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Senate

The Senate met at 10 a.m. and was called to order by the Honorable ZELL MILLER, a Senator from the State of Georgia.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear God, today we want to live out the true meaning of the motto of our Nation, ''In God We Trust.'' All through this day we will live the psalmist's admonition for successful living: ''Commit your way to the Lord, trust also in Him, and He shall bring it to pass.''—Psalm 37:5. We claim the meaning of the word ''commit'' in Hebrew as ''to roll over.'' We roll over our burdens from our shoulders onto Your mighty shoulders.

We begin this day very conscious of the burdens we have tried to carry ourselves: personal needs, physical problems, concerns for people we love, friends about whom we worry, plus all the responsibilities of work, and our unfinished projects and proposals. We take all of these and roll them over onto You. We trust You to give us strength to work today free of fretting frustration. We accept Your invitation through Peter: ''Let God have all your worries and cares, for He is always thinking about you and watching everything that concerns you.''—1 Peter 5:7, Living Bible.

Thank You, that You have lightened our load of what we could not carry alone and strengthened our backs for what You call us to carry with Your help. Amen.

PLEDGE OF ALLEGIANCE

The Honorable ZELL MILLER 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 assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, March 19, 2002.

To the Senate:

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

ROBERT C. BYRD,
President pro tempore.

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

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. REID. Mr. President, today the Senate will resume consideration of H.R. 2356, the Campaign Finance Reform Act. Cloture was filed yesterday. Therefore, Senators have until 12:30 today to file first-degree amendments. Unless agreement is reached on final passage of campaign finance, the Senate will vote on cloture tomorrow morning.

While negotiations continue on campaign finance, we expect to resume consideration of the energy reform bill. I see Senator FEINGOLD. We will be happy if there are statements he or others wish to make on that legislation. But as I have indicated, unless there is some movement in the way of some amendments, we will try to get back to the energy reform bill.

Senator FEINSTEIN is here to move forward on the matter on which she and Senator GRAMM have been working for about a week now.

Mr. LOTT. Mr. President, will the Senator from Nevada yield?

Mr. REID. I will be happy to yield.

Mr. LOTT. I know there have been a lot of negotiations back and forth on getting agreement on how to proceed on campaign finance reform. I was under the impression that perhaps an agreement was close.

Mr. REID. That is my understanding.

Mr. LOTT. Do you have information on that, and when do you expect we would try to enter into an agreement? Because obviously that affects the schedule of how we proceed on other issues, the energy bill in particular.

Mr. REID. Senator DASCHLE has authorized me to say that whenever there is agreement, he will move forward on it immediately. The fact is, there just has not been one yet, to my knowledge.

Mr. FEINGOLD. Mr. President, if I could speak just for a moment—and I thank the minority leader—just to make it clear, the cloture motion has been filed. It will ripen tomorrow. Regardless of the other discussions and negotiations, our understanding is that will go forward. There are, however, negotiations going on with regard to some technical aspects, and we hope that can be worked out.

I want to be clear because sometimes it seems as if, in these conversations, people think the two are linked and nothing will move forward. The campaign finance bill is going forward and it will be voted on tomorrow, as a cloture vote, unless there is some agreement. But, yes, as the minority leader has suggested, there are some conversations and discussions going on that we hope will be fruitful.

Mr. REID. I say to my friend from Wisconsin, that is what I did say earlier. We have the votes scheduled tomorrow, and I ask Senators to file amendments, if they have them, by 12:30 today. It is my understanding, I say to both the Republican leader and

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

the Senator from Wisconsin, that any agreement that is being talked about will call for a vote tomorrow anyway. That is my understanding.

Mr. FEINGOLD. That is correct.

Mr. REID. I think we can look forward to a cloture vote tomorrow on this bill, regardless of what happens.

I hope there will be some progress on the energy bill. In addition to the work of Senator FEINSTEIN, we also have the alternative fuels problem we wish to have resolved. I hope Senator KYL will come over as soon as possible today to offer his amendment. That would pretty much do for the alternative fuels problems we have with this legislation.

So it is contemplated there will be rollcall votes in relation to the energy bill throughout the day.

The Senate will recess from 12:30 to 2:15 p.m. today for our weekly party conferences. I appreciate everyone's courtesy, waiting while I made this brief announcement. I do hope, though, that everyone understands we are going to try to move forward on the legislation we have before us, campaign finance reform, and it is my understanding we can only get to the energy bill today after having moved off campaign finance reform. Is that true?

The ACTING PRESIDENT pro tempore. That is correct.

RESERVATION OF LEADER TIME

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

BIPARTISAN CAMPAIGN REFORM ACT OF 2002

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of H.R. 2356, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 2356) to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform.

Mr. REID. Mr. President, what is the regular order?

The ACTING PRESIDENT pro tempore. The Senate is now considering H.R. 2356.

Mr. REID. I ask we now move to the energy bill—that is the regular order? Is my understanding correct that calling for the regular order would call up the energy bill at this time?

The ACTING PRESIDENT pro tempore. Calling for the regular order with respect to the energy bill would bring the energy bill to the floor.

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Resumed

Mr. REID. Mr. President, I maybe misspoke. I ask for the regular order as it relates to the energy bill that Senator BINGAMAN has been marshaling the last several days.

The ACTING PRESIDENT pro tempore. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 517) to authorize funding for the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

Pending:

Daschle/Bingaman further modified amendment No. 2917, in the nature of a substitute.

Feinstein amendment No. 2989 (to amendment No. 2917), to provide regulatory oversight over energy trading markets.

Kerry/McCain amendment No. 2999 (to amendment No. 2917), to provide for increased average fuel economy standards for passenger automobiles and light trucks.

Dayton/Grassley amendment No. 3008 (to amendment No. 2917), to require that Federal agencies use ethanol-blended gasoline and biodiesel-blended diesel fuel in areas in which ethanol-blended gasoline and biodiesel-blended diesel fuel are available.

Bingaman amendment No. 3016 (to amendment No. 2917), to clarify the provisions relating to the Renewable Portfolio Standard.

Lott amendment No. 3028 (to amendment No. 2917), to provide for the fair treatment of Presidential judicial nominees.

Mr. REID. Mr. President, on the energy bill, what is the pending amendment?

The ACTING PRESIDENT pro tempore. The pending amendment is the Lott amendment, No. 3028.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 2989, AS MODIFIED

Mrs. FEINSTEIN. Mr. President, I call for the regular order with respect to my amendment.

The ACTING PRESIDENT pro tempore. The amendment of the Senator from California is now pending.

Mrs. FEINSTEIN. Mr. President, I send a modification to the desk.

The ACTING PRESIDENT pro tempore. The amendment is so modified.

The amendment, as modified, is as follows:

At the end, add the following:

DIVISION ___—MISCELLANEOUS

TITLE I—ENERGY DERIVATIVES

SEC. ___1. JURISDICTION OF THE COMMODITY FUTURES TRADING COMMISSION OVER ENERGY TRADING MARKETS AND METALS TRADING MARKETS.

(a) FERC LIAISON.—Section 2(a)(8) of the Commodity Exchange Act (7 U.S.C. 2(a)(8)) is amended by adding at the end the following:

''(C) FERC LIAISON.—The Commission shall, in cooperation with the Federal Energy Regulatory Commission, maintain a liaison between the Commission and the Federal Energy Regulatory Commission.''.

(b) EXEMPT TRANSACTIONS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2) is amended—

(1) in subsection (h), by adding at the end the following:

''(7) APPLICABILITY.—This subsection does not apply to an agreement, contract, or transaction in an exempt energy commodity or an exempt metal commodity described in section 2(j)(1).''; and

(2) by adding at the end the following:

''(j) EXEMPT TRANSACTIONS.—

''(1) TRANSACTIONS IN EXEMPT ENERGY COMMODITIES AND EXEMPT METALS COMMODITIES.—An agreement, contract, or transaction (including a transaction described in section 2(g)) in an exempt energy commodity or exempt metal commodity shall be subject to—

''(A) sections 4b, 4c(b), 4o, and 5b;

''(B) subsections (c) and (d) of section 6 and sections 6c, 6d, and 8a, to the extent that those provisions—

''(i) provide for the enforcement of the requirements specified in this subsection; and

''(ii) prohibit the manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market;

''(C) sections 6c, 6d, 8a, and 9(a)(2), to the extent that those provisions prohibit the manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market;

''(D) section 12(e)(2); and

''(E) section 22(a)(4).

''(2) BILATERAL DEALER MARKETS.—

''(A) IN GENERAL.—Except as provided in paragraph (6), a person or group of persons that constitutes, maintains, administers, or provides a physical or electronic facility or system in which a person or group of persons has the ability to offer, execute, trade, or confirm the execution of an agreement, contract, or transaction (including a transaction described in section 2(g)) (other than an agreement, contract, or transaction in an excluded commodity), by making or accepting the bids and offers of 1 or more participants on the facility or system (including facilities or systems described in clauses (i) and (iii) of section 1a(33)(B)), may offer or may allow participants in the facility or system to enter into, enter into, or confirm the execution of any agreement, contract, or transaction under paragraph (1) (other than an agreement, contract, or transaction in an excluded commodity) only if the person or group of persons meets the requirement of subparagraph (B).

''(B) REQUIREMENT.—The requirement of this subparagraph is that a person or group of persons described in subparagraph (A) shall—

''(i) provide notice to the Commission in such form as the Commission may specify by rule or regulation;

''(ii) file with the Commission any reports (including large trader position reports) that the Commission requires by rule or regulation;

''(iii) maintain sufficient capital, commensurate with the risk associated with the transaction, as determined by the Commission;

''(iv)(I) consistent with section 4i, maintain books and records relating to each transaction in such form as the Commission may specify for a period of 5 years after the date of the transaction; and

''(II) make those books and records available to representatives of the Commission and the Department of Justice for inspection for a period of 5 years after the date of each transaction; and

''(iv) make available to the public on a daily basis information on volume, settlement price, open interest, opening and closing ranges, and any other information that the Commission determines to be appropriate for public disclosure, except that the Commission may not—

''(I) require the real time publication of proprietary information; or

''(II) prohibit the commercial sale of real time proprietary information.

''(3) REPORTING REQUIREMENTS.—On request of the Commission, an eligible contract participant that trades on a facility or system described in paragraph (2)(A) shall provide to the Commission, within the time period specified in the request and in such form and manner as the Commission may specify, any information relating to the transactions of the eligible contract participant on the facility or system within 5 years after the date of any transaction that the Commission determines to be appropriate.

''(4) TRANSACTIONS EXEMPTED BY COMMISSION ACTION.—Any agreement, contract, or transaction described in paragraph (1) (other than an agreement, contract, or transaction in an excluded commodity) that would otherwise be exempted by the Commission under section 4(c) shall be subject to—

''(A) sections 4b, 4c(b), 4o, and 5b; and

''(B) subsections (c) and (d) of section 6 and sections 6c, 6d, 8a, and 9(a)(2), to the extent that those provisions prohibit the manipulation of the market price of any commodity in interstate commerce or for future delivery on or subject to the rules of any contract market.

''(5) NO EFFECT ON OTHER FERC AUTHORITY.—This subsection does not affect the authority of the Federal Energy Regulatory Commission to regulate transactions under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C 717 et seq.).

''(6) APPLICABILITY.—This subsection does not apply to—

''(A) a designated contract market regulated under section 5; or

''(B) a registered derivatives transaction execution facility regulated under section 5a.''.

(c) CONTRACTS DESIGNED TO DEFRAUD OR MISLEAD.—Section 4b of the Commodity Exchange Act (7 U.S.C. 6b) is amended by striking subsection (a) and inserting the following:

''(a) PROHIBITION.—It shall be unlawful for any member of a registered entity, or for any correspondent, agent, or employee of any member, in or in connection with any order to make, or the making of, any contract of sale of any commodity in interstate commerce, made, or to be made on or subject to the rules of any registered entity, or for any person, in or in connection with any order to make, or the making of, any agreement, transaction, or contract in a commodity subject to this Act—

''(1) to cheat or defraud or attempt to cheat or defraud any person;

''(2) willfully to make or cause to be made to any person any false report or statement, or willfully to enter or cause to be entered any false record;

''(3) willfully to deceive or attempt to deceive any person by any means; or

''(4) to bucket the order, or to fill the order by offset against the order of any person, or willfully, knowingly, and without the prior consent of any person to become the buyer in respect to any selling order of any person, or to become the seller in respect to any buying order of any person.''

(d) CONFORMING AMENDMENTS.—The Commodity Exchange Act is amended—

(1) in section 2 (7 U.S.C. 2)—

(A) in subsection (h)—

(i) in paragraph (1), by striking ''paragraph (2)'' and inserting ''paragraphs (2) and (7)''; and

(ii) in paragraph (3), by striking ''paragraph (4)'' and inserting ''paragraphs (4) and (7)''; and

(B) in subsection (i)(1)(A), by striking ''section 2(h) or 4(c)'' and inserting ''subsection (h) or (j) or section 4(c)'';

(2) in section 4i (7 U.S.C. 6i)—

(A) by striking ''any contract market or'' and inserting ''any contract market,''; and

(B) by inserting '', or pursuant to an exemption under section 4(c)'' after ''transaction execution facility'';

(3) in section 5a(g)(1) (7 U.S.C. 7a(g)(1)), by striking ''section 2(h)'' and inserting ''subsection (h) or (j) of section 2'';

(4) in section 5b (7 U.S.C. 7a–1)—

(A) in subsection (a)(1), by striking ''2(h) or'' and inserting ''2(h), 2(j), or''; and

(B) in subsection (b), by striking ''2(h) or'' and inserting ''2(h), 2(j), or''; and

(5) in section 12(e)(2)(B) (7 U.S.C. 16(e)(2)(B)), by striking ''section 2(h) or 4(c)'' and inserting ''subsection (h) or (j) of section 2 or section 4(c)''.

SEC. ___2. RECRUITMENT AND RETENTION OF QUALIFIED PERSONNEL AT THE COMMODITY FUTURES TRADING COMMISSION.

(a) IN GENERAL.—Section 2(a)(6) of the Commodity Exchange Act (7 U.S.C. 2(a)(6)) is amended by adding at the end the following:

''(G) PERSONNEL MATTERS.—

''(i) IN GENERAL.—The Chairman may appoint and fix the compensation of any officers, attorneys, economists, examiners, and other employees that are necessary in the execution of the duties of the Commission.

''(ii) COMPENSATION.—

''(I) IN GENERAL.—Rates of basic pay for all employees of the Commission may be set and adjusted by the Chairman without regard to the provisions of chapter 51 or subchapter III of chapter 53 of title 5, United States Code.

''(II) ADDITIONAL COMPENSATION.—The Chairman may provide additional compensation and benefits to employees of the Chairman if the same type and amount of compensation or benefits are provided, or are authorized to be provided, by any other Federal agency specified in section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b).

''(III) COMPARABILITY.—In setting and adjusting the total amount of compensation and benefits for employees under this subparagraph, the Chairman shall consult with, and seek to maintain comparability with, any other Federal agency specified in section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b).''.

(b) CONFORMING AMENDMENTS.—

(1) Section 3132(a)(1) of title 5, United States Code, is amended—

(A) in subparagraph (C), by striking ''or'';

(B) in subparagraph (D), by adding ''or'' at the end; and

(C) by adding at the end the following:

''(E) the Commodity Futures Trading Commission.''.

(2) Section 5316 of title 5, United States Code, is amended—

(A) by striking ''General Counsel, Commodity Futures Trading Commission.''; and

(B) by striking ''Executive Director, Commodity Futures Trading Commission.''.

(3) Section 5373(a) of title 5, United States Code, is amended—

(A) in paragraph (2), by striking ''or'' at the end;

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

''(3) section 2(a)(6)(G) of the Commodity Exchange Act.''.

(4) Section 1206 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833b) is amended by inserting ''the Commodity Futures Trading Commission,'' after ''the Farm Credit Administration, ''.

SEC. ___3. JURISDICTION OF THE FEDERAL ENERGY REGULATORY COMMISSION OVER ENERGY TRADING MARKETS.

Section 402 of the Department of Energy Organization Act (42 U.S.C. 7172) is amended by adding at the end the following:

''(i) JURISDICTION OVER DERIVATIVES TRANSACTIONS.—

''(1) IN GENERAL.—To the extent that the Commission determines that any contract that comes before the Commission is not under the jurisdiction of the Commission, the Commission shall refer the contract to the appropriate Federal agency.

''(2) MEETINGS.—A designee of the Commission shall meet quarterly with a designee of the Commodity Futures Trading Commission, the Securities Exchange Commission, the Federal Trade Commission, and the Federal Reserve Board to discuss—

''(A) conditions and events in energy trading markets; and

''(B) any changes in Federal law (including regulations) that may be appropriate to regulate energy trading markets.

''(3) LIAISON.—The Commission shall, in cooperation with the Commodity Futures Trading Commission, maintain a liaison between the Commission and the Commodity Futures Trading Commission.''.

Mrs. FEINSTEIN. Mr. President, I rise on behalf of Senators FITZGERALD, CANTWELL, CORZINE, WYDEN, LEAHY, BOXER, and DURBIN in modifying our amendment on energy derivatives.

As you know, we discussed this issue on the floor before, and the senior Senator from Texas had some concerns. So we spent a good deal of time talking with him and his staff. We have also kept in touch with our cosponsors. We have agreed on some modifications. There are some modifications that the Senator from Texas sought that the cosponsors and I could not agree to. So this modification represents where we agree and not where we disagree.

I begin by explaining two terms in the amendment. The first term is ''a derivative.'' A derivative is a financial instrument traded on or off an exchange, the price of which is directly dependent upon an underlying commodity, such as natural gas or electricity. An ''over-the-counter'' or ''swap'' contract is an agreement whereby a floating price is exchanged for a fixed price over a specified period. It involves no transfer of physical energy, and both parties settle their contractual obligations in cash.

Although energy derivatives make up only 4 percent of all derivative transactions, energy swaps make up 80 percent of all energy derivatives. So these are important terms.

What our amendment does is subject electronic exchanges, such as Enron Online, Dynegydirect, and IntercontinentalExchange—these exchanges trade energy derivatives—to the similar oversight reporting and capital requirements as other exchanges, such as the Chicago Mercantile Exchange, the New York Mercantile Exchange, and the Chicago Board of Trade. However, since the vast majority of energy derivative transactions are over the

counter, the Commodity Futures Trading Commission has insufficient authority, at present, to investigate and prevent fraud and price manipulation, and parties making these trades are not required to keep records of their trades. In other words, there is no transparency. There is no record and there is no oversight of these particular trades.

So our amendment simply requires these parties to keep records of their transactions, which is what most companies do in any event.

If it turns out there is a fraud allegation, the CFTC will have a record to review. This is the same fraud and manipulation authority the Commodity Futures Trading Commission has for every other commodity and it is the same authority they had until Congress passed the Commodity Futures Modernization Act in 2000. That act exempted energy and metals trading from regulatory oversight, and excluded it completely if the trade was done electronically. Before this act, it was all included. Following the act, it was excluded. That was around June of 2000.

The problem and why we need this legislation: Presently, energy transactions—those about which I am not speaking, but the other energy transactions—are regulated by the Federal Energy Regulatory Commission when there is actually a delivery of the energy commodity.

What do I mean? If I buy natural gas from you, and you deliver that natural gas to me, the Federal Energy Regulatory Commission has the authority to ensure that this transaction is both transparent and reasonably priced. In other words, FERC has regulatory authority when the energy is actually delivered. However, energy transactions have become increasingly complex over the past decade. So, today, energy transactions do not always result in a direct delivery, and thus a giant loophole has opened where there is no transparency, no records, and no oversight. And that is not when I sell it to you to deliver it but when I sell it to you and you sell it to somebody else, who sells it to somebody else, who sells it to somebody else, and then it is delivered. Those interim trades are in no way, shape, or form transparent. They are done in secret. There is no oversight and there is no record.

So I can purchase from you a derivatives contract, which is a promise that you will deliver natural gas to me at some point in the future. I may never need to physically own that gas, so I can at a small profit sell that gas to someone, who can then turn around and sell it yet to someone else, and so on and so forth, as I have just pointed out. The promise of a gas delivery can literally change hands dozens of times before the commodity is ever delivered. Even then, it may never get delivered if the spot market price is lower than the future price that comes due on that day. That is what I meant about saying it is very complicated.

