing discrimination and ensuring equal housing opportunity for all people. With several member organizations within the Fifth Circuit, we are deeply concerned about a nominee whose civil rights record reveals a lack of commitment to equality and justice.

We find the civil rights record of Judge Southwick on the Mississippi Court of Appeals quite troubling. His rulings on race discrimination in the areas of employment and jury selection lead us to question his ability to be a fair and impartial decision-maker in cases involving housing discrimination.

Judge Southwick participated in a shocking 5-4 decision that essentially excused an employee's use of a racial slur. The holding in *Richmond v. Mississippi Department of Human Services* affirmed a Mississippi Employee Appeals Board hearing officer's decision to reinstate an employee who had been fired for calling her co-worker a "good ore nigger." The officer had concluded that the employer had overreacted because the term was not a racial slur but rather equivalent to calling the black employee "teacher's pet." The majority, including Judge Southwick, agreed, finding that taken in context, the comment "was not motivated out of racial hatred or racial animosity directed toward a particular co-worker or toward blacks in general."

This decision drew a strong dissent and was unanimously reversed by the Mississippi Supreme Court. The dissenters stated that the majority's reasoning "strains credulity" because "[t]he word 'nigger' is, and has always been offensive." They went on to argue that "the hearing officer and the majority opinion seem to suggest that absent evidence of a near race riot, the remark is too inconsequential to serve as a basis of dismissal."

Judge Southwick's reasoning in *Richmond* is indicative of a general lack of concern for race discrimination, and it reveals a potential hostility toward equal opportunity in housing. Many cases of housing discrimination involve intimidation through racial slurs. In this context, as in all contexts, the word "nigger" is powerful, offensive, and threatening. The following cases are indicative of the pervasive nature of this deplorable conduct in housing cases:

In *Bradley v. Carydale Enterprises*, the Eastern District of Virginia ordered compensatory damages for an African-American woman whose neighbor had called her "nigger." The court noted that the term "deeply wounded" the woman, pointing to her humiliation and embarrassment, sleepless nights, and inability to perform at her job.

In *Smith v. Mission Associates Ltd. Partnership*, an on-site property manager called a white tenant a "nigger-lover" because of his live-in girlfriend's bi-racial children, and the manager's son told one of these children he didn't like "niggers." Based on this and other racially hostile conduct, the District of Kansas held that the plaintiffs had established a prima facie case for a hostile housing environment under the Fair Housing Act.

In *Cousins v. Bray*, the Southern District of Ohio granted the plaintiffs' motion for a preliminary injunction against eviction and any attempts of harassment, intimidation, or threats. The court found that the plaintiffs' allegations that defendants had referred to their biracial sons as "niggers" helped to establish that race motivated their

eviction, in violation of the Fair Housing Act.

And just this month, in *United States v. Craft*, the Seventh Circuit relied on an arsonist's use of the term "nigger" to determine that he targeted a black man's house because of the victim's race. It held the arsonist in violation of the portion of the Fair Housing Act that prohibits the use of coercion or intimidation to interfere with property rights.

As these cases demonstrate, our federal courts acknowledge that harmful racial slurs like "nigger" are powerful tools in the denial of fair housing. We are deeply concerned that based on his record, Judge Southwick does not share these ideals, and we question his ability to be a fair and impartial decision-maker in these and other civil rights cases.

Thus, we strongly oppose Judge Southwick's nomination to the Fifth Circuit Court of Appeals and believe the Senate should not confirm him.

Sincerely yours,

SHANNA SMITH,
President.

SERVICE EMPLOYEES
INTERNATIONAL UNION,
Washington, DC, June 6, 2007.

Hon. PATRICK LEAHY,
Chair, U.S. Senate Judiciary Committee
Washington, DC.

Hon. ARLEN SPECTER,
Ranking Member, U.S. Senate Judiciary Committee
Washington, DC.

DEAR CHAIRMAN LEAHY AND RANKING MEMBER SPECTER: I am writing on behalf of the 1.8 million members of the Service Employees International Union (SEIU), including the health care, public sector and property service members who live and work in the Fifth Circuit, to oppose the nomination of Judge Leslie H. Southwick to the United States Court of Appeals. SEIU joins the civil rights organizations, professional societies and editorial boards which have stated their opposition to Judge Southwick's nomination because of his consistent record of hostility to the rights of minorities and gay parents as well as his practice of going beyond the resolution of the case at issue to inject his own views on social and legislative policies into his decisions. We write separately to express our concerns regarding Judge Southwick's rulings regarding workplace issues and his ability to fairly enforce the nation's labor and employment laws.

In his dissent in *Cannon v. Mid-South X-Ray Co.*, 738 So. 2d 274 (Miss. App. Ct. 1999), Judge Southwick argued that the claim of Annie Cannon, a worker exposed to toxic chemicals in her work place, should be rejected because it was barred by the statute of limitations. Ms. Cannon had begun to experience health problems soon after the start of her employment as a darkroom technician. However, while the severity of the problems increased over time, Ms. Cannon's condition was not diagnosed by a doctor as work related until sometime later. Based on this diagnosis, Ms. Cannon filed suit.

Judge Southwick argued that all that is necessary for the statute of limitations to run against a plaintiff's claim is that the plaintiff know of her illness, not the cause of her illness. This rule, as the eight judges in the majority recognized, places an unreasonable burden on a worker "who cannot reasonably be expected to diagnose a disease on which the scientific community has yet to reach an agreement." While Ms. Cannon knew she was sick, she did not know she had been injured by the defendants until her disease was affirmatively diagnosed by her doctor and therefore should not have been required to file a cause of action which she did not know even existed.

The use of a procedural device by Judge Southwick to deny an injured worker her day in court is chillingly similar to the rule announced by Justice Alito in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S.—(2007). In that case, Lilly Ledbetter's pay disparity claim was not "easy to identify" because the impact of that discrimination, like Ms. Cannon's illness, grew over time and when it reached the point that it was clear that discrimination, or work place chemicals, was the cause, an action was filed. In upholding the dismissal of Ms. Ledbetter's case, Justice Alito relied upon same statute of limitations procedural device employed by Judge Southwick in denying Ms. Cannon her day in court.

In another dissent, Judge Southwick offers a gratuitous insight into his judicial philosophy on the subject of employment at will. The employment at will doctrine, which is premised on the illusion that employers and individual workers have equal power in the employment relationship, has been consistently criticized and limited by legislative and judicial action over the last hundred years. However, in *Dubard v. Biloxi H.M.A.*, 1999 Miss. App. Lexis 468 (1999), *rev'd*, 778 So. 2d 113, 114 (Miss. 2000), Judge Southwick opines that "employment at will . . . provides the best balance of the competing interests in the normal employment situation. It has often been said about democracy, that it does not provide a perfect system of government, but just a better one than everything else that has ever been suggested. An equivalent view might be seen as the justification for employment at will." Judge Southwick's radical statement of judicial philosophy calls into question the legitimacy of most federal employment laws enacted in the twentieth century, from the minimum wage to the Family and Medical Leave Act, implying that they are inconsistent with a democratic system of government.

Judge Southwick's record of judicial activism evidences a willingness to erect insurmountable barriers to workers seeking access to the courts and an aversion of laws which limit the employer's unrestricted right to control the employment relationship. He should not be given a lifetime appointment to a court where he will be called upon to enforce laws that he clearly disdains by injured workers who he believes have no right to ask for relief. We ask the Committee to reject the nomination of Judge Southwick to the United States Court of Appeals for the Fifth Circuit.

Sincerely,

ANNA BURGER,
International Secretary-Treasurer.

NATIONAL WOMEN'S LAW CENTER,
Washington, DC, June 6, 2007.
Re Nomination of Leslie Southwick to the
U.S. Court of Appeals for the Fifth Circuit

Hon. PATRICK J. LEAHY,
Chair, U.S. Senate Judiciary Committee,
Washington, DC.

Hon. ARLEN SPECTER,
Ranking Member, U.S. Senate Judiciary Committee,
Washington, DC.

DEAR SENATORS LEAHY AND SPECTER: We write to express our serious concerns regarding the nomination of Leslie Southwick to the U.S. Court of Appeals for the Fifth Circuit. As an organization dedicated to advancing and protecting women's legal rights, the National Women's Law Center (NWLC) has reviewed Judge Southwick's available record, his testimony before the Committee, and his responses to Senators' written questions in order to assess his commitment to upholding essential civil rights protections. This substantive review has led the Center to

conclude that there is a significant basis to doubt that commitment. Under these circumstances, it is especially troubling that hundreds of unpublished opinions that Judge Southwick joined while on the Mississippi Court of Appeals have not been produced to the Committee. As a result, the legal record that serves as the basis for determining his fitness for a lifetime position on the Fifth Circuit remains woefully incomplete. Consequently, we urge the Committee not to advance Judge Southwick's nomination until all of his record has been made available and has been reviewed, and until the substantive concerns have been satisfied.

Judge Southwick's actions in *S.B. v. L.W.* and *Richmond v. Mississippi Department of Human Services* raise significant concerns. Judge Southwick joined a separate concurrence in *S.B. v. L.W.* and joined the majority opinion in *Richmond*. Although he did not write those opinions, the result and reasoning therein is properly ascribed to him. As Judge Southwick stated in his hearing before the Committee, his decision to join an opinion as a judge on the Mississippi Court of Appeals meant that he at least agreed with the outcome espoused by that opinion. He also acknowledged at the hearing that he could have worked with the author of an opinion to change its language and at all times had the option of writing his own separate opinion.

In *S.B. v. L.W.*, a 2001 custody case involving the parental rights of a mother in a homosexual relationship, Judge Southwick joined the majority in its holding awarding custody to the father. He also chose to join a concurrence that gratuitously took pains to elaborate the punitive "consequences" that may be imposed on individuals in homosexual relationships, including the loss of custody of a child. The concurrence expounded upon the state's ability, grounded in principles of "federalism," to limit the rights of homosexual Americans in the area of family law and characterized participation in a homosexual relationship as a "choice" and "exertion of a perceived right." In addition, although neither party to the case had raised constitutional questions, the concurrence undertook to discuss constitutional precedent in a highly selective manner to support its conclusion that the Mississippi legislature had permissibly taken a policy position with regard to the rights of homosexual individuals in domestic relations settings that would limit the custody rights of homosexual parents. The opinion cited the Supreme Court's decision in *Bowers v. Hardwick*, which upheld criminal penalties for sodomy, but ignored *Romer v. Evans*, which struck down a ballot initiative that "classifie[d] homosexuals not to further a proper legislative end but to make them unequal." To make matters worse, when Judge Southwick was questioned about the concurrence's failure to discuss *Romer*, he answered that neither *Romer* nor *Bowers* was argued by the parties to the case. However, his answers do not speak to why the concurrence only cited *Bowers*, and, therefore, do not allay our concerns about the impartiality of the legal analysis in this case.

Furthermore, while Judge Southwick indicated in written responses that the custody decision would be evaluated differently today in light of the Supreme Court's decision in *Lawrence v. Texas*, he did not directly address concerns raised by the language of the concurrence either in his written answers or in his testimony, although he was asked to do so. He did not clarify whether he considers homosexuality to be a choice as suggested in the concurrence and provided no persuasive justification for his seeming endorsement of extraordinarily harsh penalties for that so-called choice.

Judge Southwick's decision to join the majority opinion in *Richmond v. Mississippi Department of Human Services*, affirming a state review board's decision to overturn a state agency's termination of an employee for referring to an African-American employee as a "good ole n****r," also raises serious concerns. The majority in *Richmond* concluded that the terminated employee "was not motivated out of racial hatred or racial animosity directed toward a particular co-worker or toward blacks in particular," and that there was no "credible proof" that the use of this highly inflammatory racial epithet caused substantial problems within the agency workplace. This majority opinion failed to adequately consider the discrimination inherent in the use of that particular racial epithet and required an unnecessarily stringent showing of disruption from the employing agency. The Mississippi Supreme Court unanimously reversed the Court of Appeals' decision, remanding to the review board to make findings as to whether the agency acted properly under state personnel rules, and as to whether a lesser penalty than termination should be imposed.

Judge Southwick's testimony before the Senate Judiciary Committee and his responses to written questions did not alleviate NWLC's concerns. It is disturbing that Judge Southwick continues to consider the majority opinion in *Richmond* well-reasoned and declined to criticize the opinion he joined in part so as not to "change horses mid-stream." In addition, Judge Southwick's characterization of the standard of review in his written questions as whether no evidence sported the review board's decision (rather than whether substantial evidence support it) is incorrect. Whether the mischaracterization represents his original understanding of the standard of review or a post-hoc attempt to justify joining the majority, his position is equally troubling. Further, although the Mississippi Supreme Court concluded that the employee should not have been terminated, two strong dissents raised grounds for Judge Southwick to consider whether his decision to join the majority opinion was correct: first, that the Court of Appeals improperly placed the burden of proof upon the agency with regard to the issue of the disruptive effect of the epithet; second, that failing to terminate the employee could have subjected the agency to a federal discrimination action and thus would have constituted negligence; and third, that the majority of the Mississippi Supreme Court substituted its judgment for the review board's. As a result, Judge Southwick's reliance on the Mississippi Supreme Court opinion in answer to questions about whether he believed his decision to join the majority in *Richmond* was correct does not eliminate our concerns.

Although our concerns are primarily grounded in only two of the reported cases that came before Judge Southwick on the Mississippi Court of Appeals, these cases are significant because they are among the few in his available record that raise constitutional and civil rights issues that Judge Southwick would face if confirmed to the Fifth Circuit. Moreover, hundreds of unpublished opinions that Judge Southwick joined during his first two years on the Mississippi Court of Appeals have not been tamed over to the Committee. These opinions could implicate an even broader range of legal issues and could shed light on Judge Southwick's approach to the constitutional and federal legal issues that come before the Fifth Circuit. It is critical for Senators and the public to be able to review a nominee's complete record when a lifetime appointment to the

federal bench is at stake. To allow this already-questionable nomination to move forward while substantial gaps in the record exist would be highly unfortunate and unwarranted.

No judicial nominee enjoys a presumption in favor of confirmation; rather, it is the nominee who carries the burden of convincing the Senate that he or she should be confirmed. NWLC respectfully urges the Committee not to vote Judge Southwick out of committee while his record remains incomplete, and while substantive concerns raised by his available record have not been allayed. If you have questions or if we can be of assistance, please contact us at (202) 588-5180.

Sincerely,

NANCY DUFF CAMPBELL,
Co-President.

MARCIA D. GREENBERGER,
Co-President.

PARENTS, FAMILIES AND FRIENDS
OF LESBIANS AND GAYS,
Washington, DC, June 7, 2007.

Senator PATRICK LEAHY,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.
Hon. ARLEN SPECTER,
Ranking Member, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY AND SENATOR SPECTER: On behalf of more than 200,000 members and supporters of Parents, Families and Friends of Lesbians and Gays (PFLAG), I am writing to urge the Judiciary Committee to reject the nomination of Judge Leslie H. Southwick to the 5th Circuit Court of Appeals. There is absolutely nothing in Judge Southwick's troubling record, written responses, or testimony to the committee to indicate that he can fairly judge cases involving gay, lesbian, bisexual or transgender families or any other minority parties.

As a member of the Mississippi Court of Appeal, Judge Southwick joined a majority opinion which took custody of an eight-year-old child away from her mother, citing in part the mother's "lesbian home" and "homosexual lifestyle" as justification for the decision. Additionally, Judge Southwick was the only other judge to join a concurring opinion by Judge Payne that unnecessarily referenced the state's probation on gay and lesbian adoption, despite the fact that this was not an adoption case, using the phrase "the practice of homosexuality" throughout. Most disturbingly, the concurrence states that even if the mother's sexual acts are her choice she must accept the fact that losing her child is a possible consequence of that choice.

We hope that you will agree that all American families, including those living in Mississippi, Louisiana, and Texas, deserve a federal court system free from bias, regardless of their sexual orientation or gender identity. We are in no way confident that Judge Leslie H. Southwick can provide that basic right. Because of this, we strongly urge you to oppose the nomination of Leslie H. Southwick to a lifetime seat on the 5th Circuit Court of Appeals.

For more information please contact our Assistant Director of Programs, Elizabeth Hampton Brown, at (202) 467-8180 ext. 211 or e-mail ebrown@pflag.org.

Sincerely,

JODY M. HUCKABY,
Executive Director.

ALLIANCE FOR JUSTICE,
Washington, DC, May 31, 2007.

Hon. PATRICK J. LEAHY,
Chair, Committee on the Judiciary,
U.S. Senate, Washington, DC.
Hon. ARLEN SPECTER,
Ranking Member, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN LEAHY AND SENATOR SPECTER: No nominee to a lifetime seat on our federal courts is entitled to a presumption of confirmation. As Senator LEAHY has stated, the Senate's constitutional "advice and consent" role is a serious responsibility, by which "those 100 of us privileged to serve in the Senate are entrusted with protecting the rights of 280 million of our fellow citizens." Were the Senate to confirm Judge Leslie Southwick to a lifetime appointment on the Fifth Circuit, it will in fact have placed in jeopardy the rights of many of the most vulnerable of our fellow citizens. As a judge on the Mississippi Court of Appeals, Judge Southwick assembled a deeply troubling record in cases involving the interests of vulnerable parties, consistently favoring corporations, insurance companies, and other powerful interests over vulnerable workers and consumers. His record also calls into question his commitment to equal dignity and equal justice for minorities.

Judge Southwick's published opinions reveal that he voted 89 percent of the time against injured workers and consumers in divided employment and torts decisions. In a number of these cases, Judge Southwick harshly interpreted laws and precedents to favor corporate defendants. In *Goode v. Synergy Corporation*, Judge Southwick voted to deny a family, who sued the propane company after their grandchild was killed in a fire, a new trial even though there was new evidence previously undisclosed by the company, showing that the company's conduct may have caused the fire.

Although there are few cases that shed light on Judge Southwick's views on civil rights, those that do are profoundly troubling. Astonishingly, in one of his exceedingly rare decisions in favor of an employee, he joined the court's 5-4 opinion in *Richmond v. Mississippi Dep't of Human Services*, which upheld an Employee Appeals Board decision to reinstate, with full back pay, a woman who used a racial slur in reference to a coworker, calling her a "good ole n*****." In neither the opinion he joined, nor in his answers to questions at his confirmation hearing, did he express doubts about the decision he joined in Richmond. He and his colleagues on the majority also declined to remand the case to the Board for assessment of a lesser penalty—as one dissenting opinion urged and the Mississippi Supreme Court later ordered in reversing the Court of Appeals. Judge Southwick and the majority would have allowed the employee full reinstatement with back pay in spite of the epithet.

In *S.B. v. L.W.*, Judge Southwick joined a homophobic concurrence arguing that sexual orientation was a perfectly legitimate basis on which to deny a parent custody of one's child. At his hearing, he attempted to explain this opinion as a reflection of the intent of the legislature as to the rights of gay parents. However, a dissenting opinion in *S.B.*, along with a subsequent Mississippi Supreme Court decision stating that sexual orientation was not a basis on which to deny child custody, demonstrate that Judge Southwick's attempt to deflect criticism to the state legislature is questionable indeed.

The Senate must be especially wary of Judge Southwick's nomination because the president, in his six years in office thus far, has engineered a transformation of the federal courts to reflect an ideology that is hos-

tile to the rights of minorities and our society's most vulnerable members. Moreover, the president has shown little willingness to promote diversity on the bench. Astonishingly, there has never been an African-American Fifth Circuit judge from Mississippi, a state with a population that is 37% African-American. Thus, it is particularly troubling that the President has now nominated someone to this Mississippi seat whose record raises such grave doubts about his racial sensitivity and his commitment to equal justice for all Americans.

President Bush and his Senate allies have exploited every opportunity to confirm the nominees of the hard right, steamrolling venerable Senate rules and traditions to achieve this goal. The current Senate now faces a choice: stand up to nominees who will make our courts even less friendly to our most vulnerable citizens; or inherit a share of President Bush's disturbing legacy of re-making the courts in the partisan image of his right wing base. Judge Leslie Southwick represents a crossroads, and the Senate should choose to reject his nomination and insist that the President submit a nominee with a demonstrated commitment to equal rights and fairness to all Americans, regardless of their race, sexual orientation or economic status.

Sincerely,

NAN ARON,
President.

Mr. REID. Mr. President, first of all, let me say I have the greatest respect for my senior colleague, the Senator from Mississippi, Mr. COCHRAN, who is always a gentleman in everything he does. I have worked on the floor with Senator LOTT during the time I was assistant leader, and I have the greatest respect for him. I appreciate the way they have handled this and not making it personal in nature simply because I oppose something they want.

I say in response to my friend, the distinguished Republican leader, there is a different standard, as well there should be, for someone who is going to be placed on the trial court than somebody placed on the appellate court. So the reasoning that Senators approved in the committee a judge for a district court—clearly, the tradition in the Senate is, with rare exception, they are approved—so the argument that we have approved somebody for a trial court so they should automatically be approved for an appellate court simply is not valid.

Our Constitution outlines the shared responsibility between the Senate and the President of the United States to ensure that the judiciary is staffed with men and women who possess outstanding legal skills, suitable temperament, and high ethical standing.

As a leader, I have worked hard to ensure that the Senate carries out its work with respect to judicial nominees fairly and promptly, and with a lot of transparency.

The judicial confirmation process today is working well, and all Senators should be pleased to know that the judicial vacancy rate is currently at an all-time low. For people who yell and shout and complain about the Democrats not allowing Republicans to assume the bench, the judicial vacancy rate today is at an all-time low. We

have a Judiciary Committee that has helped this significantly. Senator Pat Leahy, Senator Arlen Specter—the chairman and ranking member of that committee—have as much collegiality as I have ever seen in a committee since I have been in the Senate. They have been fair, and they have been fast.

This year alone, the Senate has confirmed 32 judicial nominees, including four court of appeals nominees—in addition to the more than 250 others who have been approved during the past 6 years of the Bush administration.

In contrast, my Republican colleagues and my Democratic colleagues will clearly recall that during the Clinton administration, the Republican-controlled Senate refused to confirm 70 nominees. Think about that: 70 nominees. Many of them did not even have the courtesy of a hearing. Some of them waited almost 4 years for a hearing.

I remember how we were treated. But we have chosen to live by the Golden Rule. We have chosen this is not “get even time;” this is a time to be fair and to be open. The Golden Rule: Treat people as you would want them to treat you. I am happy to say that is how we have done this.

Judges with impeccable records, such as Ronnie White and Richard Paez, were maligned by Republicans merely for partisan political gain. That is wrong. We do not intend to initiate any of that while we are in charge of the Senate.

But today we face a judicial nomination that has attracted strong opposition. I turned in what is part of this RECORD a stack of organizations and individuals who simply oppose this nomination for lots of different reasons.

Opposition to the nomination of Judge Leslie Southwick for the Fifth Circuit Court is neither partisan nor political. It is factual. These facts are present deep within the fundamental American commitment to civil justice and equal rights, which is something we must stand by.

In the past few weeks, our Nation has seen the recurrence of racial issues that we had assumed and hoped were behind us. Yet, the recent events in Jena, LA, and at the U.S. Coast Guard academy—where nooses were hung to intimidate, demean, and belittle people of color—demonstrate that issues of race and intolerance are sorrowfully still present in our society.

For many Americans, for many African Americans, and for the Congressional Black Caucus—of which this body only has one member. When I first came to the House of Representatives, there were about 20 members of the Congressional Black Caucus. Now there are 78. I believe that is the number. That is good. That is good for our country. But those individuals concerned know the Federal courts have historically represented the first, last, and often the only form of redress against racism and civil injustice. For

that reason, I believe this body has little choice but to consider the nomination of Judge Southwick to the Fifth Circuit Court in the context of race and civil rights.

I heard Senator SCHUMER here this morning talk about the demography of the State of Mississippi. That has to be something we take into consideration.

President Bush is asking us to confirm Southwick for one of the highest judicial positions in the United States: the United States Circuit Court of Appeals. It is a lifetime appointment. But for a court as important as the Fifth Circuit, Judge Southwick is the wrong choice. His record on the Mississippi State court does not justify a promotion. That is why I rise, once again, as I have many times regarding Judge Southwick, to express my strong opposition to this nomination. I urge my colleagues to join me in voting “no.”

As a member of the Mississippi State appellate court, Judge Southwick joined decisions that demonstrate insensitivity to, and disinterest in, the cause of civil rights.

Mr. President, I ask unanimous consent that the hour of 11 o'clock time for the vote be extended. I should be finished shortly.

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

Mr. REID. Mr. President, I do believe that as a member of the Mississippi State appellate court, Judge Southwick joined decisions that demonstrate insensitivity to, and disinterest in, the cause of civil rights.

For example, in the Richmond case, he voted to uphold the reinstatement with back pay of a White State employee who had used a racial epithet about an African-American coworker.

Judge Southwick says the decision was about technical legal issues, but the dissent in the case by his colleague, Judge King, explains what was at stake. It was not a technical legal issue. As I said when I began, it was based on the facts. Judge King wrote, regarding the “N” word—and I quote him:

There are some words, which by their nature and definition are so inherently offensive, that their use establishes the intent to offend.

It was clear in this decision that Judge Southwick should have joined what would have been the majority. The majority would have been with Judge King. He decided not to go with what would have been the majority and created his own majority to, in effect, agree that using this “N” word was nothing more than an offhand remark that meant nothing. It took the courageous action of judges on the Fifth Circuit to carry out the Supreme Court’s desegregation decisions and destroy the vestiges of the Jim Crow era.

Judge Southwick, from what I have learned about him, is not capable of being part of that. Yet Judge Southwick’s record gives us absolutely no reason to hope that he will continue this tradition of delivering justice to the aggrieved.

That is why there is no shortage of opposition to this nomination, first and foremost, as I have said, from our colleagues, Members of Congress, the Black Caucus. They cite opposition by the Magnolia Bar, the Mississippi NAACP, and countless other organizations that stand for justice. They have asked us to remember that their constituents are our constituents—some 45 million of them—and they deserve representation on this issue.

His decision in the Richmond case is his most serious problem, but Judge Southwick has failed in many other areas. He sides continually with plaintiffs in bad cases. He always, with rare exception, joins with corporations and not the workers. He appears to favor defendants.

There is no reason why the President can’t find a nominee with a record fairly representing all people. If we reject Judge Southwick, the President will still have an opportunity to nominate another candidate. Judge Southwick’s record has been fully documented by my colleagues who have spoken before me. His most grievous failure—I repeat—a failure to give full weight to the vile meaning and history of the “N” word—is deeply disturbing. I cannot overlook it.

I urge all my colleagues to join me in voting “no,” so we can find a candidate truly befitting this important lifetime appointment—a candidate who will give the people of the Fifth Circuit the confidence they deserve that their claim to justice will be heard with the respect and equality every American citizen deserves.

The PRESIDING OFFICER. All time for debate has expired.

Mr. LEVIN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Michigan will state his inquiry.

Mr. LEVIN. How many votes are required to invoke cloture and end the debate on the pending nomination under the rules and precedents of the Senate?

The PRESIDING OFFICER. It will be three-fifths of the Members duly chosen and sworn, that being 60.

Mr. LEVIN. I thank the Chair.

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 291, the nomination of Leslie Southwick, of Mississippi, to be United States Circuit Judge for the Fifth Circuit.

Mitch McConnell, Arlen Specter, Wayne Allard, Johnny Isakson, Richard Burr, Norm Coleman, David Vitter, Kay Bailey Hutchison, George V. Voinovich, John Thune, Jim DeMint, Tom Coburn, Michael B. Enzi, Elizabeth Dole, Jeff Sessions, Jim Bunning, John Barrasso, Trent Lott, and Thad Cochran.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Leslie Southwick to be United States Circuit Judge for the Fifth Circuit shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from Connecticut (Mr. DODD), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

I further announce that if present and voting, the Senator from Massachusetts (Mr. KENNEDY) would vote "nay."

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

The result was announced—yeas 62, nays 35, as follows:

[Rollcall Vote No. 392 Ex.]

YEAS—62

Akaka	DeMint	Lugar
Alexander	Dole	Martinez
Allard	Domenici	McCain
Barrasso	Dorgan	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brownback	Feinstein	Pryor
Bunning	Graham	Roberts
Burr	Grassley	Sessions
Byrd	Gregg	Salazar
Carper	Hagel	Shelby
Chambliss	Hatch	Smith
Coburn	Hutchison	Snowe
Cochran	Inhofe	Specter
Coleman	Inouye	Stevens
Collins	Isakson	Sununu
Conrad	Johnson	Sununu
Corker	Kyl	Thune
Cornyn	Lieberman	Vitter
Craig	Lincoln	Voivovich
Crapo	Lott	Warner

NAYS—35

Baucus	Kerry	Obama
Bayh	Klobuchar	Reed
Biden	Kohl	Reid
Bingaman	Landrieu	Rockefeller
Brown	Lautenberg	Sanders
Cantwell	Leahy	Schumer
Cardin	Levin	Stabenow
Casey	McCaskill	Tester
Clinton	Menendez	Webb
Durbin	Mikulski	Whitehouse
Feingold	Murray	Wyden
Harkin	Nelson (FL)	

NOT VOTING—3

Boxer	Dodd	Kennedy
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The PRESIDING OFFICER. On this vote, the yeas are 62, the nays are 35. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The PRESIDING OFFICER. Under the previous order, the question is, Shall the Senate advise and consent to the nomination of Leslie Southwick to be United States Circuit Judge for the Fifth Circuit.

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

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

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from Connecticut (Mr. DODD), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY) would vote "nay."

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

The result was announced—yeas 59, nays 38, as follows:

[Rollcall Vote No. 393 Ex.]

YEAS—59

Akaka	DeMint	Lugar
Alexander	Dole	Martinez
Allard	Domenici	McCain
Barrasso	Dorgan	McConnell
Bennett	Ensign	Murkowski
Bond	Enzi	Nelson (NE)
Brownback	Feinstein	Pryor
Bunning	Graham	Roberts
Burr	Grassley	Sessions
Byrd	Gregg	Shelby
Chambliss	Hagel	Smith
Coburn	Hatch	Snowe
Cochran	Hutchison	Specter
Coleman	Inhofe	Stevens
Collins	Isakson	Sununu
Conrad	Johnson	Sununu
Corker	Kyl	Thune
Cornyn	Lieberman	Vitter
Craig	Lincoln	Voivovich
Crapo	Lott	Warner

NAYS—38

Baucus	Inouye	Obama
Bayh	Kerry	Reed
Biden	Klobuchar	Reid
Bingaman	Kohl	Rockefeller
Brown	Landrieu	Salazar
Cantwell	Lautenberg	Sanders
Cardin	Leahy	Schumer
Carper	Levin	Stabenow
Casey	McCaskill	Tester
Clinton	Menendez	Webb
Durbin	Mikulski	Whitehouse
Feingold	Murray	Wyden
Harkin	Nelson (FL)	

NOT VOTING—3

Boxer	Dodd	Kennedy
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The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is laid upon the table, and the President is notified of the Senate's action.

Mr. CLINTON. Mr. President, I opposed the nomination of Leslie Southwick to serve a lifetime appointment on the U.S. Court of Appeals for the Fifth Circuit. His tenure as a judge on the Mississippi Court of Appeals reveals a record that fails to honor the principles of equality and justice and demonstrates a disregard for civil rights.

The American people deserve Federal judges—regardless of who nominates them—who are dedicated to an even-handed and just application of our laws. In case after case, Judge Southwick has demonstrated a lack of respect and understanding for the civil rights of all Americans, and particular indifference towards the real and enduring evils of discrimination against African Americans and gay and lesbian Americans.

After reviewing his judicial opinions and examining his qualifications, I

have concluded that Judge Southwick's regressive civil rights record should disqualify him from serving a lifetime appointment on the Court of Appeals for the Fifth Circuit. I urge the President to select judicial nominees who embrace the principle that all are equal under the law.

LEGISLATIVE SESSION

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

DEVELOPMENT, RELIEF, AND EDUCATION FOR ALIEN MINORS ACT OF 2007—MOTION TO PROCEED

The PRESIDING OFFICER. There will now be 20 minutes of debate equally divided before a cloture vote on a motion to proceed to S. 2205.

The majority leader.

Mr. REID. Mr. President, I am going to use my leader time so it does not interfere with the 20 minutes allocated.

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

Mr. REID. Mr. President, earlier this year, we had a chance at comprehensive immigration reform. I agree with the President of the United States that we should do comprehensive immigration reform. President Bush and I, I repeat, were in agreement. That effort brought people together from both sides of the aisle, from all parts of the political spectrum. We agreed our current immigration system works well for no one. That effort brought Democrats and Republicans together in pursuit of a common good.

Many of us then were profoundly disappointed when this issue was stopped, not because of the President, but by Republicans in the Senate and a few Democrats. It was a real disappointment to me. We had spent so much time on the floor trying to move forward on comprehensive immigration reform.

I continue to believe that tough, fair, practical and comprehensive reform is the only way to get control of our broken immigration system and restore the rule of law. I remain committed to enacting comprehensive legislation as soon as we can. But until we can once again look forward to comprehensive immigration reform, we should, at the very least, enact the DREAM Act. We tried to offer this crucial legislation as an amendment to the Defense authorization bill, but we were blocked from doing so by a small number of Republicans.

At that time, I committed to moving the DREAM Act for a vote before November 16. Today, that is where we are. We now turn to the DREAM Act as stand-alone legislation, and I once again rise to offer my strong support for this legislation. Anyone who believes as I do that education unlocks doors to limitless opportunity should join me in voting for this legislation.

We should vote for this legislation because the DREAM Act recognizes

that children should not be penalized for the actions of their parents. Many of the children this bill addresses came here when they were very young. Many don't even remember their home countries—in fact, most of them don't—or speak the language of their home countries. They are as loyal and devoted to our country as any American. Only children who came to the United States when they were 15 years old or younger and have been in the United States for at least 5 years and are now not yet 30 years old can apply. Those who are eligible must earn a high school diploma, demonstrate good moral character, and pass criminal and security clearances. They must also either go to college or serve in the military for 2 years.

I have met many star students in Nevada who qualify for the DREAM Act. With it, their futures are limitless. Without it, their hope is diminished greatly. What a waste it is to make it more difficult for children—children in our country—to go to college and get jobs or join the military when they can be making meaningful contributions to their communities and to our country. What good does it do anybody to prevent these young people from having a future? The answer is it does no good. It harms children who have done no wrong, and in the long run it greatly harms our country's economy.

I very much appreciate the hard work of Senator DURBIN and Senator HATCH to bring this legislation to the floor. They have worked tirelessly to ensure this important bipartisan bill does not go away. We must now invoke cloture and pass this bill. Vote cloture and move to this legislation. If we do, we will put the American dream within the reach of far more children in Nevada and across America who want nothing more than a fair chance at success. That will be an accomplishment of which we can all be proud.

A lot of what we do is based on personal experiences. My memory goes back many years to a small rural community in Nevada called Smith Valley. It is one of the few farming areas we have left in the State of Nevada. It is a beautiful place. I spoke to an assembly at a small school, and I could tell this young lady wanted to speak to me when I finished. She was embarrassed, of course. But I asked her if she wanted to talk to me, and she was embarrassed—clearly embarrassed. She said words to this effect: I am the smartest kid in my class. I am graduating from high school soon. I can't go to college. My parents are illegals.

I have thought about that so much. I don't know where she is today. Is she doing domestic work someplace? What is she doing? She should have been able to go to college. Not a free education—that isn't what this bill calls for—but an opportunity to go to college.

In Reno and in Las Vegas we have scores of gangs—many of them Hispanic gangs—doing illegal things much of the time. Not all the time but much

of the time. There is no question—I have been told by police officers, by high school counselors—that this legislation would give children an alternative, an alternative to going into the gangs.

So I appreciate this legislation. It is all-American legislation, which is so important for what we want to accomplish in this country. I would hope my fellow Senators will allow this legislation to move forward by voting yea on the motion to proceed.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I yield 2 minutes to the Senator from Oklahoma.

Mr. INHOFE. Mr. President, every once in a while we disagree with the majority leader. In this case, I do. When he says the immigration bill brought us together, it didn't bring us together. Let us remember what happened, though. The immigration bill: We came in on a Monday and expected to vote on a bill that no one had seen until Saturday afternoon. Now, this is another sudden thing upon us, and let us keep in mind this is an amnesty bill. We are talking about people who came to this country illegally, regardless of age.

This says: If you have lived in the United States for more than 5 consecutive years, even though you came in illegally, and if you entered this country at age 16 or before—and you could have been here for as long as 14 years illegally, because they have the cutoff at age 30—then you will be getting a conditional, lawful permanent residence—a green card—for up to 6 years.

What can you do during that 6-year period? During that 6-year period you can actually bring in other members, parents and others, who were brought here illegally in the first place, so they can enjoy that same type of citizenship.

Now, I know I am prejudiced on this issue because I have had the honor of speaking at naturalization ceremonies. When you look at the people who have done it right, done it legally—they have learned the language and the history—this or any other type of an amnesty bill would be a slap in the face to all those who came here legally.

So I would ask the question: When do we learn? We went through this thing before. I know we try to fast-track these things so people will not catch on, but I can assure you, all of America is awake on this one and they know exactly what we are doing. This is another amnesty bill, and I believe we should not proceed to it.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Vermont.

Mr. LEAHY. Mr. President, I wish to commend Senator DURBIN and Senators HATCH, LUGAR, HAGEL, and MENENDEZ for their commitment to this bill. This legislation would allow young people who have grown up in the United

States a chance at stability, and a chance to achieve the American dream by attending college or serving in our military.

I do not believe it is the American way to punish young people for the mistakes of their parents. When these young people have the opportunity to reach their potential by service in our Armed Forces or through higher education, we all win. Opening the door to opportunity, not squandering the potential of young people, is part of what America is all about.

So let us take a first step toward sensible immigration policy and move beyond the rhetoric and give these people a chance of fulfilling the American dream.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial appearing in today's New York Times.

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

[From the New York Times, Oct. 24, 2007]

A CHANCE TO DREAM

The Senate has a chance today to pluck a small gem from the ashes of the immigration debate. A critical procedural vote is scheduled on the Dream Act, a bill to open opportunities for college and military service to the children of undocumented immigrants.

Roughly 65,000 children graduate each year from high school into a constrained future because they cannot work legally or qualify for most college aid. These are the overlooked bystanders to the ferocious bickering over immigration. They did not ask to be brought here, have worked hard in school and could, given the chance, hone their talents and become members of the homegrown, high-skilled American work force.

The bill is one of the least controversial immigration proposals that have been offered in the last five years. But that doesn't mean much. Like everything else not directly involving border barricades and punishment, it has been branded as "amnesty," and has languished.

But this bill is different, starting with its broad, bipartisan support, from its original sponsor, the Utah Republican Orrin Hatch, to its current champion, Richard Durbin, Democrat of Illinois. Repeated defeats have forced Mr. Durbin to pare away at the bill's ambitions. It focuses now on a narrow sliver of a worthy group: children who entered the country before age 16, lived here continuously for at least five years and can show good moral character and a high school diploma. They would receive conditional legal status for six years, during which they could work, go to college and serve in the military. If they completed at least two years of college or military service, they would be eligible for legalization.

These young people—their numbers are estimated at anywhere from a million to fewer than 100,000—are in many ways fully American, but their immigration status puts a lock on their potential right after high school. They face the prospect of living in the shadows as their parents do, fearing deportation to countries they do not know, yearning to educate themselves in a country that ignores their aspirations.

The Dream Act rejects that unacceptable waste of young talent. The opportunity is there, provided the votes are there in the Senate.

Mr. LEAHY. I yield the floor, and I yield the remainder of my time to Senator DURBIN.

The PRESIDING OFFICER. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, many speeches are made on the floor, many amendments are offered, many bills, and many resolutions. Very few of them cause a ripple. A handful of people may follow them closely, a handful of people may care. The DREAM Act is a different thing. The DREAM Act is a bill which I thought about and introduced years ago, and it has finally reached this moment of truth where it comes to the floor of the Senate. The reason why this bill will be noticed is that literally thousands of young people across America know that their fate and future will be determined by this vote.

Yesterday, I had a press conference with three of these young people. A Congressman from the State of Colorado sent out a press release arguing that these three young people should be arrested in the Capitol. Of course, he didn't take the time to determine that they are all here now with the understanding of and disclosure to the Department of Homeland Security. But his press release is an indication of how badly this debate is going in America. To turn on these children and treat them as criminals is an indication of the level of emotion and, in some cases, bigotry and hatred that is involved in this debate.

America is better than that. America is a better nation than what we hear from the likes of that Congressman. What crime did these children commit? They committed the crime of obeying their parents; following their parents to this country. Do you think there was a vote in the household about their future? I don't think so. Mom and dad said: We are leaving. And the kids packed their suitcases and followed. That is their crime. That is the only crime you can point to. What did they do after they got here? To qualify under the DREAM Act, they had to make certain they didn't commit a crime while living in America; they had to have good moral character and beat the odds and graduate from high school. That is the only way they can qualify for this.

Then what do we say? Not enough. If you want to be legal in America, you have to do one of two things: Volunteer to serve in our military, to risk your life for America, and then we will give you a chance to be citizens. But even that is not good enough for some. Some argue, no, we don't want them in our military. We don't need them. Well, the people involved in our military know better. They know these are the kind of bright, promising young people who can serve our country with distinction and they tell us that.

What else could they do? They can pursue their education to show they are serious about making something out of their lives. These are the only two ways they get a chance. That is what the DREAM Act is all about.

I could go for an hour or more with stories of these young people whom I

have met. They are hopeful and heart-breaking at the same time. They are hopeful stories because these are young people who have the same dreams my children have, the same dreams every American child has: to have a good life, a good family, and do something important in their lives. That is all they want.

The young woman from India I met in Chicago wants to be a dentist. The young man from Mexico, who is now pursuing his graduate degree in biomedical science, wants to go into research. A young girl from Texas is a graduate of nursing school but can't find a job because she is a person without a country. Tomorrow's teachers and engineers and scientists. All they are asking for is a chance. That is the hopeful side of it.

The heartbreaking side of it is these are kids without a country. They have nowhere to turn. Tam Tran, who is with us today and who joined me yesterday, has been through an arduous journey, starting in Vietnam, going to Germany, then coming to the United States. Her family can't return to Vietnam and face persecution, and Germany would not have her. She doesn't even speak German. Yet our government tells her: Leave. She graduated from UCLA. She wants to pursue a degree and be a professor.

Leave. We don't want you. Is that the message? If it is, it is the wrong message. Because time and again we are told we need talent in America to be a successful and prosperous nation. We are told we need to bring in talent from overseas with our H-1B visas and the H-2B visas. Well, how can we, on one side of the argument, say we need more talent and then turn these children away, turn these young people away? Give them a chance. Give them hope. Give them a chance to prove themselves in this country.

This bill puts them through a long process. It will not be easy. Some will not make it. Most will not make it. But those who do will make this a better Nation. Isn't that what we should be about?

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

Mr. VITTER. Mr. President, I would like to be recognized for 2 minutes, and if you can announce when that time has expired.

The PRESIDING OFFICER. The Senator will be notified.

Mr. VITTER. Mr. President, I think there are millions of Americans all around the country who wish no ill will on these minors whom we are talking about but are sitting at home following this debate, following this procedure, and scratching their heads and saying: Haven't these Members of Congress heard us? Don't they get it? Don't they understand what we have been saying loudly and clearly? Apparently, we don't.

I don't think the message could have been clearer from millions of Ameri-

cans across the country this summer. They said during our debate on the overall so-called comprehensive immigration bill: No, you got it wrong. The enforcement in that bill is inadequate. It has not been accomplished. It is not done. We want that done first. And no, you got it wrong. We do not want amnesty.

Yet, even after that clear, compelling message from the American people, a message so overwhelming it shut down the Senate phone system the morning of the last vote which killed that bill, apparently a whole bunch of folks here still do not get it. They still are not listening. Because this is a bill which has no enforcement but does have clear amnesty.

The American people have no ill will toward these minors we are talking about. But they do have complete confusion with regard to what we are doing—not fixing the problem, making it worse. Inadequate enforcement plus amnesty, that is a recipe for disaster. They know that out of innate common sense. We do nothing to stop the magnet that attracts illegal aliens here because we have little or no workplace enforcement, in particular. Yet we continue with amnesty and other programs.

Please vote no, my colleagues, on proceeding to the DREAM Act.

Mr. GRASSLEY. Mr. President, I am voting against the motion to proceed to the DREAM Act today. Even though I support the end goal of this legislation; that is, to provide children with an education, I do not think the bill is perfect. I would like to see changes made. The bill didn't go through the proper channels and was not approved by the Judiciary Committee. Moreover, the majority leader has indicated that he will fill the tree and prevent the minority from offering amendments to the bill. "Filling the tree" by the majority leader is what this process is called and it freezes me out of offering amendments to improve the DREAM Act. For these reasons, I will oppose proceeding to the bill today.

Mr. FEINGOLD. Mr. President, I strongly support the DREAM Act. This bill would give promising children, who played no part in their parents' decision to come to this country illegally, the chance to earn legal status through college attendance or military service.

Some of my colleagues have suggested that this bill constitutes amnesty. But the term "amnesty" implies that these children did something wrong and are being absolved of the consequences of their actions. It is difficult to imagine how these children can be blamed for actions that their parents took when the children were too young to have any say. The United States does not visit the sins of parents on their children in other contexts and should not do so here. Furthermore, to call the bill "amnesty" ignores the fact that these children would be required to earn their legal status through academic achievement or military service.

The children who would be granted legal status under the DREAM Act are those who have shown through their actions that they can make an important contribution to our country. At a time when our economy and our military are in need, turning these children away squanders a valuable resource. It also leaves these children in a permanent limbo, as many of them have little or no knowledge of the country from which their parents came and have known no home other than the United States.

It serves neither justice nor our national interest to deprive these children of a future and to deprive ourselves of their potential contributions. That is why I support the DREAM Act, and I urge my colleagues to support it as well.

Mr. HAGEL. Mr. President, today, I rise in support of the DREAM Act, introduced by Senators DURBIN, LUGAR, and myself. Each year, thousands of hard-working students who graduate from American high schools are unable to attend college or serve in the military because of their illegal immigration status.

These young people were brought to the United States by adults who were breaking the law. In America, we have never held children responsible for their parents' sins. It is not the habit of the United States to punish children for the actions of their parents. Let's not start now.

Many have been in our country nearly their entire lives, and most have received their primary education here. They contribute to their communities and our country by earning higher education or serving in the Armed Forces. It is in our national interest that they be given the opportunity to do so. These young people were forced into an unfortunate position, which have made them outcasts in our society, yet they have proven their potential and ambition by meeting the several requirements necessary to be eligible under the DREAM Act for legal status. We need more young people to contribute to our country, not less.

The DREAM Act would make it possible to bring these young people out of shadows and give them the opportunity to contribute, work, and pay taxes—giving back to the communities in which they were raised.

The DREAM Act is not amnesty. It is a narrowly tailored piece of legislation that would help only a limited, select group of young people earn legal status. This is not an incentive for more illegal immigrants to enter our country. To be eligible for legal status under the DREAM Act, you must have good moral character, have graduated from an American high school, entered the country under the age of 15, and have been in the United States for at least 5 years. There is an end date to the DREAM Act.

The current system punishes children for the mistakes of their parents. The DREAM Act will provide a legal path

for undocumented students to pursue the American dream based on their own accomplishments and hard work.

Immigration is a very complicated and difficult issue, for many reasons. Partly because we have deferred this issue for years. We have refused to take a responsible position on all the different aspects of immigration reform—including the DREAM Act.

Obviously border security is the core, the beginning of immigration reform. I am not aware of any Senator who has questioned or contested that point. In July, the Senate approved \$3 billion in funding for border security and immigration enforcement—totaling \$40.6 billion in overall funding for homeland security. From fiscal year 1993 to fiscal year 2006, the budget for the Border Patrol has tripled from \$362 million to \$1.6 billion.

That is not the debate. The debate, of course, resides around the difficult issues, the 11 to 12 million illegals now in this country. The debate elicits great and deep emotions and passion—and it should. We were sent here to deal with the great challenges of our time, to resolve the issues, find solutions, not go halfway. That is leadership.

Currently, we have provided no leadership for the American people. We have not had the courage to deal with it because it is political, because it is emotional, because it cuts across every sector and every line of our society. It is about national security. It is about autonomy and our future. It is about our society, our schools, our hospitals. That is difficult.

Who are we helping with the current situation that we have today? People stay in the shadows, we don't collect taxes, we don't have the complete involvement in communities that we have always had from our immigrants. There is a national security element to this. There is a law enforcement element to it, and there is certainly an economic element to it. Are we really winning? No, we are losing. We are losing everywhere.

You can take pieces of each and pick and choose which might make you more comfortable politically, but it doesn't work that way. It is all wrapped into the same enigma. It is woven into the same fabric. That is what we are dealing with.

It is leadership to take on the tough issues. Immigration is one of those issues which tests and defines a society. It tests and defines a country. And the precious glue that has been indispensable in holding this country together for over 200 years has been common interests and mutual respect. I don't know of an issue that is facing our country today that is more important, that is framed in that precious glue concept more precisely than this issue. Crafting something for the future, for our history, for our children, and for our society—that is what it is about.

The PRESIDING OFFICER. Who yields time?

Mr. MCCONNELL. Mr. President, I don't know whether I am in control of time or not, but how much time is left on this side?

The PRESIDING OFFICER. The Republican side has 5 minutes 47 seconds.

Mrs. HUTCHISON. Mr. President, parliamentary inquiry: How much time is left on the other side?

The PRESIDING OFFICER. The majority side has 3 minutes 3 seconds.

The Republican leader is recognized.

Mr. MCCONNELL. Mr. President, I want to proceed on my leader time and preserve the remainder of time on this side for Senator SESSIONS.

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

Mr. MCCONNELL. Mr. President, earlier this year, a bipartisan group of Senators took up the issue of illegal immigration. It was clear from the debate that ensued that there are deeply held beliefs on both sides. It was also apparent that this is not a problem with a simple solution; it is one that requires time and consideration.

And to live up to the expectation of our constituents, it seemed clear to me that Congress must take steps to secure our borders and provide for our national security first. The Senate seemed to get the message, because it voted overwhelmingly in July to dedicate \$3 billion in emergency spending to help promote our border and interior security.

I am disappointed my colleagues on the other side of the aisle are not continuing on the bipartisan path of enhancing our security. Instead, they are bringing up a controversial issue with the DREAM Act. This bill is an attempt to put illegal immigrants who graduate from a U.S. high school or obtain their GED on a special path to citizenship.

Though I recognize and appreciate the tremendous contributions to our country made by generations of immigrants, I do not believe we should reward illegal behavior. It is our duty to promote respect for America's immigration laws and fairness for U.S. citizens and lawful immigrants.

The DREAM Act fails that test and I will oppose it.

This is not an issue that can be solved in one day, and there are pressing matters which we must address.

Here we are, 4 weeks into the new fiscal year and we have yet to send a single appropriations bill to the President's desk. We should be focused on funding our troops in the field, ensuring our intelligence forces have the tools they need to find and catch terrorists, and holding the line on budget-busting spending bills.

The Internet tax moratorium expires in exactly 1 week. Unless we act soon, Internet users across the country will be hit with yet another tax.

And we still have yet to see any plan for addressing the looming middle class tax hike known as the alternative minimum tax. Secretary Paulson told Congress that we must act by early November if we don't want to see 50 million taxpayers ensnared in a confused

filing season next year. This deadline, too, is just around the corner.

We still have an enormous amount of work to complete, and we are running out of time.

I urge my colleagues to oppose this attempt to bring up a divisive issue, further delaying the essential, unfinished, business of the Congress.

The Senate has more than enough to do without also tackling issues that divide both this body and the Nation.

Mr. President, I wish to extend my time just 1 more minute.

It has been made clear to me in discussions that this will not be an open amendment process if we get on the bill. It is my understanding that the tree will be filled up, which, of course, would put the majority in control of deciding what amendments, if any, are offered. So this is not going to be an open debate, as far as I can tell.

Maybe the majority would decide to bless some amendment on this side and allow a vote on it. I guess that is possible. But for the balance of the people on this side of the aisle, on my side of the aisle, the Republican side, I want them to understand that even if we get cloture on the motion to proceed, there is certainly no guarantee that this will be an open process that will allow a broad array of amendments.

I yield the floor.

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

Mr. MCCONNELL. I yield to the Senator from Texas.

Mr. CORNYN. Mr. President, I appreciate the comments made by the distinguished Republican leader with regard to the process we can anticipate and the fact that the majority leader has indicated he will fill the amendment tree, blocking any ability of any Senator, both on this side of the aisle and the other side of the aisle, to offer amendments to improve the bill or perhaps add other provisions that cry out for some remedy.

I ask the distinguished Republican leader whether the types of amendments or suggestions that have been discussed informally would include things like adding a requirement of securing the borders and having an enforceable system at the worksite, or a trigger, before any other provisions like the DREAM Act would be considered or implemented; whether it would also consider—for example, we know that in the agricultural sector there is a lot of concern about a shortage of workers—whether there would be an ability to provide an amendment which would allow for not a path to citizenship but for a temporary workforce to satisfy that need in the agricultural sector; or, for example, in places like Texas that are fast growing States, whether there may be an opportunity to offer any amendments that would provide for a temporary worker program—not a path to citizenship—that would satisfy the legitimate needs of American business? Are those going to be precluded under the plan by the majority leader?

Mr. MCCONNELL. Mr. President, I say to my friend from Texas, I don't know for sure, but the way the process will work—we have seen it before under majorities of both parties—is the majority leader has the ability to fill up the tree and then deny any amendments or pick amendments. Only the majority leader would be able to answer the question whether an amendment dealing with workplace enforcement or an amendment dealing with border security or, in the case of this Senator, an amendment dealing with the H-2A agricultural worker program, which is important to my State—all of that would be within the sole authority of the majority leader, who would pick and choose if any amendments were allowed, pick and choose which ones were given a chance to have a vote.

I say to my colleagues here on the minority side, we will have little or no control—or none, no control at all over what amendments would be allowed. It would be entirely controlled by the majority leader.

The PRESIDING OFFICER. Who yields time?

Mr. MCCONNELL. How much time do we have on this side?

The PRESIDING OFFICER. The Republicans have 5 minutes 45 seconds.

Mr. MCCONNELL. I know Senator SESSIONS is seeking time. Is Senator HUTCHISON trying to get some of the time on our side as well?

Mrs. HUTCHISON. Mr. President, I was really trying to have an opportunity to ask Senator DURBIN a question and have a colloquy. I don't want to take from your time on that. I ask if I could have a colloquy with Senator DURBIN on his time?

Mr. DURBIN. Mr. President, there has been some conversation here about procedure. If you would be kind enough—if the minority side will allow me 2 minutes for a colloquy with Senator HUTCHISON, and I would offer the same 2 minutes—

Mr. MCCONNELL. Would that be off the time of the Senator from Illinois?

Mr. DURBIN. No, no. I asked consent for an additional 2 minutes. I have 3 minutes remaining, so it would be a total of 5 minutes, 2 minutes for a colloquy with Senator HUTCHISON and myself, and I would extend 2 minutes to the time of the minority side.

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

Mr. DURBIN. Unless the Senator from Alabama or Pennsylvania wants to speak, I would enter into a colloquy with Senator HUTCHISON at this point?

Mr. SESSIONS. Mr. President, I have no objection to that. I assume it is a colloquy—but I would not want to concede that rather small amount of time remaining on this side.

Mr. MCCONNELL. We would lose no time, as I understand it. We would end up, actually, with more time, 7 minutes, which will allow the Senator from Alabama to have 5 and the Senator from Pennsylvania to have the remain-

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, during the course of preparing this bill for the floor, I have been working on both sides of the aisle. I hope the vote in a few minutes will evidence that. I have had a constructive conversation with Senator HUTCHISON of Texas and Senator MARTINEZ of Florida and others about modifications of the DREAM Act. I believe the proposals they have made in principle are positive proposals that move us toward our goal.

I say to the Senator from Texas, and I certainly am going to open this to her comments when I finish, it is my intention to offer a substitute amendment as the first amendment that is brought forward by the majority, a bipartisan amendment with Senator HUTCHISON which will achieve our mutual goals. I hope we can reach that agreement in the next 30 hours, after this motion prevails. Failing that agreement, the minority is protected because it will require another cloture vote, another 60-vote margin before this bill moves forward.

So they have my word to work in good faith on the substitute bipartisan amendment. Failing that, their protection is a cloture vote which they could join in defeating.

I yield to my colleague from Texas if she has any comment or question.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, I appreciate what the Senator from Illinois has said because I do believe there is a compromise approach to the DREAM Act that could have bipartisan support. As has been mentioned on the floor, there is no opportunity that has been laid out for a substitute to be considered. But the Senator from Illinois has given me his word. I have been working on something that I think would take us on the right path. This is such an important piece of legislation, and I do think this is isolated from the entire immigration issue because there—

The PRESIDING OFFICER. The Senator's 2 minutes has expired.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent for 1 additional minute on both sides.

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

Mrs. HUTCHISON. Mr. President, there are young people who have been brought to this country as minors, not of their own doing, who have gone to American high schools, graduated, and who want to go to American colleges. They are in a limbo situation. I believe we should deal with this issue. We should do it in a way that helps assimilate these young people with a college education into our country. They have lived here most of their lives. If we sent them home, they wouldn't know what home is. There is a compassionate reason for us to try to work this out. But I will say, if we cannot work on a bipartisan amendment, we

will have another vote, as has been promised. I will vote against the Durbin bill. But if we can work on a bipartisan solution, we should try.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, how much time is left on this side?

The PRESIDING OFFICER. The Republicans now have 8 minutes 47 seconds.

Mr. SESSIONS. Mr. President, I yield 4 minutes to Senator SPECTER, please.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I believe that the DREAM Act is a good act, and I believe that its purposes are beneficial. I think it ought to be enacted. But I have grave reservations about seeing a part of comprehensive immigration reform go forward because it weakens our position to get a comprehensive bill.

Right now, we are witnessing a national disaster, a governmental disaster, as States and counties and cities and townships and boroughs and municipalities—every level of government—are legislating on immigration because the Congress of the United States is derelict in its duty to proceed.

We passed an immigration bill out of both Houses last year. It was not conferred. It was a disgrace that we couldn't get the people's business done. We were unsuccessful in June in trying to pass an immigration bill. I think we ought to be going back to it. I have discussed it with my colleagues.

I had proposed a modification to the bill defeated in June, which, much as I dislike it, would not have granted citizenship as part of the bill, but would have removed fugitive status only. That means someone could not be arrested if the only violation was being in the country illegally. That would eliminate the opportunity for unscrupulous employers to blackmail employees with squalid living conditions and low wages, and it would enable people to come out of the shadows, to register within a year.

We cannot support 12 to 20 million undocumented immigrants, but we could deport the criminal element if we could segregate those who would be granted amnesty only.

I believe we ought to proceed with hearings in the Judiciary Committee. We ought to set up legislation. If we cannot act this year because of the appropriations logjam, we will have time in late January. But as reluctant as I am to oppose this excellent idea of the Senator from Illinois, I do not think we ought to cherry-pick. It would take the pressure off of comprehensive immigration reform, which is the responsibility of the Federal Government. We ought to act on it, and we ought to act on it now.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. SESSIONS. Mr. President, I yield myself 4 minutes. I yield Senator DEMINT the remaining time.

The PRESIDING OFFICER. The Senator may proceed.

Mr. SESSIONS. The Executive Office of the President of the United States, OMB, has issued a veto threat on this bill and said they will veto it because they believe it is not part of comprehensive reform, as Senator SPECTER said. They also go forward to note a number of specific problems with it.

They note that we:

[M]ust be careful not to provide incentives for recurrence of the illegal conduct that has brought the Nation to this point. By creating a special path to citizenship that is unavailable to other prospective immigrants—including young people whose parents respected our Nation's laws—S. 2205 falls short.

They go on to note:

This path to citizenship is unavailable to any other alien, no matter how much promise he or she may have, no matter how much he or she may contribute to American society.

They note that it would:

[A]llow illegal aliens to obtain a green card before many individuals who are currently lawfully waiting in line.

They note that they can:

[P]etition almost instantly to bring family members into the country.

By the way, it would be 1.3 million people admitted under this program, according to the Migration Policy Institute, a fair and objective—certainly not a conservative group, I will say it that way.

They go on to note that the persons would be “eligible for welfare benefits within 5 years.” The bill would be indiscriminate in who it would make eligible for the program through certain loopholes:

Certain aliens convicted of multiple misdemeanors and even felonies.

They note that it would be vetoed. So that is President Bush who has been strongly favoring immigration reform. I have disagreed with him consistently on many of his ideas.

Let me make mention of a couple of things that are fundamentally important. Most importantly, individuals are not going to take the military route. I would estimate at least 90 percent would take the option of just 2 years of college without any requirement to have to attain a degree.

I submit this will strike a dagger, most importantly, in the heart of the decided will of the American people which is to create a lawful system of immigration. It would put illegals ahead of legals. It will make clear that even after our national debate and vote a few weeks ago, the Congress still does not get it; that the Congress is still determined to stiff the will of the decent majority of American citizens; that the Senate will move forward with an amnesty bill that puts 1.3 million people on a swift and guaranteed path to citizenship, ahead of millions who applied and are waiting in line lawfully, to give them every right of citizenship this country has to offer.

That is what I think amnesty is, giving every single right that we have to

offer to someone as a result of illegal conduct. So before—and this is important—before we make any real progress toward a lawful system of immigration, we have less than 100 miles of the 700 miles of fencing this Congress called for. There is no workplace enforcement. A modest attempt to do something like that has been blocked by the courts, and nothing has been followed up. There has been little or no—

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. Mr. President, I ask unanimous consent for an additional 30 seconds?

The PRESIDING OFFICER. Without objection, the Senator may proceed.

Mr. SESSIONS. I will just conclude by saying, this would be the wrong direction. This would be to signal that, once again, we are focused on rewarding illegality rather than taking the steps necessary to create a lawful system, and at that point we can more fairly go to the American people and ask them to consider what to do in a compassionate way for those here illegally.

I yield the remainder of the time to Senator DEMINT.

The PRESIDING OFFICER. The Senator from South Carolina has 1 minute.

Mr. DEMINT. I appreciate the motives of those who sponsored the bill. It is true that by us not enforcing our laws over many years we have created a lot of tragic circumstances. But the solution is not to reward lawbreaking and create incentives for more illegal immigration in the future.

America has asked us to secure our borders, create a worker ID system, and an immigration system that works. If we do this, if we build that foundation, then the possibility of comprehensive reform becomes a reality.

I would encourage my colleagues not to chip away in the way of trying to provide compassion through amnesty, but let's fix the system like we promised and revisit this next year. Then, hopefully, we can achieve the comprehensive reforms that my colleagues have talked about. I urge my colleagues to vote against proceeding to this bill.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DURBIN. How much time remains?

The PRESIDING OFFICER. There is 3 minutes 8 seconds remaining.

Mr. DURBIN. Mr. President, what are we talking about? We are talking about children. We are talking about children who are brought to this country by their parents. Since when in America do we visit the sins and crimes of parents on children?

If a parent commits a crime, does that mean the child goes to prison? If a parent disqualifies himself or herself from American citizenship, does that mean the child can never have a chance? Is that what America has come

to amidst the confusion and distortion and vitriol on this debate on immigration, children such as Marie Gonzalez? She was brought to this country from Costa Rica by her parents at the age of 5. Her parents have been deported as illegals. Because I have made a special request, she has been allowed to continue to finish her college education at Westminster College in Missouri. Her goal is to be an American and to give to the only country she has ever known. Costa Rica is not her country; America is her country.

What we are talking about is turning these children out. And what sin, what crime did they commit? They obeyed their parents; they followed their parents. And for some, that is going to be a mark of Cain on their head forever in America. Is that what we are all about? Give these kids a chance. Meet them. Take time to see these children. Many of us have.

And what you will see in their eyes is the same kind of hope for this country we want to see in our own children's eyes, to be doctors and nurses and teachers, engineers, to find cures for diseases, start businesses, the things that make America grow.

Give these kids a chance. Do not take your anger out on illegal immigration on children who have nothing to say about this. They were brought to this country, they have lived a good life, they have proven themselves, they have beaten the odds. We need them.

Do not turn around and tell me tomorrow that you need H1-B visas to bring in talented people to America because we do not have enough. Do not tell me you need H2-B, H2-A, and all of the rest of them if you are going to turn away these children, if you are going to say: America doesn't need you, go about your business, find someplace in the world. Do not come back to me and tell me that we need a bigger labor pool and more talent in America.

How can we say no to hope? How can we say no to these kids when all they want is a piece of the American dream? Please, vote to proceed to the DREAM Act. I will work with Senator HUTCHISON on a bipartisan amendment. We will do our best. I think we can come up with something. Give us a chance. Give these kids a chance.

I yield the floor.

Mr. SESSIONS. Mr. President, I need to correct one statement I made previously. I said the President had issued a veto threat. He does not normally do that on a motion for cloture situation. It was a statement of objection for the bill without an explicit threat of veto.

CLOTURE MOTION

The PRESIDING OFFICER. By unanimous consent, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule

XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 431, S. 2205, DREAM Act.

Richard J. Durbin, Robert Menendez, Daniel K. Inouye, Robert P. Casey, Jr., Joe Lieberman, Patty Murray, Jeff Bingaman, Jack Reed, Patrick Leahy, Charles Schumer, Daniel K. Akaka, Frank R. Lautenberg, Benjamin L. Cardin, John Kerry, S. Whitehouse, Barbara Boxer, Harry Reid.

The PRESIDING OFFICER. The questions is, Is it the sense of the Senate that debate on the motion to proceed to S. 2205, a bill to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents and who entered the United States as children, and for other purposes, shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from California (Mrs. BOXER), the Senator from Connecticut (Mr. DODD), and the Senator from Massachusetts (Mr. KENNEDY) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KENNEDY) would vote "yea."

Mr. LOTT. The following Senator is necessarily absent: the Senator from Arizona (Mr. MCCAIN).

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

The result was announced—yeas 52, nays 44, as follows:

[Rollcall Vote No. 394 Leg.]

YEAS—52

Akaka	Hagel	Mikulski
Bayh	Harkin	Murray
Bennett	Hatch	Nelson (FL)
Biden	Hutchison	Nelson (NE)
Bingaman	Inouye	Obama
Brown	Johnson	Reed
Brownback	Kerry	Reid
Cantwell	Klobuchar	Rockefeller
Cardin	Kohl	Salazar
Carper	Lautenberg	Sanders
Casey	Leahy	Schumer
Clinton	Levin	Snowe
Coleman	Lieberman	Stabenow
Collins	Lincoln	Webb
Craig	Lott	Whitehouse
Durbin	Lugar	Wyden
Feingold	Martinez	
Feinstein	Menendez	

NAYS—44

Alexander	DeMint	Murkowski
Allard	Dole	Pryor
Barrasso	Domenici	Roberts
Baucus	Dorgan	Sessions
Bond	Ensign	Shelby
Bunning	Enzi	Smith
Burr	Graham	Specter
Byrd	Grassley	Stevens
Chambliss	Gregg	Sununu
Coburn	Inhofe	Tester
Cochran	Isakson	Thune
Conrad	Kyl	Vitter
Corker	Landrieu	Voinovich
Cornyn	McCaskill	Warner
Crapo	McConnell	

NOT VOTING—4

Boxer	Kennedy
Dodd	McCain

The PRESIDING OFFICER. On this vote, the yeas are 52, the nays are 44. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader is recognized.

MORNING BUSINESS

Mr. REID. Mr. President, I now tell all Members, I have had a conversation with the distinguished Republican leader, and we are going to make a decision in the next hour or so as to what we are going to go to next. We were planning, of course, to go to this legislation. Cloture on the motion to proceed was not invoked. We have a number of things we are talking about, and we will make that decision this afternoon.

Mr. President, I now ask unanimous consent that the Senate proceed to a period of morning business, with Senators allowed to speak therein for a period not to exceed 10 minutes each.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CALIFORNIA WILDFIRES

Mrs. FEINSTEIN. Mr. President, either my colleague Senator BOXER or I have updated the Senate each day on the California wildfire situation. Senator BOXER is in California now, and I believe the President is as well. I wish to give a brief update to the Senate.

So far, this is the largest evacuation of people in California history. It is the largest evacuation in the United States since Katrina. San Diego remains the worst of the burning regions.

As of this morning, the President has approved individual assistance programs that will allow FEMA, the Federal Emergency Management Agency, to make payments for rental assistance, home repair, and pay for some home replacement costs.

As soon as the fires die down and the wind in places is easing, FEMA will set up centers. I urge Californians, who have been evacuated from their homes, who have had their homes partially

burned or burned to the ground, to go to FEMA centers and see what assistance is available to you.

This morning, on television, I heard a family speak. I think they are from Escondido. I think they have a few acres—12. They had a home. They have children. The home was burned down, but the father said: We have fire insurance.

Then I heard of another family, with four young children, and no fire insurance. The father has no relatives in the area. Fortunately, the wife has a mother with whom the family will be in the near term. But they said: We don't know what we will do.

For those people who are in the "We don't know what we will do" category, this is the job of FEMA, to be out there, to open those centers, and to offer help and aid to these people.

So please, Californians, use this.

More than 950,000 people have been ordered evacuated.

More than 420,000 acres have burned. That is roughly 656 square miles. If you think of it, it is a huge area.

More than 6,000 firefighters are battling 19 active fires. They range from north of Los Angeles to San Diego, and they have crossed the Mexican border.

More than 1,155 homes have been destroyed and 68,000 are threatened.

Two deaths are reported so far. I believe there are others.

Now, if the winds die down today, we will be able, hopefully, to get a handle on it. The vast bulk of the damage now is occurring in populated areas.

The good news: The canyon fire in Malibu is 75 percent contained.

The bad news: Most of the other fires are uncontained and out of control.

Interstate 5, the main artery between San Diego and Los Angeles, was closed in both directions earlier, near Camp Pendleton, because of smoke. Northeast of San Diego, the town of Julian has been evacuated.

I am particularly concerned about the coming days and the Herculean task of feeding, caring, and providing shelter to hundreds of thousands of displaced Californians. We have more than 10,000 in Qualcomm Stadium, another 2,000 at the clubhouse at the Del Mar Race Track.

The Red Cross is doing great. Thank you, Red Cross. Thank you, Red Cross volunteers. They are manning at least three shelters that I know about, and up to this point food, water, and sanitary facilities have been adequate.

I think there is a lot of food for thought for Californians in what is happening in terms of the future, and perhaps it is too early to begin to talk about it.

I do not think there is any blame to be cast on anyone. I think everyone is responding: the Governor, the mayors, Homeland Security, FEMA, and, of course, the President. I am very grateful for this, and I know I am joined by my colleague Senator BOXER. She will be back tonight, and I know she will have stories to tell on the floor of the Senate tomorrow.

But I think we need to think a little bit in the future, particularly those of us who come from local government. I spent 18 years in local government, 9 as a county supervisor and 9 as a mayor, and there is one thing I know, and that is that local governments control zoning. I think the local governments have to begin to look at their zoning about the siting of new housing developments in floodplains in the northern part of the State, around levees and the siting of large subdivisions in the path of Santa Ana winds in parched, dry areas of the State where these winds blow hard and hot.

In this case, at least up to this point, we believe power lines blew down. The winds were so forceful they actually turned large container trucks on their side, and the fires were so strong and burned so hot that they melted the metal of automobiles so that, literally, nothing was left. It could sweep off of a ridge and within minutes come down that ridge and just devour homes and take pieces of board, which are called embers, and send them a mile or two away to start a new fire.

In San Diego 4 years ago, there was the cedar fire. It destroyed 2,000 homes. And now there is this fire in the same area.

So the question comes: Would local officials be well advised to take a look at zoning codes and to begin to protect areas that are prone to catastrophic wildfire from housing developments?

Secondly, community fire plans. Community fire plans are very good. Communities can come together—they did it in the cedar fire area, and they have done it quite successfully—to be able to establish fire plans: how they keep a fire break from their house, what they can take down, the kind of ground cover they should have, the kind of roof that is fire resistant, the siding that is fire resistant—and actually get some Government help to implement these fire plans. This is now going on in the Nevada Tahoe area and in the California Tahoe area as well.

So I believe very strongly that local officials should exercise their zoning control to see that citizens in the future are protected by staying out of heavily fire-prone and heavily flood-prone areas. I will be having more to say about that in the future.

It is also pretty clear to me that we have to develop some Government-helped catastrophic insurance. I have been very concerned. Allstate Insurance Company pulled out of California, and they pulled out of California because they said: It is catastrophe prone, it is fire prone, it is earthquake prone, and we—Allstate—don't want any part of it. So they are not insuring in California any longer. This must not be allowed to happen. Companies must not be allowed to cherry-pick the United States and only insure areas that are safe and secure and say to other areas: You are on your own.

So we are kind of rethinking this area. I think the State of California,

which has an earthquake authority which helps underwrite insurance in earthquake-prone areas, perhaps should also develop a flood and fire authority where they can enter into the same kind of undertaking. Just think about what it would be like to have four children standing in front of a television camera and saying: My house burned down. With it, all my possessions, all my children's possessions, all our photographs and albums and memories, and virtually everything we held dear, and we have no insurance. Think about it. Think about how you would feel if you were in that situation.

So I think there is going to be a lot of food for thought coming out of these fires in terms of public policy, and I am delighted that my colleague, Senator BOXER, is there, and I look forward to her report tomorrow. I believe we will have much more to say about the public policy that goes into the future for our State and other States that are catastrophe prone.

I will just tell my colleagues one other little story. I received a call a while ago from the head of the San Francisco Fine Arts Museum saying that they had an opportunity to bring two paintings to show in San Francisco from the Met, and the insurance for those two paintings was \$8 billion, just to bring them out for show. Why? Because insurance was being denied because California was a catastrophe-prone area. This is just one other example of what is ricocheting out there under the surface now, and I think this body has to become involved. Any one of us can have a catastrophe. Any one of us can have a major bombing. Any one of us can have a major earthquake, a major flood, or major fires. I think it is up to us to see that we have in place the regulations and the laws that enable people to get the insurance they need on a cost-effective basis to be able to restore their lives and rebuild once again.

I thank the Chair, and I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Is there any pending business?

The PRESIDING OFFICER. We are in morning business, with Senators recognized for up to 10 minutes.

Mr. SESSIONS. Mr. President, I wish to speak in morning business. Before I do, I just want to express my concern and sympathy to Senator FEINSTEIN and the people of California. It has been horrendous. I caught some of it last night, and my wife has been watching it off and on all day. It is a horrifying spectacle to see the power of that fire and the helplessness you face when the winds are right. I think it does, I say to the Senator, indicate, as she has suggested, whether we are talking about hurricanes or earthquakes or fires or floods, we can probably do a better job with policy and reaction to that. I look forward to working with the Senator from California.

DREAM ACT

Mr. SESSIONS. Mr. President, I would like to share a few thoughts on the vote we cast on the DREAM Act. I really believe it was an important issue. It went beyond what some might think in that it dealt with some issues that are important to America, what we are thinking of as a country, and why we need to get the immigration issue correct. We can do it. It is something that is important. But once again, we sort of fell into the trap of focusing on helping to meet what the needs or desires are of people who are here illegally and not focusing on restoring the rule of law to immigration enforcement. So I think the Senate leadership's commitment to moving this legislation would have been a step in exactly the wrong direction. I believe the strong bipartisan vote against it indicates that there remains grave concern about this kind of amnesty proposal, particularly in light of the fact that we have not achieved any significant progress toward enforcement of our laws at the border, at the workplace, and in other areas.

I would just say as a person who has worked on this with some determination in the last several years that I have absolutely come to believe that if we do a series of things, we can create a lawful system of immigration in America. That is important because I think a lot of people think it is just not possible, that nothing we do will work. But that is not true. If we have a good legal system, if we have a good enforcement system at the border, if we make it difficult for people to work, eliminate the job magnet and create a work card, an identification card that is biometric and can't be easily counterfeited, we could see a dramatic return to lawfulness in immigration. That would be so good for America. It would so reduce the frustration and anger that is out there.

As I have said before, I don't think people are angry at immigrants, although some of the people who support these legislative acts that I think have been bad have tried to suggest that the anger which is out there among the American people is directed at immigrants. It is really directed at us. The American people have been requesting for 30, 40 years that we create a lawful system of immigration, and Congress has continued to stiff them—just refused to do it—and talks about it and promises and passes this bill or that bill or this provision or that provision, all the time suggesting that these are going to make a difference. Then, either we don't fund them adequately, so they never really take place, or the bill is a discrete piece of legislation that never has much impact on the overall situation we have confronted and does not do any significant—does not take us in any significant way toward a lawful system.

I hope this strong vote sends a message that this Senate, prior to creating a lawful system of immigration both at

our border and in the workplace, is not prepared to undertake the huge AgJOBS legislation. Senator REID has said he would bring that up again, but maybe this vote will encourage him not to do so.

The DREAM Act, which we just rejected, would have given, in short order, every benefit of citizenship—including citizenship—to 1.3 million persons. The AgJOBS bill that we keep hearing will be brought up will be an additional 3.3 million. So that is a third of the amount of people who would be provided the benefits of amnesty, a third of the number that was in the bill this summer that the American people rejected. The DREAM Act, as I said, would have provided amnesty for over 1.3 million, according to the Migration Policy Institute—not a conservative group. It would give current illegal aliens a financial bonus. They would be eligible for instate tuition, subsidized student loans, and Federal work study.

So if you have a problem with illegality—and I just want to share this with my colleagues; these are not insignificant points I am making—if you are going to create a lawful system of immigration into America, you are going to have to have some sanctions and punishments and prosecutions.

More than that, you absolutely can't give benefits to people who have violated our laws, who have gotten past our borders, and then we start rewarding them with benefits. So a number of years ago, in 1996, we said that if you are a person coming to our country illegally and you were illegally here, you at least shouldn't get instate tuition when you go to college. You ought to not be in a better position than a lawful American who might live a few miles across the State line. That was the deciding vote here. This would have reversed that—not only that; as I said, it would give them subsidized student loans, Stafford loans and other loans, as well as work study benefits. So, as they say, if you are in a hole, the first thing you do is stop digging. If you would like to end and reduce illegal immigration, stop rewarding it, please. That is what we are talking about.

So this bill I think went too far in a number of ways. I was actually pleased that President Bush's administration analyzed it and strongly opposed it and sent us a letter to that effect. So even President Bush, who strongly supports immigration into America and has supported a lot of the legislation here, opposed this bill. I think they were right in doing so.

I would note that under the DREAM Act, individuals, once they have been here 5 years and did 2 years of college without a degree being required—they got 2 years of college—they would then be able to bring their family members.

Some say: Well, they were brought here as a young child and through no fault of their own, and so they ought to be given the benefits of this amnesty. Well, that is not a uniform picture. It

does tug at our heart strings, and we do care about that. It is something we are going to have to deal with sooner or later: how we are going to deal with people who came here a long time ago?

But many people came here at age 15. You only have to be here prior to age 15. Maybe they came and lived with their brothers, sisters, cousins, aunts and uncles, and then they are immediately put on a path to citizenship. They are then able, after that, to become a citizen and to bring their parents or maybe the parents are here. They would also be able to bring in their wife and children, plus bringing brothers and sisters. That is the way the system would work. I think it is not a good process. I am pleased the Senate agreed with that.

I will conclude by making some points about policy and the question of the rule of law in our country. If we are serious about securing our borders, the first thing you do is stop providing benefits to those who come illegally. That is the first and most obvious step we can take. The principle is clear: If there are benefits to breaking the law, people will continue to do it. When you subsidize something, you get more of it. If you subsidize people who are here illegally by giving them student loans and in-State tuition, you will encourage that. You will also send a message that is even more important—that if you can get into America illegally and hold on a few years, you will be rewarded in advance of those who are here legally and are waiting in line.

This is an untenable position for our Nation. A nation that wants itself to be considered seriously, a nation that respects its laws and cares about that must follow through. We cannot abandon our commitment to the rule of law. You have to be consistent. That is what sends the message that builds respect for the law, and not just in the United States, I submit; it would be sending that message and broadcasting that message to the world. If we don't do it, the message we are broadcasting to the world is that if you can bring, send or assist a teenager to come into the United States, the United States will educate them all the way through college—and we do that. We don't require you to be a legal American citizen to go to schools in Alabama or anyplace in America, nor to college. But you are not supposed to get in-State tuition if you are here illegally.

Not only would you be able to carry through with that, but you would be able to, in 5 years, get a permanent resident status, a citizenship, and then you would be able to bring your family in. That is not the right direction, I submit, we should be going in. We don't want to send the wrong message.

The question sort of comes down to, do we have the will to enforce our immigration law? Do we have the will to do it? Will we stand on principle and law and sound public policy? Or will we allow emotion and politics to further erode an already weak immigration

system and further erode the perception that we are serious about creating a lawful system. Passing the DREAM Act today would, in the wake of failed comprehensive reform that we had this summer—if we had done that before we have been able to secure our borders and before we have been able to create a lawful system of immigration, that is not the right way for us to go. It is not. It cannot be gotten around. It sends the wrong message. It will say we have immigration laws but no intent to enforce them. It will send a message that if you break our laws, not only will that be forgiven, but you will be put at the head of the line and you will be financially rewarded for it.

That is not what we have to do to create a lawful system. The rule of law in this country is important. I was a Federal prosecutor for almost 15 years. I was attorney general of Alabama. I have worked with law enforcement all my professional life. I remember distinctly talking with law enforcement officers about the sale of marijuana in neighborhoods. Sometimes local police would say: You know, these are small amounts of marijuana and we cannot focus on the small cases. We only focus on the dealers. That was a mindset a lot of police departments had. They discouraged that. I would tell them that, in effect, if you take that policy, you have legalized the sale of marijuana in that neighborhood. Not only that, you have created an unlawful system in that neighborhood and you will have created violence and instability that adversely impacts the good and decent people who live in that neighborhood. You cannot do that.

You see, there are moral and legal and practical consequences of having a legal system that is not enforced. It adds up. That is what we have done in immigration. We have looked the other way and denied it is happening, and we have let people with special interests dominate the debate and we have talked about making the system lawful, but we have never done it. That is why the American people are not happy with us. We have not been trustworthy. We have not been reliable. We have not. If we would get this system right, we could do a lot better job about making it work in an effective way. The American people want us to do that.

I have to tell you, why do people want to come to America? They think they can make a better life here. If there has been crime and instability and theft and abuse and unfairness in the system that was in the place they came from, they feel like if they come to America and they have a problem here, they can go to court and they will be protected and they can make money and build assets and people will not come and steal it from them. They can leave something for their children and they can work hard and send their children to college and they will be able to do even better. That is why they want to come here. It is all found-

ed on the rule of law. The reason we are a unique nation—and you know that great hymn that says our liberty is in law—is that our legal system has made us great, prosperous, and free.

I don't think it is a good policy that we allow millions of people to come to our country in violation of our law. I think that sends a wrong message to them and undermines the very legal system that makes the country so attractive. I remember in the debate, Senator GRASSLEY, who is a direct speaker, a farmer from Iowa and now the ranking member on the Finance Committee, made a speech. He said he was here in 1986 as a Member of this body. He remembered the debate. During those debates, it was said that in 1986 this would be amnesty, but it is the last time, we would never do it again. He said: Let me ask you why nobody this time, in this debate, a few months ago this summer, is saying we will not have anymore amnesty again. Why are people not saying that? He said the answer is obvious. If we had amnesty in 1986, and 20 years later we have it again, nobody with a straight face can stand up before the world or the American people and say that we would not have amnesty after this one, that this is going to be the last one. How silly is that? We said that a few years ago.

So this is not a small matter. What principle can you utilize to say to a young person, or any other person who came into our country illegally today, 10, 15 years from now—what principle can you articulate as to why they should not be given amnesty when we gave it to people today? You see, this is a matter of seriousness. It cannot be ignored. I feel strongly about that. I want my colleagues to know our country needs to create a lawful system of immigration. Once that is accomplished and the American people feel comfortable about that, we can think about a way, I believe, that would be effective and compassionate for those who are here today and that is rational and that we can defend. I don't believe we can defend that today, when our system is not working.

I see my time has expired. I will wrap up and say I think we did the right thing in this vote today. Hopefully, we will continue to work toward a lawful system of immigration and, if we do that, a lot of things will become possible in the future that are not possible and appropriate and should not be done today.

I ask unanimous consent that a Statement of Administration Policy that opposes the DREAM Act, which we rejected a short while ago, be printed in the RECORD.

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

STATEMENT OF ADMINISTRATION POLICY—S. 2205, DEVELOPMENT—RELIEF, AND EDUCATION FOR ALIEN MINORS ACT OF 2007

The administration continues to believe that the Nation's broken immi-

gration system requires comprehensive reform. This reform should include strong border and interior enforcement, a temporary worker program, a program to bring the millions of undocumented aliens out of the shadows without amnesty and without animosity, and assistance that helps newcomers assimilate into American society. Unless it provides additional authorities in all of these areas, Congress will do little more than perpetuate the unfortunate status quo.

The administration is sympathetic to the position of young people who were brought here illegally as children and have come to know the United States as home. Any resolution of their status, however, must be careful not to provide incentives for recurrence of the illegal conduct that has brought the Nation to this point. By creating a special path to citizenship that is unavailable to other prospective immigrants—including young people whose parents respected the Nation's immigration laws—S. 2205 falls short. The administration therefore opposes the bill.

The primary change wrought by S. 2205 would be to establish a preferential path to citizenship for a special class of illegal aliens. Specifically, S. 2205 awards permanent status to any illegal alien who is under 30, has been in the United States for five years after arriving as a child, and has completed two years of college or in the uniformed services. This path to citizenship is unavailable to any other alien, no matter how much promise he or she may have, no matter how much he or she may contribute to American society. Moreover, the path that S. 2205 creates would allow illegal aliens to obtain a green card before many individuals who are currently lawfully waiting in line.