In fact, about 90 percent of the energy trades represent purely financial transactions, not regulated by either the Federal Energy Regulatory Commission, or the CFTC. So as long as there is no delivery, there is no price transparency. We do not know the price or the terms for 90 percent of the energy transactions. Let me repeat that. Today, no one knows the price or the terms for 90 percent of the energy transactions.

Again, this lack of transparency and oversight only applies to energy. It does not apply if you are selling wheat or pork bellies or any other tangible commodity. As I said, there is a very big loophole here. What we seek to do is simply close that loophole.

How did this happen? The answer is, the Commodity Futures Modernization Act, signed into law in 2000, exempted energy and minerals trading from regulatory oversight and also exempted electronic trading platforms from oversight. That is the online trading that occurs. In a sense, what the legislation did was set up two different systems: treating electronic trading platforms differently from other platforms, and treating energy commodities different from other commodities.

Up until 2000, energy derivative transactions were regulated in a similar fashion to other transactions, and all energy transactions were subject to antifraud and antimanipulation oversight. Electronic trading platforms were treated like all other platforms. These were the standards that were in place until June of 2000. Up until that time, if a gas or electricity commodity was delivered, FERC had oversight, and there was transparency; if there was not delivery, the CFTC had the authority. So the loophole arose just 2 years ago.

At the time of the 2000 legislation, no one knew how the exemptions would affect the energy market. It was a new market. They wanted to see growth. So they kind of unleashed it and said: All this can go on without the light of day.

We have a much better idea today because of what we have learned since then. It didn't take long for Enron Online and others in the energy sector to take advantage of this new freedom—and, to an extent, secrecy—by trading energy derivatives absent any regulatory oversight or transparency. Thus, after the 2000 legislation was enacted, Enron Online began to trade energy derivatives bilaterally, over the counter, in a one-to-one transaction, without being subject to any regulatory oversight whatsoever.

It should not surprise anyone that, without transparency, prices went right up. Was Enron and its energy derivatives trading arm, Enron Online, the sole reason California and the West had an energy crisis 18 months ago? Of course not. Was it a contributing factor to the crisis? I believe it was.

Unfortunately, because of the energy exemptions in the 2000 Commodities Futures Modernization Act, which took away the CFTC's authority to investigate, we may never know for sure since there are no records.

For me, this issue comes down to some fundamental questions. Why shouldn't there be transparency in the energy market? Why should the CFTC not have antifraud, antimanipulation authority when there is fraud and manipulation in the market? And why shouldn't California's energy ratepayers and customers and consumers and ratepayers in other States enjoy the same CFTC protections as ranchers and farmers do today?

The modification of our amendment results from the discussions my cosponsors and I had with Senator PHIL GRAMM, who approached us to express his concern that our bill could inadvertently impact financial derivatives. We made several changes to accommodate Senator GRAMM's concerns, and we were hopeful we could reach agreement with him. However, there are four additional points where we did not reach agreement: exempting energy swaps from CFTC antifraud and antimanipulation authority; deleting all public price-transparency requirements; exempting all electronic exchanges from requirements that they maintain sufficient capital to carry out their operations, based on risk; and finally, eliminating metal derivatives from oversight.

As I said before, energy swaps—this is a point of contention between us—comprise as much as 80 percent of energy derivatives transactions so this change would have taken the teeth out of our amendment. We consulted with our cosponsors. They did not want to agree to it. I believe Senator FITZGERALD is coming to the Chamber to speak to this.

Additionally, our amendment states that electronic trading forums should hold capital commensurate with the risk, which seems a reasonable expectation to me. The public can already access information from nonelectronic exchanges simply by picking up the business section of a daily newspaper. I don't understand the rationale for wanting to limit the public's access to data on electronic exchanges.

There is ample evidence that fraud and manipulation can occur and have already occurred in the metal sector.

This was borne out by several scandals over the past decade, including the 1996 Sumitomo case. In Sumitomo, it was found that U.S. consumers were overcharged $2.5 billion because of a Japanese company's manipulation of the copper markets. These were changes that we simply could not agree to.

Why do my cosponsors and I feel so strongly about the need to pass this amendment? First, the debate is nothing new. In November of 1999, the Federal Reserve, the Department of Treasury, the SEC, and the CFTC issued a report on derivatives titled ''Over the Counter Derivative Markets and the Commodity Exchange Act, A Report of

the President's Working Group on Financial Markets.'' This report was signed by the Federal Reserve Chairman, the then-Secretary of Treasury, the then-SEC Chairman, and the then-CFTC Chairman.

What the report found was the case had not been made that energy or other tangible commodities should be exempted from CFTC oversight. In fact, the report found that because of the immaturity of the energy market, the lack of liquidity in the market and finite supplies in energy markets, energy markets were more susceptible to manipulation than the deep and liquid financial markets.

Recent history has certainly borne that to be correct. These commodities are more subject to manipulation.

On June 21, 2000, shortly after the President's working group issued its report, the Banking Committee and Agriculture Committee held a hearing on the report and Senator LUGAR's Commodity Futures Modernization Act. Let me read from the committee report:

> The Commission has reservations about the bill's exclusions of OTC derivatives from the Commodities Exchange Act. On this point the bill diverges from the recommendations of the President's Working Group, which limited the proposed exclusions to financial derivatives. The Commission believes the distinction drawn by the Working Group between financial (nontangible) and non-financial transactions was a sound one and respectfully urges the Committees to give weight to that distinction.

Eight days later, Chairman LUGAR marked up his CFMA bill in conference. This is what he had to say:

> The Chairman's Mark also addresses concerns regarding this bill's exclusion of institutional energy transactions from the act. Our bill no longer excludes those transactions from the act. With the resolution of this provision, the CFTC has indicated it will fully support our legislation.

Much to his credit, Chairman LUGAR eliminated the exemption for energy transactions to accommodate the CFTC and the President's working groups. But—and this is a big ''but''—Enron and others lobbied in the House and, as it turned out, this was never reflected in the final provision that passed Congress as part of a much bigger bill at the end of the 106th Congress. There is already a legislative history.

More recently, the Senate Energy and Natural Resources Committee held a hearing on January 29 on energy derivative trading, where CFTC Chairman Jim Newsome and FERC Chairman Pat Wood both testified and explained the regulatory burdens that prevent them from fully investigating Enron Online.

Let me be candid; I am truly amazed at the opposition to this amendment. Why should anyone be able to set up an online trading platform without any reporting, disclosure, or capital requirements and without any regulatory oversight whatsoever? Why should companies that are engaging in an over-the-counter transaction not have to keep a record of this transaction? Everyone else does. And why, if there is fraud or market manipulation, should there not be a regulatory agency that can investigate and cite wrongdoing?

What I cannot understand is how this amendment is somehow antibusiness. On the contrary, the amendment is all about making markets work.

I call your attention to the recently released report by the Cambridge Energy Research Associates Study and Accenture titled ''Energy Restructuring at a Crossroads, Creating Workable Competitive Power Markets.''

The report cites 12 recommendations for making energy markets function effectively, including having the CFTC expand its oversight to include energy derivative trading, as it did before 2000.

The report recognizes that transparency, disclosure, and reporting requirements instill confidence in markets and provide assurances for investors that there will not be fraud and manipulation.

This is also why the amendment is supported by the Chicago Mercantile Exchange, the New York Mercantile Exchange, Cambridge Energy Research Associates, Mid-America Energy Holding Company, PG&E, and Southern California Edison. They have to pay the higher prices for energy if it is traded back and forth. They want to know if these trades increase prices for the purposes of manipulation. Calpine, the American Public Gas Association, the American Public Power Association, the Texas Independent Producers and Royalty Association, the California Municipal Utilities Association, the Consumers Union, the Consumer Federation of America, the Derivatives Institute, U.S. PIRG, the Transmission Access Policy Study Group, and all four FERC Commissioners.

I would like to read into the RECORD the letter from the Chairman of the Federal Energy Regulatory Commission, Mr. Pat Wood, III, dated March 7:

> Thank you for calling to my attention your proposed amendment to clarify federal oversight of financial transactions involving energy commodities. Your amendment would clarify that these transactions are within the jurisdiction of the Commodity Futures Trading Commission, thus revoking current exemption for such transactions under the Commodity Exchange Act and extending the Act to apply comprehensively to financial transactions based on energy commodities.
>
> From our first meeting last Spring, you know how strongly I feel about customers having access to the broadest range of useful market information. Information on financial as well as physical transactions is a key part of market transparency. Billions of dollars are now at stake in these markets. The consequences of a major participant's collapse are illustrated by the Enron bankruptcy. Federal oversight of such trading is appropriate. Your amendment can ensure greater transparency in these markets, and this transparency can help provide an early warning signal to those charged with protecting the public interest.

Mr. President, I ask unanimous consent to print other letters in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

EDISON INTERNATIONAL,
March 7, 2002.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: Thank you for asking Edison International for our views on your amendment to S. 517, the Senate Energy Policy Act of 2002. As you know, Edison shares your concern over possible manipulation of the California electricity market by some market participants, which helped contribute to the serious problems the state faced from out of control energy prices. Your amendment would provide for transparency in the electric derivatives trading market, an industry that is currently exempted from regulation under the Commodity Futures Modernization Act of 2000 (CFMA).

I support your amendment, with a suggestion for your consideration to further refine it. Our company and others use energy derivatives trading to protect and hedge their actual physical assets, as opposed to companies that conduct trading with no or few physical assets. There should be guidance in the final language which recognizes the difference between these two types of businesses, particularly regarding any further capital requirements. Otherwise companies that trade in order to hedge physical assets may be required to pay twice—once in order to obtain capital for the assets and a second time in order to meet any capital requirements to back their trades.

Thanks again for all your efforts on behalf of California consumers and businesses.

Sincerely,

JOHN F. BRYSON,
Chairman of the Board and Chief Executive Officer.

PG&E CORPORATION,
Washington, DC, March 6, 2002.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: We are writing today in reference to the amendment you will be offering to the Senate Energy bill, containing the substance of legislation you and several of your colleagues introduced earlier to provide regulatory oversight over energy trading markets, as amended.

At the outset, we applaud your efforts to ensure public and consumer confidence in the operation and orderly functioning of the energy marketplace. As you know, the industry relies heavily on these markets and products to manage risk for the benefit of consumers of electricity. We thus appreciate your willingness to work with us and other market participants to address areas of interest and concern as the provisions of your amendment have been debated and refined. As presently drafted, we view your amendment as providing an increased level of oversight, while ensuring the continued ability of market participants to utilize these instruments as part of overall risk management strategies. We therefore support your amendment.

Thank you for your hard work in this area, and we look forward to continuing to work with you and others on matters of national energy policy.

Sincerely,

STEVEN L. KLINE,
Vice President, Federal Governmental & Regulatory Relations.

MIDAMERICAN ENERGY HOLDINGS CO.,
Omaha, NE, March 5, 2002.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing in support of your effort to ensure that there is transparency and appropriate federal oversight of energy futures trading markets.

As I testified before the Senate Energy and Natural Resources Committee last month, I have long been concerned that the type of exchange run by Enron before its collapse offered opportunities for manipulation. Enron was the largest buyer, the largest seller and the operator of an unregulated exchange. In view of the revelations of the last several months regarding Enron, the unregulated nature of these markets has raised serious concerns regarding the ability of the federal government to ensure that energy trading and futures markets are operating in the interest of the public and market participants.

As the Senate addresses this issue, it is important to remember that electric and gas markets as a whole responded to the Enron collapse without disruption, so legislation should not compromise the liquidity of these markets. I applaud your determination to keep your amendment focused on oversight and transparency and am encouraged that you, along with Senators Cantwell and Wyden, have pledged to work with market participants to continue to perfect this proposal as debate on the comprehensive energy bill continues.

Ensuring public confidence in the integrity of energy futures markets is a critical component of establishing a modernized regulatory framework for the electric and natural gas industries. I am pleased to support your effort and commend you on your work on this important issue.

Sincerely,

DAVID L. SOKOL,
Chairman and CEO.

AMERICAN PUBLIC POWER ASSOCIATION,
Washington, DC, March 7, 2002.

Hon. DIANNE FEINSTEIN,
Senate Hart Building,
Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the American Public Power Association (APPA), an association representing the interests of more than 2000 publicly owned electric utility systems across the country, I would like to express support for your amendment regarding the regulatory treatment of energy derivative transactions which is expected to be offered during consideration of S. 517, the Energy Policy Act of 2002.

As we understand it, your amendment repeals exemptions and exclusions from regulation, originally granted by the Commodity Futures Trading Commission, for bilateral derivatives and multi-lateral electronic energy commodity markets. Further, your amendment helps ensure that entities involved in running on-line trading forums maintain open books and records for investigation and enforcement purposes. Ensuring sufficient regulatory oversight and market transparency are critical steps towards helping prevent market abuses and protecting consumers.

As you are aware, on December 3rd Enron filed for Chapter 11 bankruptcy protection. At the same time, forward markets on the West Coast fell by 30% despite the fact that no other changes in operations, hydroelectric supply, or fossil fuel prices took place at the time. This has led some to believe that Enron may have been using its market dominance to ''set'' forward prices. Your amendment will help avoid such potential abuses in the future.

APPA commends you for taking a leadership role on this critical issue. We look forward to working with you on this and other amendments aimed at providing effective and sustainable competition while protecting consumers from market abuses.

Sincerely,

ALAN H. RICHARDSON,
CEO & Executive Director.

CALPINE CORP.,
Washington, DC, March 7, 2002.

Hon. DIANNE FEINSTEIN,
Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing to let you know of Calpine's support for additional oversight of certain energy derivative markets, as intended by your proposed amendment to S. 517. While we have not seen any evidence that energy trading was the cause of either the California energy crisis or Enron's demise, we do believe there is a crisis of confidence in the energy markets and that your amendment will assist in restoring much needed public confidence in the energy sector.

We support the amendment's strengthening of the CFTC's anti-fraud and anti-manipulation authority and its provision for increased cooperation and liaison between the CFTC and the FERC. We are also pleased that your amendment addresses concerns about the oversight and transparency of the electronic trading platforms. It is important that such facilities, which play a significant price discovery role in the energy trading markets, be subject to appropriate reporting and oversight by the CFTC.

However, I also understand that typical over the counter bilateral trading operations, such as those that operate from a trading desk where various potential counterparties are separately contacted by phone or email, are not intended to be treated as electronic trading facilities under your amendment. This is an important distinction and one that I understand you intend to further clarify in report language.

Calpine would like to thank you for your efforts to advocate reasonable measures to ensure the integrity of the important energy trading markets and we stand ready to provide you with any information or assistance that you may need.

Sincerely,

JEANNE CONNELLY,
Vice President—Federal Relations.

Austin, TX, March 6, 2002.

Hon. DIANNE FEINSTEIN,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: We understand that later today, you will introduce an important measure designed to bring greater transparency to natural gas markets. We believe that improved transparency will reduce price-markups charged in transactions that take place after natural gas leaves the wellhead and before it reaches the burner tip. Thus your measure will benefit both consumers and producers. We support the modified version of S. 1951 that you intend to offer as an amendment to the Senate Energy Bill.

We understand that the amendment:

(1) will not grant any price control authority under the Federal Power Act or Natural Gas Act;

(2) will continue to allow energy commodities (actually all commodities other than agricultural commodities) to be traded on electronic trading facilities that currently qualify as exempt commercial markets, provided that the trading facilities register, meet net capital requirements, file reports, and maintain books and records;

(3) will require participants in such markets to maintain books and records; and

(4) will apply these requirements to electronic trading facilities which permit execution with multiple parties and non-binding bids and offers, and will require books and records to be kept by participants in facilities that permit bilateral negotiations.

TIPRO believes that this measure will tend to improve price transparency in natural gas markets, leading to a more efficient and stable marketplace. The relatively modest requirements outlined above should not unduly reduce liquidity for gas traders. Accordingly, TIPRO endorses your amendment.

Sincerely,

GREGORY MOREDOCK,
National Energy Policy Committee Chairman.

AMERICAN PUBLIC GAS ASSOCIATION,
Fairfax, VA, March 5, 2002.

Re: S. 517

Hon. DIANNE FEINSTEIN,
Hart Senate Office Building, U.S. Senate, Washington, DC.

DEAR SENATOR FEINSTEIN: The American Public Gas Association (APGA) is very pleased that you have taken the lead to amend the Commodity Exchange Act (CEA). You revisions to S. 517, which amends the CEA, brings the trading of energy products, including natural gas spot and forward prices, under the appropriate jurisdiction of Commodity Futures Trading Commission (CFTC). As a result, your amendment will reduce the various risks imposed on consumers by a partially unregulated energy trading market.

As you know, Enron operated in what was essentially an unregulated environment. While there will be much more to come in the wake of Enron, one thing is perfectly clear today—our federal government has an obligation to make sure that no important trading activities fall between the cracks leaving some energy markets without a federal agency with oversight authority. Your amendment remedies this glaring deficiency.

APGA is fully committed to support your effort to reverse the action Congress took just 15 months ago in the Commodities Futures Modernization Act (CFMA). The CFMA amended the CEA by allowing some energy contracts to be traded with no government oversight. We firmly believe that the CFTC must have at its disposal the necessary jurisdiction and authority to protect the operational integrity of energy markets so that (1) transactions are executed fairly, (2) proper disclosures are made to customers, and (3) fraudulent and manipulative practices are not tolerated.

In December of 2000, when the CFMA was under consideration in the Senate, APGA submitted a Statement for the Record to the U.S. Senate Committee on Energy and Natural Resources during a hearing on the ''Status of Natural Gas Markets.'' In the statement, we expressed a concern that the proposed legislation would codify an exemption for energy commodity transactions that would shield those energy transactions from the oversight and review of the CFTC. Enron took advantage of this gap in regulatory oversight. Your amendment will close that gap. Consumers across the country will benefit from your efforts because they are less likely to be victimized by activities that occur in a market where the CFTC exercises oversight.

Again, public gas utilities and the hundreds of communities that we serve commend you for your thoughtful and deliberate leadership on this very important issue. While there may be some who will oppose this amendment, one need not look far to see whether the opposition is looking out for the best interests of Wall Street or Main Street. We pledge to work with you in any way we

can to pass this much-needed amendment. Please let me know how I can assist you.

Sincerely,

BOB CAVE,
President.

U.S. COMMODITY FUTURES TRADING COMMISSION,
Washington, DC, March 7, 2002.

Hon. DIANNE FEINSTEIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINSTEIN: Thank you for calling to ask that I provide you with my views of your proposed amendment to the energy bill pending before the Senate. The amendment would bring transparency to markets and provide Congress and the public with the assurance that no exchange offering energy commodity derivatives transactions would go completely unregulated. Moreover, it would restore to the federal government those basic tools necessary to detect and deter fraud and manipulation. Therefore, I strongly support the amendment.

In my previous correspondence with you, I indicated that under the current law none of our federal regulators could give you any definitive assurance that there was no manipulative or fraudulent activity in energy markets in the wake of the Enron collapse. This is due, in part, to the lack of transparency demanded of energy markets and more significantly to the fact that certain exchange markets such as EnronOnline are completely unregulated.

Consumers are the ultimate beneficiaries of properly functioning derivatives markets, whether those markets are private—like EnronOnline—or public—like the New York Mercantile Exchange. By the same token, consumers are the ultimate victims when markets are manipulated, or otherwise affected by unlawful behavior.

I am a firm believer in the efficiencies that derivatives markets bring to bear on cash commodity markets and the consequent benefits to market users and to consumers. However, such derivatives markets should, in the public interest, adhere to certain, minimal regulatory obligations. Your amendment is a prudent response to the issues highlighted by the Enron episode.

Sincerely,

THOMAS J. ERICKSON,
Commissioner.

Mrs. FEINSTEIN. I thank the Chair.

To summarize, if the western energy markets over the past 2 years have shown us anything, it is that the light of day and records must be available on all transactions. If the western energy markets and California have shown us anything, it is that there must be Federal oversight. And if what has happened in the last 2 years tells us anything, it is that the trading of these particular commodities should not be in secret.

Mr. President, this amendment aims to clear up those three points. It does so. I recognize there is opposition. I recognize the banks oppose it. Why do the banks oppose it? Because they have set up an online trading exchange, the IntercontinentalExchange, to do just what Enron Online did. Dynegy opposes it. Williams opposes it because they are doing the same thing now.

There is this burgeoning market of trading up the price of energy in secret. It is wrong. The light of day must be shed on it, and it should be treated as are all other aspects of trades. My cosponsors and I feel very strongly about this.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Texas.

Mr. GRAMM. Mr. President, how can a case be more overwhelming than the case of the Senator from California? Who could possibly be in favor of a situation where transactions could be undertaken and no records kept? Who could possibly be in favor of granting a license for fraud and manipulation? The answer is no one.

The problem is that each of these points that is outlined has no factual basis in the law. The plain truth is that there is extensive recordkeeping currently required under law. That recordkeeping was strengthened in the 2000 extension of the authorization of the Commodity Exchange Act. I will read from the legislation as we get to it.

The 2000 Act provided specific antifraud authority for the CFTC in exactly the areas for which the Senator from California calls. It provided authority to intervene in the case of price manipulation. In fact, everything that the proponents of this amendment claim they are for is part of current law as amended by the 2000 Act.

I have offered and we have negotiated—and I thank the Senator from California for the negotiations—to try to work out an agreement so that we can have an amendment go forward with broad support. We have failed to succeed in that effort, and I will outline in a moment why we have failed to do that.

Before I do, let me start at the beginning. This amendment has as strong a coalition of opponents as any amendment that has been offered, and not one of them opposes what the proponents of the amendment say they want to do. Not one of them opposes required recordkeeping. Not one of them opposes the granting of antifraud authority. Not one of them opposes granting the ability to intervene in the case of price manipulation. Every opponent of this amendment favors what the proponents of the amendment say that it does, but they oppose what the amendment in fact does.

I will read from the list of the opponents: Alan Greenspan, testifying twice before committees of Congress—the Financial Services Committee in the House and the Banking Committee in the Senate. In as strong words as Alan Greenspan ever utters and in as clear a form as he could possibly pronounce it, he opposes this amendment, not because he opposes the intent of the Senator from California, but because he opposes what the amendment, if adopted, would do—the unintended consequences—which is what this debate is about.

The Secretary of the Treasury is adamantly opposed to this amendment and has joined Chairman Greenspan in talking about the potential impacts on the American economy of a decision we would make in this proposal that has nothing to do with energy futures but everything to do with a swap industry which is now $75 trillion in annual volume and which has become part of virtually every business in America where that business tries to insure itself against risk.

These swaps are tailored transactions between two economic entities that are able, through their transaction, to provide greater certainty in providing jobs, growth, and opportunity for the American economy. In fact, Chairman Greenspan has said that the growth in the derivatives markets may very well be a major factor in the resilience of the American economy today and why we, in fact, did not have a recession.

I urge my colleagues to read the letter which the Secretary of the Treasury and the Chairman of the Board of Governors of the Federal Reserve System sent to the two leaders.

I ask unanimous consent the letter to which I just referred be printed in the RECORD.

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

MARCH 12, 2002.

Hon. TRENT LOTT,
U.S. Senate,
Washington, DC.

DEAR SENATOR LOTT: We are writing to express our serious concerns with an amendment to be offered by Senator Feinstein and others to S. 517, the national energy policy bill. We are committed to ensuring the integrity of the nation's energy markets. However, we question whether it is necessary to reopen the Commodity Futures Modernization Act of 2000 (CFMA) to achieve that objective. Amending the CFMA as proposed by Senator Feinstein could re-introduce legal uncertainties into off-exchange derivatives markets and other markets—uncertainties that were thought to have been settled as a result of the CFMA's enactment.

Accordingly, we urge Congress to defer action on Senator Feinstein's proposal until the appropriate committees of jurisdiction have a change to hold hearings on the amendment and carefully vet the language through the normal committee processes.

The CFMA expressly maintained the Commodity Futures Trading Commission's (CFTC) anti-fraud and anti-manipulation authority with respect to off-exchange energy derivatives markets covered by the Commodity Exchange Act (CEA). Thus, it appears that the CFTC may have sufficient current authority to address instances of fraud or price manipulation in energy derivatives markets. Congress should carefully evaluate the adequacy of the CFTC's current authority before it attempts to re-open the CFMA.

The CFMA was the culmination of a long, difficult process, which provided much needed clarification regarding the scope of the CEA for all off-exchange derivatives instruments, not just energy products. Any effort to undo the delicate compromises achieved in that legislation should be undertaken only after careful reflection. Otherwise, such legislation could jeopardize the contribution that off-exchange derivatives have made to the dispersion of risk in the economy. These instruments may well have contributed significantly to the economy's impressive resilience to financial and economic shocks and imbalances.

Similar letters have been sent to Senators Harkin, Lugar, Sarbanes, Gramm, and Daschle.

Sincerely,

PAUL H. O'NEILL,
Secretary, Department of the Treasury.
ALAN GREENSPAN,
Chairman, Board of Governors of the Federal Reserve System.

Mr. GRAMM. This amendment is also opposed by the Securities and Exchange Commission, which has the principal responsibility in the American economy for antifraud and antimanipulation enforcement with regard to securities transactions. If their whole purpose in existing, if their major mandate, is to deal with exactly the problems which the amendment proposes to deal with, why is the SEC adamantly opposed to this amendment? Because of unintended consequences, because the amendment, in fact, does not achieve its stated goals, but it does other things that are potentially very harmful to the economy.

The Chairman of the Commodity Futures Trading Commission, the very Commission that would be empowered by this amendment, has come out in very strong opposition to the amendment. This amendment is opposed by the International Swaps and Derivatives Association, the American Bankers Association, the ABA Securities Association, the Financial Services Roundtable, the Futures Industry Association, the Securities Industry Association, and the Chamber of Commerce of the United States.

Why would the Chamber of Commerce of the United States be opposed to this amendment? Are they in favor of fraud, manipulation, and the absence of recordkeeping? No. They are concerned that the amendment will have a harmful effect outside the futures area as it relates to natural gas and electricity, and, in the process, will do harm to the entire economy.

This amendment is strongly opposed by the National Mining Association. I can understand bringing Enron into the debate as it relates to natural gas and electricity, but why we should bring in mining I do not understand. There will at some point in this debate be an amendment which is part of our disagreement, to focus the provisions of this amendment on natural gas and electricity. If that is the concern, then why not focus the attention on that concern rather than getting into areas such as metals? I have seen no evidence—in fact, I will point out that Chairman Greenspan has seen no evidence—that derivatives trading by Enron, or by anybody else, had anything to do with the energy spike in prices in California.

Going back to the beginning, first of all, this is a debate I was pulled into when the 2000 bill was written. The provision relating to energy was written in the House, and the version of those provisions that finally passed in the House and came to the Senate was never changed again. My concern about the bill at the time, that held the bill up for 3 months and almost killed the bill at the end of 2000 in the final session of that Congress, the lameduck session of that Congress, had to do with exactly the issue which is before us, and that is unintended consequences.

Nobody in the Senate knows what a derivative is, and I speak for myself in saying that deep down I have a conception of what a derivative is. I might pass a freshman course in finance in college in giving a definition of derivative, but these are very complicated, tailored instruments, each instrument being unique, which is why it has, from the very beginning of its trading, been deregulated.

One of the arguments that has been made over again, as the debate on this amendment has started, is that somehow the 2000 legislation exempted these derivatives and swaps from regulation. That is totally false, totally inaccurate. They have never been regulated. In fact, Congress acted in passing the Futures Trading Practice Act in 1992 to give the CFTC specific power to exempt these derivatives and swaps as being inappropriate for regulation under the CFTC, which has the job of regulating futures, not tailored swaps between sophisticated customers. The Congress passed the Futures Trading Practice Act in 1992 that directed the CFTC to grant these exemptions. Those exemptions were granted. The exemption for energy was granted under the Clinton administration with a Democrat Chairman of the CFTC. That issue has never been controversial before. Nor have these swaps and derivatives ever come under Federal regulation in terms of an ongoing regulatory process.

In fact, the 2000 Act, far from exempting something which had never been subject to regulation, added to the strength of the CFTC exactly the powers that the proponents of this amendment would like us to believe their amendment does, and they believe their amendment does. There is no bad faith on this amendment. It is simply trying to understand very complicated issues when no Member of the Senate knows what a derivative is. It is very difficult to understand what swaps are, impossible to comprehend a $75 trillion industry. Unless one is directly involved in mining, banking, or securities, it is very difficult for me to comprehend what this whole market is about.

All I know is, it has grown to $75 trillion. It is the envy of the world, and Alan Greenspan, who is not the embodiment of God's voice on Earth, when it comes to financial matters in the U.S. economy, speaks with more knowledge and more authority than anybody else when he says that disturbing these markets could have a detrimental impact on the economy and that the resilience of the economy in the face of the recession might very well have been due to the growth of this derivatives market. I say at least let's put a little sign up that says: Danger, high voltage. Do not be fooling around in here if you do not know what you are doing.

Let's talk about these issues. As we have listened to these speeches and been moved by them—I have been moved by them to support the intent of the amendment—we are really not far apart, and I will outline where we differ.

First of all, let me quote from the 2000 Act that the Congress adopted in the waning days of the session in the year 2000. I will go to page 43 of the Senate companion bill, S. 3283. This is in paragraph (4) of section 2(h) of the Commodity Exchange Act. Paragraph (4)(B) gives the Commodity Futures Trading Commission the power to intervene and enforce any action where fraud is present.

In listening to the proponents of this amendment, one would believe there is no power whereby the CFTC can intervene in cases of fraud. Not only does that power exist, but it was strengthened in the 2000 legislation, a provision written in the energy section of the bill in the House of Representatives.

In paragraph (4)(C), we have the provision relating to price manipulation, and the Commission is given the power to intervene in cases where price manipulation occurs.

As we have listened to this debate, we have heard the question, well, how can you do anything if these markets are conducted with no records?

I will read the language of the bill in paragraph (4)(D):

> . . . such rules and regulations as the Commission may prescribe if necessary to ensure timely dissemination by the electronic trading facility of price, trading volume, and other trading data to the extent appropriate, if the Commission determines that the electronic trading facility performs a significant price discovery function for transactions . . .

It then goes on and specifically outlines the power of the Commission. Now, let me make it clear that I am in favor of, and will support, strengthening these provisions. I am in favor of giving the CFTC the power to require that records be kept, to require that they be kept to the level so that you can reconstruct the transaction, to require that the data under the Commodity Exchange Act be kept for 5 years so that you can reconstruct individual transactions. I am willing to support—and so are all the opponents of this bill, as far as I am aware—strengthening antiprice manipulation and strengthening the anti-fraud provisions.

The point I want to make is these provisions are already law, and they are in the 2000 Act. To the extent they can be strengthened without affecting other markets that are in no way related to electricity and natural gas so that we can deal with what the proponents of this amendment intend to achieve, I am in favor of it. The problem is the amendment, as now written, does many things that go beyond this.

If we can focus it on electricity and natural gas, if we can limit it to these provisions, we would have an agreement, and I assume we would get a unanimous vote.

But here are some problems, and let me outline them. First of all, everybody needs to understand that we have a wholesale market for swaps and derivatives, tailor-made products. These are products that are not sold on exchanges. Let me make it clear. I have been chairman of the Banking Committee. I have worked with the exchanges in Chicago and New York. As we say in our business, I have many friends who are associated with the exchanges in Chicago and New York. But when they go to bed every night and they say their prayers, they say: God, please kill the $75 trillion swaps industry and make those people buy these derivatives and swaps on my market and pay me a commission and buy them in thousand-unit lots. If you love me, God, please do this for me. Now, it may hurt the American economy, but it would be so good for me.

Now, there is an element of that going on here. There was an element of it going on in the 2000 Act. There has been an element of it going on forever. People try to promote their own interests, we understand that. There is no issue where all the special interests are on one side. There seems to be a conception that we try to perpetrate that there is good and there is evil and there are special interests and public interests and they are competing against each other. The plain truth is normally there are special interests all over the ballpark. And that is not all bad. I will note that I have always felt if you are going to catch hell no matter what you do, even lawmakers will do the right thing.

There has been an ongoing effort, since the emergence of derivatives and swaps, to force them on to the futures exchanges. I could give you a long and, in this case, happy history. It will suffice to simply say this: First of all, these swaps have never been sold on market exchanges such as the Chicago Mercantile Exchange, Chicago Board of Trade, the New York Mercantile Exchange. They sell standardized products at both the wholesale and retail level. When we are talking about swaps, we don't have a retail swap industry in America. When the 2000 bill was written—and I was involved in those sections of that legislation that had to do with banking products—we simply allowed the swaps business as it related to wholesale users, namely banks, securities companies, manufacturers, et cetera, to function on an over-the-counter basis. We agreed that the case would be different should a retail market ever occur in these products—that is, a situation where individuals would buy them; your aunt might buy one. I can't imagine, and I would not advise that, I would not do it—but we agreed in the 2000 bill, in the bank products section of the bill that if a retail market ever came into existence, at that point a decision would be made as to who would regulate it and how.

Now, these products have never been under regulation, are not sold on exchanges; they are individually negotiated instruments, highly sophisticated and, obviously, they yield great value because people buy and sell them—$75 trillion worth. Alan Greenspan, as I said, said these have now become a mainstay and a stabilizing influence in the American economy.

Here are the problems that I see with the amendment as it is written. I will elaborate some on each of them. First of all, it permits the CFTC to regulate contracts regardless of whether they are futures contracts. The CFTC has jurisdiction over futures. It does not have, never has had, and I hope never will have jurisdiction over non-futures derivatives or swaps at the wholesale level. As the amendment is now written, it would impose CFTC regulations on companies operating electronic bulletin boards, where bids and offers are posted for various commodities—facilities such as Blackbird, as one example—even if futures contracts are not traded on those bulletin boards. My view is, if our objective is to provide more information—and I am for more information—why should we be taking action to kill off bulletin boards that are simply providing purchase and sale prices to customers?

Another point, this amendment—and I don't quite understand why it does it—would make the use of advanced technology a trigger for CFTC regulation, so that if a bank or an insurance company, or an investment company sets up an electronic computer system whereby people can come together, negotiate, purchase, and sell a swap or a derivative, if they use the computer to do it, they could come under regulation. If they do the same transaction over the phone, they don't come under CFTC regulation.

This amendment brings under the Commodity Exchange Act and under the jurisdiction of the CFTC instruments that are not futures. The CFTC is an agency that is trained and has expertise in futures; that is, say that I am contracting to deliver natural gas at the hub in Louisiana on a certain date, and so I sell a future for that delivery, and someone buys it. That is the kind of transaction that the CFTC is chartered to regulate. It is not chartered, nor has it ever been chartered, nor has it ever regulated, these tailored swaps and derivatives.

Let me quote Alan Greenspan because he has gone out of his way to make statements on this, and he has been asked questions about this. Since this has been raised in relation to energy and to California, in particular, let me just, if I can, go through some of the things Alan Greenspan has said without wasting everybody's time in reading huge volumes of statements. Chairman Greenspan of the Federal Reserve Board on March 7, 2000, stated before the Senate Banking, Housing, and Urban Affairs Committee that with respect to the existence of a nexus between energy derivatives and Enron's demise: ''I haven't seen any.''

Alan Greenspan said, when questioned before the Banking Committee, that he saw no relationship between derivatives and the demise of Enron. In fact, the derivatives part of Enron has subsequently been sold to another company that is in the process of reinvigorating it, creating 800 jobs, and paying off some of the debt of Enron, including debt to employees. This is a part of Enron that is alive and well, though not under the control of Enron, which as we know is in bankruptcy.

Chairman Greenspan stated before the House Banking Committee on the same issue:

> What I sense happened is that they ran [why Enron failed] into losses which they basically endeavored to obscure. It had nothing to do with derivatives.

I could go through the quotes in greater detail, but when asked, Did derivatives have anything to do with the price hike in California? Chairman Greenspan said no. When asked if they had anything to do with the failure of Enron, he said it had nothing to do with derivatives.

He also stated before the Senate Banking Committee on March 7:

> We've got to allow for that system to work because if we step in as government regulators we will remove a considerable amount of caution.

In other words, not only did he say he was concerned about us getting into other areas, but he was concerned, if we had more Government regulation of these sophisticated instruments, people would come to rely on the Government and actually might be less cautious in financial matters.

I quote the following:

> I think that act [the 2000 commodity exchange reauthorization] in retrospect was a very sound program, passed by the Congress, and I don't see any particular need to revisit any of the issues that were discussed at length at this time.

Let me read what he said in particular in response to a question by Senator MILLER of Georgia who asked the following question, and I am reading from the raw transcript. In response to Senator MILLER of Georgia who asked whether there is a nexus between energy derivatives, including their regulation and the California energy crisis, here is what Chairman Greenspan said:

> We don't need to revert to derivatives to get a judgment as to why prices did what they did. My recollection is that 2 years ago or so the sort of capacity buffer that the California electric power system has was the typical 15 percent for its summer back loads, which is what generally a regulated industry has because you respectively guarantee a rate of return on capability which is not being used, but that 15 percent kept prices down. As the years went on, the demand went up in California and no new capacity came on stream. That 15 percent gradually

dissolved because there's no way to have inventory of electricity—there are battery systems—but they are just inadequate. You get into a situation where the demand load, if it is running up against a limited capacity and the demand tends to be price inelastic, you can get some huge price spikes. So you don't need derivatives to explain what happened to price.

Now, let me try to sum up because I have covered a lot of areas.

Mr. LOTT. Will the Senator yield?

Mr. GRAMM. I am happy to yield.

Mr. LOTT. With all due respect to the Senators in the Chamber who perhaps understand this issue, I have serious doubts how many Senators really understand what we are talking about here. I was trying to understand what the Senator was saying, and it sounds pretty complicated to me. I hope we won't do a test here to ask Senators to define what a derivative is. In fact, we have been checking Webster's, trying to make sure we understand the definition of derivative. After having read the definition, I don't think it clears up anything.

Who has jurisdiction of this? Is it the Agriculture Committee or is it the Banking Committee?

Mr. GRAMM. They both have jurisdiction. The Agriculture Committee has jurisdiction as it relates to fundamental commodities. The Banking Committee has jurisdiction as it relates to financial products. You have a problem in that the amendment applies not just to futures but to other derivatives and to swaps, which are under the jurisdiction of the Banking Committee.

The problem is, the last time we dealt with this area, we spent 4 months dealing with it in committee. We dealt with it extensively in debate and conference and ended up, in total, taking about 7 months to deal with it.

Mr. LOTT. Has this amendment been considered or had hearings in Banking, or in Agriculture, as to its implications and what the impact would be?

Mr. GRAMM. No.

Mr. LOTT. Isn't this clearly an extremely complicated area with which we are dealing?

Mr. GRAMM. There are two approaches, it seems to me, that make sense. One is to call on the major agencies—the Fed, the SEC, and the CFTC—to take a look at the amendment on a truncated basis, say 45 days, and give a comprehensive report and definition. That would be one approach.

The other approach would be to try to work out the concerns that the SEC and the Federal Reserve have raised. Those concerns are trying to narrow this down to electricity and natural gas, which is the real concern.

Mr. LOTT. If the Senator will yield, I was under the impression there had been serious and extended negotiations between yourself and Senator FEINSTEIN and perhaps others in trying to work out a compromise.

Mr. GRAMM. There were serious negotiations. I think Senator FEINSTEIN made a good effort on her part. Senator FITZGERALD was involved. When it got right down to it, an agreement could not be reached on the narrowing of this to include futures but not swaps and or other derivatives, to focus it just on electricity and natural gas, which is where the concern is.

The reason Chairman Greenspan has chosen to speak out on this on three different occasions, the reason he has talked to Members, and when they called him, called them back, is that he is very concerned about unintended consequences. The problem is it is hard to debate unintended consequences.

Mr. LOTT. One final point and I will let the Senator give his summation. This is a very complicated area that could have unintended consequences, no question. We should not be trying to write legislation in this area in the Senate without very careful thought and consideration by committees. I think it is a very serious mistake to be considering this amendment in this way.

Just so Senators will understand, Webster's defines ''derivative'' as:

> The limit of the ratio of the change in a function to the corresponding change in its independent variable as the latter change approaches zero.

I am sure you got that. That makes my point. We don't know what we are doing here, and we should not be acting in this area.