Sponsors of S. 2205 argue that the bill is necessary in order to give children who are illegal aliens incentives to obtain an education. But it is difficult to reconcile that professed aim with the bill's retroactivity provisions: even those who attended college years earlier will be eligible for a green card.

The legal status that the bill grants its beneficiaries means that they can petition almost instantly to bring family members into the country. It also places them on the fast track to citizenship because they can immediately begin accruing the residence time in the United States that is necessary for naturalization. Finally, this legal status entitles the bill's beneficiaries to certain welfare benefits within 5 years.

The bill is also indiscriminate in whom it would make eligible for the program. For example, S. 2205 includes loopholes that would authorize permanent status for certain aliens convicted of multiple misdemeanors and even felonies.

The open-ended nature of S. 2205 is objectionable and will inevitably lead to large-scale document fraud. The path to citizenship remains open for

decades, thus creating a strong temptation for future illegal aliens to purchase fraudulent documents on a burgeoning black market. Moreover, the bill's confidentiality provisions are drawn straight from the 1986 amnesty law and will provide the same haven for fraud and criminality as that law did.

Immigration is one of the top concerns of the American people—and of this administration—but it needs to be addressed in a comprehensive and balanced way that avoids creating incentives for problems in the future.

The PRESIDING OFFICER. The Senator from Ohio is recognized.

Mr. VOINOVICH. Mr. President, I ask unanimous consent that I be allowed to speak for 30 minutes as in morning business.

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

FISCAL HEALTH OF THE NATION

Mr. VOINOVICH. Mr. President, I rise today to comment on the sad state of the appropriations process, as well as our long-term fiscal health. The new fiscal year began 23 days ago, and we are debating appropriations bills that haven't even passed the Senate yet, as Government agencies operate on temporary, stopgap funding. When we Republicans were in the majority, we consistently failed to enact all of the appropriations bills before the end of the fiscal year. We enacted short-term continuing resolutions, or CRs, to keep agencies funded while we wrapped several of those bills into an end-of-the-year omnibus bill.

After the Democrats won control of the Senate, I sincerely hoped they would fulfill their promises to manage the budget better. But while the party in power has changed, the results have stayed the same. In fact, the results, so far, have been even worse. Fiscal year 2008 has already started, and we have enacted exactly zero appropriation bills.

Government-by-CR has consequences. Agencies cannot plan for the future. They cannot make hiring decisions. They cannot sign contracts. As a result, we get more waste and inefficiency from Government. We get lower quality services provided to the people. At the end of the day, we get higher spending and less accountability and oversight of the taxpayers' money.

On September 23, the New York Times reported that our failures could have a devastating effect on cancer research because scientists are waiting around to hear if they will receive grants for their innovative research ideas. The same article quoted a transportation industry representative as saying our failure could have major implications for anyone who rides in cars, trucks, trains, buses, and subways. If you want more examples of how Congress's failure to do its job on time affects ordinary Americans, I invite you to visit my Web site, where I provide several additional examples.

That is why a bipartisan group of Senators agree that we need to adopt biennial budgeting by the Federal Government, such as I had as Governor of Ohio, so Congress can get its work done on time while also conducting the oversight necessary to ensure that programs and agencies are functioning effectively.

Senator DOMENICI has been a leader on biennial budgeting for years. We should adopt it during this Congress and name it the Pete Domenici Biennial Budgeting Act as part of Pete's legacy to this country.

Putting aside our short-term failures and focusing on our long-term problems, in January I introduced the Securing America's Future Economy, or SAFE Commission Act, legislation that would create a bipartisan commission to look at our Nation's tax and entitlement systems and recommend reforms to put us back on a fiscally sustainable course and ensure the solvency of entitlement programs for future generations.

I commend two of my colleagues, the Budget Committee chairman from North Dakota and the ranking member from New Hampshire, for recently introducing a bipartisan bill that would create a tax and entitlement reform task force very similar to my SAFE commission. In fact, I saw them on CNBC recently talking about it. The only major difference is that Senators CONRAD and GREGG require every congressional appointee to be a sitting Member of Congress, whereas the SAFE commission would include outside experts. I have signed on as a co-sponsor of the Conrad-Gregg proposal, and I am pleased to learn they intend to hold a hearing on the bill in the very near future. I look forward to working with them to get the bill passed.

I also commend Democratic Congressman Jim Cooper of Tennessee and Republican Congressman FRANK Wolf of Virginia who introduced a bipartisan SAFE commission bill in the House of Representatives. I have been working with Congressman WOLF for more than a year on this proposal, and I welcome Congressman COOPER's decision to join us.

This bipartisan, bicameral group has support from corporate executives, religious leaders, and think tanks across the political spectrum, from the Heritage Foundation to the Brookings Institution, and former Members from both parties, such as former Senators Warren Rudman and Bob Kerrey, and former Congressmen Bill Frenzel and Leon Panetta.

Our entitlement programs are creaking under the strain of an aging society and runaway health care costs. Our Tax Code is imploding from the hundreds of economic and social policies that Congress pursues through tax incentives and from the dozens of temporary tax provisions that wreak havoc on families and businesses trying to plan their affairs.

Neither our major entitlement programs nor our Tax Code are sustain-

able in the current form. The appropriations bills that we are debating this week are shrinking as a share of the budget as entitlements crowd out domestic discretionary spending. We must come together and develop a bipartisan consensus to fix these systems so our children and grandchildren can enjoy prosperity and increasing standards of living.

I want to share with my colleagues some extraordinary numbers that reveal our Nation's looming fiscal crisis. I speak out of concern not only for our generation but also for our children and our grandchildren. They are going to bear the burden of reckless fiscal policies.

Sir Edmund Burke, the father of conservative thought, said:

Society is . . . a partnership not only between those who are living, but between those who are living, those who are dead, and those who are to be born.

Unless we change course, we will break that partnership with those who are yet to be born. This grave situation can be addressed only through hard bipartisan work, and we must begin our work now, for every day we wait, the solutions become more painful.

In the simplest of terms, the Federal Government continues to spend more than it brings in. Running up the credit card for today's needs and leaving the bill for future generations should not be the policy of this country, this Congress, or this administration. It represents a recklessness that threatens our economic security, our global competitiveness, and our future quality of life. The Federal Government has become the biggest violator of credit card abuse in the world.

Comptroller David Walker has said:

The greatest threat to our future is our fiscal irresponsibility.

He added:

America suffers from a serious case of myopia, or nearsightedness, both in the public sector and the private sector. We need to start focusing more on the future. We need to start recognizing the reality that we're on an imprudent and unsustainable fiscal path, and we need to get started now.

Everyone in this great body should heed Comptroller Walker's warning.

Our commitments to the war on terror, to securing our borders, to educating our workforce, and to investing in our Nation's infrastructure demand tremendous resources and require long-term financial commitments. At the same time, we cannot ignore the demographic tide that will soon overwhelm our resources. We need a system for raising the revenues necessary to fund these priorities that does as little damage to the economy as possible. In short, the need for tax reform and entitlement reform has never been greater. A historical perspective helps to highlight the gravity of our current situation.

The fiscal year 2007 budget deficit was \$163 billion, but that figure hides the true degree to which our fiscal situation has deteriorated, mainly because it uses every dime of the Social

Security surplus, as well as surpluses in other trust funds, to hide the true size of the Government's operating deficit. The Social Security surplus, however, must be reserved for future retirees. As far as I know, you cannot spend the same money twice, but Congress keeps pretending that it can.

If you wall off the Social Security surplus so Congress cannot spend it on other programs, as I believe we should do, then the Government's operating deficit more than doubles to \$344 billion, not \$163 billion. And if you add back the money the Government is borrowing from other trust funds, such as Federal employee pensions, the deficit explodes to \$441 billion, almost triple the reported deficit.

In other words, we are hiding from the public how much we are borrowing because we don't tell them about the money we are borrowing from trust funds. As a result, they see these numbers, such as the \$163 billion, and they think things are getting better, but we are hiding the fact that we are spending every dime of these trust funds to keep the Government going.

The annual difference between revenues and outlays is not what is truly threatening our future. It is the cumulative, ongoing increase in our national debt that matters.

Remember, in 1992 when Ross Perot ran for President and he showed us those frightening fiscal charts? Well, I have my own charts, and I call these charts my Halloween charts. I call them that because, No. 1, the Government's new fiscal year starts in October and, No. 2, because the fiscal picture is terrifying.

Fifteen years ago, when Ross Perot was sounding the alarm, the national debt was about \$4 trillion. He showed a chart projecting that by 2007, the debt would increase to \$8 trillion. Well, guess what. As of 2007, the national debt stands at almost \$9 trillion. Ross Perot's doomsday predictions turned out to be too rosy. In the more than 200 years that have passed between the Declaration of Independence and Ross Perot's 1992 campaign, the U.S. Government accumulated \$4 trillion in debt. We have now added even more than that in the last 15 years.

This Congress has acknowledged that it will pass right by \$9 trillion. A few weeks ago, Congress very quietly voted to allow the national debt to increase by another \$800 billion, from about \$9 trillion to \$9.8 trillion.

What does that mean, \$9 trillion? How do we even fathom that number? For one thing, it represents two-thirds of our entire national economy, the worst number in 50 years. For another thing, it means that each man, woman, and child in the United States owes \$30,000 of the Federal Government's debt. I want my colleagues to think about these young people, the pages here today. All of you, every one of you, owe \$30,000 on the debt we have accumulated.

That \$30,000 only represents the debt racked up by the Government in the

past. Because we continue borrowing more than we bring in, that number is increasing every single day. And those numbers pale in comparison with the budget problems looming in our future as the baby boom generation begins to retire just 69 days from now, on January 1, 2008. In fact, just last week, the first baby boomer applied for Social Security retirement benefits. Reality is setting in that this is not just a far-off prediction. It is a growing storm that threatens to overwhelm our economy if we do not act now.

Perhaps even more concerning is that 55 percent of the privately owned debt is held by foreign creditors, mostly foreign central banks. That's up from 35 percent just 6 years ago. Foreign creditors provided more than 80 percent of the funds the United States has borrowed since 2001, according to the Wall Street Journal.

And who are these foreign creditors? According to the Treasury Department, the three largest holders of U.S. debt are China, Japan, and the OPEC nations. Borrowing hundreds of billions of dollars from China and OPEC puts not only our future economy, but also our national security, at risk. It is critical that we ensure that countries that control our debt do not control our future.

If after hearing all this, one still thinks this is a problem that exists only in the distant future, consider recent projections by the major credit rating agency, Standard & Poor's. For decades, U.S. Treasuries have been considered the risk-free investment against which the risks of all other investments are judged. A good place to invest, our Treasuries. In fact, the global financial system is largely based on the notion of U.S. Treasuries as the only risk-free investment out there.

But in just 5 years, that will cease to be true. According to Standard & Poor's, U.S. Treasuries will lose their triple-A credit rating in 2012 because of the Government's deteriorating long-term fiscal position. Don't think that the world markets aren't looking at what we are doing in the United States. What kind of global economic turmoil awaits us 5 years from now when the U.S. Government is considered as risky as a typical corporation? What happens if the foreign banks decide they are going to move their money out of the United States and send it somewhere else? And what economic catastrophe awaits our children and grandchildren in 2025 when Standard & Poor's projects that U.S. Treasuries will be classified as junk bonds?

Why do we refuse to see the warning signs? A decade ago, who ever would have imagined that the Canadian dollar would be worth just as much as a U.S. dollar? A few years ago, the Euro was worth 83 cents. Now it is worth \$1.42. Meanwhile, our trade deficit has gone through the roof as we Americans are forced to borrow the money we need to buy foreign products.

What is driving this train wreck? Certainly additional revenues have to

be part of the solution. But this is not a problem that will be solved simply by reaching deeper into the American people's pockets. Many colleagues are familiar with Pete Peterson, former Commerce Secretary. He made it clear that "The minute you start looking at a tax increase as the primary solution, you're confronted with tax increases that are clearly beyond anything anyone can imagine."

Even the Democratic chairman of the Budget Committee has acknowledged that most of the heavy lifting will have to be done on the spending side. Revenues will be on the table for sure, but the coming storm will require significant changes to entitlement programs.

Here are some numbers that help put this situation in perspective. Forty years ago in 1967, Social Security, Medicare, and Medicaid made up only 3 percent of the GDP. In 2007, their cost has tripled as a share of the economy to 9 percent. The Congressional Budget Office projects that over the next 40 years, this number could double again to 18 percent, a frightening thought when we consider that in 2006 total federal revenues accounted for only 18 percent of GDP. It reminds me of when I was Governor of Ohio. I called Medicaid the Pac-Man in Ohio.

Well, today I would refer to entitlements as the Pac-Man in terms of our national finances. If entitlement spending continues on this path, we will be required to use every cent of our Federal revenue to fulfill these entitlement obligations. Our grandchildren will have no money for national defense, energy security, education, the environment, or our infrastructure. And, they'll look back at our generation and ask how we could be so reckless with their futures.

Our Nation faces one of the most competitive environments in its history, and the question is, in this new world of global competitiveness, will future generations be able to enjoy the same standard of living we are experiencing? Will my kids, will my grandchildren be able to enjoy the same standard of living I have enjoyed? Will they have the opportunity for the same quality of life? With the largest national debt in 50 years, will we be able to remain competitive with foreign economies?

Congress must view our Tax Code, entitlement system, and the budget process as three components or pillars of the Nation's fiscal foundation, and not as separate problems. Each is linked to the other two pillars, and we must reform all three to raise the necessary revenue to fund the Government in an economically efficient manner, to keep our obligations to future generations, and to keep the size of Government to a manageable level.

We must enact fundamental tax reform to help make the Tax Code simple, fair, transparent, and economically efficient. According to the President's Advisory Panel on Federal Tax Reform, headed by former Senators Connie

Mack and John Breaux, only 13 percent—think of this, only 13 percent—of taxpayers file without the help of either a tax preparer or computer software. Since enacting the Tax Reform Act of 1986, over 15,000 provisions have been added to the Internal Revenue Code.

It is not just a matter of saving taxpayers' time and effort. This is about saving real money. The Tax Foundation estimates that comprehensive tax reform could save Americans as much as \$265 billion a year in compliance costs associated with preparing their returns. Now, that would be a real tax reduction that wouldn't cost the Treasury one dime.

Mr. President, I have been working on tax reform for years. In 2003, I attached an amendment to the Jobs and Growth Tax Relief Reconciliation Act that would have created a blue ribbon commission to study fundamental tax reform. The amendment was adopted by voice vote but later removed in conference. Then, in the autumn of 2004, I offered my tax reform commission amendment again, this time to the American Jobs Creation Act. The Senate again adopted my amendment. During conference negotiations, the White House contacted me and requested I withdraw my amendment because the President was preparing to take a leadership role by appointing his own tax reform panel. I enthusiastically agreed to defer to his leadership, and I withdrew my amendment. It seemed to me that the tax reform bandwagon was finally starting to roll.

In January 2005, President Bush announced the creation of the all-star panel headed up by former Senators Connie Mack and John Breaux, and that panel spent most of the year engaging the American public to develop proposals to make our Tax Code simpler, fairer, and more conducive to economic growth. In November of 2005, the panel issued its final report. While not perfect in everyone's mind, the panel's two plans provided a starting point for developing tax reform legislation that would represent a huge improvement over the current system. The panel's proposals belong as a key part of the national discussion on fundamental tax reform.

Tinkering with the current Tax Code won't get it done. Tinkering is what has got us in this mess in the first place. It's time to rip the Tax Code out by its roots and replace it with something that works.

The President's panel had a number of great ideas that we should incorporate into tax reform legislation. For example, we should simplify the code by repealing the complex, unfair, and antigrowth alternative minimum tax. We should consolidate all the various tax-preferred savings plans into just two or three plans that average workers and families can understand and utilize. We should scale back the tax subsidies that we use to pursue social engineering and dictate economic pol-

icy, forcing Americans who fail to qualify for tax breaks to pay higher rates to make up the lost revenue.

We must create a tax system that is conducive to job creation and economic growth. We should start by addressing one of the biggest problems with the current code, and that is it rewards moving production overseas. We are taxing our exports heavily and taxing our imports lightly. Such a system sounds absolutely perverse, but that's what we have in the United States.

In fact, a constituent of mine, Tom Secor, from Norwalk, OH, who owns his own small business, came to my office and told a story about a business trip he made to China. He said he saw an editorial in a Chinese newspaper that was discussing the concerns of Americans about Chinese competition. The conclusion of the editorial was that Americans could solve most of their problems with Chinese competition if they would just reform their own Tax Code. Imagine that, even Communist China knows the United States needs tax reform to stay competitive. But for some reason we refuse to learn that lesson ourselves.

We must also understand that unless we do tax reform, the lower marginal rates, the lower capital gains taxes, the lower taxes on dividends will evaporate and we will have gained nothing in regard to fundamental tax reform and entitlement reform. And I think such reform, folks, must take into account our failure to pay for the Iraq war. This administration will have to explain why they are leaving us holding the bag and why they did not keep their promise for tax reform. They promised us.

I know there is bipartisan support in this chamber to move forward on fundamental tax reform. Some of our colleagues have already taken steps towards developing legislation that would represent a huge improvement over our current system. As I already mentioned, we have Senator GREGG and we have Senator KENT CONRAD who want to get going, so we should endorse the approach they want to take and submit legislation that Congress could consider under fast-track procedures. The proposal basically is to appoint eight Democrats and eight Republicans, including two top administration officials, and it would require a three-fourths vote for submitting a proposal to Congress.

In other words, they do their work, and if three-fourths have said this is what we want to do for tax reform and entitlement reform, we have to vote on it up or down. That is really important because you can't ask some of our colleagues to spend that kind of time on tax reform and entitlement reform and not guarantee them that if they agree on something, they will get a vote on it.

Some say to me: George, it is too late to do something. Well, it is not. And I think of Bill Bradley. Bill Bradley, in 1982, came up with a tax reform pro-

gram. It took 4 years, but it was adopted in 1986. In other words, Ronald Reagan, working with Congress, reformed the Tax Code in 1986, and President Reagan is still fondly remembered as the leader who set the stage for years of prosperity at the end of the 20th century. He worked on a bipartisan basis. I think this President really has an opportunity to do something in regard to this. I think the President and the administration should say to Congress: Everything is on the table. No holds barred. I will sit down with you, and I will work on it. And you know what. Maybe we will not get it done, but at least we will start it. We will let the American people know that we understand that tax reform and entitlement reform is fundamental to the future of our country. What a nice legacy for our President, to at least say he got into the game and did something about it and didn't say you guys worry about it; it is your problem.

Mr. President, the time to act is now. When you look at the numbers, it is self-evident we must confront our swelling national debt; that we must make a concerted bipartisan effort to reform our tax system, slow the growth of entitlement spending, and halt this freight train that is threatening to crush our children and grandchildren's future.

Right now, in my lifetime, where I am at this stage, what I am worried about is the kids of America. I am worried about my grandchildren and other people's grandchildren. What is the legacy that we are going to leave those children and grandchildren? I don't know about my colleagues, but I am worried. I am really worried. I am worried about whether we are going to develop the infrastructure of competitiveness so those kids can compete in that global marketplace.

It is in our hands. Folks back home sent us here to take on the tough problems and make the tough decisions and do what is right for our country.

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.

THE PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. 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 DREAM ACT

Mrs. MURRAY. Mr. President, our Nation was built on the belief that no matter where we start from in life, we all have a shot at the American dream. I, for one, am very proud of this reputation, and I believe it is one we should continue to promote and maintain. Unfortunately, Mr. President, somewhere along the way, amid politics and rhetoric, the belief that we

should now turn our backs on certain children in our communities has gained a voice.

Mr. President, I am here on the floor of the Senate today because I believe we need to make sure that America remains a country of opportunity for all children, no matter where they come from, no matter what language they speak at home, and no matter what obstacles they have to overcome. Earlier today in the Senate we had a chance to pay more than just lipservice to the idea of opportunity for all. Unfortunately, a few Members of this body didn't think it was an American priority.

I still believe in the DREAM Act and its power to not only give hope to many today but to make our country stronger in the future. In fact, we can still give hope to many by passing the Development, Relief and Education for Alien Minors Act. This DREAM Act was narrowly tailored bipartisan legislation that would give a select group of undocumented students the chance—the chance—to become permanent residents if they came to this country as children, are long-term U.S. residents, have good moral character, and attend college for at least 2 years or enlist in the military. Certainly, Mr. President, those are criteria that all of us would be very proud of.

Senator DURBIN previously brought up the DREAM Act as an amendment to the Defense authorization bill to address critical manpower shortages that are facing our military forces. Under the DREAM Act, tens of thousands of well-qualified potential recruits would become eligible for military service for the first time. These are young people who love our country and are eager to serve in the Armed Forces during a time of war. The DREAM Act would add a very strong incentive to enlist because it provides a path to permanent legal status.

The DREAM Act would also make qualified students eligible for temporary, legal immigration status upon high school graduation that would lead to permanent residency if—if—they attend college.

Mr. President, critics of this amendment would have you believe this is simply a matter of politics. Well, it is not. This is about real people, and I want to tell you about one of them. Recently, the *Seattle Times*, a newspaper in my State, featured the story of a young woman named Maria who has lived in the United States illegally since her parents brought her here at the age of 5. Maria completed high school in my home State of Washington. She did really well and was an active member of the student body. In fact, she was elected class officer 3 years in a row. Maria was accepted to the University of Washington. She graduated with a high GPA and honors in her department of study.

Maria is now in her second year of law school, and to quote the *Seattle Times*:

By all rights, save one, she should have the world by the tail. But she is dogged by the questions: When she graduates, will she be able to take the bar exam? Will she be able to keep helping low-income people as she's done during her internship this summer with a non-profit legal-aid corporation?

"The DREAM Act is my only hope," Maria said in the article. "I hope and I pray for it."

Isn't Maria exactly the type of young person in whom we should be investing? She studied hard, she got good grades, she has served her school, she has served her community, and now she wants to continue to serve her community and our country—the only home she has ever known.

It is not Maria's fault that her parents brought her to America when she was 5 years old. It is not Maria's fault that Congress has not yet passed the comprehensive immigration reform we clearly need. But it is the thousands of Marias out there who are living the consequences. We do need comprehensive immigration reform, but we also need a Government that invests in our children and understands that the face of the American dream is not just one class or one race or one religion. Our Nation is filled with young people who love this country, have beat the odds, and whom we should be investing in. We will reap the return we invest.

The reason I know that is from personal experience. When I was young, growing up in a family of nine, I thought my family was doing fine. I knew we didn't have a lot of money. But my dad was stricken with multiple sclerosis when I was a young teacher. All of a sudden, seven young kids under the age of 16 didn't know if they would ever be able to go to college, didn't know if they would ever even be able to graduate from high school or how they were going to face the future.

Because this country was there for them and we had student loans and Pell grants and a country that said: We are there with you, all seven of those children graduated from high school and graduated from college. Today, this country has a Microsoft employee. They have a lawyer who works very hard. They have a young mom who stays home with her two kids. They have a newspaper reporter who follows sports around the country. They have an eighth grade teacher who has taught now, for 25-plus years, eighth grade students. And they have a U.S. Senator. That is a pretty good investment by our country for those seven kids who thought they had lost their hope. That was my family.

I know what it is like to lose hope, and I know what it is like to have hope behind you when your country steps in. That is what we are talking about with the DREAM Act—young kids out there who are just looking for a country to be behind them, who have the skills, who have the capability, who are willing to be a part of this country, to give back if they could.

This is a real issue which touches real communities and real people

across our country. I actually got a letter from the superintendent of the Lake Chelan School District in north central Washington. I wish to read what he wrote. He said:

Each year I watch students who have worked hard to be successful during high school struggle to continue their education after graduation because of their immigration status. These students are an important part of America's future and we must give them the opportunity to further their education, contribute to society, and help build the American dream for generations to come. Allowing these young people to flourish is not only fair to them, but it also adds value to our country's rich, vibrant, and diverse culture. They deserve that opportunity to succeed regardless of the outcome of the current immigration debate.

I couldn't agree more. I think it is important that we remember that this debate is not just about immigration. It really is about what type of country we want to be. It is about what we stand for. It is about what type of future we want to build.

It is pretty easy to get caught up in the specifics of the policies we debate. But I encourage all of my colleagues to not lose sight, today, as we struggle with this difficult debate, of the bigger picture, because this debate touches nearly every aspect of American life, from our economy to our security, from our classrooms to our workplaces. Most importantly, it speaks about our values.

I received a letter recently from a high school senior named Victor. Victor lives in Walla Walla, a small town on the Washington-Oregon border. Victor wrote to me and he said:

I came to the U.S. when I was 10 years old. My most difficult and only challenge I faced since I came to the U.S. is education. I came to this country not knowing a single word of English, therefore I had to learn it as fast as I could. I was held back a grade and put into English as a Second Language classes. It took me about a year to learn it well enough to where I was able to be in classes with native speakers.

I am currently part of the National Honors Society and I also take part in fall and spring sports. I have been accepted to the University of Washington and three other Washington universities. . . . My plans are to go to the University of Washington and get a degree in computer science.

Unfortunately, I come from a low-income family, making it hard for me to make further plans about my education. Currently the federal government will not help with any financial aid to any noncitizen in the United States. How do you expect us to improve ourselves and succeed in this country?

I would like to ask my colleagues how they answer Victor's question, how they expect our Nation to continue to be one of hope, one of opportunity, if we close down our children's future rather than handing them the keys to success. All of our children should have the opportunity to become more successful than their parents, and none of them should be punished for their parents' decisions.

We have thousands of dedicated, motivated, and gifted students who have been forced into the shadows through

no fault of their own. Like Victor, like Maria, they have beaten odds many of us could never even imagine, and they want to serve now and contribute back to America's future. It would be our mistake to say no.

I hope my colleagues will reconsider their votes today. I hope they will say yes to the DREAM Act and yes to a richer, stronger, more vibrant American dream for all of us, for generations to come.

Mrs. CLINTON. Mr. President, more than 65,000 immigrant students will graduate from U.S. high schools this year only to see the doors of opportunity closed to them. These are gifted and highly motivated children who grew up in the United States. For these children, many of whom arrived to this country as babies, America is the only home they know. They speak English fluently, and for many it is their first and only language. Many have never even visited the country of their birth. They have been educated in our public school system. They have stayed in school and stayed out of trouble. These kids are honor students, team captains, student body presidents, and valedictorians.

Many would like nothing more than to contribute to the only country they have ever known as home. But for these children, because of their immigration status, they are often effectively barred from pursuing a post-secondary education and reaching their full potential. Through no fault of their own, they are forced to live in the shadows and denied their chance at achieving their God-given potential.

What are we saying to these hard-working students? Well I will tell you. We are saying they are not welcome in the only country they have ever known. We are telling them to go back to another country they often know little about, where they may not speak the language or understand the culture. These are children caught at a crossroads, and rather than providing them with an opportunity, we are holding them accountable for the actions of their parents.

That is not the America I know.

There is a solution to this crisis, but, sadly, the Senate today failed to act. The DREAM Act—which I have proudly cosponsored for several years—would help expand opportunities for our Nation's immigrant children. For those students who have grown up in the United States, have demonstrated good moral character, and are pursuing a college education or have enlisted in the military, the DREAM Act will provide an opportunity to earn legal status in this country.

There are many good reasons to enact the DREAM Act. In today's 21st century economy, where a post-secondary education is quickly becoming the minimum requirement for higher earning jobs, we need to provide the children in our country with every opportunity to achieve academically, both for their benefit but also for the

benefit of our society. The DREAM Act would also strengthen our Nation's military readiness, allowing these well-qualified young men and women to serve their country with honor. But most importantly, the DREAM Act ensures that the promise of the American dream becomes a reality for all our children.

I am disappointed that the Senate failed to pass the DREAM Act. The enactment of this legislation is long overdue, and I will continue to fight for its passage, for all of our children and our Nation.

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

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

Mr. DURBIN. Mr. President, I ask consent to speak as in morning business.

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

Mr. DURBIN. Mr. President, I thank my colleagues for their remarks that were just concluded on the DREAM Act and for the vote in support of it. It is interesting to me that those who have taken no time to meet the students who were involved in this issue come away with a much different feeling. Once this goes beyond cliches and inflammatory rhetoric that you hear in what passes for entertainment—television and radio—and you actually sit down and hear these life stories, you just can't help but have your heart touched by them. It happened to me a long time ago, 6 years ago, and it continues to happen to me. But, unfortunately, we didn't have the votes. We had 52 votes when we needed 60. In the Senate, 60 votes is a threshold requirement.

I thank the 11 Republicans who voted with me. I will tell you, it took some courage for them to do it. It is not an easy vote for anybody. It is surely not an easy vote for them when the vast majority of their colleagues are going the other way.

I also thank the 41 Democrats who stood by me. Some of them did it with pain in their eyes, thinking about: Now I have to go home and explain this one. I understand that. I thank them for doing that.

After you have been around Capitol Hill for a few years—and I have—you try to put things in perspective about your public service. I don't believe there are many, if any, who come to the Senate with the ambition of retiring. Most of us come here with the ambition of doing something important for our Nation and serving our Nation. There reaches a point sometime in a career where risks have to be taken for important things to happen. What I did today was no great risk. I will probably

hear about it back home, and I already have a little bit, but I will just say in the course of our history the important things that have occurred here in this Chamber have involved political risk and controversy—whether it is a question of voting on war or voting on issues involving civil rights and human rights. It is rare that you find a great issue that makes a career that everybody agrees with.

I say to my colleagues who joined in this effort today, thank you from the bottom of my heart, but thanks also to the thousands of young people across America who continue to follow this debate and follow this issue so closely. The toughest part was not standing in the well and being told that I lost with only 52 votes; the toughest part was walking up those stairs and facing 3 of the kids in my office. I didn't quite know what to expect. These young people have been through a lot, through no fault of their own.

One young man whose stepgrandfather failed to file the appropriate documents is 20 years old. A few years ago, he was arrested and detained in jail over Christmas and New Year's. How is that for a high school graduation present, to be told that you are illegal and subject to deportation?

Another young woman—her parents were outed as being illegal and deported. I pled with the Department of Homeland Security to let her stay in school and finish her college degree, and they have allowed her to do that. I hope they will continue to. But she doesn't know where she is going from here. She has lived in the United States since she was a very young girl and this is her country, this is where she wants to be.

Another one is literally a young woman without a country. A refugee from Vietnam, she went to Germany and then came to the United States. Vietnam is not a safe place for her to return to, and Germany doesn't want her. She is without a country. She has a bachelor's degree and no place to turn.

I didn't quite know what to expect when I went up to see them after this disappointing vote, and they greeted me with smiles and encouragement. It is great to work around young people; they have such determination and energy, and they are not going to let anything get them down. It made me feel better, and I am glad we did it even though we weren't successful. It renewed my commitment to this issue.

I am not going to quit. I don't know when the next chance will be. I know we have a busy schedule, and Senator REID was kind enough to give me the chance today for a vote, but this is an idea whose time will come because it is an idea based on justice and fairness. To think these young people would see their lives ruined because their parents were undocumented, because their parents brought them to this country, to think we would turn them away from America, saying we don't need any

more electrical engineers, we don't need any more teachers and nurses and doctors—no, we know better than that. We need them. We need all of them, and their strength makes us a stronger Nation.

So the day will come, and I hope soon, when we will have a chance for those who follow the debate so closely and to those who understood their fate was in the hands of the Senators who voted this morning.

Do not give up. We have not given up yet and you should not give up. We are going to keep pursuing this. We are in a sad and troubling moment in American history when the issue of immigration is so divisive. But let's be honest, it has always been divisive. There have always been people saying: No more immigrants, please, in this nation of immigrants.

Immigrants have to play by the rules. They have to follow the law. I understand that. But let's not turn our back on our heritage as a nation. The strength of America is its diversity. The fact that we come from the four corners of the world to call this place home, the fact that our parents and grandparents had the courage to pick up and move, rather than to be content with a life of mediocre opportunity—those are the people who made America, those are the ones who defined who we are. It is why we are special in this world, if we are, and I think we are.

We cannot let these young people go. We cannot afford to let them go. For those several of the Senators today who stuck their necks out a mile, a political mile to cast this vote, I thank you from the bottom of my heart, and these DREAM Act kids thank you too. The American dream will be there some day, and we will keep working until it happens.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

IRAQ

Mr. FEINGOLD. Mr. President, last week marked the 5-year anniversary of President Bush's signing the Congressional resolution that authorized him to use military force in Iraq. That resolution has proved to be a disaster for our country, opening the door to a war that has undermined our top national security priority, the fight against al-Qaida and its affiliates.

More than 5 years after the authorization of war, America is mired in a conflict that continues to have no end in sight. Nearly 4,000 of our soldiers have died and more than 27,000 have been wounded. Hundreds of thousands of Iraqi civilians have been killed, if

not more, and at least 4.5 million have been displaced from their homes. The region is more unstable, and our credibility throughout the international community has been significantly damaged.

We have spent over a half trillion dollars and stretched our military to the breaking point. Who knows how many more billions will be spent and how many brave Americans will die while the President pursues a military solution to problems that can only be solved by a political settlement in Iraq.

At the same time, al-Qaida has reconstituted itself along the Afghanistan-Pakistan border region and has developed new affiliates around the globe. Al-Qaida has been strengthened, not weakened, since we authorized military action against, and then want to war in, Iraq.

Indeed, this senseless war has made us more vulnerable, not more secure. Yet it continues endlessly with only a small token drawdown of forces expected in the coming months, and no timeline from this administration as to when more troops will come home.

The American people know this war does not make sense. They expect us to do everything in our power to end it. Now that does not mean neglecting domestic priorities, and there are plenty of those to address, but it does mean we cannot, in good conscience, simply put Iraq on the back burner. We cannot simply tell ourselves and our constituents we have done everything we could. Finding the votes to end this war is not an easy task, but for the sake of the country, we must keep trying. I, for one, am not prepared to say, in late October, with weeks to go before we adjourn for the year, that Iraq can wait until we come back in 2008. Believe me, the administration and its supporters would like nothing better than to change the subject from Iraq. Every time we insist on debates and votes on Iraq, they complain loudly that we are taking time away from the country's true priorities. But as we were reminded last November, however, ending the disastrous Iraq war is one of the American people's top priorities. It may well be their top priority, and we owe it to them to make it our top priority as well.

While the administration continues to refuse to acknowledge that we have severely strayed off course, the war drags on and on, and more brave American soldiers are being wounded or killed. But it is not only the President and his administration that is at fault; many of my colleagues here in Congress have expressed concerns about the war but refuse to take real action to end it. They have prevented Congress from acting to secure our country and restore our global leadership.

I will not stand idly by while this mistaken war continues. I will continue working to end this war and bring our troops home. I will continue looking in the days and weeks ahead for opportunities to debate and vote on

ending the war, this year, and, if necessary, next as well.

My colleagues may complain, they may be inconvenienced, they may prefer to focus on other matters. But this Congress has no greater priority than making right the mistake it made more than 5 years ago when it authorized this misguided war.

I do not want to have to come to the floor again in a year to mark another anniversary of the war's authorization, and to again implore my colleagues to act. I do not want the American people to lose faith in their elected leaders for pursuing a war they rightly oppose. I do not want more American troops to be killed for a war that does not serve our national security interests.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

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

The PRESIDING OFFICER. We are in morning business.

ALTERNATIVE MINIMUM TAX

Mr. WYDEN. Mr. President, this country is headed toward a total meltdown on taxes. I am going to spend a few minutes this afternoon to talk about how that can be cooled off for a bit.

Yesterday, Treasury Secretary Paulson warned that unless the Congress acts within the next month on the alternative minimum tax, up to 50 million households, more than a third of all taxpayers, could be clobbered with new taxes. Congress has known for some time that unless the alternative minimum tax is addressed, 23 million taxpayers would be hit with the double whammy of having to calculate their taxes twice, and typically pay a higher tax bill.

First, they are going to have to do their taxes using the regular 1040 form; then they will have to calculate their taxes using the alternative minimum tax, which has a completely different and more complex set of forms.

Having to do your taxes once is bad enough. On average, that takes something like 15 to 30 hours, depending on whether a taxpayer is itemizing. But having to do your taxes is simply bureaucratic water torture.

Yesterday's announcement by Treasury Secretary Paulson revealed that twice as many taxpayers as previously estimated could be put in bureaucratic limbo by the alternative minimum tax and face delays in processing their returns and getting a tax refund. The problem is going to get worse and worse each year, as more and more tax-paying Americans are dragged into the alternative minimum tax parallel universe of tax rules, because the tax law is now stuck in a time warp.

It was never indexed for inflation. If Congress does not act, an estimated 30 million taxpaying Americans are going to be hit by the alternative minimum tax double whammy in 2010.

The Congress has not been able to get ahead of the problem. It is simply, at this point, trying to keep the problem from getting worse. Each year, the cost of even the so-called temporary patch to keep the AMT from clobbering more persons goes up. This year it will cost \$55 billion to preserve the status quo. The next year the cost will go to \$80 billion. Over 10 years the cost is an astounding \$870 billion.

The Senate Finance Committee, on which I serve, is trying to find a way to pay for a 1-year fix. Senators are working in good faith in a bipartisan fashion, but there is not a huge pot of money out there to pay for a \$55 billion patch for the alternative minimum tax.

I will be working with my colleagues on a bipartisan basis to look at every conceivable possibility to come up with the money for 1 year of alternative minimum tax relief. But certainly the Congress ought to start, and start now, to find a clear path out of the budgetary haze. I think that path and all roads that the Congress ought to be looking at should lead to comprehensive tax reform in our country.

This week the House Ways and Means chairman plans to unveil his proposal that would repeal the alternative minimum tax as part of a larger tax reform effort. Over the summer, Treasury Secretary Paulson called for corporate tax reform.

Ways and Means Chairman RANGEL has indicated he is going to look at the issue of corporate reform as part of broader legislation he wants to consider. But I think there is an opportunity now, if the administration would engage the Congress on tax reform, and there is a model. The model is one where a Republican President, Ronald Reagan, worked with the Democratic Congress to achieve historic reform in 1986. It was based on a simple set of principles. Those principles were: It ought to be possible for everybody in our country to get ahead. It ought to be possible for people who work for a wage and people who make money through investments to get ahead.

It was a system that kept progressivity so that there was a sense of fairness for all Americans. It was a system based on cleaning out a lot of unnecessary tax breaks, clutter in the Tax Code, in order to finance reform.

That is what I have proposed to do in legislation that I call the Fair Flat Tax Act. I believe there are real opportunities for bipartisan reform, starting with the issue of tax simplification. In our Fair Flat Tax Act we have a 1-page 1040 form, something like 30 lines long.

President Bush had a tax reform commission that looked at reform. Their simplification process involved a form that was something like 34 lines long. For purposes of Government work, that is about the same thing. We could get a bipartisan agreement on tax simplification, if the President engaged the Congress fairly quickly. Certainly, the other issues will take a

great deal more thought and involve more complexity, but I have been asking witnesses who come before the Finance Committee their views about tax reform. These are experts who come from across the political spectrum. They share widely differing views. But of the witnesses who came to the Finance Committee, 19 out of 20 witnesses agree with my fundamental premise that the model of 1986, holding down rates for everybody, keeping progressivity and financing it by getting rid of loopholes and breaks, those witnesses all said the 1986 model, put together by the late President Reagan and Democrats in Congress, is still a model that makes sense for today.

One of the witnesses even said:

Baseball fans remember the moment when Babe Ruth pointed at the stands and hit a home run, and tax geeks remember the 1986 Act with similar relish.

Like the 1986 act, I start with simplification, as I have outlined. Then I look to make the Tax Code flatter to make sure that instead of six individual brackets, we would have perhaps three. I start with the rates Ronald Reagan started with, but I am not wedded to those particular rates. Ronald Reagan and Bill Bradley and others in 1986 looked at something in the vicinity of 15 and 28 percent. The point is, if Members of this body, working with the President on a bipartisan basis, want to get into this, it would be possible to look at comprehensive tax reform now. The alternatives, as the Senate sees how difficult it is to fix the alternative minimum tax and deal with various proposals as it relates to investment and hedge funds, strike me as nowhere near as appealing as dealing with comprehensive tax reform.

Many have raised the question of the issue of the differential treatment between work and wealth. It is a fact that the cop walking the beat today who makes their money on wages pays taxes at a significantly higher rate than somebody who makes their money from investments. That is a fact that ought to trouble all Americans. What we ought to be trying to do is not pit those two against each other but look at an approach such as the one pursued in 1986 so that all Americans have a chance to get ahead. That is what we are about as a nation, not pitting one group of people against another. We want people who work for a wage to have a chance to get ahead as well as pay for necessities for their families. We all understand how important investment is at a time when we face great economic challenges globally. The fair flat tax of 2007 seeks to try to ensure that all Americans would have an opportunity to get ahead and provides real relief to the middle class through fewer exclusions, exemptions, deductions, deferrals, credits, and special rates for certain businesses and activities and through the setting of one single flat corporate rate.

On the individual side, the fair flat tax ends favoritism for itemizers while

approving deductions across the board. The standard deduction would be tripled for standard filers from \$5,000 to \$15,000 and raised from \$10,000 to \$30,000 for married couples. As a result, the vast majority of Americans would be better off claiming the standard deduction than having to itemize their deductions, so filing will be simplified for all Americans. We also keep the deductions most used by middle-class families, as Ronald Reagan and Bill Bradley and others who worked so hard in 1986 did. We protect the home mortgage interest break, the one for charitable contributions, and the credits for children, education, and earned income. But nobody would have to calculate their taxes twice under the Fair Flat Tax Act.

The alternative minimum tax would be eliminated. This is particularly important right now as citizens look at the challenges they are going to face next year.

What makes the Fair Flat Tax Act unique is it also corrects one of the most glaring inequities in the current tax system; that is, regressive State and local taxes. Under current law, low and middle-income taxpayers get hit with a double whammy once again. Compared to those who are more fortunate, they pay more of their income in State and local taxes. Poor families pay more than 11 percent, and middle-income families pay about 10 percent of their income in State and local taxes, while more fortunate individuals pay only about half. Because many low- and middle-income taxpayers don't itemize, they get no credit on their Federal forms for paying State and local taxes. In fact, two-thirds of the Federal deduction for State and local taxes goes to those with substantial incomes. Under the Fair Flat Tax Act, for the first time the Federal code would look at the individual's entire tax picture, their combined Federal, State, and local tax burden, and give credit to low and middle-income individuals to correct for regressive State and local taxes.

What this all means—and we had Jane Gravelle and her excellent team at the Congressional Research Service work on these numbers—is that the typical middle-class family with wage and salary income up to approximately \$150,000 a year would see tax relief in a way that would not cause the Federal Government to lose revenue.

Finally, by simplifying the code, there are other benefits. With a simpler system, it would be harder for individuals to take advantage of the system and easier for the Internal Revenue Service to catch those who do cheat. At present, there is a tax gap between taxes owed and collected of over \$300 billion per year. Chairman BAUCUS and Senator GRASSLEY have done yeoman's work on this issue. I believe the Fair Flat Tax Act can make, in addition, a significant dent in dealing with the tax gap, raising a significant amount of revenue from a source that would not

increase taxes. The Fair Flat Tax Act, as it relates to the tax gap issue, is a win for all Americans except for those who have been cheating the system.

I am obviously aware that the clock is ticking down on this session of Congress. Certainly, by early next year, in the thick of a Presidential election, something such as this is daunting. But it is time for Congress to get started now on what witness after witness after witness in the Finance Committee is saying; that is, the urgent need, after scores of tax changes, to get about draining the swamp.

To give you an idea of what the numbers are with respect to tax changes, the latest analysis shows we have had something akin to 15,000 tax changes. That comes to three for every working day. Even regional IRS offices, according to practitioners I talk to, cannot agree among themselves as to how to apply this increasingly complicated Tax Code.

It is time to get started. The Bush tax cuts expire in 2010. Certainly, that is going to cause additional confusion and chaos for taxpayers. With the problems the Congress is wrestling with now, such as the immediate crunch of the alternative minimum tax and with the hammer poised to come down in 2010 with all the other expiring tax laws, there is a strong incentive for members of both political parties to come to the table and get to work on tax reform.

I hope colleagues will look at the Fair Flat Tax Act as a way to start the debate. I don't consider it the last word on this extraordinarily important subject, but I hope we can begin the debate now.

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

The PRESIDING OFFICER (Mr. CARDIN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LOTT. 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. LOTT. Mr. President, what is the order of business at this time?

The PRESIDING OFFICER. We are in morning business.

Mr. LOTT. Until what time?

The PRESIDING OFFICER. There is no time limit.

AMTRAK

Mr. LOTT. Mr. President, while we are in this morning business period and in anticipation of going to the next legislation, I wish to make some opening comments about what happened here and make a plea to my colleagues on both sides of the aisle, but particularly my own side of the aisle, that we not object to going to consideration of Amtrak legislation.

I have been working on this issue for several years now. I think it is an important issue. It is an important part

of our transportation system in America. I believe that for the future development of our country, for the mobility of our country, for the creation of jobs, the maintaining of jobs, for safety, security, and access, we should pay attention to infrastructure in America, and lanes, planes, trains, ports, and harbors. This is critical to our future economic development and to our American lifestyle.

I have been working for years to upgrade and improve the Federal Aviation Administration, the air traffic control system so we can have less congestion in the airways and fewer delays, and modernization. We are still working on that. We did get FAA reauthorization a few years ago. Now it is back up but, unfortunately, stalled right now. We did pass a highway bill a few years ago that had many good things in it. But here is my point: You can only build so many lanes until you can't build any more. You can only have so many planes in the sky until you can't have any more. So what is the other alternative? Trains.

Now, I am not from a State that is hugely dependent on the rail passenger system. We get some of the benefits of it. But part of the problem is we don't have enough access, enough opportunities in that area, or we have delays and problems such as that. Why do we have delays? Because we haven't modernized the Amtrak system. Because we have not worked through the Transportation Department to put in some reforms, decide what is needed in terms of money, and how to get more capitalization. We haven't done the reforms.

I was pleased to be involved the last time we did some Amtrak legislation. That was several years ago. I stood right in this very spot and told my friend JOHN MCCAIN from Arizona if it didn't work and if Amtrak didn't do a better job, I would eat it without salt. Well, I guess I should have probably eaten it without salt later on. It didn't do everything I hoped it would. But what is the alternative? Do we want a national rail passenger system or not? I think we do. I don't mean only on the Northeast corridor, although I love the Northeast corridor. I have been delighted to work with my friend and colleague from New Jersey, Senator LAUTENBERG, on this legislation, because I want good Amtrak service between Washington and New York City. Frankly, I would rather ride the Acela to New York City than the shuttle, the airline shuttle. You go to the airport; you wait; you are delayed. You get on the train. You ride the Acela. You do your computer. You are not crowded. It is nice, clean. It works. You can get a little something to eat, and you arrive in New York City.

I realize Acela is one of the best in the country, but we need to do more. In fact, putting money in it—and by the way, not enough—year after year we are starving it to death and then we are saying, Why didn't it do better? It is because we haven't given them more

opportunities, we haven't had more requirements, we haven't had reforms. I tried for the past 2 years to get this legislation up. We had some objections. We had some Senators who wanted to offer amendments. My attitude is: Fine. If you have amendments, let's go with them. Administration: If you have some reforms, fine, let's do it. But we need to get this thing done.

Now here we are, we have a different majority. Senator LAUTENBERG is the chairman of the committee. But basically, this is the bill he and I put together 3 years ago. It is time to do it. It is not perfect. It has some reforms in it. It has some requirements in it. By the way, more people are riding Amtrak, and they have more income. They are doing better. If we give them more incentives, if we get them to close some of the routes that are never going to be profitable, they are not going to work, it would be even better than that.

I am not going to give my full opening speech now, even though I sound like it. I am saying to my colleagues, we should not object to the motion to proceed on every bill, and filibuster the motion to proceed. That is bad business. Do it judiciously? Yes. If you want to slow this place down time after time after time after time, yes, we can do that. But I stood here on the floor earlier today and last night and said: If the Senate will do the right thing on this judicial nomination, Leslie Southwick, that will be a step forward to show that this place can work together. We can be civil. We can be less partisan, and there will be some benefits. I am standing right here right now saying this is the next step. Let's not tangle this bill up because we are not ready, or because we may not like it. You don't like it? Vote against it. You want more? Bring your amendments. Let's get this done. I hope my colleagues will not try to block the motion to proceed. Senator REID is going to ask unanimous consent that we go to the bill, and I hope and pray that if it is objected to, he is going to file cloture and he is going to make us eat it, because we ought to take this up and deal with it. If we want to kill it, shoot it down, but doing nothing is unacceptable.

The Senate has become very proficient at doing nothing; not just this year, but last year and the year before. We paid a price, because we didn't get anything done in the previous 2 years. Are we going to do it again or can we do something for the American people? This is one way we can do it.

So I make that plea and I hope we can get something worked out when we get on this bill. I will not be a party to try to ram it through so quickly people can't get their amendments ready.

Mr. LAUTENBERG. Mr. President, will the Senator yield?

Mr. LOTT. I will be glad to yield to my distinguished colleague and leader on this effort now, and to my friend from New Jersey, and I look forward to working with him on this legislation.

Mr. LAUTENBERG. Mr. President, the obvious obstinacy at getting this on the floor seems to ignore the fact that you almost can't get anyplace from here or there without enormous delays, without enormous congestion, and with pollution problems, et cetera. Is it understood, I ask the distinguished Senator from Mississippi, how difficult it is for the country right now? You can't get an airplane that will leave on time or arrive on time with any degree of certainty. I, for instance, travel from here up to Newark or to LaGuardia Airport, both of which are convenient to my home in New Jersey, and a flight that takes 36 minutes of air time takes 2½ hours to get there, more often than not.

So do the Senator's friends understand that this is a crisis moment for this country of ours? We have seen incidents so many times where the absence of a rail system—for instance, we threw away billions of dollars some years ago because nuclear powerplants that were built, ready to operate, couldn't get a license to go because there weren't satisfactory evacuation routes and it had to be by rail because the highways were unable to provide for it.

If we look at Katrina and we see how much better we could have done if rail was sufficiently employed down there, and we didn't get it, and people were jammed and stuck in there.

There is no difference in what—when you cross the aisle, when you ask the question: Do we want to get things operating better? Do we want to facilitate our corporations to operate efficiently? Do we want to provide the jobs that go along when you have facilities for travel in place? Would people do better if they could travel by rail rather than have to get in a car and pay who knows what for gasoline? It is predicted that oil is going to go up to \$200 a barrel one of these days. Well, Heaven forbid that does come. We are not going to close shop and say we will go home and rest.

Do the Senator's colleagues recognize that those who don't want to let us get this train of theirs started, do they realize that these problems are in front of us, I ask?

Mr. LOTT. Mr. President, let me say to the distinguished Senator from New Jersey, I am sorry I went ahead and spoke first, because you are chairman of the committee and you have been providing real leadership in trying to get this legislation brought up. I did it because I wanted to make a plea to my colleagues on this side of the aisle to let this move forward. Let me emphasize that I have no indication there will be objection. They want to take a look at it. They want to make sure they will have a chance to offer amendments or substitutes. I have assured them we will work with them. I believe we are going to be able to clear the hurdles, but I wanted to make a public plea so we could get on this legislation and guarantee the Members that their

amendments will be considered and, in fact, in the past, when we worked together, we have accepted amendments and fought some of them, and we had votes. It is a novel idea in the Senate, to have a debate and have a vote.

But I want to say again I have enjoyed working with Senator LAUTENBERG. This is a lot bigger issue in New Jersey and along the eastern seaboard, I guess, but more and more it is important on the west coast, it is important to the Chicago area, it is important all over America. This is not about one region or the other region, or trying to accommodate business or labor; this is about American people. So I think my colleagues, hopefully, are going to realize that we ought to do something about Amtrak, and this is the way to get it done.

I thank the Senator for his question. The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Mr. President, I want to respond to what my friend from Mississippi has said. We have worked together in the past and we have gotten things done in the past. We know that Amtrak finally has come into its place. We have a lot of work yet to do when you think about what travel is like these days in all forms. The highways are too congested. The airways are getting even more congested. The expectation is that delays are going to become even longer. So I hope those who want to discuss it and those who want to amend it—the Senator is right, we should consider amendments. As a matter of fact, I think it is good if we do hear from people and see what problems they foresee. But we can't get it done unless we talk about it, unless we prepare for a vote.

Are we about to say to the American people: No, continue to suffer? Stay stuck in traffic? Stay stuck at the airports? Time will take care of it? All you have to do is spend more time away from home, away from your job and away from things you might enjoy.

American people, get used to spending more time away from home in useless activities, such as listening to an idling engine or listening to the car radio or something like that. We cannot function this way.

Now the time is upon us where we have to do something about this. I believe this is an opportune time. I know a lot of colleagues on that side of the aisle want to see this happen. After all, we touch 40 States across the country. Wherever you look and see where there has been new or upgraded rail service, people are responding to it: On the west coast, and some of the routes out of Chicago—people are responding to it, and they are getting on trains.

I use the trains frequently. The other day I got on an Amtrak train here, and it was a full train with barely a seat left. So people are demanding it. If we look at the example that exists, let's say in Europe or in Japan, and see what happens. When I wanted to take a plane one time from Brussels, where a

NATO meeting was ongoing, to go to Paris, I tried to get a flight. They said: You cannot get an airplane from here because we go by train—200 miles in 1 hour and 20 minutes. Imagine what it would do for travel in this country and business progress.

So I am ready whenever my colleague and our friends on that side of the aisle are ready. I am told we are all set here and ready to go.

Mr. LOTT. If the Senator will yield, since I have worked with the Senator on this issue, some of my colleagues have taken to calling me Senator "Lott-enberg." I know there is a bit of a regional difference. It is not quite as crowded in our neck of the woods, so you might come on down South and it would be a lot less crowded. However, I would like for them to be able to get there on Amtrak, to be able to catch that train in Washington or in Newark and run on down and come through Atlanta down to Jackson, MS. I think they would enjoy it once they got there. I invite the Senator from New Jersey to take the ride to Jackson, and we will show him around down there.

Mr. LAUTENBERG. In response, A, I would like to do it; and, B, I wonder if people realize how many new lines are being dreamt up—I say "dreamt" up because unless we get the base going, nothing else is going to happen.

I hear from colleagues in other States besides mine who say, you know, we could use train service here or there. We have seen something in New Jersey that exemplifies the value of rail service. We had a line open from the southernmost tip of our State to Trenton, our State capital. The ridership, at first, was very low. Before you knew it, we began to see buildings, factories, warehouses, et cetera, being built along the transit way. And now the area is beginning to prosper where it was just dead and nothing was going on. That is what we have seen.

There is a lot of talk about something called transit villages. In New Jersey, the most crowded State in the country, we don't think about villages really, but we have transit villages centered around a rail hub. People know they can get back and forth, and companies know employees can get back and forth to work and they can run an efficient operation.

So this is a point in time when opportunity presents itself, and we ought not to miss it. If we cannot see it, we ought to let the public see that. Certainly, at this point in time, we ought to be able to discuss it. We should not have any obstruction to bringing the issue to the floor of the Senate. Let's get out in this public forum and have a discussion and see what we can do or whether there are problems that can be dealt with or maybe we can go to some other kinds of travel—I don't know what kind, but we at least ought to take the one nearest to us that is the best option.

With that, I yield the floor.

Mr. LOTT. Mr. President, we are working on when we are going to be

able to get this up. I have a couple of points. One, we have a catch-22. Our Members want to make sure they have a chance to offer amendments, and we want to do that. At the same time, our leadership on both sides has to pay attention to when and how we get it to a conclusion. I think it is incumbent upon our leadership from the committee to work with Members to get amendments but also not to let this become a punching bag and have Members throwing everything out but the kitchen sink.

I believe we can move this through in a reasonable time. My attitude is, when Senators have amendments, come over and offer them. We will debate them and then have a vote. We will not shove it over until 9 or 10 o'clock tomorrow night. I think there is hesitation on both sides of the aisle, and we have to work through that. But we have done this before. We did this bill 2 years ago, or so, and we got 90-something votes. So we can do that.

Mr. President, one other observation: As I have worked on this, another part of the equation of having a good national rail passage system is encouraging our States to be able to do more on their own and build lines like we have in San Francisco to the L.A. area—there is incentive to do more—and at the same time, not telling poorer States that they have to do way more than they are capable of doing.

Also, a couple of weeks ago, I thought about this bill. I was at Big D's Barbeque at Pochontas, MS. The City of New Orleans, a sleeper Amtrak train, came whizzing by Big D's Tee Pee. They were ballin' the jack headed to New Orleans. It had about six or eight cars, which is relatively short. But the important thing was that they were going lickity-split.

If we are going to be able to get these trains, in a reasonable way, where they want to go, part of the problem is a problem the freight lines have. If they are going to get off on a side track and let the Amtrak go through, they have to build side tracks. We need more lines all across America. Union Pacific, Burlington Northern, Santa Fe—they need to build more lines across this country. We need to encourage the freight lines to build more capacity, more lines, and more side tracks, so they can work with Amtrak, so that Amtrak is not adding to the cost of doing business of the freight lines. So I am looking at that equation too. We don't want a conflict between Amtrak and freight lines. We want them both to be able to make a profit and deliver the goods and services to the American people.

So we are working on that side of the equation too, to make sure that Amtrak has a way to be on time.

Mr. LAUTENBERG. The Senator from Mississippi remembers that yesterday we had a hearing on freight railroads, and that traffic is going to be up some 44 percent by 2020. They are concerned about how to get it done. At the

same time, we have to provide for passenger rail service. This is a good time for all sides to get together and start moving.

Does the Senator remember this bill was processed on the Senate floor last year? We had a vote that was 93 to 6. I lost a year. It was actually in 2005.

Mr. LOTT. Yes, I think that is right.

Mr. LAUTENBERG. The vote was 93 to 6, I remind everybody. This was popularly supported, totally understood. We were on our way to the next station, and it just didn't work out. Things were a little tumultuous, to put it mildly. Now there is a cooler moment to think about it and present it. We have time available on the floor, and I think to waste it would be a terrible loss when we can discuss this important problem with a solution for the country.

Mr. LOTT. Mr. President, I thank my colleague. The occupant of the chair, the Senator from Maryland, I suspect, supports this too. I am ready to do business when we get the go-ahead to take up this legislation.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. MARTINEZ. 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. MARTINEZ. Parliamentary inquiry, Madam President: Is the Senate in morning business?

The PRESIDING OFFICER. The Senate is in morning business, with 10-minute grants.

Mr. MARTINEZ. I wish to speak for a period of 10 minutes.

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

CUBA

Mr. MARTINEZ. Madam President, in the last couple of hours, the President took the opportunity to speak at the State Department on the condition of relations between the United States and Cuba. For me, as an immigrant from Cuba, born on that island and an immigrant to this country, it was a very moving and transcending kind of moment. The President, for the first time, I think, in many years that any American President might do this, detailed the problems in Cuba and the cruelty of that regime toward its own people.

The President put a human face on the suffering of the Cuban people by inviting to the stage with him three families of Cuban political prisoners. These families, each with their own tale of hardship and suffering, were representatives of what I think is the now almost half century long suffering of the Cuban people. He spoke about their plight, the unjust nature of their relatives' incarceration, which is nothing

more than a representative sampling of what the Cuban people have suffered over so many years of brutal repression.

He also detailed the many failed promises of the Cuban revolution toward its own people. He spoke of the failed promises; that the revolution would bring a better life and so many other things that have simply not occurred. He detailed frankly, the economic misery the Cuban people suffer from today, the fact that housing is deplorable and difficult and that many families have to, obviously, live together. He spoke about the irony that while the Cuban system touts the greatness of their medical prowess; in fact the Cuban people do not have access to the kind of quality medical care that medical tourists can obtain.

Just as an anecdote, sitting next to me was a foreign diplomat who mentioned to me that she had been to Cuba for eye surgery some years earlier. I mentioned to her that at about that same time—I think she said that was in 1992—I had a relative, an uncle of mine, whom we had brought to this country so he could have eye surgery here because he couldn't get it in Cuba. So foreign visitors, for dollar amounts, can get first-rate medical care in Cuba, but it is not always available to the Cuban people.

He spoke about the oppression of those who seek to be a voice for change and the fact that many of those in prison, these patriots, are in prison for nothing more than having a fax machine in their home or a willingness to speak and talk about the human rights conditions on the island. The fact is that each of these brave souls takes great risk in order to facilitate the opportunity for Cubans to speak to one another, for the opportunity to speak in freedom, the opportunity to freely express an idea. These are things which are abhorrent to the Cuban regime.

The President made an offer. He made an offer that the United States, through non-governmental organizations and religious entities, would send computers and provide Internet access to the Cuban people, if only the Cuban Government would allow the average, everyday Cuban—what today is part of international trade, commerce, and communications—Internet access. Internet access in Cuba today is only allowed under the strictest of Government authority, and it is a way in which the Cuban people are held back from achieving the promise that the 21st century has for so many people, in so many other places.

He also spoke about the opportunity for Cuban children to be a part of a scholarship program and all they would have to do is to be freely allowed to participate.

He spoke to the international community using the example of the Czech Republic, Hungary, and Poland, which have, with such determination, stood clearly on the side of freedom, stood clearly on the side of those in Cuba

who are not satisfied with the current conditions but look to the moment of their liberty, look to the moment of freedom. These new democracies in Europe, who still well remember the days of their oppression at the hands of another Communist dictator, are very much involved in helping the Cuban dissident movement, in allowing them to come to their embassies and just stand in their lobbies and have access to a magazine or a newspaper or a book that would otherwise not be permitted by the Cuban authorities.

We can all do more. The United States has been at the forefront of assistance to a free Cuba, but no doubt many other countries, many other capitals across the world could well heed the example these Eastern European governments are today giving to the rest of the world as they stand clearly on the side of freedom.

The fact is that the most important take-away, if you will, that I heard today in this very moving, emotional, and I thought historic speech was the fact that the President today said that in the future of Cuba, we should be clearly on the side of freedom and not on the side of stability.

You see, the Cuban people are in the throes of change. Change is happening on that imprisoned island today, and that change can take one of several forms. One of them would be for us to side with stability and more of the same, for the sake of stability. The other would be to chart that uncertain path that freedom often brings but a path that ultimately leads to the opportunity for free people to live freely, that opportunity to simply stand in a town square and speak your mind.

So often people ask me: Have you ever been back to Cuba?

And I say: No.

They ask: Will you ever go back?

And I say: Yes, I will go back the day I can stand in the park of my little town where I grew up, in Sagua La Grande, Cuba, and stand there and freely express my thoughts or the day I can pick up a book and read it freely.

Those are the times and those are the conditions under which the Cuban people will really begin to taste freedom.

All of Latin America today in one measure or another is moving to the march of democratic governments and clearly enjoying the fruits of a free market. The free-trade agreements currently pending with Latin American countries will only continue to expand the wave of prosperity that is today sweeping that continent. But one example remains, one example of absolute tyranny, one example of an old-fashioned, brutal military dictator, and that is Cuba.

The fact is, I do believe freedom is on the march and that freedom can come to the Cuban people. I hope we can continue to encourage the voices of freedom within the island.

The President spoke to the military, he spoke to the governmental structures of the Cuban Government, and he

pleaded with them to side with the people of Cuba who seek to live free and not use the elements of repression at a critical and decisive moment in the future of Cuba.

I have no doubt that many of those who today might have been, at one time, supporters of the Cuban regime, who believed in the promises of the revolution, as at one time or another all of us did, that they would now understand that this failed system has a limited lifespan and that it is time to side with the forces of freedom and not with the forces of repression and tyranny. For those who have no blood on their hands, they do have a future in a free Cuba.

One of the more touching moments today was when the President discussed dissidents, such as Oscar Elias Biscet. Oscar Elias Biscet is a physician who has been sentenced, to I believe 20 years, for merely speaking and expressing his own beliefs and his desire to see a change within Cuba. He is in deplorable conditions, in rat-infested conditions, needing medical care and getting none. He is the face of the future of Cuba. He is the face of the dissidents in Cuba. He is a young man, born and raised under the Castro regime. He does not belong to any rich families of the past. In fact, he happens to be an Afro-Cuban. He is a physician. He believes in life at all stages, from conception to death, and that was one of the big sins for which he has been punished in Cuba.

So I would say that today is an important day in the history of U.S. relations with Cuba. I hope it will also be a historic marker for the future of the Cuban people. The President spoke about a popular song, both in Cuba and outside, and it basically talks about "our day is coming." I don't think there is any doubt that the freedom of the Cuban people is coming and that our day, without a doubt, is coming.

I look forward to continuing to help the dissident movement inside Cuba in any way that we can, to continuing to help the voices of freedom that so much yearn for an opportunity. I believe the President made it clear that the standard by which we should judge our future relations with Cuba is the way in which the Cuban Government treats its own people; by releasing political prisoners, by allowing freedom of expression, by allowing freedom of the press, and by ending these despicable acts of repression or repudiation, which are nothing more than a government-organized gang of neighbors ganging up on someone who, for whatever reason, seems to be out of step with the orthodoxy of the Government of the day. These are horrible beatings and harassment that cut across age groups. It is not just about the head of the household who has expressed himself in a way the Government deems negative or maybe being guilty of that ill-defined crime of dangerousness. But the children of that family suffer, the elderly, and all of the

members of any family who is chosen for these repudiation acts. They all suffer. Those are despicable acts. Those have to end—that kind of repression—and the freeing of political prisoners. These simple things.

When people talk about what is going to be the future, the future is in the hands of the Cuban people. I know the United States will stand clearly on the side of freedom. That is, what makes our country so very different and so very special, is the fact we do put freedom first; that we do put a value on every human being, every human life, and the dignity of each one; that we do understand there is a difference between freedom and oppression and we choose to stand clearly on the side of freedom.

I will always be proud to stand with our President, who so clearly spoke today about his desire to stand on the side of freedom. I hope many of my colleagues in the Senate will take the time to read the speech the President gave today. If you care about Latin America, if you care about Cuba, if you care about the future of that oppressed island, I think this was a very good moment.

I see my dear colleague from New Jersey and fellow Cuban American here on the Senate floor, and I know we share the same passion for the opportunity for Cuba to be free. This isn't a partisan issue between us; this is about the right of the Cuban people to live freely. I say to Senator MENENDEZ that it was a momentous speech and I think one that will be a historic marker, as I said, in the relations between our countries and the opportunity for the Cuban people to live in freedom. I think it was an important moment, and I hope my colleague will have an opportunity to see it and read it. It was the kind of speech so many of us have wished for and were delighted to hear today.

Madam President, I appreciate the indulgence of the Chair, and I yield the floor.

THE PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. MENENDEZ. Madam President, I come to the floor primarily to speak about a vote we took earlier today on the DREAM Act. I do appreciate my distinguished colleague from Florida's comments about the President's speech. We look forward to getting a further focus on what the President had to say. We certainly appreciate any movement, any policy that tries to create an opportunity for freedom for the people of Cuba, for them to be able to achieve what we enjoy here in the United States—the right to choose our Representatives, to worship at the altar that we chose freely, to be able to associate with others freely, to be able to protest when we believe our Government is moving in the wrong direction. We have freedom of the press, freedom of religion, freedom of speech. All of those things are denied the Cuban people.

Certainly, the efforts the President speaks about, trying to move in the direction that creates that moment in which those freedoms can be fulfilled for the people of Cuba, we applaud.

THE DREAM ACT

Mr. MENENDEZ. Madam President, I came to the floor to talk about the earlier vote on the DREAM Act. I have heard some of my colleagues define it in ways that make me believe the future of any other form of immigration reform is going to be incredibly difficult. We did not get to cloture and cannot move to have a full debate on the bill and a vote to move in a direction in which we could give young people in this country—who did not choose to come to this country themselves, as they were brought here by their parents at a young age, and who in many cases could achieve great success for the Nation—an opportunity to earn their way to a process of legalization. To see that those hopes have been snuffed out by the votes that were taken here leads me to believe the future of any other form of immigration reform is going to be incredibly difficult.

It was not the decision of these children to come to the United States. It's hard to make a decision about where you are moving to when you are in a stroller. If we cannot give hope to children, if we are going to insist that the children be responsible for the sins of their parents, in making the decision they did to come in an undocumented fashion to the United States, then this is not the America I know.

If, by no choice of your own, you came to this country and have now grown up—for many of those children I have met across the landscape of the country have grown up as Americans, and thought of themselves as Americans—and then came a point in time in which they wanted to go to college or enlist in the Armed Forces, they found their status was not that of an American. They wanted badly to either serve or to be able to fulfill their God-given abilities by achieving a college education. They had to earn all of this. All we need to do is give them a chance.

I have colleagues who represent a lot of sectors, and they want people to come to this country and use their human capital to do some of the toughest jobs that exist in America, to bend their backs and be on their knees picking crops for Americans to be able to consume.

There are some who suggest we are going to even change the nature of what AgJOBS is, so even though you come year after year, you bend your back, you give your sweat, you do some of the toughest jobs no one wants to do—we will not give you any pathway to earn legalization.

I don't know how those who want to see the AgJOBS bill move think it can move when we turn down children who had no choice of their own. Our friends

in industries that request H1-B visas say we need to bring people from other countries in the world to America because we don't have enough human capital here to meet our Nation's high-tech demands, but in that case it doesn't make much sense to refuse to take advantage of the proven capacity of so many children in this country, some of whom have graduated as valedictorians and salutatorians from high school. A vote against the DREAM Act says, we are not going to use that intellect; no, let's bring in somebody from outside the country to perform that service.

Those in the service industries, such as the hotels and motels of our cities and highways, who want people to clean the toilets and the bathrooms, or those who want workers to pluck the chickens at poultry plants or work at seafood establishments and the list goes on and on—let's give those people visas to come to this country and let's use their human capital. I am for any American who wants to do any of those jobs first and foremost. Whatever is necessary to create that opportunity, I am for. But in the absence of it, I wish to challenge some of our colleagues who talk about the big growers and their needs, who talk about the high-tech industry and their needs, who talk about the hotels and motels and poultry plants and seafood plants—and then vote against these children. I want to hear how they can justify the differences.

What the DREAM Act said was if you had no choice, you made no choice in coming to this country—your parents brought you here, you grew up here and you have been a good citizen, you have lived the type of life we want all our young people to live in terms of being good citizens, being of exemplary character, being individuals who have the intellectual capacity on their own to get into college—we want to give them the opportunity to have the status to do that. I would rather have our kids going to school than hanging out on the streets, but I guess we would rather have them hanging out on the streets rather than having them get an education and serving our Nation.

I don't understand how a military that is straining, in terms of the volunteer Armed Forces that we have, that has now downgraded whom they are willing to accept in the Armed Forces to include people who have criminal records and those who are high school dropouts, we will have those people serve, but we will not have young people who are incredibly talented, have no criminal record whatsoever, exemplary individuals, and some of them, some very smart ones, but who want to serve America because they believe themselves to be Americans—oh, no, let's not have them serve in the Armed forces of the United States. By virtue of that service, including the possibility that they could die on behalf of their adopted country, no, let's not give them that opportunity either. We

would rather take people who have criminal records. We would rather take people who have not even finished high school.

The first U.S. soldier who died in Iraq was someone who was not a U.S. citizen. Yet he died in Iraq in the service of the country he loved as his own.

I believe there are going to be challenges going forward. As Members of the Senate who represent different parts of our economy come forth and say, "I need to help the farmers because we need to get people in those fields, we can't get anybody to do the job;" or, "I need to have someone at that poultry plant and make sure that we are able to pluck chickens and go through the bone-breaking job, their hands are cut from the processing," I want to see how, in fact, that discussion is going to take place.

We will certainly be here to challenge our colleagues to think about how can you promote those desires and yet snuff out the hopes and dreams and aspirations of a young person who did not do anything wrong. On the contrary, they want to do everything they can to serve this country, and we say no to them. Yet we will bring in people from other parts of the world to do these things. It is going to be very difficult. It is going to be very difficult, without reform of the process, to make sure we are not outsourcing jobs in the process, without labor protections. I think it is all going to be very difficult.

I hope our colleagues will think about reconsidering their position on the DREAM Act because they say it is an "amnesty." Everything is amnesty to them. I can't wait until the AgJOBS bill comes up. I am sure we will get cries of "amnesty." I can't wait until the H-1B issue comes up. I can't wait until the H-2B issue comes up. I am sure it will be cries of "amnesty." So those sectors of the American economy will be halted, and we will not get the productivity we need because I am sure they are not going to find a way to say that it is not "amnesty."

At end of the day, I am looking forward to those debates as we move forward. I believe we have set a precedent in today's vote that people will rue as they try to understand the essence of some of the economic sectors of our country that are going to need help, have needed help, and need help today.

We should, hopefully, have a little introspection and figure out whether a process in which you have a journey to go through, in which you have to start with an exemplary record, in which you have to be willing to meet all types of challenges, in which you must give of yourself to the Nation or you must be able to create personal achievement that ultimately will be of value to the Nation—whether snuffing out that opportunity is in the national interests of the United States.

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

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

Mr. WHITEHOUSE. Madam President, I ask unanimous consent to speak for 12 to 15 minutes in morning business.

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

The Senator is recognized.

MISPLACED PRIORITIES

Mr. WHITEHOUSE. Madam President, as my colleagues know, earlier this week President Bush announced he will ask this Congress to provide an additional \$46 billion for the war in Iraq next year. That is \$46 billion more than the \$150 billion he already told us he would ask for. Taken together, that is close to \$200 billion more than the hundreds of billions of dollars the taxpayers of this country have already poured into the sands and marshes of Iraq—for a war this President has made clear he has no intention of ending.

The people of Rhode Island are tired of watching their sons and daughters, their neighbors and their friends, sent off to war by a President who won't trouble himself to make a plan to bring them home. They are tired of spending money our country has to borrow on a war with burdens our country should no longer have to bear. And they are sick and tired of hearing this President veto or threaten to veto legislation passed by this Congress that supports the real and urgent needs of Americans and their families—all because he says it costs too much.

Clearly, this President is an expert when it comes to irresponsible and excessive spending. Look at the war. Look at the private contractors. Look at the national debt he has run up. But how can he keep a straight face and tell the American people it is more important to borrow and spend \$35 billion for 3½ more months of the Iraq war than it is to provide budgeted health insurance for 5 years to 10 million American children? What a sobering revelation of this administration's misplaced priorities.

No American should doubt for 1 minute what is going on here. Every time President Bush vetoes a bill to fund children's health care, every time he threatens to veto legislation that will send our Nation's children to college, keep families warm during the winter months, invest in job training and technical education programs, or offer the promise of medical cures through research at the National Institutes of Health, President Bush is making a choice. He is choosing prolonging a war in Iraq over battling cancer. He is choosing his no-plan war over helping families in poverty. It is a choice, and it is the wrong choice.

Last night, the Senate passed a bill to provide funding for the Departments

of Labor, Health and Human Services, Education, and other agencies. On October 17, the administration expressed its opposition to this appropriations bill based on what it calls "an irresponsible and excessive level of spending." As I said, this President is certainly expert at irresponsible and excessive levels of spending, but what does he mean? The President means that \$10.8 billion spent to help millions of Americans lead healthier, more productive lives is irresponsible and excessive, but the nearly \$200 billion additional he wants to borrow and spend on the war in Iraq is just fine.

Let's look at two areas in this bill where the funding levels we propose exceed those in the administration's budget to see just how irresponsible and excessive we are.

The first is at the National Heart, Lung, and Blood Institute at NIH. Our bill funds the institute at \$67 million more than the President's request. I want to introduce my colleagues to one man who does not think this increase is irresponsible and excessive.

This is a picture of Richard Pezzillo on his last visit to Washington, DC. Rich is a bright, kind, thoughtful young man from North Providence, RI, who hopes one day to become a meteorologist. Rich also suffers from hemophilia and right now lies in a hospital bed in Rhode Island, too sick to attend his classes at Western Connecticut State University where he hopes to graduate this May. Sadly, Rich, now 24, has missed 2½ years of school due to his illness.

One of these absences was caused by an activity most of us would never even think about—something we do, in fact, to save lives—putting on a seatbelt. Three years ago, Rich unfastened his seatbelt from the airplane, collected his things, and walked off into the airport and suddenly started to feel tremendous pain. He started vomiting blood. Simply wearing his seatbelt had caused Rich to bleed internally, inside of his stomach, eventually requiring that his gall bladder be removed. Rich spent roughly 3 weeks in the hospital, accumulating bills totaling nearly \$1.5 million. Luckily, Blue Cross-Blue Shield of Rhode Island, his family's insurer, covered most of these costs. But Rich is desperately afraid what will happen to him when he graduates from college and no longer qualifies under his parents' health care plan. Hemophilia is one of the most expensive conditions a person can have, one that few insurance companies will want to take on.

Richard Pezzillo is a fighter. He is an example for us all. But he will continue to face tremendous difficulties with his health throughout his life. Soon, thanks to research going on at the National Institutes of Health; specifically at the National Heart, Lung, and Blood Institute, hemophilia could be the first disease cured by gene therapy. The funding in this appropriations bill will go toward research which could save

Richard's life and the lives of 18,000 people across this country who suffer from hemophilia. This spending is not irresponsible. This spending is not excessive. This spending is vital and it is working and it has the potential to save thousands of people like Rich Pezzillo.

A second place where this bill calls for spending above the President's budget—\$128 million above his budget to be exact—is at the National Cancer Institute. Here I want to share the story of Benjamin Haight. I met Ben's parents this summer when they came down to my office from Warwick, RI, to share their little boy's story. Ben was diagnosed with neuroblastoma early in 1999 when he was just 4½ years old. At the time, Ben's dad was a senior chief in the Navy, serving aboard the USS Miami. He was airlifted off the submarine to join his son, as Ben underwent five rounds of chemo, surgery, radiation, and endured two stem cell transplants. These treatments left Ben with no high frequency hearing, requiring him to wear the two hearing aids, and they left him with a severely compromised immune system. But Ben refused to let any of this keep him from being a kid. He told his doctors there would be no treatments during science class, and that they would have to be out by 3 to go to Cub Scouts or baseball or soccer or other activities. He often left his chemotherapy sessions dressed in his Little League uniform. Ben was a snorkler, a sailor, a swimmer, a fisherman, a climber, an artist, and an animal lover. He was, as his parents say, a child first and a child with cancer second.

Though Ben and his family enjoyed 2 years of remission, he relapsed again in October 2001 at the start of second grade. This new round of treatment consisted of more chemo and over 200 blood and platelet transfusions. Ben lost his battle with neuroblastoma on August 8, 2003, at the age of 9. The night before he died, Ben turned to his mom and asked: "Can't we try a stronger medicine?"

Well, Ben, at the pediatric oncology branch of the National Cancer Institute, they are trying to create that stronger medicine. Ten phase I and four phase II clinical trials are currently being conducted on neuroblastoma, and scientists are closer and closer every day to the stronger medicine you asked for.

Is it really so irresponsible and excessive to provide the funding for these studies, to find the treatments that could have saved Ben Haight and could save so many more children like him?

To me, irresponsible and excessive is borrowing and spending \$450 billion for an endless war that undermines our national security and then asking the Congress for another \$196.4 billion without a plan to bring our troops home, all while nearly 50 million Americans go without health insurance and millions of families hover at the door of poverty.

We should be clear that the nearly \$200 billion this President has requested for the war in Iraq, on top of the hundreds of billions he has already spent, is not even the whole story. When this administration tells us about the financial costs of this disastrous war, they don't tell us about the interest payments we will have to pay. The Congressional Budget Office tells us that interest on the war will total \$415 billion by 2017, and then there will be more interest on the additional \$200 billion the President wants us to borrow and spend. The final interest costs of this war could approach \$1 trillion, passed on to our children and grandchildren.

President Bush, I think most Americans would argue with you. I think most Americans would argue that \$22 billion to keep our families healthy is a pretty sound investment in our country's future, and trillions of dollars in spending and hundreds of billions of dollars in interest for a war you won't take action to end, that is what is irresponsible and excessive.

The President's threatened veto of this appropriations bill is just another illustration of his extraordinarily misplaced priorities. The \$67 million increase this bill calls for to fund the National Heart, Lung, and Blood Institute is a few hours of the cost of the war in Iraq—not even a full day, not even half a day, a few hours. In fact, the entire NIH budget in this bill is only \$1 billion above the President's request. One billion dollars sounds like a lot of money, of course, but it is, in fact, only a few days of the war in Iraq—not a month, not a week, only a few days.

President Bush would rather prolong the war in Iraq than fund additional research at the National Institutes of Health into pediatric cancer, into hemophilia, and into other diseases such as diabetes, heart disease, arthritis, multiple sclerosis, autism, Parkinson's, and Alzheimer's. He would rather fund a continuous war than provide hope for millions of families around this country.

Well, I hope President Bush will listen to Rich Pezillo's story. I hope he will listen to Ben Haight's parents. I hope he will listen to the thousands of Rhode Islanders who have reached out to me to demand a new direction, not only in Iraq but here at home in America. I hope he will listen to Americans across this country who think that people such as Rich and Ben should be our first priorities.

I am proud this bill puts people such as Rich and Ben ahead of the extreme rightwing ideologies and reckless wars this President pursues, and I hope we in Congress will stand our ground when, of all people, this President charges that putting Rich and Ben first is irresponsible and excessive.

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

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

PASSENGER RAIL INVESTMENT AND IMPROVEMENT ACT OF 2007

Mr. REID. Mr. President, we are going to move to the Amtrak bill. There is an understanding that I have with Senator LOTT that a number of Members on the Republican side want to be able to have a little extra time to do some amendments dealing with this bill. There are no games being played with this legislation. This is something which is long overdue, and we want to complete this.

I ask unanimous consent that the Senate now proceed to consideration of Calendar No. 158, S. 294, the Amtrak authorization measure.

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

Mr. REID. Mr. President, let me say this. We have a lot to do here. For people who are concerned with why we haven't been doing things this afternoon, it takes time getting things done, and I appreciate that. This is a bipartisan effort to move forward on this legislation. It is something I think we can do. There is no effort to do anything other than get a bill passed.

I have had a conversation with Senator LOTT and with two other Republican Senators, and we have agreements with what we have talked about with them. It is a gentleman's agreement, but we will live up to it on our side.

Mr. President, there will be no more votes today. We hope there will be a good debate on this important issue today and hope there will be some amendments offered tomorrow and Friday.

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

The legislative clerk read as follows:

A bill (S. 294) to reauthorize Amtrak, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Commerce, Science and Transportation, with amendments, as follows:

(The parts of the bill intended to be stricken are shown in boldface brackets and the parts of the bill intended to be inserted are shown in italic.)

S. 294

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Passenger Rail Investment and Improvement Act of 2007".

SEC. 2. AMENDMENT OF TITLE 49, UNITED STATES CODE.

Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to a section or other provision of law, the reference

shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 3. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Amendment of title 49, United States Code.

Sec. 3. Table of contents.

TITLE I—AUTHORIZATIONS

Sec. 101. Authorization for Amtrak capital and operating expenses and State capital grants.
Sec. 102. Authorization for the Federal Railroad Administration.
Sec. 103. Repayment of long-term debt and capital leases.
Sec. 104. Excess railroad retirement.
Sec. 105. Other authorizations.

TITLE II—AMTRAK REFORM AND OPERATIONAL IMPROVEMENTS

Sec. 201. National railroad passenger transportation system defined.
Sec. 202. Amtrak Board of Directors.
Sec. 203. Establishment of improved financial accounting system.
Sec. 204. Development of 5-year financial plan.
Sec. 205. Establishment of grant process.
Sec. 206. State-supported routes.
Sec. 207. Independent auditor to establish methodologies for Amtrak route and service planning decisions.
Sec. 208. Metrics and standards.
Sec. 209. Passenger train performance.
Sec. 210. Long distance routes.
Sec. 211. Alternate passenger rail service program.
Sec. 212. Employee transition assistance.
Sec. 213. Northeast Corridor state-of-good-repair plan.
Sec. 214. Northeast Corridor infrastructure and operations improvements.
Sec. 215. Restructuring long-term debt and capital leases.
Sec. 216. Study of compliance requirements at existing intercity rail stations.
Sec. 217. Incentive pay.
Sec. 218. Access to Amtrak equipment and services.
Sec. 219. General Amtrak provisions.
Sec. 220. Private sector funding of passenger trains.
Sec. 221. On-board service improvements.
Sec. 222. Management accountability.
Sec. 223. *Locomotive biodiesel fuel use study.*

TITLE III—INTERCITY PASSENGER RAIL POLICY

Sec. 301. Capital assistance for intercity passenger rail service.
Sec. 302. State rail plans.
Sec. 303. Next generation corridor train equipment pool.
Sec. 304. Federal rail policy.
Sec. 305. Rail cooperative research program.

TITLE IV—PASSENGER RAIL SECURITY AND SAFETY

Sec. 400. Short title.
Sec. 401. Rail transportation security risk assessment.
Sec. 402. Systemwide Amtrak security upgrades.
Sec. 403. Fire and life-safety improvements.
Sec. 404. Freight and passenger rail security upgrades.
Sec. 405. Rail security research and development.
Sec. 406. Oversight and grant procedures.
Sec. 407. Amtrak plan to assist families of passengers involved in rail passenger accidents.
Sec. 408. Northern border rail passenger report.

- Sec. 409. Rail worker security training program.
 Sec. 410. Whistleblower protection program.
 Sec. 411. High hazard material security threat mitigation plans.
 Sec. 412. Memorandum of agreement.
 Sec. 413. Rail security enhancements.
 Sec. 414. Public awareness.
 Sec. 415. Railroad high hazard material tracking.
 Sec. 416. Authorization of appropriations.]