Mr. DORGAN. Will the Senator from Texas yield for a question?

Mr. GRAMM. I am happy to yield for a question.

Mr. DORGAN. Mr. President, the minority leader was asking about the definition of a derivative. I ask the Senator from Texas, could he not find the definition of a derivative by talking to people who used to run Long Term Capital Management? As the Senator from Texas will recall, it lost a fortune sufficient so that it almost took down the American economy.

The Fed had to have a Sunday night rescue package to try to prevent LTCM from collapsing. I would expect an awfully good definition of derivatives. They are risks that are now falling through the cracks of regulators, which come from an understanding of Long Term Capital Management.

Mr. GRAMM. If the Senator will yield, I would respond that, if we had a hearing, I do not think they would be the people we would call on to give us advice. I was thinking of the Chairman of the SEC, perhaps former Chairmen, the Chairman of the Commodity Futures Trading Commission, the Chairman of the Board of Governors of the Federal Reserve System.

I might say about Long Term Capital, that they went broke by making bad decisions. They didn't go broke because of the existence of financial instruments. They went broke because they made bad choices in the use of those instruments. You cannot blame the instrument. It is like blaming thermometers—saying I hate thermometers because every time they register above 100 degrees it is hot. It is not the thermometer's fault. So it is clear that we have had people go broke. I guess my feeling is that we simply need to know more about this.

As I have said from the beginning, if we can make some simple changes in this I could be for it, and I believe everybody who I quoted here today would be for it. Let me just tell you what the amendments would be.

First of all, the focus of this amendment is supposed to be on natural gas and electricity. The problem is, when you get into energy in general, and also into metals, you cast a very wide net. And while the plain truth is—and I believe it—that there is no evidence to substantiate any claim that the price spike in California had anything to do with the existence of derivatives on natural gas and on electricity, under the circumstances and especially given the precedent set in the 2000 law, I am in favor of, and I believe everyone who opposes the amendment is in favor of, strengthening the provisions of law related to antimanipulation, antifraud, and recordkeeping. That much we agree to. That part of the amendment is agreed to.

But I believe, and all these other groups from the bankers to the Federal Reserve Board, to the SEC, to the CFTC believe, that one of the ways you could improve this—they are all still very nervous about this amendment, even if we made all these changes—but if you could narrow it just to electricity and natural gas they would see that as an improvement.

The amendment is about the CFTC, and it ought to be about futures, not about swaps. That is getting into another agenda, and that agenda is basically expanding markets on exchanges. And we should not be getting involved in deciding where a product is bought and sold and who ought to be buying and selling and who should benefit economically and who should not.

This whole question of capital is a very important issue. At the risk of just overstating the case and oversimplifying, this is the problem. Many of these mechanisms, whereby trades are sold—or undertaken—just bring buyers and sellers together. They never take ownership of the derivative or the swap. So to make them put up capital based on the transactions, if they don't ever take ownership, how does it make any sense to make them put up some part of $75 trillion when none of their own money is at risk?

So that requirement, if you are not very careful, ends up killing off the market for no purpose. If you are not taking ownership, if all you are doing is bringing a bank and an insurance company together, why should you have to put up capital based on the transaction?

Then you have the toughest of the issues, and I admit this is a hard one. If you look at it one way, it seems like how can anybody be against it. If you look at it another way, it makes little sense. This is the point.

What we have agreed to in this amendment, sitting down—and again I thank the Senator from California for being willing to sit down and try to work it out—what we have agreed to is extensive recordkeeping, under the Commodity Exchange Act. Any of these platforms that bring together buyers and sellers of these instruments would have to keep records for 5 years—which is the same thing that any futures dealer has to do. They would have to keep them at a level where the individual transaction could be reconstructed. They would have to make it available to the CFTC when the CFTC is looking at a potential for fraud and a potential for price manipulation. And they have to provide it in whatever form the CFTC wants: price, trading volume, other trading data to the extent appropriate, which the Commission determines as being appropriate.

The question is, Should they have to make it public? This is the question. When you are talking about the prices that you and I see every day when we go to Wal-Mart or when we go to buy a pair of tennis shoes, we are used to dealing in the world we deal in as consumers where people not only want to make prices public, but they pay money to publish them in the newspaper. But Wal-Mart does not make public what it pays for the things it buys. Wholesale transactions in America are proprietary information.

So that is part of the reason you have this tremendous opposition from the entire financial structure of the country. Everyone has agreed to the CFTC having the data in whatever form they want, and the ability to intervene. But when you are dealing with wholesale proprietary information as to how people are brought together in these transactions, where if I am a trading floor, or if I am one of these people who is a middle man, bringing buyers and sellers together, and I have a way of doing it, I don't want to share my trade secrets with somebody else.

So we are not talking about retail prices. The CFTC has total access if there is fraud, price manipulation—they can intervene. But in terms of these wholesale transactions requiring that these prices be made public, and that these transactions would be made public, it would be like requiring a shoe store to make public what it paid Nike for tennis shoes.

That is something we do not do in any industry in America of which I am aware. Granted, if you are choosing which side to be on in the debating club in high school, you want to be on the side of disclosure of wholesale prices. But if you are trying to have efficiency in the running of the greatest economy in the history of the world, you want retail prices to be public, you want the Government to have access to data so, if somebody is engaged in an illegal, fraudulent, or manipulative activity, you can intervene, but to make people make public wholesale prices is something we do not do because that is proprietary information. How people put their business together, what kind of deals they make with Nike—that is private information.

So I urge my colleagues, again: Can we focus this down on electricity and natural gas to be sure we do not have these unintended consequences?

Second, can we focus it just on futures?

Third, can we at least require that capital requirements are not based on the transactions that come through your purview but on any risk you take or ownership you take? Can you imagine if you had some job collecting money and consummating transactions for somebody, and you had to put up capital based not on what you invested or the risk you have, but of your gross and net volume? No company in America that has a huge volume could possibly deal with the problem. When you are dealing with a $75 trillion industry, it becomes even more important.

And, finally, any information that Government needs to prevent wrongdoing in wholesale transactions—if there is something we have not agreed to that would make people feel more confident, I am willing to sit down to try to see if we can work it out. But proprietary information on a wholesale level is something that we do not do in other places.

So I urge my colleagues, if we can, there are two ways of working this out, it seems to me: One, to do an amendment to send the matter to these three agencies for evaluation on an expedited basis. Let them report back. Let the committees of jurisdiction hold a hearing so we can hear from people who know something about this area, rather than simply talking among ourselves. That is one approach.

Another approach is to go back one more time and see if we can deal with these concerns. When the people who have been entrusted by us to make these markets work, and work fairly, and work efficiently—such as Chairman Greenspan—when they and their staff have raised an issue, it seems to me we have an obligation to try to see if we understand it and to see if we can fix the concern.

So my guess is we are probably agreed on 90 percent of the things that are in this amendment. But the 10 percent we differ on is very important.

Finally—and I will conclude because I see the leader, with the right of prior recognition, in the Chamber—let me say if we could work something out, I think we would serve the public's interest. I think having a series of votes, where we really do not understand what we are doing, is not in the public's interest. You feel uncomfortable as a Senator saying that, but these are complicated issues.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. Mr. President, a further definition of ''derivative'': ''A financial instrument whose characteristics and value depend upon the characteristics and value of an underlying instrument or asset, typically a commodity, bond, equity, or currency. Examples are futures and options.''

I am sure that further clarifies the earlier definition that was read.

AMENDMENT NO. 3033 TO AMENDMENT NO. 2989

Mr. President, I send a second-degree amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Mississippi [Mr. LOTT] proposes an amendment numbered 3033 to amendment No. 2989.

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

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

The amendment is as follows:

At the appropriate place, add the following:

SEC. . FAIR TREATMENT OF PRESIDENTIAL JUDICIAL NOMINEES.

(a) FINDINGS.—The Senate finds that—

(1) the Senate Judiciary Committee's pace in acting on judicial nominees thus far in this Congress has caused the number of judges confirmed by the Senate to fall below the number of judges who have retired during the same period, such that the 67 judicial vacancies that existed when Congress adjourned under President Clinton's last term in office in 2000 have now grown to 96 judicial vacancies, which represents an increase from 7.9 percent to 11 percent in the total number of Federal judgeships that are currently vacant;

(2) thirty one of the 96 current judicial vacancies are on the United States Courts of Appeals, representing a 17.3 percent vacancy rate for such seats;

(3) seventeen of the 31 vacancies on the Courts of Appeals have been declared ''judicial emergencies'' by the Administrative Office of the U.S. Courts;

(4) during the first 2 years of President Reagan's first term, 19 of the 20 circuit court nominations that he submitted to the Senate were confirmed; and during the first 2 years of President George H. W. Bush's term, 22 of the 23 circuit court nominations that he submitted to the Senate were confirmed; and during the first 2 years of President Clinton's first term, 19 to the 22 circuit court nominations that he submitted to the Senate were confirmed; and

(5) only 7 of President George W. Bush's 29 circuit court nominees have been confirmed to date, representing just 24 percent of such nominations submitted to the Senate.

(b) SENSE OF THE SENATE.—It is the Sense of the Senate that, in the interests of the administration of justice, the Senate Judiciary Committee shall hold hearings on the nominees submitted by the President on May 9, 2001, by May 9, 2002.

Mr. LOTT. Mr. President, I have made the point here—and Senator GRAMM was making the point very strongly—that this first-degree amendment clearly needs additional work, additional consideration. The committees of jurisdiction should have an opportunity to work on it. I had hoped that some accommodation could be worked out. I am still hopeful of that. But I do not think we are ready to go forward at this time.

Having said that, I also think it is very important the Senate take a position with regard to judicial nominations. This second-degree amendment is the resolution that was offered last week. There has been no indication of how we would proceed on that. All it would say is the first nine circuit judge nominations that were offered last May—May of 2001—would have a hearing—just a hearing—by May 9, 2002.

This issue is very important to our country, and it needs to be considered in the order in which it was pending before we came back to the Feinstein amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENT NO. 2989, AS MODIFIED

Mr. FITZGERALD. Mr. President, I am pleased to rise in support of Senator FEINSTEIN's amendment. I want to address and rebut a number of things my good friend from Texas said.

I have as much respect for Senator GRAMM as I do for anybody in this body. It is going to be a great shame that he is retiring this year because I will miss him dearly. I think this is, perhaps, the first time in my 3 years in the Senate that I have ever risen in opposition to Senator GRAMM, but I do disagree with him. I do not think this is a complicated issue.

I think it is a relatively simple issue. I think what it comes down to is that 2 years ago, when we passed the Commodity Futures Modernization Act, we patterned our bill after the recommendations of the Presidential Working Group, which included the Chairman of the CFTC, the Chairman of the SEC, and the Chairman of the Federal Reserve Board. And they had recommended that we create three categories of regulation.

One was a designated contract market which would be our Board of Trade and Mercantile Exchange in Chicago or the NYMEX in New York. There would be heavy regulation on those designated contract markets.

The other recommended level of regulation was the so-called DTEF, the derivatives transaction execution facilities. Those would be online bilateral trading facilities that could be trading derivatives online. They would be regulated but with lighter regulation than the full-blown regulation of designated contract markets.

And, finally, we created an exclusion for financial OTC derivatives. The opponents of this amendment have created the false impression that somehow the amendment by Senator FEINSTEIN and myself intrudes upon the now essentially excluded financial derivatives industry. There is no regulation by the CFTC to speak of for all the financial derivatives that are out there, mainly between banks. Our amendment would not impose any regulation on the banks in that regard or on others who engage in purely financial derivative transactions. This has nothing to do with that.

Instead, we are simply closing off an exemption that applied to just a handful of online trading companies that happen to be trading energy and metals. At the last minute, over in the House, they were exempted, not just from one or two levels but from all levels of regulation. And this exemption applied to literally just a handful of companies. It was a special carveout that is upheld by absolutely no public policy rationale.

The companies that benefited from this exemption included, of course, Enron Online. There is a company called ICE, the IntercontinentalExchange; they benefited from this exemption.

The reason banks are interested in this issue is not because they are worried we are imposing some kind of legal uncertainty on financial derivatives but, instead, because a couple of banks have a big ownership interest in this totally exempt energy online trading facility, ICE.

And, finally, there is another company called TradeSpark that is owned by a couple of energy companies.

So you have three companies that essentially got a special carveout from the whole scheme of regulation that originated with the President's Working Group.

The President's Working Group, in essence, said financial derivatives, interest rate swaps, for example, between banks would be exempt from regulation by the CFTC.

I take issue with Senator GRAMM when he says no Member of the Senate knows what a derivative is. I do. I grew up in a banking family. I was on the board of many banks. I was a general counsel of a publicly traded bank holding company. We used to enter into interest rate swaps. When our banks wanted to do a lot of fixed rate mortgages, we wanted interest rate protection. We would go protect ourselves against an increase in interest rates by entering a swap with another bank.

There should be no fear, whatsoever, out there that that market would be disturbed by our amendment because it has absolutely nothing to do with it. We would not impose any requirements on banks entering into interest rate swaps, for example. Instead, the intent of our amendment is to close off an exemption, a special carveout for online energy trading companies that makes no sense.

The President's Working Group distinguished between financial commodities of an infinite supply, such as interest rate swaps, and said those should be excluded. And they are excluded. We maintain that exclusion.

But they said: Finite commodities such as agricultural commodities—corn, soybeans, pork bellies—or metals—gold, silver—finite physical commodities such as that in which there is a finite supply and in which, theoretically at least, the market could be cornered, there should be some regulation for those markets.

The President's working group further said that there should be full-bore regulation if the trading is in an open outcry pit such as we have at the Board of Trade and the Mercantile Exchange in Chicago. There is full-blown regulation. But there is a lighter degree of regulation, some regulatory oversight, for online exchanges that trade those physical, finite-quantity commodities.

It is that level of regulation that we are seeking to impose on these now exempt online energy transaction facilities.

Senator GRAMM cited section 4(g) of the Commodities Act. He said we already have recordkeeping requirements in the CFMA; we already have the ability for the CFTC to go after fraud if they find it.

I looked at section 4(g). Guess what. Section 4(g) does say that the Commission shall adopt rules requiring that a contemporaneous written record be made, as practical, of all orders for execution on the floor or subjected to the rules of each contract market—a contract market is a board of trade like the Chicago Board of Trade—or a derivatives transaction execution facility. Those are the online transaction facilities we are talking about that are regulated.

The fact is, earlier in this act we created a special category for these online energy and metal firms such as ICE which is in turn owned by Morgan Stanley and Goldman Sachs. They have a rifleshot exemption in this code, and this section 4(g) that Senator GRAMM talked about does not apply to them because they are exempt from the definition of derivatives transaction execution facility. That is back earlier in the act.

What we need to do is close this loophole. What public policy rationale upholds the picking out of a couple of online firms and saying: You are going to be exempt from the requirements of the act? It doesn't make any sense.

Now, we did have good-faith negotiations with Senator GRAMM. He has proposed regulating natural gas and electricity contracts that are traded online but exempting metals and oil contracts. Why does that make any sense? Shouldn't everybody be playing on a level regulatory playing field? Why should some business have a regulatory advantage? That isn't what America is all about. We want all businesses to be playing on the same level playing field. If some succeed because they work harder, have better products, and they are smarter, that is great. But when they succeed or make a lot of money because the Government has sponsored some special advantage based on their power and their adeptness at playing the political game in Washington, that is not right. That is not what America is all about, giving a special carve-out to a few companies. It doesn't make sense.

Now, I happen to agree with Senator GRAMM on one point. I have seen no evidence that the trading by online energy trading firms had anything to do

with the spike in oil or electricity prices on the west coast. I certainly doubt that is the case.

But that is not why I am here supporting this amendment. Instead, I am supporting this amendment because I think price discovery is very important to consumers.

Senator GRAMM was saying we never require retailers to disclose the wholesale prices they pay. That is true. But this is not really analogous to going to buy something at Wal-Mart. This is more analogous to buying a stock from a broker. You call up your broker, and you ask them to buy 100 shares of IBM stock. They can look up on the New York Stock Exchange and get one of the latest quotes, and they can tell you. Let's just say it is $100 a share. You go buy the 100 shares for $100 a share, and then your broker gets a commission.

The problem with this kind of trading is that the customer can't see the prices. In the case of your going to your broker and buying 100 shares of IBM, you can find out what the price was on the New York Stock Exchange. It is different with an online energy trading firm. You may call them up and say you want a contract for, let's say, natural gas or something, and you will pay $265 for the contract.

Well, what if the person from the online energy company looks up and he finds he can buy it at $263? But then he resells it to you at $265. You never would know the difference, would you, because you would never know the wholesale price at which he got it.

I am sure no one at Enron Online would ever cheat their customer in the way I just described. I am sure that would never happen, or that this would ever happen in ICE or TradeSpark—that they would use their superior knowledge of the wholesale market and the lack of knowledge of their customer to make a few extra points. I am sure that would never happen.

But let's just say that this could happen, that there could be some dishonest people in those companies. And in addition to wanting to make a commission for selling that contract at $265, they might want to take a little bit of markup, a little bit of kickback. It probably happens in the political business when we all buy our direct mail. You are always wondering how much your direct mail firm is actually paying for their printing and mailing. You know they are marking it up, and you try to guard against it.

But that very same thing could happen when you are trading with one of these online customers. That is why I do believe it is important for the CFTC to have the ability to require these companies to report their volumes and to report their prices. That is protection for the consumer.

Oddly, I think ICE, Enron Online, and TradeSpark would have more customers if they were regulated by the CFTC than they now have. I will tell you this: I would never go trade with them because I would have no idea at what wholesale prices they were buying. I wouldn't use them. I would go to a regulated board of trade where I could be sure there were some safeguards for me. I wouldn't trade with somebody such as that, an online energy company. And I believe their businesses are smaller than they otherwise would be if there were some protections for consumers.

It is much like our stock markets. Our capital markets have exploded in the last 50 or 60 years. We have the best capital formation markets in the world. I do believe that our securities laws have helped foster that strong capital market. If you go back to the 1920s and before, when there was really no regulation, or go back before the Federal Trade Commission, when there was absolutely no regulation of our stock markets, the little guys didn't get involved in that at all because they figured it was an insider game and that the deck was stacked against them. They were right; the deck was stacked against them.

Since we have put in protections for the consumer, we have banned insider trading and made a lot of manipulative practices illegal, more and more Americans have felt comfortable investing in the stock market to the point that we now have over 50 percent of Americans investing their own stocks directly or indirectly. If there were this light level of regulation that Senator FEINSTEIN and I are suggesting with our amendment, that would be good for these companies that want to uphold this special privilege that exempts them from all regulatory oversight.

Now, I also note that there is a Senator who probably knows as much as any of the derivatives experts in this country about derivative transactions, and that is Senator JOHN CORZINE of New Jersey. Senator CORZINE was chairman of Goldman Sachs, which is an owner of IntercontinentalExchange. He has joined us as a cosponsor of this amendment.

I think this is an outstanding amendment. I think it is very simple. We are closing off a special deal that just applies to a few firms. There is no public policy rationale that supports the special deal these firms have. We are making the treatment of all firms the same under the Commodity Futures Modernization Act. It makes perfect sense. We are doing so in a way that was originally recommended by the President's Working Group.

I appreciate the hard work of my colleague from California and also my colleague from Texas. We have had a lot of negotiations. I think one thing we have done is conclusively demolish any argument that this represents any threat at all to financial derivatives. They are not affected in any way.

Senator GRAMM initially said this was his primary concern. We worked on it, and we have modified the amendment to make it crystal clear that we have no intent of affecting the financial derivatives markets. Those are excluded and will continue to be excluded. We are simply trying to close off a special loophole that applies to a handful of companies. I think it is very good public policy. Let's close this exemption that was stuck in by the House at the last minute when they passed the CFMA.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GRAMM. Mr. President, might I ask if the Senator will give me about 3 minutes to respond to these points before they get cold in everybody's mind? Would that work for her?

Ms. CANTWELL. How long?

Mr. GRAMM. I think I can do it in 3 minutes.

Ms. CANTWELL. I will wait.

Mr. GRAMM. Mr. President, first of all, I thank the distinguished Senator for giving me 3 minutes. She did not have to do that.