TITLE IV—IMPROVED RAIL SECURITY

- Sec. 401. Definitions.
 Sec. 402. Rail transportation security risk assessment.
 Sec. 403. Systemwide Amtrak security upgrades.
 Sec. 404. Fire and life-safety improvements.
 Sec. 405. Freight and passenger rail security upgrades.
 Sec. 406. Rail security research and development.
 Sec. 407. Oversight and grant procedures.
 Sec. 408. Amtrak plan to assist families of passengers involved in rail passenger accidents.
 Sec. 409. Northern border rail passenger report.
 Sec. 410. Rail worker security training program.
 Sec. 411. Whistleblower protection program.
 Sec. 412. High hazard material security risk mitigation plans.
 Sec. 413. Enforcement authority.
 Sec. 414. Rail security enhancements.
 Sec. 415. Public awareness.
 Sec. 416. Railroad high hazard material tracking.
 Sec. 417. Certain reports submitted to Senate Committee on Homeland Security and Governmental Affairs.
 Sec. 418. Authorization of appropriations.

TITLE I—AUTHORIZATIONS

SEC. 101. AUTHORIZATION FOR AMTRAK CAPITAL AND OPERATING EXPENSES AND STATE CAPITAL GRANTS.

(a) OPERATING GRANTS.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for operating costs the following amounts:

- (1) For fiscal year 2007, \$580,000,000.
- (2) For fiscal year 2008, \$590,000,000.
- (3) For fiscal year 2009, \$600,000,000.
- (4) For fiscal year 2010, \$575,000,000.
- (5) For fiscal year 2011, \$535,000,000.
- (6) For fiscal year 2012, \$455,000,000.

(b) CAPITAL GRANTS.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for capital projects (as defined in subparagraphs (A) and (B) of section 24401(2) of title 49, United States Code) to bring the Northeast Corridor (as defined in section 24102(a)) to a state-of-good-repair, for capital expenses of the national railroad passenger transportation system, and for purposes of making capital grants under section 24402 of that title to States, the following amounts:

- (1) For fiscal year 2007, \$813,000,000.
- (2) For fiscal year 2008, \$910,000,000.
- (3) For fiscal year 2009, \$1,071,000,000.
- (4) For fiscal year 2010, \$1,096,000,000.
- (5) For fiscal year 2011, \$1,191,000,000.
- (6) For fiscal year 2012, \$1,231,000,000.

(c) AMOUNTS FOR STATE GRANTS.—Out of the amounts authorized under subsection (b), the following percentage shall be available each fiscal year for capital grants to States under section 24402 of title 49, United States Code, to be administered by the Secretary of Transportation:

- (1) 3 percent for fiscal year 2007.
- (2) 11 percent for fiscal year 2008.
- (3) 23 percent for fiscal year 2009.
- (4) 25 percent for fiscal year 2010.
- (5) 31 percent for fiscal year 2011.
- (6) 33 percent for fiscal year 2012.

(d) PROJECT MANAGEMENT OVERSIGHT.—The Secretary may withhold up to ½ of 1 percent of amounts appropriated pursuant to sub-

section (b) for the costs of project management oversight of capital projects carried out by Amtrak.

SEC. 102. AUTHORIZATION FOR THE FEDERAL RAILROAD ADMINISTRATION.

There are authorized to be appropriated to the Secretary of Transportation for the use of the Federal Railroad Administration such sums as necessary to implement the provisions required under this Act for fiscal years 2007 through 2012.

SEC. 103. REPAYMENT OF LONG-TERM DEBT AND CAPITAL LEASES.

(a) AMTRAK PRINCIPAL AND INTEREST PAYMENTS.—

(1) PRINCIPAL ON DEBT SERVICE.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for retirement of principal on loans for capital equipment, or capital leases, not more than the following amounts:

- (A) For fiscal year 2007, \$153,900,000.
- (B) For fiscal year 2008, \$153,400,000.
- (C) For fiscal year 2009, \$180,600,000.
- (D) For fiscal year 2010, \$182,800,000.
- (E) For fiscal year 2011, \$189,400,000.
- (F) For fiscal year 2012, \$202,600,000.

(2) INTEREST ON DEBT.—There are authorized to be appropriated to the Secretary of Transportation for the use of Amtrak for the payment of interest on loans for capital equipment, or capital leases, the following amounts:

- (A) For fiscal year 2007, \$139,600,000.
- (B) For fiscal year 2008, \$131,300,000.
- (C) For fiscal year 2009, \$121,700,000.
- (D) For fiscal year 2010, \$111,900,000.
- (E) For fiscal year 2011, \$101,900,000.
- (F) For fiscal year 2012, \$90,200,000.

(3) EARLY BUYOUT OPTION.—There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary for the use of Amtrak for the payment of costs associated with early buyout options if the exercise of those options is determined to be advantageous to Amtrak.

(4) LEGAL EFFECT OF PAYMENTS UNDER THIS SECTION.—The payment of principal and interest on secured debt, with the proceeds of grants authorized by this section shall not—

(A) modify the extent or nature of any indebtedness of the National Railroad Passenger Corporation to the United States in existence of the date of enactment of this Act;

(B) change the private nature of Amtrak's or its successors' liabilities; or

(C) imply any Federal guarantee or commitment to amortize Amtrak's outstanding indebtedness.

SEC. 104. EXCESS RAILROAD RETIREMENT.

There are authorized to be appropriated to the Secretary of Transportation, beginning with fiscal year 2007, such sums as may be necessary to pay to the Railroad Retirement Account an amount equal to the amount Amtrak must pay under section 3221 of the Internal Revenue Code of 1986 in such fiscal years that is more than the amount needed for benefits for individuals who retire from Amtrak and for their beneficiaries. For each fiscal year in which the Secretary makes such a payment, the amounts authorized by section 101(a) shall be reduced by an amount equal to such payment.

SEC. 105. OTHER AUTHORIZATIONS.

There are authorized to be appropriated to the Secretary of Transportation—

(1) \$5,000,000 for each of fiscal years 2007 through 2012 to carry out the rail cooperative research program under section 24910 of title 49, United States Code;

(2) \$5,000,000 for fiscal year 2008, to remain available until expended, for grants to Amtrak and States participating in the Next Generation Corridor Train Equipment Pool Committee established under section 303 of

this Act for the purpose of designing, developing specifications for, and initiating the procurement of an initial order of 1 or more types of standardized next-generation corridor train equipment and establishing a jointly-owned corporation to manage that equipment; and

(3) \$2,000,000 for fiscal year 2008, for the use of Amtrak in conducting the evaluation required by section 216 of this Act.

TITLE II—AMTRAK REFORM AND OPERATIONAL IMPROVEMENTS

SEC. 201. NATIONAL RAILROAD PASSENGER TRANSPORTATION SYSTEM DEFINED.

(a) IN GENERAL.—Section 24102 is amended—

(1) by striking paragraph (2);

(2) by redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively; and

(3) by inserting after paragraph (4) as so redesignated the following:

“(5) ‘national rail passenger transportation system’ means—

“(A) the segment of the Northeast Corridor between Boston, Massachusetts and Washington, DC;

“(B) rail corridors that have been designated by the Secretary of Transportation as high-speed corridors (other than corridors described in subparagraph (A)), but only after they have been improved to permit operation of high-speed service;

“(C) long distance routes of more than 750 miles between endpoints operated by Amtrak as of the date of enactment of the Passenger Rail Investment and Improvement Act of 2007; and

“(D) short-distance corridors, or routes of not more than 750 miles between endpoints, operated by—

“(i) Amtrak; or

“(ii) another rail carrier that receives funds under chapter 244.”.

(b) AMTRAK ROUTES WITH STATE FUNDING.—

(1) IN GENERAL.—Chapter 247 is amended by inserting after section 24701 the following:

“§ 24702. Transportation requested by States, authorities, and other persons

“(a) CONTRACTS FOR TRANSPORTATION.—Amtrak may enter into a contract with a State, a regional or local authority, or another person for Amtrak to operate an intercity rail service or route not included in the national rail passenger transportation system upon such terms as the parties thereto may agree.

“(b) DISCONTINUANCE.—Upon termination of a contract entered into under this section, or the cessation of financial support under such a contract by either party, Amtrak may discontinue such service or route, notwithstanding any other provision of law.”.

(2) CONFORMING AMENDMENT.—The chapter analysis for chapter 247 is amended by inserting after the item relating to section 24701 the following:

“24702. Transportation requested by States, authorities, and other persons.”.

(c) AMTRAK TO CONTINUE TO PROVIDE NON-HIGH-SPEED SERVICES.—Nothing in this Act is intended to preclude Amtrak from restoring, improving, or developing non-high-speed intercity passenger rail service.

(d) APPLICABILITY OF SECTION 24706.—Section 24706 is amended by adding at the end the following:

“(c) APPLICABILITY.—This section applies to all service over routes provided by Amtrak, notwithstanding any provision of section 24701 of this title or any other provision of this title except section 24702(b).”.

SEC. 202. AMTRAK BOARD OF DIRECTORS.

(a) IN GENERAL.—Section 24302 is amended to read as follows:

§ 24302. Board of directors

“(a) COMPOSITION AND TERMS.—

“(1) The Board of Directors of Amtrak is composed of the following 10 directors, each of whom must be a citizen of the United States:

“(A) The Secretary of Transportation.

“(B) The President of Amtrak, who shall serve ex officio, as a non-voting member.

“(C) 8 individuals appointed by the President of the United States, by and with the advice and consent of the Senate, with general business and financial experience, experience or qualifications in transportation, freight and passenger rail transportation, travel, hospitality, cruise line, and passenger air transportation businesses, or representatives of employees or users of passenger rail transportation or a State government.

“(2) In selecting individuals described in paragraph (1) for nominations for appointments to the Board, the President shall consult with the Speaker of the House of Representatives, the minority leader of the House of Representatives, the majority leader of the Senate, and the minority leader of the Senate and try to provide adequate and balanced representation of the major geographic regions of the United States served by Amtrak.

“(3) An individual appointed under paragraph (1)(C) of this subsection serves for 5 years or until the individual's successor is appointed and qualified. Not more than 5 individuals appointed under paragraph (1)(C) may be members of the same political party.

“(4) The Board shall elect a chairman and a vice chairman from among its membership. The vice chairman shall serve as chairman in the absence of the chairman.

“(5) The Secretary may be represented at board meetings by the Secretary's designee.

“(6) The voting privileges of the President can be changed by a unanimous decision of the Board.

“(b) PAY AND EXPENSES.—Each director not employed by the United States Government is entitled to \$300 a day when performing Board duties. Each Director is entitled to reimbursement for necessary travel, reasonable secretarial and professional staff support, and subsistence expenses incurred in attending Board meetings.

“(c) VACANCIES.—A vacancy on the Board is filled in the same way as the original selection, except that an individual appointed by the President of the United States under subsection (a)(1)(C) of this section to fill a vacancy occurring before the end of the term for which the predecessor of that individual was appointed is appointed for the remainder of that term. A vacancy required to be filled by appointment under subsection (a)(1)(C) must be filled not later than 120 days after the vacancy occurs.

“(d) QUORUM.—A majority of the members serving shall constitute a quorum for doing business.

“(e) BYLAWS.—The Board may adopt and amend bylaws governing the operation of Amtrak. The bylaws shall be consistent with this part and the articles of incorporation.”

(b) EFFECTIVE DATE FOR DIRECTORS' PROVISION.—The amendment made by subsection (a) shall take effect on October 1, 2007. The members of the Amtrak Board serving on the date of enactment of this Act may continue to serve for the remainder of the term to which they were appointed.

SEC. 203. ESTABLISHMENT OF IMPROVED FINANCIAL ACCOUNTING SYSTEM.

(a) IN GENERAL.—The Amtrak Board of Directors—

(1) may employ an independent financial consultant with experience in railroad accounting to assist Amtrak in improving Amtrak's financial accounting and reporting system and practices; and

(2) shall implement a modern financial accounting and reporting system that will produce accurate and timely financial information in sufficient detail—

(A) to enable Amtrak to assign revenues and expenses appropriately to each of its lines of business and to each major activity within each line of business activity, including train operations, equipment maintenance, ticketing, and reservations;

(B) to aggregate expenses and revenues related to infrastructure and distinguish them from expenses and revenues related to rail operations;

(C) to allow the analysis of ticketing and reservation information on a real-time basis;

(D) to provide Amtrak cost accounting data; and

(E) to allow financial analysis by route and service.

(b) VERIFICATION OF SYSTEM; REPORT.—The Inspector General of the Department of Transportation shall review the accounting system designed and implemented under subsection (a) to ensure that it accomplishes the purposes for which it is intended. The Inspector General shall report his findings and conclusions, together with any recommendations, to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

SEC. 204. DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.

(a) DEVELOPMENT OF 5-YEAR FINANCIAL PLAN.—The Amtrak Board of Directors shall submit an annual budget and business plan for Amtrak, and a 5-year financial plan for the fiscal year to which that budget and business plan relate and the subsequent 4 years, prepared in accordance with this section, to the Secretary of Transportation and the Inspector General of the Department of Transportation no later than—

(1) the first day of each fiscal year beginning after the date of enactment of this Act; or

(2) the date that is 60 days after the date of enactment of an appropriation Act for the fiscal year, if later.

(b) CONTENTS OF 5-YEAR FINANCIAL PLAN.—The 5-year financial plan for Amtrak shall include, at a minimum—

(1) all projected revenues and expenditures for Amtrak, including governmental funding sources;

(2) projected ridership levels for all Amtrak passenger operations;

(3) revenue and expenditure forecasts for non-passenger operations;

(4) capital funding requirements and expenditures necessary to maintain passenger service which will accommodate predicted ridership levels and predicted sources of capital funding;

(5) operational funding needs, if any, to maintain current and projected levels of passenger service, including state-supported routes and predicted funding sources;

(6) projected capital and operating requirements, ridership, and revenue for any new passenger service operations or service expansions;

(7) an assessment of the continuing financial stability of Amtrak, as indicated by factors such as the ability of the Federal government to fund capital and operating requirements adequately, Amtrak's ability to efficiently manage its workforce, and Amtrak's ability to effectively provide passenger train service;

(8) estimates of long-term and short-term debt and associated principal and interest payments (both current and anticipated);

(9) annual cash flow forecasts;

(10) a statement describing methods of estimation and significant assumptions;

(11) specific measures that demonstrate measurable improvement year over year in Amtrak's ability to operate with reduced Federal operating assistance; and

(12) capital and operating expenditures for anticipated security needs.

(c) STANDARDS TO PROMOTE FINANCIAL STABILITY.—In meeting the requirements of subsection (b), Amtrak shall—

(1) apply sound budgetary practices, including reducing costs and other expenditures, improving productivity, increasing revenues, or combinations of such practices;

(2) use the categories specified in the financial accounting and reporting system developed under section 203 when preparing its 5-year financial plan; and

(3) ensure that the plan is consistent with the authorizations of appropriations under title I of this Act.

(d) ASSESSMENT BY DOT INSPECTOR GENERAL.—

(1) IN GENERAL.—The Inspector General of the Department of Transportation shall assess the 5-year financial plans prepared by Amtrak under this section to determine whether they meet the requirements of subsection (b), and may suggest revisions to any components thereof that do not meet those requirements.

(2) ASSESSMENT TO BE FURNISHED TO THE CONGRESS.—The Inspector General shall furnish to the House of Representatives Committee on Appropriations, the Senate Committee on Appropriations, the House of Representatives Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation—

(A) an assessment of the annual budget within 90 days after receiving it from Amtrak; and

(B) an assessment of the remaining 4 years of the 5-year financial plan within 180 days after receiving it from Amtrak.

SEC. 205. ESTABLISHMENT OF GRANT PROCESS.

(a) GRANT REQUESTS.—Amtrak shall submit grant requests (including a schedule for the disbursement of funds), consistent with the requirements of this Act, to the Secretary of Transportation for funds authorized to be appropriated to the Secretary for the use of Amtrak under sections 101(a) and (b), 103, and 105.

(b) PROCEDURES FOR GRANT REQUESTS.—The Secretary shall establish substantive and procedural requirements, including schedules, for grant requests under this section not later than 30 days after the date of enactment of this Act and shall transmit copies to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure. As part of those requirements, the Secretary shall require, at a minimum, that Amtrak deposit grant funds, consistent with the appropriated amounts for each area of expenditure in a given fiscal year, in the following 3 accounts:

(1) The Amtrak Operating account.

(2) The Amtrak General Capital account.

(3) The Northeast Corridor Improvement funds account.

Amtrak may not transfer such funds to another account or expend such funds for any purpose other than the purposes covered by the account in which the funds are deposited without approval by the Secretary.

(c) REVIEW AND APPROVAL.—

(1) 30-DAY APPROVAL PROCESS.—The Secretary shall complete the review of a complete grant request (including the disbursement schedule) and approve or disapprove the request within 30 days after the date on which Amtrak submits the grant request. If the Secretary disapproves the request or determines that the request is incomplete or

deficient, the Secretary shall include the reason for disapproval or the incomplete items or deficiencies in the notice to Amtrak.

(2) 15-DAY MODIFICATION PERIOD.—Within 15 days after receiving notification from the Secretary under the preceding sentence, Amtrak shall submit a modified request for the Secretary's review.

(3) REVISED REQUESTS.—Within 15 days after receiving a modified request from Amtrak, the Secretary shall either approve the modified request, or, if the Secretary finds that the request is still incomplete or deficient, the Secretary shall identify in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure the remaining deficiencies and recommend a process for resolving the outstanding portions of the request.

SEC. 206. STATE-SUPPORTED ROUTES.

(a) IN GENERAL.—Within 2 years after the date of enactment of this Act, the Board of Directors of Amtrak, in consultation with the Secretary of Transportation and the governors of each State and the Mayor of the District of Columbia or groups representing those officials, shall develop and implement a standardized methodology for establishing and allocating the operating and capital costs among the States and Amtrak associated with trains operated on routes described in section 24102(5)(B) or (D) or section 24702 that—

(1) ensures, within 5 years after the date of enactment of this Act, equal treatment in the provision of like services of all States and groups of States (including the District of Columbia); and

(2) allocates to each route the costs incurred only for the benefit of that route and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than 1 route.

(b) REVIEW.—If Amtrak and the States (including the District of Columbia) in which Amtrak operates such routes do not voluntarily adopt and implement the methodology developed under subsection (a) in allocating costs and determining compensation for the provision of service in accordance with the date established therein, the Surface Transportation Board shall determine the appropriate methodology required under subsection (a) for such services in accordance with the procedures and procedural schedule applicable to a proceeding under section 24904(c) of title 49, United States Code, and require the full implementation of this methodology with regards to the provision of such service within 1 year after the Board's determination of the appropriate methodology.

(c) USE OF CHAPTER 244 FUNDS.—Funds provided to a State under chapter 244 of title 49, United States Code, may be used, as provided in that chapter, to pay capital costs determined in accordance with this section.

SEC. 207. INDEPENDENT AUDITOR TO ESTABLISH METHODOLOGIES FOR AMTRAK ROUTE AND SERVICE PLANNING DECISIONS.

(a) METHODOLOGY DEVELOPMENT.—The Federal Railroad Administration shall obtain the services of an independent auditor or consultant to develop and recommend objective methodologies for determining intercity passenger routes and services, including the establishment of new routes, the elimination of existing routes, and the contraction or expansion of services or frequencies over such routes. In developing such methodologies, the auditor or consultant shall consider—

(1) the current or expected performance and service quality of intercity passenger train operations, including cost recovery, on-

time performance and minutes of delay, ridership, on-board services, stations, facilities, equipment, and other services;

(2) connectivity of a route with other routes;

(3) the transportation needs of communities and populations that are not well served by other forms of public transportation;

(4) Amtrak's and other major intercity passenger rail service providers in other countries' methodologies for determining intercity passenger rail routes and services; and

(5) the views of the States and other interested parties.

(b) SUBMITTAL TO CONGRESS.—The auditor or consultant shall submit recommendations developed under subsection (a) to Amtrak, the House of Representatives Committee on Transportation and Infrastructure, and the Senate Committee on Commerce, Science, and Transportation.

(c) CONSIDERATION OF RECOMMENDATIONS.—Within 90 days after receiving the recommendations developed under subsection (a) by the independent auditor or consultant, the Amtrak Board shall consider the adoption of those recommendations. The Board shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure explaining its action in adopting or failing to adopt any of the recommendations.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be made available to the Secretary of Transportation, out of any amounts authorized by this Act to be appropriated for the benefit of Amtrak and not otherwise obligated or expended, such sums as may be necessary to carry out this section.

(e) PIONEER ROUTE.—Within 2 years after the date of enactment of this Act, Amtrak shall conduct a 1-time evaluation of the Pioneer Route formerly operated by Amtrak to determine, using methodologies adopted under subsection (c), whether a level of passenger demand exists that would warrant consideration of reinstating the entire Pioneer Route service or segments of that service.

SEC. 208. METRICS AND STANDARDS.

(a) IN GENERAL.—Within 180 days after the date of enactment of this Act, the Administrator of the Federal Railroad Administration and Amtrak shall jointly, in consultation with the Surface Transportation Board, rail carriers over whose rail lines Amtrak trains operate, States, Amtrak employees, and groups representing Amtrak passengers, as appropriate, develop new or improve existing metrics and minimum standards for measuring the performance and service quality of intercity passenger train operations, including cost recovery, on-time performance and minutes of delay, ridership, on-board services, stations, facilities, equipment, and other services. Such metrics, at a minimum, shall include the percentage of avoidable and fully allocated operating costs covered by passenger revenues on each route, ridership per train mile operated, measures of on-time performance and delays incurred by intercity passenger trains on the rail lines of each rail carrier and, for long distance routes, measures of connectivity with other routes in all regions currently receiving Amtrak service and the transportation needs of communities and populations that are not well-served by other forms of public transportation. Amtrak shall provide reasonable access to the Federal Railroad Administration in order to enable the Administration to carry out its duty under this section.

(b) QUARTERLY REPORTS.—The Administrator of the Federal Railroad Administration shall collect the necessary data and publish a quarterly report on the performance and service quality of intercity passenger train operations, including Amtrak's cost recovery, ridership, on-time performance and minutes of delay, causes of delay, on-board services, stations, facilities, equipment, and other services.

(c) CONTRACT WITH HOST RAIL CARRIERS.—To the extent practicable, Amtrak and its host rail carriers shall incorporate the metrics and standards developed under subsection (a) into their access and service agreements.

(d) ARBITRATION.—If the development of the metrics and standards is not completed within the 180-day period required by subsection (a), any party involved in the development of those standards may petition the Surface Transportation Board to appoint an arbitrator to assist the parties in resolving their disputes through binding arbitration.

SEC. 209. PASSENGER TRAIN PERFORMANCE.

(a) IN GENERAL.—Section 24308 is amended by adding at the end the following:

“(f) PASSENGER TRAIN PERFORMANCE AND OTHER STANDARDS.—

“(1) INVESTIGATION OF SUBSTANDARD PERFORMANCE.—If the on-time performance of any intercity passenger train averages less than 80 percent for any 2 consecutive calendar quarters, or the service quality of intercity passenger train operations for which minimum standards are established under section 208 of the Passenger Rail Investment and Improvement Act of 2007 fails to meet those standards for 2 consecutive calendar quarters, the Surface Transportation Board may initiate an investigation, or upon the filing of a complaint by Amtrak, an intercity passenger rail operator, a *host freight railroad over which Amtrak operates*, or an entity for which Amtrak operates intercity passenger rail service, the Board shall initiate an investigation to determine whether, and to what extent, delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over tracks of which the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operator. In making its determination or carrying out such an investigation, the Board shall obtain information from all parties involved and identify reasonable measures and make recommendations to improve the service, quality, and on-time performance of the train.

“(2) PROBLEMS CAUSED BY HOST RAIL CARRIER.—If the Board determines that delays or failures to achieve minimum standards investigated under paragraph (1) are attributable to a rail carrier's failure to provide preference to Amtrak over freight transportation as required under subsection (c), the Board may award damages against the host rail carrier, including prescribing such other relief to Amtrak as it determines to be reasonable and appropriate pursuant to paragraph (3) of this subsection.

“(3) DAMAGES AND RELIEF.—In awarding damages and prescribing other relief under this subsection the Board shall consider such factors as—

“(A) the extent to which Amtrak suffers financial loss as a result of host rail carrier delays or failure to achieve minimum standards; and

“(B) what reasonable measures would adequately deter future actions which may reasonably be expected to be likely to result in delays to Amtrak on the route involved.

“(4) USE OF DAMAGES.—The Board shall, as it deems appropriate, remit the damages awarded under this subsection to Amtrak or

to an entity for which Amtrak operates intercity passenger rail service. Such damages shall be used for capital or operating expenditures on the routes over which delays or failures to achieve minimum standards were the result of a rail carrier's failure to provide preference to Amtrak over freight transportation as determined in accordance with paragraph (2)."

(b) CHANGE OF REFERENCE.—Section 24308 is amended—

(1) by striking "Interstate Commerce Commission" in subsection (a)(2)(A) and inserting "Surface Transportation Board";

(2) by striking "Commission" each place it appears and inserting "Board";

(3) by striking "Secretary of Transportation" in subsection (c) and inserting "Board"; and

(4) by striking "Secretary" the last 3 places it appears in subsection (c) and each place it appears in subsections (d) and (e) and inserting "Board".

SEC. 210. LONG DISTANCE ROUTES.

(a) IN GENERAL.—Chapter 247 is amended by adding at the end thereof the following:

"§ 24710. Long distance routes

"(a) ANNUAL EVALUATION.—Using the financial and performance metrics developed under section 208 of the Passenger Rail Investment and Improvement Act of 2007, Amtrak shall—

"(1) evaluate annually the financial and operating performance of each long distance passenger rail route operated by Amtrak; and

"(2) rank the overall performance of such routes for 2006 and identify each long distance passenger rail route operated by Amtrak in 2006 according to its overall performance as belonging to the best performing third of such routes, the second best performing third of such routes, or the worst performing third of such routes.

"(b) PERFORMANCE IMPROVEMENT PLAN.—Amtrak shall develop and publish a performance improvement plan for its long distance passenger rail routes to achieve financial and operating improvements based on the data collected through the application of the financial and performance metrics developed under section 208 of that Act. The plan shall address—

"(1) on-time performance;

"(2) scheduling, frequency, routes, and stops;

"(3) the feasibility of restructuring service into connected corridor service;

"(4) performance-related equipment changes and capital improvements;

"(5) on-board amenities and service, including food, first class, and sleeping car service;

"(6) State or other non-Federal financial contributions;

"(7) improving financial performance; and

"(8) other aspects of Amtrak's long distance passenger rail routes that affect the financial, competitive, and functional performance of service on Amtrak's long distance passenger rail routes.

"(c) IMPLEMENTATION.—Amtrak shall implement the performance improvement plan developed under subsection (b)—

"(1) beginning in fiscal year 2008 for those routes identified as being in the worst performing third under subsection (a)(2);

"(2) beginning in fiscal year 2009 for those routes identified as being in the second best performing third under subsection (a)(2); and

"(3) beginning in fiscal year 2010 for those routes identified as being in the best performing third under subsection (a)(2).

"(d) ENFORCEMENT.—The Federal Railroad Administration shall monitor the development, implementation, and outcome of improvement plans under this section. If, for

any year, it determines that Amtrak is not making reasonable progress in implementing its performance improvement plan or in achieving the expected outcome of the plan for any calendar year, the Federal Railroad Administration—

"(1) shall notify Amtrak, the Inspector General of the Department of Transportation, and appropriate Congressional committees of its determination under this subsection;

"(2) shall provide an opportunity for a hearing with respect to that determination; and

"(3) may withhold any appropriated funds otherwise available to Amtrak for the operation of a route or routes on which it is not making progress, other than funds made available for passenger safety or security measures."

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 247 is amended by inserting after the item relating to section 24709 the following:

"24710. Long distance routes."

SEC. 211. ALTERNATE PASSENGER RAIL SERVICE PROGRAM.

(a) IN GENERAL.—Chapter 247, as amended by section 209, is amended by adding at the end thereof the following:

"§ 24711. Alternate passenger rail service program

"(a) IN GENERAL.—Within 1 year after the date of enactment of the Passenger Rail Investment and Improvement Act of 2007, the Federal Railroad Administration shall initiate a rulemaking proceeding to develop a program under which—

"(1) a rail carrier or rail carriers that own infrastructure over which Amtrak operates a passenger rail service route described in subparagraph (B), (C), or (D) of section 24102(5) or in section 24702 of title 49, United States [Code] Code, or any entity operating as a rail carrier that has negotiated a contingent agreement to lease necessary rights-of-way from a rail carrier or rail carriers that own the infrastructure on which Amtrak operates such routes, may petition the Federal Railroad Administration to be considered as a passenger rail service provider over that route in lieu of Amtrak;

"(2) the Administration would notify Amtrak within 30 days after receiving a petition under paragraph (1) and establish a deadline by which both the petitioner and Amtrak would be required to submit a bid to provide passenger rail service over the route to which the petition relates;

"(3) each bid would describe how the bidder would operate the route, what Amtrak passenger equipment would be needed, if any, what sources of non-Federal funding the bidder would use, including any State subsidy, among other things;

"(4) the Administration would make a decision and execute a contract within a specified, limited time after that deadline awarding to the winning bidder—

"(A) the right and obligation to provide passenger rail service over that route subject to such performance standards as the Administration may require, consistent with the standards developed under section 208 of this Act; and

"(B) an operating subsidy—

"(i) for the first year at a level not in excess of the level in effect during the fiscal year preceding the fiscal year in which the petition was received, adjusted for inflation;

"(ii) for any subsequent years at such level, adjusted for inflation; and

"(5) each bid would contain a staffing plan describing the number of employees needed to operate the service, the job assignments and requirements, and the terms of work for prospective and current employees of the

bidder for the service outlined in the bid, and such staffing plan would be made available by the winning bidder to the public after the bid award.

"(b) IMPLEMENTATION.—

"(1) INITIAL PETITIONS.—Pursuant to any rules or regulations promulgated under subsection (A), the Administration shall establish a deadline for the submission of a petition under subsection (a)—

"(A) during fiscal year 2008 for operations commencing in fiscal year 2009; and

"(B) during the immediately preceding fiscal year for operations commencing in subsequent fiscal years.

"(2) ROUTE LIMITATIONS.—The Administration may not make the program available with respect to more than 1 Amtrak passenger rail route for operations beginning in fiscal year 2009 nor to more than 2 such routes for operations beginning in fiscal year 2011 and subsequent fiscal years.

"(c) PERFORMANCE STANDARDS; ACCESS TO FACILITIES; EMPLOYEES.—If the Administration awards the right and obligation to provide passenger rail service over a route under the program to a rail carrier or rail carriers—

"(1) it shall execute a contract with the rail carrier or rail carriers for rail passenger operations on that route that conditions the operating and subsidy rights upon—

"(A) the service provider continuing to provide passenger rail service on the route that is no less frequent, nor over a shorter distance, than Amtrak provided on that route before the award; and

"(B) the service provider's compliance with the minimum standards established under section 208 of the Passenger Rail Investment and Improvement Act of 2007 and such additional performance standards as the Administration may establish;

"(2) it shall, if the award is made to a rail carrier other than Amtrak, require Amtrak to provide access to its reservation system, stations, and facilities to any rail carrier or rail carriers awarded a contract under this section, in accordance with section 218 of that Act, necessary to carry out the purposes of this section;

"(3) the employees of any person used by a rail carrier or rail carriers (as defined in section 10102(5) of this title) in the operation of a route under this section shall be considered an employee of that carrier or carriers and subject to the applicable Federal laws and regulations governing similar crafts or classes of employees of Amtrak, including provisions under section 121 of the Amtrak Reform and Accountability Act of 1997 relating to employees that provide food and beverage service; and

"(4) the winning bidder shall provide preference in hiring to qualified Amtrak employees displaced by the award of the bid, consistent with the staffing plan submitted by the bidder.

"(d) CESSATION OF SERVICE.—If a rail carrier or rail carriers awarded a route under this section cease to operate the service or fail to fulfill their obligations under the contract required under subsection (c), the Administrator, in collaboration with the Surface Transportation Board shall take any necessary action consistent with this title to enforce the contract and ensure the continued provision of service, including the installment of an interim service provider and re-bidding the contract to operate the service. The entity providing service shall either be Amtrak or a rail carrier defined in section 24711(a)(1).

"(e) ADEQUATE RESOURCES.—Before taking any action allowed under this section, the Secretary shall certify that the Administrator has sufficient resources that are adequate to undertake the program established under this section."

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 247, as amended by section 209, is amended by inserting after the item relating to section 24710 the following: “24711. Alternate passenger rail service program.”.

SEC. 212. EMPLOYEE TRANSITION ASSISTANCE.

(a) PROVISION OF FINANCIAL INCENTIVES.—For Amtrak employees who are adversely affected by the cessation of the operation of a long distance route or any other route under section 24711 of title 49, United States Code, previously operated by Amtrak, the Secretary shall develop a program under which the Secretary may, in the Secretary's discretion, provide grants for financial incentives to be provided to employees of the National Railroad Passenger Corporation who voluntarily terminate their employment with the Corporation and relinquish any legal rights to receive termination-related payments under any contractual agreement with the Corporation.

(b) CONDITIONS FOR FINANCIAL INCENTIVES.—As a condition for receiving financial assistance grants under this section, the Corporation must certify that—

(1) a reasonable attempt was made to reassign an employee adversely affected under section 24711 of title 49, United States Code, or by the elimination of any route, to other positions within the Corporation in accordance with any contractual agreements;

(2) the financial assistance results in a net reduction in the total number of employees equal to the number receiving financial incentives;

(3) the financial assistance results in a net reduction in total employment expense equivalent to the total employment expenses associated with the employees receiving financial incentives; and

(4) the total number of employees eligible for termination-related payments will not be increased without the express written consent of the Secretary.

(c) AMOUNT OF FINANCIAL INCENTIVES.—The financial incentives authorized under this section may be no greater than \$50,000 per employee.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to make grants to the National Railroad Passenger Corporation to provide financial incentives under subsection (a).

(e) TERMINATION-RELATED PAYMENTS.—If Amtrak employees adversely affected by the cessation of Amtrak service resulting from the awarding of a grant to an operator other than Amtrak for the operation of a route under section 24711 of title 49, United States Code, or any other route, previously operated by Amtrak do not receive financial incentives under subsection (a), then the Secretary shall make grants to the National Railroad Passenger Corporation from funds authorized by section 102 of this Act for termination-related payments to employees under existing contractual agreements.

SEC. 213. NORTHEAST CORRIDOR STATE-OF-GOOD-REPAIR PLAN.

(a) IN GENERAL.—Within 6 months after the date of enactment of this Act, the National Railroad Passenger Corporation, in consultation with the Secretary and the States (including the District of Columbia) that make up the Northeast Corridor (as defined in section 24102 of title 49, United States Code), shall prepare a capital spending plan for capital projects required to return the railroad right-of-way (including track, signals, and auxiliary structures), facilities, stations, and equipment, of the Northeast Corridor to a state of good repair by the end of fiscal year 2012, consistent with the funding levels authorized in this Act and shall submit the plan to the Secretary.

(b) APPROVAL BY THE SECRETARY.—

(1) The Corporation shall submit the capital spending plan prepared under this section to the Secretary of Transportation for review and approval pursuant to the procedures developed under section 205 of this Act.

(2) The Secretary of Transportation shall require that the plan be updated at least annually and shall review and approve such updates. During review, the Secretary shall seek comments and review from the commission established under section 24905 of title 49, United States Code, and other Northeast Corridor users regarding the plan.

(3) The Secretary shall make grants to the Corporation with funds authorized by section 101(b) for Northeast Corridor capital investments contained within the capital spending plan prepared by the Corporation and approved by the Secretary.

(4) Using the funds authorized by section 101(d), the Secretary shall review Amtrak's capital expenditures funded by this section to ensure that such expenditures are consistent with the capital spending plan and that Amtrak is providing adequate project management oversight and fiscal controls.

(c) ELIGIBILITY OF EXPENDITURES.—The Federal share of expenditures for capital improvements under this section may not exceed 100 percent.

SEC. 214. NORTHEAST CORRIDOR INFRASTRUCTURE AND OPERATIONS IMPROVEMENTS.

(a) IN GENERAL.—Section 24905 is amended to read as follows:

“§ 24905. Northeast Corridor Infrastructure and Operations Advisory Commission; Safety and Security Committee

“(a) NORTHEAST CORRIDOR INFRASTRUCTURE AND OPERATIONS ADVISORY COMMISSION.—

“(1) Within 180 days after the date of enactment of the Passenger Rail Investment and Improvement Act of 2007, the Secretary of Transportation shall establish a Northeast Corridor Infrastructure and Operations Advisory Commission (hereinafter referred to in this section as the ‘Commission’) to promote mutual cooperation and planning pertaining to the rail operations and related activities of the Northeast Corridor. The Commission shall be made up of—

“(A) members representing the National Railroad Passenger Corporation;

“(B) members representing the Secretary of Transportation and the Federal Railroad Administration;

“(C) 1 member from each of the States (including the District of Columbia) that constitute the Northeast Corridor as defined in section 24102, designated by, and serving at the pleasure of, the chief executive officer thereof; and

“(D) non-voting representatives of freight railroad carriers using the Northeast Corridor selected by the Secretary.

“(2) The Secretary shall ensure that the membership belonging to any of the groups enumerated under subparagraph (1) shall not constitute a majority of the commission's memberships.

“(3) The commission shall establish a schedule and location for convening meetings, but shall meet no less than four times per fiscal year, and the commission shall develop rules and procedures to govern the commission's proceedings.

“(4) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

“(5) Members shall serve without pay but shall receive travel expenses, including per diem in lieu of subsistence, in accordance with sections 5702 and 5703 of title 5, United States Code.

“(6) The Chairman of the Commission shall be elected by the members.

“(7) The Commission may appoint and fix the pay of such personnel as it considers appropriate.

“(8) Upon request of the Commission, the head of any department or agency of the United States may detail, on a reimbursable basis, any of the personnel of that department or agency to the Commission to assist it in carrying out its duties under this section.

“(9) Upon the request of the Commission, the Administrator of General Services shall provide to the Commission, on a reimbursable basis, the administrative support services necessary for the Commission to carry out its responsibilities under this section.

“(10) The commission shall consult with other entities as appropriate.

(b) GENERAL RECOMMENDATIONS.—The Commission shall develop recommendations concerning Northeast Corridor rail infrastructure and operations including proposals addressing, as appropriate—

“(1) short-term and long term capital investment needs beyond the state-of-good-repair under section 213;

“(2) future funding requirements for capital improvements and maintenance;

“(3) operational improvements of intercity passenger rail, commuter rail, and freight rail services;

“(4) opportunities for additional non-rail uses of the Northeast Corridor;

“(5) scheduling and dispatching;

“(6) safety and security enhancements;

“(7) equipment design;

“(8) marketing of rail services; and

“(9) future capacity requirements.

(c) ACCESS COSTS.—

(1) DEVELOPMENT OF FORMULA.—Within 1 year after verification of Amtrak's new financial accounting system pursuant to section 203(b) of the Passenger Rail Investment and Improvement Act of 2007, the Commission shall—

“(A) develop a standardized formula for determining and allocating costs, revenues, and compensation for Northeast Corridor commuter rail passenger transportation, as defined in section 24102 of this title, that use National Railroad Passenger Corporation facilities or services or that provide such facilities or services to the National Railroad Passenger Corporation that ensure that—

“(i) there is no cross-subsidization of commuter rail passenger, intercity rail passenger, or freight rail transportation; and

“(ii) each service is assigned the costs incurred only for the benefit of that service, and a proportionate share, based upon factors that reasonably reflect relative use, of costs incurred for the common benefit of more than 1 service;

“(B) develop a proposed timetable for implementing the formula before the end of the 6th year following the date of enactment of that Act;

“(C) transmit the proposed timetable to the Surface Transportation Board; and

“(D) at the request of a Commission member, petition the Surface Transportation Board to appoint a mediator to assist the Commission members through non-binding mediation to reach an agreement under this section.

(2) IMPLEMENTATION.—The National Railroad Passenger Corporation and the commuter authorities providing commuter rail passenger transportation on the Northeast Corridor shall implement new agreements for usage of facilities or services based on the formula proposed in paragraph (1) in accordance with the timetable established therein. If the entities fail to implement such new agreements in accordance with the timetable, the Commission shall petition the Surface Transportation Board to determine the appropriate compensation amounts for

such services in accordance with section 24904(c) of this title. The Surface Transportation Board shall enforce its determination on the party or parties involved.

“(d) TRANSMISSION OF RECOMMENDATIONS.—The Commission shall annually transmit the recommendations developed under subsection (b) and the formula and timetable developed under subsection (c)(1) to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure.

“(e) NORTHEAST CORRIDOR SAFETY AND SECURITY COMMITTEE.—

“(1) IN GENERAL.—The Secretary shall establish a Northeast Corridor Safety and Security Committee composed of members appointed by the Secretary. The members shall be representatives of—

“(A) the Secretary;

“(B) Amtrak;

“(C) freight carriers operating more than 150,000 train miles a year on the main line of the Northeast Corridor;

“(D) commuter agencies;

“(E) rail passengers;

“(F) rail labor;

“(G) the Transportation Security Administration; and

“(H) other individuals and organizations the Secretary decides have a significant interest in rail safety or security.

“(2) FUNCTION; MEETINGS.—The Secretary shall consult with the Committee about safety and security improvements on the Northeast Corridor main line. The Committee shall meet at least once every 2 years to consider safety matters on the main line.

“(3) REPORT.—At the beginning of the first session of each Congress, the Secretary shall submit a report to the Commission and to Congress on the status of efforts to improve safety and security on the Northeast Corridor main line. The report shall include the safety recommendations of the Committee and the comments of the Secretary on those recommendations.”.

(b) CONFORMING AMENDMENTS.—Section 24904(c)(2) is amended by—

(1) inserting “commuter rail passenger and” after “between”; and

(2) striking “freight” in the second sentence.

(c) RIDOT ACCESS AGREEMENT.—

(1) IN GENERAL.—Not later than December 15, 2007, Amtrak and the Rhode Island Department of Transportation shall enter into an agreement governing access fees and other costs or charges related to the operation of the South County commuter rail service on the Northeast Corridor between Providence and Wickford Junction, Rhode Island.

(2) FAILURE TO REACH AGREEMENT.—If Amtrak and the Rhode Island Department of Transportation fail to reach the agreement specified under paragraph (1), the Administrator of the Federal Railroad Administration shall, after consultation with both parties, resolve any outstanding disagreements between the parties, including setting access fees and other costs or charges related to the operation of the South County commuter rail service that do not allow for the cross-subsidization of intercity rail passenger and commuter rail passenger service, not later than [January 30, 2008.] *October 31, 2007.*

(3) INTERIM AGREEMENT.—Any agreement between Amtrak and the Rhode Island Department of Transportation relating to access costs made under this subsection shall be superseded by any access cost formula developed by the Northeast Corridor Infrastructure and Operations Advisory Commission under section 24905(c)(1) of title 49, United States Code, as amended by section 214(a) of this Act.

SEC. 215. RESTRUCTURING LONG-TERM DEBT AND CAPITAL LEASES.

(a) IN GENERAL.—The Secretary of the Treasury, in consultation with the Secretary of Transportation and Amtrak, may make agreements to restructure Amtrak’s indebtedness as of the date of enactment of this Act. This authorization expires on October 1, 2008.

(b) DEBT RESTRUCTURING.—The Secretary of Treasury, in consultation with the Secretary of the Transportation and Amtrak, shall enter into negotiations with the holders of Amtrak debt, including leases, outstanding on the date of enactment of this Act for the purpose of restructuring (including repayment) and repaying that debt. The Secretary of the Treasury may secure agreements for restructuring or repayment on such terms as the Secretary of the Treasury deems favorable to the interests of the Government.

(c) CRITERIA.—In restructuring Amtrak’s indebtedness, the Secretary and Amtrak—

(1) shall take into consideration repayment costs, the term of any loan or loans, and market conditions; and

(2) shall ensure that the restructuring results in significant savings to Amtrak and the United States Government.

(d) PAYMENT OF RENEGOTIATED DEBT.—If the criteria under subsection (c) are met, the Secretary of Treasury may assume or repay the restructured debt, as appropriate.

(e) AMTRAK PRINCIPAL AND INTEREST PAYMENTS.—

(1) PRINCIPAL ON DEBT SERVICE.—Unless the Secretary of Treasury makes sufficient payments to creditors under subsection (d) so that Amtrak is required to make no payments to creditors in a fiscal year, the Secretary of Transportation shall use funds authorized by section 103(a)(1) for the use of Amtrak for retirement of principal on loans for capital equipment, or capital leases.

(2) INTEREST ON DEBT.—Unless the Secretary of Treasury makes sufficient payments to creditors under subsection (d) so that Amtrak is required to make no payments to creditors in a fiscal year, the Secretary of Transportation shall use funds authorized by section 103(a)(2) for the use of Amtrak for the payment of interest on loans for capital equipment, or capital leases.

(3) REDUCTIONS IN AUTHORIZATION LEVELS.—Whenever action taken by the Secretary of the Treasury under subsection (a) results in reductions in amounts of principal or interest that Amtrak must service on existing debt, the corresponding amounts authorized by section 103(a)(1) or (2) shall be reduced accordingly.

(f) LEGAL EFFECT OF PAYMENTS UNDER THIS SECTION.—The payment of principal and interest on secured debt, other than debt assumed under subsection (d), with the proceeds of grants under subsection (e) shall not—

(1) modify the extent or nature of any indebtedness of the National Railroad Passenger Corporation to the United States in existence of the date of enactment of this Act;

(2) change the private nature of Amtrak’s or its successors’ liabilities; or

(3) imply any Federal guarantee or commitment to amortize Amtrak’s outstanding indebtedness.

(g) SECRETARY APPROVAL.—Amtrak may not incur more debt after the date of enactment of this Act without the express advance approval of the Secretary of Transportation.

(h) REPORT.—The Secretary of the Treasury shall transmit a report to the Senate Committee on Commerce, Science, and Transportation, the Senate Committee on Appropriations, the House of Representa-

tives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Appropriations by November 1, 2008—

(1) describing in detail any agreements to restructure the Amtrak debt; and

(2) providing an estimate of the savings to Amtrak and the United States Government.

SEC. 216. STUDY OF COMPLIANCE REQUIREMENTS AT EXISTING INTERCITY RAIL STATIONS.

Amtrak, in consultation with station owners, shall evaluate the improvements necessary to make all existing stations it serves readily accessible to and usable by individuals with disabilities, as required by section 242(e)(2) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12162(e)(2)). The evaluation shall include the estimated cost of the improvements necessary, the identification of the responsible person (as defined in section 241(5) of that Act (42 U.S.C. 12161(5))), and the earliest practicable date when such improvements can be made. Amtrak shall submit the evaluation to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the National Council on Disability by September 30, 2008, along with recommendations for funding the necessary improvements.

SEC. 217. INCENTIVE PAY.

The Amtrak Board of Directors is encouraged to develop an incentive pay program for Amtrak management employees.

SEC. 218. ACCESS TO AMTRAK EQUIPMENT AND SERVICES.

If a State desires to select or selects an entity other than Amtrak to provide services required for the operation of an intercity passenger train route described in section 24102(5)(D) or 24702 of title 49, United States Code, the State may make an agreement with Amtrak to use facilities and equipment of, or have services provided by, Amtrak under terms agreed to by the State and Amtrak to enable the State to utilize an entity other than Amtrak to provide services required for operation of the route. If the parties cannot agree upon terms, and the Surface Transportation Board finds that access to Amtrak’s facilities or equipment, or the provision of services by Amtrak, is necessary to carry out this provision and that the operation of Amtrak’s other services will not be impaired thereby, the Surface Transportation Board shall, within 120 days after submission of the dispute, issue an order that the facilities and equipment be made available, and that services be provided, by Amtrak, and shall determine reasonable compensation, liability and other terms for use of the facilities and equipment and provision of the services. Compensation shall be determined in accord with the methodology established pursuant to section 206 of this Act.

SEC. 219. GENERAL AMTRAK PROVISIONS.

(a) REPEAL OF SELF-SUFFICIENCY REQUIREMENTS.

(1) TITLE 49 AMENDMENTS.—Chapter 241 is amended—

(A) by striking the last sentence of section 24101(d); and

(B) by striking the last sentence of section 24104(a).

(2) AMTRAK REFORM AND ACCOUNTABILITY ACT AMENDMENTS.—Title II of the Amtrak Reform and Accountability Act of 1997 (49 U.S.C. 24101 nt) is amended by striking sections 204 and 205.

(b) LEASE ARRANGEMENTS.—Amtrak may obtain services from the Administrator of General Services, and the Administrator may provide services to Amtrak, under section 201(b) and 211(b) of the Federal Property and Administrative Service Act of 1949 (40

U.S.C. 481(b) and 491(b)) for each of fiscal years 2007 through 2012.

(c) **APPLICABILITY OF DISTRICT OF COLUMBIA LAW TO CERTAIN AMTRAK CONTRACTS.**—Section 24301 is amended by adding at the end the following:

“(o) **APPLICABILITY OF DISTRICT OF COLUMBIA LAW.**—Any lease or contract entered into between the National Railroad Passenger Corporation and the State of Maryland, or any department or agency of the State of Maryland, after the date of the enactment of this subsection shall be governed by the laws of the District of Columbia.”.

(d) **TRAVEL FACILITATION.**—Using existing authority or agreements, or upon reaching additional agreements with Canada, the Secretary of Transportation and other Federal agencies, as appropriate, are authorized to establish facilities and procedures to conduct preclearance of passengers traveling on Amtrak trains from Canada to the United States. The Secretary shall seek to establish such facilities and procedures—

(1) in Vancouver, Canada, no later than June 1, 2008; and

(2) in other areas as determined appropriate by the Secretary.

SEC. 220. PRIVATE SECTOR FUNDING OF PASSENGER TRAINS.

Amtrak is encouraged to increase its operation of trains funded by the private sector in order to minimize its need for Federal subsidies. Amtrak shall utilize the provisions of section 24308 of title 49, United States Code, when necessary to obtain access to facilities, train and engine crews, or services of a rail carrier or regional transportation authority that are required to operate such trains.

SEC. 221. ON-BOARD SERVICE IMPROVEMENTS.

(a) **IN GENERAL.**—Within 1 year after metrics and standards are established under section 208 of this Act, Amtrak shall develop and implement a plan to improve on-board service pursuant to the metrics and standards for such service developed under that section.

(b) **REPORT.**—Amtrak shall provide a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on the on-board service improvements proscribed in the plan and the timeline for implementing such improvements.

SEC. 222. AMTRAK MANAGEMENT ACCOUNTABILITY.

(a) **IN GENERAL.**—Chapter 243 is amended by inserting after section 24309 the following:

“§ 24310. Management accountability

“(a) **IN GENERAL.**—Three years after the date of enactment of the Passenger Rail Investment and Improvement Act of 2007, and two years thereafter, the Inspector General of the Department of Transportation shall complete an overall assessment of the progress made by Amtrak management and the Department of Transportation in implementing the provisions of that Act.

“(b) **ASSESSMENT.**—The management assessment undertaken by the Inspector General may include a review of—

“(1) effectiveness improving annual financial planning;

“(2) effectiveness in implementing improved financial accounting;

“(3) efforts to implement minimum train performance standards;

“(4) progress maximizing revenues and minimizing Federal subsidies; and

“(5) any other aspect of Amtrak operations the Inspector General finds appropriate to review.”.

(b) **CONFORMING AMENDMENT.**—The chapter analysis for chapter 243 is amended by inserting after the item relating to section 24309 the following:

“24310. Management accountability.”.

SEC. 223. LOCOMOTIVE BIODIESEL FUEL USE STUDY.

(a) **IN GENERAL.**—The Federal Railroad Administration, in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall conduct a study to determine the extent to which Amtrak could use biodiesel fuel blends to power its fleet of locomotives and any of its other motor vehicles that can operate on diesel fuel.

(b) **FACTORS.**—In conducting the study, the Federal Railroad Administration shall consider—

(1) environmental and energy security effects of biodiesel fuel use;

(2) the cost of purchasing biodiesel fuel blends for such purposes;

(3) whether sufficient biodiesel fuel is readily available; and

(4) the effect of biodiesel fuel use on relevant performance or warranty specifications.

(c) **REPORT.**—Not later than April 1, 2008, the Federal Railroad Administration shall report the results of its study to the Congress together with such findings, conclusions, and recommendations as it deems appropriate.

TITLE III—INTERCITY PASSENGER RAIL POLICY

SEC. 301. CAPITAL ASSISTANCE FOR INTERCITY PASSENGER RAIL SERVICE; STATE RAIL PLANS.

(a) **IN GENERAL.**—Part C of subtitle V is amended by inserting the following after chapter 243:

“CHAPTER 244. INTERCITY PASSENGER RAIL SERVICE CORRIDOR CAPITAL ASSISTANCE

“Sec.

“24401. Definitions.

“24402. Capital investment grants to support intercity passenger rail service.

“24403. Project management oversight.

“24404. Use of capital grants to finance first-dollar liability of grant project.

“24405. Grant conditions.

“§ 24401. Definitions

“In this subchapter:

“(1) **APPLICANT.**—The term ‘applicant’ means a State (including the District of Columbia), a group of States, an Interstate Compact, or a public agency established by one or more States and having responsibility for providing intercity passenger rail service.

“(2) **CAPITAL PROJECT.**—The term ‘capital project’ means a project or program in a State rail plan developed under chapter 225 of this title for—

“(A) acquiring, constructing, improving, or inspecting equipment, track and track structures, or a facility for use in or for the primary benefit of intercity passenger rail service, expenses incidental to the acquisition or construction (including designing, engineering, location surveying, mapping, environmental studies, and acquiring rights-of-way), payments for the capital portions of rail trackage rights agreements, highway-rail grade crossing improvements related to intercity passenger rail service, security, mitigating environmental impacts, communication and signalization improvements, relocation assistance, acquiring replacement housing sites, and acquiring, constructing, relocating, and rehabilitating replacement housing;

“(B) rehabilitating, remanufacturing or overhauling rail rolling stock and facilities used primarily in intercity passenger rail service;

“(C) costs associated with developing State rail plans; and

“(D) the first-dollar liability costs for insurance related to the provision of intercity passenger rail service under section 24404.

“(3) **INTERCITY PASSENGER RAIL SERVICE.**—The term ‘intercity passenger rail service’ means transportation services with the primary purpose of passenger transportation

between towns, cities and metropolitan areas by rail, including high-speed rail, as defined in section 24102 of title 49, United States Code.

“§ 24402. Capital investment grants to support intercity passenger rail service

“(a) **GENERAL AUTHORITY.**—

“(1) The Secretary of Transportation may make grants under this section to an applicant to assist in financing the capital costs of facilities and equipment necessary to provide or improve intercity passenger rail transportation.

“(2) The Secretary shall require that a grant under this section be subject to the terms, conditions, requirements, and provisions the Secretary decides are necessary or appropriate for the purposes of this section, including requirements for the disposition of net increases in value of real property resulting from the project assisted under this section and shall prescribe procedures and schedules for the awarding of grants under this title, including application and qualification procedures and a record of decision on applicant eligibility. The Secretary shall issue a final rule establishing such procedures not later than 90 days after the date of enactment of the Passenger Rail Investment and Improvement Act of 2007.

“(b) **PROJECT AS PART OF STATE RAIL PLAN.**—

“(1) The Secretary may not approve a grant for a project under this section unless the Secretary finds that the project is part of a State rail plan developed under chapter 225 of this title, or under the plan required by section 203 of the Passenger Rail Investment and Improvement Act of 2007, and that the applicant or recipient has or will have the legal, financial, and technical capacity to carry out the project, satisfactory continuing control over the use of the equipment or facilities, and the capability and willingness to maintain the equipment or facilities.

“(2) An applicant shall provide sufficient information upon which the Secretary can make the findings required by this subsection.

“(3) If an applicant has not selected the proposed operator of its service competitively, the applicant shall provide written justification to the Secretary showing why the proposed operator is the best, taking into account price and other factors, and that use of the proposed operator will not unnecessarily increase the cost of the project.

“(c) **PROJECT SELECTION CRITERIA.**—The Secretary, in selecting the recipients of financial assistance to be provided under subsection (a), shall—

“(1) require that each proposed project meet all safety and security requirements that are applicable to the project under law;

“(2) give preference to projects with high levels of estimated ridership, increased on-time performance, reduced trip time, additional service frequency to meet anticipated or existing demand, or other significant service enhancements as measured against minimum standards developed under section 208 of the Passenger Rail Investment and Improvement Act of 2007;

“(3) encourage intermodal connectivity through projects that provide direct connections between train stations, airports, bus terminals, subway stations, ferry ports, and other modes of transportation;

“(4) ensure that each project is compatible with, and is operated in conformance with—

“(A) plans developed pursuant to the requirements of section 135 of title 23, United States Code; and

“(B) the national rail plan (if it is available); and

“(5) favor the following kinds of projects:

“(A) Projects that are expected to have a significant favorable impact on air or highway traffic congestion, capacity, or safety.

“(B) Projects that also improve freight or commuter rail operations.

“(C) Projects that have significant environmental benefits.

“(D) Projects that are—

“(i) at a stage of preparation that all pre-commencement compliance with environmental protection requirements has already been completed; and

“(ii) ready to be commenced.

“(E) Projects with positive economic and employment impacts.

“(F) Projects that encourage the use of positive train control technologies.

“(G) Projects that have commitments of funding from non-Federal Government sources in a total amount that exceeds the minimum amount of the non-Federal contribution required for the project.

“(H) Projects that involve donated property interests or services.

“(I) Projects that are identified by the Surface Transportation Board as necessary to improve the on time performance and reliability of intercity passenger rail under section 24308(f).

“(J) Projects described in section 5302(a)(1)(G) of this title that are designed to support intercity passenger rail service.

“(d) AMTRAK ELIGIBILITY.—To receive a grant under this section, the National Railroad Passenger Corporation may enter into a cooperative agreement with 1 or more States to carry out 1 or more projects on a State rail plan's ranked list of rail capital projects developed under section 22504(a)(5) of this title.

“(e) LETTERS OF INTENT, FULL FUNDING GRANT AGREEMENTS, AND EARLY SYSTEMS WORK AGREEMENTS.—

“(1)(A) The Secretary may issue a letter of intent to an applicant announcing an intention to obligate, for a major capital project under this section, an amount from future available budget authority specified in law that is not more than the amount stipulated as the financial participation of the Secretary in the project.

“(B) At least 30 days before issuing a letter under subparagraph (A) of this paragraph or entering into a full funding grant agreement, the Secretary shall notify in writing the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate and the House and Senate Committees on Appropriations of the proposed letter or agreement. The Secretary shall include with the notification a copy of the proposed letter or agreement as well as the evaluations and ratings for the project.

“(C) An obligation or administrative commitment may be made only when amounts are appropriated.

“(2)(A) The Secretary may make a full funding grant agreement with an applicant. The agreement shall—

“(i) establish the terms of participation by the United States Government in a project under this section;

“(ii) establish the maximum amount of Government financial assistance for the project;

“(iii) cover the period of time for completing the project, including a period extending beyond the period of an authorization; and

“(iv) make timely and efficient management of the project easier according to the law of the United States.

“(B) An agreement under this paragraph obligates an amount of available budget authority specified in law and may include a commitment, contingent on amounts to be specified in law in advance for commitments under this paragraph, to obligate an additional amount from future available budget authority specified in law. The agreement shall state that the contingent commitment is not an obligation of the Government and is subject to the availability of appropriations made by Federal law and to Federal laws in force on or enacted after the date of the contingent commitment. Interest and other financing costs of efficiently carrying out a part of the project within a reasonable time are a cost of carrying out the project under a full funding grant agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms.

“(3)(A) The Secretary may make an early systems work agreement with an applicant if a record of decision under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) has been issued on the project and the Secretary finds there is reason to believe—

“(i) a full funding grant agreement for the project will be made; and

“(ii) the terms of the work agreement will promote ultimate completion of the project more rapidly and at less cost.

“(B) A work agreement under this paragraph obligates an amount of available budget authority specified in law and shall provide for reimbursement of preliminary costs of carrying out the project, including land acquisition, timely procurement of system elements for which specifications are decided, and other activities the Secretary decides are appropriate to make efficient, long-term project management easier. A work agreement shall cover the period of time the Secretary considers appropriate. The period may extend beyond the period of current authorization. Interest and other financing costs of efficiently carrying out the work agreement within a reasonable time are a cost of carrying out the agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a way satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financing terms. If an applicant does not carry out the project for reasons within the control of the applicant, the applicant shall repay all Government payments made under the work agreement plus reasonable interest and penalty charges the Secretary establishes in the agreement.

“(4) The total estimated amount of future obligations of the Government and contingent commitments to incur obligations covered by all outstanding letters of intent, full funding grant agreements, and early systems work agreements may be not more than the amount authorized under section 101(c) of Passenger Rail Investment and Improvement Act of 2007, less an amount the Secretary reasonably estimates is necessary for grants under this section not covered by a letter. The total amount covered by new letters and contingent commitments included in full funding grant agreements and early systems work agreements may be not more than a limitation specified in law.

“(f) FEDERAL SHARE OF NET PROJECT COST.—

“(1)(A) Based on engineering studies, studies of economic feasibility, and information on the expected use of equipment or facilities, the Secretary shall estimate the net project cost.

“(B) A grant for the project shall not exceed 80 percent of the project net capital cost.

“(C) The Secretary shall give priority in allocating future obligations and contingent commitments to incur obligations to grant requests seeking a lower Federal share of the project net capital cost.

“(2) Up to an additional 20 percent of the required non-Federal funds may be funded from amounts appropriated to or made available to a department or agency of the Federal Government that are eligible to be expended for transportation.

“(3) 50 percent of the average amounts expended by a State or group of States (including the District of Columbia) for capital projects to benefit intercity passenger rail service and operating costs of up to \$5,000,000 per fiscal year of such service in fiscal years 2004, 2005, and 2006 shall be credited towards the matching requirements for grants awarded in fiscal years 2007, 2008, and 2009 under this section. The Secretary may require such information as necessary to verify such expenditures.

“(4) 50 percent of the average amounts expended by a State or group of States (including the District of Columbia) in a [fiscal year beginning in 2007] fiscal year, beginning in fiscal year 2007, for capital projects to benefit intercity passenger rail service or for the operating costs of such service above the average [of] capital and operating expenditures made for such service in fiscal years 2004, 2005, and 2006 shall be credited towards the matching requirements for grants awarded under this section. The Secretary may require such information as necessary to verify such expenditures.

“(g) UNDERTAKING PROJECTS IN ADVANCE.—

“(1) The Secretary may pay the Federal share of the net capital project cost to an applicant that carries out any part of a project described in this section according to all applicable procedures and requirements if—

“(A) the applicant applies for the payment;

“(B) the Secretary approves the payment; and

“(C) before carrying out the part of the project, the Secretary approves the plans and specifications for the part in the same way as other projects under this section.

“(2) The cost of carrying out part of a project includes the amount of interest earned and payable on bonds issued by the applicant to the extent proceeds of the bonds are expended in carrying out the part. However, the amount of interest under this paragraph may not be more than the most favorable interest terms reasonably available for the project at the time of borrowing. The applicant shall certify, in a manner satisfactory to the Secretary, that the applicant has shown reasonable diligence in seeking the most favorable financial terms.

“(3) The Secretary shall consider changes in capital project cost indices when determining the estimated cost under paragraph (2) of this subsection.

“(h) 2-YEAR AVAILABILITY.—Funds appropriated under this section shall remain available until expended. If any amount provided as a grant under this section is not obligated or expended for the purposes described in subsection (a) within 2 years after the date on which the State received the grant, such sums shall be returned to the Secretary for other intercity passenger rail development projects under this section at the discretion of the Secretary.

“(i) PUBLIC-PRIVATE PARTNERSHIPS.—

“(1) IN GENERAL.—A metropolitan planning organization, State transportation department, or other project sponsor may enter into an agreement with any public, private, or nonprofit entity to cooperatively implement any project funded with a grant under this title.

“(2) FORMS OF PARTICIPATION.—Participation by an entity under paragraph (1) may consist of—

“(A) ownership or operation of any land, facility, locomotive, rail car, vehicle, or other physical asset associated with the project;

“(B) cost-sharing of any project expense;

“(C) carrying out administration, construction management, project management, project operation, or any other management or operational duty associated with the project; and

“(D) any other form of participation approved by the Secretary.

“(3) SUB-ALLOCATION.—A State may allocate funds under this section to any entity described in paragraph (1).

“(j) SPECIAL TRANSPORTATION CIRCUMSTANCES.—In carrying out this section, the Secretary shall allocate an appropriate portion of the amounts available under this section to provide grants to States—

“(1) in which there is no intercity passenger rail service for the purpose of funding freight rail capital projects that are on a State rail plan developed under chapter 225 of this title that provide public benefits (as defined in chapter 225) as determined by the Secretary; or

“(2) in which the rail transportation system is not physically connected to rail systems in the continental United States or may not otherwise qualify for a grant under this section due to the unique characteristics of the geography of that State or other relevant considerations, for the purpose of funding transportation-related capital projects.

“(k) SMALL CAPITAL PROJECTS.—The Secretary shall make available \$10,000,000 annually from the amounts authorized under section 101(c) of the Passenger Rail Investment and Improvement Act of 2007 beginning in fiscal year 2008 for grants for capital projects eligible under this section not exceeding \$2,000,000, including costs eligible under section 206(c) of that Act. The Secretary may waive requirements of this section, including state rail plan requirements, as appropriate.

“§ 24403. Project management oversight

“(a) PROJECT MANAGEMENT PLAN REQUIREMENTS.—To receive Federal financial assistance for a major capital project under this subchapter, an applicant must prepare and carry out a project management plan approved by the Secretary of Transportation. The plan shall provide for—

“(1) adequate recipient staff organization with well-defined reporting relationships, statements of functional responsibilities, job descriptions, and job qualifications;

“(2) a budget covering the project management organization, appropriate consultants, property acquisition, utility relocation, systems demonstration staff, audits, and miscellaneous payments the recipient may be prepared to justify;

“(3) a construction schedule for the project;

“(4) a document control procedure and recordkeeping system;

“(5) a change order procedure that includes a documented, systematic approach to handling the construction change orders;

“(6) organizational structures, management skills, and staffing levels required throughout the construction phase;

“(7) quality control and quality assurance functions, procedures, and responsibilities

for construction, system installation, and integration of system components;

“(8) material testing policies and procedures;

“(9) internal plan implementation and reporting requirements;

“(10) criteria and procedures to be used for testing the operational system or its major components;

“(11) periodic updates of the plan, especially related to project budget and project schedule, financing, and ridership estimates; and

“(12) the recipient’s commitment to submit a project budget and project schedule to the Secretary each month.

“(b) SECRETARIAL OVERSIGHT.—

“(1) The Secretary may use no more than 0.5 percent of amounts made available in a fiscal year for capital projects under this subchapter to enter into contracts to oversee the construction of such projects.

“(2) The Secretary may use amounts available under paragraph (1) of this subsection to make contracts for safety, procurement, management, and financial compliance reviews and audits of a recipient of amounts under paragraph (1).

“(3) The Federal Government shall pay the entire cost of carrying out a contract under this subsection.

“(c) ACCESS TO SITES AND RECORDS.—Each recipient of assistance under this subchapter shall provide the Secretary and a contractor the Secretary chooses under subsection (c) of this section with access to the construction sites and records of the recipient when reasonably necessary.

“§ 24404. Use of capital grants to finance first-dollar liability of grant project

“Notwithstanding the requirements of section 24402 of this subchapter, the Secretary of Transportation may approve the use of capital assistance under this subchapter to fund self-insured retention of risk for the first tier of liability insurance coverage for rail passenger service associated with the capital assistance grant, but the coverage may not exceed \$20,000,000 per occurrence or \$20,000,000 in aggregate per year.

“§ 24405. Grant conditions

“(a) DOMESTIC BUYING PREFERENCE.—

“(1) REQUIREMENT.—

“(A) IN GENERAL.—In carrying out a project funded in whole or in part with a grant under this title, the grant recipient shall purchase only—

“(i) unmanufactured articles, material, and supplies mined or produced in the United States; or

“(ii) manufactured articles, material, and supplies manufactured in the United States substantially from articles, material, and supplies mined, produced, or manufactured in the United States.

“(B) DE MINIMIS AMOUNT.—Subparagraph (1) applies only to a purchase in an total amount that is not less than \$1,000,000.

“(2) EXEMPTIONS.—On application of a recipient, the Secretary may exempt a recipient from the requirements of this subsection if the Secretary decides that, for particular articles, material, or supplies—

“(A) such requirements are inconsistent with the public interest;

“(B) the cost of imposing the requirements is unreasonable; or

“(C) the articles, material, or supplies, or the articles, material, or supplies from which they are manufactured, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and are not of a satisfactory quality.

“(3) UNITED STATES DEFINED.—In this subsection, the term ‘the United States’ means the States, territories, and possessions of the United States and the District of Columbia.

“(b) OPERATORS DEEMED RAIL CARRIERS AND EMPLOYERS FOR CERTAIN PURPOSES.—A person that conducts rail operations over rail infrastructure constructed or improved with funding provided in whole or in part in a grant made under this title shall be considered a rail carrier as defined in section 10102(5) of this title for purposes of this title and any other statute that adopts the that definition or in which that definition applies, including—

“(1) the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.); and

“(2) the Railway Labor Act (43 U.S.C. 151 et seq.).

“(c) GRANT CONDITIONS.—The Secretary shall require as a condition of making any grant under this title for a project that uses rights-of-way owned by a railroad that—

“(1) a written agreement exist between the applicant and the railroad regarding such use and ownership, including—

“(A) any compensation for such use;

“(B) assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations;

“(C) an assurance by the railroad that collective bargaining agreements with the railroad’s employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor; and

“(D) an assurance that an applicant complies with liability requirements consistent with section 28103 of this title; and

“(2) the applicant agrees to comply with—

“(A) the standards of section 24312 of this title, as such section was in effect on September 1, 2003, with respect to the project in the same manner that the National Railroad Passenger Corporation is required to comply with those standards for construction work financed under an agreement made under section 24308(a) of this title; and

“(B) the protective arrangements established under section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 836) with respect to employees affected by actions taken in connection with the project to be financed in whole or in part by grants under this subchapter.

“(d) REPLACEMENT OF EXISTING INTERCITY PASSENGER RAIL SERVICE.—

“(1) COLLECTIVE BARGAINING AGREEMENT FOR INTERCITY PASSENGER RAIL PROJECTS.—Any entity providing intercity passenger railroad transportation that begins operations after the date of enactment of this Act on a project funded in whole or in part by grants made under this title and replaces intercity rail passenger service that was provided by Amtrak, unless such service was provided solely by Amtrak to another entity, as of such date shall enter into an agreement with the authorized bargaining agent or agents for adversely affected employees of the predecessor provider that—

“(A) gives each such qualified employee of the predecessor provider priority in hiring according to the employee’s seniority on the predecessor provider for each position with the replacing entity that is in the employee’s craft or class and is available within 3 years after the termination of the service being replaced;

“(B) establishes a procedure for notifying such an employee of such positions;

“(C) establishes a procedure for such an employee to apply for such positions; and

“(D) establishes rates of pay, rules, and working conditions.

“(2) IMMEDIATE REPLACEMENT SERVICE.—

“(A) NEGOTIATIONS.—If the replacement of preexisting intercity rail passenger service occurs concurrent with or within a reasonable time before the commencement of the

replacing entity's rail passenger service, the replacing entity shall give written notice of its plan to replace existing rail passenger service to the authorized collective bargaining agent or agents for the potentially adversely affected employees of the predecessor provider at least 90 days before the date on which it plans to commence service. Within 5 days after the date of receipt of such written notice, negotiations between the replacing entity and the collective bargaining agent or agents for the employees of the predecessor provider shall commence for the purpose of reaching agreement with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1). The negotiations shall continue for 30 days or until an agreement is reached, whichever is sooner. If at the end of 30 days the parties have not entered into an agreement with respect to all such matters, the unresolved issues shall be submitted for arbitration in accordance with the procedure set forth in subparagraph (B).

“(B) ARBITRATION.—If an agreement has not been entered into with respect to all matters set forth in subparagraphs (A) through (D) of paragraph (1) as described in subparagraph (A) of this paragraph, the parties shall select an arbitrator. If the parties are unable to agree upon the selection of such arbitrator within 5 days, either or both parties shall notify the National Mediation Board, which shall provide a list of seven arbitrators with experience in arbitrating rail labor protection disputes. Within 5 days after such notification, the parties shall alternately strike names from the list until only 1 name remains, and that person shall serve as the neutral arbitrator. Within 45 days after selection of the arbitrator, the arbitrator shall conduct a hearing on the dispute and shall render a decision with respect to the unresolved issues among the matters set forth in subparagraphs (A) through (D) of paragraph (1). This decision shall be final, binding, and conclusive upon the parties. The salary and expenses of the arbitrator shall be borne equally by the parties; all other expenses shall be paid by the party incurring them.

“(3) SERVICE COMMENCEMENT.—A replacing entity under this subsection shall commence service only after an agreement is entered into with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1) or the decision of the arbitrator has been rendered.

“(4) SUBSEQUENT REPLACEMENT OF SERVICE.—If the replacement of existing rail passenger service takes place within 3 years after the replacing entity commences intercity passenger rail service, the replacing entity and the collective bargaining agent or agents for the adversely affected employees of the predecessor provider shall enter into an agreement with respect to the matters set forth in subparagraphs (A) through (D) of paragraph (1). If the parties have not entered into an agreement with respect to all such matters within 60 days after the date on which the replacing entity replaces the predecessor provider, the parties shall select an arbitrator using the procedures set forth in paragraph (2)(B), who shall, within 20 days after the commencement of the arbitration, conduct a hearing and decide all unresolved issues. This decision shall be final, binding, and conclusive upon the parties.

“(e) INAPPLICABILITY TO CERTAIN RAIL OPERATIONS.— Nothing in this section applies to—

“(1) commuter rail passenger transportation (as defined in section 24102(4) of this title) operations of a State or local government authority (as those terms are defined in section 5302(11) and (6), respectively, of this title) eligible to receive financial assist-

ance under section 5307 of this title, or to its contractor performing services in connection with commuter rail passenger operations (as so defined);

“(2) the Alaska Railroad or its contractors; or

“(3) the National Railroad Passenger Corporation's access rights to railroad rights of way and facilities under current law.”.

(b) CONFORMING AMENDMENTS.—

(1) The table of chapters for the title is amended by inserting the following after the item relating to chapter 243:

“244. Intercity passenger rail service capital assistance 24401”.

“(2) The chapter analysis for subtitle V is amended by inserting the following after the item relating to chapter 243:

“244. Intercity passenger rail service capital assistance 24401”.

SEC. 302. STATE RAIL PLANS.

(a) IN GENERAL.—Part B of subtitle V is amended by adding at the end the following:

“CHAPTER 225. STATE RAIL PLANS AND HIGH PRIORITY PROJECTS

- “Sec.
- “22501. Definitions.
- “22502. Authority.
- “22503. Purposes.
- “22504. Transparency; coordination; review.
- “22505. Content.
- “22506. Review.

“§ 22501. Definitions

“In this subchapter:

“(1) PRIVATE BENEFIT.—

“(A) IN GENERAL.—The term ‘private benefit’—

“(i) means a benefit accrued to a person or private entity, other than the National Railroad Passenger Corporation, that directly improves the economic and competitive condition of that person or entity through improved assets, cost reductions, service improvements, or any other means as defined by the Secretary; and

“(ii) shall be determined on a project-by-project basis, based upon an agreement between the parties.

“(B) CONSULTATION.—The Secretary may seek the advice of the States and rail carriers in further defining this term.

“(2) PUBLIC BENEFIT.—

“(A) IN GENERAL.—The term ‘public benefit’—

“(i) means a benefit accrued to the public in the form of enhanced mobility of people or goods, environmental protection or enhancement, congestion mitigation, enhanced trade and economic development, improved air quality or land use, more efficient energy use, enhanced public safety or security, reduction of public expenditures due to improved transportation efficiency or infrastructure preservation, and any other positive community effects as defined by the Secretary; and

“(ii) shall be determined on a project-by-project basis, based upon an agreement between the parties.

“(B) CONSULTATION.—The Secretary may seek the advice of the States and rail carriers in further defining this term.

“(3) STATE.—The term ‘State’ means any of the 50 States and the District of Columbia.

“(4) STATE RAIL TRANSPORTATION AUTHORITY.—The term ‘State rail transportation authority’ means the State agency or official responsible under the direction of the Governor of the State or a State law for preparation, maintenance, coordination, and administration of the State rail plan.”.

“§ 22502. Authority

“(a) IN GENERAL.—Each State may prepare and maintain a State rail plan in accordance with the provisions of this subchapter.

“(b) REQUIREMENTS.—For the preparation and periodic revision of a State rail plan, a State shall—

“(1) establish or designate a State rail transportation authority to prepare, maintain, coordinate, and administer the plan;

“(2) establish or designate a State rail plan approval authority to approve the plan;

“(3) submit the State's approved plan to the Secretary of Transportation for review; and

“(4) revise and resubmit a State-approved plan no less frequently than once every 5 years for reapproval by the Secretary.

“§ 22503. Purposes

“(a) PURPOSES.—The purposes of a State rail plan are as follows:

“(1) To set forth State policy involving freight and passenger rail transportation, including commuter rail operations, in the State.

“(2) To establish the period covered by the State rail plan.

“(3) To present priorities and strategies to enhance rail service in the State that benefits the public.

“(4) To serve as the basis for Federal and State rail investments within the State.

“(b) COORDINATION.—A State rail plan shall be coordinated with other State transportation planning goals and programs and set forth rail transportation's role within the State transportation system.

“§ 22504. Transparency; coordination; review

“(a) PREPARATION.—A State shall provide adequate and reasonable notice and opportunity for comment and other input to the public, rail carriers, commuter and transit authorities operating in, or affected by rail operations within the State, units of local government, and other interested parties in the preparation and review of its State rail plan.

“(b) INTERGOVERNMENTAL COORDINATION.—A State shall review the freight and passenger rail service activities and initiatives by regional planning agencies, regional transportation authorities, and municipalities within the State, or in the region in which the State is located, while preparing the plan, and shall include any recommendations made by such agencies, authorities, and municipalities as deemed appropriate by the State.

“§ 22505. Content

“(a) IN GENERAL.—Each State rail plan shall contain the following:

“(1) An inventory of the existing overall rail transportation system and rail services and facilities within the State and an analysis of the role of rail transportation within the State's surface transportation system.

“(2) A review of all rail lines within the State, including proposed high speed rail corridors and significant rail line segments not currently in service.

“(3) A statement of the State's passenger rail service objectives, including minimum service levels, for rail transportation routes in the State.

“(4) A general analysis of rail's transportation, economic, and environmental impacts in the State, including congestion mitigation, trade and economic development, air quality, land-use, energy-use, and community impacts.

“(5) A long-range rail investment program for current and future freight and passenger infrastructure in the State that meets the requirements of subsection (b).

“(6) A statement of public financing issues for rail projects and service in the State, including a list of current and prospective public capital and operating funding resources, public subsidies, State taxation, and other financial policies relating to rail infrastructure development.

“(7) An identification of rail infrastructure issues within the State that reflects consultation with all relevant stake holders.

“(8) A review of major passenger and freight intermodal rail connections and facilities within the State, including seaports, and prioritized options to maximize service integration and efficiency between rail and other modes of transportation within the State.

“(9) A review of publicly funded projects within the State to improve rail transportation safety and security, including all major projects funded under section 130 of title 23.

“(10) A performance evaluation of passenger rail services operating in the State, including possible improvements in those services, and a description of strategies to achieve those improvements.

“(11) A compilation of studies and reports on high-speed rail corridor development within the State not included in a previous plan under this subchapter, and a plan for funding any recommended development of such corridors in the State.

“(12) A statement that the State is in compliance with the requirements of section 22102.

“(b) LONG-RANGE SERVICE AND INVESTMENT PROGRAM.—

“(1) PROGRAM CONTENT.—A long-range rail investment program included in a State rail plan under subsection (a)(5) shall include the following matters:

“(A) A list of any rail capital projects expected to be undertaken or supported in whole or in part by the State.

“(B) A detailed funding plan for those projects.

“(2) PROJECT LIST CONTENT.—The list of rail capital projects shall contain—

“(A) a description of the anticipated public and private benefits of each such project; and

“(B) a statement of the correlation between—

“(i) public funding contributions for the projects; and

“(ii) the public benefits.

“(3) CONSIDERATIONS FOR PROJECT LIST.—In preparing the list of freight and intercity passenger rail capital projects, a State rail transportation authority should take into consideration the following matters:

“(A) Contributions made by non-Federal and non-State sources through user fees, matching funds, or other private capital involvement.

“(B) Rail capacity and congestion effects.

“(C) Effects on highway, aviation, and maritime capacity, congestion, or safety.

“(D) Regional balance.

“(E) Environmental impact.

“(F) Economic and employment impacts.

“(G) Projected ridership and other service measures for passenger rail projects.

“§ 22506. Review

The Secretary shall prescribe procedures for States to submit State rail plans for review under this title, including standardized format and data requirements. State rail plans completed before the date of enactment of the Passenger Rail Investment and Improvement Act of 2007 that substantially meet the requirements of this chapter, as determined by the Secretary, shall be deemed by the Secretary to have met the requirements of this chapter.”

(b) CONFORMING AMENDMENTS.—

(1) The table of chapters for the title is amended by inserting the following after the item relating to chapter 223:

“225. State rail plans 22501”.

(2) The chapter analysis for subtitle V is amended by inserting the following after the item relating to chapter 223:

“225. State rail plans 24401”.

SEC. 303. NEXT GENERATION CORRIDOR TRAIN EQUIPMENT POOL.

(a) IN GENERAL.—Within 180 days after the date of enactment of this Act, Amtrak shall establish a Next Generation Corridor Equipment Pool Committee, comprised of representatives of Amtrak, the Federal Railroad Administration, and interested States. The purpose of the Committee shall be to design, develop specifications for, and procure standardized next-generation corridor equipment.

(b) FUNCTIONS.—The Committee may—

(1) determine the number of different types of equipment required, taking into account variations in operational needs and corridor infrastructure;

(2) establish a pool of equipment to be used on corridor routes funded by participating States; and

(3) subject to agreements between Amtrak and States, utilize services provided by Amtrak to design, maintain and remanufacture equipment.

(c) COOPERATIVE AGREEMENTS.—Amtrak and States participating in the Committee may enter into agreements for the funding, procurement, remanufacture, ownership and management of corridor equipment, including equipment currently owned or leased by Amtrak and next-generation corridor equipment acquired as a result of the Committee’s actions, and may establish a corporation, which may be owned or jointly-owned by Amtrak, participating States or other entities, to perform these functions.

(d) FUNDING.—In addition to the authorization provided in section 105 of this Act, capital projects to carry out the purposes of this section shall be eligible for grants made pursuant to chapter 244 of title 49, United States Code.

SEC. 304. FEDERAL RAIL POLICY.

Section 103 is amended—

(1) by inserting “IN GENERAL.—” before “The Federal” in subsection (a);

(2) by striking the second and third sentences of subsection (a);

(3) by inserting “ADMINISTRATOR.—” before “The head” in subsection (b);

(4) by redesignating subsections (c), (d), and (e) as subsections (d), (e), and (f), respectively and by inserting after subsection (b) the following:

“(c) SAFETY.—To carry out all railroad safety laws of the United States, the Administration is divided on a geographical basis into at least 8 safety offices. The Secretary of Transportation is responsible for all acts taken under those laws and for ensuring that the laws are uniformly administered and enforced among the safety offices.”;

(5) by inserting “POWERS AND DUTIES.—” before “The” in subsection (d), as redesignated;

(6) by striking “and” after the semicolon in paragraph (1) of subsection (d), as redesignated;

(7) by redesignating paragraph (2) of subsection (d), as redesignated, as paragraph (3) and inserting after paragraph (1) the following:

“(2) the duties and powers related to railroad policy and development under subsection (e); and”;

(8) by inserting “TRANSFERS OF DUTY.—” before “A duty” in subsection (e), as redesignated;

(9) by inserting “CONTRACTS, GRANTS, LEASES, COOPERATIVE AGREEMENTS, AND SIMILAR TRANSACTIONS.—” before “Subject” in subsection (f), as redesignated;

(10) by striking the last sentence in subsection (f), as redesignated; and

(11) by adding at the end the following:

“(g) ADDITIONAL DUTIES OF THE ADMINISTRATOR.—The Administrator shall—

“(1) provide assistance to States in developing State rail plans prepared under chap-

ter 225 and review all State rail plans submitted under that section;

“(2) develop a long range national rail plan that is consistent with approved State rail plans and the rail needs of the Nation, as determined by the Secretary in order to promote an integrated, cohesive, efficient, and optimized national rail system for the movement of goods and people;

“(3) develop a preliminary national rail plan within a year after the date of enactment of the Passenger Rail Investment and Improvement Act of 2007;

“(4) develop and enhance partnerships with the freight and passenger railroad industry, States, and the public concerning rail development;

“(5) support rail intermodal development and high-speed rail development, including high speed rail planning;

“(6) ensure that programs and initiatives developed under this section benefit the public and work toward achieving regional and national transportation goals; and

“(7) facilitate and coordinate efforts to assist freight and passenger rail carriers, transit agencies and authorities, municipalities, and States in passenger-freight service integration on shared rights of way by providing neutral assistance at the joint request of affected rail service providers and infrastructure owners relating to operations and capacity analysis, capital requirements, operating costs, and other research and planning related to corridors shared by passenger or commuter rail service and freight rail operations.

“(h) PERFORMANCE GOALS AND REPORTS.—

“(1) PERFORMANCE GOALS.—In conjunction with the objectives established and activities undertaken under section 103(e) of this title, the Administrator shall develop a schedule for achieving specific, measurable performance goals.

“(2) RESOURCE NEEDS.—The strategy and annual plans shall include estimates of the funds and staff resources needed to accomplish each goal and the additional duties required under section 103(e).

“(3) SUBMISSION WITH PRESIDENT’S BUDGET.—Beginning with fiscal year 2009 and each fiscal year thereafter, the Secretary shall submit to Congress, at the same time as the President’s budget submission, the Administration’s performance goals and schedule developed under paragraph (1), including an assessment of the progress of the Administration toward achieving its performance goals.”.

SEC. 305. RAIL COOPERATIVE RESEARCH PROGRAM.

(a) ESTABLISHMENT AND CONTENT.—Chapter 249 is amended by adding at the end the following:

“§ 24910. Rail cooperative research program

“(a) IN GENERAL.—The Secretary shall establish and carry out a rail cooperative research program. The program shall—

“(1) address, among other matters, intercity rail passenger and freight rail services, including existing rail passenger and freight technologies and speeds, incrementally enhanced rail systems and infrastructure, and new high-speed wheel-on-rail systems and rail security;

“(2) address ways to expand the transportation of international trade traffic by rail, enhance the efficiency of intermodal interchange at ports and other intermodal terminals, and increase capacity and availability of rail service for seasonal freight needs;

“(3) consider research on the interconnectedness of commuter rail, passenger rail, freight rail, and other rail networks; and

“(4) give consideration to regional concerns regarding rail passenger and freight transportation, including meeting research

needs common to designated high-speed corridors, long-distance rail services, and regional intercity rail corridors, projects, and entities.

“(b) **CONTENT.**—The program to be carried out under this section shall include research designed—

“(1) to identify the unique aspects and attributes of rail passenger and freight service;

“(2) to develop more accurate models for evaluating the impact of rail passenger and freight service, including the effects on highway and airport and airway congestion, environmental quality, and energy consumption;

“(3) to develop a better understanding of modal choice as it affects rail passenger and freight transportation, including development of better models to predict utilization;

“(4) to recommend priorities for technology demonstration and development;

“(5) to meet additional priorities as determined by the advisory board established under subsection (c), including any recommendations made by the National Research Council;

“(6) to explore improvements in management, financing, and institutional structures;

“(7) to address rail capacity constraints that affect passenger and freight rail service through a wide variety of options, ranging from operating improvements to dedicated new infrastructure, taking into account the impact of such options on operations;

“(8) to improve maintenance, operations, customer service, or other aspects of intercity rail passenger and freight service;

“(9) to recommend objective methodologies for determining intercity passenger rail routes and services, including the establishment of new routes, the elimination of existing routes, and the contraction or expansion of services or frequencies over such routes;

“(10) to review the impact of equipment and operational safety standards on the further development of high speed passenger rail operations connected to or integrated with non-high speed freight or passenger rail operations; and

“(11) to recommend any legislative or regulatory changes necessary to foster further development and implementation of high speed passenger rail operations while ensuring the safety of such operations that are connected to or integrated with non-high speed freight or passenger rail operations.

“(c) **ADVISORY BOARD.**—

“(1) **ESTABLISHMENT.**—In consultation with the heads of appropriate Federal departments and agencies, the Secretary shall establish an advisory board to recommend research, technology, and technology transfer activities related to rail passenger and freight transportation.

“(2) **MEMBERSHIP.**—The advisory board shall include—

“(A) representatives of State transportation agencies;

“(B) transportation and environmental economists, scientists, and engineers; and

“(C) representatives of Amtrak, the Alaska Railroad, freight railroads, transit operating agencies, intercity rail passenger agencies, railway labor organizations, and environmental organizations.

“(d) **NATIONAL ACADEMY OF SCIENCES.**—The Secretary may make grants to, and enter into cooperative agreements with, the National Academy of Sciences to carry out such activities relating to the research, technology, and technology transfer activities described in subsection (b) as the Secretary deems appropriate.”

(b) **CLERICAL AMENDMENT.**—The chapter analysis for chapter 249 is amended by adding at the end the following:

“24910. Rail cooperative research program.”.

【TITLE IV—PASSENGER RAIL SECURITY AND SAFETY

【SEC. 400. SHORT TITLE.

【This title may be cited as the “Surface Transportation and Rail Security Act of 2007”.

【SEC. 401. RAIL TRANSPORTATION SECURITY RISK ASSESSMENT.

【(a) **IN GENERAL.**—

【(1) **VULNERABILITY AND RISK ASSESSMENT.**—The Secretary of Homeland Security shall establish a task force, including the Transportation Security Administration, the Department of Transportation, and other appropriate agencies, to complete a vulnerability and risk assessment of freight and passenger rail transportation (encompassing railroads, as that term is defined in section 20102(1) of title 49, United States Code). The assessment shall include—

【(A) a methodology for conducting the risk assessment, including timelines, that addresses how the Department of Homeland Security will work with the entities describe in subsection (b) and make use of existing Federal expertise within the Department of Homeland Security, the Department of Transportation, and other appropriate agencies;

【(B) identification and evaluation of critical assets and infrastructures;

【(C) identification of vulnerabilities and risks to those assets and infrastructures;

【(D) identification of vulnerabilities and risks that are specific to the transportation of hazardous materials via railroad;

【(E) identification of security weaknesses in passenger and cargo security, transportation infrastructure, protection systems, procedural policies, communications systems, employee training, emergency response planning, and any other area identified by the assessment; and

【(F) an account of actions taken or planned by both public and private entities to address identified rail security issues and assess the effective integration of such actions.

【(2) **RECOMMENDATIONS.**—Based on the assessment conducted under paragraph (1), the Secretary, in consultation with the Secretary of Transportation, shall develop prioritized recommendations for improving rail security, including any recommendations the Secretary has for—

【(A) improving the security of rail tunnels, rail bridges, rail switching and car storage areas, other rail infrastructure and facilities, information systems, and other areas identified by the Secretary as posing significant rail-related risks to public safety and the movement of interstate commerce, taking into account the impact that any proposed security measure might have on the provision of rail service;

【(B) deploying equipment to detect explosives and hazardous chemical, biological, and radioactive substances, and any appropriate countermeasures;

【(C) training appropriate railroad or railroad shipper employees in terrorism prevention, passenger evacuation, and response activities;

【(D) conducting public outreach campaigns on passenger railroads;

【(E) deploying surveillance equipment; and

【(F) identifying the immediate and long-term costs of measures that may be required to address those risks.

【(3) **PLANS.**—The report required by subsection (c) shall include—

【(A) a plan, developed in consultation with the freight and intercity passenger railroads, and State and local governments, for the Federal government to provide increased security support at high or severe threat levels of alert;

【(B) a plan for coordinating existing and planned rail security initiatives undertaken by the public and private sectors; and

【(C) a contingency plan, developed in conjunction with freight and intercity and commuter passenger railroads, to ensure the continued movement of freight and passengers in the event of an attack affecting the railroad system, which shall contemplate—

【(i) the possibility of rerouting traffic due to the loss of critical infrastructure, such as a bridge, tunnel, yard, or station; and

【(ii) methods of continuing railroad service in the Northeast Corridor in the event of a commercial power loss, or catastrophe affecting a critical bridge, tunnel, yard, or station.

【(b) **CONSULTATION; USE OF EXISTING RESOURCES.**—In carrying out the assessment and developing the recommendations and plans required by subsection (a), the Secretary of Homeland Security shall consult with rail management, rail labor, owners or lessors of rail cars used to transport hazardous materials, first responders, shippers of hazardous materials, public safety officials, and other relevant parties.

【(c) **REPORT.**—

【(1) **CONTENTS.**—Within 180 days after the date of enactment of this Act, the Secretary shall transmit to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Homeland Security a report containing the assessment, prioritized recommendations, and plans required by subsection (a) and an estimate of the cost to implement such recommendations.

【(2) **FORMAT.**—The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is appropriate or necessary.

【(d) **ANNUAL UPDATES.**—The Secretary, in consultation with the Secretary of Transportation, shall update the assessment and recommendations each year and transmit a report, which may be submitted in both classified and redacted formats, to the Committees named in subsection (c)(1), containing the updated assessment and recommendations.

【(e) **FUNDING.**—Out of funds appropriated pursuant to section 114(u) of title 49, United States Code, as amended by section 416 of this title, there shall be made available to the Secretary of Homeland Security to carry out this section \$5,000,000 for fiscal year 2008.

【SEC. 402. SYSTEMWIDE AMTRAK SECURITY UPGRADES.

【(a) **IN GENERAL.**—Subject to subsection (c) the Secretary of Homeland Security, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), is authorized to make grants to Amtrak—

【(1) to secure major tunnel access points and ensure tunnel integrity in New York, Baltimore, and Washington, DC;

【(2) to secure Amtrak trains;

【(3) to secure Amtrak stations;

【(4) to obtain a watch list identification system approved by the Secretary;

【(5) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;

【(6) to hire additional police and security officers, including canine units;

【(7) to expand emergency preparedness efforts; and

【(8) for employee security training.

【(b) **CONDITIONS.**—The Secretary of Transportation shall disburse funds to Amtrak provided under subsection (a) for projects contained in a systemwide security plan approved by the Secretary of Homeland Security. The plan shall include appropriate

measures to address security awareness, emergency response, and passenger evacuation training.

[(c) **EQUITABLE GEOGRAPHIC ALLOCATION.**—The Secretary shall ensure that, subject to meeting the highest security needs on Amtrak's entire system and consistent with the risk assessment required under section 401, stations and facilities located outside of the Northeast Corridor receive an equitable share of the security funds authorized by this section.

[(d) **AVAILABILITY OF FUNDS.**—Out of funds appropriated pursuant to section 114(u) of title 49, United States Code, as amended by section 416 of this title, there shall be made available to the Secretary of Homeland Security and the Assistant Secretary of Homeland Security (Transportation Security Administration) to carry out this section—

[(1) \$63,500,000 for fiscal year 2008;

[(2) \$30,000,000 for fiscal year 2009; and

[(3) \$30,000,000 for fiscal year 2010.

[Amounts appropriated pursuant to this subsection shall remain available until expended.

[SEC. 403. FIRE AND LIFE-SAFETY IMPROVEMENTS.

[(a) **LIFE-SAFETY NEEDS.**—The Secretary of Transportation, in consultation with the Secretary of Homeland Security, is authorized to make grants to Amtrak for the purpose of making fire and life-safety improvements to Amtrak tunnels on the Northeast Corridor in New York, NY, Baltimore, MD, and Washington, DC.

[(b) **AUTHORIZATION OF APPROPRIATIONS.**—Out of funds appropriated pursuant to section 416(b) of this title, there shall be made available to the Secretary of Transportation for the purposes of carrying out subsection (a) the following amounts:

[(1) For the 6 New York tunnels to provide ventilation, electrical, and fire safety technology upgrades, emergency communication and lighting systems, and emergency access and egress for passengers—

[(A) \$100,000,000 for fiscal year 2008;

[(B) \$100,000,000 for fiscal year 2009;

[(C) \$100,000,000 for fiscal year 2010; and

[(D) \$100,000,000 for fiscal year 2011.

[(2) For the Baltimore & Potomac tunnel and the Union tunnel, together, to provide adequate drainage, ventilation, communication, lighting, and passenger egress upgrades—

[(A) \$10,000,000 for fiscal year 2008;

[(B) \$10,000,000 for fiscal year 2009;

[(C) \$10,000,000 for fiscal year 2010; and

[(D) \$10,000,000 for fiscal year 2011.

[(3) For the Washington, DC, Union Station tunnels to improve ventilation, communication, lighting, and passenger egress upgrades—

[(A) \$8,000,000 for fiscal year 2008;

[(B) \$8,000,000 for fiscal year 2009;

[(C) \$8,000,000 for fiscal year 2010; and

[(D) \$8,000,000 for fiscal year 2011.

[(c) **INFRASTRUCTURE UPGRADES.**—Out of funds appropriated pursuant to section 416(b) of this title, there shall be made available to the Secretary of Transportation for fiscal year 2008 \$3,000,000 for the preliminary design of options for a new tunnel on a different alignment to augment the capacity of the existing Baltimore tunnels.

[(d) **AVAILABILITY OF APPROPRIATED FUNDS.**—Amounts made available pursuant to this section shall remain available until expended.

[(e) **PLANS REQUIRED.**—The Secretary of Transportation may not make amounts available to Amtrak for obligation or expenditure under subsection (a)—

[(1) until Amtrak has submitted to the Secretary, and the Secretary has approved, an engineering and financial plan for such projects; and

[(2) unless, for each project funded pursuant to this section, the Secretary has approved a project management plan prepared by Amtrak addressing appropriate project budget, construction schedule, recipient staff organization, document control and record keeping, change order procedure, quality control and assurance, periodic plan updates, and periodic status reports.

[(f) **REVIEW OF PLANS.**—The Secretary of Transportation shall complete the review of the plans required by paragraphs (1) and (2) of subsection (e) and approve or disapprove the plans within 45 days after the date on which each such plan is submitted by Amtrak. If the Secretary determines that a plan is incomplete or deficient, the Secretary shall notify Amtrak of the incomplete items or deficiencies and Amtrak shall, within 30 days after receiving the Secretary's notification, submit a modified plan for the Secretary's review. Within 15 days after receiving additional information on items previously included in the plan, and within 45 days after receiving items newly included in a modified plan, the Secretary shall either approve the modified plan, or, if the Secretary finds the plan is still incomplete or deficient, the Secretary shall identify in writing to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Homeland Security the portions of the plan the Secretary finds incomplete or deficient, approve all other portions of the plan, obligate the funds associated with those other portions, and execute an agreement with Amtrak within 15 days thereafter on a process for resolving the remaining portions of the plan.

[(g) **FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.**—The Secretary shall, taking into account the need for the timely completion of all portions of the tunnel projects described in subsection (a)—

[(1) consider the extent to which rail carriers other than Amtrak use or plan to use the tunnels;

[(2) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

[(3) obtain financial contributions or commitments from such other rail carriers at levels reflecting the extent of their use or planned use of the tunnels, if feasible.

[SEC. 404. FREIGHT AND PASSENGER RAIL SECURITY UPGRADES.

[(a) **SECURITY IMPROVEMENT GRANTS.**—The Secretary of Homeland Security, through the Assistant Secretary of Homeland Security (Transportation Security Administration) and other appropriate agencies, is authorized to make grants to freight railroads, the Alaska Railroad, hazardous materials shippers, owners of rail cars used in the transportation of hazardous materials, universities, colleges and research centers, State and local governments (for rail passenger facilities and infrastructure not owned by Amtrak), and, through the Secretary of Transportation, to Amtrak, for full or partial reimbursement of costs incurred in the conduct of activities to prevent or respond to acts of terrorism, sabotage, or other intercity passenger rail and freight rail security vulnerabilities and risks identified under section 401, including—

[(1) security and redundancy for critical communications, computer, and train control systems essential for secure rail operations;

[(2) accommodation of rail cargo or passenger screening equipment at the United States-Mexico border, the United States-Canada border, or other ports of entry;

[(3) the security of hazardous material transportation by rail;

[(4) secure intercity passenger rail stations, trains, and infrastructure;

[(5) structural modification or replacement of rail cars transporting high hazard materials to improve their resistance to acts of terrorism;

[(6) employee security awareness, preparedness, passenger evacuation, and emergency response training;

[(7) public security awareness campaigns for passenger train operations;

[(8) the sharing of intelligence and information about security threats;

[(9) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;

[(10) to hire additional police and security officers, including canine units; and

[(11) other improvements recommended by the report required by section 401, including infrastructure, facilities, and equipment upgrades.

[(b) **ACCOUNTABILITY.**—The Secretary shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this title and the priorities and other criteria developed by the Secretary.

[(c) **ALLOCATION.**—The Secretary shall distribute the funds authorized by this section based on risk and vulnerability as determined under section 401, and shall encourage non-Federal financial participation in awarding grants. With respect to grants for intercity passenger rail security, the Secretary shall also take into account passenger volume and whether a station is used by commuter rail passengers as well as intercity rail passengers.

[(d) **CONDITIONS.**—The Secretary of Transportation may not disburse funds to Amtrak under subsection (a) unless Amtrak meets the conditions set forth in section 402(b) of this title.

[(e) **ALLOCATION BETWEEN RAILROADS AND OTHERS.**—Unless as a result of the assessment required by section 401 the Secretary of Homeland Security determines that critical rail transportation security needs require reimbursement in greater amounts to any eligible entity, no grants under this section may be made—

[(1) in excess of \$45,000,000 to Amtrak; or

[(2) in excess of \$80,000,000 for the purposes described in paragraphs (3) and (5) of subsection (a).

[(f) **AUTHORIZATION OF APPROPRIATIONS.**—Out of funds appropriated pursuant to section 114(u) of title 49, United States Code, as amended by section 416 of this title, there shall be made available to the Secretary of Homeland Security to carry out this section—

[(1) \$100,000,000 for fiscal year 2008;

[(2) \$100,000,000 for fiscal year 2009; and

[(3) \$100,000,000 for fiscal year 2010.

Amounts made available pursuant to this subsection shall remain available until expended.

[(g) **HIGH HAZARD MATERIALS DEFINED.**—In this section, the term "high hazard materials" means quantities of poison inhalation hazard materials, Class 2.3 gases, Class 6.1 materials, and anhydrous ammonia that the Secretary, in consultation with the Secretary of Transportation, determines pose a security risk.

[SEC. 405. RAIL SECURITY RESEARCH AND DEVELOPMENT.

[(a) **ESTABLISHMENT OF RESEARCH AND DEVELOPMENT PROGRAM.**—The Secretary of Homeland Security, through the Under Secretary for Science and Technology and the Assistant Secretary of Homeland Security (Transportation Security Administration), in consultation with the Secretary of Transportation shall carry out a research and development program for the purpose of improving freight and intercity passenger rail

security that may include research and development projects to—

[(1) reduce the vulnerability of passenger trains, stations, and equipment to explosives and hazardous chemical, biological, and radioactive substances;

[(2) test new emergency response technologies and technologies;

[(3) develop improved freight technologies, including—

[(A) technologies for sealing rail cars;

[(B) automatic inspection of rail cars;

[(C) communication-based train controls; and

[(D) emergency response training;

[(4) test wayside detectors that can detect tampering with railroad equipment;

[(5) support enhanced security for the transportation of hazardous materials by rail, including—

[(A) technologies to detect a breach in a tank car or other rail car used to transport hazardous materials and transmit information about the integrity of cars to the train crew or dispatcher;

[(B) research to improve tank car integrity, with a focus on tank cars that carry high hazard materials (as defined in section 404(g) of this title); and

[(C) techniques to transfer hazardous materials from rail cars that are damaged or otherwise represent an unreasonable risk to human life or public safety; and

[(6) other projects that address vulnerabilities and risks identified under section 401.

[(b) COORDINATION WITH OTHER RESEARCH INITIATIVES.—The Secretary of Homeland Security shall ensure that the research and development program authorized by this section is coordinated with other research and development initiatives at the Department of Homeland Security and the Department of Transportation. The Secretary shall carry out any research and development project authorized by this section through a reimbursable agreement with the Secretary of Transportation, if the Secretary of Transportation—

[(1) is already sponsoring a research and development project in a similar area; or

[(2) has a unique facility or capability that would be useful in carrying out the project.

[(c) GRANTS AND ACCOUNTABILITY.—To carry out the research and development program, the Secretary may award grants to the entities described in section 404(a) and shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this title and the priorities and other criteria developed by the Secretary.

[(d) AUTHORIZATION OF APPROPRIATIONS.—Out of funds appropriated pursuant to section 114(u) of title 49, United States Code, as amended by section 416 of this title., there shall be made available to the Secretary of Homeland Security to carry out this section—

[(1) \$33,000,000 for fiscal year 2008;

[(2) \$33,000,000 for fiscal year 2009; and

[(3) \$33,000,000 for fiscal year 2010.

Amounts made available pursuant to this subsection shall remain available until expended.

[SEC. 406. OVERSIGHT AND GRANT PROCEDURES.

[(a) SECRETARIAL OVERSIGHT.—The Secretary of Homeland Security may use up to 0.5 percent of amounts made available for capital projects under this title to enter into contracts for the review of proposed capital projects and related program management plans and to oversee construction of such projects.

[(b) USE OF FUNDS.—The Secretary may use amounts available under subsection (a)

of this subsection to make contracts to audit and review the safety, procurement, management, and financial compliance of a recipient of amounts under this title.

[(c) PROCEDURES FOR GRANT AWARD.—The Secretary shall, within 90 days after the date of enactment of this Act, prescribe procedures and schedules for the awarding of grants under this title, including application and qualification procedures (including a requirement that the applicant have a security plan), and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the grant recipient and the Secretary and shall be consistent, to the extent practicable, with the grant procedures established under section 70107 of title 46, United States Code.

[SEC. 407. AMTRAK PLAN TO ASSIST FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.

[(a) IN GENERAL.—Chapter 243 of title 49, United States Code, is amended by adding at the end the following:

["§24316. Plans to address needs of families of passengers involved in rail passenger accidents

["(a) SUBMISSION OF PLAN.—Not later than 6 months after the date of the enactment of the Surface Transportation and Rail Security Act of 2007 Amtrak shall submit to the Chairman of the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in a loss of life.

["(b) CONTENTS OF PLANS.—The plan to be submitted by Amtrak under subsection (a) shall include, at a minimum, the following:

["(1) A process by which Amtrak will maintain and provide to the National Transportation Safety Board and the Secretary of Transportation, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for Amtrak to use reasonable efforts to ascertain the number and names of passengers aboard a train involved in an accident.

["(2) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

["(3) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, by suitably trained individuals.

["(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as Amtrak has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

["(5) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within Amtrak's control; that any possession of the passenger within Amtrak's control will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation; and that any unclaimed possession of a passenger within Amtrak's control will be retained by the rail passenger carrier for at least 18 months.

["(6) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

["(7) An assurance that Amtrak will provide adequate training to its employees and agents to meet the needs of survivors and family members following an accident.

["(c) USE OF INFORMATION.—The National Transportation Safety Board, the Secretary of Transportation, and Amtrak may not release any personal information on a list obtained under subsection (b)(1) but may provide information on the list about a passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

["(d) LIMITATION ON LIABILITY.—Amtrak shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of Amtrak in preparing or providing a passenger list, or in providing information concerning a train reservation, pursuant to a plan submitted by Amtrak under subsection (b), unless such liability was caused by Amtrak's conduct.

["(e) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section may be construed as limiting the actions that Amtrak may take, or the obligations that Amtrak may have, in providing assistance to the families of passengers involved in a rail passenger accident.

["(f) FUNDING.—Out of funds appropriated pursuant to section 416(b) of the Surface Transportation and Rail Security Act of 2007, there shall be made available to the Secretary of Transportation for the use of Amtrak \$500,000 for fiscal year 2007 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended."

[(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 243 of title 49, United States Code, is amended by adding at the end the following:

["24316. Plan to assist families of passengers involved in rail passenger accidents."']

[SEC. 408. NORTHERN BORDER RAIL PASSENGER REPORT.

[(Within 180 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), the Secretary of Transportation, heads of other appropriate Federal departments, and agencies and the National Railroad Passenger Corporation, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Homeland Security that contains—

[(1) a description of the current system for screening passengers and baggage on passenger rail service between the United States and Canada;

[(2) an assessment of the current program to provide preclearance of airline passengers between the United States and Canada as outlined in "The Agreement on Air Transport Preclearance between the Government of Canada and the Government of the United States of America", dated January 18, 2001;

[(3) an assessment of the current program to provide preclearance of freight railroad traffic between the United States and Canada as outlined in the "Declaration of Principle for the Improved Security of Rail Shipments by Canadian National Railway and Canadian Pacific Railway from Canada to the United States", dated April 2, 2003;

[(4) information on progress by the Department of Homeland Security and other Federal agencies towards finalizing a bilateral protocol with Canada that would provide for preclearance of passengers on trains operating between the United States and Canada;

[(5) a description of legislative, regulatory, budgetary, or policy barriers within the United States Government to providing pre-screened passenger lists for rail passengers traveling between the United States and Canada to the Department of Homeland Security;

[(6) a description of the position of the Government of Canada and relevant Canadian agencies with respect to preclearance of such passengers;

[(7) a draft of any changes in existing Federal law necessary to provide for pre-screening of such passengers and providing pre-screened passenger lists to the Department of Homeland Security; and

[(8) an analysis of the feasibility of reinstating in-transit inspections onboard international Amtrak trains.

[SEC. 409. RAIL WORKER SECURITY TRAINING PROGRAM.]

[(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretary of Homeland Security and the Secretary of Transportation, in consultation with appropriate law enforcement, security, and terrorism experts, representatives of railroad carriers, and nonprofit employee organizations that represent rail workers, shall develop and issue detailed guidance for a rail worker security training program to prepare front-line workers for potential threat conditions. The guidance shall take into consideration any current security training requirements or best practices.

[(b) PROGRAM ELEMENTS.—The guidance developed under subsection (a) shall include elements, as appropriate to passenger and freight rail service, that address the following:

[(1) Determination of the seriousness of any occurrence.

[(2) Crew communication and coordination.

[(3) Appropriate responses to defend or protect oneself.

[(4) Use of protective devices.

[(5) Evacuation procedures.

[(6) Psychology of terrorists to cope with hijacker behavior and passenger responses.

[(7) Situational training exercises regarding various threat conditions.

[(8) Any other subject the Secretary considers appropriate.

[(c) RAILROAD CARRIER PROGRAMS.—Not later than 90 days after the Secretary of Homeland Security issues guidance under subsection (a) in final form, each railroad carrier shall develop a rail worker security training program in accordance with that guidance and submit it to the Secretary for review. Not later than 30 days after receiving a railroad carrier's program under this subsection, the Secretary shall review the program and transmit comments to the railroad carrier concerning any revisions the Secretary considers necessary for the program to meet the guidance requirements. A railroad carrier shall respond to the Secretary's comments within 30 days after receiving them.

[(d) TRAINING.—Not later than 1 year after the Secretary reviews the training program developed by a railroad carrier under this section, the railroad carrier shall complete the training of all front-line workers in accordance with that program. The Secretary shall review implementation of the training program of a representative sample of railroad carriers and report to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Homeland Security on the number of reviews conducted and the results. The Secretary may submit the report in both classified and redacted formats as necessary.

[(e) UPDATES.—The Secretary shall update the training guidance issued under subsection (a) as appropriate to reflect new or different security threats. Railroad carriers shall revise their programs accordingly and provide additional training to their front-line workers within a reasonable time after the guidance is updated.

[(f) FRONT-LINE WORKERS DEFINED.—In this section, the term “front-line workers” means security personnel, dispatchers, train operators, other onboard employees, maintenance and maintenance support personnel, bridge tenders, as well as other appropriate employees of railroad carriers, as defined by the Secretary.

[(g) OTHER EMPLOYEES.—The Secretary of Homeland Security shall issue guidance and best practices for a rail shipper employee security program containing the elements listed under subsection (b) as appropriate.

[SEC. 410. WHISTLEBLOWER PROTECTION PROGRAM.]

[(a) IN GENERAL.—Subchapter A of chapter 201 of title 49, United States Code, is amended by inserting after section 20117 the following:

["§20118. Whistleblower protection for rail security matters]

["(a) DISCRIMINATION AGAINST EMPLOYEE.—No rail carrier engaged in interstate or foreign commerce may discharge a railroad employee or otherwise discriminate against a railroad employee because the employee (or any person acting pursuant to a request of the employee)—

["(1) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to a reasonably perceived threat, in good faith, to security; or

["(2) provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding a reasonably perceived threat, in good faith, to security; or

["(3) refused to violate or assist in the violation of any law, rule or regulation related to rail security.

["(b) DISPUTE RESOLUTION.—A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved not later than 180 days after it is filed. If the violation is a form of discrimination that does not involve discharge, suspension, or another action affecting pay, and no other remedy is available under this subsection, the Board, division, delegate, or other board of adjustment may award the employee reasonable damages, including punitive damages, of not more than \$20,000.

["(c) PROCEDURAL REQUIREMENTS.—Except as provided in subsection (b), the procedure set forth in section 42121(b)(2)(B) of this subtitle, including the burdens of proof, applies to any complaint brought under this section.

["(d) ELECTION OF REMEDIES.—An employee of a railroad carrier may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the carrier.

["(e) DISCLOSURE OF IDENTITY.—

["(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this section.

["(2) The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.”.

[(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 of title 49, United States Code, is amended by inserting after the item relating to section 20117 the following:

["20118. Whistleblower protection for rail security matters.”.

[SEC. 411. HIGH HAZARD MATERIAL SECURITY THREAT MITIGATION PLANS.]

[(a) IN GENERAL.—The Secretary of Homeland Security, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration) and the Secretary of Transportation, shall require rail carriers transporting a high hazard material, as defined in section 404(g) of this title to develop a high hazard material security threat mitigation plan containing appropriate measures, including alternative routing and temporary shipment suspension options, to address assessed risks to high consequence targets. The plan, and any information submitted to the Secretary under this section shall be protected as sensitive security information under the regulations prescribed under section 114(s) of title 49, United States Code.

[(b) IMPLEMENTATION.—A high hazard material security threat mitigation plan shall be put into effect by a rail carrier for the shipment of high hazardous materials by rail on the rail carrier's right-of-way when the threat levels of the Homeland Security Advisory System are high or severe and specific intelligence of probable or imminent threat exists towards—

[(1) a high-consequence target that is within the catastrophic impact zone of a railroad right-of-way used to transport high hazardous material; or

[(2) rail infrastructure or operations within the immediate vicinity of a high-consequence target.

[(c) COMPLETION AND REVIEW OF PLANS.—

[(1) PLANS REQUIRED.—Each rail carrier shall—

[(A) submit a list of routes used to transport high hazard materials to the Secretary of Homeland Security within 60 days after the date of enactment of this Act;

[(B) develop and submit a high hazard material security threat mitigation plan to the Secretary within 180 days after it receives the notice of high consequence targets on such routes by the Secretary; and

[(C) submit any subsequent revisions to the plan to the Secretary within 30 days after making the revisions.

[(2) REVIEW AND UPDATES.—The Secretary, with assistance of the Secretary of Transportation, shall review the plans and transmit comments to the railroad carrier concerning any revisions the Secretary considers necessary. A railroad carrier shall respond to the Secretary's comments within 30 days after receiving them. Each rail carrier shall update and resubmit its plan for review not less than every 2 years.

[(d) DEFINITIONS.—In this section:

[(1) The term “high-consequence target” means a building, buildings, infrastructure, public space, or natural resource designated by the Secretary of Homeland Security that is viable terrorist target of national significance, the attack of which could result in—

[(A) catastrophic loss of life; and

[(B) significantly damaged national security and defense capabilities; or

[(C) national economic harm.

[(2) The term “catastrophic impact zone” means the area immediately adjacent to, under, or above an active railroad right-of-

way used to ship high hazard materials in which the potential release or explosion of the high hazard material being transported would likely cause—

[(A) loss of life; or

[(B) significant damage to property or structures.

[(3) The term “rail carrier” has the meaning given that term by section 10102(5) of title 49, United States Code.

[SEC. 412. MEMORANDUM OF AGREEMENT.]

[(a) MEMORANDUM OF AGREEMENT.—Similar to the public transportation security annex between the two departments signed on September 8, 2005, within 1 year after the date of enactment of this Act, the Secretary of Transportation and the Secretary of Homeland Security shall execute and develop an annex to the memorandum of agreement between the two departments signed on September 28, 2004, governing the specific roles, delineations of responsibilities, resources and commitments of the Department of Transportation and the Department of Homeland Security, respectively, in addressing railroad transportation security matters, including the processes the departments will follow to promote communications, efficiency, and nonduplication of effort.

[(b) RAIL SAFETY REGULATIONS.—Section 20103(a) of title 49, United States Code, is amended by striking “safety” the first place it appears, and inserting “safety, including security.”.

[SEC. 413. RAIL SECURITY ENHANCEMENTS.]

[(a) RAIL POLICE OFFICERS.—Section 28101 of title 49, United States Code, is amended—

[(1) by inserting “(a) IN GENERAL.—” before “Under”; and

[(2) by striking “the rail carrier” each place it appears and inserting “any rail carrier”.

[(b) REVIEW OF RAIL REGULATIONS.—Within 1 year after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Secretary of Homeland Security and the Assistant Secretary of Homeland Security (Transportation Security Administration), shall review existing rail regulations of the Department of Transportation for the purpose of identifying areas in which those regulations need to be revised to improve rail security.

[SEC. 414. PUBLIC AWARENESS.]

[Not later than 90 days after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Secretary of Transportation, shall develop a national plan for public outreach and awareness. Such plan shall be designed to increase awareness of measures that the general public, railroad passengers, and railroad employees can take to increase railroad system security. Such plan shall also provide outreach to railroad carriers and their employees to improve their awareness of available technologies, ongoing research and development efforts, and available Federal funding sources to improve railroad security. Not later than 9 months after the date of enactment of this Act, the Secretary of Homeland Security shall implement the plan developed under this section.

[SEC. 415. RAILROAD HIGH HAZARD MATERIAL TRACKING.]

[(a) WIRELESS COMMUNICATIONS.—

[(1) IN GENERAL.—In conjunction with the research and development program established under section 405 and consistent with the results of research relating to wireless tracking technologies, the Secretary of Homeland Security, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), shall develop a program that will encourage the equipping of rail cars transporting high hazard materials (as defined in section 404(g)

of this title) with wireless terrestrial or satellite communications technology that provides—

[(A) car position location and tracking capabilities;

[(B) notification of rail car depressurization, breach, or unsafe temperature; and

[(C) notification of hazardous material release.

[(2) COORDINATION.—In developing the program required by paragraph (1), the Secretary shall—

[(A) consult with the Secretary of Transportation to coordinate the program with any ongoing or planned efforts for rail car tracking at the Department of Transportation; and

[(B) ensure that the program is consistent with recommendations and findings of the Department of Homeland Security’s hazardous material tank rail car tracking pilot programs.

[(b) FUNDING.—Out of funds appropriated pursuant to section 114(u) of title 49, United States Code, as amended by section 416 of this title, there shall be made available to the Secretary of Homeland Security to carry out this section \$3,000,000 for each of fiscal years 2008, 2009, and 2010.

[SEC. 416. AUTHORIZATION OF APPROPRIATIONS.]

[(a) TRANSPORTATION SECURITY ADMINISTRATION AUTHORIZATION.—Section 114 of title 49, United States Code, is amended by adding at the end thereof the following:

[(“u) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for rail security—

[(1) \$205,000,000 for fiscal year 2008;

[(2) \$166,000,000 for fiscal year 2009; and

[(3) \$166,000,000 for fiscal year 2010.”.

[(b) DEPARTMENT OF TRANSPORTATION.—There are authorized to be appropriated to the Secretary of Transportation to carry out this title and sections 20118 and 24316 of title 49, United States Code, as added by this title—

[(1) \$121,000,000 for fiscal year 2008;

[(2) \$118,000,000 for fiscal year 2009;

[(3) \$118,000,000 for fiscal year 2010; and

[(4) \$118,000,000 for fiscal year 2011.

TITLE IV—IMPROVED RAIL SECURITY

SEC. 401. DEFINITIONS.

In this title:

(1) HIGH HAZARD MATERIALS.—The term “high hazard materials” means quantities of poison inhalation hazard materials, Class 2.3 gases, Class 6.1 materials, anhydrous ammonia, and other hazardous materials that the Secretary, in consultation with the Secretary of Transportation, determines pose a security risk.

(2) SECRETARY.—The term “Secretary” refers to the Secretary of Homeland Security unless otherwise noted.

SEC. 402. RAIL TRANSPORTATION SECURITY RISK ASSESSMENT.

(a) IN GENERAL.—

(1) RISK ASSESSMENT.—The Secretary shall establish a task force, including the Transportation Security Administration and other agencies within the Department, the Department of Transportation, and other appropriate Federal agencies, to complete a risk assessment of freight and passenger rail transportation (encompassing railroads, as that term is defined in section 20102(1) of title 49, United States Code). The assessment shall include—

(A) a methodology for conducting the risk assessment, including timelines, that addresses how the Department of Homeland Security will work with the entities described in subsection (b) and make use of existing Federal expertise within the Department of Homeland Security, the Department of Transportation, and other appropriate agencies;

(B) identification and evaluation of critical assets and infrastructures;

(C) identification of risks to those assets and infrastructures;

(D) identification of risks that are specific to the transportation of hazardous materials via railroad;

(E) identification of risks to passenger and cargo security, transportation infrastructure (including rail tunnels used by passenger and freight railroads in high threat urban areas), protection systems, operations, communications systems, employee training, emergency response planning, and any other area identified by the assessment;

(F) an assessment of public and private operational recovery plans to expedite, to the maximum extent practicable, the return of an adversely affected freight or passenger rail transportation system or facility to its normal performance level after a major terrorist attack or other security event on that system or facility; and

(G) an account of actions taken or planned by both public and private entities to address identified rail security issues and assess the effective integration of such actions.

(2) RECOMMENDATIONS.—Based on the assessment conducted under paragraph (1), the Secretary, in consultation with the Secretary of Transportation, shall develop prioritized recommendations for improving rail security, including any recommendations the Secretary has for—

(A) improving the security of rail tunnels, rail bridges, rail switching and car storage areas, other rail infrastructure and facilities, information systems, and other areas identified by the Secretary as posing significant rail-related risks to public safety and the movement of interstate commerce, taking into account the impact that any proposed security measure might have on the provision of rail service or on operations served or otherwise affected by rail service;

(B) deploying equipment and personnel to detect security threats, including those posed by explosives and hazardous chemical, biological, and radioactive substances, and any appropriate countermeasures;

(C) training appropriate railroad or railroad shipper employees in terrorism prevention, preparedness, passenger evacuation, and response activities;

(D) conducting public outreach campaigns on passenger railroads regarding security;

(E) deploying surveillance equipment;

(F) identifying the immediate and long-term costs of measures that may be required to address those risks; and

(G) public and private sector sources to fund such measures.

(3) PLANS.—The report required by subsection (c) shall include—

(A) a plan, developed in consultation with the freight and intercity passenger railroads, and State and local governments, for the Federal Government to provide adequate security support at high or severe threat levels of alert;

(B) a plan for coordinating existing and planned rail security initiatives undertaken by the public and private sectors; and

(C) a contingency plan, developed in coordination with freight and intercity and commuter passenger railroads, to ensure the continued movement of freight and passengers in the event of an attack affecting the railroad system, which shall contemplate—

(i) the possibility of rerouting traffic due to the loss of critical infrastructure, such as a bridge, tunnel, yard, or station; and

(ii) methods of continuing railroad service in the Northeast Corridor in the event of a commercial power loss, or catastrophe affecting a critical bridge, tunnel, yard, or station.

(b) CONSULTATION; USE OF EXISTING RESOURCES.—In carrying out the assessment and developing the recommendations and plans required by subsection (a), the Secretary shall consult with rail management, rail labor, owners or lessors of rail cars used to transport hazardous materials, first responders, offerers of

hazardous materials, public safety officials, and other relevant parties. In developing the risk assessment required under this section, the Secretary shall utilize relevant existing risk assessments developed by the Department or other Federal agencies, and, as appropriate, assessments developed by other public and private stakeholders.

(c) REPORT.—

(1) CONTENTS.—Within 1 year after the date of enactment of this Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives a report containing—

(A) the assessment, prioritized recommendations, and plans required by subsection (a); and

(B) an estimate of the cost to implement such recommendations.

(2) FORMAT.—The Secretary may submit the report in both classified and redacted formats if the Secretary determines that such action is appropriate or necessary.

(d) ANNUAL UPDATES.—The Secretary, in consultation with the Secretary of Transportation, shall update the assessment and recommendations each year and transmit a report, which may be submitted in both classified and redacted formats, to the Committees named in subsection (c)(1), containing the updated assessment and recommendations.

(e) FUNDING.—Out of funds appropriated pursuant to section 114(v) of title 49, United States Code, as amended by section 418 of this title, there shall be made available to the Secretary to carry out this section \$5,000,000 for fiscal year 2008.

SEC. 403. SYSTEMWIDE AMTRAK SECURITY UPGRADES.

(a) IN GENERAL.—

(1) GRANTS.—Subject to subsection (c) the Secretary, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), is authorized to make grants to Amtrak in accordance with the provisions of this section.

(2) GENERAL PURPOSES.—The Secretary may make such grants for the purposes of—

(A) protecting underwater and underground assets and systems;

(B) protecting high risk and high consequence assets identified through system-wide risk assessments;

(C) providing counter-terrorism training;

(D) providing both visible and unpredictable deterrence; and

(E) conducting emergency preparedness drills and exercises.

(3) SPECIFIC PROJECTS.—The Secretary shall make such grants—

(A) to secure major tunnel access points and ensure tunnel integrity in New York, New Jersey, Maryland, and Washington, DC;

(B) to secure Amtrak trains;

(C) to secure Amtrak stations;

(D) to obtain a watch list identification system approved by the Secretary;

(E) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;

(F) to hire additional police officers, special agents, security officers, including canine units, and to pay for other labor costs directly associated with security and terrorism prevention activities;

(G) to expand emergency preparedness efforts; and

(H) for employee security training.

(b) CONDITIONS.—The Secretary of Transportation shall disburse funds to Amtrak provided under subsection (a) for projects contained in a systemwide security plan approved by the Secretary. Amtrak shall develop the security plan in consultation with constituent States and other relevant parties. The plan shall include appropriate measures to address security awareness, emergency response, and passenger evacu-

ation training and shall be consistent with State security plans to the maximum extent practicable.

(c) EQUITABLE GEOGRAPHIC ALLOCATION.—The Secretary shall ensure that, subject to meeting the highest security needs on Amtrak's entire system and consistent with the risk assessment required under section 403, stations and facilities located outside of the Northeast Corridor receive an equitable share of the security funds authorized by this section.

(d) AVAILABILITY OF FUNDS.—

(1) IN GENERAL.—Out of funds appropriated pursuant to section 114(v) of title 49, United States Code, as amended by section 418 of this title, there shall be made available to the Secretary and the Assistant Secretary of Homeland Security (Transportation Security Administration) to carry out this section—

(A) \$63,500,000 for fiscal year 2008;

(B) \$30,000,000 for fiscal year 2009; and

(C) \$30,000,000 for fiscal year 2010.

(2) AVAILABILITY OF APPROPRIATED FUNDS.—

Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 404. FIRE AND LIFE-SAFETY IMPROVEMENTS.

(a) LIFE-SAFETY NEEDS.—The Secretary of Transportation, in consultation with the Secretary, is authorized to make grants to Amtrak for the purpose of making fire and life-safety improvements to Amtrak tunnels on the Northeast Corridor in New York, New Jersey, Maryland, and Washington, DC.

(b) AUTHORIZATION OF APPROPRIATIONS.—Out of funds appropriated pursuant to section 418(b) of this title, there shall be made available to the Secretary of Transportation for the purposes of carrying out subsection (a) the following amounts:

(1) For the 6 New York and New Jersey tunnels to provide ventilation, electrical, and fire safety technology upgrades, emergency communication and lighting systems, and emergency access and egress for passengers—

(A) \$100,000,000 for fiscal year 2008;

(B) \$100,000,000 for fiscal year 2009;

(C) \$100,000,000 for fiscal year 2010; and

(D) \$100,000,000 for fiscal year 2011.

(2) For the Baltimore & Potomac tunnel and the Union tunnel, together, to provide adequate drainage, ventilation, communication, lighting, and passenger egress upgrades—

(A) \$10,000,000 for fiscal year 2008;

(B) \$10,000,000 for fiscal year 2009;

(C) \$10,000,000 for fiscal year 2010; and

(D) \$10,000,000 for fiscal year 2011.

(3) For the Washington, DC, Union Station tunnels to improve ventilation, communication, lighting, and passenger egress upgrades—

(A) \$8,000,000 for fiscal year 2008;

(B) \$8,000,000 for fiscal year 2009;

(C) \$8,000,000 for fiscal year 2010; and

(D) \$8,000,000 for fiscal year 2011.

(c) INFRASTRUCTURE UPGRADES.—Out of funds appropriated pursuant to section 418(b) of this title, there shall be made available to the Secretary of Transportation for fiscal year 2008 \$3,000,000 for the preliminary design of options for a new tunnel on a different alignment to augment the capacity of the existing Baltimore tunnels.

(d) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts made available pursuant to this section shall remain available until expended.

(e) PLANS REQUIRED.—The Secretary of Transportation may not make amounts available to Amtrak for obligation or expenditure under subsection (a)—

(1) until Amtrak has submitted to the Secretary, and the Secretary has approved, an engineering and financial plan for such projects; and

(2) unless, for each project funded pursuant to this section, the Secretary has approved a project management plan prepared by Amtrak addressing appropriate project budget, construction schedule, recipient staff organization, doc-

ument control and record keeping, change order procedure, quality control and assurance, periodic plan updates, and periodic status reports.

(f) REVIEW OF PLANS.—

(1) IN GENERAL.—The Secretary of Transportation shall complete the review of the plans required by paragraphs (1) and (2) of subsection (e) and approve or disapprove the plans within 45 days after the date on which each such plan is submitted by Amtrak.

(2) INCOMPLETE OR DEFICIENT PLAN.—If the Secretary determines that a plan is incomplete or deficient, the Secretary shall notify Amtrak of the incomplete items or deficiencies and Amtrak shall, within 30 days after receiving the Secretary's notification, submit a modified plan for the Secretary's review.

(3) APPROVAL OF PLAN.—Within 15 days after receiving additional information on items previously included in the plan, and within 45 days after receiving items newly included in a modified plan, the Secretary shall either approve the modified plan, or, if the Secretary finds the plan is still incomplete or deficient, the Secretary shall—

(A) identify in writing to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Transportation and Infrastructure and the Committee on Homeland Security of the House of Representatives the portions of the plan the Secretary finds incomplete or deficient;

(B) approve all other portions of the plan;

(C) obligate the funds associated with those other portions; and

(D) execute an agreement with Amtrak within 15 days thereafter on a process for resolving the remaining portions of the plan.

(g) FINANCIAL CONTRIBUTION FROM OTHER TUNNEL USERS.—The Secretary shall, taking into account the need for the timely completion of all portions of the tunnel projects described in subsection (a)—

(1) consider the extent to which rail carriers other than Amtrak use or plan to use the tunnels;

(2) consider the feasibility of seeking a financial contribution from those other rail carriers toward the costs of the projects; and

(3) obtain financial contributions or commitments from such other rail carriers at levels reflecting the extent of their use or planned use of the tunnels, if feasible.

SEC. 405. FREIGHT AND PASSENGER RAIL SECURITY UPGRADES.

(a) SECURITY IMPROVEMENT GRANTS.—The Secretary, in consultation with Assistant Secretary of Homeland Security (Transportation Security Administration) and other appropriate agencies or officials, is authorized to make grants to freight railroads, the Alaska Railroad, hazardous materials offerers, owners of rail cars used in the transportation of hazardous materials, universities, colleges and research centers, State and local governments (for rail passenger facilities and infrastructure not owned by Amtrak), and to Amtrak for full or partial reimbursement of costs incurred in the conduct of activities to prevent or respond to acts of terrorism, sabotage, or other intercity passenger rail and freight rail security risks identified under section 402, including—

(1) security and redundancy for critical communications, computer, and train control systems essential for secure rail operations;

(2) accommodation of rail cargo or passenger screening equipment at the United States-Mexico border, the United States-Canada border, or other ports of entry;

(3) the security of hazardous material transportation by rail;

(4) secure intercity passenger rail stations, trains, and infrastructure;

(5) structural modification or replacement of rail cars transporting high hazard materials to improve their resistance to acts of terrorism;

(6) employee security awareness, preparedness, passenger evacuation, and emergency response training;

(7) public security awareness campaigns for passenger train operations;

(8) the sharing of intelligence and information about security threats;

(9) to obtain train tracking and interoperable communications systems that are coordinated to the maximum extent possible;

(10) to hire additional police and security officers, including canine units; and

(11) other improvements recommended by the report required by section 402, including infrastructure, facilities, and equipment upgrades.

(b) **ACCOUNTABILITY.**—The Secretary shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this title and the priorities and other criteria developed by the Secretary.

(c) **ALLOCATION.**—The Secretary shall distribute the funds authorized by this section based on risk as determined under section 402, and shall encourage non-Federal financial participation in projects funded by grants awarded under this section. With respect to grants for intercity passenger rail security, the Secretary shall also take into account passenger volume and whether stations or facilities are used by commuter rail passengers as well as intercity rail passengers. Not later than 240 days after the date of enactment of this Act, the Secretary shall provide a report to the Committees on Commerce, Science and Transportation and Homeland Security and Governmental Affairs in the Senate and the Committee on Homeland Security in the House on the feasibility and appropriateness of requiring a non-Federal match for the grants authorized in subsection (a).

(d) **CONDITIONS.**—Grants awarded by the Secretary to Amtrak under subsection (a) shall be disbursed to Amtrak through the Secretary of Transportation. The Secretary of Transportation may not disburse such funds unless Amtrak meets the conditions set forth in section 403(b) of this title.

(e) **ALLOCATION BETWEEN RAILROADS AND OTHERS.**—Unless as a result of the assessment required by section 402 the Secretary determines that critical rail transportation security needs require reimbursement in greater amounts to any eligible entity, no grants under this section may be made cumulatively over the period authorized by this title—

(1) in excess of \$45,000,000 to Amtrak; or

(2) in excess of \$80,000,000 for the purposes described in paragraphs (3) and (5) of subsection (a).

(f) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—Out of funds appropriated pursuant to section 114(v) of title 49, United States Code, as amended by section 418 of this title, there shall be made available to the Secretary to carry out this section—

(A) \$100,000,000 for fiscal year 2008;

(B) \$100,000,000 for fiscal year 2009; and

(C) \$100,000,000 for fiscal year 2010.

(2) **AVAILABILITY OF APPROPRIATED FUNDS.**—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 406. RAIL SECURITY RESEARCH AND DEVELOPMENT.

(a) **ESTABLISHMENT OF RESEARCH AND DEVELOPMENT PROGRAM.**—The Secretary, through the Under Secretary for Science and Technology and the Assistant Secretary of Homeland Security (Transportation Security Administration), in consultation with the Secretary of Transportation shall carry out a research and development program for the purpose of improving freight and intercity passenger rail security that may include research and development projects to—

(1) reduce the risk of terrorist attacks on rail transportation, including risks posed by explosives and hazardous chemical, biological, and radioactive substances to intercity rail passengers, facilities, and equipment;

(2) test new emergency response techniques and technologies;

(3) develop improved freight rail security technologies, including—

(A) technologies for sealing rail cars;

(B) automatic inspection of rail cars;

(C) communication-based train controls; and

(D) emergency response training;

(4) test wayside detectors that can detect tampering with railroad equipment;

(5) support enhanced security for the transportation of hazardous materials by rail, including—

(A) technologies to detect a breach in a tank car or other rail car used to transport hazardous materials and transmit information about the integrity of cars to the train crew or dispatcher;

(B) research to improve tank car integrity, with a focus on tank cars that carry high hazard materials (as defined in section 401 of this title); and

(C) techniques to transfer hazardous materials from rail cars that are damaged or otherwise represent an unreasonable risk to human life or public safety; and

(6) other projects that address risks identified under section 402.

(b) **COORDINATION WITH OTHER RESEARCH INITIATIVES.**—The Secretary shall ensure that the research and development program authorized by this section is coordinated with other research and development initiatives at the Department of Homeland Security and the Department of Transportation. The Secretary shall carry out any research and development project authorized by this section through a reimbursable agreement with the Secretary of Transportation, if the Secretary of Transportation—

(1) is already sponsoring a research and development project in a similar area; or

(2) has a unique facility or capability that would be useful in carrying out the project.

(c) **GRANTS AND ACCOUNTABILITY.**—To carry out the research and development program, the Secretary may award grants to the entities described in section 405(a) and shall adopt necessary procedures, including audits, to ensure that grants made under this section are expended in accordance with the purposes of this title and the priorities and other criteria developed by the Secretary.

(d) **AUTHORIZATION OF APPROPRIATIONS.**—

(1) **IN GENERAL.**—Out of funds appropriated pursuant to section 114(v) of title 49, United States Code, as amended by section 418 of this title, there shall be made available to the Secretary to carry out this section—

(A) \$33,000,000 for fiscal year 2008;

(B) \$33,000,000 for fiscal year 2009; and

(C) \$33,000,000 for fiscal year 2010.

(2) **AVAILABILITY OF APPROPRIATED FUNDS.**—Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

SEC. 407. OVERSIGHT AND GRANT PROCEDURES.

(a) **SECRETARIAL OVERSIGHT.**—The Secretary may award contracts to audit and review the safety, security, procurement, management, and financial compliance of a recipient of amounts under this title.

(b) **PROCEDURES FOR GRANT AWARD.**—The Secretary shall, within 180 days after the date of enactment of this Act, prescribe procedures and schedules for the awarding of grants under this title, including application and qualification procedures (including a requirement that the applicant have a security plan), and a record of decision on applicant eligibility. The procedures shall include the execution of a grant agreement between the grant recipient and the Secretary and shall be consistent, to the extent practicable, with the grant procedures established under section 70107 of title 46, United States Code.

(c) **ADDITIONAL AUTHORITY.**—The Secretary may issue nonbinding letters under similar terms to those issued pursuant to section 47110(e) of title 49, United States Code, to sponsors of rail projects funded under this title.

SEC. 408. AMTRAK PLAN TO ASSIST FAMILIES OF PASSENGERS INVOLVED IN RAIL PASSENGER ACCIDENTS.

(a) **IN GENERAL.**—Chapter 243 of title 49, United States Code, is amended by adding at the end the following:

“§24316. Plans to address needs of families of passengers involved in rail passenger accidents

“(a) **SUBMISSION OF PLAN.**—Not later than 6 months after the date of the enactment of the Transportation Security and Interoperable Communication Capabilities Act, Amtrak shall submit to the Chairman of the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security a plan for addressing the needs of the families of passengers involved in any rail passenger accident involving an Amtrak intercity train and resulting in a loss of life.

“(b) **CONTENTS OF PLANS.**—The plan to be submitted by Amtrak under subsection (a) shall include, at a minimum, the following:

“(1) A process by which Amtrak will maintain and provide to the National Transportation Safety Board, the Secretary of Transportation, and the Secretary of Homeland Security, immediately upon request, a list (which is based on the best available information at the time of the request) of the names of the passengers aboard the train (whether or not such names have been verified), and will periodically update the list. The plan shall include a procedure, with respect to unreserved trains and passengers not holding reservations on other trains, for Amtrak to use reasonable efforts to ascertain the number and names of passengers aboard a train involved in an accident.

“(2) A plan for creating and publicizing a reliable, toll-free telephone number within 4 hours after such an accident occurs, and for providing staff, to handle calls from the families of the passengers.

“(3) A process for notifying the families of the passengers, before providing any public notice of the names of the passengers, by suitably trained individuals.

“(4) A process for providing the notice described in paragraph (2) to the family of a passenger as soon as Amtrak has verified that the passenger was aboard the train (whether or not the names of all of the passengers have been verified).

“(5) A process by which the family of each passenger will be consulted about the disposition of all remains and personal effects of the passenger within Amtrak’s control; that any possession of the passenger within Amtrak’s control will be returned to the family unless the possession is needed for the accident investigation or any criminal investigation; and that any unclaimed possession of a passenger within Amtrak’s control will be retained by the rail passenger carrier for at least 18 months.

“(6) A process by which the treatment of the families of nonrevenue passengers will be the same as the treatment of the families of revenue passengers.

“(7) An assurance that Amtrak will provide adequate training to its employees and agents to meet the needs of survivors and family members following an accident.

“(c) **USE OF INFORMATION.**—Neither the National Transportation Safety Board, the Secretary of Transportation, the Secretary of Homeland Security, nor Amtrak may release any personal information on a list obtained under subsection (b)(1) but may provide information on the list about a passenger to the family of the passenger to the extent that the Board or Amtrak considers appropriate.

“(d) **LIMITATION ON LIABILITY.**—Amtrak shall not be liable for damages in any action brought in a Federal or State court arising out of the performance of Amtrak under this section in preparing or providing a passenger list, or in

providing information concerning a train reservation, pursuant to a plan submitted by Amtrak under subsection (b), unless such liability was caused by Amtrak's conduct.

“(e) **LIMITATION ON STATUTORY CONSTRUCTION.**—Nothing in this section may be construed as limiting the actions that Amtrak may take, or the obligations that Amtrak may have, in providing assistance to the families of passengers involved in a rail passenger accident.

“(f) **FUNDING.**—Out of funds appropriated pursuant to section 418(b) of the Passenger Rail Investment and Improvement Act of 2007, there shall be made available to the Secretary of Transportation for the use of Amtrak \$500,000 for fiscal year 2008 to carry out this section. Amounts made available pursuant to this subsection shall remain available until expended.”.

(b) **CONFORMING AMENDMENT.**—The chapter analysis for chapter 243 of title 49, United States Code, is amended by adding at the end the following:

“24316. Plan to assist families of passengers involved in rail passenger accidents.”.

SEC. 409. NORTHERN BORDER RAIL PASSENGER REPORT.

Within 1 year after the date of enactment of this Act, the Secretary, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), the Secretary of Transportation, heads of other appropriate Federal departments, and agencies and the National Railroad Passenger Corporation, shall transmit a report to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Homeland Security that contains—

(1) a description of the current system for screening passengers and baggage on passenger rail service between the United States and Canada;

(2) an assessment of the current program to provide preclearance of airline passengers between the United States and Canada as outlined in “The Agreement on Air Transport Preclearance between the Government of Canada and the Government of the United States of America”, dated January 18, 2001;

(3) an assessment of the current program to provide preclearance of freight railroad traffic between the United States and Canada as outlined in the “Declaration of Principle for the Improved Security of Rail Shipments by Canadian National Railway and Canadian Pacific Railway from Canada to the United States”, dated April 2, 2003;

(4) information on progress by the Department of Homeland Security and other Federal agencies towards finalizing a bilateral protocol with Canada that would provide for preclearance of passengers on trains operating between the United States and Canada;

(5) a description of legislative, regulatory, budgetary, or policy barriers within the United States Government to providing pre-screened passenger lists for rail passengers traveling between the United States and Canada to the Department of Homeland Security;

(6) a description of the position of the Government of Canada and relevant Canadian agencies with respect to preclearance of such passengers;

(7) a draft of any changes in existing Federal law necessary to provide for pre-screening of such passengers and providing pre-screened passenger lists to the Department of Homeland Security; and

(8) an analysis of the feasibility of reinstating in-transit inspections onboard international Amtrak trains.

SEC. 410. RAIL WORKER SECURITY TRAINING PROGRAM.

(a) **IN GENERAL.**—Not later than 1 year after the date of enactment of this Act, the Secretary,

in consultation with the Secretary of Transportation, appropriate law enforcement, security, and terrorism experts, representatives of railroad carriers and shippers, and nonprofit employee organizations that represent rail workers, shall develop and issue detailed guidance for a rail worker security training program to prepare front-line workers for potential threat conditions. The guidance shall take into consideration any current security training requirements or best practices.

(b) **PROGRAM ELEMENTS.**—The guidance developed under subsection (a) shall include elements appropriate to passenger and freight rail service that address the following:

(1) Determination of the seriousness of any occurrence.

(2) Crew communication and coordination.

(3) Appropriate responses to defend or protect oneself.

(4) Use of protective devices.

(5) Evacuation procedures.

(6) Psychology, behavior, and methods of terrorists, including observation and analysis.

(7) Situational training exercises regarding various threat conditions.

(8) Any other subject the Secretary considers appropriate.

(c) **RAILROAD CARRIER PROGRAMS.**—Not later than 90 days after the Secretary issues guidance under subsection (a) in final form, each railroad carrier shall develop a rail worker security training program in accordance with that guidance and submit it to the Secretary for review. Not later than 90 days after receiving a railroad carrier's program under this subsection, the Secretary shall review the program and transmit comments to the railroad carrier concerning any revisions the Secretary considers necessary for the program to meet the guidance requirements. A railroad carrier shall respond to the Secretary's comments within 90 days after receiving them.

(d) **TRAINING.**—Not later than 1 year after the Secretary reviews the training program developed by a railroad carrier under this section, the railroad carrier shall complete the training of all front-line workers in accordance with that program. The Secretary shall review implementation of the training program of a representative sample of railroad carriers and report to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Homeland Security on the number of reviews conducted and the results. The Secretary may submit the report in both classified and redacted formats as necessary.

(e) **UPDATES.**—The Secretary shall update the training guidance issued under subsection (a) as appropriate to reflect new or different security threats. Railroad carriers shall revise their programs accordingly and provide additional training to their front-line workers within a reasonable time after the guidance is updated.

(f) **FRONT-LINE WORKERS DEFINED.**—In this section, the term “front-line workers” means security personnel, dispatchers, locomotive engineers, conductors, trainmen, other onboard employees, maintenance and maintenance support personnel, bridge tenders, as well as other appropriate employees of railroad carriers, as defined by the Secretary.

(g) **OTHER EMPLOYEES.**—The Secretary shall issue guidance and best practices for a rail shipper employee security program containing the elements listed under subsection (b) as appropriate.

SEC. 411. WHISTLEBLOWER PROTECTION PROGRAM.

(a) **IN GENERAL.**—Subchapter A of chapter 201 of title 49, United States Code, is amended by inserting after section 20117 the following:

“§20118. Whistleblower protection for rail security matters

“(a) **DISCRIMINATION AGAINST EMPLOYEE.**—A railroad carrier engaged in interstate or foreign

commerce may not discharge or in any way discriminate against an employee because the employee, whether acting for the employee or as a representative, has—

“(1) provided, caused to be provided, or is about to provide or cause to be provided, to the employer or the Federal Government information relating to a reasonably perceived threat, in good faith, to security;

“(2) provided, caused to be provided, or is about to provide or cause to be provided, testimony before Congress or at any Federal or State proceeding regarding a reasonably perceived threat, in good faith, to security; or

“(3) refused to violate or assist in the violation of any law, rule or regulation related to rail security.

“(b) **DISPUTE RESOLUTION.**—A dispute, grievance, or claim arising under this section is subject to resolution under section 3 of the Railway Labor Act (45 U.S.C. 153). In a proceeding by the National Railroad Adjustment Board, a division or delegate of the Board, or another board of adjustment established under section 3 to resolve the dispute, grievance, or claim the proceeding shall be expedited and the dispute, grievance, or claim shall be resolved not later than 180 days after it is filed. If the violation is a form of discrimination that does not involve discharge, suspension, or another action affecting pay, and no other remedy is available under this subsection, the Board, division, delegate, or other board of adjustment may award the employee reasonable damages, including punitive damages, of not more than \$20,000.

“(c) **PROCEDURAL REQUIREMENTS.**—Except as provided in subsection (b), the procedure set forth in section 42121(b)(2)(B) of this subtitle, including the burdens of proof, applies to any complaint brought under this section.

“(d) **ELECTION OF REMEDIES.**—An employee of a railroad carrier may not seek protection under both this section and another provision of law for the same allegedly unlawful act of the carrier.

“(e) **DISCLOSURE OF IDENTITY.**—

“(1) Except as provided in paragraph (2) of this subsection, or with the written consent of the employee, the Secretary of Transportation or Secretary of Homeland Security may not disclose the name of an employee of a railroad carrier who has provided information about an alleged violation of this section.

“(2) The Secretary shall disclose to the Attorney General the name of an employee described in paragraph (1) of this subsection if the matter is referred to the Attorney General for enforcement.

“(f) **PROCESS FOR REPORTING PROBLEMS.**—

“(1) **ESTABLISHMENT OF REPORTING PROCESS.**—The Secretary shall establish, and provide information to the public regarding, a process by which any person may submit a report to the Secretary regarding railroad security problems, deficiencies, or vulnerabilities.

“(2) **CONFIDENTIALITY.**—The Secretary shall keep confidential the identity of a person who submits a report under paragraph (1) and any such report shall be treated as a record containing protected information to the extent that it does not consist of publicly available information.

“(3) **ACKNOWLEDGMENT OF RECEIPT.**—If a report submitted under paragraph (1) identifies the person making the report, the Secretary shall respond promptly to such person and acknowledge receipt of the report.

“(4) **STEPS TO ADDRESS PROBLEMS.**—The Secretary shall review and consider the information provided in any report submitted under paragraph (1) and shall take appropriate steps under this title to address any problems or deficiencies identified.

“(5) **RETALIATION PROHIBITED.**—No employer may discharge any employee or otherwise discriminate against any employee with respect to the compensation to, or terms, conditions, or privileges of the employment of, such employee

because the employee (or a person acting pursuant to a request of the employee) made a report under paragraph (1).”

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 201 of title 49, United States Code, is amended by inserting after the item relating to section 20117 the following:

“20118. Whistleblower protection for rail security matters.”.

SEC. 412. HIGH HAZARD MATERIAL SECURITY RISK MITIGATION PLANS.

(a) IN GENERAL.—The Secretary, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration) and the Secretary of Transportation, shall require rail carriers transporting a high hazard material, as defined in section 402 of this title, to develop a high hazard material security risk mitigation plan containing appropriate measures, including alternative routing and temporary shipment suspension options, to address assessed risks to high consequence targets. The plan, and any information submitted to the Secretary under this section shall be protected as sensitive security information under the regulations prescribed under section 114(s) of title 49, United States Code.

(b) IMPLEMENTATION.—A high hazard material security risk mitigation plan shall be put into effect by a rail carrier for the shipment of high hazardous materials by rail on the rail carrier’s right-of-way when the threat levels of the Homeland Security Advisory System are high or severe or specific intelligence of probable or imminent threat exists towards—

(1) a high-consequence target that is within the catastrophic impact zone of a railroad right-of-way used to transport high hazardous material; or

(2) rail infrastructure or operations within the immediate vicinity of a high-consequence target.

(c) COMPLETION AND REVIEW OF PLANS.—

(1) PLANS REQUIRED.—Each rail carrier shall—

(A) submit a list of routes used to transport high hazard materials to the Secretary within 60 days after the date of enactment of this Act;

(B) develop and submit a high hazard material security risk mitigation plan to the Secretary within 180 days after it receives the notice of high consequence targets on such routes by the Secretary that includes an operational recovery plan to expedite, to the maximum extent practicable, the return of an adversely affected rail system or facility to its normal performance level following a major terrorist attack or other security incident; and

(C) submit any subsequent revisions to the plan to the Secretary within 30 days after making the revisions.

(2) REVIEW AND UPDATES.—The Secretary, with assistance of the Secretary of Transportation, shall review the plans and transmit comments to the railroad carrier concerning any revisions the Secretary considers necessary. A railroad carrier shall respond to the Secretary’s comments within 30 days after receiving them. Each rail carrier shall update and resubmit its plan for review not less than every 2 years.

(d) DEFINITIONS.—In this section:

(1) The term “high-consequence target” means property, infrastructure, public space, or natural resource designated by the Secretary that is a viable terrorist target of national significance, the attack of which could result in—

(A) catastrophic loss of life;

(B) significant damage to national security or defense capabilities; or

(C) national economic harm.

(2) The term “catastrophic impact zone” means the area immediately adjacent to, under, or above an active railroad right-of-way used to ship high hazard materials in which the potential release or explosion of the high hazard material being transported would likely cause—

(A) loss of life; or

(B) significant damage to property or structures.

(3) The term “rail carrier” has the meaning given that term by section 10102(5) of title 49, United States Code.

SEC. 413. ENFORCEMENT AUTHORITY.

(a) IN GENERAL.—Section 114 of title 49, United States Code, is amended by adding at the end the following:

“(u) ENFORCEMENT OF REGULATIONS AND ORDERS OF THE SECRETARY OF HOMELAND SECURITY ISSUED UNDER THIS TITLE.—

“(1) APPLICATION OF SUBSECTION.—

“(A) IN GENERAL.—This subsection applies to the enforcement of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of this title other than a provision of chapter 449.

“(B) VIOLATIONS OF CHAPTER 449.—The penalties for violations of regulations prescribed, and orders issued, by the Secretary of Homeland Security under chapter 449 of this title are provided under chapter 463 of this title.

“(C) NONAPPLICATION TO CERTAIN VIOLATIONS.—

“(i) Paragraphs (2) through (5) of this subsection do not apply to violations of regulations prescribed, and orders issued, by the Secretary of Homeland Security under a provision of this title—

“(I) involving the transportation of personnel or shipments of materials by contractors where the Department of Defense has assumed control and responsibility;

“(II) by a member of the armed forces of the United States when performing official duties; or

“(III) by a civilian employee of the Department of Defense when performing official duties.

“(ii) Violations described in subclause (I), (II), or (III) of clause (i) shall be subject to penalties as determined by the Secretary of Defense or the Secretary’s designee.

“(2) CIVIL PENALTY.—

“(A) IN GENERAL.—A person is liable to the United States Government for a civil penalty of not more than \$10,000 for a violation of a regulation prescribed, or order issued, by the Secretary of Homeland Security under this title.

“(B) REPEAT VIOLATIONS.—A separate violation occurs under this paragraph for each day the violation continues.

“(3) ADMINISTRATIVE IMPOSITION OF CIVIL PENALTIES.—

“(A) IN GENERAL.—The Secretary of Homeland Security may impose a civil penalty for a violation of a regulation prescribed, or order issued, under this title. The Secretary shall give written notice of the finding of a violation and the penalty.

“(B) SCOPE OF CIVIL ACTION.—In a civil action to collect a civil penalty imposed by the Secretary under this subsection, the court may not re-examine issues of liability or the amount of the penalty.

“(C) JURISDICTION.—The district courts of the United States have exclusive jurisdiction of civil actions to collect a civil penalty imposed by the Secretary under this subsection if—

“(i) the amount in controversy is more than—

“(I) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

“(II) \$50,000, if the violation was committed by an individual or small business concern;

“(ii) the action is in rem or another action in rem based on the same violation has been brought; or

“(iii) another action has been brought for an injunction based on the same violation.

“(D) MAXIMUM PENALTY.—The maximum penalty the Secretary may impose under this paragraph is—

“(i) \$400,000, if the violation was committed by a person other than an individual or small business concern; or

“(ii) \$50,000, if the violation was committed by an individual or small business concern.

“(4) COMPROMISE AND SETOFF.—

“(A) The Secretary may compromise the amount of a civil penalty imposed under this subsection. If the Secretary compromises the amount of a civil penalty under this subparagraph, the Secretary shall—

“(i) notify the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Homeland Security of the compromised penalty and explain the rationale therefor; and

“(ii) make the explanation available to the public to the extent feasible without compromising security.

“(B) The Government may deduct the amount of a civil penalty imposed or compromised under this subsection from amounts it owes the person liable for the penalty.

“(5) INVESTIGATIONS AND PROCEEDINGS.—Chapter 461 of this title shall apply to investigations and proceedings brought under this subsection to the same extent that it applies to investigations and proceedings brought with respect to aviation security duties designated to be carried out by the Secretary.

“(6) DEFINITIONS.—In this subsection:

“(A) PERSON.—The term ‘person’ does not include—

“(i) the United States Postal Service; or

“(ii) the Department of Defense.

“(B) SMALL BUSINESS CONCERN.—The term ‘small business concern’ has the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632).”.

(b) CONFORMING AMENDMENT.—Section 46301(a)(4) of title 49, United States Code is amended by striking “or another requirement under this title administered by the Under Secretary of Transportation for Security”.

(c) RAIL SAFETY REGULATIONS.—Section 20103(a) of title 49, United States Code, is amended by striking “safety” the first place it appears, and inserting “safety, including security.”.

SEC. 414. RAIL SECURITY ENHANCEMENTS.

(a) RAIL POLICE OFFICERS.—Section 28101 of title 49, United States Code, is amended—

(1) by inserting “(a) IN GENERAL.—” before “Under”; and

(2) by adding at the end the following:

“(b) ASSIGNMENT.—A rail police officer employed by a rail carrier and certified or commissioned as a police officer under the laws of a State may be temporarily assigned to assist a second rail carrier in carrying out law enforcement duties upon the request of the second rail carrier, at which time the police officer shall be considered to be an employee of the second rail carrier and shall have authority to enforce the laws of any jurisdiction in which the second rail carrier owns property to the same extent as provided in subsection (a).”.

(b) MODEL STATE LEGISLATION.—By no later than September 7, 2007, the Secretary of Transportation shall develop model State legislation to address the problem of entities that claim to be rail carriers in order to establish and run a police force when the entities do not in fact provide rail transportation and shall make it available to State governments. In developing the model State legislation the Secretary shall solicit the input of the States, railroad companies, and railroad employees. The Secretary shall review and, if necessary, revise such model State legislation periodically.

SEC. 415. PUBLIC AWARENESS.

Not later than 90 days after the date of enactment of this Act, the Secretary, in consultation with the Secretary of Transportation, shall develop a national plan for public outreach and awareness. Such plan shall be designed to increase awareness of measures that the general public, railroad passengers, and railroad employees can take to increase railroad system security. Such plan shall also provide outreach to railroad carriers and their employees to improve their awareness of available technologies, ongoing research and development efforts, and available Federal funding sources to improve railroad

security. Not later than 9 months after the date of enactment of this Act, the Secretary shall implement the plan developed under this section.

SEC. 416. RAILROAD HIGH HAZARD MATERIAL TRACKING.

(a) WIRELESS COMMUNICATIONS.—

(1) IN GENERAL.—In conjunction with the research and development program established under section 406 and consistent with the results of research relating to wireless tracking technologies, the Secretary, in consultation with the Assistant Secretary of Homeland Security (Transportation Security Administration), shall develop a program that will encourage the equipping of rail cars transporting high hazard materials (as defined in section 402 of this title) with technology that provides—

(A) car position location and tracking capabilities; and

(B) notification of rail car depressurization, breach, unsafe temperature, or release of hazardous materials.

(2) COORDINATION.—In developing the program required by paragraph (1), the Secretary shall—

(A) consult with the Secretary of Transportation to coordinate the program with any ongoing or planned efforts for rail car tracking at the Department of Transportation; and

(B) ensure that the program is consistent with recommendations and findings of the Department of Homeland Security's hazardous material tank rail car tracking pilot programs.

(b) FUNDING.—Out of funds appropriated pursuant to section 114(v) of title 49, United States Code, as amended by section 418 of this title, there shall be made available to the Secretary to carry out this section \$3,000,000 for each of fiscal years 2008, 2009, and 2010.

SEC. 417. CERTAIN REPORTS SUBMITTED TO SENATE COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS.

The Senate Committee on Homeland Security and Governmental Affairs shall receive the reports required by the following provisions of law in the same manner and to the same extent that the reports are to be received by the Senate Committee on Commerce, Science, and Transportation:

(1) Section 402(c) of this title.

(2) Section 404(f)(3)(A) of this title.

(3) Section 409 of this title.

(4) Section 410(d) of this title.

SEC. 418. AUTHORIZATION OF APPROPRIATIONS.

(a) TRANSPORTATION SECURITY ADMINISTRATION AUTHORIZATION.—Section 114 of title 49, United States Code, as amended by section 413, is amended by adding at the end thereof the following:

“(v) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Homeland Security for rail security—

“(1) \$205,000,000 for fiscal year 2008;

“(2) \$166,000,000 for fiscal year 2009; and

“(3) \$166,000,000 for fiscal year 2010.”.

(b) DEPARTMENT OF TRANSPORTATION.—There are authorized to be appropriated to the Secretary of Transportation to carry out this title and sections 20118 and 24316 of title 49, United States Code, as added by this title—

(1) \$121,000,000 for fiscal year 2008;

(2) \$118,000,000 for fiscal year 2009;

(3) \$118,000,000 for fiscal year 2010; and

(4) \$118,000,000 for fiscal year 2011.

Mr. REID. Mr. President, I ask unanimous consent that the committee amendments be agreed to.

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

The committee amendments were agreed to.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. ALEXANDER. Mr. President, I ask unanimous consent to speak for up to 5 minutes as in morning business.

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

Mr. ALEXANDER. I thank the Senator from New Jersey and the Senator from Mississippi for allowing me to proceed.

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

Mr. ALEXANDER. Mr. President, I thank the bill managers, and I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, our bill has been sent to the desk, and I want to start off by saying that I am pleased, obviously, that the Senate is considering S. 294, the Passenger Rail Investment and Improvement Act of 2007.

The first thing I want to do is to say thanks to my friend and chief cosponsor of the bill, Senator TRENT LOTT. We have worked together on matters related to transportation in the past, and there is no question that he understands the potential for passenger rail, and his long-standing efforts to improve our country's transportation systems are well known and deeply appreciated.

Like him, I believe this is a critical moment—with delays, unavailability of reliable planning for work, personal opportunity to spend time with kids and family or other activities of choice. Anyone who spends any significant time on our roads does not need reminders that highway congestion is a major problem. In almost every city and town of any size throughout our country, it is experienced.

A recent study by the Texas Transportation Institute showed that highway congestion costs our country over \$78 billion per year, including \$4.2 billion in lost productivity and 2.9 billion gallons of wasted fuel and an indeterminable loss in the quality of our lives. These things all cascade upon us.

Congestion, however, isn't just limited to our roads. One in four flights was late last year at our airports. At Newark Liberty International Airport, it is almost one in two flights. Other metropolitan regions are experiencing worsening delays. The DOT finally had to cap the number of flights at Chicago's O'Hare Airport a couple of years ago and is considering doing the same thing for Newark and Kennedy Airport in New York. Even airlines are throwing in the towel. The 38 minutes in the air between here and New York City is now scheduled to take almost 2 hours, gate to gate. It is on the schedule—38 minutes of flying time and almost 2 hours to make the trip. It is outrageous. Coupled with long security lines, these delays make air travel increasingly stressful and inconvenient. How about those who are stranded in airplanes, for sometimes as long as 9 hours—stuck in an airplane without the amenities that necessarily should be there, like food and potable water and working restrooms and so forth?

Everyone knows what a difficult day going to the airport can be, or that air travel can be like. Further, everyone knows that the high price of gas has created economic hardship for so many Americans. Some experienced voices are predicting that oil prices in the future, not too distant, can be as high as \$200 a barrel, more than twice the current price. One reason why the United States is addicted to oil, as President Bush puts it, is because the Government has not provided other options for travelers. Where reliable rail service is available, people will run to the trains.

Our Nation's passenger railroad, Amtrak, has enjoyed record ridership over the past several years and set a new company record of almost 26 million passengers in the last year. More travelers take the train between Washington and New York City than fly on all the airlines combined between these cities. Amtrak is so popular in the Northeast because people can count on being on time; it is reliable service and it is economical and comfortable.

We see similar results outside of the Northeast corridor, where frequent and reliable passenger service is available. I can tell you from personal experience that riding the train can be a pleasurable experience. Passengers can use their laptops, talk on the phone, have a bite and be productive and not be exhausted when they get there.

Additionally, in most instances, rail service delivers passengers directly to where they need to go in the heart of a city. What a difference that is. You don't have to spend a half hour or an hour to get to the airport a half hour or an hour before the plane takes off so you are ready when the flight is ready to leave. Good passenger rail service is not only good transportation policy, but it is something people in this country are rushing to use.

Everyone is aware now also of the danger of pollution. In the battle against global warming, which is enveloping our country, with erratic weather raising havoc, rail is one of the most effective weapons. To move one passenger a mile, Amtrak emits slightly more than half of the carbon dioxide that airlines do and less than cars as well. Americans want a cleaner option in the air and the water for their children, grandchildren, and future generations than this constant assault on healthy air and water.

In a time where conserving energy and reducing our dependency on foreign oil has never been more important, passenger rail service offers significant fuel-saving benefits. In a time when oil imports continue to expand while prices rise, the quality of life in America is being substantially eroded by these high prices. According to the Department of Energy, airlines on the average consume over 20 percent more energy than Amtrak to move a passenger one mile, while we search for ways to fight against poisoning our atmosphere.

Passenger rail is not just a matter of convenience. It is also an important security asset. One of the lessons we learned on 9/11 was that our country cannot afford to rely on any single mode of transportation. When our aviation system shut down that terrible day, September 11, and for days thereafter, Amtrak was a principal way to reunite thousands of travelers with their families. We also saw chaotic evacuations during Hurricanes Katrina and Rita, with resulting floods, with evacuating motorists stuck for hours and some without cars were left behind altogether. Some investigations showed that with better preparation, passenger trains could have been used to help move thousands out of harm's way.

It is clear that rail service can help move our citizens to safety during emergencies, but you can't do it without the trains and the track that are part of the system. Other nations around the world understand these benefits and, unfortunately, we have been lagging behind. I will never forget a trip I took from Paris to Brussels. There are 18 trains a day between these two cities. You cannot get an airplane that goes between the two. The 210-mile trip takes about 85 minutes. Think about it, 210 miles taking 85 minutes, with trains leaving practically every hour. If you go to Union Station here and travel approximately 210 miles, it is a 3-hour or 2¾-hour train ride. We can do so much better.

The Europeans are not better at these things than we are. They are not smarter than we are. But from Spain to Germany, they have simply made the wise decision to invest in passenger rail. These investments extend worldwide.

Taiwan recently opened its \$15 billion, 208-mile rail line this year, where riders can travel its length, 208 miles, in 90 minutes—approximately the length of the trip between Washington, DC, and New York City.

The benefits of these systems are obvious to anyone who travels there. We need the same world-class system in this country. The potential of new rail corridors in our country is enormous. Higher speed, more frequent rail service between Chicago and other Midwestern cities, such as St. Louis, Detroit, and Milwaukee, would revolutionize the way people travel in an entire region of our country.

Likewise, expanded rail service between Atlanta, Charlotte, Richmond, and Washington would allow people options besides having to brave traffic and trucks on Interstate 95.

I am reminded that the train service between Portland, Oregon, and Seattle, Washington, called the Cascades line, is enjoying tremendous ridership, over 600,000 passengers each and every year. It is an invaluable asset. We see something similar in California between San Diego and Los Angeles, where over two and a half million people took the train this past year.

There is enthusiasm for passenger rail service in America, and States are planning rail corridors throughout the country. They are prepared to spend their limited funding for rail projects. But our Federal policies encourage them to build more roads. That is why we need to pass this bill that Senator LOTT and I have presented. Our bill paves the way for an improved modern passenger rail network. It authorizes funding for Amtrak's capital needs as well as State grants for passenger rail. We already make a significant investment in roads. We spend \$40 billion a year. By comparison, we spend almost half that amount on airports and air traffic control towers. Our bill will start to address this investment gap by authorizing nearly \$2 billion a year for Amtrak in the States that participate over the next 6 years.

A yearly average of \$237 million of this money will be used to create a new State grant program for rail projects. Our Amtrak bill also funds the rehabilitation of Amtrak's Northeast corridor and mandates that Amtrak work with the Department of Transportation and the States to develop plans to do so.

Our bill also requires changes at Amtrak—Senator LOTT pursued this diligently—to make sure these funds will help the railroad continue moving in the right direction.

While we had record ridership and revenues last year, we can still improve its efficiency and management practices. That is why our bill would require Amtrak to reform its operations to reduce its Federal operating subsidy by 40 percent over the life of the bill. It also, at the suggestion of the Department of Transportation's inspector general, will allow the Federal Government to refinance Amtrak's \$3 billion in outstanding debt.

With this bill, we are hitting so many of the areas of concern: it not only addresses the funding, but it also helps the management to focus on getting this railroad in a condition that it should be in.

One of these major reforms is for Amtrak to develop a new financial accounting system, which will provide more transparency into the company's financial management and better cost controls.

Most importantly, the LAUTENBERG-LOTT Amtrak bill focuses on improving service for passengers. I learned when I was in the private sector that if you provide a good product, people will buy it. We will require new standards for service quality—on-time performance, onboard and station services, cost recovery, connectivity, to name a few. The public is going to know what Amtrak is doing and would be kept apprised of their performance through quarterly reports from the Federal Railroad Administration.

Our bill also addresses the problem of train delays. On many routes outside the Northeast, freight trains delay Amtrak riders from reaching their des-

tinuation on time. It is against the Federal law. As we know in the airline industry, delays frustrate passengers and hurt the company's bottom line. Our bill would authorize the Surface Transportation Board to issue fines to freight railroads that delay Amtrak trains. We all have to share the system and share it efficiently.

Some have suggested another provider could be more efficient than Amtrak. I doubt this claim, but our bill does authorize a program to allow a freight railroad to bid for Amtrak's subsidy on up to two long-distance or State-supported corridor routes. So we are saying, even if there is some skepticism on our part, the bill authorizes the States to go ahead and work with the freight railroad to bid for an Amtrak subsidy, on up to two long-distance or State-supported corridor routes.

I repeat that because it is very significant. We want the States to participate, and we want to open as much of a change in policy as can be done with practical output. This pilot program could allow freight railroads to maximize efficiencies because they own the tracks already. As many Northeast corridor States have called for more involvement in how that essential corridor is run, this bill will improve governance by giving Northeast States, such as New Jersey, a bigger voice in infrastructure and operations decisions.

The State will join a newly formed commission that will develop recommendations about the short- and long-term capital investments, among other things.

And speaking of governance, our bill restructures Amtrak's board of directors by ensuring a bipartisan nine-member board of qualified members. That gives an opportunity to bring more people into the management decision process, and we think it will be a much more efficient and involved board. One board member, nominated by President Bush, actually told me at his Senate confirmation hearing that he had never even been on an Amtrak train. Well, it does not suggest he is going to be working with knowledge in hand that is significant or helpful to the company.

Currently there is a seven-member board, no qualification requirements, and for years the Administration had taken the position that the board need not be bipartisan at all. Well, it was originally structured as a bipartisan board to give all sides to the principal parties to be able to be engaged in this process.

We worked hard to forge this bipartisan compromise plan. Last Congress, our plan, which was nearly identical to this one, was approved by the Senate as an amendment to the budget bill by a vote of 93 to 6. That tells us this is a well thought-out plan.