Let me be brief. First of all, if you go back and read the Commodity Exchange Act, as amended, you will find that what I said, in fact, was correct. There are exempt commodities, which have always been exempt, have never been regulated, but they are exempt, except as provided in these paragraphs.

Then we go through a reference to anti-fraud, anti-price manipulation, and recordkeeping. So they are exempt from the normal process because these are huge wholesale markets among sophisticated dealers that have never come under regulation. But they are not exempt from anti-fraud, anti-price manipulation, and from recordkeeping. I wanted to be sure that we all knew that was true.

The Senator says the working group favored his amendment. There is only one problem with that. Every member of the working group has written a letter opposing the amendment. The Chairman of the Federal Reserve Board, the Secretary of the Treasury, the Chairman of the Commodity Futures Trading Commission, and the Securities and Exchange Commission Chairman are the members of the working group. The Senator takes a sentence from their report that he says bolsters his argument. But every member of the working group who wrote the report, and who is charged with it today, opposes the amendment. I have seen no evidence that anybody who held these positions during the Clinton administration supports the amendment either.

Special carve-out? There is no special carve-out. We are getting back to a myth. Let me remind my colleagues that, as I look at the 2000 bill as it was passed, Senator FITZGERALD was an original cosponsor of the bill. What this legislation did was simply clarify to a legal certainty something the President, the Secretary of the Treasury, and the Federal Reserve Board wanted to do, and that was that these sophisticated wholesale products that had never been regulated by anybody

in the history of this country—and since we invented them, and nowhere else were they started, that I am aware of—that they were exempt from normal regulation, but they were subject to anti-fraud, anti-price manipulation, and recordkeeping.

In terms of buying a stock, that is where all this confusion comes from. The example is a good one, but it has nothing to do with the point. We are not talking about the same product. Every swap is not a future, it is a specific, custom contract. They are not homogeneous. If they are, then they are not exempt. These are individually negotiated contracts. They are not bought by individual, retail investors, such as our colleague from Illinois. They are bought by banks and mining companies and those businesses trying to protect themselves against risk.

I thank the Senator from Washington for yielding me this time.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Ms. CANTWELL. Mr. President, I rise to urge my colleagues to approve this amendment that we have been debating, which would subject energy derivatives trading to the same degree of regulatory scrutiny as many other commodities. Senator FEINSTEIN and others have worked hard to bring about a fair resolution to this issue, and to the chaos brought upon many Western States in the electricity crisis as it unfolded.

What I think is important to understand is exactly what this amendment does. First and foremost, my colleagues must recognize that this legislation is designed to close a specific loophole—the Enron loophole—that allowed Enron and other online traders to sell energy futures behind closed doors, without any form of safeguards for consumers or investors whatsoever.

At its core, our amendment would allow the Commodity Futures Trading Commission to treat energy futures similar to other regulated commodity futures. It does not give the CFTC any new powers that it does not already have over many other futures markets. This legislation deals specifically with energy futures, without tampering with regulation of financial derivatives as much of the floor debate would lead you to believe.

Some have claimed that by subjecting energy derivatives to the same level of regulatory scrutiny as other commodities, we would be imposing some sort of unacceptable level of ''uncertainty'' on these markets. I find that argument fundamentally flawed. How, then, does one explain the prominence and global importance of other American markets, such as NYMEX, already under the CFTC jurisdiction? They don't seem to be struggling because of oversight and scrutiny by the CFTC.

In fact, I believe that by subjecting trading platforms, such as Enron Online, to the same transparency and antifraud rules as other types of exchanges, we will actually be increasing the confidence of market participants. They can know with certainty that prices for energy derivatives are not the result of manipulation. And believe me, in my State, consumers have a lot of doubt about why they are paying a 50-percent rate increase in energy prices. Under this amendment, consumers can rest assured that they will not become the casualties of gaming in these markets. That is very important.

To quote the New York Mercantile Exchange, the world's largest trader of energy futures:

> With numerous reports of reduced confidence in market integrity in the wake of the Enron bankruptcy, never has it been more important to restore faith in that great American resource, our competitive markets.

Some have suggested that there has not yet been conclusive evidence that Enron manipulated derivative markets and, they argue, that alone is reason enough not to proceed.

Mr. President, there never will be conclusive evidence of such market manipulation, if Enron Online and businesses like it are allowed to continue operating in secret. I ask the opponents of this amendment to think about the ramifications of this situation on the ongoing investigation into price manipulation in my home state. As I said, in my State, consumers have seen rates increase up to 50 percent in long-term contracts that they are going to have to live with for many years. In fact, Enron is still buying power at cheap prices, marking it up, and selling it to utilities at higher prices because of these long-term contracts. Yet, FERC's investigation into these price hikes has been severely hampered by the lack of information surrounding swaps transactions done in secret.

The task of investigating Enron's collapse and Enron Online's impact on energy markets has been made infinitely more complex by virtue of the fact that no one was required to maintain books or records that would have shown this clear pattern of irregular trading. Instead, we are saddled with this post hoc investigation that may well last years.

Some colleagues talked a lot about the President's Working Group recommendations, and some have suggested we delay this legislation. What is interesting is that many of the names thrown about this morning, Alan Greenspan, then-Secretary of Treasury Larry Summers, SEC Chairman Arthur Levitt, and CFTC Chairman Bill Ranier, were signatories to the President's Working Group report given to Congress before passage of the Commodity Futures Modification Act of 2000. While it is true that the report supported exemptions for over-the-counter derivatives, the report included significant cautionary notes.

The President's Working Group basically issued a warning saying: commodities with finite supplies are more easily subject to price manipulation.

Obviously, those of us from the West know how finite the energy supplies can be, as California, Washington, and other States experienced the unbelievable skyrocketing of prices.

What we, the cosponsors of this amendment, are talking about here is how to implement the Working Group's recommendations on antifraud provisions. We are saying transaction information should be collected and kept. Then, if there is a suspicion of fraud, investigators will have something tangible to examine.

The Working Group unanimously recommended that there should be an exclusion for bilateral transactions between sophisticated counterparties, but it made specific note: Other than transactions that involve nonfinancial commodities with finite supplies.

The Working Group recommended an exclusion from the Commodity Exchange Act for derivatives traded on electronic trading systems provided systems limit participation to sophisticated counterparties trading for their own accounts and are not used to trade contracts that involve nonfinancial commodities—again culling out nonfinancial commodities with finite supplies.

The Working Group noted the danger of exempting these transactions, including energy derivatives, from regulatory scrutiny, and they did this in November of 1999. These are precisely the transactions that our amendment would put under the jurisdiction of the CFTC.

Unfortunately, these cautionary notes were not heeded by Congress and were instead translated into a statutory exemption for bilateral energy derivatives and electronic exchanges in the context of the Commodity Futures Modernization Act of 2000. I can tell you, my State has suffered greatly because of this exemption and has not been able to find out whether price manipulation has actually occurred.

I also suggest that my colleagues take note of the Working Group's recommendation that the regulatory regime should be reevaluated from time to time. In the aftermath of Enron's collapse, a reevaluation is certainly warranted.

Again, to quote from the President's Working Group:

> Although this report recommends the enactment of legislation to clearly exclude most over-the-counter financial derivatives transactions from the Commodities Exchange Act, this does not mean that transactions may not, in some instances, be subject to a different regulatory regime or that a need for regulation of currently unregulated activities may not arise in the future.

Specifically, the Working Group recommends the enactment of a limited regulatory regime aimed at enhancing market transparency and efficiency may become necessary. That is what we are doing.

We are saying that these things may have come about because of the Enron collapse. We have seen, while Congress may have acted in 2000 thinking this

exemption was the right thing to do, this exemption cost consumers—if not the high rates they are paying directly—it has at least cost them confidence in the system.

We must restore that confidence by opening up the energy derivatives market to transparency and oversight. I urge my colleagues to support this very important amendment and to tell the American public that Congress is acting to protect them from the kinds of loopholes that Enron was able to walk through and cost consumers higher energy prices in this country.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Washington. I do not know anyone who has been more concerned about what has been happening with electricity markets than Senator CANTWELL. She has really tried to help her constituents and the consumers in this area. I am very pleased she has been in the leadership of this amendment.

I particularly thank the Senator from Illinois, Mr. FITZGERALD, for straightening out the record from the perspective of somebody intimately involved in the banking industry.

Let me tell you how all of this boils down for me. It is this: Should some parts of this trading community essentially be exempt from any form of transparency, from recordkeeping or from oversight? That is the bottom line. We are not trying to do anything that is horrendous. All we are saying is they should have oversight, they should keep records, and there should be information for the public that the Commodity Futures Trading Commission would find to be nonproprietary. This is, in essence, all we are trying to do.

I have a hard time understanding how one has to have a large degree of sophistication in the industry to want to shed the light of day on some of these trades.

Maybe California was impacted by these trades and maybe California was not impacted by these trades, but I can tell you this: The price of electricity in California in 1999 was $7 billion. The price the next year was $27 billion. It went up fourfold. Something happened other than the fact there was a huge demand and no supply. There was trading.

We saw it with natural gas coming in to California. Natural gas prompts the price of electricity, and when it is $59 a decatherm in southern California and $8 a decatherm in New Mexico, when the cost of transportation from New Mexico to that place in California is only $1, one has to look at what has happened to boost that price way up.

So all we are saying is to put it back the way it was before. Give the CFTC jurisdiction.

It is being made light of that the CFTC does not support this action. The CFTC has three members. One of the members supports what we are trying to do, and his name is Thomas Erickson.

I will quickly read what he says.

> This amendment would bring transparency to markets and provide Congress and the public with the assurance that no exchange offering energy commodity derivatives transactions would go completely unregulated. Moreover, it would restore to the Federal Government those basic tools necessary to detect and defer fraud and manipulation. Therefore, I strongly support the amendment.

That is one member of the regulatory body out of three members to whom we are trying to give this responsibility. So there is nothing nefarious about the amendment.

As I pointed out, all members of the FERC support the amendment, as well as the Chairman of the FERC, whose letter I read into the RECORD. They know something about these matters. They know what derivatives are. They know the transparency and recordkeeping and oversight.

Whether there was a carve-out for two or three companies or not, I am not going to comment because I do not know. I do know there is this one narrow exemption whereby all of these online trades go on not in the light of day but in the dark of night, so to speak. Nobody knows what they are. There are no records kept of them. Therefore, whether the CFTC thinks it has some jurisdiction or not does not really make a difference because they cannot go back and look at records of trades, compare them wholesale versus retail prices, and know whether there was any price manipulation or not. So sure, investigate. If there are no records, there is no evidence. Therefore, there is not much that is going to come from the investigation.

So all we are trying to say is because this has become a huge, burgeoning online business, subject it to all of the same regulations and oversight that every other part of the trading community has. It does not take a Philadelphia lawyer to understand that. I do think it benefits consumers, I do think it benefits responsible trading, and I do think it benefits a level playing field for everyone who is trading in these markets. I think it provides that level of consumer protection. Some people, say, oh, there is a reason why the NYMEX and the Chicago Board of Trade want it. They want to force everybody on their exchanges. No, not true. If it is easier to trade online, you can trade online, no problem with it, but there should be a record kept of the trades. There should be transparency, and information that the CFTC deems is not proprietary but should be in the public domain can, in fact, be in the public domain, and that, finally, there is some regulatory body that when there is an allegation of fraud would step in.

For example, I would like the CFTC to take a look at the California situation, evaluate the record and tell us, was there price manipulation? Was online trading of natural gas manipulated to artificially raise prices? They might try to do it now, but they would have no records on which to base any investigation. Therefore, that is what this amendment is all about.

Sure, I know there are people who do not like it. There are people who have tried to obfuscate about it, but is the consumer going to be better off because the light of day is shed on these trades in a market that is billions and billions of dollars? I think so. I cannot understand how anybody feels disadvantaged because there is transparency, there is oversight, or there is recordkeeping that is required in every single level of trading on any market that exists in America today.

So if anyone takes the time to read these letters, I think they will find we are doing nothing nefarious. We are simply trying to bring the light of day to provide a record and to provide some regulatory oversight to a huge, burgeoning market.

When I talked to Mr. Greenspan, and I did on two occasions, what he was concerned with was financial certainty. What I would say to him is this brings financial certainty. This lets everybody who trades online know there is some regulation. Just as you have regulation with FERC, if you deliver natural gas directly to an entity, if you are trading gas in between the delivery, there also is certainty—a certainty that one must keep a record, a certainty that the record can become public, and a certainty that there is some Federal oversight as there is everywhere else.

I see no reason at all why there should be this widespread exemption, particularly at a time when we have seen these prices escalate beyond anyone's expectation. Nobody could think that someone could be selling electricity at $30 a megawatt and overnight have that price go to $300 and then $3,000 without the opportunity for the light of day to be shed on it, and also have some records and some oversight.

It is a very simple thing we are doing. It existed before the year 2000. All we are saying is give the CFTC this oversight. It is supported by FERC. It is supported by the New York Merchantile Exchange. It is supported by the Chicago Exchange. It is supported by people who deal in electricity and natural gas, the municipal systems. It may not be supported by the banks that want to run an exchange in this secret way. It may not be supported by some who would like to see this anonymity continue. But if my colleagues believe that light of day is important, then please vote for this amendment.

I yield the floor.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Idaho.

Mr. CRAPO. Madam President, I appreciate the opportunity to rise in opposition to this amendment. We have heard a lot of debate today about a

very complicated topic that has been discussed, that understanding derivatives is very difficult to do. Since this debate started and I began working on this issue, even in years previous as we tried to address the issue, I still have to go back again and again to the experts who help us to understand the issue.

The first point I want to make is: We spent the better part of a year, a couple of years ago, working on this entire issue of how transactions called derivatives are regulated as they deal with commodities. We had a Presidential Working Group with which then-President Clinton worked, and we relied on the advice of that working group in setting up the model we put forward to help us address how we in the United States should regulate and manage transactions in commodities known as derivatives.

I am going to try in a few minutes to give a little bit of structure to how we did that, but the first point is we spent a tremendous amount of time with congressional committees working on it over a long period of time, and with a Presidential panel working on it, and an advisory group, and we came together with an approach that we then brought forth as legislation which became law and which President Clinton signed into law, and which we have now been working under for a few short years.

This amendment will change that approach. Before I get into what we are talking about and try to put a little order to what the whole debate is about in terms of the structure of the law, let me state the conclusion that Alan Greenspan gave in answer to me in a Banking Committee hearing a few weeks ago when I said to the Chairman: Chairman Greenspan, is this amendment going to be good for America?

His answer to me—and I will read his words in a few minutes if I need to, but his answer, in essence, was he believed the way we had set it up was working, that it provided a resiliency to our markets in the United States and that resiliency was, in his opinion, probably one of the big factors in our ability to have the strength in our economy to rebound as fast as we did when the recessionary trends hit us.

In other words, the recessionary trends we are hopefully now starting to see ourselves grow out of were lessened, and the time we had to spend in that financial trough was reduced because we had the resiliency in our derivatives transactions that we put into place as a result of this very thorough study we went through just a few years ago.

This amendment seeks to change that. The arguments are in that act we passed a few years ago. There was a rifleshot created, a specific exemption for a few commodities that was not fair, and all commodities should be treated equally. The reality is the reverse. We created basic categories in the law we passed. This amendment is a rifleshot amendment to pick out just a couple commodity groups and say these commodity groups should have been treated differently.

How did the law we passed last time work? The question, again, is how are we going to regulate derivatives and commodities that are going to be marketed through derivatives transactions. First, there was an entire category we said we were going to exclude, we would not regulate. Those are called financial derivatives. This includes Treasury bonds, foreign exchange, interest rates, things that happen in the financial industry.

The Senator from Illinois discussed how banks and others deal in these transactions. They are totally excluded.

Another category of commodities included, because historically they have been included and traded on exchanges and derivatives transactions, was the agricultural commodities. They were included with full regulation, full coverage. They are now traded on these boards.

All other commodities were exempted. I use the word ''exempt'' as opposed to ''exclude'' because it is different than how we treat financial transactions. Financial derivatives were excluded; no regulation. Agricultural commodities were included; complete regulation. All other commodities were exempted, meaning they were not going to be regulated and forced on to the exchanges and forced to be traded in the ways that the agricultural commodities were, but they were still subject to very important regulatory controls. The Senator from Texas has already gone over those. Those were protections against fraud. They would be subject to the antifraud protections, the anti-price manipulation protections, and the recordkeeping protections. All other commodities, other than agricultural and financial transactions, are still subject to those types of fraud, price manipulation, and recordkeeping requirements under the act.

What has happened with this amendment? From that category called ''all other commodities,'' the amendment seeks to pick out just two commodity groups: Energy and minerals. That is the rifleshot, saying we do not like the categorization we did a few years ago; we need to take energy and minerals and move them to another category. The arguments given in favor of it are because we need more recordkeeping control and protection. That is included under the act.

The other argument is that we should not treat one group different from any other group. Frankly, as I indicated, we already have exemptions and exclusions and coverage in different categories. I ask this question: If the argument is that regulation is good and therefore we should not have any commodity derivatives transaction that is not regulated, why not, instead of having a rifleshot amendment that regulates only energy and mineral transactions, bring all the financial transactions in as well?

If people are at risk in America today because we are not regulating derivatives transactions, why shouldn't we have regulated derivatives transactions and Treasury bonds? People's retirement depends on their investment in Treasury bonds. Financial transactions, like foreign exchange and interest rates, are every bit as important to the investor in America as are energy or mineral transactions—and, in fact, probably more so if you look at the financial transactions and all of the other types of commodities not included when we did the act before.

If we do that, we take the resiliency out of the markets and make it harder for this Nation's financial system to work effectively. If you accept the argument that everybody should be under the same rules and nobody should be rifleshot out, we should cover everybody and have no exclusion for financial transactions and no exclusion for any commodities. Instead, that is not what the working group recommended.

I make another point. It has been argued somewhat subtly, but I think the point has been clearly argued, investors are at risk because they do not have information about these derivatives transactions. These transactions are not investor transactions. This is not a situation where an investor is looking at a transaction and saying: I think I will invest in that derivative or I will see if I can buy into this derivative transaction.

What is going on is the transfer of risk from those who hold a higher risk situation but do not want to maintain that risk or are not in a financial position to maintain that risk to someone in a better position to maintain risk. We talk about what derivatives transactions do. They transfer risk from one who cannot manage it as well to one who can manage it better. It helps our economy be resilient.

These are transactions between extremely sophisticated managers—whether they be people who are transacting in energy commodities or in minerals commodities. There is not a situation where an investor is being shown a document and being asked to invest in a particular instrument. This is not like a stock market sale or transaction. This is a negotiated contract between sophisticated buyers and sellers who are working in the marketplace to try to reduce risk, which brings strength and stability to the economy and, as Greenspan said, helped in this last recession to bring us back more rapidly.

What we are being asked to do is to shackle it and make it so that these transactions cannot occur except over the board. These transactions have to be regulated like the agricultural transactions.

There has been a lot of talk about who supports and who opposes this

amendment. There is already in the RECORD a letter from our Secretary of the Department of Treasury and from the Chairman of the Board of Governors of the Federal Reserve System, Paul H. O'Neill and Alan Greenspan, who strongly say we should maintain the current system. I read from the very last part of their letter:

[Such legislation] could jeopardize the contribution that off exchange derivatives have made to the dispersion of risk in the economy. These instruments may well have contributed significantly to the economy's impressive resilience to financial and economic shocks and imbalances.

So you have the Secretary of the Treasury and the Chairman of the Federal Reserve saying: Do not shackle our economy this way.

We also have the Commodity Futures Trading Commission itself, the Chairman, representing the majority point of view, stating that there is no shown reason for us to change the structure we achieved after such careful debate previously.

We also have the Securities and Exchange Commission saying there is no need for this change and we should walk carefully.

We are talking about the Government regulators—the Department of Treasury, the Federal Reserve, the SEC, the CFTC—saying there is no need for this.

What is the private sector saying? Those opposed to this amendment are those who deal in these transactions: The International Swaps and Derivatives Association, the American Bankers Association, the ABA Securities Association, the Bond Market Association, the Financial Services Roundtable, the Futures Industry Association, the Securities Industry Association, and the U.S. Chamber of Commerce, the point being that those in our economy who deal with derivatives are saying to us: We don't want to have a rifleshot amendment that takes energy and mining transactions and moves them over.