There are only slight changes to our bill from the last Congress, and we will have a managers' amendment to address other minor modifications. Our

Nation's passenger rail programs have not been reauthorized for a decade, and the result is chaos in our transportation system.

I urge my colleagues to vote for this Amtrak bill, to provide millions of Americans with more transportation choices. It is fair to say that the public has agreed with this change in droves. They are sick and tired of being delayed, paying more for fuel, and including a more polluted atmosphere at the same time. It is time to make this change.

AMENDMENT NO. 3451

Madam President, I send a managers' amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER (Ms. CANTWELL.) The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG] proposes an amendment numbered 3451.

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

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

The amendment is as follows:

(Purpose: To make minor changes in the bill as reported, to strike title IV, and for other purposes)

In the table of contents, strike the items relating to title IV.

On page 22, line 2, insert "relevant" after "each".

On page 22, line 4, insert "single, Nationwide" after "implement a".

On page 28, line 12, insert "As part of its investigation, the Board has authority to review the accuracy of the train performance data." after "operator".

On page 29, line 15, insert "order the host rail carrier to" after "appropriate".

On page 29, between lines 23 and 24, insert the following:

(b) FEES.—The Surface Transportation Board may establish and collect filing fees from any entity that files a complaint under section 24308(f)(1) of title 49, United States Code, or otherwise requests or requires the Board's services pursuant to this Act. The Board shall establish such fees at levels that will fully or partially, as the Board determines to be appropriate, offset the costs of adjudicating complaints under that section and other requests or requirements for Board action under this Act. The Board may waive any fee established under this subsection for any governmental entity as determined appropriate by the Board.

(c) AUTHORIZATION OF ADDITIONAL STAFF.—The Surface Transportation Board may increase the number of Board employees by up to 15 for the 5 fiscal year period beginning with fiscal year 2008 to carry out its responsibilities under section 24308 of title 49, United States Code, and this Act.

On page 29, line 24, strike "(b)" and insert "(d)".

On page 51, between lines 4 and 5, insert the following:

(d) ACELA SERVICE STUDY.—

(1) IN GENERAL.—Amtrak shall conduct a study to determine the infrastructure and equipment improvements necessary to provide regular Acela service—

(A) between Washington, D.C. and New York City in 2 hours and 30 minutes; and

(B) between New York City and Boston in 3 hours and 15 minutes.

(2) ISSUES.—The study conducted under paragraph (1) shall include—

(A) an estimated time frame for achieving the trip time described in paragraph (1);

(B) an analysis of any significant obstacles that would hinder such an achievement; and

(C) a detailed description and cost estimate of the specific infrastructure and equipment improvements necessary for such an achievement.

(3) SECONDARY STUDY.—Amtrak shall provide an initial assessment of the infrastructure and equipment improvements, including an order of magnitude cost estimate of such improvements, that would be necessary to provide regular Acela service—

(A) between Washington, D.C. and New York City in 2 hours and 15 minutes; and

(B) between New York City and Boston in 3 hours.

(4) REPORT.—Not later than February 1, 2008, Amtrak shall submit a written report containing the results of the studies required under this subsection to—

(A) the Committee on Commerce, Science, and Transportation of the Senate;

(B) the Committee on Appropriations of the Senate;

(C) the Committee on Transportation and Infrastructure of the House of Representatives;

(D) the Committee on Appropriations of the House of Representatives; and

(E) the Federal Railroad Administration.

On page 57, strike lines 3 through 11.

On page 57, line 12, strike "(d)" and insert "(c)".

On page 73, line 1, insert "2003," after "years".

On page 81, line 25, strike "and".

On page 82, line 2, strike "seq." and insert "seq.;" and".

On page 82, between lines 2 and 3, insert the following:

"(3) the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.).

On page 144, beginning with line 2, strike through the end of the bill.

Mr. LAUTENBERG. Madam President, this amendment will strike the title on security which has already become law this year. It adds a study on trip time in the Northeast corridor, and makes several technical corrections.

I yield the floor to my distinguished friend and colleague, Senator LOTT.

Mr. LOTT. Let me say with regard to the package that was agreed to, the changes, we did work together on that. It was cleared on both sides. I want to thank the leaders for allowing us to move forward on this legislation. It is never easy to go straight to a bill these days. There are Senators who have reservations about going to this particular bill at this time. Some Senators wanted to make sure they were going to have an opportunity to look at the legislation and prepare thoughtful amendments, amendments that might, frankly, improve the legislation, add additional reforms, delete parts of it.

That is all well and good. I understand that maybe some Senators were not aware we were going to try to go to Amtrak today, even though I know an effort was made to try to inform both sides that would be the intent after we dealt with the Labor-HHS appropriations bill, the Southwick nomination, and the DREAM Act. Maybe it moved a little quicker than people thought be-

cause of some of the earlier actions today.

I want to emphasize this too. While I have been involved in working on this legislation for some 3 years with Senator LAUTENBERG as chairman of this subcommittee and now as ranking member, and I think there are some good things in here worth having, maybe we can even strengthen it more. That would be positive for the future of Amtrak. I am perfectly willing and anxious to see if there are good ideas of how we can make it even a stronger bill. I want Amtrak to succeed. If we are going to keep it, let's fix it where it will work. I do not think it is wise to continue putting money into a system that is not enough, and then complain because it is not doing the job. We are slowly starving it, using it more, and complaining that it is not doing better. I think we need some reforms. I think we need to have authorization. I think we need to expect more of the Amtrak board. We need to expect good service from Amtrak. I think we ought to provide an opportunity for them to have a way to get the funds to do the job. That is what we are trying to do here.

As I said earlier today, this is not something people in my State are going to feel an immediate impact from. We do have Amtrak service that runs through my State, north and south, from New Orleans to Chicago. We have even had it down along the coast. Probably some people would say: Well, it is not worth it.

I believe we need Amtrak. I believe we need a national passenger rail system. It is a part of the package. I support improving aviation and a modernization of the aircraft control system. I want us to have safety in the airways. I want us to have less congestion. I want us to do what we need to do to modernize the system. I want good passenger airline service. I also want to continue to work to improve highways in this country. But I do not believe that lanes and planes will always be enough. There is a limit to what you can do in the air and on the ground with highways. I think we need passenger rail service also.

This is not something, again, that is going to be critical in my State. But I think it is important for our country. My State will benefit, too, when the rest of the country benefits.

I also think if we are going to have this system, it ought to not be just the Northeast corridor. I think we should continue to work to try to find ways to make other routes profitable, on time, provide good service. That is what we are trying to do here.

Some of my friends look at me and say: Well, why are you trying to do this? This is costing money. It is too overly subsidized. They have union problems, this, that and the other. I admit it has problems. I think we are part of the problem, because we are not engaged in trying to improve the law, give them more power to do what they need to do to make the tough decisions, get outside advice, try to figure

out how to do a better job. That is what we do here.

So this is an area I have worked on for most of my career in Congress, transportation and infrastructure. I believe they are critical to the future of our country. It is about jobs. It is about economic development. It is about opportunity. It is about movement. It is about America.

That is why I have been involved for some time, to the consternation of some of my friends. We have worked on this before. I worked on the last Amtrak reform legislation. I had higher hopes from that legislation than the results we got. But I think we have made some progress. And when you do legislation that does not achieve all you want it to do, my attitude is, come back and try again.

But to show you the amount of support we have, when we brought this up on the reconciliation package in 2005, it got 93 votes. Some people said: Well, it is not enough, or, we can do better. But when they voted, 93 Senators voted for it. That is part of the process.

This time, hopefully, we can get it through here freestanding, get the House to act, let us get to conference, let's bring in the administration. If the administration has recommendations or concerns, great, let us hear them.

My problem with the administration is, they have tried to ignore it. So let's try to get them involved. I am not going to be partisan about this. I do not want to blast Amtrak, I don't want to blast the board or the administration. I want us all to get together. That is part of the effort of what we are trying to do here.

This legislation, S. 294, makes a number of important reforms in Amtrak. It has three major themes: Amtrak reform and accountability; cost cutting; and creating funding options for States.

Now, whether are you from Illinois, California, or Missouri, or whether you are from New Jersey, you ought to like this. And if you are a conservative Republican, did you hear what I said? Cost cutting, reform, and accountability. This is made in heaven.

I think we should get this done, and work in good faith with each other. I think we need to increase the executive branch oversight and involvement in Amtrak. The bill ensures that taxpayer money is used more effectively and it builds on the improvements that have been made in recent years. I think you have to give credit to the fact that David Gunn, when he was the president of Amtrak, made some improvements in his management. He did a good job. He finally wound up leaving because he had other opportunities, and maybe some people were critical of him. But I have to say I think he did a great job, and he moved it in the right direction.

The bill requires Amtrak to develop better financial systems and to evaluate its operations objectively. It forces Amtrak to improve the efficiency of long-distance train service. There are

some lines that are losing way too much money. I think the Amtrak officials should look at it and try to make those lines more profitable, put some guidelines on them, put some pressure on them, and if they do not meet them, cut them off. I cannot defend a line that is losing money and is costing \$400 a head subsidy for a passenger.

So the bill reduces Amtrak's operating subsidy by 40 percent by 2012 by requiring Amtrak to use its funds more effectively.

But it does not just say "do it," it provides a number of things that will lead to making that possible. The bill promotes a greater role for the private sector by allowing private companies to bid on operating Amtrak lines.

The bill also creates a new rail capital grant program that States can use to start new inner city passenger rail service. There has been a real increase, and that is where we had a lot of boardings, a lot of passengers. They are using that service where that opportunity has existed. This would be the first time that States will have a Federal program they can use for passenger rail, putting inner city passenger rail on similar footing with highway transit and airports, all of which have Federal assistance programs for infrastructure.

Some people complain about the money in Amtrak, and yet if you look at what we have in these other areas, highways and transit and airports, Amtrak is terribly shortchanged. We provide all of this infrastructure in these other areas, and then we are not prepared to do that with the passenger rail system.

States will not have to rely only on Amtrak for their inner city passenger rail service. It gives them more opportunity, more for themselves, and to have a Federal program work with them to achieve that.

Now, while discussing reform, we should not forget there is good news here. Some people will only say: Well, it is still losing money. In fiscal year 2007, there was a record number of 25.8 million passengers who traveled on Amtrak. People are using it and using it more. It is the chicken-and-egg deal. Once you get better equipment, on-time service, better food, going to places people want to go, they will ride. In the past they haven't done it because maybe the equipment was old or they got delayed. As they have provided better service, more people started riding. The boarding ticket revenues increased 11 percent to \$1.5 billion in fiscal year 2007. Of course, the Acela Express, I guess the old standard of what Amtrak should do, can do—and we use it here in this corridor—had a 20-percent increase in ridership and achieved an on-time performance of 87.8 percent, proving it can be done. Passenger service can be on time. The Acela is so popular that another round-trip between New York and Washington was created in July.

We should not focus solely on the Northeast corridor though. I want to

make sure we have some service in the South and the Midwest and the West and in the Northwest. The Capital Corridor operating in California between Auburn and San Jose increased ridership by 15 percent and has an ontime performance of 75 percent. Most notably, the Lincoln service connecting Chicago to St. Louis is up 42 percent. Chicago to St. Louis, that is a tremendous increase. It is a direct result of the State more than doubling its contract with Amtrak. Across the country, States are interested in passenger service, and passengers are responding in record numbers to the better service.

S. 294 is the best mechanism to reform Amtrak. I encourage my colleagues to support this bill. Read it. It is not a long, complicated bill. But if you have a better idea, come on out here. Let's hear it. Tomorrow we will be ready for business. We will have some amendments. The way I like to do business, with the cooperation of our chairman, if you have an amendment, let's have you offer it. Let's talk about it, and let's vote. Let's don't be setting them aside and piling them up for later on in the day. Let's do business. I think that is one way you get Senators to actually be here and doing work, actually have some votes. I don't want to go on too long.

Let me just run down some of the areas where we have concentrated in this bill. It does provide for management improvement. The bill requires a financial accounting system for Amtrak operations and a 5-year financial plan. Why in the world wouldn't they have that? I don't know. Families have plans for their budgets and what they are going to do in the future. Amtrak ought to do that.

It deals with debt. The bill directs the Secretary of the Treasury, in consultation with the Secretary of Transportation and Amtrak, to negotiate the restructuring of Amtrak's debt within 1 year. This is something Senator LAUTENBERG has talked about. They can actually save money. Why would they not do that? So we would direct that in the bill.

It does improve corporate governance. It adds the Amtrak president to the Amtrak board, bringing the total number of members of the board to nine. Think about that, the Amtrak president was not on the board. That doesn't make any sense.

It calls for metrics and standards. In consultation with the Surface Transportation Board and the operating freight railroads, the Federal Railroad Administration and Amtrak shall jointly develop metrics and standards for measuring the performance and service quality of intercity train operations. They should include cost recovery, ontime performance, ridership per train mile, onboard and station services, the whole package.

It does improve the route methodology. It would provide access to Amtrak equipment and services.

States wishing to use operators other than Amtrak would be able to do so

under this legislation. It would improve the Northeast corridor. It would work to improve the long distance routes.

I think we have touched on the very important areas, but the one I think that is going to make the greatest difference is the State Capital Grant Program for intercity passenger rail. When I have talked to Governors and transportation officials, railroad people, they say this is what we need. This could really make a difference. I see the Presiding Officer nodding her head. I suspect her State is one that would have an interest up there in the northwest corner of Washington and Oregon.

So there are significant reforms. This is a good effort. This is the kind of work we ought to do more of in the Senate. We have managed for the last few years to find what we could disagree about, something we could fight about. We haven't taken the time to take up issues that affect real people's lives that we can agree on, that are bipartisan. I appreciate the leader putting this in the agenda. He did it at the request of a number of Senators who care about this. Senator CARPER obviously is one of them, Senator LAUTENBERG, myself, and others. We have been pleading with them. I pleaded with the previous majority leader. Let's get this bill up.

Some people say there are other things more important we could be doing. Why aren't you doing something about health care, more appropriations bills? That is a good question. All I know is, this is an issue that matters. We don't know when we are going to have another incident in America with aviation, or somewhere else, when we need trains. We need good service. I am also working in the Finance Committee to see if we can't get a tax credit so that we can continue to improve the capacity of our freight rail and allow them to build off ramps so the freight trains can get out of the way so Amtrak can run without losing time and money. We are looking at that side of the equation too. I know some of our friends in the freight rail industry are not all that excited about this legislation because we want Amtrak to be on time and to get by the slower moving freight trains. Sometimes that costs them money, and it is an inconvenience for them. After all, Amtrak is running on their tracks. But we will work with the freight lines and make sure their points of view are considered in the process.

I won't go on any longer. I would like for us to get to some amendments that may be available on Amtrak. I know Senator SUNUNU has some. We will continue tomorrow.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Madam President, once again, it is obvious to all that Senator LOTT understands what we have to do to get things done around here, and that it can't be all

one way because each of us does represent a different State. We are brought here to bring in the opinions of the people whom we serve, our constituents, so we do get a mix of views. Sometimes I wish we didn't, but for the most part that is life in the real world.

The thing we sometimes fail to see is, when we do something for the infrastructure, when we do something for rail service, it is in the national interest, even though there are currently many more riders in the very densely populated Northeast corridor. The fact is, as I related before, other places around the country are examining rail service as an alternative to their own congestion and pollution problems. When we look at something called essential air service, it is essential. That is why it is done. The Government does subsidize its existence because communities need that. So it is with rail service.

Interestingly enough, only four States have no contact with Amtrak. One of them is Hawaii, which involves a very long train ride. The other is Alaska. We have heard Senator STEVENS talk about having a railroad that goes to Alaska. But otherwise we have 46 States that have contact with Amtrak. Some of them are more active than others. But as was said by our colleague, Senator LOTT, some of these States don't have the traffic or they are not en route enough. The mission is to get as many States involved with Amtrak, with rail service as we can, national rail passenger service.

We look at ways of improving the management of Amtrak, that which we would with any business. I spent much of my life in business before I came to the Senate. Businesses run differently than government. But there are some principles that are the same; for instance, investments in product. If you don't put the money in, you don't get the money out. What we found here is, since the creation of Amtrak, which goes back to 1971—1971 was the creation of the Amtrak quasi-government corporation. It had been in private hands under different names for many years and never succeeded. Why? The thing that is obvious; that is, with rail passenger rail service, there is going to always be some assistance required from government, just as there is for the aviation system and the highway system. As a matter of fact, we spend more on highways in a year than we have spent on Amtrak since its creation, never having quite put in enough resources to bring the infrastructure up to the level it should be related to the period of time we are talking about.

In Germany, there was a program to establish a rail system that cost about \$70 billion in a 10-year period. China now is establishing a passenger rail service which could cost up to \$200 billion. And here we are in the most powerful nation in the world playing catch-up. We are not talking about insignificant sums of money, but we are talking

about substantial opportunities for us to improve what we are doing with this bill that will run almost \$2 billion a year for 6 years, plus some additional funding in another bill raised by bonding authority. Senator LOTT has been very helpful in the Finance Committee to get this system up to where it ought to be. Whenever we look for opportunities to improve life in America, certainly this looms high on the horizon.

We have made it clear that we are ready to accept amendments. We would like them brought to the floor this evening or tomorrow. But we will not be able to stay here and not see any response, if there isn't enough interest by fellow Members to come down and bring us their amendments.

I ask unanimous consent that the previously agreed to committee amendments be considered as original text for the purpose of further amendments; that the pending managers' amendment be considered and agreed to and considered as original text for the purpose of further amendments; that the bill, as amended, be considered as original text for the purpose of further amendments; that no points of order be considered waived by virtue of this agreement.

As Senator LOTT well knows, this is kind of professional language for the institution.

Mr. LOTT. Madam President, I will not object. I just want to say, we have worked through this, and it is cleared on our side. We have no objection.

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

The amendment (No. 3451) was agreed to.

Mr. LOTT. I thank the Chair and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. SUNUNU. Madam President, we are moving on into the early hours of the evening, and I appreciate the work that the bill managers, Senator LAUTENBERG and Senator LOTT, have done on this legislation.

I am a member of the Commerce Committee as well, and there is no question that there was strong support for this legislation when we voted on it last year. As Senator LAUTENBERG indicated, it was a 93-to-6 vote. I am sorry to say, at least from his perspective, I was one of the six who voted "no."

Despite the work that has gone into this legislation, I do think it has some real weaknesses. Both Senators LOTT and LAUTENBERG touched on some of those weaknesses in their opening remarks—that at times Amtrak has not delivered the kind of quality service we would expect; at times they have not delivered, year after year, the kind of financial results we would hope for and

expect as taxpayers who are providing the subsidies and the support for Amtrak.

Since its creation well over 25 years ago, the Federal subsidies have amounted to over \$20 billion. Amtrak was originally created with the intention of becoming self-sufficient. There was an Amtrak reform bill passed in 1997, recommitting to this goal, and yet it still has not happened.

As a taxpayer and as a Senator, it causes me great concern we have not done better—better both in terms of performance on the service and the quality side—but also on the financial side.

There was discussion of the Northeast Corridor. The Northeast Corridor does provide for a great opportunity to serve millions of people running from my State of New Hampshire all the way down to Washington, DC, and beyond—some of the more densely populated areas where it makes the most sense to have a train service. But even in the Northeast Corridor, the operation is not what we would want.

I think it is fair to expect more; not just in the financial oversight that is in the legislation, not just in some of the new programs that are in the legislation, but, for example, in the long-distance train service. For the long-distance train routes—I think there are 15 or 16 now—they lose \$200 per passenger. That is not acceptable.

I have a couple amendments I will be offering. One deals with that huge per-passenger subsidy, to say if we are losing \$200 per passenger—every single passenger: a \$200 subsidy—on some of those long-distance routes, we should not continue to operate that route.

There are some proposals for allowing route competition. I think that is also a good idea, but one we can build on and expand on, allowing more and different routes to be offered on a competitive basis.

So I think there are ways to improve the bill that we need to take a look at, and that I hope are at least part of the debate.

I do not necessarily expect to win on all of those amendments, but I think it is important we be realistic about some of the weaknesses that are in the system.

I also want to address an issue that was spoken about early this evening by Senator ALEXANDER. He discussed at some length the Internet tax moratorium and what that would mean to American consumers.

Right now, we have a ban on Internet access taxes. You cannot levy an access tax on the Internet for consumers, or for businesses, for that matter. Everyone talks about the importance of broadband to our economy. Without question, the Internet is important to our economy, not just because it gives us information or brings data into our homes, but because it represents a national—in effect, a global—network for communication and for commerce.

That is something that is the responsibility of Congress to protect—to pro-

tect from onerous regulation, to protect from taxes that would discourage long-term investment that would raise costs for consumers or businesses.

We have had that ban on Internet taxes in place, and I think it is important we make that tax ban permanent. Unfortunately, after introducing legislation at the beginning of this year, we have not had a single vote on this issue. We have not voted on it in the Commerce Committee or any subcommittee. They have not voted on it in the Finance Committee. We have not had a vote on it on this floor.

Many of us have been trying very hard to get a vote to make this Internet tax moratorium permanent. The moratorium expires on Halloween, of all days. On that day, because the ban will no longer be in effect, States, cities, towns, and counties would be in the position to levy new taxes on Internet access. That is not right. It is not good for consumers. It is not good for the economy. It is not good for the communication system, the data system, and the commerce system we have come to count on with the Internet.

A number of Senators—Senator WYDEN; Senator MCCAIN; Senator MCCONNELL; Senator LOTT and numerous House Members, such as ANNA ESHOO from California—have worked very hard on making this ban permanent. For those who have listened to this debate from around the country, I am sure they wonder why it is we cannot do anything in a consistent way. We have research and development tax credits that lasts only for a year. We have a death tax that is repealed in 2011 and comes back from the dead in 2012. And we have a ban on Internet access taxes that only lasts 4 years. It ought to be made permanent for the sake of consistency.

While I do not want to cause any unnecessary delay in underlying legislation, I think that addressing the Internet tax moratorium is something that is important.

AMENDMENT NO. 3452

For that reason, Madam President, I send an amendment to the desk at this time and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. SUNUNU] proposes an amendment numbered 3452.

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

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

The amendment is as follows:

(Purpose: To amend the Internet Tax Freedom Act to make permanent the moratorium on certain taxes relating to the Internet and to electronic commerce)

At the end of the bill, add the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Internet Tax Freedom Act Amendments Act of 2007”.

SEC. 2. PERMANENT BAN OF INTERNET ACCESS TAXES.

(a) IN GENERAL.—Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking “during the period” through “2007”.

(b) GRAND FATHERING OF STATES THAT TAX INTERNET ACCESS.—Section 1104(a)(2) of such Act is amended to read as follows:

“(2) STATE TELECOMMUNICATIONS SERVICE TAX.—

“(A) DATE FOR TERMINATION.—This subsection shall not apply after November 1, 2006, with respect to a State telecommunications service tax described in subparagraph (B).

“(B) DESCRIPTION OF TAX.—A State telecommunications service tax referred to in subparagraph (A) is a State tax—

“(i) enacted by State law on or after October 1, 1991, and imposing a tax on telecommunications service; and

“(ii) applied to Internet access through administrative code or regulation issued on or after December 1, 2002.”.

SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

Section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

“(C) APPLICATION OF DEFINITION.—

“(1) IN GENERAL.—Effective as of November 1, 2003—

“(A) for purposes of subsection (a), the term ‘Internet access’ shall have the meaning given such term by section 1104(5) of this Act, as enacted on October 21, 1998; and

“(B) for purposes of subsection (b), the term ‘Internet access’ shall have the meaning given such term by section 1104(5) of this Act as enacted on October 21, 1998, and amended by section 2(c) of the Internet Tax Nondiscrimination Act (Public Law 108-435).

“(2) EXCEPTIONS.—Paragraph (1) shall not apply until November 1, 2007, to a tax on Internet access that is—

“(A) generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate administrative agency of a State or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner that is inconsistent with paragraph (1); or

“(B) the subject of litigation instituted in a judicial court of competent jurisdiction prior to July 1, 2007, in which a State or political subdivision is seeking to enforce, in a manner that is inconsistent with paragraph (1), such tax on telecommunications service purchased, used, or sold by a provider of Internet access.

“(3) NO INFERENCE.—No inference of legislative construction shall be drawn from this subsection or the amendments to section 1105(5) made by the Internet Tax Freedom Act Amendments Act of 2007 for any period prior to November 1, 2007, with respect to any tax subject to the exceptions described in subparagraphs (A) and (B) of paragraph (2).”.

SEC. 4. DEFINITIONS.

Section 1105 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) in paragraph (1) by striking “services”,

(2) by amending paragraph (5) to read as follows:

“(5) INTERNET ACCESS.—The term ‘Internet access’—

“(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

“(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold—

“(i) to provide such service; or

“(ii) to otherwise enable users to access content, information or other services offered over the Internet;

“(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity; and

“(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), or (C)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), or (C).”

(3) by amending paragraph (9) to read as follows:

“(9) TELECOMMUNICATIONS.—The term ‘telecommunications’ means ‘telecommunications’ as such term is defined in section 3(43) of the Communications Act of 1934 (47 U.S.C. 153(43)) and ‘telecommunications service’ as such term is defined in section 3(46) of such Act (47 U.S.C. 153(46)), and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 (26 U.S.C. 4251)).”

(4) in paragraph (10) by adding at the end the following:

“(C) SPECIFIC EXCEPTION.—

“(i) SPECIFIED TAXES.—Effective November 1, 2007, the term ‘tax on Internet access’ also does not include a State tax expressly levied on commercial activity, modified gross receipts, taxable margin, or gross income of the business, by a State law specifically using one of the foregoing terms, that—

“(I) was enacted after June 20, 2005, and before November 1, 2007 (or, in the case of a State business and occupation tax, was enacted after January 1, 1932, and before January 1, 1936);

“(II) replaced, in whole or in part, a modified value-added tax or a tax levied upon or measured by net income, capital stock, or net worth (or, is a State business and occupation tax that was enacted after January 1, 1932 and before January 1, 1936);

“(III) is imposed on a broad range of business activity; and

“(IV) is not discriminatory in its application to providers of communication services, Internet access, or telecommunications.

“(ii) MODIFICATIONS.—Nothing in this subparagraph shall be construed as a limitation on a State’s ability to make modifications to a tax covered by clause (i) of this subparagraph after November 1, 2007, as long as the modifications do not substantially narrow the range of business activities on which the tax is imposed or otherwise disqualify the tax under clause (i).

“(iii) NO INFERENCE.—No inference of legislative construction shall be drawn from this subparagraph regarding the application of subparagraph (A) or (B) to any tax described in clause (i) for periods prior to November 1, 2007.”

SEC. 6. CONFORMING AMENDMENTS.

(a) ACCOUNTING RULE.—Section 1106 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by striking “telecommunications services” each place it appears and inserting “telecommunications”, and

(2) in subsection (b)(2)—

(A) in the heading by striking “SERVICES”,

(B) by striking “such services” and inserting “such telecommunications”, and

(C) by inserting before the period at the end the following: “or to otherwise enable users to access content, information or other services offered over the Internet”.

(b) VOICE SERVICES.—The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking section 1108.

SEC. 6. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on November 1, 2007, and shall apply with respect to taxes in effect as of such date or thereafter enacted, except as provided in section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note).

Mr. SUNUNU. Madam President, this legislation would simply take what has already been done in the House—which is to pass a 4-year extension—and to make it permanent. A lot of good work was done in the House to strengthen the current moratorium and ban on Internet access taxes. Unfortunately, despite the fact there were over 240 Democrats and Republicans who supported this legislation, it did not receive an up-or-down vote to make the ban on Internet taxes permanent.

So what we do is take the House language in this amendment and make it permanent. It provides clarification with regard to services and technologies that are dealt with and not dealt with. If you are an Internet business, you still pay property taxes and payroll taxes. You pay business income taxes. But the Government should not be allowed to levy a tax on access to the Internet for the consumers themselves.

There are certain States that are affected by grandfather clauses that were included in the House language. We maintain that language. All we do is fully extend it permanently so that if you are a consumer you know the Internet will not be taxed. If you are a small business, you know your cost of Internet access will not go up. If you are doing business over the Internet, you know there will continue to be investments in the infrastructure necessary to increase broadband deployment.

I think at the very least we should have an opportunity to vote on making this Internet tax moratorium permanent. I think it is a commonsense approach. We can always come back and look at the technical issues associated with the language if it needs to be modified in 5 years or 10 years or 15 years. That is what Congress does. But we should say, once and for all, we are not going to tax Internet access at the Federal level, at the State level, at the local level.

Madam President, I thank you for the consideration and yield the floor.

The PRESIDING OFFICER. The minority leader is recognized.

Mr. McCONNELL. Madam President, I thank the Senator from New Hampshire for offering this important amendment. We are running out of time. The Internet tax moratorium does expire in a week. As the Senator

from New Hampshire has indicated, State and local governments across our country could impose taxes on Internet access as soon as a week from now.

I think it is important we address this issue—not that the underlying measure is not important as well. I know it is important to many Senators. But the Internet needs to be protected. Here is our chance to go on record: Are we for a tax on Internet access or not?

The Internet has been at the heart of America’s economic growth over the past decade—all because Government has not gotten in the way. Those days are over if we open the Internet to new taxes. I think there is bipartisan support for a permanent ban, for continuing the moratorium forever, and I think the Senate ought to have an opportunity to go on record.

CLOTURE MOTION

The only way, Madam President, in the parliamentary situation we find ourselves in, that a vote on a permanent moratorium could be achieved is if I were to offer a motion to invoke cloture, which I send to the desk now, on the Sununu amendment.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the pending amendment No. 3452 to make the moratorium on Internet access taxes and multiple and discriminatory taxes on electronic commerce permanent.

Mitch McConnell, John E. Sununu, John Ensign, Ted Stevens, Kay Bailey Hutchison, John Barrasso, R.F. Bennett, Larry Craig, Lindsey Graham, Wayne Allard, Trent Lott, Jim Bunning, Jim DeMint, Mel Martinez, Richard Burr, David Vitter.

Mr. McCONNELL. Madam President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Madam President, I thank the Republican leader for his remarks and for the support he has provided to us. He is not a member of the Commerce Committee. He has a lot of other duties in the Senate, but he has taken a great interest in this issue, as I think most any legislator would, because the Internet is something we all understand, we deal with, we work with at one level or another. Our families, our friends, our neighbors, and businesses we may have worked for before, depend on it in different ways.

Everyone understands when you tax something, you raise its cost; when you tax something, you end up getting less of it—especially in the long run.

Some people stood up and said: Well, there are some States that have some taxes on the Internet, but there has still been broadband deployment in their State. That may well be, but you

cannot argue with the economic fact that when you tax something, you raise its cost; and when you raise its cost, you create a barrier to investment. Those are economic facts of life we cannot change, and those are the economic factors that make implementing a permanent ban on Internet taxes so important.

Opponents of making this ban permanent have also suggested it is an unfunded mandate to tell States they cannot tax the Internet, that it is an unfunded mandate because if we allow them to tax, they could raise money, but because we are telling them they cannot tax Internet access, they cannot raise that money, so there is a cost.

I think that is classic Washington-speak, a classic inside-the-beltway mentality, that if we prevent a State from imposing taxes, we have to compensate the State for that. That is plain wrong. If that were true, then we should be compensating every State in the Union because we do not allow them to arbitrarily impose taxes, fees, and tolls on every mile of interstate highway in the country, or because we do not allow every State in the Union to impose unique taxes on any flight or aviation that comes into or leaves their State. We do not allow that because we recognize our aviation system is a national system, because we recognize our interstate highway system is a national system. We do not allow States to tax exports for the same reason. And yet, we do not call those examples unfunded mandates. We do not compensate the States for these activities because the Federal Government has recognized these are important facets to interstate commerce that need to be dealt with in a systematic and uniform way at the Federal level. So I think it is an enormous mistake and very misleading to refer to this as an unfunded mandate.

The second objection that some have made is they recognize: Well, the technologies may change, so defining what is Internet access or data service or voice service—those definitions may have to be modified, as we have modified them over the last 6 or 8 years since the first ban on Internet access taxes was first put in place in 1998.

But if the fact that technology may change is a reason for not legislating or not making something permanent, we could use that as an excuse not to do anything ever or at least to do every bill on a 1- or 2-year basis. Especially in an area where we are dealing with investment and taxation, it is counterproductive at times to do such short-term legislation because those in the economy who are taking risks, making investments, creating jobs and economic opportunity for other people, will not be able to calculate and estimate what long-term returns and benefits might come from a given investment. They do not know what the tax rate will be or they do not know what the regulatory burden will be. As a re-

sult, you get fewer investments in that area. So we know that technology, services, and the approach to the Internet that businesses take may change in the future, but Congress can always and should always revisit laws, rules, or regulations, whether it has to do with Internet access or any other area.

So this is a piece of legislation whose time has come. I hope we can get expeditious consideration and approval because I think this is something that has been shown to have bipartisan support in both the House and the Senate.

At this time, I would like to turn my attention to another amendment I mentioned earlier in my remarks, and that has to do with the long-distance train routes. As I said, I think there are 14, 15, or 16 routes in operation now. None of these long-distance train routes make any money. They do not make any operating profit. They all lose money. They all lose money at different levels. Some of the long-distance routes, by GAO accounting estimates, lose as much as \$200 per passenger. That means there is a Federal taxpayer subsidy, not of \$1, or \$10, or \$20, or \$40, but \$200 for every passenger riding that route over the course of a year. That is a level of cost and subsidy which just can't be justified; especially at a time when we are trying to deal with difficult Federal priorities.

Today and throughout this week, there has been a lot of discussion about SCHIP, the State Children's Health Insurance Program, and the fact that SCHIP is an important program. I agree. I supported the legislation here in the Senate. Its goal is to provide coverage for lower income families who aren't covered by Medicaid, but may not be covered at their place of employment by a health care policy. As we are having a debate about providing that funding and targeting it to the most needy, whether it is health care or any other high-priority initiative, it is so hard to justify running trains across the country that have a subsidy of \$200 for every passenger riding that train through the year.

So what I would propose is that we set a standard of \$200. If your per-passenger subsidy through the course of a year is less than \$200, we will allow the train to operate. Now, we hope it improves. We hope the reforms that were described at the beginning of the evening work—improve the management, reduce the costs, improve the efficiency, and improve the performance. But if they do not, and that subsidy level remains above \$200 over the course of a year, that route should not remain in operation. Then, in subsequent years, we bring that threshold down, and the second year after this amendment would be in effect, the threshold would be \$175. So if you have to subsidize passengers at \$170 for every passenger who rides that train in a year, you can remain in operation, but if it is more than \$175, that route would have to be closed. So on over the lifetime, until at the end of the author-

ization period for this bill we would have a cap of \$100 subsidy per rider. I think that is still too high, but I certainly don't think it is too much to ask in an authorization bill of this type.

AMENDMENT NO. 3453

Mr. President, at this time I ask unanimous consent to set aside any pending amendment and send this amendment to the desk.

The PRESIDING OFFICER (Mr. CASEY). Without objection, it is so ordered. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. SUNUNU] proposes an amendment numbered 3453.

Mr. SUNUNU. I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

AMENDMENT NO. 3453

(Purpose: To prohibit Federal subsidies in excess of specified amounts on any Amtrak train route)

On page 32, before line 21, insert the following:

(c) LIMIT ON PASSENGER SUBSIDIES.—

(1) IN GENERAL.—The Secretary of Transportation shall prohibit any Federal funds to be used for the operation of an Amtrak train route that has a per passenger subsidy, as determined by the Inspector General under paragraph (2), of not less than—

(A) \$200 during the first fiscal year beginning after the date of the enactment of this Act;

(B) \$175 during the second fiscal year beginning after the date of the enactment of this Act;

(C) \$150 during the third fiscal year beginning after the date of the enactment of this Act;

(D) \$125 during the fourth fiscal year beginning after the date of the enactment of this Act; and

(E) \$100 during any fiscal year beginning after the time period described in subparagraph (D).

(2) DETERMINATION OF SUBSIDY LEVEL.—The Inspector General of the Department of Transportation, using data provided by Amtrak, shall determine the difference between the average fully allocated operating cost per passenger and the average ticket price collected for each train route operated by Amtrak during the most recent 12-month period for which data is available.

(3) REPORT.—

(A) IN GENERAL.—Not later than 6 months before the end of each fiscal year, and every 6 months thereafter, the Inspector General shall publish a report that—

(i) lists the subsidy levels determined under paragraph (2); and

(ii) includes a statement that Amtrak will terminate any train route that has a per passenger subsidy in excess of the limits set forth in paragraph (1).

(B) DISTRIBUTION.—The Inspector General shall display the report published under subparagraph (A) on the Internet and submit a copy of such report to—

(i) the President of Amtrak;

(ii) the Secretary of Transportation;

(iii) the Committee on Commerce, Science, and Transportation of the Senate; and

(iv) the Committee on Transportation and Infrastructure of the House of Representatives.

Mr. SUNUNU. Mr. President, I thank you for the time. The amendment I

have just submitted is as I have described, and I hope this is an idea and an approach which can be incorporated into the legislation. I think it is common sense. I know a lot of Members of the Senate believe strongly that we should have long-distance trains, with long routes across the country. I would like to see those routes maintained and sustained as well, if it can be done in an economically reasonable way.

But the last years have shown that for some of these routes, the passenger levels are so low, the costs of operating are so high, they just can't compete. They can't compete with buses, they can't compete with automobiles, and they can't compete with airplanes in terms of cost and efficiency. So I think a step like this is long overdue. Again, I thank the bill managers, Senator LAUTENBERG and Senator LOTT, for their time and consideration and for allowing me to offer these amendments this evening.

I yield the floor.

Mr. LAUTENBERG. Mr. President, I note the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant 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 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 ask unanimous consent to speak as in morning business.

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

2007 FARM BILL

Mr. BROWN. Mr. President, I appreciate seeing the Senator from Pennsylvania in the chair. We were both in the Agriculture Committee today. I thank him for his leadership for dairy farmers and for nutrition and feeding kids and all that he did that way.

The 2007 farm bill is a chance for Congress to make historic strides in agriculture, alternative energy, and to literally help improve the lives of millions of families across the country—families struggling from Harrisburg to Erie, from Ashtabula to Gallipolis, from Lima to Toledo.

In a State such as Ohio, with a long and rich agricultural history, this means a bright future for our agriculture industry, for our family farmers, and for our families.

I applaud the leadership of Senator HARKIN. I am proud, as Ohio's first Senator to sit on the Agriculture Committee in four decades, to be part of this process.

This bill could mean that low-income families will have more access to better nutrition by increasing Food Stamp Programs and access to affordable healthy foods. That means more fruits

and vegetables into the schools in Hamilton, Middletown, and Akron, and more fruits and vegetables available, grown by local farmers, to go into farmers markets in Columbus and Zanesville and all over our State.

Earlier this year, as the occupant of the chair and I and others gathered in the committee, we heard from Rhonda Stewart of Hamilton, OH. Rhonda is perhaps in her early thirties and has, I believe, a 9-year-old son. She is a single mother, struggling and working full-time and making about \$8, \$9, or \$10 an hour, with no health insurance. She was president of the local PTA and her son is involved in the Cub Scouts and she is a food stamp beneficiary. She struggled every month. At the beginning of the month, she told the committee back in February, she would serve her son pork chops that first week, which is his favorite meal. By the middle of the month, they went to McDonald's or another fast-food place maybe twice. But by the end of the month, as times got tough and she struggled financially, she would almost invariably sit at the dinner table, at the kitchen table with her son, he would be eating and she would not. He would say: What's wrong, Mom? Aren't you hungry? She would say: No, I don't feel well. She simply ran out of money at the end of the month.

In the farm bill, we are helping people like her and her family who work hard and play by the rules and do everything in the workplace and in their homes that we ask them to do as citizen of their communities and our country. This bill could mean new investment and a new direction for farmers in Ohio.

The 2007 farm bill reflects the values of farmers across Ohio: forward-thinking, responsible, and working to protect our natural resources and our rural communities.

This bill will help family farmers in my State and in Pennsylvania and across the country by strengthening the farm safety net, one that will provide better protection for farmers against disasters, such as either low yield or low prices. Either one can be obviously devastating to farmers.

The Average Crop Revenue Program, which Senator DURBIN and I introduced a bill to create as part of the farm bill—amended by Chairman HARKIN into the farm bill—offers a much needed choice to farmers. It represents significant reform for farmers and huge savings—literally \$3.5 billion—for taxpayers.

Farmers can stay in the current or old program that does little to protect against drops in revenue or, for the first time ever, farmers will be able to switch to a forward-looking policy that better protects against volatile crop prices, natural disasters, and rising production costs. If farmers are doing well and prices and yields are good, farmers would not get tax dollars. If times are bad—the yield is low or there are floods or tornadoes that cause

major crop yield drops or if the price is low—then the farmer will get help. That is the way that agriculture should be. That is the way most farmers I find in northwest Ohio and all over my State want to do it too. I traveled throughout Ohio this Spring—to Chillicothe, where we did roundtables with fruit and vegetable farmers, and in Montgomery County, not too far from Troy, and Piqua, near Dayton. We talked to farmers there, and near Wooster, OH. We talked to dairy farmers. In Lake County we talked to specialty farmers, especially those who do landscaping and greenhouses. In northwest Ohio we talked to farmers who grow corn and soybeans.

I met with a corn farmer in Henry County who will be supplying corn to one of the first ethanol plants in Ohio. I met with a hog farmer in Montgomery County who uses wind turbines to provide on-farm energy.

This farm bill makes a commitment to move beyond antiquated energy sources and wean ourselves from Middle Eastern oil and prepare American agriculture to lead the world in renewable energy production.

With the right resources and the right incentives, farmers can help decrease our dependence on foreign oil and produce clean, sustainable, renewable energy.

In a State such as Ohio, with a talented labor force and a proud lead-the-nation manufacturing history, that doesn't just mean stronger farms and more prosperous farmers; it means a stronger economy.

Rural communities across the Nation will benefit from additional Federal assistance in the farm bill and small towns not far from where I grew up in Lexington, OH, places like Butler and Belleville, will benefit from funding for infrastructure and hospitals, while expanding access to broadband for all of my State, especially southeast Ohio, which doesn't have the access it needs.

This bill will also provide more than \$4 billion in additional funding for conservation programs to help farmers protect our water quality, expand wildlife habitat, and preserve endangered farmland.

While I am pleased with the bill overall, it can be improved. The public is perfectly willing to help family farmers when they need it, but taxpayers will not support massive payments to farms that have substantial net incomes.

We should not be sending tax dollars to Florida real estate developers, to city farmers who live in New York, to NBA players, or to media personalities. Those are not the people who should benefit from the farm bill.

I regret that we have not funded the McGovern-Dole international feeding program. I hope as this legislation progresses, we will do so.

The agricultural industry in Ohio has experienced unprecedented change in recent years, but the values of Ohio farmers—hard work, stewardship of the

land, caring for their families—remains steadfast.

We, too, must be steadfast in our support for farmers, but we must also change how we go about providing that support.

I applaud the proposal put before us in the Agriculture Committee today. I hope we can even improve upon it in the weeks ahead.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. 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. LAUTENBERG. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. Amendment No. 3452 is pending.

AMENDMENT NO. 3454 TO AMENDMENT NO. 3452

Mr. LAUTENBERG. Mr. President, I send an amendment to the desk on behalf of Senator CARPER, which is No. 3452.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Jersey [Mr. LAUTENBERG], for Mr. CARPER, proposes an amendment numbered 3454 to Amendment No. 3452.

Mr. LAUTENBERG. I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

Strike all after the first word and insert the following:

1. SHORT TITLE.

This Act may be cited as the "Internet Tax Freedom Act Amendments Act of 2007".

SEC. 2. MORATORIUM.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) in section 1101(a) by striking "2007" and inserting "2011", and

(2) in section 1104(a)(2)(A) by striking "2007" and inserting "2011".

SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

Section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

"(c) APPLICATION OF DEFINITION.—

"(1) IN GENERAL.—Effective as of November 1, 2003—

"(A) for purposes of subsection (a), the term 'Internet access' shall have the meaning given such term by section 1104(5) of this Act, as enacted on October 21, 1998; and

"(B) for purposes of subsection (b), the term 'Internet access' shall have the meaning given such term by section 1104(5) of this Act as enacted on October 21, 1998, and amended by section 2(c) of the Internet Tax Nondiscrimination Act (Public Law 108-435).

"(2) EXCEPTIONS.—Paragraph (1) shall not apply until November 1, 2007, to a tax on Internet access that is—

"(A) generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate ad-

ministrative agency of a State or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner that is inconsistent with paragraph (1); or

"(B) the subject of litigation instituted in a judicial court of competent jurisdiction prior to July 1, 2007, in which a State or political subdivision is seeking to enforce, in a manner that is inconsistent with paragraph (1), such tax on telecommunications service purchased, used, or sold by a provider of Internet access.

"(3) NO INFERENCE.—No inference of legislative construction shall be drawn from this subsection or the amendments to section 1105(5) made by the Internet Tax Freedom Act Amendments Act of 2007 for any period prior to November 1, 2007, with respect to any tax subject to the exceptions described in subparagraphs (A) and (B) of paragraph (2)."

SEC. 4. DEFINITIONS.

Section 1105 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) in paragraph (1) by striking "services",

(2) by amending paragraph (5) to read as follows:

"(5) INTERNET ACCESS.—The term 'Internet access'—

"(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

"(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold—

"(i) to provide such service; or

"(ii) to otherwise enable users to access content, information or other services offered over the Internet;

"(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity; and

"(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), or (C)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated, with the charge for services described in subparagraph (A), (B), or (C)."

(3) by amending paragraph (9) to read as follows:

"(9) TELECOMMUNICATIONS.—The term 'telecommunications' means 'telecommunications' as such term is defined in section 3(43) of the Communications Act of 1934 (47 U.S.C. 153(43)) and 'telecommunications service' as such term is defined in section 3(46) of such Act (47 U.S.C. 153(46)), and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 (26 U.S.C. 4251))."

(4) in paragraph (10) by adding at the end the following:

"(C) SPECIFIC EXCEPTION.—

"(i) SPECIFIED TAXES.—Effective November 1, 2007, the term 'tax on Internet access' also does not include a State tax expressly levied on commercial activity, modified gross receipts, taxable margin, or gross income of the business, by a State law specifically using one of the foregoing terms, that—

"(I) was enacted after June 20, 2005, and before November 1, 2007 (or, in the case of a State business and occupation tax, was enacted after January 1, 1932, and before January 1, 1936);

"(II) replaced, in whole or in part, a modified value-added tax or a tax levied upon or measured by net income, capital stock, or net worth (or, is a State business and occupation tax that was enacted after January 1, 1932 and before January 1, 1936);

"(III) is imposed on a broad range of business activity; and

"(IV) is not discriminatory in its application to providers of communication services, Internet access, or telecommunications.

"(ii) MODIFICATIONS.—Nothing in this subparagraph shall be construed as a limitation on a State's ability to make modifications to a tax covered by clause (i) of this subparagraph after November 1, 2007, as long as the modifications do not substantially narrow the range of business activities on which the tax is imposed or otherwise disqualify the tax under clause (i).

"(iii) NO INFERENCE.—No inference of legislative construction shall be drawn from this subparagraph (A) or (B) to any tax described in clause (i) for periods prior to November 1, 2007."

SEC. 5. CONFORMING AMENDMENTS.

(a) ACCOUNTING RULE.—Section 1106 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by striking "telecommunications services" each place it appears and inserting "telecommunications", and (2) in subsection (b)(2)—

(A) in the heading by striking "SERVICES",

(B) by striking "such services" and inserting "such telecommunications", and

(C) by inserting before the period at the end the following: "or to otherwise enable users to access content, information or other services offered over the Internet".

(b) VOICE SERVICES.—The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking section 1108.

SEC. 6. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on November 1, 2007, and shall apply with respect to taxes in effect as of such date or thereafter enacted, except as provided in section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note).

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LAUTENBERG. 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. LAUTENBERG. Mr. President, I ask unanimous consent that when the Senate resumes consideration of S. 294 on Thursday, October 25, there be 2 hours of debate prior to a vote in relation to the SUNUNU amendment No. 3453, with the time equally divided and controlled between Senators LAUTENBERG and SUNUNU or their designees, with no amendment in order to the amendment prior to the vote; that upon the use or yielding back of time, the Senate proceed to vote in relation to the amendment.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the Senate now proceed to a period for the transaction of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

INTERNET TAX MORATORIUM

Mr. ALEXANDER. Mr. President, the House voted recently 405 to 2 to extend the current Internet tax moratorium which expires at the end of this month. They voted to extend it for 4 more years. I believe the Senate should do the same thing and do it before the end of the month rather than enact a permanent moratorium, as some want to do, because permanent action is likely to invoke a far higher law—the law of unintended consequences.

We can't imagine the future impact of the World Wide Web, and a permanent moratorium could produce at least two unintended consequences: No. 1, a big unintended tax increase, or No. 2, a big unintended, unfunded Federal mandate.

Here is an example of how a permanent moratorium could produce an unintended new tax. At the time the original moratorium was enacted in 1998, Internet access meant dial-up. Today, Internet access also includes broadband. Fortunately, Congress updated the moratorium definition in 2004 so that access to broadband is exempt from taxation.

Or, here is an example of how an outdated moratorium could produce an unintended, unfunded Federal mandate on States, cities, and counties. States and local governments collect billions of dollars in sales tax on telephone services to pay for schools, roads, police, and hospital workers. Under the old definition of Internet access, telephone calls made over the Internet might have escaped such taxation. That might sound good to conservatives like me who favor lower taxes, but most members of my Republican Party were elected promising to end the practice of unfunded Federal mandates—that is, those of us in Washington telling Governors, mayors, and county commissioners what services to provide and how to pay for them. In fact, Republican candidates for Congress stood with Newt Gingrich on the Capitol steps in 1994 and said, as part of a Contract With America, “No more unfunded mandates. If we break our promise, throw us out.” In 1995, the new Republican Congress enacted a new Federal Unfunded Mandates Reform Act, banning unfunded mandates.

Make no mistake, Mr. President, the permanent extension that is proposed would be an unfunded Federal mandate because it would not allow the grandfathered States—and there are currently nine of them collecting this tax—the ability to continue to make their own decisions about what revenues to collect. It would freeze into place forever an Internet access definition that might not be wise for industry and that might not be wise for State and local governments.

That is why so many people support the idea of a 4-year moratorium on taxation of Internet access. It has the support of the National Governors Association, the National Association of Counties, The U.S. Conference of Mayors, the National League of Cities, the Multistate Tax Commission, and the AFL-CIO.

In addition to that, even though many in the industry would like to have a longer moratorium, the Don't Tax Our Web Coalition has written a letter to JOHN CONYERS, chairman of the House Judiciary Committee, saying that they prefer the permanent extension but that they believe the House-passed bill is a step forward and one they can support.

Mr. President, I ask unanimous consent to have printed in the RECORD a copy of the letter from the Don't Tax Our Web Coalition and also a copy of the Congressional Budget Office cost estimate from September 9, 2003, which makes absolutely clear that such a law would be an unfunded Federal mandate under the terms of the 1995 Unfunded Federal Mandate Act.

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

DON'T TAX OUR WEB COALITION,
October 2, 2007.

Hon. JOHN CONYERS, JR.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR CHAIRMAN CONYERS: On behalf of the Don't Tax Our Web Coalition (“Coalition”), I am pleased to express the Coalition's support of your effort to extend the Internet tax moratorium. Your continued leadership on these and other important matters affecting our industry is critical to consumers, and to strengthening the economy and job creation.

H.R. 3678, if enacted, would provide a temporary, four-year extension of the moratorium that is set to expire on November 1. Your bill also contains important definitional and statutory changes that improve current law. H.R. 3678 will provide much needed clarity to the communications and internet industries. By helping keep Internet access affordable, the moratorium promotes ubiquitous broadband access.

As you know, the Coalition has long endorsed H.R. 743, the Permanent Internet Tax Freedom Act. While we prefer a permanent extension, we believe that H.R. 3678 is a step forward and thus a bill we can support.

We look forward to continuing to work with you on this most important issue.

Sincerely,

BRODERICK D. JOHNSON.

S. 150—Internet Tax Nondiscrimination Act

Summary: S. 150 would permanently extend a moratorium on certain state and local taxation of online services and electronic

commerce, and after October 1, 2006, would eliminate an exception to that prohibition for certain states. Under current law, the moratorium is set to expire on November 1, 2003. CBO estimates that enacting S. 150 would have no impact on the federal budget, but beginning in 2007, it would impose significant annual costs on some state and local governments.

By extending and expanding the moratorium on certain types of state and local taxes, S. 150 would impose an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the mandate would cause state and local governments to lose revenue beginning in October 2006; those losses would exceed the threshold established in UMRA (\$64 million in 2007, adjusted annually for inflation) by 2007. While there is some uncertainty about the number of states affected, CBO estimates that the direct costs to states and local governments would probably total between \$80 million and \$120 million annually, beginning in 2007. The bill contains no new private-sector mandates as defined in UMRA.

Estimated cost to the Federal Government: CBO estimates that enacting S. 150 would have no impact on the federal budget.

Intergovernmental mandates contained in the bill: The Internet Tax Freedom Act (ITFA) currently prohibits state and local governments from imposing taxes on Internet access until November 1, 2003. The ITFA, enacted as Public Law 105-277 on October 21, 1998, also contains an exception to this moratorium, sometimes referred to as the “grandfather clause,” which allows certain state and local governments to tax Internet access if such tax was generally imposed and actually enforced prior to October 1, 1998.

S. 150 would make the moratorium permanent and, after October 1, 2006, would eliminate the grandfather clause. The bill also would state that the term “Internet access” or “Internet access services” as defined in ITFA would not include telecommunications services except to the extent that such services are used to provide Internet access (known as “aggregating” or “bundling” of services). These extensions and expansions of the moratorium constitute intergovernmental mandates as defined in UMRA because they would prohibit states from collecting taxes that they otherwise could collect.

Estimated direct costs of mandates to state and local governments: CBO estimates that repealing the grandfather clause would result in revenue losses for as many as 10 states and for several local governments totaling between \$80 million and \$120 million annually, beginning in 2007. We also estimate that the change in the definition of Internet access could affect tax revenues for many states and local governments, but we cannot estimate the magnitude or the timing of any such additional impacts at this time.

UMRA includes in its definition of the direct costs of a mandate the amounts that state and local governments would be prohibited from raising in revenues to comply with the mandate. The direct costs of eliminating the grandfather clause would be the tax revenues that state and local governments are currently collecting but would be precluded from collecting under S. 150. States also could lose revenues that they currently collect on certain services, if those services are redefined as Internet access under the bill.

Over the next five years there will likely be changes in the technology and the market for Internet access. Such changes are likely to affect, at minimum, the price for access to the Internet as well as the demand for and the methods of such access. How these technological and market changes will ultimately affect state and local tax revenues is

unclear, but for the purposes of this estimate, CBO assumes that over the next five years, these effects will largely offset each other, keeping revenues from taxes on Internet access within the current range.

The grandfather clause

The primary budget impact of this bill would be the revenue losses starting in October 2006—resulting from eliminating the grandfather clause that currently allows some state and local governments to collect taxes on Internet access. While there is some uncertainty about the number of jurisdictions currently collecting such taxes—and the precise amount of those collections—CBO believes that as many as 10 states (Hawaii, New Hampshire, New Mexico, North Dakota, Ohio, South Dakota, Tennessee, Texas, Washington, Wisconsin) and several local jurisdictions in Colorado, Ohio, South Dakota, Texas, Washington, and Wisconsin are currently collecting such taxes and that these taxes total between \$80 million and \$120 million annually. This estimate is based on information from the states involved, from industry sources, and from the Department of Commerce. In arriving at this estimate, CBO took into account the fact that some companies are challenging the applicability of the tax to the service they provide and thus may not be collecting or remitting the taxes even though the states feel they are obligated to do so. Such potential liabilities are not included in the estimate.

It is possible that if the moratorium were allowed to expire as scheduled under current law, some state and local governments would enact new taxes or decide to apply existing taxes to Internet access during the next five years. It is also possible that some governments would repeal existing taxes or preclude their application to these services. Because such changes are difficult to predict, for the purposes of estimating the direct costs of the mandate, CBO considered only the revenues from taxes that are currently in place and actually being collected.

Definition of Internet access

Depending on how the language altering the definition of what telecommunications services are taxable is interpreted, that language also could result in substantial revenue losses for states and local governments. It is possible that states could lose revenue if services that are currently taxed are redefined as Internet "access" under the definition in S. 150. Revenues could also be lost if Internet access providers choose to bundle products and call the product Internet access. Such changes would reduce state and local revenues from telecommunications taxes and possibly revenues from content currently subject to sales and use taxes. However, CBO cannot estimate the magnitude of these losses.

Estimated impact on the private sector: This bill would impose no new private-sector mandates as defined in UMRA.

Previous CBO estimate: On July 21, 2003, CBO transmitted a cost estimate for H.R. 49, the Internet Tax Nondiscrimination Act, as ordered reported by the House Committee on the Judiciary on July 16, 2003. Unlike H.R. 49, which would eliminate the grandfather clause upon passage, S. 150 would allow the grandfather clause to remain in effect until October 2006. Thus, while both bills contain an intergovernmental mandate with costs above the threshold, the enactment of S. 150 would not result in revenue losses to states until October 2006.

Estimate prepared by: Impact on State, Local, and Tribal Governments: Sarah Puro; Federal Costs: Melissa Zimmerman; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

HONORING OUR ARMED FORCES

STAFF SERGEANT JARRED SETH FONTENOT

Mr. SALAZAR. Mr. President, I rise today to honor the memory of SSG Jarred Seth Fontenot of the 2nd Battalion, 12th Infantry Regiment, 2nd Infantry Division, out of Fort Carson, CO. Sergeant Fontenot was killed last Thursday in an engagement with insurgents in Baghdad. He died of injuries from an explosion and small arms fire that rained down on his patrol. Sergeant Fontenot was 35 years old, a loving husband, and a father of four.

Jarred Fontenot grew up in a family steeped in military tradition. His grandfather, who helped raise Jarred after his parents died at an early age, served in the Army. His two great uncles attended West Point, later joining the Navy and Marines. One of his great uncles died in Korea, a place Jarred would later serve.

Jarred's family speaks of him as a man who loved his job and who embraced the virtues of military service. "He loved being a soldier," his grandmother recalls, "and he died doing what he loved."

Sergeant Fontenot was on his second tour in Iraq, on a mission to help bring security and stability to a region torn by violence and tragedy. Every day, he and his unit put themselves in harm's way to give Iraqi citizens a chance at a society governed by the rule of law, free from the threats of sectarian strife, terrorism or autocratic rule. He served bravely and was highly decorated, earning the Overseas Service Ribbon, the Parachute Badge, and the Army Commendation Medal, an honor bestowed upon those who have distinguished themselves by their service and acts of heroism.

Between deployments, Jarred devoted himself to law enforcement in his hometown of Port Barre, LA. On his days off, he would volunteer his expertise and his time to help his fellow peace officers. Needless to say, he earned the respect and appreciation of those with whom he served.

Mr. President, how can we properly honor the deeds of a man such as Jarred Fontenot, so devoted to his country, his family, and to those with whom he served? No words can match the magnitude of his virtue.

Pericles, the great Athenian general, suggested that we honor the sacrifices of soldiers like Jarred Fontenot by reflecting not only on his life and loss, but also on the rewards that he and other soldiers have delivered to the nation for which they fought.

At a funeral oration to honor soldiers who had died in one of the first battles of the Peloponnesian War, Pericles told the crowd that:

Any one can discourse to you for ever about the advantages of a brave defense, which you know already. But instead of listening to him I would have you day by day fix your eyes upon the greatness of Athens, until you become filled with the love of her; and when you are impressed by the spectacle of her glory, reflect that this empire has

been acquired by men who knew their duty and had the courage to do it, who in the hour of conflict had the fear of dishonor always present to them, and who, if ever they failed in an enterprise, would not allow their virtues to be lost to their country, but freely gave their lives to her as the fairest offering which they could present at her feast.

In this Chamber, the greatest deliberative body in the world, I ask that we honor Sergeant Fontenot by fixing our eyes on those freedoms which, for more than two centuries, have endured and prospered in this Chamber and across America. Our freedom of speech, our freedom of assembly, our freedom from self-determination, our freedom from tyranny and violence—these are the rewards that the American soldier has delivered, generation after generation, to a grateful and humble nation. So long as the United States remains a beacon for freedom, democracy, and justice, their sacrifices will never be forgotten.

To the family of SSG Jarred Fontenot—to his wife, Dana, his four children, to his grandparents Charles and Dorthy, and to his sister—I know of no words that can describe or assuage the pain you feel. I pray that in time you can find comfort in the knowledge that Jarred was doing something he truly loved, of which he was extraordinarily proud, and for which his country is eternally grateful.

"For where the rewards of virtue are greatest," Pericles reminded the departing Athenian crowd, "there the noblest citizens are enlisted in the service of the state." Jarred Fontenot was among the noblest of our citizens. May his legacy endure in the strength of our democracy.

Mr. LAUTENBERG. Mr. President, another 2 months have passed, and more American troops lost their lives overseas in Iraq and Afghanistan. It is only right that we take a few moments in the U.S. Senate to honor them. Outside my office here in Washington, we have a tribute called "Faces of the Fallen." Visitors to the Senate from across the country have stopped by the memorial. I encourage my colleagues to come see this tribute on the third floor of the Hart Building.

I last came to the Senate floor to honor our fallen troops in early August. Since that time, the Pentagon has announced the deaths of 182 troops in Iraq and in Operation Enduring Freedom, including in Afghanistan. They will not be forgotten. So today I will read their names into the RECORD:

PO3 Mark R. Cannon, of Lubbock, TX
SPC Chirasak Vidhyarkorn, of Queens, NY
SGT Randell Olguin, of Ralls, TX
GYSGT Herman J. Murkerson Jr., of Adger, AL
SGT Robert T. Ayres III, of Los Angeles, CA
SGT Zachary D. Tellier, of Charlotte, NC
SSGT Donnie D. Dixon, of Miami, FL
James D. Doster, of Pine Bluff, AR
SPC Ciara M. Durkin, of Quincy, MA
Randy L. Johnson, of Washington, DC
SPC Mathew D. Taylor, of Cameron Park, CA
PFC Christopher F. Pfeifer, of Spalding, NE

PO2 Charles Luke Milam, of Littleton, CO
 SSGT Zachary B. Tomczak, of Huron, SD
 CPL Anthony K. Bento, of San Diego, CA
 SSGT Kevin R. Brown, of Harrah, OK
 Matthew D. Blaskowski, of Levering, MI
 SPC David L. Watson, of Newport, AR
 SPC Joshua H. Reeves, of Watkinsville, GA
 CSM Jonathan M. Lankford, of Scottsboro, AL
 CAPT (Dr.) Roselle M. Hoffmaster, of Cleveland, OH
 SPC John J. Young, of Savannah, GA
 PFC Luigi Marciante Jr., of Elizabeth, NJ
 CPL Graham M. McMahon, of Corvallis, OR
 SGT Edmund J. Jeffers, of Daleville, AL
 PFC Christian M. Neff, of Lima, OH
 SPC Aaron J. Walker, of Harker Heights, TX
 SPC Joseph N. Landry III, of Pensacola, FL
 SPC Nicholas P. Olson, of Novato, CA
 SPC Donald E. Valentine III, of Orange Park, FL
 SPC Matthew J. Emerson, of Grandview, WA
 SPC Brandon T. Thorsen, of Trenton, FL
 SSGT Michael L. Townes, of Las Vegas, NV
 SSGT Terry D. Wagoner, of Piedmont, SC
 CPL Todd A. Motley, of Clare, MI
 CPL Jonathan Rivadeneira, of Jackson Heights, NY
 PFC Christopher M. McCloud, of Malakoff, TX
 CPL Terrence P. Allen, of Pennsauken, NJ
 SGT John Mele, of Bunnell, FL
 SSGT Yance T. Gray, of Ismay, MT
 SSGT Gregory Rivera-Santiago, of St. Croix, VI
 SGT Michael C. Hardegree, of Villa Rica, GA
 SGT Omar L. Mora, of Texas City, TX
 SGT Nicholas J. Patterson, of Rochester, IN
 SPC Ari D. Brown-Weeks, of Abingdon, MD
 SPC Steven R. Elrod, of Hope Mills, NC
 SSGT Courtney Hollinsworth, of Yonkers, NY
 CPL Carlos E. Gilorozco, of San Jose, CA
 LCPL Jon T. Hicks Jr., of Atco, NJ
 CPL Travis M. Woods, of Redding, CA
 CPL Javier G. Paredes, of San Antonio, TX
 PFC Sammie E. Phillips, of Cecilia, KY
 LCPL Lance M. Clark, of Cookeville, TN
 SGT Alexander U. Gaglac, of Wahiawa, HI
 CAPT Drew N. Jensen, of Clackamas, OR
 SPC Marisol Heredia, of El Monte, CA
 CPL Ryan A. Woodward, of Fort Wayne, IN
 CPL Christopher L. Poole Jr., of Mount Dora, FL
 CPL Bryan J. Scripsick, of Wayne, OK
 SSGT John C. Stock, of Longview, TX
 SGT Michael J. Yarbrough, of Malvern, AR
 SGT Lee C. Wilson, of Chapel Hill, NC
 SPC Jason J. Hernandez, of Streetsboro, OH
 SPC Thomas L. Hilbert, of Venus, TX
 PFC Mykel F. Miller, of Phoenix, AZ
 SGT Joel L. Murray, of Kansas City, MO
 SPC David J. Lane, of Emporia, KS
 PVT Randol S. Shelton, of Schiller Park, IL
 CPL Keith A. Nurnberg, of McHenry, IL
 1st SGT David A. Cooper Jr., of State College, PA
 SSGT Delmar White, of Wallins, KY
 CPL William T. Warford III, of Temple, TX
 SPC Dane R. Balcn, of Colorado Springs, CO
 SPC Rodney J. Johnson, of Houston, TX
 MSGT Patrick D. Magnani, of Martinez, CA
 SPC Christopher G. Patton, of Lawrenceville, GA
 SGT Kevin A. Gilbertson, of Cedar Rapids, IA
 PVT Justin T. Sanders, of Watson, LA
 SPC Travis M. Virgadamo, of Las Vegas, NV
 1stSGT Daniel E. Scheibner, of Muskegon, MI
 SSGT Andrew P. Nelson, of Moorhead, MN
 SSGT Jason M. Butkus, of West Milford, NJ
 SPC Edward L. Brooks, of Dayton, OH
 CPL John C. Tanner, of Columbus, GA
 CAPT Erick M. Foster, of Wexford, PA
 Maj. Henry S. Ofeciar, of Agana, Guam
 MSGT Scott R. Ball, of Mount Holly Springs, PA

SGT Jan M. Argonish, of Peckville, PA
 1stSGT Rocky H. Herrera, of Salt Lake City, UT
 SGT Cory L. Clark, of Plant City, FL
 SGT Bryce D. Howard, of Vancouver, WA
 SGT James S. Collins Jr., of Rochester Hills, MI
 PFC Thomas R. Wilson, of Maurertown, VA
 LCPL Rogelio A. Ramirez, of Pasadena, CA
 SSGT Nicholas R. Carnes, of Dayton, KY
 SGT Joshua L. Morley, of Boise, ID
 SPC Tracy C. Willis, of Marshall, TX
 LCPL Matthew S. Medicott, of Houston, TX
 1stSGT Daniel E. Miller, of Rossford, OH
 1stSGT Scott M. Carney, of Ankeny, IA
 1stSGT David A. Heringes, of Tampa, FL
 PFC Edgar E. Cardenas, of Lilburn, GA
 1stSGT Adrian M. Elizalde, of North Bend, OR
 1stSGT Michael J. Tully, of Falls Creek, PA
 SSGT Sandy R. Britt, of Apopka, FL
 CAPT Corry P. Tyler, of GA
 CWO Paul J. Flynn, of Whitsett, NC
 SGT Matthew L. Tallman, of Groveland, CA
 SPC Rickey L. Bell, of Caruthersville, MO
 CAPT Derek A. Dobogai, of Fond du Lac, WI
 SSGT Jason L. Paton, of Poway, CA
 SGT Garrett I. McLead, of Rockport, TX
 CPL Jeremy P. Bouffard, of Middlefield, MA
 CPL Phillip J. Brodnick, of New Lenox, IL
 CPL Joshua S. Harmon, of Mentor, OH
 CPL Nathan C. Hubbard, of Clovis, CA
 SPC Michael A. Hook, of Altoona, PA
 SPC Jessy G. Pollard, of Springfield, MO
 SPC Tyler R. Seideman, of Lincoln, AR
 PFC Omar E. Torres, of Chicago, IL
 PFC Donovan D. Witham, of Malvern, AR
 CPL Willard M. Powell, of Evansville, IN
 SPC George V. Libby, of Aberdeen, NC
 SSGT Paul B. Norris, of Cullman, AL
 SPC Kamisha J. Block, of Vidor, TX
 CAPT Michael S. Fielder, of Holly Springs, NC
 1st Lt. Jonathan W. Edds, of White Pigeon, MI
 SGT Princess C. Samuels, of Mitchellville, MD
 SPC Zandra T. Walker, of Greenville, SC
 SSGT Robert R. Pirelli, of Franklin, MA
 SPC Alun R. Howells, of Parlin, CO
 SSGT Eric D. Cottrell, of Pittsview, AL
 CPL Juan M. Lopez Jr., of San Antonio, TX
 PFC Paulomarko U. Pacificador, of Shirley, NY
 CWO Christopher C. Johnson, of MI
 CWO Jackie L. McFarlane Jr., of Virginia Beach, VA
 SSGT Sean P. Fisher, of Santee, CA
 SSGT Stanley B. Reynolds, of Rock, WV
 SPC Steven R. Jewell, of Bridgeton, NC
 SSGT Alicia A. Birchett, of Mashpee, MA
 CPL Shawn D. Hensel, of Logansport, IN
 SSGT William D. Scates, of Oklahoma City, OK
 SGT Scott L. Kirkpatrick, of Reston, VA
 SGT Andrew W. Lancaster, of Stockton, IL
 SPC Justin O. Penrod, of Mahomet, IL
 SGT Michael E. Tayaotao, of Sunnyvale, CA
 1st SGT Jeffrey D. Kettle, of Madill, OK
 SSGT Jesse G. Clowers Jr., of Herndon, VA
 SGT Charles B. Kitowski III, of Farmers Branch, TX
 SPC William L. Edwards, of Houston, TX
 PVT Alan J. Austin, of Houston, TX
 SPC Jordan E. Goode, of Kalamazoo, MI
 SSGT Joan J. Duran, of Roxbury, MA
 CPL Reynold Armand, of Rochester, NY
 SPC Donald M. Young, of Helena, MT
 SSGT Jacob M. Thompson, of North Mankato, MN
 SGT Nicholas A. Gummersall, of Chubbuck, ID
 CPL Juan M. Alcantara, of NY
 CPL Kareem R. Khan, of Manahawkin, NJ
 SPC Justin R. Blackwell, of Paris, TN
 PFC Jeremy S. Bohannon, of Bon Aqua, TN
 SGT Jon E. Bonnell Jr., of Fort Dodge, IA

SPC Christopher T. Neiberger, of Gainesville, FL
 1stSGT Travis S. Bachman, of Garden City, KS
 SGT Bradley W. Marshall, of Little Rock, AR
 SPC Daniel F. Reyes, of San Diego, CA
 SPC Charles E. Leonard Jr., of Monroe, LA
 PFC Matthew M. Murchison, of Independence, MO
 SGT Dustin S. Wakeman, of Fort Worth, TX
 CPL Jason K. Lafleur, of Ignacio, CO
 SPC Jaron D. Holliday, of Tulsa, OK
 LCPL Cristian Vasquez, of Coalinga, CA
 Tech. SGT Joey D. Link, of Portland, TN
 SPC Braden J. Long, of Sherman, TX
 MSGT Julian Ingles Rios, of Anasco, Puerto Rico
 SSGT Fernando Santos, of San Antonio, TX
 SPC Cristian Rojas-Gallego, of Loganville, GA
 SPC Eric D. Salinas, of Houston, TX
 SGT Taurean T. Harris, of Liberty, MS
 SPC Zachariah J. Gonzalez, of IN
 PFC Charles T. Heinlein Jr., of Hemlock, MI
 PFC Alfred H. Jairala, of Hialeah, FL

To date, more than 3,800 American men and women have lost their lives in Iraq. And more than 440 have lost their lives in Operation Enduring Freedom, including in Afghanistan.

This list includes five soldiers from NJ: PFC Luigi Marciante Jr. of Elizabeth, NJ, CPL Terrence P. Allen, of Pennsauken, NJ, LCPL Jon T. Hicks Jr., of Atco, NJ, SSGT Jason M. Butkus, of West Milford, NJ and CPL Kareem R. Khan, of Manahawkin, NJ.

We will not forget them and the Nation will not forget their sacrifice.

LABOR-HHS APPROPRIATIONS

Mr. LEVIN. Mr. President, I voted, yesterday, in favor of the Ensign amendment to deny credit toward Social Security benefits claimed in violation of the Social Security Act. This would deny benefits to people, including undocumented workers, who have, in the words of the act, "willfully, knowingly, and with the intent to deceive used false Social Security numbers."

The Ensign amendment was more carefully focused on denying benefits based on illegal use of a fake Social Security number, unlike previous Ensign amendments which I did not support.

Yesterday's Ensign amendment requires the Commissioner of Social Security to deny Social Security benefits for work performed by any individual using a Social Security account number which was not his, in violation of section 208 of the Social Security Act at 42 U.S.C. 408.

The Ensign amendment was adopted yesterday by the Senate.

This amendment differs from a previous amendment offered by Senator ENSIGN in the 109th Congress, which could have harmed senior citizens and other individuals who may have made an honest error.

That amendment was rejected by the Senate.

In July of 2007, Senator ENSIGN proposed an amendment to the College Cost Reduction Act which could have

led to a highly unfair loss of benefits to naturalized citizens or others who are legally present. The provisions of that amendment would have posed great problems because it would have denied Social Security benefits to legally naturalized citizens, for instance, unless the Social Security Administration could affirmatively determine that the individual was legally authorized to work. This amendment would have placed an unmanageable burden on the Social Security Administration and seniors who have been legally present for decades, who could have unfairly lost their benefits.

This amendment also failed in the Senate.

Ms. SNOWE. Mr. President, the Social Security Administration, SSA, is currently facing nothing short of a crisis when it comes to processing disability claims. Indeed, SSA Commissioner Michael Astrue has called this issue his agency's most pressing challenge. Currently, there are over 756,000 individuals who are waiting for a hearing to have their claims adjudicated, and the average wait time is a staggering 512 days. That is the longest amount of time in SSA's history. In contrast, in 2001, disability applicants had to wait an average of 308 days for a hearing. While that was still far too long, individuals now have to wait 66 percent longer. Sadly, some people have died waiting for a hearing.

To help the SSA process disability claims more quickly, I was proud that, yesterday, the Senate voted 88 to 6 to approve an amendment to the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act that Senators BINGAMAN, BAUCUS, and I offered to increase funds dedicated to the agency's administrative costs by \$150 million. We believe that this added funding will help the SSA reduce its disability backlog and enable individuals to access the benefits to which they are entitled and need for their basic living expenses. Because of the financial strains on applicants and their families, it is simply unconscionable to have individuals waiting for upwards of 2 years before they receive ruling on their disability claims. We can and must do better—it is our moral obligation.

Although I strongly believe that providing the SSA with additional resources is warranted, I would like to thank the two managers of the Labor-HHS bill—Senators HARKIN and SPECTER—for working so hard to increase funding for the SSA and for supporting our amendment. It is notable that the underlying bill they brought to the Senate floor would have provided \$9.72 billion for the SSA in fiscal year 2008, an increase of \$426.4 million over fiscal year 2007 and \$125 million over President Bush's fiscal year 2008 budget.

The fact is that we have underfunded the SSA for years and must begin to reverse this trend. Indeed, according to SSA data, one reason wait times for

disability hearings have risen so precipitously is that between fiscal years 2001 and 2007, Congress provided on average \$150 million less than President Bush requested for the agency. At the same time, Congress gave SSA more work, including the responsibility to review Medicare beneficiaries' income and determine whether they should be charged higher premiums or if they are eligible for assistance to pay for premiums and fees in the Medicare prescription drug program. I would note that last year, Congress had to include an additional \$36.6 million in the fiscal year 2007 continuing resolution just to prevent the agency from furloughing each of its employees for 10 days, as well as close offices around the Nation.

Finally, I would also like to thank the Senate for unanimously adopting a second amendment on Monday that I offered to require the Government Accountability Office, GAO, to evaluate the SSA's plan to both reduce the disability hearing backlog and improve disability benefits processing. Senators HARKIN and SPECTER presciently asked for the SSA to produce this report when the Appropriations Committee approved the underlying Labor-HHS bill. Commissioner Astrue submitted his Agency's plan to Congress on September 13.

I believe it would be extraordinarily useful for GAO to look at the SSA's plan and make recommendations to make it even more effective. The bottom line is that we know that it is crucial that we ensure that the plan to rectify problems of disability processing will be productive. While the SSA has been among our most efficient agencies, this GAO evaluation will help ensure that the plan put in place will best use the funds we are acting to provide.

Mr. President, in closing, I hope that conferees will retain the two SSA administrative costs amendments the Senate adopted so resoundingly this week in the forthcoming Labor-HHS conference report, so that President Bush may sign them into law. This Nation's disabled deserve nothing less.

DEFENSE AUTHORIZATION

Mr. KYL. Mr. President, I rise today to bring the attention of the Senate to a provision of the fiscal year 08 Defense Authorization Act, now in conference. Section 3122 of the bill undermines the Senate's position on the Comprehensive Nuclear Test Ban Treaty, CTBT, without the benefit of neither the historical treaty consideration process nor a serious policy debate.

It has been 9 years since the CTBT was the subject of any deliberation by the Senate, which ultimately concluded that its ratification was not in the Nation's interests. There were numerous objections that proved determinative then and remain true today.

First, the U.S. deterrent cannot be maintained without testing. U.S. nuclear weapons have the highest average

age of any in the world. Some, like the W-76 warhead, the backbone of the submarine-based component of our nuclear triad, date back to 1966, making them more than four times as old as the average American car.

Given the high average age, now at its highest point in the six decade history of nuclear weapons, they require substantial, ongoing modification if they are to be maintained as a viable deterrent. As the then-Director of Sandia National Laboratories, Dr. C. Paul Robinson, testified to the Senate, "To forego validation through testing is, in short, to live with uncertainty." We cannot afford uncertainty when it comes to the reliability, safety, and credibility of our most important weaponry.

Some believe that the reliable replacement warhead, RRW, can be developed and introduced without underground testing. Even if that judgment proves correct, it will be many years before we no longer need to rely on the older designs in the current arsenal for deterrence. As the administration noted in a recent statement by Secretaries Bodman, Gates, and Rice, "delays on RRW also raise the prospect of having to return to underground nuclear testing to certify existing weapons." But, underground testing would be an option permanently denied to the United States through ratification of CTBT as section 3122 endorses.

This permanent loss of the testing option would be even more problematic if we need to continue to rely on these aging designs for decades more as we would if current plans, including those passed by the House and proposed in the Senate, that eliminate RRW funding are not rejected.

Further, the cuts proposed to RRW compound the impact of current plans to cut more than \$500 million in funding for the nuclear weapons complex that supports, maintains, and refurbishes the weapons currently in the complex. These proposed cuts to RRW and the nuclear weapons complex have been rejected by individuals of great authority, including Secretaries Kissinger and Schultz, and Dr. Sidney Drell.

The second reason the Senate rejected the treaty in 1999, and would do so again today, is that the treaty is not verifiable. Militarily significant covert nuclear testing can—and almost certainly will—be conducted at low yields or in other ways aimed at masking the force of an explosion.

Assistant Secretary Paula DeSutter of the State Department's Bureau of Verification, Compliance, and Implementation recently made this point. She stated that the International Monitoring System set up to monitor compliance with CTBT is "aimed to detect detonations over 1 kiloton; smaller or concealed detonations are less likely to be identified. Evasion techniques can easily reduce the signature of a nuclear explosion by factors of 50 or 100."

Third, CTBT's unverifiability means a ban will not have uniform effects.

Our inability under CTBT to monitor the state of foreign nuclear weapons programs effectively means that hostile or potentially hostile countries will be able to modernize their weapons even as the U.S. arsenal steadily degrades. As a result, the long-term effect of CTBT accession would translate into the inevitable, if gradual, unilateral disarmament of our Nation's deterrent.

Fourth, CTBT would damage the struggle against proliferation. On the one hand, the inherent unverifiability of the CTBT can be expected to encourage rogue state regimes to believe they could pursue nuclear weapons programs with impunity. On the other, the attendant erosion of our deterrent would mean that allied countries—notably, Japan, Taiwan and perhaps South Korea—that currently rely on the U.S. deterrent “umbrella” would be more likely to develop their own nuclear weapons.

As Dr. James Schlesinger remarked in testimony before the Armed Services Committee in 1999, “the chief barrier to proliferation in these last 55 years since Hiroshima has been confidence in the protection offered by the American deterrent. It is the reason, quite simply, that nations like [South] Korea or Japan, or more complicated, in the case of Germany, have not sought nuclear weapons. Because of the NATO agreement, because of the Japan Treaty, because of our agreements with the Koreans, they have not felt the necessity of taking that final plunge. As confidence on their part in the U.S. deterrent wanes over a period of . . . years, what is the likelihood that those nations will refrain from seeking nuclear weapons? I think that it is very modest.”

Finally, the Senate rejected the CTBT in 1999 because it realized that the Stockpile Stewardship Program, SSP, is a “crap-shoot,” as Troy Wade, a retired Department of Energy nuclear scientist, referred to it in his testimony before the Committee on Foreign Relations in 1999. It remains doubtful whether the SSP, supported by CTBT advocates as a substitute for nuclear testing, can adequately meet the maintenance and refurbishment needs of the U.S. nuclear arsenal. As a result, it will become ever more likely that dangerous anomalies in our weapons will pass unnoticed.

Despite these abiding concerns and the Senate vote in 1999, the 2008 Defense authorization bill would put the Senate on record in support of CTBT's ratification without hearings or debate. How can new Senators—37 since 1999—be expected to have reached such a conclusion?

Preordaining the ratification of a treaty, as is done in section 3122 of this bill, does a disservice to the Senate's history of thoughtful consideration of treaties proposed for ratification, especially when the treaties were on issues with the gravity of the Comprehensive Nuclear Test Ban Treaty.

I would be remiss if I didn't reference the comments of Secretary of State Rice in a recent letter. She stated that the administration does not support the Comprehensive Nuclear Test Ban Treaty and “does not intend to seek Senate advice and consent to its ratification.”

I also call the attention of the Senate to the Statement of Administration Policy on this bill which states strong opposition to section 3122 due to its dangerous implications for the reliability of our nuclear deterrent.

Mr. President, I note that these are not simply the concerns of this Senator. The letter I will ask to have printed in the CONGRESSIONAL RECORD makes clear that 40 of my fellow Senators share many of these concerns about the CTBT and the unprecedented approach taken by this bill. My colleagues recognize as I do that since the reasons for the rejection of this treaty in 1999 have not changed, neither should the Senate's position.

Mr. President, I ask unanimous consent to have the letter to which I just referred printed in the RECORD.

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

U.S. SENATE,

Washington, DC, October 23, 2007.

Hon. CARL LEVIN,
Chairman, Committee on Armed Services, U.S.
Senate, Washington, DC.

DEAR CHAIRMAN LEVIN: One of the Senate's most important national security debates of the last decade was whether to ratify the Comprehensive Nuclear-Test-Ban Treaty (CTBT). In the end, following a rigorous and thorough debate, 51 Senators voted to reject the CTBT, 17 more than necessary to assure its defeat.

The principal reasons the Senate rejected the CTBT were its lack of verifiability, adverse effect on the safety and reliability of our nuclear stockpile, and potential to increase nuclear proliferation.

We are not aware of any congressional hearings on this treaty since its rejection in 1999. The total absence of discussion in the more than eight years since its rejection belies the assertion in section 3122 of S. 1547 that the CTBT now should be ratified. Moreover, the 37 Senators who have joined the Senate since this treaty was rejected deserve to have the benefit of a careful and measured review of this treaty. There is no basis on which they can conclude that CTBT should be ratified.

The Constitution of the United States invests an extraordinary responsibility in the Senate to provide measured and thoughtful review of treaties when submitted by the President for our consideration. The Senate has not had the opportunity for such review since 1999. In a recent letter, Secretary of State Rice stated that the Administration does not support the Comprehensive Nuclear-Test-Ban Treaty and “does not intend to seek Senate advice and consent to its ratification.” The Statement of Administration Policy on S. 1547 likewise states strong opposition to section 3122 due to its dangerous implications for the reliability of our nuclear deterrent.

Under all of these circumstances, we believe it denigrates the serious role of the U.S. Senate to claim in section 3122 to ex-

press the “sense of the Congress” that the CTBT should be ratified.

Sincerely,

Jon Kyl, John McCain, Johnny Isakson, James Inhofe, Mike Crapo, Wayne Allard, Jeff Sessions, Michael B. Enzi, Sam Brownback, C.S. Bond, Larry E. Craig, Bob Corker, Saxby Chambliss, John Thune, Trent Lott, John Cornyn, Jim DeMint, Jim Bunning, David Vitter, John Ensign, Kay Bailey Hutchison, Ted Stevens, Pete V. Domenici, Olympia Snowe, Mitch McConnell, Elizabeth Dole, John Barrasso, Richard C. Shelby, Thad Cochran, Chuck Grassley, Norm Coleman, Mel Martinez, Tom Coburn, Lindsey Graham, Lisa Murkowski, Richard Burr, John E. Sununu, Judd Gregg, Orin Hatch, Lamar Alexander, Pat Roberts.

ADDITIONAL STATEMENTS

CONGRATULATING MOOSEHEAD MANUFACTURING COMPANY

• Ms. SNOWE. Mr. President, I wish to congratulate Moosehead Manufacturing Company, a small firm in Monson, Maine, that will soon be reopening its doors. For 60 years, Moosehead Manufacturing had been a thriving business that exemplified the quality of Maine production. Unfortunately, after facing tough challenges from the global economy earlier this year, Moosehead ceased production. With the help of new investors, the company recently announced that it will recommence production and hire 40 employees in Monson, continuing its legacy of providing quality furniture to the State of Maine and beyond.

Moosehead Manufacturing specializes in producing exceptional Maine-made furniture. The company prides itself on the durable and hand-finished aspects of its products, which it offers to consumers at competitive prices. Not only does Moosehead Manufacturing provide valuable employment opportunities, it procures all of its production resources from within the State, helping Maine's economy. The furniture is built from hardwoods harvested from neighboring forests, cut in Moosehead's own saw mills, and dried in its own kilns. Moosehead has been described as “an amazing corporate citizen” by Tom Lizotte, a Piscataquis county commissioner.

Moosehead Manufacturing was founded in 1947 by the Wentworth family. At its peak of production in the late 1990s, it was the largest privately owned furniture factory in New England, employing about 250 workers. Recently, increasing imports of cheap, foreign-made furniture have threatened Moosehead's business. In 2003, Moosehead Manufacturing joined a group of furniture makers nationwide in petitioning the Government to place duties on some of the furniture that China imports to the United States. I echoed their sentiments in a letter I sent to Secretary of Commerce Evans stating my deep concern with the impact Chinese imports were having on

the small and midsized American companies fighting to compete. The problem reached a climax when Moosehead announced its closure in February 2007. The communities of Monson and Dover-Foxcroft, where the company maintained its factories, were dealt great blows with the loss of nearly 130 jobs. And while I was disappointed that Moosehead was forced to shut down its facilities, I fully supported trade adjustment assistance funds to workers who lost their jobs.

However, three new buyers recently stepped forward to save Moosehead Manufacturing: Joshua Tardy, the minority leader of the Maine House of Representatives; Dana Connors, president of the Maine State Chamber of Commerce; and Ed Skovron, a financier from Rhode Island. Under the continued management of John Wentworth, Moosehead will soon resume production in Monson, much to the relief of Piscataquis County, and will return to making longlasting furniture in which Mainers can take pride.

Moosehead Manufacturing's reopening is exciting for the economic prospects of both Monson and Maine. Not only does it provide necessary employment opportunities, but it also sets a precedent for continued, Maine-based manufacturing established on quality and durability in the face of an increasingly competitive global market. I wish the owners and employees of Moosehead Manufacturing Company continued success in the coming years. I look forward to its exciting return to Maine's business scene.●

TRIBUTE TO DR. EILEEN SCHMITT

● Mr. BIDEN. Mr. President, at the end of this year, Dr. Eileen Schmitt, a friend and fixture in our Wilmington community, is retiring, and I want to share her inspirational story because there is much all of us can learn from her.

As we debate health care, again, and again, and again in this Chamber, Dr. Schmitt has lived the life Mother Teresa called for when she said: Do not wait for leaders; do it alone, person to person.

A talented medical doctor who rose to become president and chief executive officer of St. Francis Hospital, she walked away from her fancy title and big desk in 2001 to do her true calling, healing the poorest in our community. She became the medical director for the St. Clare Medical Van, making her rounds in a mobile van to provide free health care to those who have no insurance.

The van pulls up, and there may be 20 people waiting—some earn minimum wage, some don't have a job, some are homeless, many are children—and she asks for no money, no insurance. She just sees to their medical needs.

As part of her work, she arranges for doctors to donate their time, and launched drives to create a pharmaceutical fund for prescription medi-

cines for her patients. If funds are low or a patient needs something right away, she buys it herself. That is the type of person she is.

And in her spare time, you can find her teaching her patients English, and bringing clothes to the families she visits.

When someone asked her why she does it, she explained:

When I first went into medicine, I wanted to do missionary work. I think getting back to taking care of people—especially people who don't have the means to get medical care—helps to fulfill my initial calling.

The acts of love and compassion she provides every day may seem small in our prosperous country of 300 million people, but America would be much less of a Nation were it not for Dr. Schmitt.

Her patients call her their angel, and indeed she has been one to them. But she also is an inspiration to all Americans, reminding us that small acts, one person at a time, touch and change our neighborhoods.

I know Senator CARPER, Congressman CASTLE, and all my colleagues thank Dr. Schmitt and wish her happiness and health as she retires.●

CONGRATULATING GEORGE F. POTARACKE

● Mr. KOHL. Mr. President, I would like to take this time to congratulate Mr. George F. Potaracke on his retirement from the Wisconsin Board on Aging and Long Term Care, where he has served as executive director since 1981.

Mr. Potaracke has been with the Board on Aging and Long Term Care since its inception in the early 1980s and was selected as its first executive director. Under his leadership, the Board on Aging and Long Term Care has grown from an agency of only 3 employees to an agency of 30 employees with offices throughout the State.

Along with his duties as executive director of the Board on Aging and Longterm Care, Mr. Potaracke directs the Wisconsin Medigap hotline, which provides counseling services for Medicare beneficiaries in Wisconsin. He is the treasurer of the National Citizens Coalition for Nursing Home Reform and an adviser to the National Health Policy Council and the Aging Leadership Council. He has served as president of the National Association of State Long Term Care Programs and leads fundraising efforts for this organization.

In addition to his work on behalf of seniors, Mr. Potaracke is actively involved with the national Human Rights Campaign, the AIDS Support Network of Southern Wisconsin, Frontier Men of Dane County, and the New Harvest Foundation, where he chairs fund-raising efforts.

Throughout his career, Mr. Potaracke has dedicated himself to a wide range of aging services. As chair of the Senate Special Committee on

Aging, I have had the distinct privilege of working with Mr. Potaracke on a variety of issues and hold his opinion in the highest regard. He is nationally recognized as an advocate for our aging population and has truly made a difference on behalf of all seniors.

On behalf of our State and Nation, I thank Mr. Potaracke for his service and wish him good health, happiness, and prosperity for many years to come.●

TRIBUTE TO WALGREENS' 6000TH STORE IN NEW ORLEANS

● Ms. LANDRIEU. Mr. President, Walgreens, a leading national drug store chain, is today hosting a celebration for the opening of its 6,000th store, which is located in New Orleans, LA. I am thrilled that for this milestone the company has chosen my hometown, which is enduring a long recovery from Hurricane Katrina.

The greater New Orleans area is one of Walgreens' oldest and most distinct markets. The first store in the region opened in 1938, and the new store in the historic Carrollton neighborhood is the city's 48th. The company currently employs nearly 1,400 people in the area who serve thousands of patients and customers every day. Walgreens will become a wellness resource for Carrollton residents, some of whom have underserved health care needs.

In honor of the grand opening, Walgreens is today offering free blood glucose screenings in every New Orleans store to drive greater awareness of the diabetes epidemic and get more people on the path to prevention or early detection and treatment.

The Walgreens wellness tour bus will also travel to locations throughout the area today to provide a variety of tests, including cholesterol, blood pressure, bone density, and body mass index for individuals who otherwise may not have access to basic health screenings.

Immediately following Katrina, 74 Walgreens stores had to close because of physical damage and loss of power. It was the most significant operational challenge in the company's 106-year history. More than 700 Walgreens employee volunteers traveled from across the country to help with recovery efforts, filling hundreds of thousands of emergency prescriptions and providing vital supplies to evacuees. Walgreens was one of the first retailers to reopen, proving New Orleans was on the road to recovery. I am grateful for their great help to our region during the extremely challenging days following the storm and the flood that followed.

Through its investment, Walgreens is demonstrating its continued commitment to our great city and region. By next summer, Walgreens will have more stores in the New Orleans area than it did prior to the hurricane. I ask the Senate to join me in congratulating Walgreens and New Orleans for this longstanding and growing relationship.●

IN MEMORY OF DELAWARE STATE
SENATOR JAMES T. VAUGHN

• Mr. BIDEN. Mr. President, earlier this month James T. Vaughn, a long-time State Senator who was a legend in Delaware, passed away, and I want to pay tribute to him.

Jim spent a lifetime in public service, enlisting in the Marine Corps during World War II; serving as a Delaware State Police trooper for two decades and as the State Corrections Commissioner; and entering our State Senate 27 years ago.

His seniority put him in powerful positions either as the chairman or member of the committees that oversaw budgets, revenues, taxation, judiciary, and corrections matters. In other words, he had his hand in everything, and most recently that meant establishing a veterans' home at Milford.

Jim had this tough image, always set in his way, and always an honest man, who scrutinized every matter and paid incredible attention to the taxpayers' dollars. Throughout his career no one worked harder for the people of Delaware than Jim Vaughan.

His constituents were his No. 1 priority, and last year when he became ill and was unable to campaign during his re-election, the voters still handily put him in office, recognizing a lifetime of responsiveness to their needs. It set a standard we can all admire.

Like this Senator, Jim was a lifetime Yankees fan. And he had a special place in his heart for Little League baseball. Babe Ruth once said:

I won't be happy until we have every boy in America between the ages of six and sixteen wearing a glove and swinging a bat.

Babe Ruth would have appreciated Jim. For four decades he volunteered with the Smyrna-Clayton Little League, a group he originally helped organize. He served as its director, treasurer, equipment manager, and grass cutter—in fact, his wife Sylvia would joke that he loved to cut the grass there, but not at the family home in Clayton.

A few times I had the high honor of throwing the first pitch to start the season, and today the Smyrna-Clayton Little League Park is named for Jim.

The people of Delaware will miss Jim, and I extend my prayers and thoughts to his loving family.●

RETIREMENT OF AIR FORCE
MAJOR GENERAL ROGER P.
LEMPKE

• Mr. NELSON of Nebraska. Mr. President, I wish to pay tribute to one of America's finest military leaders, Air Force MG Roger P. Lempke, on the occasion of his retirement as adjutant general of the Nebraska National Guard.

The National Guard has been tested by the wars in Iraq and Afghanistan more than any period since World War II. Nationally, it has been a true test of the Guard to maintain strength at

home and abroad during a time of lengthy deployments, mounting casualties, declining recruitment, and a shortage of equipment. Yet, in Nebraska during this period, under the competent leadership of General Lempke, the Nebraska National Guard has continued to thrive, pulling in record numbers of recruits, increasing retention, and establishing an active family support program.

General Lempke instills confidence, not only in the troops he commands and their families but in the elected officials he serves. Since the tragic attacks of September 11, 2001, and during the time of war that has followed, we are fortunate to have had his very capable leadership as he oversaw the National Guard's changing role into an active duty combat force. The American people have seen vividly that the National Guard is no longer a supplemental force; it serves in seamless fashion with the active duty.

As past president of the National Association of State Adjutants General, General Lempke has been a vocal advocate for the National Guard, working with the Pentagon to help shape policies on issues ranging from base closures to troop strength. A graduate of the Air Force Academy, this even-tempered Nebraska farm boy and devoted husband and father rose through the ranks to become a respected military leader, not only in Nebraska but among his peers nationally. He and I have worked closely together on many projects which benefited not only Nebraska but helped our Nation's military as a whole.

I will miss that close association with the general as our professional relationship comes to a close, but on a personal level, I will always be proud to call Roger P. Lempke a trusted and respected friend.●

REPORT ON THE CONTINUATION
OF THE NATIONAL EMERGENCY
DECLARED IN EXECUTIVE
ORDER 13413 WITH RESPECT TO
BLOCKING THE PROPERTY OF
PERSONS CONTRIBUTING TO THE
CONFLICT TAKING PLACE IN THE
DEMOCRATIC REPUBLIC OF THE
CONGO—PM 30

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

The situation in or in relation to the Democratic Republic of the Congo, which has been marked by widespread violence and atrocities that continue to threaten regional stability and was addressed by the United Nations Security Council in Resolution 1596 of April 18, 2005, Resolution 1649 of December 21, 2005, and Resolution 1698 of July 31, 2006, continues to pose an unusual and

extraordinary threat to the foreign policy of the United States. For this reason, I have determined that it is necessary to continue the national emergency declared in Executive Order 13413 of October 27, 2006, and the related measures blocking the property of certain persons contributing to the conflict.

Section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the *Federal Register* and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent the enclosed notice to the *Federal Register* for publication, stating that the national emergency with respect to the situation in or in relation to the Democratic Republic of the Congo, and the related measures blocking the property of certain persons contributing to the conflict in that country, must continue in effect beyond October 27, 2007.

GEORGE W. BUSH.
THE WHITE HOUSE, October 24, 2007.

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 11:43 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 327. An act to amend title 38, United States Code, to direct the Secretary of Veterans Affairs to develop and implement a comprehensive program designed to reduce the incidence of suicide among veterans.

H.R. 1284. An act to increase, effective as of December 1, 2007, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

H.R. 3233. An act to designate the facility of the United States Postal Service located at Highway 49 South in Piney Woods, Mississippi, as the "Laurence C. And Grace M. Jones Post Office Building".

The enrolled bills were subsequently signed by the President pro tempore (Mr. BYRD).

At 12:40 p.m., a message from the House of Representatives, delivered by Mrs. Cole, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1011. An act to designate additional National Forest System lands in the State of Virginia as wilderness or a wilderness study area, to designate the Kimberling Creek Potential Wilderness Area for eventual incorporation in the Kimberling Creek Wilderness, to establish the Seng Mountain and Bear Creek Scenic Areas, to provide for the development of trail plans for the wilderness areas and scenic areas, and for other purposes.

H.R. 1680. An act to authorize the Secretary of Homeland Security to regulate the

sale of ammonium nitrate to prevent and deter the acquisition of ammonium nitrate by terrorists, and for other purposes.

H.R. 1808. An act to designate the Department of Veterans Affairs Medical Center in Augusta, Georgia, as the "Charlie Norwood Department of Veterans Affairs Medical Center".

H.R. 1955. An act to prevent homegrown terrorism, and for other purposes.

H.R. 2408. An act to designate the Department of Veterans Affairs outpatient clinic in Green Bay, Wisconsin, as the "Milo C. Huempfer Department of Veterans Affairs Outpatient Clinic".

H.R. 2868. To eliminate the exemption from State regulation for certain securities designated by national securities exchanges.

H.R. 3927. An act to temporarily extend the programs under the Higher Education Act of 1965, and for other purposes.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1011. An act to designate additional National Forest System lands in the State of Virginia as wilderness or a wilderness study area, to designate the Kimberling Creek Potential Wilderness Area for eventual incorporation in the Kimberling Creek Wilderness, to establish the Seng Mountain and Bear Creek Scenic Areas, to provide for the development of trail plans for the wilderness areas and scenic areas, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 1680. To authorize the Secretary of Homeland Security to regulate the sale of ammonium nitrate to prevent and deter the acquisition of ammonium nitrate by terrorists, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

H.R. 1808. An act to designate the Department of Veterans Affairs Medical Center in Augusta, Georgia, as the "Charlie Norwood Department of Veterans Affairs Medical Center"; to the Committee on Veterans' Affairs.

H.R. 1955. An act to prevent homegrown terrorism, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

H.R. 2408. An act to designate the Department of Veterans Affairs outpatient clinic in Green Bay, Wisconsin, as the "Milo C. Huempfer Department of Veterans Affairs Outpatient Clinic"; to the Committee on Veterans' Affairs.

H.R. 2868. An act to eliminate the exemption from State regulation for certain securities designated by national securities exchanges; to the Committee on Banking, Housing, and Urban Affairs.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time, and placed on the calendar:

S. 2216. A bill to amend the Internal Revenue Code of 1986 to extend the Indian employment credit and the depreciation rules for property used predominantly within an Indian reservation.

S. 2217. A bill to amend the Internal Revenue Code of 1986 to extend the taxable income limit on percentage depletion for oil and natural gas produced from marginal properties.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 3564. An act to amend title 5, United States Code, to authorize appropriations for the Administrative Conference of the United States through fiscal year 2011, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-3729. A communication from the Assistant Chief Counsel for Hazardous Materials Safety, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Hazardous Materials: Revision of Requirements for Authorization of Use of International Standards" (RIN2137-AE01) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3730. A communication from the Regulatory Ombudsman, Federal Motor Carrier Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Fees for Unified Carrier Registration Plan and Agreement" (RIN2126-AB09) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3731. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "National Air Tour Safety Standards" (RIN2120-AF07)(Docket No. FAA-1998-4521) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3732. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revision of Class E Airspace; Noatak, AK" (RIN2120-AA66)(Docket No. 07-AAL-08) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3733. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "High-Intensity Radiated Fields Protection for Aircraft Electrical and Electronic Systems" (RIN2120-AI06)(Docket No. FAA-2206-23657) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3734. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Fire Penetration Resistance of Thermal Acoustic Insulation Installed on Transport Category Airplanes" (RIN2120-AI75)(Docket No. FAA-2006-24277) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3735. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Manhattan, KS" (RIN2120-AA66)(Docket No. 07-ACE-2) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3736. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Marshalltown, IA" (RIN2120-AA66)(Docket No. 07-ACE-4 page 27420) received on Octo-

ber 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3737. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Marshalltown, IA" (RIN2120-AA66)(Docket No. 07-ACE-4 page 27416) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3738. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Monticello, IA" (RIN2120-AA66)(Docket No. 07-ACE-3) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3739. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Monticello, IA" (RIN2120-AA66)(Docket No. 07-ACE-3 page 27415) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3740. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Recording of Major Repairs and Major Alterations" (RIN2120-AJ19)(Docket No. FAA-2007-28631) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3741. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Canby, MN" (RIN2120-AA66)(Docket No. 07-AGL-2) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3742. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Canby, MN" (RIN2120-AA66)(Docket No. 07-AGL-2 page 27417) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3743. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Establishment of Area Navigation Routes, Western United States" (RIN2120-AA66)(Docket No. 07-ANM-1) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3744. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Modification of Class E Airspace; Manhattan, KS" (RIN2120-AA66)(Docket No. 07-ACE-2 page 27418) received on October 19, 2007; to the Committee on Commerce, Science, and Transportation.

EC-3745. A communication from the Secretary of Transportation, transmitting, pursuant to law, a report entitled, "Alaskan Way Viaduct: Emergency Relief Eligibility"; to the Committee on Environment and Public Works.

EC-3746. A communication from the Chief of the Border Security Regulations Branch, Customs and Border Protection, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled "Technical Amendments to List of User Fee Airports" (CBP Dec. 07-83) received on October 18, 2007; to the Committee on Finance.

EC-3747. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed amendment to a manufacturing agreement for the export of defense services to Japan to support the maintenance of an infrared detecting system; to the Committee on Foreign Relations.

EC-3748. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, a proposed re-export of firearms for end-use by the Afghan National Army; to the Committee on Foreign Relations.

EC-3749. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed agreement for the export of defense articles and services to provide maintenance support for the Iraqi Government's UH-1H helicopters; to the Committee on Foreign Relations.

EC-3750. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed technical assistance agreement for the export of defense services and articles to Germany and the United Kingdom related to the Nemesis Multi-Band Viper Laser Based Directional Infrared Countermeasures System; to the Committee on Foreign Relations.

EC-3751. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed manufacturing license agreement for the export of defense articles and services to Italy to establish a depot repair facility for night vision equipment; to the Committee on Foreign Relations.

EC-3752. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed technical assistance agreement for the export of defense services and articles to Korea in support of the Multi-Role Electronically Scanned Array Radar; to the Committee on Foreign Relations.

EC-3753. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed license for the export of defense articles and services to Spain for the production of select components of the M2HB Machine Gun; to the Committee on Foreign Relations.

EC-3754. A communication from the Assistant Secretary, Office of Legislative Affairs, Department of State, transmitting, pursuant to law, the certification of a proposed manufacturing license agreement for the export of defense articles and services to Canada for the development and manufacture of 45/9mm GI ammunition; to the Committee on Foreign Relations.

EC-3755. A communication from the Secretary of Defense and Acting Secretary of Veterans Affairs, transmitting, the report of a draft bill entitled, "America's Wounded Warriors Act"; to the Committee on Veterans' Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. INOUE, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 1492. A bill to improve the quality of federal and state data regarding the availability and quality of broadband services and to promote the deployment of affordable

broadband services to all parts of the Nation (Rept. No. 110-204).

By Mr. BAUCUS, from the Committee on Finance, without amendment:

S. 2223. An original bill to amend the Internal Revenue Code of 1986 to provide additional tax incentives to promote habitat conservation and restoration, and for other purposes (Rept. No. 110-205).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of nominations were submitted:

By Mr. BIDEN for the Committee on Foreign Relations.

*Henrietta Holsman Fore, of Nevada, to be Administrator of the United States Agency for International Development.

*George E. Pataki, of New York, to be a Representative of the United States of America to the Sixty-second Session of the General Assembly of the United Nations.

*Kelly G. Knight, of Kentucky, to be an Alternate Representative of the United States of America to the Sixty-second Session of the General Assembly of the United Nations.

*Rodger D. Young, of Michigan, to be an Alternate Representative of the United States of America to the Sixty-second Session of the General Assembly of the United Nations.

*William H. Frist, of Tennessee, to be a Member of the Board of Directors of the Millennium Challenge Corporation for a term of three years.

*Kenneth Francis Hackett, of Maryland, to be a Member of the Board of Directors of the Millennium Challenge Corporation for a term of two years.

*David T. Johnson, of Georgia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be an Assistant Secretary of State (International Narcotics and Law Enforcement Affairs).

*Robin Renee Sanders, of New York, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federal Republic of Nigeria.

Nominee: Robin R. Sanders.

Post: Nigeria.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, none.
2. Spouse, none.
3. Children and spouses, N/A.
4. Parents: Geneva Sanders, none; Robert M. Sanders, none.

5. Grandparents: Lucille Lawrence, none. Robert Saunders, Mary Spear, Major Spear—all deceased.

6. Brothers and Spouses, N/A.
7. Sisters and spouses: Sharon L. Sanders, none; Paula L. Sanders, none.

*Barry Leon Wells, of Ohio, a Career Member of the Senior Executive Service, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of The Gambia.

Nominee: Barry Leon Wells.

Post: U.S. Ambassador, the Gambia.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, none.
2. Spouse: Winsome P. Wells, none.
3. Children and spouses: Alicia R and Jon Duleba, none; Trudyann Powell, none.
4. Parents: Deceased.
5. Grandparents: Deceased.
6. Brothers and spouses: N/A.
7. Sisters and spouses: N/A.

*Mark M. Boulware, of Texas, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Islamic Republic of Mauritania.

Nominee: Mark M. Boulware.

Post: Chief of Mission.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, none.
2. Spouse, none.
3. Children and spouses: Jeremy Boulware, none; Heather Boulware, none; Bartholemew Boulware, none; Alexander Boulware, none.

4. Parents: Everett L Boulware, deceased; Alice W. Boulware, none.

5. Grandparents: William T. Boulware, deceased; Mary C. Boulware, deceased; Clayton H. Chance, deceased; Beulah Chance, deceased.

6. Brothers and spouses: Michael D. Boulware, none; Mitchell D. Boulware, none; Sue Boulware, none.

7. Sisters and spouses: Marsha Yeager, none; William G. Yeager, none; Regina J. Gooden, none; Mark Gooden, none.

*James D. McGee, of Florida, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Zimbabwe.

Nominee: James David McGee.

Post: Zimbabwe.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, none.
2. Spouse: Shirley J. McGee, none.
3. Children & Spouses: N/A.
4. Parents: Ruby Mae McGee (nee: West), none; Jewel L. McGee, deceased.

5. Grandparents: James West, Sr., deceased; Malvena West, deceased; David McGee, deceased; Mary McGee, deceased.

6. Brothers and spouses: Ronald N. McGee, none; Kathy McGee, none.

7. Sisters and spouses: Mary Ann Dillahunty, none; Tyrone Dillahunty, none.

*Ronald K. McMullen, of Iowa, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the State of Eritrea.

Nominee: Ronald K. McMullen.

Post: State, Office Director, INL/AP.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, none.
2. Spouse: Jane E. McMullen, none.
3. Children and spouses: Owen G. and Wyatt K. McMullen, none.

4. Parents: Jack D. and Jane J. McMullen, none.

5. Grandparents: Wayne and Doris Keith, G.H. and Lefie McMullen, all deceased.

6. Brothers and spouses, N/A.

7. Sisters and spouses: Cheryl McMullen Cheng, none.

*P. Robert Fannin, of Arizona, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Dominican Republic.

Nominee: Paul Robert Fannin.
Post: Dominican Republic.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, 10/18/06, \$4,200, Jon Kyl; 10/16/06, \$1,000, JD Hayworth; 10/06/06, \$25,000, Republican National Committee; 9/26/06, \$1,100, Rick Renzi; 9/25/06, \$1,000, Rick Renzi; 9/5/06, \$1,000, John Shadegg; 8/30/06, \$1,000, JD Hayworth; 7/17/06, \$500.00, Ron Drake; 5/19/06, \$1,000, John Shadegg; 4/28/06, \$1,000, Straight Talk America; 3/14/06, \$10,000, Arizona Republican Party; 3/6/06, \$1,000, Mark Kennedy; 1/20/06, \$1,000, George Allen; 1/9/06, \$2,000, Rick Santorum; 1/4/06, \$2,500, Arizona Republican Party; 11/1/05, \$1,000, Arizona Republican Party; 6/16/05, \$500, Trent Franks; 5/6/05, \$2,000, Rick Renzi; 4/14/05, \$-500, Jon Kyl; 3/30/05, \$-1522.10, Jon Kyl; 3/16/05, \$2,500, Arizona Republican Party; 3/14/05, \$1,000, Conservative National Committee; 3/12/05, \$500, Jon Kyl; 2/15/05, \$1,000, Jon Kyl; 2/11/05, \$1,900, Jon Kyl; 11/22/04, \$538, Republican Party of Minnesota; 11/5/04, \$1329, Republican Federal Committee of Pennsylvania; 11/5/04, \$316, Nevada Republican State Central Committee; 11/4/04, \$696, Missouri Republican State Committee-Federal; 11/4/04, \$443, Oregon Republican Party; 11/4/04, \$379, Arkansas Leadership Committee 2004 FCR; 11/1/04, \$253, Maine Republican Party; 10/30/04, \$1,000, John McCain; 10/27/04, \$253, New Hampshire Republican Committee; 10/25/04, \$443, Republican Party of Iowa; 10/25/04, \$1,265, Ohio Republican Party State Central & Executive Committee; 10/21/04, \$1,000, John Shadegg; 10/19/04, \$1,000, Pete Coors; 10/19/04, \$1,076, Michigan Republican Party; 10/19/04, \$347, Washington State Republican Committee; 10/19/04, \$632, Republican Party of Wisconsin; 10/13/04, \$1,000, John McCain; 10/1/04, \$10,000, 2004 Joint State Victory Committee; 10/1/04, \$1,708, Republican Party of Florida; 8/12/04, \$1,200, Arizona Republican Party; 6/30/04, \$5,000, Arizona Republican Party; 6/3/04, \$300.00, Arizona Republican Party; 5/3/04, \$500, Jeff Flake; 4/13/04, \$2,000, Jon Kyl; 3/29/04, \$3,500, Arizona Republican Party; 3/26/04, \$1,000, John Thune; 2/17/04, \$1,000, Conservative National Committee; 2/6/2004, \$500, John Shadegg; 11/12/03, \$5,000, Arizona Republican Party; 10/17/03, \$500, Jon Kyl; 10/3/03, \$3,500, Arizona Republican Party; 6/30/03, \$2,000, George W. Bush; 5/21/03, \$1,000, Richard Shelby; 5/19/03, \$2,500, Senate Majority Fund; 5/14/03, \$1,000, Rick Renzi; 5/7/03, \$1,000, Jeff Flake; 4/17/03, \$1,000, Conservative National Committee; 4/4/03, \$1,500, Arizona Republican Party; 2/20/03, \$1,000, Charles Grassley; 2/14/03, \$1,000, John McCain; 12/17/02, \$250.00, Lisa Atkins; 9/24/02, \$1,000, Jim Kolbe; 9/20/02, \$2,500, The Leadership Committee; 9/18/02, \$2,500, The Leadership Committee; 8/13/02, \$250, John Ganske; 7/22/02, \$250, John Ganske; 6/12/02, \$1,500.00, Arizona Republican Party; 3/25/02, \$500.00, James Inhofe; 2/26/02, \$500, Susan Collins; 1/29/02, \$875, Larry Craig.

2. Spouse, none.

3. Children and spouses: Elizabeth "Lisa" Fannin, 10/18/06, \$4,200, Jon Kyl; 4/28/06, \$1,000, Straight Talk America; 9/5/06, \$1,000, John

Shadegg; 3/27/06, \$5,000, Arizona Republican Party; 3/10/06, \$500, American Society of Anesthesiologists PAC; 3/16/05, \$2,500, Arizona Republican Party; 3/15/05, \$700, Jon Kyl; 3/12/05, \$500, Jon Kyl; 2/11/05, \$900, Jon Kyl; 10/30/04, \$2,000, John McCain; 10/21/04, \$1,000, John Shadegg; 8/12/04, \$4,700, Arizona Republican Party; 6/30/04, \$5,000, Arizona Republican Party; 5/10/04, \$300, Arizona Republican Party; 5/3/04, \$500, Jeff Flake; 4/13/04, \$2,000, Jon Kyl; 3/9/04, \$500, American Society of Anesthesiologists PAC; 12/31/03, \$2,515, Arizona Republican Party; 11/12/03, \$5,000, Arizona Republican Party; 10/13/03, \$500, Arizona Republican Party; 6/30/03, \$2,000, George W. Bush; 5/17/03, \$2,500, Senate Majority Fund; 2/25/03, \$500, American Society of Anesthesiologists PAC; 2/14/03, \$1,000, John McCain; 12/17/02, \$250, Lisa Atkins; 9/20/02, \$5,000, The Leadership Committee; 5/17/02, \$1,000, John Shade; 4/6/02, \$1,000, Jeff Flake; 3/15/02, \$500, American Society of Anesthesiologists PAC; 2/26/02, \$500, Susan Collins. Paul Robert Fannin, Jr., 1/24/06, \$200, Jon Kyl; 11/28/05, \$1,900, Jon Kyl; 3/29/05, \$1,000, Jon Kyl; 3/12/05, \$500, Jon Kyl; 2/11/05, \$500, Jon Kyl; 10/30/04, \$2,000, John McCain; 10/26/04, \$2,000, Arizona Republican Party; 10/21/04, \$2,000, John Shadegg; 3/15/04, \$270, Arizona Republican Party; 11/28/03, \$5,000, Arizona Republican Party; 11/20/03, \$2,000, George W. Bush; 10/15/02, \$1,500, Rick Renzi; 5/22/02, \$300.00, Arizona Republican Party. Sheryl Sue Fannin, 6/14/06, \$500.00, Jon Kyl. Joseph William Fannin, none

4. Parents: Paul Jones Fannin, N/A. Elma Jean Fannin, N/A.

5. Grandparents: N/A.

6. Brothers and spouses: William Jones Fannin, none. Thomas Newton Fannin, 1/18/06, \$500, Jon Kyl; 2/23/05, \$500, Jon Kyl; 10/17/03, \$500, Jon Kyl; 10/15/02, \$1,000, Rick Renzi. Marianne Fannin, none.

7. Sisters and spouses: Linda Louise Rider, none.

*Christopher Egan, of Massachusetts, to be Representative of the United States of America to the Organization for Economic Cooperation and Development, with the rank of Ambassador.

Nominee: Christopher Fitzgerald Egan.

Post: U.S. Ambassador and Permanent Representative to the Organization for Economic Cooperation and Development.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self: (\$500), 1/22/2003, Republican State Cmte of Massachusetts; \$802, 6/30/2003, Bush, George W.; \$10,000, 12/31/2003, Republican National Cmte; \$2,000, 3/23/2004, Martinez, Mel; \$1,000, 3/29/2004, Paterno, Scott; \$2,000, 5/14/2004, Ryan, Jack; \$1,000, 5/26/2004, Republican State Cmte of Massachusetts; \$1,000, 7/1/2004, Crews, Ronald A.; \$5,000, 7/15/2004, 2004 Joint State Victory Committee; \$5,000, 7/15/2004, 2004 Joint Candidate Committee; \$20,000, 7/15/2004, Republican National Cmte; (\$2,000), 8/23/2004, Ryan, Jack; \$5,000, 10/5/2004, Republican National Cmte; \$1,000, 6/22/2005, Hastert, Dennis; \$2,000, 6/24/2005, Santorum, Rick; \$2,100, 9/20/2005, Taylor, Van; \$1,000, 9/30/2005, Talent, James M.; \$2,100, 11/1/2005, Ricketts, Pete; \$2,100, 11/1/2005, Ricketts, Pete; \$2,100, 12/15/2005, Steele, Michael; \$1,000, 1/17/2006, Snowe, Olympia J.; \$1,100, 3/6/2006, Talent, James M.; \$900, 3/6/2006, Talent, James M.; \$2,100, 3/31/2006, Lynch, Stephen F.; \$2,100, 4/21/2006, Taylor, Van; \$1,000, 6/27/2006, Kennedy, Mark; \$15,000, 6/28/2006, Republican State Cmte of Massachusetts; (\$5,000), 7/11/2006, Republican State Cmte of Massachusetts; \$1,500, 8/18/2006, Bradley, Jeb; \$25,000, 9/25/2006, Republican National Cmte; \$1,000, 10/31/2006, Sweeney,

John; \$1,000, 10/31/2006, Kuhl, Randy; \$1,000, 10/31/2006, Bass, Chalie; \$1,000, 11/1/2006, Schmidt, Jean; \$1,000, 11/1/2006, Ryon, Jim; \$1,000, 11/2/2006, Gutknecht, Gil; \$1,000, 11/4/2006, Lewis, Ron; \$1,000, 11/4/2006, Santorum, Rick.

2. Spouse: Jean C. Egan, \$10,000, 12/31/2003, Republican National Cmte; \$2,000, 4/22/2004, Martinez, Mel; \$2,100, 9/20/2005, Taylor, Van; \$1,000, 9/30/2005, Talent, James M.; \$2,100, 2/6/2006, Taylor, Van; \$2,100, 4/3/2006, Lynch, Stephen; \$2,000, 8/18/2006, Bradley, Jeb; \$15,000, 9/12/2006, Republican State Cmte of Massachusetts; (\$5,000), 9/19/2006, Republican State Cmte of Massachusetts; \$2,100, 10/23/2006, Lieberman, Joe.

3. Children and spouses: Mary Catherine Egan, none; Christopher C. Egan, none; Michael C. Egan, none.

Parents: Richard J. Egan, \$500, 6/9/2003, Federer, Bill; \$500, 6/9/2003, Cox, Christopher; \$500, 6/9/2003, National Republican Senatorial Cmte; \$1,000, 7/14/2003, Bunning, Jim; \$1,000, 11/13/2003, Lynch, Stephen F.; \$1,000, 12/2/2003, Republicans Abroad; \$25,000, 12/22/2003, Republican National Cmte; \$2,000, 3/1/2004, Nader, Ralph; \$2,000, 3/1/2004, Parke, Greg; \$2,000, 3/23/2004, Martinez, Mel; \$1,000, 5/27/2004, Ryan, Jack; \$250, 6/1/2004, National Republican Congressional Cmte; \$250, 6/8/2004, Capuano, Michael E.; \$1,000, 6/15/2004, Specter, Arlen; \$1,000, 6/24/2004, Crews, Ronald A.; \$20,000, 6/24/2004, RNC Presidential Trust; \$5,000, 6/30/2004, 2004 Joint State Victory Committee; \$5,000, 6/30/2004, 2004 Joint Candidate Committee; \$1,000, 7/15/2004, New Hampshire Republican State Cmte; \$500, 7/15/2004, Vermont Repub Federal Elections Cmte; \$1,000, 8/19/2004, Crews, Ronald A.; \$1,000, 8/19/2004, Thune, John; (\$1,000), 8/23/2004, Ryan, Jack; \$1,000, 9/19/2004, Bermudez, Claudia; \$1,000, 9/30/2004, Crews, Ronald A.; \$2,000, 10/5/2004, Martinez, Mel; \$1,000, 10/5/2004, Bass, Charles; \$1,000, 10/5/2004, Federer, Bill; \$1,000, 10/5/2004, Bunning, Jim; \$2,500, 10/28/2004, RNC Presidential Trust; \$1,000, 4/26/2005, NH Republican State Committee; \$500, 5/24/2005, Lewis, Hiram; \$1,000, 6/6/2005, Hastert, Dennis; \$2,000, 6/6/2005, Santorum, Rick; \$2,000, 9/15/2005, Talent, James M.; \$2,000, 1/5/2006, Bass, Charles; \$1,000, 1/31/2006, Harris, Katherine; \$2,000, 2/2/2006, Laffey, Stephen; \$2,000, 2/25/2006, Shaw, Clay; \$500, 2/25/2006, Delay, Tom; \$2,100, 3/31/2006, Lynch, Stephen F.; \$500, 5/19/2006, Morse, Charles A.; \$25,000, 6/20/2006, Republican National Cmte; \$1,000, 7/10/2006, Morse, Charles A.; \$14,000, 8/29/2006, Republican State Cmte of Massachusetts; (\$5,000), 9/19/2006, Republican State Cmte of Massachusetts; \$12,500, 10/20/2006, Republican Joint Candidate Committee; \$2,000, 10/31/2006, Santorum, Rick. Maureen E. Egan, \$1,000, 11/26/2003, Lynch, Stephen F.; \$10,000, 12/22/2003, Republican National Cmte; \$1,000, 3/12/2004, Paterno, Scott; \$2,000, 3/23/2004, Martinez, Mel; \$1,000, 5/27/2004, Ryan, Jack; \$20,000, 6/24/2004, RNC Presidential Trust; \$5,000, 6/30/2004, 2004 Joint State Victory Committee; \$5,000, 6/30/2004, 2004 Joint Candidate Committee; \$500, 7/15/2004, Vermont RSC Victory 2004; (\$1,000), 8/23/2004, Ryan, Jack; \$2,000, 9/30/2004, Crews, Ronald A.; \$2,000, 10/5/2004, Martinez, Mel; \$2,500, 10/21/2004, RNC Presidential Trust; \$1,000, 4/26/2005, NH Republican State Committee; \$1,000, 6/6/2005, Hastert, Dennis; \$2,000, 6/6/2005, Santorum, Rick; \$1,000, 9/15/2005, Talent, James M.; \$2,000, 2/2/2006, Laffey, Stephen; \$15,000, 8/29/2006, Republican State Cmte of Massachusetts; \$25,000, 9/11/2006, Republican National Cmte; (\$5,000), 9/19/2006, Republican State Cmte of Massachusetts; \$12,500, 10/20/2006, Republican Joint Candidate Committee; \$2,000, 10/31/2006, Santorum, Rick.

5. Grandparents: Kenneth Egan, deceased; Constance Egan, deceased; Patrick Fitzgerald—deceased; Mary Kate Fitzgerald—deceased.

Brothers and spouses: John R. Egan, \$10,000, 12/31/2003, Republican National Cmte; \$2,000, 3/23/2004, Martinez, Mel; \$2,000, 4/26/2004, Nader, Ralph; \$1,000, 7/6/2004, Crews, Ronald A.; \$5,000, 7/15/2004, 2004 Joint State Victory Committee; \$5,000, 7/15/2004, 2004 Joint Candidate Committee; \$20,000, 7/15/2004, Republican National Cmte; \$1,000, 6/22/2005, Hastert, Dennis; \$2,000, 6/24/2005, Santorum, Rick; \$15,000, 9/12/2006, Republican State Cmte of Massachusetts; (\$5,000), 9/19/2006, Republican State Cmte of Massachusetts; Pamela Egan, \$10,000, 12/31/2003, Republican National Cmte; \$2,000, 3/23/2004, Martinez, Mel; \$2,000, 4/26/2004, Nader, Ralph; \$15,000, 9/12/2006, Republican State Cmte of Massachusetts; (\$5,000), 9/19/2006, Republican State Cmte of Massachusetts; Michael J. Egan, \$2,000, 6/10/2003, Bush, George W.; \$5,000, 6/23/2003, Volunteer PAC; \$10,000, 12/31/2003, Republican National Cmte; \$2,000, 2/11/2004, Obey, David R.; \$2,000, 3/23/2004, Martinez, Mel; \$1,000, 7/1/2004, Crews, Ronald A.; \$5,000, 7/15/2004, 2004 Joint State Victory Committee; \$5,000, 7/15/2004, 2004 Joint Candidate Committee; \$20,000, 7/15/2004, Republican National Cmte; \$5,000, 10/6/2004, Republican National Cmte; \$1,000, 6/22/2005, Hastert, Dennis; \$2,100, 5/16/2006, Pombo, Richard; \$2,100, 5/16/2006, Pombo, Richard; \$15,000, 9/7/2006, Republican State Cmte of Massachusetts; (\$5,000), 9/19/2006, Republican State Cmte of Massachusetts; Donna Egan, \$2,000, 6/10/2003, Bush, George W.; \$10,000, 12/31/2003, Obey, David R.; \$2,000, 3/23/2004, Martinez, Mel; \$500, 12/20/2006, McCain, John.

7. Sisters and spouses: Maureen Petracca, \$2,000, 6/24/2003, Bush, George W.; \$10,000, 12/31/2003, Republican National Cmte; \$1,000, 6/22/2005, Hastert, Dennis; \$2,000, 6/24/2005, Santorum, Rick; \$15,000, 9/7/2006, Republican State Cmte of Massachusetts; (\$5,000), 9/19/2006, Republican State Cmte of Massachusetts; Paul Petracca, \$2,000, 6/24/2003, Bush, George W.; \$10,000, 12/31/2003, Republican National Cmte; \$1,000, 7/1/2004, Crews, Ronald A.; \$5,000, 7/15/2004, 2004 Joint State Victory Committee; \$5,000, 7/15/2004, 2004 Joint Candidate Committee; \$20,000, 7/15/2004, Republican National Cmte; \$1,000, 11/1/2004, Crapo, Mike; \$15,000, 9/7/2006, Republican State Cmte of Massachusetts; (\$5,000), 9/19/2006, Republican State Cmte of Massachusetts; Catherine Walkey, \$2,000, 6/27/2003, Bush, George W.; \$10,000, 12/31/2003, Republican National Cmte; \$2,000, 3/25/2004, Martinez, Mel; \$2,000, 4/30/2004, Nader, Ralph; \$1,000, 7/1/2004, Crews, Ronald A.; \$5,000, 7/15/2004, 2004 Joint State Victory Committee; \$5,000, 7/15/2004, 2004 Joint Candidate Committee; \$20,000, 7/15/2004, Republican National Cmte; \$5,000, 10/5/2004, Republican National Cmte; \$15,000, 9/7/2006, Republican State Cmte of Massachusetts; (\$5,000), 9/19/2006, Republican State Cmte of Massachusetts; Thomas R. Walkey, \$2,000, 6/27/2003, Bush, George W.; \$10,000, 12/31/2003, Republican National Cmte; \$2,000, 3/25/2004, Martinez, Mel; \$2,000, 4/30/2004, Nader, Ralph; \$15,000, 10/1/2004, Republican National Cmte; \$5,000, 10/6/2004, Republican National Cmte; \$1,000, 6/22/2005, Hastert, Dennis; \$2,000, 6/24/2005, Santorum, Rick; \$15,000, 9/7/2006, Republican State Cmte of Massachusetts; (\$5,000), 9/19/2006, Republican State Cmte of Massachusetts.

Louis John Nigro, Jr., of Florida, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Chad.

Nominee: Louis John Nigro, Jr.

Post: Ambassador, Republic of Chad.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by

them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, none.
2. Spouse: Tarja H. Nigro, none.
3. Children and spouses: N/A.
4. Parents: Louis J. Nigro, Sr., deceased; Marie Nigro, none.
5. Grandparents: Teresa Cavola, deceased; Michael Cavola, deceased; John Zulli, deceased; Catherine Zulli, deceased.
6. Brother and spouse: Robert Nigro, none; Anita Nigro, none.
7. Sisters and spouses: N/A.

Paul E. Simons, of Virginia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Chile.

Nominee: Paul Simons.

Post: Santiago, Chile.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, jointly w/spouse, \$100.00, 5/14/04, Democratic Nat'l Committee.
2. Spouse: see above.
3. Children and spouses: Andrea Simons, none; Camila Simons, none.
4. Parents: Joseph Simons, deceased; Gertrude Simons, none.
5. Grandparents: Oscar Bundschuh, deceased; Caroline Bundschuh, deceased; Edward Simons, deceased; Genevieve Simons, deceased.
6. Brother and spouse: Joseph Simons, none; Janet Simons, none.
7. Sisters and spouses: Mary Beth Ward, none; Timothy Ward, none.

*Gail Dennise Mathieu, of New Jersey, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Namibia.

Nominee: Gail Dennise Mathieu.

Post: U.S. Ambassador to Namibia.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, none.
2. Spouse: Erick Mathieu, none.
3. Children and spouses: Yuri K. Mathieu, none; Yasmin Mathieu, none.
4. Parents: Herbert D. Thomas, deceased; Mildred Thomas, deceased.
5. Grandparents: Mary Simmons, deceased; Henry Simmons, deceased; John Thomas, deceased; Emma Israel, deceased.
6. Brother and spouse: Nairobi Sailcat, none; Rose Sailcat, none.
7. Sisters and spouses: N/A.

*Dan Mozena, of Iowa, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Angola.

Nominee: Dan W. Mozena.

Post: Chief of Mission.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, none.
2. Spouse: none.
3. Children and spouses: Anne C. Mozena, none; Mark W. Mozena, none.
4. Parents: Kenneth E. Mozena, deceased; Edna C. Mozena, none.
5. Grandparents: Frank Mozena, deceased; Hattie Mozena, deceased; William Gottschalk, deceased; Charlotte Gottschalk, deceased.
6. Brothers and spouses: Darryl and Terry Mozena, \$250.00, 2003, Charles Grassley for Senate Committee; Jeffery and Janet Mozena, \$500.00, 2006, Mike Whalen for Congress; Terry and Angie Mozena, none.
7. Sister and spouse: Kris Ann (Mozena) McNamer, deceased.

*Eunice S. Reddick, of New York, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Gabonese Republic, and to serve concurrently and without additional compensation as Ambassador Extraordinary and Plenipotentiary of the United States of America to the Democratic Republic of Sao Tome and Principe.

Nominee: Eunice S. Reddick.

Post: Ambassador to Gabon.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, none.
2. Spouse: Marc M. Wall, none.
3. Children and spouses: Sarah Wall, none; Gregory Wall, none.
4. Parents: Ellsworth Reddick, deceased; Carrie Reddick, deceased.
5. Grandparents: Sophie Crawford, deceased; Henry Crawford, deceased.
6. Brothers and spouses: N/A.
7. Sisters and spouses: Helen Luchars, none; Robert Luchars, deceased.

*Daniel V. Speckhard, of Wisconsin, a Career Member of the Senior Executive Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Greece.

Nominee: Daniel Vern Speckhard.

Post: Athens.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, none.
2. Spouse: Anne Speckhard, none.
3. Children and spouses: Leah Speckhard, none; Jessica Speckhard, none; Daniel T. Speckhard, none.
4. Parents: Thomas T. Speckhard, \$35, Fall 2005, Democratic Congressional Campaign Committee; \$25, Fall 2006, Democratic Congressional Campaign Committee; \$50, 2006, Sen. Feingold; \$50, 2004, Congressman David Obey; Carol A. Speckhard, deceased;
5. Grandparents: Walter and Louise Speckhard, deceased; Vern and Lilian Bueror, deceased.
6. Brothers and spouses: Thomas J. Speckhard, none; James W. Speckhard, none.
7. Sisters and spouses: Kathleen Speckhard, deceased.

Thomas F. Stephenson, of California, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Portuguese Republic.

Nominee: Thomas F. Stephenson.

Post: Ambassador to Portugal.

(The following is a list of all members of my immediate family and their spouses. I have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, Donee:

1. Self, 25,000, 5/12/03, RNC 2,000, 6/15/03, Bush-Cheney '04 Inc; 25,000, 1/14/04, Republican Regents; 2,000, 3/7/04, John Thune for U.S. Senate; 2,000, 4/2/04, John Thune for U.S. Senate; 2,000, 5/10/04, Bill Jones for U.S. Senate; 2,000, 6/6/04, Bill Jones for U.S. Senate; 2,000, 9/9/04, Pete Coors for U.S. Senate; 25,000, 9/9/04, 2004 Joint Candidate Committee 1,000 10/6/04, Martinez for Senate; 25,000, 5/5/05, RNC; 4,200, 6/1/05, Talent for U.S. Senate; 4,200, 6/1/05, Santorum 2006; 1,000, 6/1/05, Ensign for Senate; 4,200, 6/1/05, Friends of George Allen; 5,000, 11/17/05, VOLPAC; 2,100, 1/11/06, Dreier for Congress; 5,000, 3/10/06, VOLPAC; 25,000, 5/15/06, RNC; 4,200, 5/30/06, Friend of Conrad Burns; 4,200, 7/11/06, Steele for Maryland Inc; 2,100, 8/17/06, Hastert for Congress; 2,100, 9/6/06, Mark Kennedy '06; 5,000, 9/15/06, Joint Candidate Committee; 2,100, 9/24/06, Corker for Senate; 2,100, 9/24/06, Tom Kean for U.S. Senate; 1,250, 10/2/06, Friends of Mike McGarvick; 1,250, 10/2/06, Mike DeWine for U.S. Senate; 2,500, 2/24/07, VOLPAC; 2,300, 3/6/07, Romney for President; 25,000, 4/2/07, RNC; 2,300, 5/30/07, Coleman for Senate.

Spouse: Barbara U. Stephenson, 25,000, 5/12/2003, RNC; 2,000, 6/15/2003, Bush-Cheney '04; 25,000, 1/14/2004, RNC; 2,000, 3/7/2004, John Thune for U.S. Senate; 2,000, 4/2/2004, John Thune for U.S. Senate; 2,000, 5/10/2004, Bill Jones for U.S. Senate; 2,000, 6/6/2004, Bill Jones for U.S. Senate; 2,000, 9/9/2004, Pete Coors for U.S. Senate; 25,000, 9/9/2004, 2004 Joint Candidate Committee; 25,000, 5/5/2005, RNC; 4,200, 6/1/2005, Talent for Senate; 4,200, 6/1/2005, Santorum 2006, 4,200, 6/1/2005, Friends of George Allen; 5,000, 11/17/2005, VOLPAC; 5,000, 3/10/2006, VOLPAC; 25,000, 5/15/2006, RNC; 4,200, 5/30/2006, Friends of Conrad Burns; 4,200, 7/11/2006, Steele for Maryland Inc.; 2,100, 8/17/2006, Hastert for Congress; 2,100, 9/6/2006, Mark Kennedy '06; 5,000, 9/15/2006, Joint Candidate Committee; 2,100, 9/24/2006, Corker for Senate; 2,100, 9/24/2006, Tom Kean for U.S. Senate; 2,100, 10/2/2006, Friends of Mike McGarvick; 2,100, 10/2/2006, Mike DeWine for U.S. Senate; 2,500, 2/24/2007, VOLPAC; 2,300, 3/6/2007, Romney for President Inc.; 25,000, 4/2/2007, RNC; 2,300, 5/30/2007, Coleman for Senate.

3. Children and spouses: Anne Stephenson Murphy, none; Taylor Murphy, none; Martin Barthmeir, none; Cameron W. Stephenson, none; Tenley Stephenson Pimentel, none; John Pimentel, \$1,000, 10/29/03, Bush-Cheney '04; \$1,000, 3/11/04, Bush-Cheney '04; \$2,300, 3/27/07, Romney for President.

4. Parents: Thomas W. Stephenson, none; Elizabeth F. Stephenson, deceased.

5. Grandparents: Gilbert Stephenson, deceased; Grace Stephenson, deceased; H. Walter Forster, deceased; Sylvia Forster, deceased.

6. Brothers and spouses: N/A.

7. Sisters and spouses: Nancy Nichols, deceased; Susan Gates, none; John Gates, none.

*Vincent Obsitnik, of Virginia, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Slovak Republic.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

Nominee: Vincent Obsitnik

Post: U.S. Ambassador to Slovakia.

(The following is a list of all members of my immediate family and their spouses. I

have asked each of these persons to inform me of the pertinent contributions made by them. To the best of my knowledge, the information contained in this report is complete and accurate.)

Contributions, Amount, Date, and Donee:

1. Self, 2003—\$15,000, 3/11/03, RNC—Eagles; \$2,000, 6/30/03, Bush Cheney 04 Inc.; \$1,000, 10/23/03, Friends of George Allen—see note below.

2004—\$2,000, 2/24/04, Natl Republican Senatorial Comm.; \$10,000, 4/6/04, RNC—T100; \$15,000, 4/7/04, RNC—T100; \$250, 7/13/04, Natl Republican Senatorial Comm.; \$50, 7/15/04, John Thune for US Senate; \$1,000, 8/17/04, Friends of George Allen; \$2,000, 8/17/04, Friends of George Allen; \$250, 9/8/04, Natl Republican Senatorial Comm.; \$1,000, 12/7/04, Friends of Dick Lugar.

2005—\$1,000, 3/17/05, Friends of George Allen; \$200, 3/29/05, Friends of George Allen; \$15,000, 8/8/05, RNC—T100; \$10,000, 8/8/05, RNC—T100. \$1,000, 12/30/05, Friends of George Allen.

2006—\$1,000, 2/9/06, Restore America PAC; \$500, 6/15/06, Santorum 2006; \$15,000, 10/3/06, RNC—T100; \$10,000, 10/4/06, RNC—T100.

2. Spouse: Annemarie Obsitnik, \$2,000, 6/3/03, Bush Cheney 04 Inc.

3. Children and spouses: Vincent M. Obsitnik, \$2,000, 12/03, Bush Cheney 04; \$ 500, 6/06, Santorum 2006; Suzanna Obsitnik, \$2,000, 12/03, Bush Cheney 04; Paul E. Obsitnik, \$500, 3/00, RNC; \$150, 5/02, RNC; \$150, 5/04, RNC Mehri A. Mehrabi, none; Stephen A. Obsitnik, none; Suzanne Tager, none; James T. Obsitnik, \$500, 10/5/04, Lead 21 (527); \$60, 7/7/05, Lead 21 (527); Anne Obsitnik, none;

4. Parents: Michael Obsitnik, deceased; Susan Obsitnik, deceased.

5. Grandparents: Michael and Maria Obsitnik, deceased. Lived in Czechoslovakia; Pavol and Zuzanna Cvercko, deceased. Lived in Czechoslovakia.

6. Brothers and spouses: Michael P. Obsitnik, none; Marilyn Obsitnik, \$200, 7/04, RNC; \$100, 10/04, RNC; \$100 1/05, Inaugural Committee; Thomas F. Obsitnik, none; Mary F. Obsitnik, none.

7. Sisters and spouses: Mary Ann Cizmar, none; Dr. Stephan Cizmar, \$25, 1/29/03, RNC; \$25, 1/4/05, RNC; \$25, 1/6/06, RNC; \$30, 12/8/06, RNC.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. CLINTON:

S. 2222. A bill to require the International Trade Commission to report on the specific impact of each free trade agreement in force with respect to the United States on a sector-by-sector basis, and for other purposes; to the Committee on Finance.

By Mr. BAUCUS:

S. 2223. An original bill to amend the Internal Revenue Code of 1986 to provide additional tax incentives to promote habitat conservation and restoration, and for other purposes; from the Committee on Finance; placed on the calendar.

By Mr. OBAMA (for himself and Mr. DURBIN):

S. 2224. A bill to require a licensee to notify the Nuclear Regulatory Commission, and the State and county in which a facility is located, whenever there is an unplanned release of radioactive substances; to the Committee on Environment and Public Works.

By Mrs. FEINSTEIN:

S. 2225. A bill to amend the Harmonized Tariff Schedule of the United States to clarify the tariff rate for certain mechanics' work gloves; to the Committee on Finance.

By Mr. NELSON of Florida:

S. 2226. A bill to recognize the Navy UDT-SEAL Museum in Fort Pierce, Florida, as the official national museum of Navy SEALs and their predecessors; to the Committee on Armed Services.

By Mr. OBAMA (for himself and Mr. REED):

S. 2227. A bill to provide grants to States to ensure that all students in the middle grades are taught an academically rigorous curriculum with effective supports so that students complete the middle grades prepared for success in high school and postsecondary endeavors, to improve State and district policies and programs relating to the academic achievement of students in the middle grades, to develop and implement effective middle school models for struggling students, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. LUGAR (for himself, Mr. LAUTENBERG, Mr. MENENDEZ, Mr. CARDIN, Mr. WHITEHOUSE, Mr. REED, Mr. HATCH, and Ms. COLLINS):

S. 2228. A bill to extend and improve agricultural programs, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. KERRY (for himself and Mr. KENNEDY):

S. Res. 355. A resolution expressing the sense of the Senate regarding Boston's celebration of the Little Rock Nine on the 50th anniversary of their courageous and selfless stand in the face of hatred, violence, and intolerance; to the Committee on the Judiciary.

ADDITIONAL COSPONSORS

S. 22

At the request of Mr. WEBB, the name of the Senator from Nebraska (Mr. HAGEL) was added as a cosponsor of S. 22, a bill to amend title 38, United States Code, to establish a program of educational assistance for members of the Armed Forces who serve in the Armed Forces after September 11, 2001, and for other purposes.

S. 38

At the request of Mr. DOMENICI, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 38, a bill to require the Secretary of Veterans Affairs to establish a program for the provision of readjustment and mental health services to veterans who served in Operation Iraqi Freedom and Operation Enduring Freedom, and for other purposes.

S. 211

At the request of Mrs. DOLE, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 211, a bill to facilitate nationwide availability of 2-1-1 telephone service for information and referral on human services, volunteer services, and for other purposes.

S. 388

At the request of Mr. THUNE, the name of the Senator from Virginia (Mr.

WEBB) was added as a cosponsor of S. 388, a bill to amend title 18, United States Code, to provide a national standard in accordance with which nonresidents of a State may carry concealed firearms in the State.

S. 469

At the request of Mr. BAUCUS, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of S. 469, a bill to amend the Internal Revenue Code of 1986 to make permanent the special rule for contributions of qualified conservation contributions.

S. 644

At the request of Mrs. LINCOLN, the name of the Senator from Pennsylvania (Mr. CASEY) was added as a cosponsor of S. 644, a bill to amend title 38, United States Code, to recodify as part of that title certain educational assistance programs for members of the reserve components of the Armed Forces, to improve such programs, and for other purposes.

S. 759

At the request of Mr. WEBB, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 759, a bill to prohibit the use of funds for military operations in Iran.

S. 819

At the request of Mr. DORGAN, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 819, a bill to amend the Internal Revenue Code of 1986 to expand tax-free distributions from individual retirement accounts for charitable purposes.

S. 1012

At the request of Ms. LANDRIEU, the name of the Senator from Alabama (Mr. SESSIONS) was added as a cosponsor of S. 1012, a bill to amend the Consumer Credit Protection Act to assure meaningful disclosures of the terms of rental-purchase agreements, including disclosures of all costs to consumers under such agreements, to provide certain substantive rights to consumers under such agreements, and for other purposes.

S. 1359

At the request of Mrs. MURRAY, the names of the Senator from New York (Mrs. CLINTON) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 1359, a bill to amend the Public Health Service Act to enhance public and health professional awareness and understanding of lupus and to strengthen the Nation's research efforts to identify the causes and cure of lupus.

S. 1512

At the request of Mr. COCHRAN, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 1512, a bill to amend part E of title IV of the Social Security Act to expand Federal eligibility for children in foster care who have attained age 18.

S. 1737

At the request of Mr. SESSIONS, the name of the Senator from Georgia (Mr.

ISAKSON) was added as a cosponsor of S. 1737, a bill to amend title XVIII of the Social Security Act to provide for a waiver of the 35-mile drive requirement for designations of critical access hospitals.

S. 1809

At the request of Mr. THUNE, the name of the Senator from Georgia (Mr. ISAKSON) was added as a cosponsor of S. 1809, a bill to amend the Internal Revenue Code of 1986 to provide that distributions from an individual retirement plan, a section 401(k) plan, a section 403(b) contract, or a section 457 plan shall not be includible in gross income to the extent used to pay long-term care insurance premiums.

S. 1818

At the request of Mr. OBAMA, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 1818, a bill to amend the Toxic Substances Control Act to phase out the use of mercury in the manufacture of chlorine and caustic soda, and for other purposes.

S. 1852

At the request of Mr. INOUE, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1852, a bill to designate the Friday after Thanksgiving of each year as "Native American Heritage Day" in honor of the achievements and contributions of Native Americans to the United States.

S. 1911

At the request of Mrs. CLINTON, the names of the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Florida (Mr. NELSON) were added as cosponsors of S. 1911, a bill to amend the Safe Drinking Water Act to protect the health of susceptible populations, including pregnant women, infants, and children, by requiring a health advisory, drinking water standard, and reference concentration for trichloroethylene vapor intrusion, and for other purposes.

S. 2075

At the request of Mr. BROWNBACK, the name of the Senator from Tennessee (Mr. CORKER) was added as a cosponsor of S. 2075, a bill to ensure that women seeking an abortion receive an ultrasound and the opportunity to review the ultrasound before giving informed consent to receive an abortion.

S. 2139

At the request of Ms. KLOBUCHAR, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 2139, a bill to amend title 38, United States Code, provide educational assistance under the Montgomery GI Bill for members of the National Guard and Reserve who serve extended period of continuous active duty that include a prolonged period of service in certain theaters of operation, and for other purposes.

S. 2166

At the request of Mr. CASEY, the name of the Senator from Maryland

(Ms. MIKULSKI) was added as a cosponsor of S. 2166, a bill to provide for greater responsibility in lending and expanded cancellation of debts owed to the United States and the international financial institutions by low-income countries, and for other purposes.

S. CON. RES. 48

At the request of Mr. JOHNSON, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. Con. Res. 48, a concurrent resolution expressing the sense of Congress regarding high level visits to the United States by democratically-elected officials of Taiwan.

S. RES. 118

At the request of Mr. LEVIN, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. Res. 118, a resolution urging the Government of Canada to end the commercial seal hunt.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 355—EXPRESSING THE SENSE OF THE SENATE REGARDING BOSTON'S CELEBRATION OF THE LITTLE ROCK NINE ON THE 50TH ANNIVERSARY OF THEIR COURAGEOUS AND SELFLESS STAND IN THE FACE OF HATRED, VIOLENCE, AND INTOLERANCE

Mr. KERRY (for himself and Mr. KENNEDY) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 355

Whereas, on October 24, 2007, the legacy of the Little Rock Nine will be celebrated in Boston's Faneuil Hall;

Whereas, in Faneuil Hall, abolitionists of the 19th Century publicly attacked the evils of slavery in the United States;

Whereas Massachusetts was the center of the United States abolitionist movement and a national leader in providing public education to all students, regardless of race or ethnicity;

Whereas abolitionist leader and Newburyport, Massachusetts native William Lloyd Garrison fueled the abolitionist movement through his powerful writing in his newspaper, "The Liberator", and fiery public oratory;

Whereas the "Father of American public education", Franklin, Massachusetts native Horace Mann, advocated for the end of slavery and improved access for all students to quality public education;

Whereas, in 1832, Garrison and other abolitionists gathered at the African Meeting House on Boston's Beacon Hill and founded the New England Anti-Slavery Society;

Whereas, in 1855, the Massachusetts legislature outlawed segregation in the State's public schools;

Whereas, on May 17, 1954, the United States Supreme Court issued its ruling in the case of Brown v. Board of Education of Topeka and declared that segregated education was unconstitutional;

Whereas many elementary and high schools and colleges and universities throughout the United States continued to enforce a system of educational inequality in

which students of color were denied access to their right to a quality public education;

Whereas, 3 years after the ruling in *Brown v. Board of Education of Topeka*, the school board of Little Rock, Arkansas, announced it would implement a gradual integration of its school system beginning in September 1957;

Whereas the Little Rock chapter of the National Association for the Advancement of Colored People selected 9 outstanding African-American students to attend previously all-White Little Rock Central High School;

Whereas, on September 4, 1957, those 9 African-American students, Minnijean Brown, Elizabeth Eckford, Ernest Green, Thelma Mothershed, Melba Pattillo, Gloria Ray, Terrence Roberts, Jefferson Thomas, and Carlotta Walls attempted to enter Central High School;

Whereas, on September 4, 1957, Arkansas Governor Orval Faubus mobilized the Arkansas National Guard and ordered the armed soldiers to block the 9 African-American students from entering Central High School;

Whereas, after a Federal judge ordered Governor Faubus to remove the National Guard, police officers and citizens of Little Rock took up positions at the entrances to Central High School and continued to block the African-American students from entering;

Whereas, on September 23, 1957, after learning that the 9 African-American students had successfully entered the school, a segregationist mob gathered at Central High School and the African-American students had to be escorted from the school for fear that they would be killed;

Whereas, on September 23, 1957, Little Rock Mayor Woodrow Mann, in a telegram to President Dwight D. Eisenhower, appealed to the President to send Federal troops to protect the students and ensure the integration of Central High School;

Whereas on September 24, 1957, President Eisenhower ordered the 101st Airborne Division of the United States Army to Little Rock and federalized the entire Arkansas National Guard;

Whereas, on September 25, 1957, Minnijean Brown, Elizabeth Eckford, Ernest Green, Thelma Mothershed, Melba Pattillo, Gloria Ray, Terrence Roberts, Jefferson Thomas, and Carlotta Walls walked through the front doors of Central High School, as thousands of White students had done before them;

Whereas despite the constant presence of United States soldiers, the 9 African-American students were physically and verbally harassed throughout the school year;

Whereas Minnijean Brown, after enduring months of physical and verbal harassment and assaults, was expelled from Central High School for a verbal retort aimed at one of her antagonists;

Whereas, at the end of the 1957–1958 school year, Ernest Green became the first African-American graduate in the history of Central High School;

Whereas Minnijean Brown Trickery became a prominent social activist and works as a writer and social worker in Ontario, Canada;

Whereas Ernest Green attended Michigan State University, later served as Assistant Secretary of Housing and Urban Affairs under President Jimmy Carter, and currently is a managing partner and vice president of Lehman Brothers;

Whereas Elizabeth Eckford had a successful career in the same United States Army that protected her at Central High School, raised 2 sons in Little Rock, and now works as a social worker;

Whereas Thelma Mothershed-Wair returned to school as a teacher and now volunteers in a program for abused women;

Whereas Melba Pattillo Beals is an author and journalist for *People Magazine* and *NBC Universal*;

Whereas Gloria Ray Karlmark graduated from Illinois Technical College and is a successful computer science writer whose work has been published in 39 countries;

Whereas Terrence Roberts is now Dr. Terrence Roberts and teaches at the University of California, Los Angeles (UCLA) and Antioch College and also works as a clinical psychologist;

Whereas Jefferson Thomas graduated from Central High School in 1960 and works for the Department of Defense as an accountant;

Whereas Carlotta Walls Lanier graduated from Central High School in 1959, attended Michigan State University, and has found success in the field of real estate;

Whereas the Little Rock Nine, in brave defiance of segregation, proved that with access to educational opportunity all students are capable of greatness, regardless of race or ethnicity;

Whereas the courage of the Little Rock Nine, broadcast for the entire world to see, inspired other students of all colors to take a stand on behalf of tolerance, integration, and equality;

Whereas the courage of the Little Rock Nine demonstrated to segregationists throughout the United States that hatred and intolerance were no match for the bravery of 9 high school students; and

Whereas, 50 years after the integration of Central High School, all Americans must remain vigilant in order to ensure that every child has access to quality public education, regardless of race or ethnicity: Now, therefore, be it

Resolved, That the Senate—

(1) joins with the people of Massachusetts in honoring the courage of the Little Rock Nine;

(2) pledges to advance the legacy of the Little Rock Nine;

(3) endeavors to ensure that no American is denied access to education because of race or ethnicity; and

(4) encourages the people of the United States to remember—

(A) the courage of the Little Rock Nine; and

(B) the vital importance of equal opportunity in education.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3451. Mr. LAUTENBERG proposed an amendment to the bill S. 294, to reauthorize Amtrak, and for other purposes.

SA 3452. Mr. SUNUNU proposed an amendment to the bill S. 294, supra.

SA 3453. Mr. SUNUNU proposed an amendment to the bill S. 294, supra.

SA 3454. Mr. LAUTENBERG (for Mr. CARPER) proposed an amendment to amendment SA 3452 proposed by Mr. SUNUNU to the bill S. 294, supra.

TEXT OF AMENDMENTS

SA 3451. Mr. LAUTENBERG proposed an amendment to the bill S. 294, to reauthorize Amtrak, and for other purposes; as follows:

In the table of contents, strike the items relating to title IV.

On page 22, line 2, insert “relevant” after “each”.

On page 22, line 4, insert “single, Nationwide” after “implement a”.

On page 28, line 12, insert “As part of its investigation, the Board has authority to re-

view the accuracy of the train performance data.” after “operator.”.

On page 29, line 15, insert “order the host rail carrier to” after “appropriate.”.

On page 29, between lines 23 and 24, insert the following:

(b) FEES.—The Surface Transportation Board may establish and collect filing fees from any entity that files a complaint under section 24308(f)(1) of title 49, United States Code, or otherwise requests or requires the Board’s services pursuant to this Act. The Board shall establish such fees at levels that will fully or partially, as the Board determines to be appropriate, offset the costs of adjudicating complaints under that section and other requests or requirements for Board action under this Act. The Board may waive any fee established under this subsection for any governmental entity as determined appropriate by the Board.

(c) AUTHORIZATION OF ADDITIONAL STAFF.—The Surface Transportation Board may increase the number of Board employees by up to 15 for the 5 fiscal year period beginning with fiscal year 2008 to carry out its responsibilities under section 24308 of title 49, United States Code, and this Act.

On page 29, line 24, strike “(b)” and insert “(d)”.

On page 51, between lines 4 and 5, insert the following:

(d) ACELA SERVICE STUDY.—

(1) IN GENERAL.—Amtrak shall conduct a study to determine the infrastructure and equipment improvements necessary to provide regular Acela service—

(A) between Washington, D.C. and New York City in 2 hours and 30 minutes; and

(B) between New York City and Boston in 3 hours and 15 minutes.

(2) ISSUES.—The study conducted under paragraph (1) shall include—

(A) an estimated time frame for achieving the trip time described in paragraph (1);

(B) an analysis of any significant obstacles that would hinder such an achievement; and

(C) a detailed description and cost estimate of the specific infrastructure and equipment improvements necessary for such an achievement.

(3) SECONDARY STUDY.—Amtrak shall provide an initial assessment of the infrastructure and equipment improvements, including an order of magnitude cost estimate of such improvements, that would be necessary to provide regular Acela service—

(A) between Washington, D.C. and New York City in 2 hours and 15 minutes; and

(B) between New York City and Boston in 3 hours.

(4) REPORT.—Not later than February 1, 2008, Amtrak shall submit a written report containing the results of the studies required under this subsection to—

(A) the Committee on Commerce, Science, and Transportation of the Senate;

(B) the Committee on Appropriations of the Senate;

(C) the Committee on Transportation and Infrastructure of the House of Representatives;

(D) the Committee on Appropriations of the House of Representatives; and

(E) the Federal Railroad Administration.

On page 57, strike lines 3 through 11.

On page 57, line 12, strike “(d)” and insert “(c)”.

On page 73, line 1, insert “2003,” after “years”.

On page 81, line 25, strike “and”.

On page 82, line 2, strike “(seq.)” and insert “(seq.); and”.

On page 82, between lines 2 and 3, insert the following:

“(3) the Railroad Unemployment Insurance Act (45 U.S.C. 351 et seq.).

On page 144, beginning with line 2, strike through the end of the bill.

SA 3452. Mr. SUNUNU proposed an amendment to the bill S. 294, to reauthorize Amtrak, and for other purposes; as follows:

At the end of the bill, add the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Internet Tax Freedom Act Amendments Act of 2007”.

SEC. 2. PERMANENT BAN OF INTERNET ACCESS TAXES.

(a) **IN GENERAL.**—Section 1101(a) of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking “during the period” through “2007”.

(b) **GRAND FATHERING OF STATES THAT TAX INTERNET ACCESS.**—Section 1104(a)(2) of such Act is amended to read as follows:

“(2) **STATE TELECOMMUNICATIONS SERVICE TAX.**—

“(A) **DATE FOR TERMINATION.**—This subsection shall not apply after November 1, 2006, with respect to a State telecommunications service tax described in subparagraph (B).

“(B) **DESCRIPTION OF TAX.**—A State telecommunications service tax referred to in subparagraph (A) is a State tax—

“(i) enacted by State law on or after October 1, 1991, and imposing a tax on telecommunications service; and

“(ii) applied to Internet access through administrative code or regulation issued on or after December 1, 2002.”.

SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

Section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

“(c) **APPLICATION OF DEFINITION.**—

“(1) **IN GENERAL.**—Effective as of November 1, 2003—

“(A) for purposes of subsection (a), the term ‘Internet access’ shall have the meaning given such term by section 1104(5) of this Act, as enacted on October 21, 1998; and

“(B) for purposes of subsection (b), the term ‘Internet access’ shall have the meaning given such term by section 1104(5) of this Act as enacted on October 21, 1998, and amended by section 2(c) of the Internet Tax Nondiscrimination Act (Public Law 108–435).

“(2) **EXCEPTIONS.**—Paragraph (1) shall not apply until November 1, 2007, to a tax on Internet access that is—

“(A) generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate administrative agency of a State or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner that is inconsistent with paragraph (1); or

“(B) the subject of litigation instituted in a judicial court of competent jurisdiction prior to July 1, 2007, in which a State or political subdivision is seeking to enforce, in a manner that is inconsistent with paragraph (1), such tax on telecommunications service purchased, used, or sold by a provider of Internet access.

“(3) **NO INFERENCE.**—No inference of legislative construction shall be drawn from this subsection or the amendments to section 1105(5) made by the Internet Tax Freedom Act Amendments Act of 2007 for any period prior to November 1, 2007, with respect to any tax subject to the exceptions described in subparagraphs (A) and (B) of paragraph (2).”.

SEC. 4. DEFINITIONS.

Section 1105 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) in paragraph (1) by striking “services”;

(2) by amending paragraph (5) to read as follows:

“(5) **INTERNET ACCESS.**—The term ‘Internet access’—

“(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

“(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold—

“(i) to provide such service; or

“(ii) to otherwise enable users to access content, information or other services offered over the Internet;

“(C) includes services that are incidental to the provision of the service described in subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity; and

“(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), or (C)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated with the charge for services described in subparagraph (A), (B), or (C).”.

(3) by amending paragraph (9) to read as follows:

“(9) **TELECOMMUNICATIONS.**—The term ‘telecommunications’ means ‘telecommunications’ as such term is defined in section 3(43) of the Communications Act of 1934 (47 U.S.C. 153(43)) and ‘telecommunications service’ as such term is defined in section 3(46) of such Act (47 U.S.C. 153(46)), and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 (26 U.S.C. 4251)).”.

(4) in paragraph (10) by adding at the end the following:

“(C) **SPECIFIC EXCEPTION.**—

“(i) **SPECIFIED TAXES.**—Effective November 1, 2007, the term ‘tax on Internet access’ also does not include a State tax expressly levied on commercial activity, modified gross receipts, taxable margin, or gross income of the business, by a State law specifically using one of the foregoing terms, that—

“(I) was enacted after June 20, 2005, and before November 1, 2007 (or, in the case of a State business and occupation tax, was enacted after January 1, 1932, and before January 1, 1936);

“(II) replaced, in whole or in part, a modified value-added tax or a tax levied upon or measured by net income, capital stock, or net worth (or, is a State business and occupation tax that was enacted after January 1, 1932 and before January 1, 1936);

“(III) is imposed on a broad range of business activity; and

“(IV) is not discriminatory in its application to providers of communication services, Internet access, or telecommunications.

“(ii) **MODIFICATIONS.**—Nothing in this subparagraph shall be construed as a limitation on a State’s ability to make modifications to a tax covered by clause (i) of this subparagraph after November 1, 2007, as long as the modifications do not substantially narrow the range of business activities on which the tax is imposed or otherwise disqualify the tax under clause (i).

“(iii) **NO INFERENCE.**—No inference of legislative construction shall be drawn from this subparagraph regarding the application of subparagraph (A) or (B) to any tax described in clause (i) for periods prior to November 1, 2007.”.

SEC. 5. CONFORMING AMENDMENTS.

(a) **ACCOUNTING RULE.**—Section 1106 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by striking “telecommunications services” each place it appears and inserting “telecommunications”, and

(2) in subsection (b)(2)—

(A) in the heading by striking “SERVICES”,

(B) by striking “such services” and inserting “such telecommunications”, and

(C) by inserting before the period at the end the following: “or to otherwise enable users to access content, information or other services offered over the Internet”.

(b) **VOICE SERVICES.**—The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking section 1108.

SEC. 6. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on November 1, 2007, and shall apply with respect to taxes in effect as of such date or thereafter enacted, except as provided in section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note).

SA 3453. Mr. SUNUNU proposed an amendment to the bill S. 294, to reauthorize Amtrak, and for other purposes; as follows:

On page 32, before line 21, insert the following:

(c) **LIMIT ON PASSENGER SUBSIDIES.**—

(1) **IN GENERAL.**—The Secretary of Transportation shall prohibit any Federal funds to be used for the operation of an Amtrak train route that has a per passenger subsidy, as determined by the Inspector General under paragraph (2), of not less than—

(A) \$200 during the first fiscal year beginning after the date of the enactment of this Act;

(B) \$175 during the second fiscal year beginning after the date of the enactment of this Act;

(C) \$150 during the third fiscal year beginning after the date of the enactment of this Act;

(D) \$125 during the fourth fiscal year beginning after the date of the enactment of this Act; and

(E) \$100 during any fiscal year beginning after the time period described in subparagraph (D).

(2) **DETERMINATION OF SUBSIDY LEVEL.**—The Inspector General of the Department of Transportation, using data provided by Amtrak, shall determine the difference between the average fully allocated operating cost per passenger and the average ticket price collected for each train route operated by Amtrak during the most recent 12-month period for which data is available.

(3) **REPORT.**—

(A) **IN GENERAL.**—Not later than 6 months before the end of each fiscal year, and every 6 months thereafter, the Inspector General shall publish a report that—

(i) lists the subsidy levels determined under paragraph (2); and

(ii) includes a statement that Amtrak will terminate any train route that has a per passenger subsidy in excess of the limits set forth in paragraph (1).

(B) **DISTRIBUTION.**—The Inspector General shall display the report published under subparagraph (A) on the Internet and submit a copy of such report to—

(i) the President of Amtrak;

(ii) the Secretary of Transportation;

(iii) the Committee on Commerce, Science, and Transportation of the Senate; and

(iv) the Committee on Transportation and Infrastructure of the House of Representatives.

SA 3454. Mr. LAUTENBERG (for Mr. CARPER) proposed an amendment to amendment SA 3452 proposed by Mr. SUNUNU to the bill S. 294, to reauthorize Amtrak, and for other purposes; as follows:

1. SHORT TITLE.

This Act may be cited as the "Internet Tax Freedom Act Amendments Act of 2007".

SEC. 2. MORATORIUM.

The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) in section 1101(a) by striking "2007" and inserting "2011", and

(2) in section 1104(a)(2)(A) by striking "2007" and inserting "2011".

SEC. 3. GRANDFATHERING OF STATES THAT TAX INTERNET ACCESS.

Section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by adding at the end the following:

"(C) APPLICATION OF DEFINITION.—

"(1) IN GENERAL.—Effective as of November 1, 2003—

"(A) for purposes of subsection (a), the term 'Internet access' shall have the meaning given such term by section 1104(5) of this Act, as enacted on October 21, 1998; and

"(B) for purposes of subsection (b), the term 'Internet access' shall have the meaning given such term by section 1104(5) of this Act as enacted on October 21, 1998, and amended by section 2(c) of the Internet Tax Nondiscrimination Act (Public Law 108-435).

"(2) EXCEPTIONS.—Paragraph (1) shall not apply until November 1, 2007, to a tax on Internet access that is—

"(A) generally imposed and actually enforced on telecommunications service purchased, used, or sold by a provider of Internet access, but only if the appropriate administrative agency of a State or political subdivision thereof issued a public ruling prior to July 1, 2007, that applied such tax to such service in a manner that is inconsistent with paragraph (1); or

"(B) the subject of litigation instituted in a judicial court of competent jurisdiction prior to July 1, 2007, in which a State or political subdivision is seeking to enforce, in a manner that is inconsistent with paragraph (1), such tax on telecommunications service purchased, used, or sold by a provider of Internet access.

"(3) NO INFERENCE.—No inference of legislative construction shall be drawn from this subsection or the amendments to section 1105(5) made by the Internet Tax Freedom Act Amendments Act of 2007 for any period prior to November 1, 2007, with respect to any tax subject to the exceptions described in subparagraphs (A) and (B) of paragraph (2)."

SEC. 4. DEFINITIONS.

Section 1105 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) in paragraph (1) by striking "services",

(2) by amending paragraph (5) to read as follows:

"(5) INTERNET ACCESS.—The term 'Internet access'—

"(A) means a service that enables users to connect to the Internet to access content, information, or other services offered over the Internet;

"(B) includes the purchase, use or sale of telecommunications by a provider of a service described in subparagraph (A) to the extent such telecommunications are purchased, used or sold—

"(i) to provide such service; or

"(ii) to otherwise enable users to access content, information or other services offered over the Internet;

"(C) includes services that are incidental to the provision of the service described in

subparagraph (A) when furnished to users as part of such service, such as a home page, electronic mail and instant messaging (including voice- and video-capable electronic mail and instant messaging), video clips, and personal electronic storage capacity; and

"(D) does not include voice, audio or video programming, or other products and services (except services described in subparagraph (A), (B), or (C)) that utilize Internet protocol or any successor protocol and for which there is a charge, regardless of whether such charge is separately stated or aggregated, with the charge for services described in subparagraph (A), (B), or (C)."

(3) by amending paragraph (9) to read as follows:

"(9) TELECOMMUNICATIONS.—The term 'telecommunications' means 'telecommunications' as such term is defined in section 3(43) of the Communications Act of 1934 (47 U.S.C. 153(43)) and 'telecommunications service' as such term is defined in section 3(46) of such Act (47 U.S.C. 153(46)), and includes communications services (as defined in section 4251 of the Internal Revenue Code of 1986 (26 U.S.C. 4251)),", and

(4) in paragraph (10) by adding at the end the following:

"(C) SPECIFIC EXCEPTION.—

"(i) SPECIFIED TAXES.—Effective November 1, 2007, the term 'tax on Internet access' also does not include a State tax expressly levied on commercial activity, modified gross receipts, taxable margin, or gross income of the business, by a State law specifically using one of the foregoing terms, that—

"(I) was enacted after June 20, 2005, and before November 1, 2007 (or, in the case of a State business and occupation tax, was enacted after January 1, 1932, and before January 1, 1936);

"(II) replaced, in whole or in part, a modified value-added tax or a tax levied upon or measured by net income, capital stock, or net worth (or, is a State business and occupation tax that was enacted after January 1, 1932 and before January 1, 1936);

"(III) is imposed on a broad range of business activity; and

"(IV) is not discriminatory in its application to providers of communication services, Internet access, or telecommunications.

"(ii) MODIFICATIONS.—Nothing in this subparagraph shall be construed as a limitation on a State's ability to make modifications to a tax covered by clause (i) of this subparagraph after November 1, 2007, as long as the modifications do not substantially narrow the range of business activities on which the tax is imposed or otherwise disqualify the tax under clause (i).

"(iii) NO INFERENCE.—No inference of legislative construction shall be drawn from this subparagraph regarding the application of subparagraph (A) or (B) to any tax described in clause (i) for periods prior to November 1, 2007."

SEC. 5. CONFORMING AMENDMENTS.

(a) ACCOUNTING RULE.—Section 1106 of the Internet Tax Freedom Act (47 U.S.C. 151 note) is amended—

(1) by striking "telecommunications services" each place it appears and inserting "telecommunications", and

(2) in subsection (b)(2)—

(A) in the heading by striking "SERVICES",

(B) by striking "such services" and inserting "such telecommunications", and

(C) by inserting before the period at the end the following: "or to otherwise enable users to access content, information or other services offered over the Internet".

(b) VOICE SERVICES.—The Internet Tax Freedom Act (47 U.S.C. 151 note) is amended by striking section 1108.

SEC. 6. EFFECTIVE DATE.

This Act, and the amendments made by this Act, shall take effect on November 1, 2007, and shall apply with respect to taxes in effect as of such date or thereafter enacted, except as provided in section 1104 of the Internet Tax Freedom Act (47 U.S.C. 151 note).

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition and Forestry be authorized to meet in executive session during the session of the Senate on Wednesday, October 24, 2007, at 10 a.m. in SR-328A. The committee will be considering the 2007 farm bill.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on October 24, 2007, at 2 p.m., in order to conduct a hearing entitled "International Accounting Standards: Opportunities, Challenges, and Global Convergence Issues."

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, Transportation be authorized to hold a hearing during the session of the Senate on Wednesday, October 24, 2007, at 10 a.m., in room 253 of the Russell Senate Office Building.

At this hearing, committee members will assess the state of innovation and competition in the radio market.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, October 24, 2007, at 9:30 a.m., in order to hold a hearing on the Great Lakes region of Africa.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, October 24, 2007, at 1:45 p.m., in order to hold a business meeting.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet during the session of the Senate on Wednesday, October 24, 2007, at 10 a.m., in order

to conduct a hearing entitled "Watching the Watch List: Building an Effective Terrorist Screening System."