Again, I want to go back and summarize a little bit. We have a situation here in which we had a Presidential working group that said we should set it up the way we did. We set it up the way we did. It worked. Those who deal with our financial markets in America have said it brings us and brought us the resilience we needed this last time when our economy had the shocks and turmoil we have faced in the last few years. It has been working.

There was also testimony in the hearings we held before the Banking Committee and elsewhere, where those who have tried to tie the failure to regulate derivatives transactions to some kind of problem in the energy markets in California, or to the Enron collapse, have been able to show no real evidence of that. If there were evidence of that, then I think that is something that would be a valid debate for us to have in the Senate.

Instead, I have sat here now for hours this morning, listening to the debate, and it has come down to basically two points, as I understand the reasons that have been put forth for this amendment.

They are that we need to have more information available for investors and those in the industry who might want to look at these transactions to see if there was fraud or whatever. And the response to that argument again is that they are already subject to the Act's anti-fraud provisions, their anti-price discrimination provisions, and their recordkeeping provisions, and that these are not investor transactions.

Then there are those who say it is just a good thing for us to have everybody under the same rules and nobody should get any exemptions. If that is the case, we should amend the amendment to bring in all commodities, including those that are excluded, such as the financial transactions, and those that are exempted, such as the commodities that are not agricultural.

Again, I am not recommending that. I am simply saying the argument that everybody should be under the same rules does not carry with regard to these kinds of transactions. If it did, then the amendment should be much broader than it is.

The bottom line here is this: If there is some basis for us to consider changing the law, which we worked so hard to put together a few years ago, then that process of determining the change that needs to be made and evaluating the facts and the arguments behind why such a change should be made should first go through the regular process of legislating here in this Congress; namely, the committees with jurisdiction should take jurisdiction over these issues and establish the analysis. We should hold hearings.

If there is an argument that somehow the Enron situation is connected to how we regulate derivatives transactions, then we should hold hearings. Those hearings should probably be in the Agriculture Committee, which is where the jurisdiction of this amendment lies. But somewhere we should have hearings to find out whether such a connection is real and, if so, what the connection is and why it occurred. That will guide us, then, in terms of figuring out how we might create a better regulatory mechanism.

The same is true if there are those who contend that somehow the California energy collapse and the circumstances that occurred there were caused by failure to properly regulate energy derivatives. Again, no connection has been made in the minds of those who work in the marketplace. But if there is an argument that such a connection is there and that it justifies a change in the law, then shouldn't we have a study of it? Shouldn't we evaluate it? Shouldn't we have a hearing—at least one? Shouldn't we let the committees of jurisdiction dig into this and go through the process we did before? Maybe we need another Presidential advisory board.

If the results of the last system are not adequate, we could add to them and supplement them. But we should study the issue and try to find out what facts justify such an argument and, if there is any validity to it, what caused it, so we can then understand how to regulate it better.

The bottom line is that we have had none of this. We have had no hearings. We have had no committee evaluation. We have had nothing, other than a several-hour debate in this Chamber. We had a couple hours of debate a week or so ago and now a couple of hours more today. But we have not had the opportunity to get to the bottom of all of these arguments, whether they be factual allegations or arguments about the proper mode of regulation.

I suggest what we need to do is to refer this amendment to the appropriate committees of jurisdiction and let them conduct the studies, conduct the evaluations. In fact, what might even be a better solution is to refer this issue to the appropriate regulators.

At some point in time I may submit an amendment to do just that, to let the CFTC and the other appropriate regulators have a period of time—the Senator from Texas suggested maybe a short period such as 45 days—to dig into this matter and give a report to Congress about what they have found out about all the alleged contacts between wrongs in our society that might be related to something here dealing with derivatives.

Again, if they find anything in that context, then the appropriate committees of jurisdiction can have hearings and review these issues, determine if there is any merit whatsoever in proceeding forward with changing our regulatory scheme, and then in a very effectively fine-tuned way figure out how we should change the law.

To me it seems very clear; if we do not have the kind of threat that some suggest we have, and if we do have the potential strength in our economy that is provided by having this flexible system of commodities transactions regulations, it would be very dangerous for us to move into a new regulatory system without understanding where we are heading.

This is one of those circumstances in which it is far too important for our economy for us to take a risk of unintended consequences.

One of the most significant things we will face with regard to this amendment, in my opinion, is the list of unintended consequences that could occur.

The Senator from Texas indicated earlier it is really hard to debate unintended consequences because we really don't know what they are, because they are unintended, uninformed—something of which we are unaware. It is something about which, if we held hearings and went through the regular legislative process on this issue, we would identify. Then whatever consequences flowed from what we were

doing would be understood and supposedly intended by those who supported it.

Instead, we are being asked here on very short notice, without the kind of debate we need, to regulate in a way that is not necessary one section of our economy—the energy and the minerals transactions related to derivatives.

Again, if the argument is going to be made that we need to protect investors in America, it is hard to see that because these are not investor transactions; they are transactions between highly sophisticated individuals. If it is true that derivatives are somehow a threat to the investor community and the safety of the investments of the American public is at risk because of something wrong with the way we manage derivatives, then why don't we cover all commodities? As I said earlier, it seems to me the question of how we regulate Treasury bonds or foreign exchange or interest rates or other financial transactions is every bit as important to the American investor as is the question of how we regulate minerals or how we regulate energy transactions.

I know in today's climate, with the Enron collapse and with the energy troubles we faced a few years ago in California, there are those who want to look at every aspect of financial and other transactions relating to energy and see if there is some way we can improve it. But I suggest it does not necessarily mean that more regulation and more government bureaucracy is the best way to solve these problems, particularly when you have the Secretary of the Treasury and the Chairman of the Federal Reserve telling us we have to have the kind of resiliency in our economy that derivatives provide to us.

In conclusion, I believe the bottom line is that each side can point to those who support their positions and those who oppose them. Each side can come up with arguments about why what we are doing now is or is not working. But no side can say we have the background information necessary to make this decision, because we have not had the kind of hearings and congressional evaluation of this issue we should have had.

Because of that, I stand firmly opposed to the amendment. I believe ultimately the American people will be much better served if we do our jobs in the Senate the way our procedures are set up to do them. The procedures and the policies of the Senate have been established to make very clear that we can have the time to evaluate issues such as this and do the study necessary to have good, solid support.

I also believe, as has been indicated by those who debate here, if we went through that process I have suggested—having a study and then further congressional evaluation and then maybe propose legislation—we would probably have much more support for whatever came forth, if anything. We would build the collaboration, we would build the consensus, and we would come forward, because the one thing that there has been agreement on today is that nobody wants to have the problems we saw occur in California.

Nobody wants to see any kind of fraud or abuse from financial transactions or derivatives transactions. Everybody is willing to make sure that antifraud provisions and price protection provisions and the recordkeeping provisions are adequately available for derivatives transactions as necessary, so that we do not cause or increase any risk of problems in the economy.

If we will follow the procedures and the processes of the Senate, let this matter be handled by the committee of jurisdiction, which I believe is probably the Agriculture Committee, and then let other related committees handle their parts of it, with studies in support from the private sector and from our regulating agencies, I believe we can get the information necessary for us to do a good job, build consensus, and come forward with a solution that can be broadly supported on both sides of the aisle.

I thank the Chair very much for this time.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 having arrived, the Senate will now stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:31 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mrs. CINTON).

NATIONAL LABORATORIES PARTNERSHIP IMPROVEMENT ACT OF 2001—Continued

AMENDMENT NO. 2989, AS MODIFIED

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Madam President, I rise again, as I did a week ago when we debated derivatives, in opposition to the derivatives amendment. It offers no solutions to problems that caused either Enron or the California energy crisis. In fact, the amendment we have is a solution looking for a problem.

I am glad we have had a little time to study the amendment further because we have asked a number of regulators what their position is regarding the additional regulation of this relatively new form of business. We have heard from two regulators who have jurisdiction over the trading markets. They both have come back with the same response: This is not needed at this time.

CFTC Chairman Newsome has said:

> This amendment would rescind significant advances brought about by the Commodity Futures Modernization Act.

In response to a letter I sent to the Securities and Exchange Commission, Chairman Pitt responded:

> The Securities and Exchange Commission believes this legislative change is premature at this time.

This amendment will disrupt a market that is working efficiently and providing important tools for energy companies. For instance, this amendment would require new capital requirements on electronic trading exchanges, even if they simply match buyers and sellers. These exchanges bear no risk associated with trading but this legislation could provide additional new taxes.

This amendment also provides new regulation on metals. I don't know of anyone who can point to how metals had anything to do with Enron or the California energy crisis. The regulatory model for metals has offered no problems. In fact, if you take a look at the derivatives market, there isn't a problem with any of the markets. I will speak about that in a moment.

Yet the supporters of this amendment believe we should quickly enact some new form of regulation to oversee the metals market. Enron was not caused by the trading of energy derivatives. As I said last week, Enron was not an energy trading problem. Enron was not an accounting problem. Enron was a fraud problem.

In fact, when the Chairman of the Federal Reserve, Alan Greenspan, was asked at a Senate Banking Committee hearing whether a nexus existed between energy derivatives trading and the collapse of Enron, he responded that ''he hadn't seen anything'' that would indicate that.

Why are we rushing to regulate an emerging business when the collapse of Enron was likely caused by potentially illegal acts by executives and, furthermore, that the collapse of Enron did not cause a blip on the scope of derivatives trading?

I know this is something everybody uses on a daily basis. In the example I gave a week ago, I cited some examples of things that might help to understand derivatives trading. I will not go into that again. I am kidding about this being something that everybody works with on a daily basis. In fact, we have been taking some classes in my office on how to spell ''derivatives.'' It isn't a common, ordinary thing, but it is a new market that we have looked at extensively, held hearings on, and have done work on in the past through the regular channels. Again, there was not a blip in that system when Enron went down.

We recently passed the Commodities Futures Modernization Act. Most of us in the Senate worked on this legislation extensively.

This legislation examined the regulation of energy derivatives. This legislation was debated at public hearings. It was negotiated. It was drafted over a significant period of time with full participation and input from members of the Clinton administration and the committees of jurisdiction. What

emerged was the proper amount of regulatory oversight for the trading of energy derivatives.

I also wish to comment on a letter sent to Senator LOTT by Secretary of the Treasury O'Neill and Chairman Greenspan. In it they write:

> We urge Congress to defer action on Senator Feinstein's proposal until the appropriate committees of jurisdiction have a chance to hold hearings on the amendment and carefully vet the language through the normal committee processes.

We know from history that hearings can make a difference on a bill, that working it through the committee process allows a lot more flexibility in actually working an issue and bringing it to light on the Senate floor, without some of the difficulties we have had on this particular amendment, which has been in the negotiation stage for about a week and a half. But the floor operation does not allow the kind of flexibility that could correct problems and lead to good legislation.

Madam President, this is all we are asking. I haven't heard anyone say we should not examine the issue. However, we should address it through the normal legislative process so we could learn exactly the ramifications of the amendment. I don't believe anybody has come to the floor and given us a thorough accounting of what would happen to the energy trading markets, the swap markets, or the metal markets if this law were enacted tomorrow.

We all want to solve the problems posed to us by Enron and the California energy crisis. But this amendment will not solve those problems. This amendment may add to those problems. Once again, I ask Members to oppose this amendment.

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. REID. 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. REID. Madam President, at approximately 3 o'clock today, Senator KYL is going to come to offer his amendment dealing with renewables. I spoke with Senator KYL. He says the debate on that should take some time. He did not say how much time. It may take a matter of hours. What we would do at that time is move off the Feinstein amendment. I have spoken with her.

With respect to the matter relating to the second-degree amendment Senator LOTT offered dealing with judges, there will be an arrangement made that we could vote on his amendment and perhaps side by side tomorrow.

I hope anyone wishing to speak on derivatives will come and do that as soon as possible. I understand Senator BOXER wishes to do that at this time. We will get into what I think is a very important debate dealing with Senator KYL's amendment on renewables at approximately 3 o'clock.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Madam President, what is the pending business?

The PRESIDING OFFICER. The Lott second-degree amendment to the Feinstein derivatives amendment.

Mrs. BOXER. Madam President, I rise to speak in behalf of the Feinstein derivatives amendment which I think is a very important amendment for us to adopt.

Senator FEINSTEIN's amendment, of which I am a cosponsor, narrows a gap in the oversight of the energy market. It is very simple. It would require the Commodity Futures Trading Commission to regulate the energy derivatives market.

We all know that derivatives are very complicated, and I know Senator FEINSTEIN has spent a good deal of time educating the Senate on derivatives. The point is very clear. It used to be that the energy derivatives market was regulated by the CFTC. It is the way it used to be, and it is the way it should be.

The CFTC should have the ability to obtain information critical to market oversight and to make market information public if the CFTC determines that it is, in fact, in the public interest to do so.

Senator FEINSTEIN has gained the support of the New York Mercantile Exchange and various consumer organizations. I have to say, as someone who has long fought for the rights of consumers, this amendment is crucial for consumers. We know in California what can happen when energy markets go secret and you do not know what is happening, except one day you wake up and find you cannot afford to heat or air-condition your house, and if you are a business, you can no longer afford to pay the energy bill.

I have to say from my heart that if the Senate walks away from this amendment, then it is giving a message to the country that we do not care much about this whole Enron scandal. Enron worked very hard to change regulations and laws to remove all government oversight. In my home State, they actually were under no oversight at all. One of the places there was oversight was the derivatives market under the Commodity Futures Trading Commission, and that was changed. Therefore, there was no oversight, and there was no way to ensure that the market was transparent—in other words, you could see the various transactions that led to the final energy bill—and it allowed, after they got out of the CFTC, for this online trading to go on in secret.

Clearly, in my opinion, Enron manipulated the electricity market for one reason, and one can explain it in one word: secrecy. They operated in secrecy. There was only one agency to mind the store, the Federal Energy Regulatory Commission.

This administration was wined and dined by Enron, and they did nothing to help California—zero, nothing—for almost a whole year. We saw the biggest transfer of wealth from ordinary working people to these energy companies. Enron had a methodical plan to free itself of any and all Government oversight so they could cooperate in secret and trade up the price of energy in secret through financial arrangements, including derivatives.

Senator FEINSTEIN has a very good amendment that will restore transparency to these sales. That is why I am very proud to support it, and that is why I say to you that it will be the first test vote on whether we learned anything from this Enron scandal, and more than that, are we willing to do something about the problems that led to the whole crisis in California.

In 1992, Enron worked to remove energy derivative contracts from Government regulations. This resulted in Enron being able to hide information about individual trades from Government oversight. That is why Senator FEINSTEIN has written this amendment. Let's go back, she says, to the days when there was oversight over these online trades.

Once the contracts were outside Government oversight, Enron lobbied Congress to remove the trading itself from Government regulation, and in 2000, Enron was successful and was allowed to create an unregulated subsidiary that could buy and sell electricity, natural gas, and other energy commodities in huge volumes without any Government oversight.

As I said, we know what happened. The prices soared in my home State. My State suffered a devastating economic crisis. I have a chart that shows the demand went up in that 1 year that Enron got out of any oversight 4 percent; energy prices in toto went up 266 percent.

I will never forget meeting with Vice President CHENEY after trying desperately to get a meeting with him—this goes for me, Senator FEINSTEIN, and other Members of the California congressional delegation. Do you know what he said to us? We told him to look at the prices: How can we sustain this? All of California spent $7.4 billion on energy in 1999, and then in 2000 when Enron got out of oversight, it shot up to $27 billion? How can we sustain it? He looked at us and said with a straight face: You are using too much energy.

I say again to the Vice President and anyone who happens to be watching, California on a per capita basis is the most energy efficient State in the Union. We use less energy than any other State.

We are a model in that regard. We have 34 million people plus, but on an individual basis we use less.

Our energy went up by only 4 percent and our prices went up by 266 percent,

and one of the reasons for this is Enron was allowed to trade online in secret. They sold the same energy over and over, sometimes, they say, as many as 14 and 15 times before it got to the consumer.

No oversight. People can make the argument that deregulation everywhere is a wonderful thing, and I am willing to listen to it, but I have to say, when it comes to a commodity that people need to live, they need it to heat their homes; they need it in hospitals to make sure an operation will not be terminated in the middle of it because of the loss of energy.

The Chair was talking about how many proud farmers are in her State. I say to the Chair, in my State I went to a meeting in the central valley—and the Chair has been there, I know—where they have all kinds of farming. One of the big industries is the poultry industry. They were so fearful that the refrigeration would go out and this poultry would spoil, some of it would make people sick, or they would have to throw it out.

The bottom line is, energy is not a luxury, it is a requirement. So when we go ahead and take the whole energy area outside of any type of reasonable regulation, we are setting up a horror story for people. I can truly say, we went through that and I want to spare that from happening in the State of the Chair—the Senator from New York has already gone through enough trauma for any Senator—and I want to stop it from happening anywhere in this great country of ours. The first test case is the Feinstein amendment to restore some type of oversight to this online trading.

There is a gentleman from San Marcos, CA, who wrote to President Bush. He sent me a copy. This was during the electricity crisis. He said:

> I am a father and a husband in a single income family. My wife and I very carefully planned our family economics in order to give our daughter the benefits of having a full-time parent at home. We are currently spending money on electricity bills that should be going into family investments for college or retirement planning.

This gentleman was so right. What happened was no regulation, the ability for Enron and others to completely manipulate the market. Senator FEINSTEIN's amendment, which has been second-degreed by a whole different subject about judges—and I am all for voting on that, but it should not have been done to this. We need a clean vote on her amendment to restore some sense of transparency and honesty to the electricity business.

This is another story I read about in the San Diego Union-Tribune when we were having our troubles. There is a pizza store called Big Top Pizza where the electricity bill went from $200 to $646—a 223-percent increase. It kind of mirrors what happened to my State. That happened in 1 month. Imagine as a business person seeing that kind of increase. I also read about a florist where their electricity bill went up 135 percent.

When we talk about these things, they may not sound as though they are so related to the amendment. The amendment talks about making sure we have an electricity business we can monitor to make sure it is fair and just and we do not have unjust and unreasonable prices. If we cannot see through this system—which is currently the case because no one is monitoring it—this is going to happen again. It is going to happen to other good people in other States.

In closing, I cannot say enough about how much I thank Senator FEINSTEIN for coming to the Senate with this amendment. What she is doing is looking at our experience in California and saying, how can we do something quite simple, which we always did before, which is to make sure we do not have people facing this type of escalation in costs, manipulation of prices, all done in secret, nobody looking over their shoulder, and who pays the price? The good American people and the good consumers of this country.

I hope we will have an outstanding vote in favor of the Feinstein amendment, and I hope we can begin then to attack the basic causes of what happened in my State—an unregulated industry, out of control, insider trading going on by the people at the top without one care in the world for the shareholders, for the consumers, and for the people.

Jeffrey Skilling, the CEO of Enron, made a ''joke'' about California which was: California and the Titanic are very much alike. The one difference is at least the Titanic went down with its lights on. That was supposed to be a humorous joke.

The bottom line is Enron turned out to be the Titanic, and if we do not learn lessons and if we do not move now to correct what happened, I do not know why we are here. That is how strongly I feel.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

Mr. DORGAN. 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. DORGAN. Madam President, my understanding is we are awaiting midafternoon for an amendment that will be offered, we are told, by Senator KYL. I should not speak for him, but I am told the amendment will strike the renewable portfolio standard in its entirety.

What is the renewable portfolio standard? To some, when we talk about an energy policy, debate on that term sounds like a foreign language—a renewable portfolio standard. It means an attempt by this country to develop different approaches, using renewable, limitless supplies of energy to produce electricity in our country.

There are some who despair this energy bill that is designed to try to take us into a new day and a new approach to energy policy, does not have the CAFE standard that was voted on last week. Some are concerned about that. Frankly, with or without the CAFE standard, this piece of legislation does include some significant areas of improvement in dealing with the efficiency of the transportation sector. It does, for example, provide very significant financial inducements for people to buy automobiles that have new sources of power: fuel cell automobiles, hybrid automobiles, and others. We recognize that if you are going to deal with this country's energy problem, you have to deal with efficiency of the energy used in transportation. That is true. I understand that. There are many ways to do that.