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet, during the session of the Senate, in order to conduct a hearing entitled "Nominations" on Wednesday, October 24, 2007. The meeting will commence at 10 a.m. in room 226 of the Dirksen Senate Office Building.

Witness list

Panel I: Ronald Jay Tenpas to be Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice.

Panel II: Joseph N. Laplante to be United States District Judge for the District of New Hampshire; Reed Charles O'Connor to be United States District Judge for the Northern District of Texas, Dallas Division; Thomas D. Schroeder to be United States District Judge for the Middle District of North Carolina; Amul R. Thapar to be United States District Judge for the Eastern District of Kentucky.

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

COMMITTEE ON THE JUDICIARY

Mr. REID. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet, during the session of the Senate, in order to conduct a hearing entitled "The Role of Federally-Funded University Research in the Patent System" on Wednesday, October 24, 2007. The meeting will commence at 1:30 p.m. in room 226 of the Dirksen Senate Office Building.

Witness list

Arti K. Rai, Professor of Law, Duke University School of Law, Durham, NC; Elizabeth Hoffman, Executive Vice President and Provost, Iowa State University, Ames, IA; Robert Weissman, Director, Essential Action, Washington, DC; Dr. Charles Louis, Vice Chancellor for Research, University of California, Riverside, Riverside, CA.

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

COMMITTEE ON VETERANS' AFFAIRS

Mr. REID. Mr. President, I ask unanimous consent for the Committee on Veterans' Affairs to be authorized to meet during the session of the Senate on Wednesday, October 24, 2007, in order to conduct a hearing on pending legislation. The committee will meet in room 562 of the Dirksen Senate Office Building, at 9:30 a.m.

THE PRESIDING OFFICER. without objection, it is so ordered.

SPECIAL COMMITTEE ON AGING

Mr. REID. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet during the session of the Senate on Wednesday, October 24, 2007, from 10:30

a.m.–12:30 p.m. in room 628 of the Dirksen Senate Office Building for the purpose of conducting a hearing.

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

SUBCOMMITTEE ON PRIVATE SECTOR AND CONSUMER SOLUTIONS TO GLOBAL WARMING AND WILDLIFE PROTECTION

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works, Subcommittee on Private Sector and Consumer Solutions to Global Warming and Wildlife Protection, be authorized to meet during the session of the Senate on Wednesday, October 24, 2007, at 2:30 p.m. in room 406 of the Dirksen Senate Office Building in order to hold a hearing entitled, "A hearing to examine America's Climate Security Act of 2007."

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

DEPARTMENTS OF LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION APPROPRIATIONS ACT, 2008

On Tuesday, October 23, 2007, the Senate passed H.R. 3043, as amended, as follows:

H.R. 3043

Resolved, That the bill from the House of Representatives (H.R. 3043) entitled "An Act making appropriations for the Departments of Labor, Health and Human Services, and Education, and related agencies for the fiscal year ending September 30, 2008, and for other purposes," do pass with the following amendment:

Strike out all after the enacting clause and insert:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Labor, Health and Human Services, and Education, and Related Agencies for the fiscal year ending September 30, 2008, and for other purposes, namely:

TITLE I

DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION
TRAINING AND EMPLOYMENT SERVICES
(INCLUDING RESCISSION)

For necessary expenses of the Workforce Investment Act of 1998 (WIA), the Denali Commission Act of 1998, and the Women in Apprenticeship and Non-Traditional Occupations Act of 1992, including the purchase and hire of passenger motor vehicles, the construction, alteration, and repair of buildings and other facilities, and the purchase of real property for training centers as authorized by the WIA; \$3,587,138,000, plus reimbursements, is available. Of the amounts provided:

(1) for grants to States for adult employment and training activities, youth activities, and dislocated worker employment and training activities, \$2,994,510,000 as follows:

(A) \$864,199,000 for adult employment and training activities, of which \$152,199,000 shall be available for the period July 1, 2008 to June 30, 2009, and of which \$712,000,000 shall be available for the period October 1, 2008 through June 30, 2009;

(B) \$940,500,000 for youth activities, which shall be available for the period April 1, 2008 through June 30, 2009; and

(C) \$1,189,811,000 for dislocated worker employment and training activities, of which

\$341,811,000 shall be available for the period July 1, 2008 through June 30, 2009, and of which \$848,000,000 shall be available for the period October 1, 2008 through June 30, 2009:

Provided, That notwithstanding the transfer limitation under section 133(b)(4) of the WIA, up to 30 percent of such funds may be transferred by a local board if approved by the Governor:

(2) for federally administered programs, \$481,540,000 as follows:

(A) \$282,092,000 for the dislocated workers assistance national reserve, of which \$3,700,000 shall be available on October 1, 2007, of which \$66,392,000 shall be available for the period July 1, 2008 through June 30, 2009, and of which \$212,000,000 shall be available for the period October 1, 2008 through June 30, 2009: *Provided*, That up to \$150,000,000 may be made available for Community-Based Job Training Grants from funds reserved under section 132(a)(2)(A) of the WIA and shall be used to carry out such grants under section 171(d) of such Act, except that the 10 percent limitation otherwise applicable to the amount of funds that may be used to carry out section 171(d) shall not be applicable to funds used for Community-Based Job Training grants: *Provided further*, That funds provided to carry out section 132(a)(2)(A) of the WIA may be used to provide assistance to a State for State-wide or local use in order to address cases where there have been worker dislocations across multiple sectors or across multiple local areas and such workers remain dislocated; coordinate the State workforce development plan with emerging economic development needs; and train such eligible dislocated workers: *Provided further*, That funds provided to carry out section 171(d) of the WIA may be used for demonstration projects that provide assistance to new entrants in the workforce and incumbent workers: *Provided further*, That \$1,500,000 shall be for a non-competitive grant to the AFL-CIO Working for America Institute, which shall be awarded not later than 30 days after the date of enactment of this Act: *Provided further*, That \$2,200,000 shall be for a non-competitive grant to the AFL-CIO Appalachian Council, Incorporated, for Job Corps career transition services, which shall be awarded not later than 30 days after the date of enactment of this Act:

(B) \$53,696,000 for Native American programs, which shall be available for the period July 1, 2008 through June 30, 2009;

(C) \$79,752,000 for migrant and seasonal farmworkers, including \$74,302,000 for formula grants, \$4,950,000 for migrant and seasonal housing (of which not less than 70 percent shall be for permanent housing), and \$500,000 for other discretionary purposes, which shall be available for the period July 1, 2008 through June 30, 2009: *Provided*, That, notwithstanding any other provision of law or related regulation, the Department shall take no action limiting the number or proportion of eligible participants receiving related assistance services or discouraging grantees from providing such services;

(D) \$1,000,000 for carrying out the Women in Apprenticeship and Nontraditional Occupations Act, which shall be available for the period July 1, 2008 through June 30, 2009; and

(E) \$65,000,000 for YouthBuild activities as described in section 173A of the WIA, which shall be available for the period April 1, 2008 through June 30, 2009;

(3) for national activities, \$111,088,000, which shall be available for the period July 1, 2008 through July 30, 2009 as follows:

(A) \$30,650,000 for Pilots, Demonstrations, and Research, of which \$27,650,000 shall be available for noncompetitive grants, with the terms, conditions and amounts specified in the committee report of the Senate accompanying this Act: *Provided*, That funding provided to carry out projects under section 171 of the WIA that are identified in the committee report accompanying this Act, shall not be subject to the requirements of section 171(b)(2)(B) and 171(c)(4)(D) of the

WIA, the joint funding requirements of sections 171(b)(2)(A) and 171(c)(4)(A) of the WIA, or any time limit requirements of sections 171(b)(2)(C) and 171(c)(4)(B) of the WIA;

(B) \$13,642,000 for ex-offender activities, under the authority of section 171 of the Act, notwithstanding the requirements of sections 171(b)(2)(B) or 171(c)(4)(D);

(C) \$4,921,000 for Evaluation under section 172 of the WIA; and

(D) \$6,875,000 for the Denali Commission, which shall be available for the period July 1, 2008 through June 30, 2009.

Of the amounts made available under this heading in Public Law 107-116 to carry out the activities of the National Skills Standards Board, \$44,063 are hereby rescinded.

COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

To carry out title V of the Older Americans Act of 1965, as amended, \$483,611,000, which shall be available for the period July 1, 2008 through June 30, 2009.

FEDERAL UNEMPLOYMENT BENEFITS AND ALLOWANCES

For payments during fiscal year 2008 of trade adjustment benefit payments and allowances under part I of subchapter B of chapter II of the Trade Act of 1974 and section 246 of that Act; and for training, allowances for job search and relocation, and related State administrative expenses under part II of subchapter B of chapter 2, title II of the Trade Act of 1974 (including the benefits and services described under sections 123(c)(2) and 151(b) and (c) of the Trade Adjustment Assistance Reform Act of 2002, Public Law 107-210), \$888,700,000, together with such amounts as may be necessary to be charged to the subsequent appropriation for payments for any period subsequent to September 15, 2008.

STATE UNEMPLOYMENT INSURANCE AND EMPLOYMENT SERVICE OPERATIONS

For authorized administrative expenses, \$98,409,000, together with not to exceed \$3,248,223,000 which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund ("the Trust Fund"), of which:

(1) \$2,510,723,000 from the Trust Fund is for grants to States for the administration of State unemployment insurance laws as authorized under title III of the Social Security Act (including \$10,000,000 to conduct in-person reemployment and eligibility assessments in one-stop career centers of claimants of unemployment insurance), the administration of unemployment insurance for Federal employees and for ex-service members as authorized under sections 8501-8523 of title 5, United States Code, and the administration of trade readjustment allowances and alternative trade adjustment assistance under the Trade Act of 1974, and shall be available for obligation by the States through December 31, 2008, except that funds used for automation acquisitions shall be available for obligation by the States through September 30, 2010, and funds used for unemployment insurance workloads experienced by the States through September 30, 2008 shall be available for Federal obligation through December 31, 2008;

(2) \$10,500,000 from the Trust Fund is for national activities necessary to support the administration of the Federal-State unemployment insurance system;

(3) \$693,000,000 from the Trust Fund, together with \$22,883,000 from the General Fund of the Treasury, is for grants to States in accordance with section 6 of the Wagner-Peyser Act, and shall be available for Federal obligation for the period July 1, 2008 through June 30, 2009;

(4) \$34,000,000 from the Trust Fund is for national activities of the Employment Service, including administration of the work opportunity tax credit under section 51 of the Internal Revenue Code of 1986, the administration of activities, including foreign labor certifications, under the Immigration and Nationality Act, and the

provision of technical assistance and staff training under the Wagner-Peyser Act, including not to exceed \$1,228,000 that may be used for amortization payments to States which had independent retirement plans in their State employment service agencies prior to 1980;

(5) \$55,985,000 from the General Fund is to provide workforce information, national electronic tools, and one-stop system building under the Wagner-Peyser Act and shall be available for Federal obligation for the period July 1, 2008 through June 30, 2009; and

(6) \$19,541,000 is to provide for work incentive grants to the States and shall be available for the period July 1, 2008 through June 30, 2009:

Provided, That to the extent that the Average Weekly Insured Unemployment (AWIU) for fiscal year 2008 is projected by the Department of Labor to exceed 2,786,000, an additional \$28,600,000 from the Trust Fund shall be available for obligation for every 100,000 increase in the AWIU level (including a pro rata amount for any increment less than 100,000) to carry out title III of the Social Security Act: Provided further, That funds appropriated in this Act that are allotted to a State to carry out activities under title III of the Social Security Act may be used by such State to assist other States in carrying out activities under such title III if the other States include areas that have suffered a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act: Provided further, That funds appropriated in this Act which are used to establish a national one-stop career center system, or which are used to support the national activities of the Federal-State unemployment insurance or immigration programs, may be obligated in contracts, grants, or agreements with non-State entities: Provided further, That funds appropriated under this Act for activities authorized under title III of the Social Security Act and the Wagner-Peyser Act may be used by States to fund integrated Unemployment Insurance and Employment Service automation efforts, notwithstanding cost allocation principles prescribed under the Office of Management and Budget Circular A-87.

In addition, \$40,000,000 from the Employment Security Administration Account of the Unemployment Trust Fund shall be available to conduct in-person reemployment and eligibility assessments in one-stop career centers of claimants of unemployment insurance: Provided, That not later than 180 days following the end of the current fiscal year, the Secretary shall submit an interim report to the Congress that includes available information on expenditures, number of individuals assessed, and outcomes from the assessments: Provided further, That not later than 18 months following the end of the fiscal year, the Secretary of Labor shall submit to the Congress a final report containing comprehensive information on the estimated savings that result from the assessments of claimants and identification of best practices.

ADVANCES TO THE UNEMPLOYMENT TRUST FUND AND OTHER FUNDS

For repayable advances to the Unemployment Trust Fund as authorized by sections 905(d) and 1203 of the Social Security Act, as amended, and to the Black Lung Disability Trust Fund as authorized by section 9501(c)(1) of the Internal Revenue Code of 1954, as amended; and for non-repayable advances to the Unemployment Trust Fund as authorized by section 8509 of title 5, United States Code, and to the "Federal unemployment benefits and allowances" account, to remain available until September 30, 2009, \$437,000,000.

In addition, for making repayable advances to the Black Lung Disability Trust Fund in the current fiscal year after September 15, 2008, for costs incurred by the Black Lung Disability Trust Fund in the current fiscal year, such sums as may be necessary.

PROGRAM ADMINISTRATION

For expenses of administering employment and training programs, \$91,133,000, together with not to exceed \$94,372,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund.

EMPLOYEE BENEFITS SECURITY ADMINISTRATION SALARIES AND EXPENSES

For necessary expenses for the Employee Benefits Security Administration, \$143,262,000.

PENSION BENEFIT GUARANTY CORPORATION

PENSION BENEFIT GUARANTY CORPORATION FUND

The Pension Benefit Guaranty Corporation is authorized to make such expenditures, including financial assistance authorized by section 104 of Public Law 96-364, within limits of funds and borrowing authority available to such Corporation, and in accord with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of the Government Corporation Control Act, as amended (31 U.S.C. 9104), as may be necessary in carrying out the program, including associated administrative expenses, through September 30, 2008, for such Corporation: Provided, That none of the funds available to the Corporation for fiscal year 2008 shall be available for obligations for administrative expenses in excess of \$411,151,000: Provided further, That obligations in excess of such amount may be incurred after approval by the Office of Management and Budget and the Committees on Appropriations of the House and Senate: Provided further, That to the extent that the number of new plan participants in plans terminated by the Corporation exceeds 100,000 in fiscal year 2008, an amount not to exceed an additional \$9,200,000 shall be available for obligation for administrative expenses for every 20,000 additional terminated participants: Provided further, That an additional \$50,000 shall be made available for obligation for investment management fees for every \$25,000,000 in assets received by the Corporation as a result of new plan terminations, after approval by the Office of Management and Budget and notification of the Committees on Appropriations of the House of Representatives and the Senate.

EMPLOYMENT STANDARDS ADMINISTRATION

SALARIES AND EXPENSES

(INCLUDING RESCISSION)

For necessary expenses for the Employment Standards Administration, including reimbursement to State, Federal, and local agencies and their employees for inspection services rendered, \$436,397,000, together with \$2,111,000 which may be expended from the Special Fund in accordance with sections 39(c), 44(d), and 44(j) of the Longshore and Harbor Workers' Compensation Act: Provided, That the Secretary of Labor is authorized to establish and, in accordance with 31 U.S.C. 3302, collect and deposit in the Treasury fees for processing applications and issuing certificates under sections 11(d) and 14 of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. 211(d) and 214) and for processing applications and issuing registrations under title I of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1801 et seq.).

Of the unobligated funds collected pursuant to section 286(v) of the Immigration and Nationality Act, \$70,000,000 are hereby rescinded.

SPECIAL BENEFITS

(INCLUDING TRANSFER OF FUNDS)

For the payment of compensation, benefits, and expenses (except administrative expenses) accruing during the current or any prior fiscal year authorized by title 5, chapter 81 of the United States Code; continuation of benefits as provided for under the heading "Civilian War Benefits" in the Federal Security Agency Appropriation Act, 1947; the Employees' Compensation Commission Appropriation Act, 1944; sections 4(c) and 5(f) of the War Claims Act of 1948

(50 U.S.C. App. 2012); and 50 percent of the additional compensation and benefits required by section 10(h) of the Longshore and Harbor Workers' Compensation Act, as amended, \$203,000,000, together with such amounts as may be necessary to be charged to the subsequent year appropriation for the payment of compensation and other benefits for any period subsequent to August 15 of the current year: Provided, That amounts appropriated may be used under section 8104 of title 5, United States Code, by the Secretary of Labor to reimburse an employer, who is not the employer at the time of injury, for portions of the salary of a reemployed, disabled beneficiary: Provided further, That balances of reimbursements unobligated on September 30, 2007, shall remain available until expended for the payment of compensation, benefits, and expenses: Provided further, That in addition there shall be transferred to this appropriation from the Postal Service and from any other corporation or instrumentality required under section 8147(c) of title 5, United States Code, to pay an amount for its fair share of the cost of administration, such sums as the Secretary determines to be the cost of administration for employees of such fair share entities through September 30, 2008: Provided further, That of those funds transferred to this account from the fair share entities to pay the cost of administration of the Federal Employees' Compensation Act, \$52,280,000 shall be made available to the Secretary as follows:

(1) For enhancement and maintenance of automated data processing systems and telecommunications systems, \$21,855,000.

(2) For automated workload processing operations, including document imaging, centralized mail intake and medical bill processing, \$16,109,000.

(3) For periodic roll management and medical review, \$14,316,000.

(4) The remaining funds shall be paid into the Treasury as miscellaneous receipts:

Provided further, That the Secretary may require that any person filing a notice of injury or a claim for benefits under chapter 81 of title 5, United States Code, or 33 U.S.C. 901 et seq., provide as part of such notice and claim, such identifying information (including Social Security account number) as such regulations may prescribe.

SPECIAL BENEFITS FOR DISABLED COAL MINERS

For carrying out title IV of the Federal Mine Safety and Health Act of 1977, as amended by Public Law 107-275 (the "Act"), \$208,221,000, to remain available until expended.

For making after July 31 of the current fiscal year, benefit payments to individuals under title IV of the Act, for costs incurred in the current fiscal year, such amounts as may be necessary.

For making benefit payments under title IV for the first quarter of fiscal year 2009, \$62,000,000, to remain available until expended.

ADMINISTRATIVE EXPENSES, ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION FUND

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses to administer the Energy Employees Occupational Illness Compensation Program Act, \$104,745,000, to remain available until expended: Provided, That the Secretary of Labor is authorized to transfer to any executive agency with authority under the Energy Employees Occupational Illness Compensation Program Act, including within the Department of Labor, such sums as may be necessary in fiscal year 2008 to carry out those authorities: Provided further, That the Secretary may require that any person filing a claim for benefits under the Act provide as part of such claim, such identifying information (including Social Security account number) as may be prescribed: Provided further, That not later than 30 days after enactment, in addition to other sums transferred by the Secretary of Labor to the National Institute for Occupational Safety and Health ("NIOSH") for the administration of the

Energy Employees Occupational Illness Compensation Program ("EEOICP"), the Secretary of Labor shall transfer \$4,500,000 to NIOSH from the funds appropriated to the Energy Employees Occupational Illness Compensation Fund (42 U.S.C. 7384e), for use by or in support of the Advisory Board on Radiation and Worker Health ("the Board") to carry out its statutory responsibilities under the EEOICP (42 U.S.C. 7384n-g), including obtaining audits, technical assistance and other support from the Board's audit contractor with regard to radiation dose estimation and reconstruction efforts, site profiles, procedures, and review of Special Exposure Cohort petitions and evaluation reports.

BLACK LUNG DISABILITY TRUST FUND

(INCLUDING TRANSFER OF FUNDS)

In fiscal year 2008 and thereafter, such sums as may be necessary from the Black Lung Disability Trust Fund, to remain available until expended, for payment of all benefits authorized by section 9501(d)(1), (2), (4), and (7) of the Internal Revenue Code of 1954, as amended; and interest on advances, as authorized by section 9501(c)(2) of that Act. In addition, the following amounts shall be available from the Fund for fiscal year 2008 for expenses of operation and administration of the Black Lung Benefits program, as authorized by section 9501(d)(5): not to exceed \$32,761,000 for transfer to the Employment Standards Administration "Salaries and Expenses"; not to exceed \$24,785,000 for transfer to Departmental Management, "Salaries and Expenses"; not to exceed \$335,000 for transfer to Departmental Management "Office of Inspector General"; and not to exceed \$356,000 for payments into miscellaneous receipts for the expenses of the Department of the Treasury.

OCCUPATIONAL SAFETY AND HEALTH

ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Occupational Safety and Health Administration, \$498,445,000, including not to exceed \$91,093,000 which shall be the maximum amount available for grants to States under section 23(g) of the Occupational Safety and Health Act (the "Act"), which grants shall be no less than 50 percent of the costs of State occupational safety and health programs required to be incurred under plans approved by the Secretary under section 18 of the Act; and, in addition, notwithstanding 31 U.S.C. 3302, the Occupational Safety and Health Administration may retain up to \$750,000 per fiscal year of training institute course tuition fees, otherwise authorized by law to be collected, and may utilize such sums for occupational safety and health training and education grants: Provided, That, notwithstanding 31 U.S.C. 3302, the Secretary of Labor is authorized, during the fiscal year ending September 30, 2008, to collect and retain fees for services provided to Nationally Recognized Testing Laboratories, and may utilize such sums, in accordance with the provisions of 29 U.S.C. 9a, to administer national and international laboratory recognition programs that ensure the safety of equipment and products used by workers in the workplace: Provided further, That none of the funds appropriated under this paragraph shall be obligated or expended to prescribe, issue, administer, or enforce any standard, rule, regulation, or order under the Act which is applicable to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees: Provided further, That no funds appropriated under this paragraph shall be obligated or expended to administer or enforce any standard, rule, regulation, or order under the Act with respect to any employer of 10 or fewer employees who is included within a category having a Days Away, Restricted, or Transferred (DART) occupational injury and illness rate, at the most precise industrial classification code for which such data are published, less than the national average rate as such rates are most recently

published by the Secretary, acting through the Bureau of Labor Statistics, in accordance with section 24 of that Act (29 U.S.C. 673), except—

(1) to provide, as authorized by such Act, consultation, technical assistance, educational and training services, and to conduct surveys and studies;

(2) to conduct an inspection or investigation in response to an employee complaint, to issue a citation for violations found during such inspection, and to assess a penalty for violations which are not corrected within a reasonable abatement period and for any willful violations found;

(3) to take any action authorized by such Act with respect to imminent dangers;

(4) to take any action authorized by such Act with respect to health hazards;

(5) to take any action authorized by such Act with respect to a report of an employment accident which is fatal to one or more employees or which results in hospitalization of two or more employees, and to take any action pursuant to such investigation authorized by such Act; and

(6) to take any action authorized by such Act with respect to complaints of discrimination against employees for exercising rights under such Act:

Provided further, That the foregoing proviso shall not apply to any person who is engaged in a farming operation which does not maintain a temporary labor camp and employs 10 or fewer employees: Provided further, That \$10,116,000 shall be available for Susan Harwood training grants, of which \$3,200,000 shall be used for the Institutional Competency Building training grants which commenced in September 2000, for program activities for the period of October 1, 2007, to September 30, 2008, provided that a grantee has demonstrated satisfactory performance: Provided further, That such grants shall be awarded not later than 30 days after the date of enactment of this Act.

MINE SAFETY AND HEALTH ADMINISTRATION

SALARIES AND EXPENSES

For necessary expenses for the Mine Safety and Health Administration, \$330,028,000, including purchase and bestowal of certificates and trophies in connection with mine rescue and first-aid work, and the hire of passenger motor vehicles, including up to \$2,000,000 for mine rescue and recovery activities, \$2,200,000 for an award to the United Mine Workers Association, for classroom and simulated rescue training for mine rescue teams, and \$1,350,000 for an award to the Wheeling Jesuit University, for the National Technology Transfer Center for a coal slurry impoundment project; in addition, not to exceed \$750,000 may be collected by the National Mine Health and Safety Academy for room, board, tuition, and the sale of training materials, otherwise authorized by law to be collected, to be available for mine safety and health education and training activities, notwithstanding 31 U.S.C. 3302; and, in addition, the Mine Safety and Health Administration may retain up to \$1,000,000 from fees collected for the approval and certification of equipment, materials, and explosives for use in mines, and may utilize such sums for such activities; the Secretary is authorized to accept lands, buildings, equipment, and other contributions from public and private sources and to prosecute projects in cooperation with other agencies, Federal, State, or private; the Mine Safety and Health Administration is authorized to promote health and safety education and training in the mining community through cooperative programs with States, industry, and safety associations; the Secretary is authorized to recognize the Joseph A. Holmes Safety Association as a principal safety association and, notwithstanding any other provision of law, may provide funds and, with or without reimbursement, personnel, including service of Mine Safety and Health Administration officials as officers in local chapters or in the national organization; and any

funds available to the department may be used, with the approval of the Secretary, to provide for the costs of mine rescue and survival operations in the event of a major disaster.

BUREAU OF LABOR STATISTICS

SALARIES AND EXPENSES

For necessary expenses for the Bureau of Labor Statistics, including advances or reimbursements to State, Federal, and local agencies and their employees for services rendered, \$482,000,000, together with not to exceed \$78,000,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund, of which \$5,000,000 may be used to fund the mass layoff statistics program under section 15 of the Wagner-Peyser Act (29 U.S.C. 491-2): Provided, That the Current Employment Survey shall maintain the content of the survey issued prior to June 2005 with respect to the collection of data for the women worker series.

OFFICE OF DISABILITY EMPLOYMENT POLICY

SALARIES AND EXPENSES

For necessary expenses for the Office of Disability Employment Policy to provide leadership, develop policy and initiatives, and award grants furthering the objective of eliminating barriers to the training and employment of people with disabilities, \$27,712,000.

DEPARTMENTAL MANAGEMENT

SALARIES AND EXPENSES

For necessary expenses for Departmental Management, including the hire of three sedans, and including the management or operation, through contracts, grants or other arrangements of Departmental activities conducted by or through the Bureau of International Labor Affairs, including bilateral and multilateral technical assistance and other international labor activities, \$313,400,000, of which \$82,516,000 is for the Bureau of International Labor Affairs, and of which \$22,000,000 is for the acquisition of Departmental information technology, architecture, infrastructure, equipment, software and related needs, which will be allocated by the Department's Chief Information Officer in accordance with the Department's capital investment management process to assure a sound investment strategy; together with not to exceed \$318,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund.

OFFICE OF JOB CORPS

To carry out subtitle C of title I of the Workforce Investment Act of 1998 (29 U.S.C. 2881 et. seq.), including Federal administrative expenses, the purchase and hire of passenger motor vehicles, the construction, alteration and repairs of buildings and other facilities, and the purchase of real property for training centers as authorized by the Workforce Investment Act; \$1,659,872,000, plus reimbursements, as follows:

(1) \$1,516,000,000 for Job Corps Operations, of which \$925,000,000 is available for obligation for the period July 1, 2008 through June 30, 2009 and of which \$591,000,000 is available for obligation for the period October 1, 2008 through June 30, 2009;

(2) \$115,000,000 for construction, rehabilitation and acquisition of Job Corps Centers, of which \$15,000,000 is available for the period July 1, 2008 through June 30, 2009 and \$100,000,000 is available for the period October 1, 2008 through June 30, 2011; and

(3) \$28,872,000 for necessary expenses of the Office of Job Corps is available for obligation for the period October 1, 2007 through September 30, 2008:

Provided, That the Office of Job Corps shall have contracting authority: Provided further, That no funds from any other appropriation shall be used to provide meal services at or for Job Corps centers: Provided further, That none of the funds made available in this Act shall be used to reduce Job Corps total student training slots below 44,791 in program year 2008.

VETERANS EMPLOYMENT AND TRAINING

Not to exceed \$197,143,000 may be derived from the Employment Security Administration Account in the Unemployment Trust Fund to carry out the provisions of 38 U.S.C. 4100-4113, 4211-4215, and 4321-4327, and Public Law 103-353, and which shall be available for obligation by the States through December 31, 2008, of which \$1,967,000 is for the National Veterans' Employment and Training Services Institute. To carry out the Homeless Veterans Reintegration Programs (38 U.S.C. 2021) and the Veterans Workforce Investment Programs (29 U.S.C. 2913), \$31,055,000, of which \$7,435,000 shall be available for obligation for the period July 1, 2008, through June 30, 2009: Provided, That \$3,000,000 shall be transferred from amounts made available in this title for salaries and expenses of the Department of Labor, to carry out Federal management activities relating to veterans employment and training.

OFFICE OF INSPECTOR GENERAL

For salaries and expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$73,929,000, together with not to exceed \$5,729,000, which may be expended from the Employment Security Administration Account in the Unemployment Trust Fund.

GENERAL PROVISIONS

SEC. 101. None of the funds appropriated in this Act for the Job Corps shall be used to pay the salary of an individual, either as direct costs or any proration as an indirect cost, at a rate in excess of Executive Level I.

(TRANSFER OF FUNDS)

SEC. 102. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended) which are appropriated for the current fiscal year for the Department of Labor in this Act may be transferred between a program, project, or activity, but no such program, project, or activity shall be increased by more than 3 percent by any such transfer: Provided, That a program, project, or activity may be increased by up to an additional 2 percent subject to approval by the House and Senate Committees on Appropriations: Provided further, That the transfer authority granted by this section shall be available only to meet emergency needs and shall not be used to create any new program or to fund any project or activity for which no funds are provided in this Act: Provided further, That the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of any transfer.

SEC. 103. In accordance with Executive Order No. 13126, none of the funds appropriated or otherwise made available pursuant to this Act shall be obligated or expended for the procurement of goods mined, produced, manufactured, or harvested or services rendered, whole or in part, by forced or indentured child labor in industries and host countries already identified by the United States Department of Labor prior to enactment of this Act.

SEC. 104. There is authorized to be appropriated such sums as may be necessary to the Denali Commission through the Department of Labor to conduct job training of the local workforce where Denali Commission projects will be constructed.

SEC. 105. The Secretary shall prepare and submit not later than July 1, 2008, to the Committees on Appropriations of the Senate and of the House an operating plan that outlines the planned allocation by major project and activity of fiscal year 2008 funds made available for section 171 of the Workforce Investment Act.

SEC. 106. None of the funds available in this Act or available to the Secretary of Labor from other sources for Community College Initiative Grants, Community-Based Job Training Grants, and grants authorized under section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998 shall be obligated for a grant awarded on a non-competitive basis.

SEC. 107. None of the funds made available in this or any other Act shall be available to finalize or implement any proposed regulation under the Workforce Investment Act of 1998, Wagner-Peyser Act of 1933, or the Trade Adjustment Assistance Reform Act of 2002 until such time as legislation reauthorizing the Workforce Investment Act of 1998 and the Trade Adjustment Assistance Reform Act of 2002 is enacted.

SEC. 108. The Secretary of Labor shall take no action to amend, through regulatory or administrative action, the definition established in 20 CFR 667.220 for functions and activities under title I of the Workforce Investment Act of 1998, or to modify, through regulatory or administrative action, the procedure for redesignation of local areas as specified in subtitle B of title I of that Act (including applying the standards specified in section 116(a)(3)(B) of that Act, but notwithstanding the time limits specified in section 116(a)(3)(B) of that Act), until such time as legislation reauthorizing the Act is enacted. Nothing in the preceding sentence shall permit or require the Secretary of Labor to withdraw approval for such redesignation from a State that received the approval not later than October 12, 2005, or to revise action taken or modify the redesignation procedure being used by the Secretary in order to complete such redesignation for a State that initiated the process of such redesignation by submitting any request for such redesignation not later than October 26, 2005.

SEC. 109. None of the funds available in this Act may be used to carry out a public-private competition or direct conversion under Office of Management and Budget Circular A-76 or any successor administrative regulation, directive or policy until 60 days after the Government Accountability Office provides a report to the Committees on Appropriations of the House of Representatives and the Senate on the use of competitive sourcing at the Department of Labor.

SEC. 110. (a) Not later than June 20, 2008, the Secretary of Labor shall revise regulations prescribed pursuant to section 303(y) of the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 863(y)) to require, in any coal mine, regardless of the date on which it was opened, that belt haulage entries not be used to ventilate active working places without prior approval from the Assistant Secretary of Labor.

(b) Not later than June 15, 2008, the Secretary of Labor shall issue regulations, pursuant to the design criteria recommended by the National Institute of Occupational Safety and Health and section 13 of the MINER Act (Public Law 109-236), requiring installation of rescue chambers in the working areas of underground coal mines.

SEC. 111. None of the funds appropriated in this Act under the heading "Employment and Training Administration" shall be used by a recipient or subrecipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular A-133. Where States are recipients of such funds, States may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from subrecipients of such funds, taking into account factors including the relative cost-of-living in the State, the compensation levels for comparable State or local government employees, and the size of the organizations that administer Federal programs involved including Employment and Training Administration programs.

SEC. 112. (a) In addition to amounts otherwise appropriated under this Act, there is appropriated, out of any money in the Treasury not otherwise appropriated, an additional \$10,000,000 for necessary expenses for salaries and expenses of the Mine Safety and Health Administration.

(b) Amounts made available under this Act for travel expenses for the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be reduced on a pro rata basis by the percentage necessary to decrease the overall amount of such spending by \$10,000,000.

SEC. 113. To enable the National Institute for Occupational Safety and Health to carry out the Fire Fighter Fatality Investigation and Prevention Program, \$5,000,000, which shall include any other amounts made available under this Act for such Program. Amounts made available under this Act for travel expenses for the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be reduced on a pro rata basis by the percentage necessary to decrease the overall amount of such spending by \$2,500,000.

This title may be cited as the "Department of Labor Appropriations Act, 2008".

TITLE II

DEPARTMENT OF HEALTH AND HUMAN SERVICES

HEALTH RESOURCES AND SERVICES ADMINISTRATION

HEALTH RESOURCES AND SERVICES

For carrying out titles II, III, IV, VII, VIII, X, XII, XIX, and XXVI of the Public Health Service Act, section 427(a) of the Federal Coal Mine Health and Safety Act, title V and sections 1128E, and 711, and 1820 of the Social Security Act, the Health Care Quality Improvement Act of 1986, as amended, the Native Hawaiian Health Care Act of 1988, as amended, the Cardiac Arrest Survival Act of 2000, and section 712 of the American Jobs Creation Act of 2004, \$6,843,673,000, of which \$191,235,000 shall be available for construction and renovation (including equipment) of health care and other facilities and other health-related activities as specified in the committee report of the Senate accompanying this Act, and of which \$38,538,000 from general revenues, notwithstanding section 1820(j) of the Social Security Act, shall be available for carrying out the Medicare rural hospital flexibility grants program under section 1820 of such Act, and of which \$250,000 shall be for the Center for Asbestos Related Disease (CARD) Clinic in Libby, Montana: Provided, That of the funds made available under this heading, \$220,000 shall be available until expended for facilities renovations at the Gillis W. Long Hansen's Disease Center: Provided further, That \$40,000,000 of the funding provided for community health centers shall be for base grant adjustments for existing health centers: Provided further, That in addition to fees authorized by section 427(b) of the Health Care Quality Improvement Act of 1986, fees shall be collected for the full disclosure of information under the Act sufficient to recover the full costs of operating the National Practitioner Data Bank, and shall remain available until expended to carry out that Act: Provided further, That fees collected for the full disclosure of information under the "Health Care Fraud and Abuse Data Collection Program", authorized by section 1128E(d)(2) of the Social Security Act, shall be sufficient to recover the full costs of operating the program, and shall remain available until expended to carry out that Act: Provided further, That no more than \$40,000 is available until expended for carrying out the provisions of 42 U.S.C. 233(o) including associated administrative expenses and relevant evaluations: Provided further, That no more than \$44,055,000 is available until expended for carrying out the provisions of Public Law 104-73 and for expenses incurred by the Department of Health and Human Services pertaining to administrative claims made under such law: Provided further, That of the funds made available under this heading, \$300,000,000 shall be for the program under title X of the Public Health Service Act to provide for voluntary family planning projects: Provided further, That amounts pro-

vided to said projects under such title shall not be expended for abortions, that all pregnancy counseling shall be nondirective, and that such amounts shall not be expended for any activity (including the publication or distribution of literature) that in any way tends to promote public support or opposition to any legislative proposal or candidate for public office: Provided further, That \$814,546,000 shall be for State AIDS Drug Assistance Programs authorized by section 2616 of the Public Health Service Act: Provided further, That in addition to amounts provided herein, \$25,000,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out Parts A, B, C, and D of title XXVI of the Public Health Service Act to fund section 2691 Special Projects of National Significance: Provided further, That, notwithstanding section 502(a)(1) and 502(b)(1) of the Social Security Act, not to exceed \$95,936,920 is available for carrying out special projects of regional and national significance pursuant to section 501(a)(2) of such Act and \$10,586,238 is available for projects described in paragraphs (A) through (F) of section 501(a)(3) of such Act: Provided further, That of the funds provided, \$39,283,000 shall be provided to the Denali Commission as a direct lump payment pursuant to Public Law 106-113: Provided further, That of the funds available under this heading, \$1,829,511,000 shall remain available to the Secretary until September 30, 2010, for parts A and B of title XXVI of the Public Health Service Act (42 U.S.C. 300ff-11 et seq.; relating to Ryan White Emergency Relief Grants and CARE Grants): Provided further, That of the funds provided, \$25,000,000 shall be provided for the Delta Health Initiative as authorized in section 222 of this Act and associated administrative expenses: Provided further, That notwithstanding section 747(e)(2) of the PHS Act, and not less than \$5,000,000 shall be for general dentistry programs and not less than \$5,000,000 shall be for pediatric dentistry programs and not less than \$24,614,000 shall be for family medicine programs: Provided further, That of the funds available under this heading, \$12,000,000 shall be provided for the National Cord Blood Inventory pursuant to the Stem Cell Therapeutic and Research Act of 2005 (Public Law 109-129): Provided further, That where prior year funds were disbursed under this appropriation account as Health Care and Other Facilities grants (and were used for the purchase, construction, or major alteration of property; or the purchase of equipment), the Federal interest in such property or equipment shall last for a period of 5 years following the completion of the project and terminate at that time: Provided further, That if the property use changes (or the property is transferred or sold) and the Government is compensated for its proportionate interest in the property, the Federal interest in such property shall be terminated: Provided further, That for projects where 5 years has already elapsed since completion, the Federal interest shall be terminated immediately.

HEALTH EDUCATION ASSISTANCE LOANS PROGRAM ACCOUNT

Such sums as may be necessary to carry out the purpose of the program, as authorized by title VII of the Public Health Service Act, as amended. For administrative expenses to carry out the guaranteed loan program, including section 709 of the Public Health Service Act, \$2,906,000.

VACCINE INJURY COMPENSATION PROGRAM TRUST FUND

For payments from the Vaccine Injury Compensation Program Trust Fund, such sums as may be necessary for claims associated with vaccine-related injury or death with respect to vaccines administered after September 30, 1988, pursuant to subtitle 2 of title XXI of the Public Health Service Act, to remain available until expended: Provided, That for necessary administrative expenses, not to exceed \$3,528,000 shall

be available from the Trust Fund to the Secretary of Health and Human Services.

CENTERS FOR DISEASE CONTROL AND PREVENTION

DISEASE CONTROL, RESEARCH, AND TRAINING

To carry out titles II, III, VII, XI, XV, XVII, XIX, XXI, and XXVI of the Public Health Service Act, sections 101, 102, 103, 201, 202, 203, 301, and 501 of the Federal Mine Safety and Health Act of 1977, and the Mine Improvement and New Emergency Response Act of 2006, sections 20, 21, and 22 of the Occupational Safety and Health Act of 1970, title IV of the Immigration and Nationality Act, section 501 of the Refugee Education Assistance Act of 1980, and for expenses necessary to support activities related to countering potential biological, disease, nuclear, radiological, and chemical threats to civilian populations; including purchase and insurance of official motor vehicles in foreign countries; and purchase, hire, maintenance, and operation of aircraft, \$6,157,169,000, of which \$220,000,000 shall remain available until expended for equipment, construction and renovation of facilities; of which \$581,335,000 shall remain available until expended for the Strategic National Stockpile; and of which \$122,769,000 for international HIV/AIDS shall remain available until September 30, 2009. In addition, such sums as may be derived from authorized user fees, which shall be credited to this account: Provided, That in addition to amounts provided herein, the following amounts shall be available from amounts available under section 241 of the Public Health Service Act: (1) \$12,794,000 to carry out the National Immunization Surveys; (2) \$108,585,000 to carry out the National Center for Health Statistics surveys; (3) \$24,751,000 to carry out information systems standards development and architecture and applications-based research used at local public health levels; (4) \$463,000 for Health Marketing evaluations; (5) \$31,000,000 to carry out Public Health Research; and (6) \$92,071,000 to carry out research activities within the National Occupational Research Agenda: Provided further, That none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention may be used, in whole or in part, to advocate or promote gun control: Provided further, That up to \$31,800,000 shall be made available until expended for Individual Learning Accounts for full-time equivalent employees of the Centers for Disease Control and Prevention: Provided further, That the Director may redirect the total amount made available under authority of Public Law 101-502, section 3, dated November 3, 1990, to activities the Director may so designate: Provided further, That the Congress is to be notified promptly of any such transfer: Provided further, That not to exceed \$19,035,000 may be available for making grants under section 1509 of the Public Health Service Act to not less than 15 States, tribes, or tribal organizations: Provided further, That notwithstanding any other provision of law, a single contract or related contracts for development and construction of facilities may be employed which collectively include the full scope of the project: Provided further, That the solicitation and contract shall contain the clause "availability of funds" found at 48 CFR 52.232-18: Provided further, That of the funds appropriated, \$10,000 is for official reception and representation expenses when specifically approved by the Director of the Centers for Disease Control and Prevention: Provided further, That employees of the Centers for Disease Control and Prevention or the Public Health Service, both civilian and Commissioned Officers, detailed to States, municipalities, or other organizations under authority of section 214 of the Public Health Service Act, or in overseas assignments, shall be treated as non-Federal employees for reporting purposes only and shall not be included within any personnel ceiling applicable to the Agency, Service, or the Department of Health and Human Services during

the period of detail or assignment: Provided further, That if States are eligible, up to \$30,000,000 shall be used to implement section 2625 of the Public Health Service Act (42 U.S.C. 300ff-33; relating to the Ryan White early diagnosis grant program): Provided further, That \$16,890,000 shall be available for the projects and in the amounts specified in the committee report of the Senate accompanying this Act.

NATIONAL INSTITUTES OF HEALTH
NATIONAL CANCER INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to cancer, \$4,910,160,000, of which up to \$8,000,000 may be used for facilities repairs and improvements at the NCI-Frederick Federally Funded Research and Development Center in Frederick, Maryland.

NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to cardiovascular, lung, and blood diseases, and blood and blood products, \$2,992,197,000.

NATIONAL INSTITUTE OF DENTAL AND
CRANIOFACIAL RESEARCH

For carrying out section 301 and title IV of the Public Health Service Act with respect to dental disease, \$398,602,000.

NATIONAL INSTITUTE OF DIABETES AND DIGESTIVE
AND KIDNEY DISEASES

For carrying out section 301 and title IV of the Public Health Service Act with respect to diabetes and digestive and kidney disease, \$1,747,784,000.

NATIONAL INSTITUTE OF NEUROLOGICAL
DISORDERS AND STROKE

For carrying out section 301 and title IV of the Public Health Service Act with respect to neurological disorders and stroke, \$1,573,268,000.

NATIONAL INSTITUTE OF ALLERGY AND
INFECTIOUS DISEASES

(INCLUDING TRANSFER OF FUNDS)

For carrying out section 301 and title IV of the Public Health Service Act with respect to allergy and infectious diseases, \$4,668,472,000: Provided, That \$300,000,000 may be made available to International Assistance Programs "Global Fund to Fight HIV/AIDS, Malaria, and Tuberculosis", to remain available until expended: Provided further, That such sums obligated in fiscal years 2003 through 2007 for extramural facilities construction projects are to remain available until expended for disbursement, with prior notification of such projects to the Committees on Appropriations of the House of Representatives and the Senate.

NATIONAL INSTITUTE OF GENERAL MEDICAL
SCIENCES

For carrying out section 301 and title IV of the Public Health Service Act with respect to general medical sciences, \$1,978,601,000.

NATIONAL INSTITUTE OF CHILD HEALTH AND
HUMAN DEVELOPMENT

For carrying out section 301 and title IV of the Public Health Service Act with respect to child health and human development, \$1,282,231,000.

NATIONAL EYE INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to eye diseases and visual disorders, \$681,962,000.

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH
SCIENCES

For carrying out sections 301 and 311 and title IV of the Public Health Service Act with respect to environmental health sciences, \$656,176,000.

NATIONAL INSTITUTE ON AGING

For carrying out section 301 and title IV of the Public Health Service Act with respect to aging, \$1,073,048,000.

NATIONAL INSTITUTE OF ARTHRITIS AND
MUSCULOSKELETAL AND SKIN DISEASES

For carrying out section 301 and title IV of the Public Health Service Act with respect to ar-

thritis and musculoskeletal and skin diseases, \$519,810,000.

NATIONAL INSTITUTE ON DEAFNESS AND OTHER
COMMUNICATION DISORDERS

For carrying out section 301 and title IV of the Public Health Service Act with respect to deafness and other communication disorders, \$402,680,000.

NATIONAL INSTITUTE OF NURSING RESEARCH

For carrying out section 301 and title IV of the Public Health Service Act with respect to nursing research, \$140,456,000.

NATIONAL INSTITUTE ON ALCOHOL ABUSE AND
ALCOHOLISM

For carrying out section 301 and title IV of the Public Health Service Act with respect to alcohol abuse and alcoholism, \$445,702,000.

NATIONAL INSTITUTE ON DRUG ABUSE

For carrying out section 301 and title IV of the Public Health Service Act with respect to drug abuse, \$1,022,594,000.

NATIONAL INSTITUTE OF MENTAL HEALTH

For carrying out section 301 and title IV of the Public Health Service Act with respect to mental health, \$1,436,001,000.

NATIONAL HUMAN GENOME RESEARCH INSTITUTE

For carrying out section 301 and title IV of the Public Health Service Act with respect to human genome research, \$497,031,000.

NATIONAL INSTITUTE OF BIOMEDICAL IMAGING
AND BIOENGINEERING

For carrying out section 301 and title IV of the Public Health Service Act with respect to biomedical imaging and bioengineering research, \$304,319,000.

NATIONAL CENTER FOR RESEARCH RESOURCES

For carrying out section 301 and title IV of the Public Health Service Act with respect to research resources and general research support grants, \$1,177,997,000: Provided, That none of these funds shall be used to pay recipients of the general research support grants program any amount for indirect expenses in connection with such grants.

NATIONAL CENTER FOR COMPLEMENTARY AND
ALTERNATIVE MEDICINE

For carrying out section 301 and title IV of the Public Health Service Act with respect to complementary and alternative medicine, \$124,213,000.

NATIONAL CENTER ON MINORITY HEALTH AND
HEALTH DISPARITIES

For carrying out section 301 and title IV of the Public Health Service Act with respect to minority health and health disparities research, \$203,895,000.

JOHN E. FOGARTY INTERNATIONAL CENTER

For carrying out the activities at the John E. Fogarty International Center, \$68,000,000.

NATIONAL LIBRARY OF MEDICINE

For carrying out section 301 and title IV of the Public Health Service Act with respect to health information communications, \$327,817,000, of which \$4,000,000 shall be available until expended for improvement of information systems: Provided, That in fiscal year 2008, the Library may enter into personal services contracts for the provision of services in facilities owned, operated, or constructed under the jurisdiction of the National Institutes of Health: Provided further, That in addition to amounts provided herein, \$8,200,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out National Information Center on Health Services Research and Health Care Technology and related health services.

OFFICE OF THE DIRECTOR

(INCLUDING TRANSFER OF FUNDS)

For carrying out the responsibilities of the Office of the Director, National Institutes of Health, \$1,145,790,000, of which up to \$25,000,000 shall be used to carry out section 217 of this Act: Provided, That funding shall be available for

the purchase of not to exceed 29 passenger motor vehicles for replacement only: Provided further, That the National Institutes of Health is authorized to collect third party payments for the cost of clinical services that are incurred in National Institutes of Health research facilities and that such payments shall be credited to the National Institutes of Health Management Fund: Provided further, That all funds credited to the National Institutes of Health Management Fund shall remain available for one fiscal year after the fiscal year in which they are deposited: Provided further, That up to \$500,000 shall be available to carry out section 499 of the Public Health Service Act: Provided further, That \$110,900,000 shall be available to carry out the National Children's Study: Provided further, That \$531,300,000 shall be available for the Common Fund established under section 402A(c)(1) of the Public Health Service Act: Provided further, That of the funds provided \$10,000 shall be for official reception and representation expenses when specifically approved by the Director of NIH: Provided further, That the Office of AIDS Research within the Office of the Director, NIH may spend up to \$4,000,000 to make grants for construction or renovation of facilities as provided for in section 2354(a)(5)(B) of the Public Health Service Act.

BUILDINGS AND FACILITIES

For the study of, construction of, renovation of, and acquisition of equipment for, facilities of or used by the National Institutes of Health, including the acquisition of real property, \$121,081,000, to remain available until expended.

SUBSTANCE ABUSE AND MENTAL HEALTH
SERVICES ADMINISTRATION

SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES

For carrying out titles V and XIX of the Public Health Service Act ("PHS Act") with respect to substance abuse and mental health services, the Protection and Advocacy for Individuals with Mental Illness Act, and section 301 of the PHS Act with respect to program management, \$3,278,135,000, of which \$10,335,000 shall be available for projects and in the amounts specified in the committee report accompanying this Act: Provided, That notwithstanding section 520A(f)(2) of the PHS Act, no funds appropriated for carrying out section 520A are available for carrying out section 1971 of the PHS Act: Provided further, That of the funds provided to the Child Trauma Stress Network Initiative, priority shall be given to those centers, that previously received grants, that provide mental health services to children affected by Hurricane Katrina and/or Rita: Provided further, That in addition to amounts provided herein, the following amounts shall be available under section 241 of the PHS Act: (1) \$79,200,000 to carry out subpart II of part B of title XIX of the PHS Act to fund section 1935(b) technical assistance, national data, data collection and evaluation activities, and further that the total available under this Act for section 1935(b) activities shall not exceed 5 percent of the amounts appropriated for subpart II of part B of title XIX; (2) \$21,413,000 to carry out subpart I of part B of title XIX of the PHS Act to fund section 1920(b) technical assistance, national data, data collection and evaluation activities, and further that the total available under this Act for section 1920(b) activities shall not exceed 5 percent of the amounts appropriated for subpart I of part B of title XIX; (3) \$21,750,000 to carry out national surveys on drug abuse; and (4) \$4,300,000 to evaluate substance abuse treatment programs: Provided further, That section 520E(b)(2) of the Public Health Service Act shall not apply to funds appropriated under this Act for fiscal year 2008.

AGENCY FOR HEALTHCARE RESEARCH AND
QUALITY

HEALTHCARE RESEARCH AND QUALITY

For carrying out titles III and IX of the Public Health Service Act, and part A of title XI of

the Social Security Act, \$329,564,000; and in addition, amounts received from Freedom of Information Act fees, reimbursable and interagency agreements, and the sale of data shall be credited to this appropriation and shall remain available until expended: Provided, That no amount shall be made available pursuant to section 927(c) of the Public Health Service Act for fiscal year 2008: Provided further, That \$5,000,000 shall be for activities to reduce infections from methicillin-resistant staphylococcus aureus (MRSA) and related infections.

**CENTERS FOR MEDICARE AND MEDICAID SERVICES
GRANTS TO STATES FOR MEDICAID**

For carrying out, except as otherwise provided, titles XI and XIX of the Social Security Act, \$141,628,056,000, to remain available until expended.

For making, after May 31, 2008, payments to States under title XIX of the Social Security Act for the last quarter of fiscal year 2008 for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

For making payments to States or in the case of section 1928 on behalf of States under title XIX of the Social Security Act for the first quarter of fiscal year 2009, \$67,292,669,000, to remain available until expended.

Payment under title XIX may be made for any quarter with respect to a State plan or plan amendment in effect during such quarter, if submitted in or prior to such quarter and approved in that or any subsequent quarter.

PAYMENTS TO HEALTH CARE TRUST FUNDS

For payment to the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds, as provided under section 1844 and 1860D-16 of the Social Security Act, sections 103(c) and 111(d) of the Social Security Amendments of 1965, section 278(d) of Public Law 97-248, and for administrative expenses incurred pursuant to section 201(g) of the Social Security Act, \$188,828,000,000.

In addition, for making matching payments under section 1844, and benefit payments under section 1860D-16 of the Social Security Act, not anticipated in budget estimates, such sums as may be necessary.

PROGRAM MANAGEMENT

For carrying out, except as otherwise provided, titles XI, XVIII, XIX, and XXI of the Social Security Act, titles XIII and XXVII of the Public Health Service Act, and the Clinical Laboratory Improvement Amendments of 1988, not to exceed \$3,248,088,000, to be transferred from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds, as authorized by section 201(g) of the Social Security Act; together with all funds collected in accordance with section 353 of the Public Health Service Act and section 1857(e)(2) of the Social Security Act, funds retained by the Secretary pursuant to section 302 of the Tax Relief and Health Care Act of 2006; and such sums as may be collected from authorized user fees and the sale of data, which shall remain available until expended: Provided, That all funds derived in accordance with 31 U.S.C. 9701 from organizations established under title XIII of the Public Health Service Act shall be credited to and available for carrying out the purposes of this appropriation: Provided further, That \$49,869,000, to remain available until September 30, 2009, is for contract costs for the Healthcare Integrated General Ledger Accounting System: Provided further, That \$253,775,000, to remain available until September 30, 2009, is for CMS Medicare contracting reform activities: Provided further, That funds appropriated under this heading are available for the Healthy Start, Grow Smart program under which the Centers for Medicare and Medicaid Services may, directly or through grants, contracts, or cooperative agreements, produce and distribute informational materials including, but not limited to, pamphlets and brochures on infant and toddler health care to expectant parents enrolled in the

Medicaid program and to parents and guardians enrolled in such program with infants and children: Provided further, That the Secretary of Health and Human Services is directed to collect fees in fiscal year 2008 from Medicare Advantage organizations pursuant to section 1857(e)(2) of the Social Security Act and from eligible organizations with risk-sharing contracts under section 1876 of that Act pursuant to section 1876(k)(4)(D) of that Act: Provided further, That in addition, the Secretary may charge a fee for conducting revisit surveys on health care facilities cited for deficiencies during initial certification, recertification, or substantiated complaints surveys: Provided further, That such fees, in an amount not to exceed \$35,000,000, shall be credited to this account as offsetting collections, to remain available until expended for the purpose of conducting such revisit surveys: Provided further, That amounts transferred to this account from the Federal Health Insurance and Federal Supplementary Medical Insurance Trust Funds for fiscal year 2008 shall be reduced by the amount credited to this account under this paragraph: Provided further, That \$1,625,000 shall be available for the projects and in the amounts specified in the committee report of the Senate accompanying this Act.

**HEALTH CARE FRAUD ABUSE AND CONTROL
ACCOUNT**

In addition to amounts otherwise available for program integrity and program management, \$383,000,000, to be available until expended, to be transferred from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds, as authorized by section 201(g) of the Social Security Act, of which \$288,480,000 is for the Medicare Integrity Program at the Centers for Medicare and Medicaid Services to conduct oversight of activities authorized in title 18 of the Social Security Act, with oversight activities including those activities listed in 18 U.S.C. 1893(b); of which \$36,690,000 is for the Department of Health and Human Services Office of Inspector General; of which \$21,140,000 is for the Department of Health and Human Services for program integrity activities in title 18, title 19 and title 21 of the Social Security Act; and of which \$36,690,000 is for the Department of Justice: Provided, That the report required by 18 U.S.C. 1817(k)(5) for fiscal year 2008 shall include measures of the operational efficiency and impact on fraud, waste and abuse in the Medicare and Medicaid programs for the funds provided by this appropriation.

ADMINISTRATION FOR CHILDREN AND FAMILIES

**PAYMENTS TO STATES FOR CHILD SUPPORT
ENFORCEMENT AND FAMILY SUPPORT PROGRAMS**

For making payments to States or other non-Federal entities under titles I, IV-D, X, XI, XIV, and XVI of the Social Security Act and the Act of July 5, 1960 (24 U.S.C. ch. 9), \$2,949,713,000, to remain available until expended; and for such purposes for the first quarter of fiscal year 2009, \$1,000,000,000, to remain available until expended.

For making payments to each State for carrying out the program of Aid to Families with Dependent Children under title IV-A of the Social Security Act before the effective date of the program of Temporary Assistance for Needy Families (TANF) with respect to such State, such sums as may be necessary: Provided, That the sum of the amounts available to a State with respect to expenditures under such title IV-A in fiscal year 1997 under this appropriation and under such title IV-A as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 shall not exceed the limitations under section 116(b) of such Act.

For making, after May 31 of the current fiscal year, payments to States or other non-Federal entities under titles I, IV-D, X, XI, XIV, and XVI of the Social Security Act and the Act of July 5, 1960 (24 U.S.C. ch. 9), for the last 3

months of the current fiscal year for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

LOW-INCOME HOME ENERGY ASSISTANCE

For making payments under section 2604(a)-(d) of the Low Income Home Energy Assistance Act of 1981 (42 U.S.C. 8623(a)-(d)), \$1,980,000,000.

For making payments under section 2604(e) of the Low Income Home Energy Assistance Act of 1981 (42 U.S.C. 8623(e)), \$181,170,000, notwithstanding the designation requirement of section 2602(e) of such Act.

REFUGEE AND ENTRANT ASSISTANCE

For necessary expenses for refugee and entrant assistance activities and for costs associated with the care and placement of unaccompanied alien children authorized by title IV of the Immigration and Nationality Act and section 501 of the Refugee Education Assistance Act of 1980, for carrying out section 462 of the Homeland Security Act of 2002, and for carrying out the Torture Victims Relief Act of 1998, \$654,166,000, of which up to \$9,823,000 shall be available to carry out the Trafficking Victims Protection Act of 2000: Provided, That funds appropriated under this heading pursuant to section 414(a) of the Immigration and Nationality Act and section 462 of the Homeland Security Act of 2002 for fiscal year 2008 shall be available for the costs of assistance provided and other activities to remain available through September 30, 2010.

**PAYMENTS TO STATES FOR THE CHILD CARE AND
DEVELOPMENT BLOCK GRANT**

For carrying out the Child Care and Development Block Grant Act of 1990, \$2,062,081,000 shall be used to supplement, not supplant State general revenue funds for child care assistance for low-income families: Provided, That \$18,777,370 shall be available for child care resource and referral and school-aged child care activities, of which \$982,080 shall be available to the Secretary for discretionary activities to support comprehensive consumer education or parental choice: Provided further, That, in addition to the amounts required to be reserved by the States under section 658G, \$267,785,718 shall be reserved by the States for activities authorized under section 658G, of which \$98,208,000 shall be for activities that improve the quality of infant and toddler care: Provided further, That \$9,821,000 shall be for use by the Secretary for child care research, demonstration, and evaluation activities.

SOCIAL SERVICES BLOCK GRANT

For making grants to States pursuant to section 2002 of the Social Security Act, \$1,700,000,000.

CHILDREN AND FAMILIES SERVICES PROGRAMS

For carrying out, except as otherwise provided, the Runaway and Homeless Youth Act, the Developmental Disabilities Assistance and Bill of Rights Act, the Head Start Act, the Child Abuse Prevention and Treatment Act, sections 310 and 316 of the Family Violence Prevention and Services Act, the Native American Programs Act of 1974, title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (adoption opportunities), sections 330F and 330G of the Public Health Service Act, the Abandoned Infants Assistance Act of 1988, sections 261 and 291 of the Help America Vote Act of 2002, part B(1) of title IV and sections 413, 1110, and 1115 of the Social Security Act; for making payments under the Community Services Block Grant Act, sections 439(i), 473B, and 477(i) of the Social Security Act, and the Assets for Independence Act, and for necessary administrative expenses to carry out such Acts and titles I, IV, V, X, XI, XIV, XVI, and XX of the Social Security Act, the Act of July 5, 1960 (24 U.S.C. ch. 9), the Low Income Home Energy Assistance Act of 1981, title IV of the Immigration and Nationality Act, section 501 of the Refugee Education Assistance Act of 1980, and section 505 of the Family

Support Act of 1988, \$9,213,332,000, of which \$9,500,000, to remain available until September 30, 2009, shall be for grants to States for adoption incentive payments, as authorized by section 473A of the Social Security Act and may be made for adoptions completed before September 30, 2008: Provided, That \$7,088,571,000 shall be for making payments under the Head Start Act, of which \$1,388,800,000 shall become available October 1, 2008, and remain available through September 30, 2009: Provided further, That \$735,281,000 shall be for making payments under the Community Services Block Grant Act: Provided further, That not less than \$8,000,000 shall be for section 680(3)(B) of the Community Services Block Grant Act: Provided further, That in addition to amounts provided herein, \$6,000,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out the provisions of section 1110 of the Social Security Act: Provided further, That to the extent Community Services Block Grant funds are distributed as grant funds by a State to an eligible entity as provided under the Act, and have not been expended by such entity, they shall remain with such entity for carryover into the next fiscal year for expenditure by such entity consistent with program purposes: Provided further, That the Secretary shall establish procedures regarding the disposition of intangible property which permits grant funds, or intangible assets acquired with funds authorized under section 680 of the Community Services Block Grant Act, as amended, to become the sole property of such grantees after a period of not more than 12 years after the end of the grant for purposes and uses consistent with the original grant: Provided further, That funds appropriated for section 680(a)(2) of the Community Services Block Grant Act, as amended, shall be available for financing construction and rehabilitation and loans or investments in private business enterprises owned by community development corporations: Provided further, That \$53,625,000 is for a compassion capital fund to provide grants to charitable organizations to emulate model social service programs and to encourage research on the best practices of social service organizations: Provided further, That \$16,720,000 shall be for activities authorized by the Help America Vote Act of 2002, of which \$11,390,000 shall be for payments to States to promote access for voters with disabilities, and of which \$5,330,000 shall be for payments to States for protection and advocacy systems for voters with disabilities: Provided further, That \$80,416,000 shall be for making competitive grants to provide abstinence education to adolescents, and for Federal costs of administering the grant: Provided further, That information provided through grants under the immediately preceding proviso shall be scientifically accurate and shall comply with section 317P(c)(2) of the Public Health Service Act: Provided further, That in addition to amounts provided herein for abstinence education for adolescents, \$4,500,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out evaluations (including longitudinal evaluations) of adolescent pregnancy prevention approaches: Provided further, That up to \$2,000,000 shall be for improving the Public Assistance Reporting Information System, including grants to States to support data collection for a study of the system's effectiveness: Provided further, That \$7,425,000 shall be available for the projects and in the amounts specified in the committee report of the Senate accompanying this Act.

PROMOTING SAFE AND STABLE FAMILIES

For carrying out section 436 of the Social Security Act, \$345,000,000 and section 437, \$89,100,000.

PAYMENTS TO STATES FOR FOSTER CARE AND ADOPTION ASSISTANCE

For making payments to States or other non-Federal entities under title IV-E of the Social Security Act, \$5,067,000,000.

For making payments to States or other non-Federal entities under title IV-E of the Act, for the first quarter of fiscal year 2009, \$1,776,000,000.

For making, after May 31 of the current fiscal year, payments to States or other non-Federal entities under section 474 of title IV-E, for the last 3 months of the current fiscal year for unanticipated costs, incurred for the current fiscal year, such sums as may be necessary.

ADMINISTRATION ON AGING

AGING SERVICES PROGRAMS

For carrying out, to the extent not otherwise provided, the Older Americans Act of 1965, as amended, and section 398 of the Public Health Service Act, \$1,441,585,000, of which \$5,500,000 shall be available for activities regarding medication management, screening, and education to prevent incorrect medication and adverse drug reactions: Provided, That \$2,935,000 shall be available for the projects and in the amounts specified in the committee report of the Senate accompanying this Act.

OFFICE OF THE SECRETARY

GENERAL DEPARTMENTAL MANAGEMENT

For necessary expenses, not otherwise provided, for general departmental management, including hire of six sedans, and for carrying out titles III, XVII, XX, and XXI of the Public Health Service Act, the United States-Mexico Border Health Commission Act, and research studies under section 1110 of the Social Security Act, \$399,386,000, together with \$5,851,000 to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Hospital Insurance Trust Fund and the Supplemental Medical Insurance Trust Fund, and \$46,756,000 from the amounts available under section 241 of the Public Health Service Act to carry out national health or human services research and evaluation activities: Provided, That of the funds made available under this heading for carrying out title XX of the Public Health Service Act, \$13,120,000 shall be for activities specified under section 2003(b)(2), all of which shall be for prevention service demonstration grants under section 510(b)(2) of title V of the Social Security Act, as amended, without application of the limitation of section 2010(c) of said title XX: Provided further, That of this amount, \$51,891,000 shall be for minority AIDS prevention and treatment activities; and \$5,941,000 shall be to assist Afghanistan in the development of maternal and child health clinics, consistent with section 103(a)(4)(H) of the Afghanistan Freedom Support Act of 2002; up to \$4,000,000 shall be for the Secretary's discretionary fund and may be used to carry out activities authorized under the Department's statutory authorities; and \$9,500,000 shall be for a Health Diplomacy Initiative and may be used to carry out health diplomacy activities such as health training, services, education, and program evaluation, provided directly, through grants, or through contracts: Provided further, That specific information requests from the chairmen and ranking members of the Subcommittees on Labor, Health and Human Services, and Education, and Related Agencies, on scientific research or any other matter, shall be transmitted to the Committees on Appropriations in a prompt professional manner and within the time frame specified in the request: Provided further, That scientific information requested by the Committees on Appropriations and prepared by government researchers and scientists shall be transmitted to the Committees on Appropriations, uncensored and without delay: Provided further, That funds provided in this Act for embryo adoption activities may be used to provide, to individuals adopting embryos, through grants and other mechanisms, medical and administrative services deemed necessary for such adoptions: Provided further, That such services shall be provided consistent with 42 CFR 59.5(a)(4): Provided further, That

\$2,100,000 shall be available for the projects and in the amounts specified in the committee report of the Senate accompanying this Act: Provided further, That \$500,000 shall be available to complete a feasibility study for a National Registry of Substantiated Cases of Child Abuse or Neglect, as described in section 633(g) of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248), and the Secretary of Health and Human Services shall submit the report described in section 633(g)(2) of such Act not later than 1 year after date of enactment of this Act: Provided further, That \$2,000,000 of the amounts appropriated under this heading shall be made available to carry out dental workforce programs under section 340G of the Public Health Service Act (42 U.S.C. 256g).

OFFICE OF MEDICARE HEARINGS AND APPEALS

For expenses necessary for administrative law judges responsible for hearing cases under title XVIII of the Social Security Act (and related provisions of title XI of such Act), \$70,000,000, to be transferred in appropriate part from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds.

OFFICE OF THE NATIONAL COORDINATOR FOR

HEALTH INFORMATION TECHNOLOGY

For expenses necessary for the Office of the National Coordinator for Health Information Technology, including grants, contracts and cooperative agreements for the development and advancement of an interoperable national health information technology infrastructure, \$43,000,000: Provided, That in addition to amounts provided herein, \$28,000,000 shall be available from amounts available under section 241 of the Public Health Service Act to carry out health information technology network development.

OFFICE OF INSPECTOR GENERAL

For expenses necessary for the Office of Inspector General, including the hire of passenger motor vehicles for investigations, in carrying out the provisions of the Inspector General Act of 1978, as amended, \$45,687,000: Provided, That of such amount, necessary sums are available for providing protective services to the Secretary and investigating non-payment of child support cases for which non-payment is a Federal offense under 18 U.S.C. 228.

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, \$33,748,000, together with not to exceed \$3,314,000 to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Hospital Insurance Trust Fund and the Supplemental Medical Insurance Trust Fund.

RETIREMENT PAY AND MEDICAL BENEFITS FOR

COMMISSIONED OFFICERS

For retirement pay and medical benefits of Public Health Service Commissioned Officers as authorized by law, for payments under the Retired Serviceman's Family Protection Plan and Survivor Benefit Plan, for medical care of dependents and retired personnel under the Dependents' Medical Care Act (10 U.S.C. ch. 55), such amounts as may be required during the current fiscal year.

PUBLIC HEALTH AND SOCIAL SERVICES EMERGENCY FUND

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary to support activities related to countering potential biological, disease, nuclear, radiological and chemical threats to civilian populations, and for other public health emergencies, \$786,556,000, of which not to exceed \$22,338,000, to remain available until September 30, 2009, is to pay the costs described in section 319F-2(c)(7)(B) of the Public Health Service Act, and of which \$189,000,000 shall be used to support advanced research and development of medical countermeasures, consistent with section 319L of the Public Health Service Act.

For expenses necessary to prepare for and respond to an influenza pandemic, \$888,000,000, of

which \$652,000,000 shall be available until expended, for activities including the development and purchase of vaccine, antivirals, necessary medical supplies, diagnostics, and other surveillance tools: Provided, That products purchased with these funds may, at the discretion of the Secretary, be deposited in the Strategic National Stockpile: Provided further, That notwithstanding section 496(b) of the Public Health Service Act, funds may be used for the construction or renovation of privately owned facilities for the production of pandemic influenza vaccines and other biologicals, where the Secretary finds such a contract necessary to secure sufficient supplies of such vaccines or biologicals: Provided further, That \$158,000,000 shall be transferred within 30 days of enactment to the Centers for Disease Control and Prevention for pandemic preparedness activities: Provided further, That funds appropriated herein and not specifically designated under this heading may be transferred to other appropriation accounts of the Department of Health and Human Services, as determined by the Secretary to be appropriate, to be used for the purposes specified in this sentence.

For expenses to provide screening and treatment for first response emergency services personnel, residents, students, and others related to the September 11, 2001, terrorist attacks on the World Trade Center, \$55,000,000 to be transferred to Centers for Disease Control and Prevention, Disease Control, Research, and Training.

GENERAL PROVISIONS

SEC. 201. Funds appropriated in this title shall be available for not to exceed \$50,000 for official reception and representation expenses when specifically approved by the Secretary.

SEC. 202. The Secretary shall make available through assignment not more than 60 employees of the Public Health Service to assist in child survival activities and to work in AIDS programs through and with funds provided by the Agency for International Development, the United Nations International Children's Emergency Fund or the World Health Organization.

SEC. 203. None of the funds appropriated in this Act may be used to implement section 1503 of the National Institutes of Health Revitalization Act of 1993, Public Law 103-43.

SEC. 204. None of the funds appropriated in this Act for the National Institutes of Health, the Agency for Healthcare Research and Quality, and the Substance Abuse and Mental Health Services Administration shall be used to pay the salary of an individual, through a grant or other extramural mechanism, at a rate in excess of Executive Level I.

SEC. 205. None of the funds appropriated in this title for Head Start shall be used to pay the compensation of an individual, either as direct costs or any proration as an indirect cost, at a rate in excess of Executive Level II.

SEC. 206. None of the funds appropriated in this Act may be expended pursuant to section 241 of the Public Health Service Act, except for funds specifically provided for in this Act, or for other taps and assessments made by any office located in the Department of Health and Human Services, prior to the Secretary's preparation and submission of a report to the Committee on Appropriations of the Senate and of the House detailing the planned uses of such funds.

SEC. 207. Notwithstanding section 241(a) of the Public Health Service Act, such portion as the Secretary shall determine, but not more than 2.4 percent, of any amounts appropriated for programs authorized under said Act shall be made available for the evaluation (directly, or by grants or contracts) of the implementation and effectiveness of such programs.

(TRANSFER OF FUNDS)

SEC. 208. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended) which are appropriated for the cur-

rent fiscal year for the Department of Health and Human Services in this Act may be transferred between a program, project, or activity, but no such program, project, or activity shall be increased by more than 3 percent by any such transfer: Provided, That a program, project, or activity may be increased by up to an additional 2 percent subject to approval by the House and Senate Committees on Appropriations: Provided further, That the transfer authority granted by this section shall be available only to meet emergency needs and shall not be used to create any new program or to fund any project or activity for which no funds are provided in this Act: Provided further, That the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of any transfer.

(TRANSFER OF FUNDS)

SEC. 209. The Director of the National Institutes of Health, jointly with the Director of the Office of AIDS Research, may transfer up to 3 percent among institutes and centers from the total amounts identified by these two Directors as funding for research pertaining to the human immunodeficiency virus: Provided, That the Appropriations Committees of both Houses of Congress are promptly notified of the transfer.

(TRANSFER OF FUNDS)

SEC. 210. Of the amounts made available in this Act for the National Institutes of Health, the amount for research related to the human immunodeficiency virus, as jointly determined by the Director of the National Institutes of Health and the Director of the Office of AIDS Research, shall be made available to the "Office of AIDS Research" account. The Director of the Office of AIDS Research shall transfer from such account amounts necessary to carry out section 2353(d)(3) of the Public Health Service Act.

SEC. 211. None of the funds appropriated in this Act may be made available to any entity under title X of the Public Health Service Act unless the applicant for the award certifies to the Secretary that it encourages family participation in the decision of minors to seek family planning services and that it provides counseling to minors on how to resist attempts to coerce minors into engaging in sexual activities.

SEC. 212. None of the funds appropriated by this Act (including funds appropriated to any trust fund) may be used to carry out the Medicare Advantage program if the Secretary denies participation in such program to an otherwise eligible entity (including a Provider Sponsored Organization) because the entity informs the Secretary that it will not provide, pay for, provide coverage of, or provide referrals for abortions: Provided, That the Secretary shall make appropriate prospective adjustments to the capitation payment to such an entity (based on an actuarially sound estimate of the expected costs of providing the service to such entity's enrollees): Provided further, That nothing in this section shall be construed to change the Medicare program's coverage for such services and a Medicare Advantage organization described in this section shall be responsible for informing enrollees where to obtain information about all Medicare covered services.

SEC. 213. Notwithstanding any other provision of law, no provider of services under title X of the Public Health Service Act shall be exempt from any State law requiring notification or the reporting of child abuse, child molestation, sexual abuse, rape, or incest.

SEC. 214. (a) Except as provided by subsection (e) none of the funds appropriated by this Act may be used to withhold substance abuse funding from a State pursuant to section 1926 of the Public Health Service Act (42 U.S.C. 300r-26) if such State certifies to the Secretary of Health and Human Services by May 1, 2008, that the State will commit additional State funds, in accordance with subsection (b), to ensure compliance with State laws prohibiting the sale of tobacco products to individuals under 18 years of age.

(b) The amount of funds to be committed by a State under subsection (a) shall be equal to 1 percent of such State's substance abuse block grant allocation for each percentage point by which the State misses the retailer compliance rate goal established by the Secretary of Health and Human Services under section 1926 of such Act.

(c) The State is to maintain State expenditures in fiscal year 2008 for tobacco prevention programs and for compliance activities at a level that is not less than the level of such expenditures maintained by the State for fiscal year 2007, and adding to that level the additional funds for tobacco compliance activities required under subsection (a). The State is to submit a report to the Secretary on all fiscal year 2007 State expenditures and all fiscal year 2008 obligations for tobacco prevention and compliance activities by program activity by July 31, 2008.

(d) The Secretary shall exercise discretion in enforcing the timing of the State obligation of the additional funds required by the certification described in subsection (a) as late as July 31, 2008.

(e) None of the funds appropriated by this Act may be used to withhold substance abuse funding pursuant to section 1926 from a territory that receives less than \$1,000,000.

SEC. 215. In order for the Department of Health and Human Services to carry out international health activities, including HIV/AIDS and other infectious diseases, chronic and environmental diseases, and other health activities abroad during fiscal year 2008, the Secretary of Health and Human Services—

(1) may exercise authority equivalent to that available to the Secretary of State in section 2(c) of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2669(c)). The Secretary of Health and Human Services shall consult with the Secretary of State and relevant Chief of Mission to ensure that the authority provided in this section is exercised in a manner consistent with section 207 of the Foreign Service Act of 1980 (22 U.S.C. 3927) and other applicable statutes administered by the Department of State; and

(2) is authorized to provide such funds by advance or reimbursement to the Secretary of State as may be necessary to pay the costs of acquisition, lease, alteration, renovation, and management of facilities outside of the United States for the use of the Department of Health and Human Services. The Department of State shall cooperate fully with the Secretary of Health and Human Services to ensure that the Department of Health and Human Services has secure, safe, functional facilities that comply with applicable regulation governing location, setback, and other facilities requirements and serve the purposes established by this Act. The Secretary of Health and Human Services is authorized, in consultation with the Secretary of State, through grant or cooperative agreement, to make available to public or nonprofit private institutions or agencies in participating foreign countries, funds to acquire, lease, alter, or renovate facilities in those countries as necessary to conduct programs of assistance for international health activities, including activities relating to HIV/AIDS and other infectious diseases, chronic and environmental diseases, and other health activities abroad.

SEC. 216. The Division of Federal Occupational Health hereafter may utilize personal services contracting to employ professional management/administrative and occupational health professionals.

SEC. 217. (a) AUTHORITY.—Notwithstanding any other provision of law, the Director of the National Institutes of Health may use funds available under sections 402(b)(7) and 402(b)(12) of the Public Health Service Act (42 U.S.C. 282(i)) to enter into transactions (other than contracts, cooperative agreements, or grants) to carry out research in support of the NIH Common Fund.

(b) PEEER REVIEW.—In entering into transactions under subsection (a), the Director of the

National Institutes of Health may utilize such peer review procedures (including consultation with appropriate scientific experts) as the Director determines to be appropriate to obtain assessments of scientific and technical merit. Such procedures shall apply to such transactions in lieu of the peer review and advisory council review procedures that would otherwise be required under sections 301(a)(3), 405(b)(1)(B), 405(b)(2), 406(a)(3)(A), 492, and 494 of the Public Health Service Act (42 U.S.C. 241, 284(b)(1)(B), 284(b)(2), 284(a)(3)(A), 289a, and 289c).

SEC. 218. Funds which are available for Individual Learning Accounts for employees of the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry may be transferred to "Disease Control, Research, and Training", to be available only for Individual Learning Accounts: Provided, That such funds may be used for any individual full-time equivalent employee while such employee is employed either by CDC or ATSDR.

SEC. 219. Notwithstanding any other provisions of law, funds made available in this Act may be used to continue operating the Council on Graduate Medical Education established by section 301 of Public Law 102-408.

SEC. 220. In addition to any other amounts available for such travel, and notwithstanding any other provision of law, amounts available from this or any other appropriation for the purchase, hire, maintenance, or operation of aircraft by the Centers for Disease Control and Prevention shall be available for travel by the Secretary of Health and Human Services, the Director of the Centers for Disease Control and Prevention, and employees of the Department of Health and Human Services accompanying the Secretary or the Director during such travel.

SEC. 221. The Director of the National Institutes of Health shall require that all investigators funded by the NIH submit or have submitted for them to the National Library of Medicine's PubMed Central an electronic version of their final, peer-reviewed manuscripts upon acceptance for publication to be made publicly available no later than 12 months after the official date of publication: Provided, That the NIH shall implement the public access policy in a manner consistent with copyright law.

SEC. 222. (a) The Secretary of Health and Human Services is authorized to award a grant to the Delta Health Alliance, a nonprofit alliance of academic institutions in the Mississippi Delta region that has as its primary purposes addressing longstanding, unmet health needs and catalyzing economic development in the Mississippi Delta.

(b) To be eligible to receive a grant under subsection (a), the Delta Health Alliance shall solicit and fund proposals from local governments, hospitals, health care clinics, academic institutions, and rural public health-related entities and organizations for research development, educational programs, health care services, job training, and planning, construction, and equipment of public health-related facilities in the Mississippi Delta region.

(c) With respect to the use of grant funds under this section for construction or major alteration of property, the Federal interest in the property involved shall last for a period of 1 year following the completion of the project or until such time that the Federal Government is compensated for its proportionate interest in the property if the property use changes or the property is transferred or sold, whichever time period is less. At the conclusion of such period, the Notice of Federal Interest in such property shall be removed.

(d) There are authorized to be appropriated such sums as may be necessary to carry out this section in fiscal year 2008 and in each of the five succeeding fiscal years.

SEC. 223. Not to exceed \$35,000,000 of funds appropriated by this Act to the Institutes and Centers of the National Institutes of Health may be used for alteration, repair, or improvement of

facilities, as necessary for the proper and efficient conduct of the activities authorized herein, at not to exceed \$2,500,000 per project.

(TRANSFER OF FUNDS)

SEC. 224. Of the amounts made available in this Act for the National Institutes of Health, 1 percent of the amount made available for National Research Service Awards (NRSA) shall be made available to the Administrator of the Health Resources and Services Administration to make NRSA awards for research in primary medical care to individuals affiliated with entities who have received grants or contracts under section 747 of the Public Health Service Act, and 1 percent of the amount made available for NRSA shall be made available to the Director of the Agency for Healthcare Research and Quality to make NRSA awards for health service research.

SEC. 225. Nothing in this Act shall be construed to effect or otherwise modify provisions of current Federal law with respect to the funding of abortion.

SEC. 226. Of the funds made available in this Act for subtitle B of title IV of the Cardiac Arrest Survival Act of 2000 (Public Law 106-505), \$200,000 shall be used to carry out section 312(c)(6) of the Public Health Service Act.

SEC. 227. (a) In addition to any amounts appropriated or otherwise made available under this Act to the Health Resources and Services Administration to carry out programs and activities under the Health Care Safety Net Amendments of 2002 (Public Law 107-251) and the amendments made by such Act, and for other telehealth programs under section 3301 of the Public Health Service Act (42 U.S.C. 254c-14), there shall be made available an additional \$6,800,000, to (1) expand support for existing and new telehealth resource centers, including at least 1 resource center focusing on telehomecare; (2) support telehealth network grants, telehealth demonstrations, and telehomecare pilot projects; and (3) provide grants to carry out programs under which health licensing boards or various States cooperate to develop and implement policies that will reduce statutory and regulatory barriers to telehealth.

(b) Notwithstanding any other provision of this Act, amounts appropriated or otherwise made available under this Act for the administrative and related expenses for departmental management for the Department of Labor, the Department of Health and Human Services, and the Department of Education, shall be reduced on a pro rata basis by \$6,800,000.

SEC. 228. (a) Not later than November 30, 2008, the Comptroller General of the United States shall submit to Congress a report concerning State health care reform initiatives.

(b) The report required under subsection (a) shall include the following:

(1) An assessment of State efforts to reexamine health care delivery and health insurance systems and to expand the access of residents to health insurance and health care services, including the following:

(A) An overview of State approaches to reexamining health care delivery and insurance.

(B) A description of whether and to what extent State health care initiatives have resulted in improved access to health care and insurance.

(C) A description of the extent to which public and private cooperation has occurred in State health care initiatives.

(D) A description of the outcomes of State insurance coverage mandates.

(E) A description of the effects of increased health care costs on State fiscal choices.

(F) A description of the effects of Federal law and funding on State health care initiatives and fiscal choices.

(G) A description of outcomes of State efforts to increase health care quality and control costs.

(2) Recommendations regarding the potential role of Congress in supporting State-based reform efforts, including the following:

(A) Enacting changes in Federal law that would facilitate State-based health reform and expansion efforts.

(B) Creating new or realigning existing Federal funding mechanisms to support State-based reform and expansion efforts.

(C) Expanding existing Federal health insurance programs and increasing other sources of Federal health care funding to support State-based health reform and expansion efforts.

SEC. 229. None of the funds made available in this Act may be used—

(1) for the Ombudsman Program of the Centers for Disease Control and Prevention; and

(2) by the Centers for Disease Control and Prevention to provide additional rotating pastel lights, zero-gravity chairs, or dry-heat saunas for its fitness center.

SEC. 230. (a) In addition to amounts otherwise appropriated under this Act, there is appropriated, out of any money in the Treasury not otherwise appropriated, an additional \$3,000,000 for the Centers for Disease Control and Prevention to make grants under the State Heart Disease and Stroke Prevention Program.

(b) Amounts made available under this Act for consulting services for the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be further reduced on a pro rata basis by the percentage necessary to decrease the overall amount of such spending by \$3,000,000.

SEC. 231. Notwithstanding any other provision of this Act, amounts appropriated in this Act for the administration and related expenses for the departmental management of the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be reduced by a pro rata percentage required to reduce the total amount appropriated in this Act by \$30,000,000.

SEC. 232. (a) In addition to any other amounts appropriated or otherwise made available under this Act, \$8,000,000 shall be available to carry out activities under the Patient Navigator Outreach and Chronic Disease Prevention Act of 2005 (Public Law 109-18).

(b) Amounts made available under this Act for consulting services for the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be further reduced on a pro rata basis by the percentage necessary to decrease the overall amount of such spending by \$8,000,000.

SEC. 233. (a) In addition to other amounts made available in this title, \$3,000,000 shall be made available for trauma care activities.

(b) Amounts made available under this Act for consulting services for the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be reduced on a pro rata basis by the percentage necessary to decrease the overall amount of such spending by \$6,000,000.

SEC. 234. (a) In addition to other amounts appropriated in this title to carry out title VII of the Public Health Service Act, \$2,000,000 shall be made available to carry out allied health professional programs under section 755 of such title VII, other than the Chiropractic-Medical School Demonstration Grant program, Graduate Psychology training programs, and podiatric physicians programs.

(b) Amounts made available under this Act for consulting services for the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be reduced further on a pro rata basis by the percentage necessary to decrease the overall amount of such spending by \$2,000,000.