Remaining in this bill are important provisions, including significant tax benefits to consumers with which they can purchase a car that meets certain specifications, or a vehicle that meets certain specifications with respect to gas mileage, the kind of power train it has, and other issues. So while some despair about the vote we had last week, let me say there remain in the bill significant areas of efficiency dealing with transportation.

But that is not the issue now. The issue is a renewable portfolio standard with respect to the production of electricity. The question for all of us has always been, when we debate energy on the floor of the Senate, will we develop new policies? Will we really turn a corner or will we simply repeat the debate we had a quarter of a century ago and beef it up just a little bit so we can debate it again a quarter of a century from now?

Will our policy simply be yesterday forever? Is that our policy? It is that just to dig and drill and dig and drill represents our policy for the next 25 years?

Look, I support digging and drilling, provided it is done in an environmentally acceptable way. We must produce new energy. We must and will produce new oil and natural gas and use coal. We must do that because we cannot solve our energy problem without producing more, but we must do it also in a way that is environmentally acceptable.

As we transition toward more production and more efficiency and more conservation, we also must, then, turn to this other issue of trying to find new sources of energy so we do not just rely on digging and drilling: new sources of energy such as wind energy, biomass, solar energy, geothermal, and more.

When we produce electricity in this country, there are several ways for us to do it. We have in the past traditionally mined coal and used coal in power plants to produce electricity and move that electricity over a series of transmission wires to places in America

where it is needed. Other plants use natural gas as the principal fuel. But there are other ways to produce electricity.

We now have newer technology—wind turbines. Those wind turbines have the capability, with much more effectiveness, to take that energy from the air and, through those turbines, create electricity. That electricity can be moved around the country where it is needed.

Likewise, with solar energy, geothermal energy, biomass—we also can produce electricity using renewable and limitless supplies of energy.

We must, when this bill leaves the Senate, have a renewable portfolio standard that is reasonably aggressive, and one that is workable. The renewable portfolio standard of 10 percent is one that we agreed to, generally speaking, when we wrote the bill earlier. Some have talked about 20 percent, which others have said is too aggressive. There are still others in our Chamber who say there should be no renewable portfolio standard, there should be no standard by which we achieve more in limitless and renewable sources of energy for the production of electricity.

I could not disagree more with that position. For us to write an energy bill in the Senate and say, let's just keep producing electricity the same old way, let's not really have any changes, let's not stretch ourselves, let's not turn the corner with respect to energy supply, I think is not a step forward at all. That is not new policy. That is, as I said, yesterday forever. We will not be here in most cases, 25 years from now, someone will have a new idea for a new energy policy. It will be digging more and drilling more.

That is not new, and it does not resolve our issues in the long term that are so important for this country.

September 11 described for all of us the fact that this is a pretty uncertain and dangerous world in some respects. We have talked a great deal since September 11 about national security. Madmen, sick, twisted, demented people who live in caves in Afghanistan, plot the murder of thousands of innocent Americans in America's cities. So we talk about national security and we prosecute a war against terrorism and we talk about homeland security and it is all very important. But there is another part of national security that is also very important. That is the security or the lack of it that comes with the need to get 57 percent of our oil, our energy supplies of oil and natural gas from abroad—most of which come from Saudi Arabia and Kuwait, in one of the most unsettled regions of the world.

Connecting our country's need for oil to a supply from a region that is so unstable and so uncertain is not a smart policy for this country. We have ratcheted this up to almost 60 percent of our energy supply coming from abroad—most of it coming from a region that is a very unstable region. We need to begin stepping that back. One way to start doing that is by reaffirming this afternoon that we believe in a renewable portfolio standard; that is, we believe in a standard by which we want this country to aspire to a goal, an achievable goal and a real goal of having 10 percent of its electric energy produced by renewable and limitless sources of energy.

I mentioned wind a moment ago. Wind energy is something that has, now, the capacity to produce a substantial amount of new energy for us. My home State of North Dakota is last in numbers of trees, as I have told my colleagues from time to time. We rank 50th in native forestlands, so we are dead last in numbers of trees. But according to the U.S. Department of Energy, we are No. 1 in wind. We are what they call the Saudi Arabia of wind energy. Putting up a turbine with the capability to take the energy from the wind and, through that turbine, turn it into electricity and move it across transmission lines makes good sense for this country. It is renewable; it is limitless; it is good for our environment; it just makes good sense.

That is why just one step in this energy bill that would be helpful for this country—just one—is to reaffirm today that we believe in this standard, in stretching our country to at least achieve the 10-percent level on alternative energy for the production of electricity. That is all we are talking about.

In North Dakota, for example, we have some transmission issues we have to deal with in order to produce more wind energy. I hope we can move to produce more energy from wind, from biomass, from solar, but we also have to find ways to transmit it through transmission lines. We are talking now in this legislation that Senator BINGAMAN brought to the floor about new technologies for transmission lines. It is for a range of initiatives. I was helpful in working on some incentives to try to move us toward composite conductor technology, for example, which is one technology, to double or triple the efficiency of transmission lines. If you can triple the efficiency of transmission lines, you don't have to build new corridors. You can move substantially more electricity across the grid system in this country to where it is needed.

The point is, we have a lot to do. This legislation does a lot. I believe this afternoon we will be confronted with an amendment that says, no, let's step back and not do quite as much. In the area of a renewable portfolio standard, it would be awful, in my judgment, for the Senate not to stand for and perhaps even improve that which is already in the bill. The 10-percent standard that is in the bill, with respect to some agreements, as I understand it, has been changed a bit. Perhaps we could even strengthen that. The point is, we ought not retract; we ought not step backwards on this issue.

So when Senator KYL offers his amendment, I hope we can have an aggressive debate today and have a vote in which this Senate, by a very strong majority, says: We insist on a renewable portfolio standard in this bill. It is the right way and the right step for this country, to make a break towards less dependence on foreign oil and more national security for this country, by having a renewable and limitless source of energy well into the future.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CARPER). The Republican leader.

Mr. LOTT. Mr. President, I asked questions this morning as to when we might be able to get an agreement on proceeding to the campaign finance reform issue. I know there have been a lot of efforts underway—Senator MCCONNELL, Senator MCCAIN, Senator FEINSTEIN, and others. Of course, I know the House has a real interest in this.

This morning I was beginning to feel that we were going to have to nudge it a little bit to get this worked out and get it agreed to so we could get a vote and move on to other issues without it interrupting them—the energy bill, for instance—even further.

UNANIMOUS CONSENT REQUESTS

I ask unanimous consent that notwithstanding the provisions of rule XXII, the Senate now proceed to the cloture vote with respect to H.R. 2356, the campaign finance reform bill, with the mandatory quorum being waived. I further ask unanimous consent that following that vote, again notwithstanding rule XXII, the Senate proceed to the consideration of a Senate resolution, the text of which is at the desk; further, the resolution be agreed to and the motion to reconsider be laid upon the table.

I further ask unanimous consent that the Senate then resume consideration of H.R. 2356 and the time until 6 tonight be equally divided between Senators MCCONNELL and MCCAIN.

I further ask unanimous consent that no amendments be in order to the bill and, at 6 tonight, the bill be read the third time and the Senate then proceed to a vote on passage of the bill with no intervening action or debate.

Finally, I ask unanimous consent that when the Senate receives from the House a technical corrections bill regarding campaign finance reform or a concurrent resolution which corrects the enrollment of H.R. 2356, and the text has been cleared by Senators MCCONNELL and MCCAIN, then the Senate immediately proceed to its consideration, the bill be read the third time and passed, or the resolution be agreed to, with the motion to reconsider laid upon the table and with no intervening action or debate.

Here is my point and why I make this request. I believe it is ready. I think it is time we bring this to conclusion. I think we can get a vote on it at 6 o'clock tonight, and then we would be prepared to get back to energy or other issues that the Senate would desire.

Mr. MCCONNELL. Will the leader yield?

Mr. LOTT. I am glad to yield, Mr. President.

Mr. MCCONNELL. Let me concur with what the leader said. As a Senator who has fought for many years to defeat that bill, I believe it is clear that position is not going to prevail.

We had good negotiations over a technicals correction to the bill. The consent request to which the Republican leader has asked that we agree gives Senator MCCAIN and myself, who have been on opposite sides of this issue, a chance to review a subsequent technicals bill that passes the House. Either one of us would have the right to veto it. We are very close to an agreement.

I agree with the Republican leader that there is certainly no necessity to have any all-night sessions or any of these other scenarios we hear have been suggested to the press, since the opponents of this bill are ready to move on with it. That is what this consent agreement makes clear.

I commend the Republican leader for offering it.

Mr. REID. Reserving the right to object, Mr. President.

The PRESIDING OFFICER. The deputy majority leader.

Mr. REID. I do congratulate the leader. It is really important we have gotten this far. We are very close. I say, however, Senator FEINGOLD and others—but especially Senator FEINGOLD—need to make sure the resolution referred to in this request is appropriate—and the correcting bill. I have no doubt they will be approved by Senator FEINGOLD. To my knowledge, he has not yet signed off on these.

I ask that the Republican leader and Senator MCCONNELL recognize it is really important that we get this out of the way. No one wants to spend all night here. We have so many other important things to do. I think there is no reason we can't work something out in the next little bit. But I have to do, as I have indicated, what needs to be done. I will do that. As a result of that, I object at this time.

The PRESIDING OFFICER. Objection is heard.

The Republican leader.

Mr. LOTT. If I could inquire of Senator REID, I understand he needs to confer with other Senators, and we would perhaps need to do that even more on our side.

But let me clarify, this did not include the technicals correction; is that correct?

Mr. MCCONNELL. What it does is set up a procedure by which, even after the passage of Shays-Meehan, if the technical corrections on which we are working is agreed to and is passed by the House and comes over here, in order to make sure it is one on which we still agree, Senator MCCAIN or I could veto it; otherwise, it could come up and be passed.

The point I think the leader is making is that we are ready to move on. It is time to pass this bill. We understand debate is largely over and we would like to wrap it up.

Mr. LOTT. I emphasize that point, Mr. President. When I was talking to Senator REID this morning, there were still, I guess, negotiations—or not even negotiations—the technical corrections were being reviewed by a number of people, including House people, and it seemed to be moving very slowly and seemed to be holding up the final disposition of this issue. And this looks to me as if that problem is taken care of by doing it this way.

So I just would inquire of Senator REID——

Mr. REID. If the leader will yield.

Mr. LOTT. Certainly.

Mr. REID. The Republican leader is absolutely right. We did have a conversation today. We have heard a lot of talk the last week or so that things have all been wrapped up. But we never really got to that point. I think we are almost there. This is a tremendous step forward from where we were this morning. I have no reason to doubt that we can be back here very shortly and enter into this agreement. We will make sure the Senator from——

Mr. LOTT. You are indicating, then, you hope very shortly we could come back perhaps and propound—or perhaps you would want to propound something such as this?

Mr. REID. I think we will be in a posture to do that very quickly.

Mr. LOTT. I thank you.

Mr. REID. I see both Republican leaders. Senator KYL is in the Chamber. What we wanted to do is move to his amendment dealing with renewables to get that issue out of the way. And I see Senator BOND and Senator LINCOLN in the Chamber. They have an amendment that may be agreed to.

I ask my friend, Senator NICKLES, are you going to speak on the derivatives issue?

Mr. NICKLES. I am going to speak on the energy bill.

Mr. REID. Yes. I am just wondering; Senator KYL is back in the Chamber, and he has had so many dry runs.

Mr. NICKLES. I will speak on the Kyl amendment as well.

Mr. REID. If we get this campaign finance agreement, everyone will step aside, of course, and we will move to that. I indicated to the staff on the Republican side, we are going to work something out tomorrow so we can go to an amendment the Republican leader has pending on the Feinstein amendment.

So what I would like—I am sorry to have been interrupted, but it was important I be.

I ask unanimous consent that the Senate now resume the Bingaman amendment No. 3016 and that Senator KYL be recognized to offer a second-degree amendment to the Bingaman amendment.

The PRESIDING OFFICER. Is there objection?

Mr. BOND. Reserving the right to object, the Senator from Arkansas has an amendment that I plan to cosponsor. I do not think it will be controversial. We do not have it fully cleared.

I talked to the Senator from Arizona. He does not seem to have an objection. I ask if the Senator from Arkansas might be permitted to go.

Mr. REID. I say to my friend, it is my understanding that the Senator from Arkansas and the Senator from Missouri wish to lay down an amendment, and with the hope that it will either be accepted or finished at some later time. But after your initial statements, we could go to Kyl. It should not take too long; is that correct?

Mr. LOTT. Reserving the right to object—and I do so to save time—I know Senator REID is trying to make use of time while he works out clearances. I would object right now to going to Kyl. In the meantime, we have Senator NICKLES who would like to speak, and also Senators LINCOLN and BOND, and then we can communicate and see if we can't get an agreement on the Kyl amendment after we get through this. But I object at this point.

Mr. REID. The only thing I would ask: Senator KYL has been over here like a yo-yo. I hope he will not go too far away, so maybe we can lay this down a little later.

The PRESIDING OFFICER. Objection is heard.

The Senator from Arkansas.

Mrs. LINCOLN. Mr. President, what is the pending amendment?

The PRESIDING OFFICER. The Lott second-degree amendment to the Feinstein first-degree amendment.

AMENDMENT NO. 3023 TO AMENDMENT NO. 2917

Mrs. LINCOLN. Mr. President, I ask unanimous consent to lay aside the pending amendment and call up amendment No. 3023.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Arkansas [Mrs. LINCOLN], for herself, Mr. BOND, Mr. JOHNSON, Mrs. CARNAHAN, Mr. HUTCHINSON, Mr. HARKIN, Mr. GRASSLEY, Mr. BUNNING, Mr. BAYH, and Mr. CRAIG, proposes an amendment numbered 3023 to amendment No. 2917.

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

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

The amendment is as follows:

(Purpose: To expand the eligibility to receive biodiesel credits and to require the Secretary of Energy to conduct a study on alternative fueled vehicles and alternative fuels)

On page 142, strike lines 8 through 11 and insert the following:

SEC. 817. TEMPORARY BIODIESEL CREDIT EXPANSION.

(a) BIODIESEL CREDIT EXPANSION.—Section 312(b) of the Energy Policy Act of 1992 (42 U.S.C. 13220(b)) is amended by striking paragraph (2) and inserting the following:

''(2) USE.—

''(A) IN GENERAL.—A fleet or covered person—

''(i) may use credits allocated under subsection (a) to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet or covered person under this title, title IV, and title V; but

''(ii) may use credits allocated under subsection (a) to satisfy 100 percent of the alternative fueled vehicle requirements of a fleet or covered person under title V for 1 or more of model years 2002 through 2005.

''(B) APPLICABILITY.—Subparagraph (A) does not apply to a fleet or covered person that is a biodiesel alternative fuel provider described in section 501(a)(2)(A).''.

(b) TREATMENT AS SECTION 508 CREDITS.—Section 312(c) of the Energy Policy Act of 1992 (42 U.S.C. 13220(c)) is amended—

(1) in the subsection heading, by striking ''CREDIT NOT'' and inserting ''TREATMENT AS''; and

(2) by striking ''shall not be considered'' and inserting ''shall be treated as''.

(c) ALTERNATIVE FUELED VEHICLE STUDY AND REPORT.—

(1) DEFINITIONS.—In this subsection:

(A) ALTERNATIVE FUEL.—The term ''alternative fuel'' has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(B) ALTERNATIVE FUELED VEHICLE.—The term ''alternative fueled vehicle'' has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(C) LIGHT DUTY MOTOR VEHICLE.—The term ''light duty motor vehicle'' has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(D) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(2) BIODIESEL CREDIT EXTENSION STUDY.—As soon as practicable after the date of enactment of this Act, the Secretary shall conduct a study—

(A) to determine the availability and cost of light duty motor vehicles that qualify as alternative fueled vehicles under title V of the Energy Policy Act of 1992 (42 U.S.C. 13251 et seq.); and

(B) to compare—

(i) the availability and cost of biodiesel; with

(ii) the availability and cost of fuels that qualify as alternative fuels under title V of the Energy Policy Act of 1992 (42 U.S.C. 13251 et seq.).

(3) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report that—

(A) describes the results of the study conducted under paragraph (2); and

(B) includes any recommendations of the Secretary for legislation to extend the temporary credit provided under subsection (a) beyond model year 2005.

Mrs. LINCOLN. Mr. President, I am very pleased to be joined in offering this amendment with my good friend from my neighboring State of Missouri, Senator BOND. Senator BOND and I have worked together on numerous issues during our tenure in the Senate, and I am pleased to work with him again.

I am also pleased to be joined by Senators JOHNSON, CRAIG, CARNAHAN, HUTCHINSON, HARKIN, GRASSLEY, BUNNING, and BAYH as cosponsors of this amendment. I ask unanimous consent to add Senators CARPER, FITZGERALD, DAYTON, and DORGAN as cosponsors.

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

Mrs. LINCOLN. The purpose of this amendment is to place biodiesel fuel on an equal footing with every other alternative motor fuel in this Nation.

Biodiesel is a clean-burning alternative fuel that can be produced from domestic renewable sources, such as agricultural oils, animal fats, or even recycled cooking oils.

It can be used in compression-ignition diesel engines with no major modifications. It contains no petroleum, but it can be blended with petroleum at any stage in the production and delivery process from the refinery to the gas pump. Biodiesel is simple to use. It is biodegradable. It is nontoxic and essentially free of sulfur and aromatics. It is completely user friendly.

Although new to our country, its use is well established in Europe with over 250 million gallons consumed annually. The Energy Policy Act of 1992 set a national objective to shift the focus of national energy demand away from imported oil toward renewable and domestically produced energy sources. When EPACT was passed in 1992, it recognized ethanol, natural gas, propane, electricity, and methanol as alternative fuels. The original list of alternative fuels did not include biodiesel because the technology had not been fully developed at that point.

EPACT set a goal to replace 10 percent of petroleum-based fuels by the year 2000 and 30 percent by the year 2010. However, a GAO report issued in July of last year noted that ''limited progress had been made in increasing the numbers of alternative fuel vehicles in the national vehicle fleet and the use of alternative fuels'' as compared to the conventional vehicles and fuels.

We have not met the original EPACT goals of replacing 10 percent of the petroleum-based fuels by the year 2000, and we are not on track to meet the goal of 30 percent by the year 2010. In fact, we have not even come close. That is partly a result of not allowing all alternative fuels to be used to meet that EPACT alternative fuel mandate.

My amendment will significantly increase the use of alternative fuels by enacting a temporary program to allow covered fleets to meet up to 100 percent of the EPACT purchase requirements through the use of biodiesel. Currently, covered fleets can meet up to 50 percent of purchase requirements with biodiesel.

The amendment would also require the Secretary of Energy to conduct a study evaluating the availability and cost of alternative-fueled vehicles and alternative fuels.

The provisions of this amendment would automatically sunset after 4 years. At that time, covered fleets would again be able to satisfy only 50 percent of purchase requirements with biodiesel. This temporary program, in conjunction with the Energy Department study, is necessary to determine if vehicle and fuel markets are significantly developed to support continuing the purchase mandates or if a further extension to the biodiesel credit program is warranted. We must allow all alternative fuels to count toward EPACT's alternative fuel requirements.

Our amendment will allow us to make the most of existing opportunities. By offering an additional option for the use of alternative fuels, we will widen the possibilities for these fuels to be made more widely available. Fleets will continue to have the option to choose the complying vehicles and fuels that best meet their needs.

This amendment is not expected to affect fleets that are currently using ethanol or natural gas. But this amendment does provide a further option for alternative-fueled vehicles. Furthermore, it does not directly displace natural gas or ethanol sales since biodiesel is used in medium and heavy-duty trucks rather than light-duty vehicles.

It is in the best security interest of our Nation to reduce our reliance on foreign energy suppliers. We can no longer afford to be subject to the whims of the foreign cartels such as OPEC which successfully manipulate the price of oil.

Added to these threats posed by OPEC and the instability of the Middle East are the even more threatening possibilities we face in other parts of world. Developments in many regions of the world where much of today's energy supplies are obtained—West Africa, the Caspian Sea, Indonesia, and on and on—clearly serve notice that our Nation cannot continue to depend on these areas for our future energy needs. These events make it even more pressing than ever that we proceed forward with developing our own domestic alternative energy resources.

By allowing fleets to meet 100 percent of their AFV requirement by using biodiesel, we will take a positive step toward moving this country away from dependence on petroleum-based motor fuels and toward alternative motor fuels.

The time to start investing in renewable energy sources is now. We have taken far too long to get to this point. There are many other nations way ahead of us in using these types of alternative fuels. I urge my colleagues to support our amendment to work hard on being able to present the realities of the fact that we are there. We have products now that we can be using. If we can provide the incentives and the abilities to make sure the marketplace can become ready for these alternative fuels, we are on the cusp of finding the solution.

I appreciate the support of my colleague in working with me. I look forward to a very positive reception of our amendment with the wonderful cosponsors we have. I know the Senate will be ready to move forward on this one. I appreciate all the work Senators have put into this alternative fuels effort.

I yield the floor.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I particularly appreciate the great work of my colleague from Arkansas. There is a lot of rivalry across the border, but on this one, the Senators from Arkansas and Missouri and many other States are working together.

I have just come from a very exciting session outside with the National Biodiesel Board Assistant Secretary, J. D. Penn; USDA; Congressman HULSHOF; members of the Missouri Soybean Merchandising Council talking about the benefits that soy diesel can provide to our environment, to reducing our dependence on imported oil, and to strengthening our rural economy.

They had a wonderful old soy diesel truck that the Missouri Soybean Council first brought here 10 years ago. That baby is still running, still smells sweet. You follow that diesel down the road, you don't get smoke coming out of it that smells like burning tires. Think of french fries. It is not only cleaning up the air, but it is using a renewable fuel. We have been talking about renewable fuels; they are doing it. They are doing it in my State and Arkansas and Illinois and Iowa and Delaware, I gather. It works.

This is a fuel that doesn't require special kinds of newfangled engines. Right now the B–20 blend is being used in major bus fleets. The St. Louis Bi-State Transit Authority has agreed to use 1.2 million gallons of soy diesel in a B–20 blend. We are working with the Kansas City Area Transit Authority, which covers Kansas and Missouri, to use it. We have worked with Ft. Leonardwood in Missouri to train soldiers using soy diesel for battlefield smoke rather than petroleum diesel. Again, the real problem is that soldiers get hungry when they smell that soy diesel smoke.

I think it is particularly useful because studies have shown there are dangers from using regular diesel in school buses, and soy diesel can significantly clean up the emissions from buses as well.

What we are doing is very simple, as my good friend from Arkansas has already pointed out. We are just changing a qualification or limitation that was in the 1992 Energy Policy Act. We have not seen the progress we expected under that act, also known as EPACT, to displace 10 percent petroleum by 2000 and 30 percent by 2010.

One of the problems is the limitations on the use of biodiesel or soy diesel because they don't require alternative-fueled vehicles. Incidentally, the CAFE amendment proposed last week by the Senator from Michigan and myself and adopted on the energy bill specifically mandated that the alternative-fueled vehicles that are mandated in the existing act actually use alternative fuels. And soy diesel is one way of getting there.

What we believe is important under the Energy Policy Act is to allow 100 percent of the usage of biodiesel to be applied toward the requirement.

Now, the fleets that are using it include the Army, Air Force, Marines, NASA, Department of Agriculture, national parks, State departments of transportation, in Missouri, Iowa, Ohio, Virginia, Maryland, and others, and public utilities, such as Commonwealth Edison, Georgia Power, Kansas City Power and Light, and Duke Energy.

These fleets have found the biodiesel fuel use option to give them more flexibility to comply with their requirements, while more directly addressing the original intent of EPACT—displacing foreign petroleum sources. These fleets, particularly public utility fleets, that are strapped for resources have urged Congress to lift the 50-percent limitation on biodiesel fuel use credits. In addition to more directly addressing the primary intent of EPACT, the biodiesel fuel use provision serves to address the secondary intent of EPACT, which is providing for cleaner air emissions.

According to Government estimates, 90 percent of heavy-duty fleet emissions come from the oldest vehicles in the fleet. New vehicles that are being purchased are much cleaner. Biodiesel offers a solution to cleaning up the emissions of older vehicles.

Lifting the 50-percent limitation on biodiesel—which does not exist for any other alternative fuel—will serve to enhance the effectiveness of the EPACT program. Biodiesel offers one of the best ways immediately to reduce our reliance on foreign petroleum through the use of our existing national infrastructure and current and future diesel technology.

I would love to discuss the benefits of soy diesel at great length. If anybody has any questions, the Senator from Arkansas or I will be more than happy to discuss them. But given the fact that we do have many contentious provisions and amendments to discuss, we will limit our comments, unless somebody wants to get into a debate. We welcome the opportunity to provide more information on it.

With that, I simply urge all of my colleagues to support this amendment. It has tremendous bipartisan support in the heartland. I think, as more people look at it, this should be overwhelmingly accepted. I urge colleagues to look at it and ask questions and support the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma is recognized.

Mr. NICKLES. Mr. President, I am going to make a few comments concerning the Senate and then the energy bill that is pending, and maybe a couple of amendments that are pending as well.

I am very concerned, as an individual Senator who has been in the Senate for 22 years, about how the Senate is working—or, in some cases, not working. I am concerned about the pending bill and the fact that I have served on this committee for 22 years and I didn't have a chance to offer an amendment. I am also concerned about how the bill has grown. It started out at 400-some pages. The second bill, dated February 26, had 539 pages. The bill we have pending, dated March 5, has 590 pages.

This bill never went through committee and didn't have a committee markup. I didn't have a chance to amend it, to read it, or to improve it. The full Senate failed to have this opportunity as well. Twenty members of the Energy Committee didn't have that chance, either. So we now face the situation where we are amending on the floor; we are significantly rewriting it on the floor. There were provisions that didn't belong in the bill in the Energy Committee on CAFE. That belonged in the Commerce Committee, but they didn't mark it up there, either. We had to amend that on the floor and fight that battle. Those provisions on CAFE standards would have impacted every automobile user, consumer, every person in the country. It would have made automobiles less safe, and it would have cost thousands of jobs and thousands of dollars per automobile. But we didn't have that debate in committee. We didn't have a committee report to say what the impact would be.

We didn't have the committee report dealing with the energy bill, either. We didn't have minority views and majority views, which we usually do. Some people said it had been done before. It hasn't been done in the Energy Committee. I have been on the committee for 22 years. Every major substantive piece of legislation in the Energy Committee has been bipartisan and has gone through the legislative process. Deregulation of natural gas comes to mind. That was a very complicated, comprehensive bill. We had both Democrat and Republican support.

But we didn't take these steps this case. We find ourselves rewriting this, discussing it, and educating Members on the floor.

I noticed that Senator DASCHLE, when he was referring to the Judiciary Committee, made this quote in a news conference on March 6. I have it behind me:

> If we respect the committee process at all, I think you have to respect the decisions of every committee. I will respect the wishes and the decisions made by that committee, as I would any other committee.

Then he said on March 14: Committees are there for a reason, and I think we have to respect the committee jurisdiction, responsibility, and leadership, and that is what I intend to do.

That statement, I happen to agree with. It is just that we did not agree with it when it came to the energy bill. So we have been wrestling with this bill now for a couple of weeks. We may well spend another couple of weeks on it. It is because we didn't do it in the committee. And so for the majority leader to say he respects the process, we didn't respect the committee process when we dealt with the energy bill,

unfortunately. We didn't respect it when we dealt with CAFE standards, which would have gone through the Commerce Committee. Now we are not respecting the committee process in dealing with the Feinstein amendment. That didn't go through the Banking Committee or the Agriculture Committee.

I happened to listen to the debate by Senators GRAMM, ENZI, and FEINSTEIN. I concur that most Members don't know much about the issue. I put myself in that majority group of Members. When you start talking about derivatives and futures contracts, and so on, maybe your eyes glaze over and you say: Doesn't somebody else work on this issue? We are going to be deciding that on the floor of the Senate. We never had a committee hearing on Senator FEINSTEIN's proposal. Senator GRAMM says it has impacts of $75 trillion. That is a lot of money. That is a lot of contracts. That is a lot of issues.

Should we not have committee hearings on that in the Agriculture Committee, in the Banking Committee, where they deal with that issue and where they have expertise? I would think so.

We are going to be dealing with an issue of renewables. Senator KYL has an amendment on renewables. We had an amendment last week that Senator JEFFORDS offered, 20-percent renewables. He ended up getting 30-some votes. Did the renewable section pass out of committee? No. But we are going to pass a law that is going to mandate that every utility in the country has to come up with renewables of 10 or 20 percent? What is the impact of that? What does that mean to consumers on their utility bills? Is it even achievable?

What do you mean by renewables? When we look at the underlying definition that is in the Daschle-Bingaman bill, renewables doesn't count hydro. Most of the definitions I have seen of renewables count hydro. According to this amendment, we are not going to count it as a renewable. We are going to count solar, wind, biomass, and a few other things; and if you add that together, that is about 1.5 percent of our electricity production. We are going to waive a law, or a bill and say, bingo, you have to be at 10 percent, or maybe 20? What does that mean? How much does that cost?

Senator KYL has an amendment saying, hey, let's tell the States, do consider renewables, give them flexibility on how to do it, and count hydro when you define renewables, as does everybody else in the world. Every State counts hydro as a renewable. But it is not in this bill. Wow. That little amendment, the 10-percent mandate for States to have renewables—I have been trying to figure out how much it costs. I have checked with experts. I get one figure of $88 billion over 10 or 15 years. Other people are speculating since it simply depends on which renewable you are talking about. Is it hydro or wind? We subsidized some renewables—a lot.

Wind energy right now has a tax credit. I think it is about 1.7 cents per kilowatt. That is the equivalent of 40-some percent of the wholesale cost of electricity. That is a pretty large subsidy.

I guess wind energy could take up the balance. Can we take wind energy from .2 percent of energy production up to 10 percent? I do not know. We are going to have hundreds of square miles of windmills if we do. Is that the right thing for our country to do, and can we do it without massive subsidies—we being the taxpayers—paying a significant portion of the energy cost? I do not know, but we are getting ready to vote on an amendment in the next day or two that will mandate this 10 percent. Is it going to be wind energy? Is it going to be solar? A lot of people are getting ready to vote and do not have a clue how much it will cost or if it is even achievable.

I support Senator KYL's amendment, and I hope my colleagues will as well.

The Senate is not working and I am critical of the Energy Committee and I am offended because as a member of the Energy Committee, as someone who has invested a lot of time on that committee, for me not to have any input on the composition of this bill is offensive to the process.

I read Senator DASCHLE's comments. He said: I will respect the wishes and the decisions made by that committee as I would with any other committee.

The wishes of the committee were not respected when it came to the energy bill. We did not get that chance. We disenfranchised I know every Republican member on the committee.

I have only been on the Energy Committee 22 years. Senator MURKOWSKI has been on it 22 years. Senator DOMENICI has been on it 26 years, maybe longer, plus or minus. That is a lot of years not to have a chance to offer an amendment during a committee markup.

When Senator DASCHLE said he was going to respect the wishes and decisions of the committee, he did not respect the wishes of the committee when it came to this major legislation, one of the most important pieces of legislation we will consider all year long. He did not respect the wishes of the Commerce Committee when it came to CAFE standards because they did not get to mark up the bill. They did not get to vote on it.

And I look at some of the other committees. It came to the Agriculture Committee. The Agriculture Committee did report out a bill but, for the first time in my Senate career, it reported out a bill on an almost straight party vote. I think there was one member who crossed over. The committee came up with a very partisan agriculture bill for the first time.

In addition, we had a partisan Finance Committee bill. We did not get the stimulus package through. The Senate is not working.

The Judiciary Committee last week failed to approve the nomination—or send to the floor—of Judge Pickering who is now a district court judge. It is the first time in 11 years that the Judiciary Committee defeated a nominee in committee, and 11 years ago is when the Democrats controlled the Senate.

I know I heard my colleagues, the leaders on both sides, say: We want to treat all judicial nominees fairly and give them appropriate consideration. Circuit court nominees have not been treated fairly by the Democrats who are running the Judiciary Committee today. They have not been treated fairly.

There are 29 people President Bush has nominated for circuit court nominees. They have been nominated to be on the circuit court—29. Seven have been confirmed; two or three of those were Democrats nominated by the previous administration supported by Democratic colleagues. We have done 7 out of 29. One was defeated. We have now had a hearing on two. There are 19 who have never had a hearing—19.

There is a tradition in the Senate—maybe I should educate my colleagues—there is a tradition in the Senate that we give Presidents their nominations by and large. If there is a problem with the nomination, fine, let's hold it, discuss it and debate it, but, by and large, Presidents have the majority of their nominations through the Judiciary Committee and through the Senate in their first 2 or 3 years as President.

I have a chart that shows President Reagan in his first 2 years got 98 percent of his judges through, including 19 of 20 circuit court nominees. The first President Bush got 95 percent of his circuit court nominees, 22 out of 23. I might mention, that is when the Democrats controlled the Senate. Somebody said: No, Republicans controlled the Senate when Ronald Reagan was President. Yes, we did, but Democrats controlled the Senate when President Bush 41 was President, and he got 93 percent of his judges in the first 2 years and 95 percent of the circuit court nominees.

President Clinton in his first 2 years, with a Democratic Senate—got 19 of 22 circuit court judges, 86 percent of circuit court judges, and by the end of his second year, he got 90 percent of all of his judges confirmed. He got 129 judges. He got 100 judges confirmed in his second year.

Why all of a sudden now with President Bush we have only done 24 percent? We have done 7 out of 29 circuit court nominees—7 out of 29. That is pathetic. President Bush nominated nine on May 8 of last year. Nine. We have disposed of one—that was Judge Pickering—and seven were confirmed out of that nine. Eight have not even had a hearing.

Miguel Estrada, a Hispanic who immigrated to this country from Honduras when he was a young man—he immigrated, frankly, with nothing. He

could not even speak English. He graduated with honors from Harvard. He has argued 16 cases before the Supreme Court, and he has not even had a hearing. John Roberts argued 36 cases before the Supreme Court. He was nominated in May of last year. He has not even had a hearing.

We have only dealt with one-fourth of the circuit court nominees, while the three previous Presidents had 90-plus percent confirmed. 90-plus percent circuit court nominees in the three previous administrations, Democrats and Republicans, were confirmed, and now we have only confirmed 7 out of 29—that's one out of four.

That is not working. The Senate is not working. This institution I love is not working. The Energy Committee did not work. It did not mark up a bill. So now we have to rewrite the bill on the floor.

The Commerce Committee did not work. The Agriculture Committee is becoming partisan. We have never had a partisan agriculture bill in decades. The Finance Committee could not even report out a stimulus package. Eventually, we took half a package from the House and adopted it when in the past the tradition of the Senate has always been, whether you are talking about Bob Dole, Bob Packwood, or Russell Long, we had bipartisan tax bills almost every time, and we could not get it done this year.

Mr. President, I am critical of the process. I happen to love this institution. I want the Senate to work. I want Members to do what Senator DASCHLE said: Have the committee process work. It is not working, and it is not working in committee after committee.

I urge my colleagues that we lower the partisan rhetoric and do our job in committees and respect Members. I will also make a comment on Judge Pickering. It is unconscionable to me to believe that this fine judge was defeated. It is unbelievable to me to think Members would not confirm a nominee who is a close friend of the Republican leader.

I cannot imagine that we would do something like that to the Democratic leader. I cannot imagine that ever happening to Bob Dole. I cannot imagine it happening to George Mitchell. I cannot imagine it happening to Howard Baker.

The Senate has really stooped, in my opinion, pretty low. Maybe in a way I am afraid we are trespassing where we should not go. It is very important that we step back and we figure out what is the right way to legislate, what is the right way to consider nominees. If people are nominated to be a district court judge or a circuit court judge, they are entitled to a hearing, they are entitled to a vote whether Democrats are in charge of the Senate or Republicans are in charge of the Senate.

I am not saying we did it perfect either when the Republicans were in charge. I do think, by and large, we ought to let people have a vote certainly the first 2 and 3 years of a President's term. Maybe in the last year of their term it is understood they do not get a lot of judges: Let's wait and see how the election goes. Particularly if the judges are nominated in the last few months of a Presidential term, there are legitimate reasons to wait until after the election.

Let us come up with a little better understanding. We should not hold people in limbo and maybe hold careers in jeopardy or on hold when we have outstanding people who are willing to serve, and in many cases at a great financial sacrifice. The President has nominated good people and they cannot even get a hearing? Something is wrong. Something is wrong on the Sixth Circuit Court when they only have 8 out of 16 positions filled. In other words, they have half that circuit court vacant. Something is wrong. The Senate is not working.

President Bush has nominated several outstanding nominees to the Sixth Circuit and they should have a chance to have a hearing and to be voted on. I am confident that the overwhelming majority would be confirmed.

I saw Senator DASCHLE's comments when he said we ought to follow the Senate committee process. I agree with that. It is unfortunate we have not been doing it. What happened last week in the Judiciary Committee, where Judge Pickering was defeated, I hope people do not go down that road. Right now the Democrats are in control, but barely. My guess is Republicans—I have been in the Senate where the leadership has changed. I think this is the fourth time, and I am sure I am going to be in the Senate where it is going to change again, and maybe again and again. Who knows?

So people should recognize they can be in the majority, they can be in the minority. So to treat nominees the way they are being treated now, because they happen to be a circuit court nominee, is not right. I will also tell my colleagues on the Democrat side I will make the same statement when Republicans are in control. I do not think we should hold people indefinitely and not give them hearings. I do not think we should confirm 24 percent of the circuit court nominees. I think that is pathetic, and we need to do better. We need to do much better, and I hope and expect that the Senate will.

I ask unanimous consent that short biographies of the eight nominees who were nominated on May 9 for the circuit court of appeals be printed in the RECORD.

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

MAY 9TH NOMINEES

JOHN G. ROBERTS, NOMINEE TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Mr. Roberts is the head of Hogan & Hartson's Appellate Practice Group in Washington, D.C. He graduated from Harvard College, summa cum laude, in 1979, from the Harvard Law School, where he was managing editor of the Harvard Law Review. Following graduation he clerked for Judge Henry J. Friendly of the United States Court of Appeals for the Second Circuit, and the following year for then-Associate Justice William H. Rehnquist. Following his clerkship, Mr. Roberts served as Special Assistant to United States Attorney General William French Smith. In 1982 President Reagan appointed Mr. Roberts to the White House Staff as Associate Counsel, a position in which he served until joining Hogan & Hartson in 1986.

Mr. Roberts left Hogan & Hartson in 1989 to accept appointment as Principal Deputy Solicitor General of the United States, a position in which he served until returning to the firm in 1993. Mr. Roberts has presented oral arguments before the Supreme Court in more than thirty cases.

MIGUEL ESTRADA, NOMINEE TO THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

Miguel A. Estrada is currently a partner in the Washington, D.C. office of Gibson, Dunn & Crutcher LLP, where he is member of the firm's Appellate and Constitutional Law Practice Group and the Business Crimes and Investigations Practice Group. Mr. Estrada has argued 15 cases before the U.S. Supreme Court. From 1992 until 1997, he served as Assistant to the Solicitor General of the United States. He previously served as Assistant U.S. Attorney and Deputy Chief of the Appellate Section, U.S. Attorney's Office, Southern District of New York.

Mr. Estrada served as a law clerk to the Honorable Anthony M. Kennedy of the U.S. Supreme Court from 1988–1989, and to the Honorable Amalya L. Kearse of the U.S. Court of Appeals for the Second Circuit from 1986–1987. He received a J.D. degree magna cum laude in 1986 from Harvard Law School, where he was editor of the Harvard Law Review. Mr. Estrada graduated with a bachelor's degree magna cum laude and Phi Beta Kappa in 1983 from Columbia College, New York. He is fluent in Spanish.

TERRENCE BOYLE, NOMINEE TO THE UNITED STATES COURT OF APPEALS FOR THE 4TH CIRCUIT BIOGRAPHY

Terrence Boyle is the Chief Judge of the United States District Court for the Eastern District of North Carolina. He was appointed to the bench in 1984 and was unanimously confirmed by the Senate. Chief Judge Boyle began his career working in Congress, where he was Minority Counsel for the House Subcommittee on Housing, Banking & Currency from 1970 through 1973. He later served as the Legislative Assistant for Senator Jesse Helms before going into private practice in 