SEC. 235. It is the sense of the Senate that a portion of the funds appropriated under this title be used for frequent hemodialysis clinical trials at the National Institute of Diabetes and Digestive and Kidney Sciences.

SEC. 236. SMALL BUSINESS CHILD CARE GRANT PROGRAM. For carrying out the small business child care grant program under section 8303 of

the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (42 U.S.C. 9858 note) \$5,000,000, to remain available until expended. Each amount otherwise appropriated in this Act for administrative expenses for the Department of Labor, Department of Health and Human Services, and Department of Education shall be reduced on a pro rata basis by the amount necessary to provide the amount referred to in the preceding sentence.

SEC. 237. Notwithstanding any other provision of law, no funds shall be made available under this Act to modify the HIV/AIDS funding formulas under title XXVI of the Public Health Service Act.

SEC. 238. (a) The amount made available under the heading "AGING SERVICES PROGRAMS" under the heading "ADMINISTRATION ON AGING" in this title shall be increased by \$10,000,000 of which—

(1) \$5,000,000 shall be used to carry out part B of title III of the Older Americans Act of 1965 (42 U.S.C. 3030d) for fiscal year 2008 (for supportive services and senior centers to allow area agencies on aging to account for projected growth in the population of older individuals, and inflation);

(2) \$2,000,000 shall be used to carry out part C of title III of such Act (42 U.S.C. 3030d-21 et seq.) for fiscal year 2008 (for congregate and home-delivered nutrition services to help account for increased gas and food costs); and

(3) \$3,000,000 shall be used to carry out part E of title III of such Act (42 U.S.C. 3030s et seq.) for fiscal year 2008 (for the National Family Caregiver Support Program to fund the program at the level authorized for that program under that Act (42 U.S.C. 3001 et seq.)).

(b)(1) The 3 amounts described in paragraph (2) shall be reduced on a pro rata basis, to achieve a total reduction of \$10,000,000.

(2) The amounts referred to in paragraph (1) are—

(A) the amount made available under the heading "SALARIES AND EXPENSES" under the heading "DEPARTMENTAL MANAGEMENT" in title I, for administration or travel expenses;

(B) the amount made available under the heading "GENERAL DEPARTMENTAL MANAGEMENT" under the heading "OFFICE OF THE SECRETARY" in this title, for administration or travel expenses; and

(C) the amount made available under the heading "PROGRAM ADMINISTRATION" under the heading "DEPARTMENTAL MANAGEMENT" in title III, for administration or travel expenses.

SEC. 239. (a) Notwithstanding any other provision of this Act, there shall be made available under this Act a total of \$7,500,000 for the National Violent Death Reporting System within the Centers for Disease Control and Prevention.

(b) Amounts made available under this Act for travel and administrative expenses for the Department of Labor, the Department of Health and Human Services, and the Department of Education shall be further reduced on a pro rata basis by the percentage necessary to decrease the overall amount of such spending by \$7,500,000.

SEC. 240. (a) Not later than 30 days after the date of enactment of this Act, the Secretary of Health and Human Services, acting through the Administrator of the Centers for Medicare & Medicaid Services, shall submit a report to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives on workers' compensation set-asides under the Medicare secondary payer set-aside provisions under title XVIII of the Social Security Act.

(b) The report described in subsection (a) shall contain the following information:

(1) The number of workers' compensation set-aside determination requests that have been pending for more than 60 days from the date of the initial submission for a workers' compensation set-aside determination.

(2) The average amount of time taken between the date of the initial submission for a workers' compensation set-aside determination request and the date of the final determination by the Centers for Medicare & Medicaid Services.

(3) The breakout of conditional payments recovered when workers' compensation is the primary payer separate from the amounts in Workers' Compensation Medicare Set-aside Accounts (in this section referred to as "WCMSAs").

(4) The aggregate amounts allocated in WCMSAs and disbursements from WCMSAs for fiscal year 2005 and fiscal year 2006.

(5) The number of conditional payment requests pending with regard to WCMSAs after 60 days from the date of the submission of the request.

(6) The number of WCMSAs that do not receive a determination based on the initial complete submission.

(7) Any other information determined appropriate by the Congressional Budget Office in order to determine the baseline revenue and expenditures associated with such workers' compensation set-asides.

SEC. 241. It is the sense of the Senate that the Secretary of Health and Human Services should maintain "deemed status" coverage under the Medicare program for clinical trials that are federally funded or reviewed, as provided for by the Executive Memorandum of June 2000.

SEC. 242. (a) The amount appropriated under the heading "DISEASE CONTROL, RESEARCH, AND TRAINING" under the heading "CENTERS FOR DISEASE CONTROL AND PREVENTION" in this title is increased by \$1,000,000.

(b) The amount appropriated under the heading "GENERAL DEPARTMENTAL MANAGEMENT" under the heading "OFFICE OF THE SECRETARY" in this title is decreased by \$1,000,000.

(c)(1)(A) The Secretary of Health and Human Services (acting through the Director of the National Institute for Occupational Safety and Health) shall conduct, and shall invite the University of Utah and West Virginia University to participate in conducting, a study of the recovery of coal pillars through retreat room and pillar mining practices in underground coal mines at depths greater than 1500 feet.

(B) The study shall examine the safety implications of retreat room and pillar mining practices, with emphasis on the impact of full or partial pillar extraction mining.

(C) The study shall consider, among other things—

(i) the conditions under which retreat mining is used, including conditions relating to—

(I) seam thickness;

(II) depth of cover;

(III) strength of the mine roof, pillars, and floor; and

(IV) the susceptibility of the mine to seismic activity; and

(ii) the procedures used to ensure miner safety during retreat mining.

(2)(A) Not later than 1 year after beginning the study described in paragraph (1), the Secretary shall submit a report containing the results of the study to the Committee on Education and Labor of the House of Representatives, the Committee on Health, Education, Labor, and Pensions of the Senate, the Committee on Appropriations of the House of Representatives, and the Committee on Appropriations of the Senate.

(B) The report shall include recommendations to enhance the safety of miners working in underground coal mines where retreat mining in room and pillar operations is utilized. Among other things, the recommendations shall identify means of adapting any practical technology to the mining environment to improve miner protections during mining at depths greater than 1500 feet, and research needed to develop improved technology to improve miner protections during mining at such depths.

(3) Not later than 90 days after the submission of the report described in paragraph (2) to Con-

gress, the Secretary of Health and Human Services shall publish a notice in the Federal Register describing the actions, if any, that the Secretary intends to take based on the report.

SEC. 243. None of the funds appropriated in this Act may be used to prevent an individual not in the business of importing a prescription drug (within the meaning of section 801(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(g)) from importing a prescription drug from Canada that complies with sections 501, 502, and 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, and 355) and is not—

(1) a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802); or

(2) a biological product, as defined in section 351 of the Public Health Service Act (42 U.S.C. 262).

This title may be cited as the "Department of Health and Human Services Appropriations Act, 2008".

TITLE III

DEPARTMENT OF EDUCATION

EDUCATION FOR THE DISADVANTAGED

For carrying out title I of the Elementary and Secondary Education Act of 1965 ("ESEA") and section 418A of the Higher Education Act of 1965, \$15,867,778,000, of which \$6,812,554,000 shall become available on July 1, 2008, and shall remain available through September 30, 2009, and of which \$8,867,301,000 shall become available on October 1, 2008, and shall remain available through September 30, 2009, for academic year 2008-2009: Provided, That \$6,808,407,000 shall be for basic grants under section 1124: Provided further, That up to \$4,000,000 of these funds shall be available to the Secretary of Education on October 1, 2007, to obtain annually updated educational-agency-level census poverty data from the Bureau of the Census: Provided further, That \$1,365,031,000 shall be for concentration grants under section 1124A: Provided further, That \$2,868,231,000 shall be for targeted grants under section 1125: Provided further, That \$2,868,231,000 shall be for education finance incentive grants under section 1125A: Provided further, That \$500,000,000 shall be for school improvement grants authorized under section 1003(g) of the ESEA: Provided further, That \$9,330,000 shall be to carry out part E of title I: Provided further, That \$1,634,000 shall be available for a comprehensive school reform clearinghouse.

IMPACT AID

For carrying out programs of financial assistance to federally affected schools authorized by title VIII of the Elementary and Secondary Education Act of 1965, \$1,248,453,000, of which \$1,111,867,000 shall be for basic support payments under section 8003(b), \$49,466,000 shall be for payments for children with disabilities under section 8003(d), \$17,820,000 shall be for construction under section 8007(b) and shall remain available through September 30, 2009, \$64,350,000 shall be for Federal property payments under section 8002, and \$4,950,000, to remain available until expended, shall be for facilities maintenance under section 8008: Provided, That for purposes of computing the amount of a payment for an eligible local educational agency under section 8003(a) of the Elementary and Secondary Education Act (20 U.S.C. 7703(a)) for school year 2007-2008, children enrolled in a school of such agency that would otherwise be eligible for payment under section 8003(a)(1)(B) of such Act, but due to the deployment of both parents or legal guardians, or a parent or legal guardian having sole custody of such children, or due to the death of a military parent or legal guardian while on active duty (so long as such children reside on Federal property as described in section 8003(a)(1)(B)), are no longer eligible under such section, shall be considered as eligible students under such section, provided such

students remain in average daily attendance at a school in the same local educational agency they attended prior to their change in eligibility status.

SCHOOL IMPROVEMENT PROGRAMS

For carrying out school improvement activities authorized by title II, part B of title IV, subparts 6 and 9 of part D of title V, parts A and B of title VI, and parts B and C of title VII of the Elementary and Secondary Education Act of 1965 ("ESEA"); the McKinney-Vento Homeless Assistance Act; section 203 of the Educational Technical Assistance Act of 2002; the Compact of Free Association Amendments Act of 2003; and the Civil Rights Act of 1964, \$5,198,525,000, of which \$3,560,485,000 shall become available on July 1, 2008, and remain available through September 30, 2009, and of which \$1,435,000,000 shall become available on October 1, 2008, and shall remain available through September 30, 2009, for academic year 2008–2009: Provided, That funds made available to carry out part B of title VII of the ESEA may be used for construction, renovation and modernization of any elementary school, secondary school, or structure related to an elementary school or secondary school, run by the Department of Education of the State of Hawaii, that serves a predominantly Native Hawaiian student body: Provided further, That from the funds referred to in the preceding proviso, not less than \$1,250,000 shall be for a grant to the Department of Education of the State of Hawaii for the activities described in such proviso, and \$1,250,000 shall be for a grant to the University of Hawaii School of Law for a Center of Excellence in Native Hawaiian law: Provided further, That funds made available to carry out part C of title VII of the ESEA may be used for construction: Provided further, That up to 100 percent of the funds available to a State educational agency under part D of title II of the ESEA may be used for subgrants described in section 2412(a)(2)(B) of such Act: Provided further, That \$60,000,000 shall be available to carry out section 203 of the Educational Technical Assistance Act of 2002: Provided further, That \$34,376,000 shall be available to carry out part D of title V of the ESEA: Provided further, That no funds appropriated under this heading may be used to carry out section 5494 under the ESEA: Provided further, That \$18,001,000 shall be available to carry out the Supplemental Education Grants program for the Federated States of Micronesia and the Republic of the Marshall Islands: Provided further, That up to 5 percent of these amounts may be reserved by the Federated States of Micronesia and the Republic of the Marshall Islands to administer the Supplemental Education Grants programs and to obtain technical assistance, oversight and consultancy services in the administration of these grants and to reimburse the United States Departments of Labor, Health and Human Services, and Education for such services.

INDIAN EDUCATION

For expenses necessary to carry out, to the extent not otherwise provided, title VII, part A of the Elementary and Secondary Education Act of 1965, \$118,690,000.

INNOVATION AND IMPROVEMENT

For carrying out activities authorized by parts G and H of title I, subpart 5 of part A and parts C and D of title II, parts B, C, and D of title V, and section 1504 of the Elementary and Secondary Education Act of 1965 ("ESEA"), \$962,889,000: Provided, That \$9,821,000 shall be provided to the National Board for Professional Teaching Standards to carry out section 2151(c) of the ESEA: Provided further, That from funds for subpart 4, part C of title II, up to 3 percent shall be available to the Secretary for technical assistance and dissemination of information: Provided further, That \$317,699,000 shall be available to carry out part D of title V of the ESEA: Provided further, That \$64,504,000 of the funds for subpart 1, part D of title V of the

ESEA shall be available for the projects and in the amounts specified in the committee report of the Senate accompanying this Act: Provided further, That \$99,000,000 of the funds for subpart 1 shall be for competitive grants to local educational agencies, including charter schools that are local educational agencies, or States, or partnerships of: (1) a local educational agency, a State, or both; and (2) at least one non-profit organization to develop and implement performance-based teacher and principal compensation systems in high-need schools: Provided further, That such performance-based compensation systems must consider gains in student academic achievement as well as classroom evaluations conducted multiple times during each school year among other factors and provide educators with incentives to take on additional responsibilities and leadership roles: Provided further, That five percent of such funds for competitive grants shall be available for technical assistance, training, peer review of applications, program outreach and evaluation activities.

SAFE SCHOOLS AND CITIZENSHIP EDUCATION

For carrying out activities authorized by subpart 3 of part C of title II, part A of title IV, and subparts 2, 3, and 10 of part D of title V of the Elementary and Secondary Education Act of 1965 ("ESEA"), \$697,112,000, of which \$300,000,000 shall become available on July 1, 2008, and remain available through September 30, 2009: Provided, That of the amount available for subpart 2 of part A of title IV of the ESEA, \$850,000 shall be used to continue the National Recognition Awards program under the same guidelines outlined by section 120(f) of Public Law 105–244: Provided further, That \$300,000,000 shall be available for subpart 1 of part A of title IV and \$222,112,000 shall be available for subpart 2 of part A of title IV, of which not less than \$1,000,000, to remain available until expended, shall be for the Project School Emergency Response to Violence program to provide education-related services to local educational agencies in which the learning environment has been disrupted due to a violent or traumatic crisis: Provided further, That \$145,000,000 shall be available to carry out part D of title V of the ESEA: Provided further, That of the funds available to carry out subpart 3 of part C of title II, up to \$12,000,000 may be used to carry out section 2345 and \$3,000,000 shall be used to implement a comprehensive program to improve public knowledge, understanding and support of the Congress and the State legislatures.

ENGLISH LANGUAGE ACQUISITION

For carrying out part A of title III of the ESEA, \$670,819,000, which shall become available on July 1, 2008, and shall remain available through September 30, 2009, except that 6.5 percent of such amount shall be available on October 1, 2007, and shall remain available through September 30, 2009, to carry out activities under section 3111(c)(1)(C).

SPECIAL EDUCATION

For carrying out the Individuals with Disabilities Education Act (IDEA) and the Special Olympics Sport and Empowerment Act of 2004, \$12,330,374,000, of which \$6,192,551,000 shall become available on July 1, 2008, and shall remain available through September 30, 2009, and of which \$5,924,200,000 shall become available on October 1, 2008, and shall remain available through September 30, 2009, for academic year 2008–2009: Provided, That \$13,000,000 shall be for Recording for the Blind and Dyslexic, Inc., to support activities under section 674(c)(1)(D) of the IDEA: Provided further, That \$1,500,000 shall be for the recipient of funds provided by Public Law 105–78 under section 687(b)(2)(G) of the IDEA (as in effect prior to the enactment of the Individuals with Disabilities Education Improvement Act of 2004) to provide information on diagnosis, intervention, and teaching strategies for children with disabilities: Provided further, That the amount for section 611(b)(2) of

the IDEA shall be equal to the lesser of the amount available for that activity during fiscal year 2007, increased by the amount of inflation as specified in section 619(d)(2)(B) of the IDEA, or the percentage increase in the funds appropriated under section 611(i) of the IDEA: Provided further, That nothing in section 674(e) of the IDEA shall be construed to establish a private right of action against the National Instructional Materials Access Center for failure to perform the duties of such center or otherwise authorize a private right of action related to the performance of such center: Provided further, That \$3,000,000 shall be available to support the Special Olympics Winter World Games.

REHABILITATION SERVICES AND DISABILITY RESEARCH

For carrying out, to the extent not otherwise provided, the Rehabilitation Act of 1973, the Assistive Technology Act of 1998 ("the AT Act"), and the Helen Keller National Center Act, \$3,286,942,000, of which \$1,000,000 shall be awarded to the American Academy of Orthotists and Prosthetists for activities that further the purposes of the grant received by the Academy for the period beginning October 1, 2003, including activities to meet the demand for orthotic and prosthetic provider services and improve patient care: Provided, That \$32,000,000 shall be used for carrying out the AT Act, including \$26,377,000 for State grant activities authorized under section 4 of the AT Act, \$4,570,000 for State grants for protection and advocacy under section 5 of the AT Act and \$1,053,000 shall be for technical assistance activities under section 6 of the AT Act: Provided further, That \$2,650,000 of the funds for section 303 of the Rehabilitation Act of 1973 shall be available for the projects and in the amounts specified in the committee report of the Senate accompanying this Act: Provided further, That \$8,400,000 shall be used to carry out the Traumatic Brain Injury (TBI) Model Systems of Care Program and to sustain at least 16 TBI Model Systems Centers.

SPECIAL INSTITUTIONS FOR PERSONS WITH DISABILITIES

AMERICAN PRINTING HOUSE FOR THE BLIND

For carrying out the Act of March 3, 1879, as amended (20 U.S.C. 101 et seq.), \$22,000,000.

NATIONAL TECHNICAL INSTITUTE FOR THE DEAF

For the National Technical Institute for the Deaf under titles I and II of the Education of the Deaf Act of 1986 (20 U.S.C. 4301 et seq.), \$59,000,000, of which \$1,705,000 shall be for construction and shall remain available until expended: Provided, That from the total amount available, the Institute may at its discretion use funds for the endowment program as authorized under section 207.

GALLAUDET UNIVERSITY

For the Kendall Demonstration Elementary School, the Model Secondary School for the Deaf, and the partial support of Gallaudet University under titles I and II of the Education of the Deaf Act of 1986 (20 U.S.C. 4301 et seq.), \$111,000,000, of which \$600,000 shall be for the Secretary of Education to carry out section 205 of the Act: Provided, That from the total amount available, the University may at its discretion use funds for the endowment program as authorized under section 207.

CAREER, TECHNICAL, AND ADULT EDUCATION

For carrying out, to the extent not otherwise provided, the Carl D. Perkins Career and Technical Education Act of 2006, the Adult Education and Family Literacy Act, and title VIII–D of the Higher Education Amendments of 1998, \$1,894,788,000, of which \$1,103,788,000 shall become available on July 1, 2008, and shall remain available through September 30, 2009, and of which \$791,000,000 shall become available on October 1, 2008, and shall remain available through September 30, 2009: Provided, That of the amount provided for Adult Education State Grants, \$67,896,000 shall be made available for integrated English literacy and civics education

services to immigrants and other limited English proficient populations: Provided further, That of the amount reserved for integrated English literacy and civics education, notwithstanding section 211 of the Adult Education and Family Literacy Act, 65 percent shall be allocated to States based on a State's absolute need as determined by calculating each State's share of a 10-year average of the Immigration and Naturalization Service data for immigrants admitted for legal permanent residence for the 10 most recent years, and 35 percent allocated to States that experienced growth as measured by the average of the 3 most recent years for which Immigration and Naturalization Service data for immigrants admitted for legal permanent residence are available, except that no State shall be allocated an amount less than \$60,000: Provided further, That of the amounts made available for the Adult Education and Family Literacy Act, \$7,000,000 shall be for national leadership activities under section 243 and \$6,638,000 shall be for the National Institute for Literacy under section 242: Provided further, That \$22,770,000 shall be for Youth Offender Grants.

STUDENT FINANCIAL ASSISTANCE

For carrying out subparts 1, 3, and 4 of part A, part C and part E of title IV of the Higher Education Act of 1965, as amended, \$16,368,883,000, which shall remain available through September 30, 2009.

The maximum Pell Grant for which a student shall be eligible during award year 2008–2009 shall be \$4,310.

STUDENT AID ADMINISTRATION

For Federal administrative expenses to carry out part D of title I, and subparts 1, 3, and 4 of part A, and parts B, C, D, and E of title IV of the Higher Education Act of 1965, as amended, \$708,216,000, which shall remain available until expended.

HIGHER EDUCATION

For carrying out, to the extent not otherwise provided, titles II, III, IV, V, VI, and VII of the Higher Education Act of 1965 ("HEA"), as amended, the Mutual Educational and Cultural Exchange Act of 1961, and section 117 of the Carl D. Perkins Career and Technical Education Act of 2006, \$2,028,302,000: Provided, That \$9,699,000, to remain available through September 30, 2009, shall be available to fund fellowships for academic year 2009–2010 under part A, subpart 1 of title VII of said Act, under the terms and conditions of part A, subpart 1: Provided further, That \$970,000 is for data collection and evaluation activities for programs under the HEA, including such activities needed to comply with the Government Performance and Results Act of 1993: Provided further, That notwithstanding any other provision of law, funds made available in this Act to carry out title VI of the HEA and section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961 may be used to support visits and study in foreign countries by individuals who are participating in advanced foreign language training and international studies in areas that are vital to United States national security and who plan to apply their language skills and knowledge of these countries in the fields of government, the professions, or international development: Provided further, That of the funds referred to in the preceding proviso up to 1 percent may be used for program evaluation, national outreach, and information dissemination activities: Provided further, That the funds provided for title II of the HEA shall be allocated notwithstanding section 210 of such Act: Provided further, That \$12,000,000 shall be for grants to institutions of higher education, in partnership with local educational agencies, to establish instructional programs at all educational levels in languages critical to U.S. national security: Provided further, That \$59,855,000 of the funds for part B of title VII of the Higher Education Act of 1965 shall be avail-

able for the projects and in the amounts specified in the committee report of the Senate accompanying this Act.

HOWARD UNIVERSITY

For partial support of Howard University (20 U.S.C. 121 et seq.), \$237,392,000, of which not less than \$3,526,000 shall be for a matching endowment grant pursuant to the Howard University Endowment Act (Public Law 98–480) and shall remain available until expended.

COLLEGE HOUSING AND ACADEMIC FACILITIES LOANS PROGRAM

For Federal administrative expenses to carry out activities related to existing facility loans pursuant to section 121 of the Higher Education Act of 1965, as amended \$481,000.

HISTORICALLY BLACK COLLEGE AND UNIVERSITY CAPITAL FINANCING PROGRAM ACCOUNT

For administrative expenses to carry out the Historically Black College and University Capital Financing Program entered into pursuant to title III, part D of the Higher Education Act of 1965, as amended, \$188,000.

INSTITUTE OF EDUCATION SCIENCES

For carrying out activities authorized by the Education Sciences Reform Act of 2002, as amended, the National Assessment of Educational Progress Authorization Act, section 208 of the Educational Technical Assistance Act of 2002, and section 664 of the Individuals with Disabilities Education Act, \$589,826,000, of which \$322,020,000 shall be available until September 30, 2009.

DEPARTMENTAL MANAGEMENT

PROGRAM ADMINISTRATION

For carrying out, to the extent not otherwise provided, the Department of Education Organization Act, including rental of conference rooms in the District of Columbia and hire of three passenger motor vehicles, \$432,631,000, of which \$3,000,000, to remain available until expended, shall be for building alterations and related expenses for the move of Department staff to the Mary E. Switzer building in Washington, DC: Provided, That the Secretary of Education shall assess the impact on education felt by students in states with a high proportion of federal land compared to students in non-public land states. The study shall consider current student teacher ratios, trends in student teacher ratios, the proportion of property tax dedicated to education in each State, and the impact of these and other factors on education in public land states. The Secretary shall submit the report not later than 1 year after the date of the enactment of this Act.

OFFICE FOR CIVIL RIGHTS

For expenses necessary for the Office for Civil Rights, as authorized by section 203 of the Department of Education Organization Act, \$93,771,000.

OFFICE OF THE INSPECTOR GENERAL

For expenses necessary for the Office of the Inspector General, as authorized by section 212 of the Department of Education Organization Act, \$54,239,000.

GENERAL PROVISIONS

SEC. 301. No funds appropriated in this Act may be used for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to overcome racial imbalance in any school or school system, or for the transportation of students or teachers (or for the purchase of equipment for such transportation) in order to carry out a plan of racial desegregation of any school or school system.

SEC. 302. None of the funds contained in this Act shall be used to require, directly or indirectly, the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education, to the school offering such special education, in order to comply with title VI of the Civil Rights Act of 1964. For the

purpose of this section an indirect requirement of transportation of students includes the transportation of students to carry out a plan involving the reorganization of the grade structure of schools, the pairing of schools, or the clustering of schools, or any combination of grade restructuring, pairing or clustering. The prohibition described in this section does not include the establishment of magnet schools.

SEC. 303. No funds appropriated in this Act may be used to prevent the implementation of programs of voluntary prayer and meditation in the public schools.

(TRANSFER OF FUNDS)

SEC. 304. Not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended) which are appropriated for the Department of Education in this Act may be transferred between appropriations, but no such appropriation shall be increased by more than 3 percent by any such transfer: Provided, That the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of any transfer.

SEC. 305. None of the funds made available in this Act may be used to promulgate, implement, or enforce any revision to the regulations in effect under section 496 of the Higher Education Act of 1965 on June 1, 2007, until legislation specifically requiring such revision is enacted.

SEC. 306. (a) Notwithstanding section 8013(9)(B) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7713(9)(B)), North Chicago Community Unit School District 187, North Shore District 112, and Township High School District 113 in Lake County, Illinois, and Glenview Public School District 34 and Glenbrook High School District 225 in Cook County, Illinois, shall be considered local educational agencies as such term is used in and for purposes of title VIII of such Act.

(b) Notwithstanding any other provision of law, federally connected children (as determined under section 8003(a) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7703(a))) who are in attendance in the North Shore District 112, Township High School District 113, Glenview Public School District 34, and Glenbrook High School District 225 described in subsection (a), shall be considered to be in attendance in the North Chicago Community Unit School District 187 described in subsection (a) for purposes of computing the amount that the North Chicago Community Unit School District 187 is eligible to receive under subsection (b) or (d) of such section if—

(1) such school districts have entered into an agreement for such students to be so considered and for the equitable apportionment among all such school districts of any amount received by the North Chicago Community Unit School District 187 under such section; and

(2) any amount apportioned among all such school districts pursuant to paragraph (1) is used by such school districts only for the direct provision of educational services.

SEC. 307. Notwithstanding any other provision of this Act, \$2,000,000 shall be available for the Underground Railroad Educational and Cultural Program. Amounts appropriated under title III for administrative expenses shall be reduced on a pro rata basis by \$2,000,000.

SEC. 308. No funds appropriated under this Act may be used by the Secretary of Education to promulgate, implement, or enforce the evaluation for the Upward Bound Program as announced in the Notice of Final Priority published at 71 Fed. Reg. 55447–55450 (Sept. 22, 2006), until after the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and Labor of the House of Representatives have thoroughly examined such regulation in concert with the reauthorization of the Higher Education Act of 1965.

SEC. 309. Notwithstanding any other provision of this Act, the Secretary of Education shall,

not later than September 30, 2008, submit to the appropriate committees of Congress and post on the Internet website of the Department of Education, a report concerning—

(1) the total number of Department of Education employees, including employees who salaries are paid by the Department but are employed by contractors or grantees of the Department;

(2) the total number, and percentage, of such employees who have previously worked in a classroom as a teacher or a teacher's assistant;

(3) of the employees who have worked in a classroom, the average number of years of time spent as an instructor;

(4) the total dollar amount, and overall percentage of the Department of Education funding, that is expended—

(A) in the classroom;

(B) on student tuition assistance;

(C) on overhead and administrative costs and expenses; and

(D) on Congressionally directed spending items, including the administrative costs of administering such earmarks; and

(5) a listing of all of the programs run by the Department of Education and the total budget and most recent evaluation of each such program, and a notation if no such evaluation has been conducted.

SEC. 310. SENSE OF THE SENATE REGARDING SCIENCE TEACHING AND ASSESSMENT. (a) FINDINGS.—The Senate finds that there is broad agreement in the scientific community that learning science requires direct involvement by students in scientific inquiry and that such direct involvement must be included in every science program for every science student in pre-kindergarten through grade 16.

(b) SENSE OF THE SENATE REGARDING THE NATIONAL ASSESSMENT OF EDUCATIONAL PROGRESS 2009 SCIENCE TEST.—It is the sense of the Senate that—

(1) the National Assessment of Educational Progress (NAEP) 2009 Science assessment should reflect the findings of the Senate described in subsection (a) and those expressed in section 7026(a) of the America Creating Opportunities to Meaningfully Promote Excellence in Technology, Education, and Science Act; and

(2) the National Assessment Governing Board (NAGB) should certify that the National Assessment of Education Progress 2009 Science framework, specification, and assessment include extensive and explicit attention to inquiry.

(c) REPORT.—The National Assessment Governing Board shall submit a report to the Committee on Health, Education, Labor, and Pensions of the Senate describing whether the certification described in subsection (b)(2) has been made, and if such certification has been made, include in the report the following:

(1) A description of the analysis used to arrive at such certification.

(2) A list of individuals with experience in inquiry science education making the certification.

SEC. 311. (a) In addition to amounts otherwise appropriated under this Act, there are appropriated, out of any money in the Treasury not otherwise appropriated—

(1) \$6,000,000 to carry out the programs for baccalaureate degrees in science, technology, engineering, mathematics, or critical foreign languages, with concurrent teacher certification under section 6113 of the America COMPETES Act (Public Law 110-69); and

(2) \$4,000,000 to carry out the programs for master's degrees in science, technology, engineering, and mathematics, or critical foreign language education under section 6114 of the America COMPETES Act (Public Law 110-69).

(b) Notwithstanding any other provision of this Act, amounts made available under this Act for the administration and related expenses for the departmental management of the Department of Education, shall be reduced by \$10,000,000.

SEC. 312. (a) The Secretary of Education shall update the 2002 Department of Education and United States Secret Service guidance entitled "Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates" to reflect the recommendations contained in the report entitled "Report to the President On Issues Raised by the Virginia Tech Tragedy", to include the need to provide schools with guidance on how information can be shared legally under the regulations issued under section 264(c) of the Health Insurance Portability and Accountability Act and the Family Educational Rights and Privacy Act.

(b) Not later than 3 months after the date of enactment of this Act, the Secretary of Education shall disseminate the updated guidance under subsection (a) to institutions of higher education and to State departments of education for distribution to all local education agencies.

SEC. 313. (a) Not later than May 31, 2009, the Comptroller General of the United States shall submit a report to Congress on the strategies utilized to assist students in meeting State student academic achievement standards, including achieving proficiency on State academic assessments.

(b) The report required under subsection (a) shall include data collected from a representative sample of schools across the Nation to determine the strategies utilized by schools to prepare students to meet State student academic achievement standards and achieve proficiency on State academic assessments, including the following categories of strategies:

(1) Adjusting the structure of the school day, which may include the expansion of the school day, or modifications in the time spent on instruction in core academic subjects.

(2) The professional development provided to teachers or additional school personnel to assist low-performing students.

(3) Changes in the provision of instruction to students, including targeting low-performing students for specialized instruction or tutoring.

(4) Utilizing types of instructional materials to prepare students.

(5) Instituting other State or local assessments.

(6) Using other strategies to prepare students to meet State student academic achievement standards and achieve proficiency on State academic assessments.

(c) The data collected pursuant to this section shall be disaggregated by—

(1) schools with a high percentage of students eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);

(2) schools with a low percentage of students eligible for a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);

(3) schools with a student enrollment consisting of a majority of racial and ethnic minority students;

(4) schools with a student enrollment consisting of a majority of non-minority students;

(5) urban schools;

(6) suburban schools;

(7) rural schools; and

(8) schools identified as in need of improvement under section 1116 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316).

(d) The representative sample described in subsection (b) shall be designed in such a manner as to provide valid, reliable, and accurate information as well as sufficient sample sizes for each type of school described in subsection (c).

(e) The data collected under subsection (b) shall be reported separately for the most common types of strategies, in each of the categories listed in paragraphs (1) through (6) of subsection (b), used by schools to prepare students to meet State student academic achievement

standards, including achieving proficiency on State academic assessments.

SEC. 314. Prior to January 1, 2008, the Secretary of Education may not terminate any voluntary flexible agreement under section 428A of the Higher Education Act of 1965 (20 U.S.C. 1078-1) that exists on the date of enactment of this Act. With respect to an entity with which the Secretary of Education has a voluntary flexible agreement under section 428A of the Higher Education Act of 1965 (20 U.S.C. 1078-1) on the date of enactment of this Act that is not cost neutral, if the Secretary terminates such agreement after January 1, 2008, the Secretary of Education shall, not later than December 31, 2008, negotiate to enter, and enter, into a new voluntary flexible agreement with such entity so that the agreement is cost neutral, unless such entity does not want to enter into such agreement.

This title may be cited as the "Department of Education Appropriations Act, 2008".

TITLE IV

RELATED AGENCIES

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED SALARIES AND EXPENSES

For expenses necessary of the Committee for Purchase From People Who Are Blind or Severely Disabled established by Public Law 92-28, \$4,994,000.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

NATIONAL AND COMMUNITY SERVICE PROGRAMS, OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the Corporation for National and Community Service to carry out the programs, activities, and initiatives under provisions of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 et seq.) (the 1973 Act) and the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.) (the 1990 Act), \$804,489,000: Provided, That all prior year unobligated balances from the "Domestic Volunteer Service Programs, Operating Expenses" account shall be transferred to and merged with this appropriation: Provided further, That up to one percent of program grant funds may be used to defray costs of conducting grant application reviews, including the use of outside peer reviewers: Provided further, That none of the funds made available to the Corporation for National and Community Service in this Act for activities authorized by section 122 of part C of title I and part E of title II of the Domestic Volunteer Service Act of 1973 shall be used to provide stipends or other monetary incentives to program participants whose incomes exceed 125 percent of the national poverty level: Provided further, That not more than \$275,775,000 of the amount provided under this heading shall be available for grants under the National Service Trust Program authorized under subtitle C of title I of the 1990 Act (42 U.S.C. 12571 et seq.) (relating to activities of the AmeriCorps program), including grants to organizations operating projects under the AmeriCorps Education Awards Program (without regard to the requirements of sections 121(d) and (e), section 131(e), section 132, and sections 140(a), (d), and (e) of the 1990 Act: Provided further, That not less than \$117,720,000 of the amount provided under this heading, to remain available without fiscal year limitation, shall be transferred to the National Service Trust for educational awards authorized under subtitle D of title I of the 1990 Act (42 U.S.C. 12601), of which up to \$4,000,000 shall be available to support national service scholarships for high school students performing community service, and of which \$7,000,000 shall be held in reserve as defined in Public Law 108-45: Provided further, That in addition to amounts otherwise provided to the National Service Trust under the fifth proviso, the Corporation may transfer

funds from the amount provided under the fourth proviso, to the National Service Trust authorized under subtitle D of title I of the 1990 Act (42 U.S.C. 12601) upon determination that such transfer is necessary to support the activities of national service participants and after notice is transmitted to Congress: Provided further, That of the amount provided under this heading for grants under the National Service Trust program authorized under subtitle C of title I of the Act, not more than \$65,000,000 may be used to administer, reimburse, or support any national service program authorized under section 121(d)(2) of such Act (42 U.S.C. 12581(d)(2)): Provided further, That notwithstanding section 501(a)(4) of the Act, of the funds provided under this heading, not more than \$12,516,000 shall be made available to provide assistance to State commissions on national and community service under section 126(a) of the 1990 Act: Provided further, That not more than \$10,466,000 shall be available for quality and innovation activities authorized under subtitle H of title I of the 1990 Act (42 U.S.C. 12853 et seq.): Provided further, That notwithstanding subtitle H of title I of the 1990 Act (42 U.S.C. 12853), none of the funds provided under the previous proviso shall be used to support salaries and related expenses (including travel) attributable to Corporation employees: Provided further, That \$31,789,000 of the funds made available under this heading shall be available for the Civilian Community Corps authorized under subtitle E of title I of the 1990 Act (42 U.S.C. 12611 et seq.), of which not less than \$5,000,000 shall be for the acquisition, renovation, equipping and startup costs for a campus located in Vinton, Iowa and a campus in Vicksburg, Mississippi.

SALARIES AND EXPENSES

For necessary expenses of administration as provided under section 501(a)(4) of the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.) and under section 504(a) of the Domestic Volunteer Service Act of 1973, including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, the employment of experts and consultants authorized under 5 U.S.C. 3109, and not to exceed \$2,500 for official reception and representation expenses, \$69,520,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, \$6,900,000.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

Notwithstanding any other provision of law, the term "qualified student loan" with respect to national service education awards shall mean any loan determined by an institution of higher education to be necessary to cover a student's cost of attendance at such institution and made, insured, or guaranteed directly to a student by a State agency, in addition to other meanings under section 148(b)(7) of the National and Community Service Act.

Notwithstanding any other provision of law, funds made available under section 129(d)(5)(B) of the National and Community Service Act to assist entities in placing applicants who are individuals with disabilities may be provided to any entity that receives a grant under section 121 of the Act.

The Inspector General of the Corporation for National and Community Service shall conduct random audits of the grantees that administer activities under the AmeriCorps programs and shall levy sanctions in accordance with standard Inspector General audit resolution procedures which include, but are not limited to, debarment of any grantee (or successor in interest or any entity with substantially the same person or persons in control) that has been determined to have committed any substantial violations of the requirements of the AmeriCorps programs, including any grantee that has been determined

to have violated the prohibition of using Federal funds to lobby the Congress: Provided, That the Inspector General shall obtain reimbursements in the amount of any misused funds from any grantee that has been determined to have committed any substantial violations of the requirements of the AmeriCorps programs.

For fiscal year 2008, the Corporation shall make any significant changes to program requirements or policy only through public notice and comment rulemaking. For fiscal year 2008, during any grant selection process, no officer or employee of the Corporation shall knowingly disclose any covered grant selection information regarding such selection, directly or indirectly, to any person other than an officer or employee of the Corporation that is authorized by the Corporation to receive such information.

Except as expressly provided herein, not to exceed 1 percent of any discretionary funds (pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985, as amended) which are appropriated for the Corporation in this Act may be transferred between activities identified under this heading in the committee report accompanying this Act, but no such activity shall be increased by more than 3 percent by any such transfer: Provided, That the Appropriations Committees of both Houses of Congress are notified at least 15 days in advance of any transfer.

CORPORATION FOR PUBLIC BROADCASTING

For payment to the Corporation for Public Broadcasting, as authorized by the Communications Act of 1934, an amount which shall be available within limitations specified by that Act, for the fiscal year 2010, \$420,000,000: Provided, That no funds made available to the Corporation for Public Broadcasting by this Act shall be used to pay for receptions, parties, or similar forms of entertainment for Government officials or employees: Provided further, That none of the funds contained in this paragraph shall be available or used to aid or support any program or activity from which any person is excluded, or is denied benefits, or is discriminated against, on the basis of race, color, national origin, religion, or sex: Provided further, That for fiscal year 2008, in addition to the amounts provided above, \$29,700,000 shall be for costs related to digital program production, development, and distribution, associated with the transition of public broadcasting to digital broadcasting, to be awarded as determined by the Corporation in consultation with public radio and television licensees or permittees, or their designated representatives: Provided further, That for fiscal year 2008, in addition to the amounts provided above, \$26,750,000 shall be for the costs associated with replacement and upgrade of the public radio interconnection system: Provided further, That none of the funds made available to the Corporation for Public Broadcasting by this Act, Public Law 108-199 or Public Law 108-7, shall be used to support the Television Future Fund or any similar purpose.

FEDERAL MEDIATION AND CONCILIATION SERVICE

SALARIES AND EXPENSES

For expenses necessary for the Federal Mediation and Conciliation Service to carry out the functions vested in it by the Labor Management Relations Act, 1947 (29 U.S.C. 171-180, 182-183), including hire of passenger motor vehicles; for expenses necessary for the Labor-Management Cooperation Act of 1978 (29 U.S.C. 175a); and for expenses necessary for the Service to carry out the functions vested in it by the Civil Service Reform Act, Public Law 95-454 (5 U.S.C. chapter 71), \$44,450,000, including \$400,000, to remain available through September 30, 2009, for activities authorized by the Labor-Management Cooperation Act of 1978 (29 U.S.C. 175a): Provided, That notwithstanding 31 U.S.C. 3302, fees charged, up to full-cost recovery, for special training activities and other conflict resolution services and technical assistance, including those provided to foreign governments and international organizations, and for arbitration serv-

ices shall be credited to and merged with this account, and shall remain available until expended: Provided further, That fees for arbitration services shall be available only for education, training, and professional development of the agency workforce: Provided further, That the Director of the Service is authorized to accept and use on behalf of the United States gifts of services and real, personal, or other property in the aid of any projects or functions within the Director's jurisdiction.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the Federal Mine Safety and Health Review Commission (30 U.S.C. 801 et seq.), \$8,096,000.

INSTITUTE OF MUSEUM AND LIBRARY SERVICES

OFFICE OF MUSEUM AND LIBRARY SERVICES: GRANTS AND ADMINISTRATION

For carrying out the Museum and Library Services Act of 1996, \$266,680,000: Provided, That \$8,680,000 shall be available for the projects and in the amounts specified in the committee report of the Senate accompanying this Act: Provided further, That funds may be made available for grants to Federal commissions that support museum and library activities, in partnership with libraries and museums that are eligible for funding under programs carried out by the Institute of Museum and Library Services.

MEDICARE PAYMENT ADVISORY COMMISSION

SALARIES AND EXPENSES

For expenses necessary to carry out section 1805 of the Social Security Act, \$10,748,000, to be transferred to this appropriation from the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds.

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

SALARIES AND EXPENSES

For close out activities of the National Commission on Libraries and Information Science, established by the Act of July 20, 1970 (Public Law 91-345, as amended), \$400,000.

NATIONAL COUNCIL ON DISABILITY

SALARIES AND EXPENSES

For expenses necessary for the National Council on Disability as authorized by title IV of the Rehabilitation Act of 1973, as amended, \$3,113,000.

NATIONAL LABOR RELATIONS BOARD

SALARIES AND EXPENSES

For expenses necessary for the National Labor Relations Board to carry out the functions vested in it by the Labor-Management Relations Act, 1947, as amended (29 U.S.C. 141-167), and other laws, \$256,988,000: Provided, That no part of this appropriation shall be available to organize or assist in organizing agricultural laborers or used in connection with investigations, hearings, directives, or orders concerning bargaining units composed of agricultural laborers as referred to in section 2(3) of the Act of July 5, 1935 (29 U.S.C. 152), and as amended by the Labor-Management Relations Act, 1947, as amended, and as defined in section 3(f) of the Act of June 25, 1938 (29 U.S.C. 203), and including in said definition employees engaged in the maintenance and operation of ditches, canals, reservoirs, and waterways when maintained or operated on a mutual, nonprofit basis and at least 95 percent of the water stored or supplied thereby is used for farming purposes.

NATIONAL MEDIATION BOARD

SALARIES AND EXPENSES

For expenses necessary to carry out the provisions of the Railway Labor Act, as amended (45 U.S.C. 151-188), including emergency boards appointed by the President, \$12,992,000.

OCCUPATIONAL SAFETY AND HEALTH REVIEW
COMMISSION

SALARIES AND EXPENSES

For expenses necessary for the Occupational Safety and Health Review Commission (29 U.S.C. 661), \$10,696,000.

RAILROAD RETIREMENT BOARD

DUAL BENEFITS PAYMENTS ACCOUNT

For payment to the Dual Benefits Payments Account, authorized under section 15(d) of the Railroad Retirement Act of 1974, \$79,000,000, which shall include amounts becoming available in fiscal year 2008 pursuant to section 224(c)(1)(B) of Public Law 98-76; and in addition, an amount, not to exceed 2 percent of the amount provided herein, shall be available proportional to the amount by which the product of recipients and the average benefit received exceeds \$97,000,000: Provided, That the total amount provided herein shall be credited in 12 approximately equal amounts on the first day of each month in the fiscal year.

FEDERAL PAYMENTS TO THE RAILROAD
RETIREMENT ACCOUNTS

For payment to the accounts established in the Treasury for the payment of benefits under the Railroad Retirement Act for interest earned on unnegotiated checks, \$150,000, to remain available through September 30, 2009, which shall be the maximum amount available for payment pursuant to section 417 of Public Law 98-76.

LIMITATION ON ADMINISTRATION

For necessary expenses for the Railroad Retirement Board for administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, \$103,694,000, to be derived in such amounts as determined by the Board from the railroad retirement accounts and from moneys credited to the railroad unemployment insurance administration fund.

LIMITATION ON THE OFFICE OF INSPECTOR
GENERAL

For expenses necessary for the Office of Inspector General for audit, investigatory and review activities, as authorized by the Inspector General Act of 1978, as amended, not more than \$8,000,000, to be derived from the railroad retirement accounts and railroad unemployment insurance account: Provided, That none of the funds made available in any other paragraph of this Act may be transferred to the Office; used to carry out any such transfer; used to provide any office space, equipment, office supplies, communications facilities or services, maintenance services, or administrative services for the Office; used to pay any salary, benefit, or award for any personnel of the Office; used to pay any other operating expense of the Office; or used to reimburse the Office for any service provided, or expense incurred, by the Office: Provided further, That funds made available under the heading in this Act, or subsequent Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Acts, may be used for any audit, investigation, or review of the Medicare Program.

SOCIAL SECURITY ADMINISTRATION

PAYMENTS TO SOCIAL SECURITY TRUST FUNDS

For payment to the Federal Old-Age and Survivors Insurance and the Federal Disability Insurance trust funds, as provided under sections 201(m), 228(g), and 1131(b)(2) of the Social Security Act, \$28,140,000.

SUPPLEMENTAL SECURITY INCOME PROGRAM

For carrying out titles XI and XVI of the Social Security Act, section 401 of Public Law 92-603, section 212 of Public Law 93-66, as amended, and section 405 of Public Law 95-216, including payment to the Social Security trust funds for administrative expenses incurred pursuant to section 201(g)(1) of the Social Security Act, \$26,959,000,000, to remain available until expended: Provided, That any portion of the

funds provided to a State in the current fiscal year and not obligated by the State during that year shall be returned to the Treasury.

For making, after June 15 of the current fiscal year, benefit payments to individuals under title XVI of the Social Security Act, for unanticipated costs incurred for the current fiscal year, such sums as may be necessary.

For making benefit payments under title XVI of the Social Security Act for the first quarter of fiscal year 2009, \$14,800,000,000, to remain available until expended.

LIMITATION ON ADMINISTRATIVE EXPENSES

For necessary expenses, including the hire of two passenger motor vehicles, and not to exceed \$15,000 for official reception and representation expenses, not more than \$9,372,953,000 may be expended, as authorized by section 201(g)(1) of the Social Security Act, from any one or all of the trust funds referred to therein: Provided, That not less than \$2,000,000 shall be for the Social Security Advisory Board: Provided further, That unobligated balances of funds provided under this paragraph at the end of fiscal year 2008 not needed for fiscal year 2008 shall remain available until expended to invest in the Social Security Administration information technology and telecommunications hardware and software infrastructure, including related equipment and non-payroll administrative expenses associated solely with this information technology and telecommunications infrastructure: Provided further, That reimbursement to the trust funds under this heading for expenditures for official time for employees of the Social Security Administration pursuant to section 7131 of title 5, United States Code, and for facilities or support services for labor organizations pursuant to policies, regulations, or procedures referred to in section 7135(b) of such title shall be made by the Secretary of the Treasury, with interest, from amounts in the general fund not otherwise appropriated, as soon as possible after such expenditures are made.

From funds provided under the first paragraph, not less than \$263,970,000 shall be available for conducting continuing disability reviews under titles II and XVI of the Social Security Act and for conducting redeterminations of eligibility under title XVI of the Social Security Act.

In addition to amounts made available above, and subject to the same terms and conditions, \$213,000,000 shall be available for additional continuing disability reviews and redeterminations of eligibility.

In addition, \$135,000,000 to be derived from administration fees in excess of \$5.00 per supplementary payment collected pursuant to section 1616(d) of the Social Security Act or section 212(b)(3) of Public Law 93-66, which shall remain available until expended. To the extent that the amounts collected pursuant to such section 1616(d) or 212(b)(3) in fiscal year 2008 exceed \$135,000,000, the amounts shall be available in fiscal year 2009 only to the extent provided in advance in appropriations Acts.

In addition, up to \$1,000,000 to be derived from fees collected pursuant to section 303(c) of the Social Security Protection Act (Public Law 108-203), which shall remain available until expended.

OFFICE OF INSPECTOR GENERAL

(INCLUDING TRANSFER OF FUNDS)

For expenses necessary for the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, \$28,000,000, together with not to exceed \$68,047,000, to be transferred and expended as authorized by section 201(g)(1) of the Social Security Act from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund.

In addition, an amount not to exceed 3 percent of the total provided in this appropriation may be transferred from the "Limitation on Administrative Expenses", Social Security Admin-

istration, to be merged with this account, to be available for the time and purposes for which this account is available: Provided, That notice of such transfers shall be transmitted promptly to the Committees on Appropriations of the House and Senate.

TITLE V

GENERAL PROVISIONS

SEC. 501. The Secretaries of Labor, Health and Human Services, and Education are authorized to transfer unexpended balances of prior appropriations to accounts corresponding to current appropriations provided in this Act: Provided, That such transferred balances are used for the same purpose, and for the same periods of time, for which they were originally appropriated.

SEC. 502. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 503. (a) No part of any appropriation contained in this Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress or any State legislature, except in presentation to the Congress or any State legislature itself.

(b) No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

SEC. 504. The Secretaries of Labor and Education are authorized to make available not to exceed \$28,000 and \$20,000, respectively, from funds available for salaries and expenses under titles I and III, respectively, for official reception and representation expenses; the Director of the Federal Mediation and Conciliation Service is authorized to make available for official reception and representation expenses not to exceed \$5,000 from the funds available for "Salaries and expenses, Federal Mediation and Conciliation Service"; and the Chairman of the National Mediation Board is authorized to make available for official reception and representation expenses not to exceed \$5,000 from funds available for "Salaries and expenses, National Mediation Board".

SEC. 505. Notwithstanding any other provision of this Act, no funds appropriated in this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

SEC. 506. When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds included in this Act, including but not limited to State and local governments and recipients of Federal research grants, shall clearly state—

(1) the percentage of the total costs of the program or project which will be financed with Federal money;

(2) the dollar amount of Federal funds for the project or program; and

(3) percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

SEC. 507. (a) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for any abortion.

(b) None of the funds appropriated in this Act, and none of the funds in any trust fund to which funds are appropriated in this Act, shall be expended for health benefits coverage that includes coverage of abortion.

(c) The term "health benefits coverage" means the package of services covered by a managed

care provider or organization pursuant to a contract or other arrangement.

SEC. 508. (a) The limitations established in the preceding section shall not apply to an abortion—

(1) if the pregnancy is the result of an act of rape or incest; or

(2) in the case where a woman suffers from a physical disorder, physical injury, or physical illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would, as certified by a physician, place the woman in danger of death unless an abortion is performed.

(b) Nothing in the preceding section shall be construed as prohibiting the expenditure by a State, locality, entity, or private person of State, local, or private funds (other than a State's or locality's contribution of Medicaid matching funds).

(c) Nothing in the preceding section shall be construed as restricting the ability of any managed care provider from offering abortion coverage or the ability of a State or locality to contract separately with such a provider for such coverage with State funds (other than a State's or locality's contribution of Medicaid matching funds).

(d)(1) None of the funds made available in this Act may be made available to a Federal agency or program, or to a State or local government, if such agency, program, or government subjects any institutional or individual health care entity to discrimination on the basis that the health care entity does not provide, pay for, provide coverage of, or refer for abortions.

(2) In this subsection, the term "health care entity" includes an individual physician or other health care professional, a hospital, a provider-sponsored organization, a health maintenance organization, a health insurance plan, or any other kind of health care facility, organization, or plan.

SEC. 509. (a) None of the funds made available in this Act may be used for—

(1) the creation of a human embryo or embryos for research purposes; or

(2) research in which a human embryo or embryos are destroyed, discarded, or knowingly subjected to risk of injury or death greater than that allowed for research on fetuses in utero under 45 CFR 46.204(b) and section 498(b) of the Public Health Service Act (42 U.S.C. 289g(b)).

(b) For purposes of this section, the term "human embryo or embryos" includes any organism, not protected as a human subject under 45 CFR 46 as of the date of the enactment of this Act, that is derived by fertilization, parthenogenesis, cloning, or any other means from one or more human gametes or human diploid cells.

SEC. 510. (a) None of the funds made available in this Act may be used for any activity that promotes the legalization of any drug or other substance included in schedule I of the schedules of controlled substances established by section 202 of the Controlled Substances Act (21 U.S.C. 812).

(b) The limitation in subsection (a) shall not apply when there is significant medical evidence of a therapeutic advantage to the use of such drug or other substance or that federally sponsored clinical trials are being conducted to determine therapeutic advantage.

SEC. 511. None of the funds made available in this Act may be used to promulgate or adopt any final standard under section 1173(b) of the Social Security Act (42 U.S.C. 1320d-2(b)) providing for, or providing for the assignment of, a unique health identifier for an individual (except in an individual's capacity as an employer or a health care provider), until legislation is enacted specifically approving the standard.

SEC. 512. None of the funds made available in this Act may be obligated or expended to enter into or renew a contract with an entity if—

(1) such entity is otherwise a contractor with the United States and is subject to the require-

ment in section 4212(d) of title 38, United States Code, regarding submission of an annual report to the Secretary of Labor concerning employment of certain veterans; and

(2) such entity has not submitted a report as required by that section for the most recent year for which such requirement was applicable to such entity.

SEC. 513. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 514. None of the funds made available by this Act to carry out the Library Services and Technology Act may be made available to any library covered by paragraph (1) of section 224(f) of such Act (20 U.S.C. 9134(f)), as amended by the Children's Internet Protections Act, unless such library has made the certifications required by paragraph (4) of such section.

SEC. 515. None of the funds made available by this Act to carry out part D of title II of the Elementary and Secondary Education Act of 1965 may be made available to any elementary or secondary school covered by paragraph (1) of section 2441(a) of such Act (20 U.S.C. 6777(a)), as amended by the Children's Internet Protections Act and the No Child Left Behind Act, unless the local educational agency with responsibility for such covered school has made the certifications required by paragraph (2) of such section.

SEC. 516. None of the funds appropriated in this Act may be used to enter into an arrangement under section 7(b)(4) of the Railroad Retirement Act of 1974 (45 U.S.C. 231f(b)(4)) with a nongovernmental financial institution to serve as disbursing agent for benefits payable under the Railroad Retirement Act of 1974.

SEC. 517. (a) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2008, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds that—

- (1) creates new programs;
- (2) eliminates a program, project, or activity;
- (3) increases funds or personnel by any means for any project or activity for which funds have been denied or restricted;
- (4) relocates an office or employees;
- (5) reorganizes or renames offices;
- (6) reorganizes programs or activities; or
- (7) contracts out or privatizes any functions or activities presently performed by Federal employees;

unless the Appropriations Committees of both Houses of Congress are notified 15 days in advance of such reprogramming or of an announcement of intent relating to such reprogramming, whichever occurs earlier.

(b) None of the funds provided under this Act, or provided under previous appropriations Acts to the agencies funded by this Act that remain available for obligation or expenditure in fiscal year 2008, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the agencies funded by this Act, shall be available for obligation or expenditure through a reprogramming of funds in excess of \$500,000 or 10 percent, whichever is less, that—

- (1) augments existing programs, projects (including construction projects), or activities;
- (2) reduces by 10 percent funding for any existing program, project, or activity, or numbers of personnel by 10 percent as approved by Congress; or
- (3) results from any general savings from a reduction in personnel which would result in a change in existing programs, activities, or projects as approved by Congress;

unless the Appropriations Committees of both Houses of Congress are notified 15 days in advance of such reprogramming or of an announcement of intent relating to such reprogramming, whichever occurs earlier.

SEC. 518. (a) None of the funds made available in this Act may be used to request that a candidate for appointment to a Federal scientific advisory committee disclose the political affiliation or voting history of the candidate or the position that the candidate holds with respect to political issues not directly related to and necessary for the work of the committee involved.

(b) None of the funds made available in this Act may be used to disseminate scientific information that is deliberately false or misleading.

SEC. 519. The Secretaries of Labor, Health and Human Services, and Education shall each prepare and submit to the Committees on Appropriations of the Senate and of the House of Representatives a report on the number and amount of contracts, grants, and cooperative agreements exceeding \$100,000 in value and awarded by the Department on a non-competitive basis during each quarter of fiscal year 2008, but not to include grants awarded on a formula basis. Such report shall include the name of the contractor or grantee, the amount of funding, and the governmental purpose. Such report shall be transmitted to the Committees within 30 days after the end of the quarter for which the report is submitted.

SEC. 520. Not later than 30 days after the date of enactment of this Act, the Departments, agencies, and commissions funded under this Act, shall establish and maintain on the homepages of their Internet websites—

(1) a direct link to the Internet websites of their Offices of Inspectors General; and

(2) a mechanism on the Offices of Inspectors General website by which individuals may anonymously report cases of waste, fraud, or abuse with respect to those Departments, agencies, and commissions.

SEC. 521. None of the funds made available under this Act may be used to circumvent any statutory or administrative formula-driven or competitive awarding process to award funds to a project in response to a request from a Member of Congress (or any employee of a Member or committee of Congress), unless the specific project has been disclosed in accordance with the rules of the Senate or House of Representatives, as applicable.

SEC. 522. (a) Notwithstanding any other provision of this Act, none of the funds made available under the heading "OFFICE OF MUSEUM AND LIBRARY SERVICES: GRANTS AND ADMINISTRATION" under the heading "INSTITUTE OF MUSEUM AND LIBRARY SERVICES" in title IV may be used for the Bethel Performing Arts Center.

(b) The amount made available under the heading "OFFICE OF MUSEUM AND LIBRARY SERVICES: GRANTS AND ADMINISTRATION" under the heading "INSTITUTE OF MUSEUM AND LIBRARY SERVICES" in title IV is reduced by \$1,000,000, and the amount made available under the heading "HEALTH RESOURCES AND SERVICES" under the heading "HEALTH RESOURCES AND SERVICES ADMINISTRATION" in title II is increased by \$336,500, which \$336,500 shall be used to carry out title V of the Social Security Act (42 U.S.C. 701 et seq.), in order to provide additional funding for the maternal and child health services program carried out under that title.

SEC. 523. None of the funds appropriated or otherwise made available by this Act may be used to enter into a contract in an amount greater than \$5,000,000 or to award a grant in excess of such amount unless the prospective contractor or grantee certifies in writing to the agency awarding the contract or grant that, to the best of its knowledge and belief, the contractor or grantee has filed all Federal tax returns required during the three years preceding the certification, has not been convicted of a criminal offense under the Internal Revenue Code of 1986, and has not, more than 90 days

prior to certification, been notified of any unpaid Federal tax assessment for which the liability remains unsatisfied, unless the assessment is the subject of an installment agreement or offer in compromise that has been approved by the Internal Revenue Service and is not in default, or the assessment is the subject of a non-frivolous administrative or judicial proceeding.

SEC. 524. (a) Notwithstanding any other provision of this Act, the amount appropriated under the heading "LIMITATION ON ADMINISTRATIVE EXPENSES" under the heading "SOCIAL SECURITY ADMINISTRATION" shall be increased by \$150,000,000.

(b) Section 1848(l)(2)(A) of the Social Security Act (42 U.S.C. 1395w-4(l)(2)(A)), as amended by section 6 of the TMA, Abstinence Education, and QI Programs Extension Act of 2007 (Public Law 110-90), is amended by striking "\$1,350,000,000" and inserting "\$1,200,000,000, but in no case shall expenditures from the Fund in fiscal year 2008 exceed \$650,000,000" in the first sentence.

SEC. 525. (a) The Comptroller General of the United States shall conduct a study to evaluate the Social Security Administration's plan to reduce the hearing backlog for disability claims at the Social Security Administration and the Social Security Administration's current and planned initiatives to improve the disability process, as contained in the report submitted to the Senate on September 13, 2007, pursuant to Senate Report 110-107.

(b) Not later than 5 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under subsection (a), together with such recommendations as the Comptroller General determines appropriate.

SEC. 526. Not later than 9 months after the date of enactment of this Act, the Government Accountability Office shall submit a report to Congress that contains an assessment of the process for hiring and managing administrative law judges and makes recommendations on ways to improve the hiring and management of administrative law judges.

SEC. 527. None of the funds appropriated or otherwise made available in this Act or any other Act making appropriations to the agencies funded by this Act may be used to close or otherwise cease to operate the field office of the Social Security Administration located in Bristol, Connecticut, before the date on which the Commissioner of Social Security submits to the appropriate committees of Congress a comprehensive and detailed report outlining and justifying the process for selecting field offices to be closed. Such report shall include—

(1) a thorough analysis of the criteria used for selecting field offices for closure and how the Commissioner of Social Security analyzes and considers factors relating to transportation and communication burdens faced by elderly and disabled citizens as a result of field office closures, including the extent to which elderly citizens have access to, and competence with, on-line services; and

(2) for each field office proposed to be closed during fiscal year 2007 or 2008, including the office located in Bristol, Connecticut, a thorough cost-benefit analysis for each such closure that takes into account—

(A) the savings anticipated as a result of the closure;

(B) the anticipated burdens placed on elderly and disabled citizens; and

(C) any costs associated with replacement services and provisional contact stations.

SEC. 528. Notwithstanding any other provision of this Act, none of the funds appropriated in this Act may be allocated, directed, or otherwise made available to cities that provide safe haven to illegal drug users through the use of illegal drug injection facilities.

SEC. 529. Iraqi and Afghan aliens granted special immigrant status under section 101(a)(27) of the Immigration and Nationality Act (8 U.S.C.

1101(a)(27)) shall be eligible for resettlement assistance, entitlement programs, and other benefits available to refugees admitted under section 207 of such Act (8 U.S.C. 1157) for a period not to exceed 6 months.

SEC. 530. None of the funds appropriated by this Act may be used by the Commissioner of Social Security or the Social Security Administration to pay the compensation of employees of the Social Security Administration to administer Social Security benefit payments, under any agreement between the United States and Mexico establishing totalization arrangements between the social security system established by title II of the Social Security Act and the social security system of Mexico, which would not otherwise be payable but for such agreement.

SEC. 531. None of the funds appropriated in this Act shall be expended or obligated by the Commissioner of Social Security, for purposes of administering Social Security benefit payments under title II of the Social Security Act, to process claims for credit for quarters of coverage based on work performed under a social security account number that was not the claimant's number which is an offense prohibited under section 208 of the Social Security Act (42 U.S.C. 408).

SEC. 532. AMERICAN COMPETITIVENESS SCHOLARSHIP PROGRAM.—(a) SHORT TITLE.—This section may be cited as the "American Competitiveness Scholarship Act of 2007".

(b) ESTABLISHMENT.—The Director of the National Science Foundation (referred to in this section as the "Director") shall award scholarships to eligible individuals to enable such individuals to pursue associate, undergraduate, or graduate level degrees in mathematics, engineering, health care, or computer science.

(c) ELIGIBILITY.—

(1) IN GENERAL.—To be eligible to receive a scholarship under this section, an individual shall—

(A) be a citizen of the United States, a national of the United States (as defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a))), an alien admitted as a refugee under section 207 of such Act (8 U.S.C. 1157), or an alien lawfully admitted to the United States for permanent residence;

(B) prepare and submit to the Director an application at such time, in such manner, and containing such information as the Director may require; and

(C) certify to the Director that the individual intends to use amounts received under the scholarship to enroll or continue enrollment at an institution of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) in order to pursue an associate, undergraduate, or graduate level degree in mathematics, engineering, computer science, nursing, medicine, or other clinical medical program, or technology, or science program designated by the Director.

(2) ABILITY.—Awards of scholarships under this section shall be made by the Director solely on the basis of the ability of the applicant, except that in any case in which 2 or more applicants for scholarships are deemed by the Director to be possessed of substantially equal ability, and there are not sufficient scholarships available to grant one to each of such applicants, the available scholarship or scholarships shall be awarded to the applicants in a manner that will tend to result in a geographically wide distribution throughout the United States of recipients' places of permanent residence.

(d) AMOUNT OF SCHOLARSHIP; RENEWAL.—

(1) AMOUNT OF SCHOLARSHIP.—The amount of a scholarship awarded under this section shall be \$15,000 per year, except that no scholarship shall be greater than the annual cost of tuition and fees at the institution of higher education in which the scholarship recipient is enrolled or will enroll.

(2) RENEWAL.—The Director may renew a scholarship under this section for an eligible individual for not more than 4 years.

(e) FUNDING.—The Director shall carry out this section only with funds made available under section 286(w) of the Immigration and Nationality Act, as added by subsection (g).

(f) FEDERAL REGISTER.—Not later than 60 days after the date of the enactment of this Act, the Director shall publish in the Federal Register a list of eligible programs of study for a scholarship under this section.

(g) SUPPLEMENTAL H-1B NONIMMIGRANT PETITIONER ACCOUNT; GIFTED AND TALENTED STUDENTS EDUCATION ACCOUNT.—Section 286 of the Immigration and Nationality Act (8 U.S.C. 1356) is amended by adding at the end the following:

"(w) SUPPLEMENTAL H-1B NONIMMIGRANT PETITIONER ACCOUNT.—

"(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'Supplemental H-1B Nonimmigrant Petitioner Account'. Notwithstanding any other section of this Act, there shall be deposited as offsetting receipts into the account 85.75 percent of the fees collected under section 214(c)(15)(B).

"(2) USE OF FEES FOR AMERICAN COMPETITIVENESS SCHOLARSHIP PROGRAM.—The amounts deposited into the Supplemental H-1B Nonimmigrant Petitioner Account shall remain available to the Director of the National Science Foundation until expended for scholarships described in the American Competitiveness Scholarship Act of 2007 for students enrolled in a program of study leading to a degree in mathematics, engineering, health care, or computer science.

"(x) GIFTED AND TALENTED STUDENTS EDUCATION ACCOUNT.—

"(1) IN GENERAL.—There is established in the general fund of the Treasury a separate account, which shall be known as the 'Gifted and Talented Students Education Account'. There shall be deposited as offsetting receipts into the account 14.25 percent of the fees collected under section 214(c)(15)(B).

"(2) USE OF FEES.—Amounts deposited into the account established under paragraph (1) shall remain available to the Secretary of Education until expended for programs and projects authorized under the Jacob K. Javits Gifted and Talented Students Education Act of 2001 (20 U.S.C. 7253 et seq.)."

(h) SUPPLEMENTAL AND DEFICIT REDUCTION FEES.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)) is amended by adding at the end the following:

"(15)(A) Except as provided under subparagraph (D), if the Attorney General, the Secretary of Homeland Security, or the Secretary of State is required to impose a fee pursuant to paragraph (9) or (11), the Attorney General, the Secretary of Homeland Security, or the Secretary of State, as appropriate, shall impose a supplemental fee and a deficit reduction fee on the employer in addition to any other fee required by such paragraph or any other provision of law, in the amounts determined under subparagraph (B).

"(B) The amount of the supplemental fee shall be \$3,500, except that the fee shall be ½ that amount for any employer with not more than 25 full-time equivalent employees who are employed in the United States (determined by including any affiliate or subsidiary of such employer).

"(C) Of the amounts collected under subparagraph (B)—

"(i) 85.75 percent shall be deposited in the Treasury in accordance with section 286(w); and

"(ii) 14.25 percent shall be deposited in the Treasury in accordance with section 286(x).

"(D) Public hospitals, which are owned and operated by a State or a political subdivision of a State shall not be subject to the supplemental fees imposed under this paragraph."

SEC. 533. Section 106(d) of the American Competitiveness in the Twenty-first Century Act of 2000 (Public Law 106-313; 8 U.S.C. 1153 note) is amended—

(1) in paragraph (1)—

(A) by inserting “1996, 1997,” after “available in fiscal year”; and

(B) by inserting “group I,” after “schedule A,”;

(2) in paragraph (2)(A), by inserting “1996, 1997, and” after “available in fiscal years”; and

(3) by adding at the end the following:

“(4) PETITIONS.—The Secretary of Homeland Security shall provide a process for reviewing and acting upon petitions with respect to immigrants described in schedule A not later than 30 days after the date on which a completed petition has been filed.”.

SEC. 534. (a) FEE FOR RECAPTURE OF UNUSED EMPLOYMENT-BASED IMMIGRANT VISAS.—Section 106(d) of the American Competitiveness in the Twenty-first Century Act of 2000 (Public Law 106-313; 8 U.S.C. 1153 note), as amended by section 521, is further amended by adding at the end the following:

“(5) FEE FOR RECAPTURE OF UNUSED EMPLOYMENT-BASED IMMIGRANT VISAS.—

“(A) IN GENERAL.—The Secretary of Homeland Security shall impose a fee upon each petitioning employer who uses a visa recaptured from fiscal years 1996 and 1997 under this subsection to provide employment for an alien as a professional nurse, provided that—

“(i) such fee shall be in the amount of \$1,500 for each such alien nurse (but not for dependents accompanying or following to join who are not professional nurses); and

“(ii) no fee shall be imposed for the use of such visas if the employer demonstrates to the Secretary that—

“(I) the employer is a health care facility that is located in a county or parish that received individual and public assistance pursuant to Major Disaster Declaration number 1603 or 1607; or

“(II) the employer is a health care facility that has been designated as a Health Professional Shortage Area facility by the Secretary of Health and Human Services as defined in section 332 of the Public Health Service Act (42 U.S.C. 254e).

“(B) FEE COLLECTION.—A fee imposed by the Secretary of Homeland Security pursuant to this paragraph shall be collected by the Secretary as a condition of approval of an application for adjustment of status by the beneficiary of a petition or by the Secretary of State as a condition of issuance of a visa to such beneficiary.”.

(b) CAPITATION GRANTS TO INCREASE THE NUMBER OF NURSING FACULTY AND STUDENTS; DOMESTIC NURSING ENHANCEMENT ACCOUNT.—Part D of title VIII of the Public Health Service Act (42 U.S.C. 296p et seq.) is amended by adding at the end the following:

“SEC. 832. CAPITATION GRANTS.

“(a) IN GENERAL.—For the purpose described in subsection (b), the Secretary, acting through the Health Resources and Services Administration, shall award a grant each fiscal year in an amount determined in accordance with subsection (c) to each eligible school of nursing that submits an application in accordance with this section.

“(b) PURPOSE.—A funding agreement for a grant under this section is that the eligible school of nursing involved will expend the grant to increase the number of nursing faculty and students at the school, including by hiring new faculty, retaining current faculty, purchasing educational equipment and audiovisual laboratories, enhancing clinical laboratories, repairing and expanding infrastructure, or recruiting students.

“(c) GRANT COMPUTATION.—

“(1) AMOUNT PER STUDENT.—Subject to paragraph (2), the amount of a grant to an eligible school of nursing under this section for a fiscal year shall be the total of the following:

“(A) \$1,800 for each full-time or part-time student who is enrolled at the school in a graduate program in nursing that—

“(i) leads to a master’s degree, a doctoral degree, or an equivalent degree; and

“(ii) prepares individuals to serve as faculty through additional course work in education and ensuring competency in an advanced practice area.

“(B) \$1,405 for each full-time or part-time student who—

“(i) is enrolled at the school in a program in nursing leading to a bachelor of science degree, a bachelor of nursing degree, a graduate degree in nursing if such program does not meet the requirements of subparagraph (A), or an equivalent degree; and

“(ii) has not more than 3 years of academic credits remaining in the program.

“(C) \$966 for each full-time or part-time student who is enrolled at the school in a program in nursing leading to an associate degree in nursing or an equivalent degree.

“(2) LIMITATION.—In calculating the amount of a grant to a school under paragraph (1), the Secretary may not make a payment with respect to a particular student—

“(A) for more than 2 fiscal years in the case of a student described in paragraph (1)(A) who is enrolled in a graduate program in nursing leading to a master’s degree or an equivalent degree;

“(B) for more than 4 fiscal years in the case of a student described in paragraph (1)(A) who is enrolled in a graduate program in nursing leading to a doctoral degree or an equivalent degree;

“(C) for more than 3 fiscal years in the case of a student described in paragraph (1)(B); or

“(D) for more than 2 fiscal years in the case of a student described in paragraph (1)(C).

“(d) ELIGIBILITY.—In this section, the term ‘eligible school of nursing’ means a school of nursing that—

“(1) is accredited by a nursing accrediting agency recognized by the Secretary of Education;

“(2) has a passage rate on the National Council Licensure Examination for Registered Nurses of not less than 80 percent for each of the 3 academic years preceding submission of the grant application; and

“(3) has a graduation rate (based on the number of students in a class who graduate relative to, for a baccalaureate program, the number of students who were enrolled in the class at the beginning of junior year or, for an associate degree program, the number of students who were enrolled in the class at the end of the first year) of not less than 80 percent for each of the 3 academic years preceding submission of the grant application.

“(e) REQUIREMENTS.—The Secretary may award a grant under this section to an eligible school of nursing only if the school gives assurances satisfactory to the Secretary that, for each academic year for which the grant is awarded, the school will comply with the following:

“(1) The school will maintain a passage rate on the National Council Licensure Examination for Registered Nurses of not less than 80 percent.

“(2) The school will maintain a graduation rate (as described in subsection (d)(3)) of not less than 80 percent.

“(3)(A) Subject to subparagraphs (B) and (C), the first-year enrollment of full-time nursing students in the school will exceed such enrollment for the preceding academic year by 5 percent or 5 students, whichever is greater.

“(B) Subparagraph (A) shall not apply to the first academic year for which a school receives a grant under this section.

“(C) With respect to any academic year, the Secretary may waive application of subparagraph (A) if—

“(i) the physical facilities at the school involved limit the school from enrolling additional students; or

“(ii) the school has increased enrollment in the school (as described in subparagraph (A)) for each of the 2 preceding academic years.

“(4) Not later than 1 year after receiving a grant under this section, the school will formulate and implement a plan to accomplish at least 2 of the following:

“(A) Establishing or significantly expanding an accelerated baccalaureate degree nursing program designed to graduate new nurses in 12 to 18 months.

“(B) Establishing cooperative intradisciplinary education among schools of nursing with a view toward shared use of technological resources, including information technology.

“(C) Establishing cooperative interdisciplinary training between schools of nursing and schools of allied health, medicine, dentistry, osteopathy, optometry, podiatry, pharmacy, public health, or veterinary medicine, including training for the use of the interdisciplinary team approach to the delivery of health services.

“(D) Integrating core competencies on evidence-based practice, quality improvements, and patient-centered care.

“(E) Increasing admissions, enrollment, and retention of qualified individuals who are financially disadvantaged.

“(F) Increasing enrollment of minority and diverse student populations.

“(G) Increasing enrollment of new graduate baccalaureate nursing students in graduate programs that educate nurse faculty members.

“(H) Developing post-baccalaureate residency programs to prepare nurses for practice in specialty areas where nursing shortages are most severe.

“(I) Increasing integration of geriatric content into the core curriculum.

“(J) Partnering with economically disadvantaged communities to provide nursing education.

“(K) Expanding the ability of nurse managed health centers to provide clinical education training sites to nursing students.

“(5) The school will submit an annual report to the Secretary that includes updated information on the school with respect to student enrollment, student retention, graduation rates, passage rates on the National Council Licensure Examination for Registered Nurses, the number of graduates employed as nursing faculty or nursing care providers within 12 months of graduation, and the number of students who are accepted into graduate programs for further nursing education.

“(6) The school will allow the Secretary to make on-site inspections, and will comply with the Secretary’s requests for information, to determine the extent to which the school is complying with the requirements of this section.

“(f) REPORTS TO CONGRESS.—The Secretary shall evaluate the results of grants under this section and submit to Congress—

“(1) not later than 18 months after the date of the enactment of this section, an interim report on such results; and

“(2) not later than September 30, 2010, a final report on such results.

“(g) APPLICATION.—An eligible school of nursing seeking a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information and assurances as the Secretary may require.

“(h) AUTHORIZATION OF APPROPRIATIONS.—In addition to the amounts in the Domestic Nursing Enhancement Account, established under section 833, there are authorized to be appropriated such sums as may be necessary to carry out this section.

“SEC. 833. DOMESTIC NURSING ENHANCEMENT ACCOUNT.

“(a) ESTABLISHMENT.—There is established in the general fund of the Treasury a separate account which shall be known as the ‘Domestic Nursing Enhancement Account.’ Notwithstanding any other provision of law, there shall be deposited as offsetting receipts into the account all fees collected under section 106(d)(5) of the American Competitiveness in the Twenty-

first Century Act of 2000 (Public Law 106-313; 8 U.S.C. 1153 note). Nothing in this subsection shall prohibit the depositing of other moneys into the account established under this section.

“(b) USE OF FUNDS.—Amounts collected under section 106(d)(5) of the American Competitiveness in the Twenty-first Century Act of 2000, and deposited into the account established under subsection (a) shall be used by the Secretary of Health and Human Services to carry out section 832. Such amounts shall be available for obligation only to the extent, and in the amount, provided in advance in appropriations Acts. Such amounts are authorized to remain available until expended.”

(c) GLOBAL HEALTH CARE COOPERATION.—

(1) IN GENERAL.—Title III of the Immigration and Nationality Act (8 U.S.C. 1401 et seq.) is amended by inserting after section 317 the following:

“SEC. 317A. TEMPORARY ABSENCE OF ALIENS PROVIDING HEALTH CARE IN DEVELOPING COUNTRIES.

“(a) IN GENERAL.—Notwithstanding any other provision of this Act, the Secretary of Homeland Security shall allow an eligible alien and the spouse or child of such alien to reside in a candidate country during the period that the eligible alien is working as a physician or other health care worker in a candidate country. During such period the eligible alien and such spouse or child shall be considered—

“(1) to be physically present and residing in the United States for purposes of naturalization under section 316(a); and

“(2) to meet the continuous residency requirements under section 316(b).”

“(b) DEFINITIONS.—In this section:

“(1) CANDIDATE COUNTRY.—The term ‘candidate country’ means a country that the Secretary of State determines to be—

“(A) eligible for assistance from the International Development Association, in which the per capita income of the country is equal to or less than the historical ceiling of the International Development Association for the applicable fiscal year, as defined by the International Bank for Reconstruction and Development;

“(B) classified as a lower middle income country in the then most recent edition of the World Development Report for Reconstruction and Development published by the International Bank for Reconstruction and Development and having an income greater than the historical ceiling for International Development Association eligibility for the applicable fiscal year; or

“(C) qualified to be a candidate country due to special circumstances, including natural disasters or public health emergencies.

“(2) ELIGIBLE ALIEN.—The term ‘eligible alien’ means an alien who—

“(A) has been lawfully admitted to the United States for permanent residence; and

“(B) is a physician or other healthcare worker.”

“(c) CONSULTATION.—The Secretary of Homeland Security shall consult with the Secretary of State in carrying out this section.

“(d) PUBLICATION.—The Secretary of State shall publish—

“(1) not later than 180 days after the date of the enactment of this section, a list of candidate countries;

“(2) an updated version of the list required by paragraph (1) not less often than once each year; and

“(3) an amendment to the list required by paragraph (1) at the time any country qualifies as a candidate country due to special circumstances under subsection (b)(1)(C).”

(2) RULEMAKING.—

(A) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Homeland Security shall promulgate regulations to carry out the amendments made by this subsection.

(B) CONTENT.—The regulations promulgated pursuant to paragraph (1) shall—

(i) permit an eligible alien (as defined in section 317A of the Immigration and Nationality Act, as added by paragraph (1)) and the spouse or child of the eligible alien to reside in a foreign country to work as a physician or other healthcare worker as described in subsection (a) of such section 317A for not less than a 12-month period and not more than a 24-month period, and shall permit the Secretary to extend such period for an additional period not to exceed 12 months, if the Secretary determines that such country has a continuing need for such a physician or other healthcare worker;

(ii) provide for the issuance of documents by the Secretary to such eligible alien, and such spouse or child, if appropriate, to demonstrate that such eligible alien, and such spouse or child, if appropriate, is authorized to reside in such country under such section 317A; and

(iii) provide for an expedited process through which the Secretary shall review applications for such an eligible alien to reside in a foreign country pursuant to subsection (a) of such section 317A if the Secretary of State determines a country is a candidate country pursuant to subsection (b)(1)(C) of such section 317A.

(3) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) DEFINITION.—Section 101(a)(13)(C)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(13)(C)(ii)) is amended by adding at the end the following: “except in the case of an eligible alien, or the spouse or child of such alien, who is authorized to be absent from the United States under section 317A.”

(B) DOCUMENTARY REQUIREMENTS.—Section 211(b) of such Act (8 U.S.C. 1181(b)) is amended by inserting “, including an eligible alien authorized to reside in a foreign country under section 317A and the spouse or child of such eligible alien, if appropriate,” after “101(a)(27)(A).”

(C) INELIGIBLE ALIENS.—Section 212(a)(7)(A)(i)(I) of such Act (8 U.S.C. 1182(a)(7)(A)(i)(I)) is amended by inserting “other than an eligible alien authorized to reside in a foreign country under section 317A and the spouse or child of such eligible alien, if appropriate,” after “Act.”

(D) CLERICAL AMENDMENT.—The table of contents of such Act is amended by inserting after the item relating to section 317 the following:

“Sec. 317A. Temporary absence of aliens providing health care in developing countries.”

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to U.S. Citizenship and Immigration Services such sums as may be necessary to carry out this subsection and the amendments made by this subsection.

(d) ATTESTATION BY HEALTH CARE WORKERS.—

(1) ATTESTATION REQUIREMENT.—Section 212(a)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)) is amended by adding at the end the following:

“(E) HEALTH CARE WORKERS WITH OTHER OBLIGATIONS.—

“(i) IN GENERAL.—An alien who seeks to enter the United States for the purpose of performing labor as a physician or other health care worker is inadmissible unless the alien submits to the Secretary of Homeland Security or the Secretary of State, as appropriate, an attestation that the alien is not seeking to enter the United States for such purpose during any period in which the alien has an outstanding obligation to the government of the alien’s country of origin or the alien’s country of residence.

“(ii) OBLIGATION DEFINED.—In this subparagraph, the term ‘obligation’ means an obligation incurred as part of a valid, voluntary individual agreement in which the alien received financial assistance to defray the costs of education or training to qualify as a physician or other health care worker in consideration for a commitment to work as a physician or other health

care worker in the alien’s country of origin or the alien’s country of residence.

“(iii) WAIVER.—The Secretary of Homeland Security may waive a finding of inadmissibility under clause (i) if the Secretary determines that—

“(I) the obligation was incurred by coercion or other improper means;

“(II) the alien and the government of the country to which the alien has an outstanding obligation have reached a valid, voluntary agreement, pursuant to which the alien’s obligation has been deemed satisfied, or the alien has shown to the satisfaction of the Secretary that the alien has been unable to reach such an agreement because of coercion or other improper means; or

“(III) the obligation should not be enforced due to other extraordinary circumstances, including undue hardship that would be suffered by the alien in the absence of a waiver.”

(2) EFFECTIVE DATE; APPLICATION.—

(A) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect on the date that is 180 days after the date of the enactment of this Act.

(B) APPLICATION BY THE SECRETARY.—Not later than the effective date described in subparagraph (A), the Secretary of Homeland Security shall begin to carry out subparagraph (E) of section 212(a)(5) of the Immigration and Nationality Act, as added by paragraph (1), including the requirement for the attestation and the granting of a waiver described in clause (iii) of such subparagraph (E), regardless of whether regulations to implement such subparagraph have been promulgated.

SEC. 535. None of the funds made available under this Act may be used to purchase first class or premium airline travel that would not be consistent with sections 301-10.123 and 301-10.124 of title 41 of the Code of Federal Regulations.

This Act may be cited as the “Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2008”.

ESTABLISHING A DISABLED VETERANS MEMORIAL

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 363, H.R. 995.

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

The assistant legislative clerk read as follows:

A bill (H.R. 995) to amend Public Law 106-348 to extend the authorization for establishing a memorial in the District of Columbia or its environs to honor veterans who became disabled while serving in the Armed Forces of the United States.

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

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

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

The bill (H.R. 995) was ordered to a third reading, was read the third time, and passed.

MEASURE READ THE FIRST
TIME—H.R. 3564

Mr. LAUTENBERG. Mr. President, I understand that H.R. 3564 has been received from the House and is at the desk. I ask for its first reading.

The PRESIDING OFFICER. The clerk will report the bill by title for the first time.

The assistant legislative clerk read as follows:

A bill (H.R. 3564) to amend title 5, United States Code, to authorize appropriations for the Administrative Conference of the United States through fiscal year 2011, and for other purposes.

Mr. LAUTENBERG. I ask for its second reading and object to my own request.

The PRESIDING OFFICER. Objection is heard. The bill will be read a second time on the next legislative day.

ORDERS FOR THURSDAY, OCTOBER
25, 2007

Mr. LAUTENBERG. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand adjourned until 9:30 a.m., on Thursday, October 25; that on Thursday, following the prayer and the pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders reserved for their use later in the day; that the Senate then proceed to a period for the transaction of morning business for 60 minutes, with the time equally divided and controlled between the leaders or their designees, with Senators permitted to speak therein for 10 minutes each, with the majority controlling the first portion and the Republicans controlling the final portion; that at the close of morning business, the Senate resume consid-

eration of S. 294, as provided for under a previous order.

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

ADJOURNMENT UNTIL 9:30 A.M.
TOMORROW

Mr. LAUTENBERG. Mr. President, if there is no further business, I now ask unanimous consent that the Senate stand adjourned under the previous order.

There being no objection, the Senate, at 7:45 p.m., adjourned until Thursday, October 25, 2007, at 9:30 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate Wednesday, October 24, 2007:

THE JUDICIARY

LESLIE SOUTHWICK, OF MISSISSIPPI, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT.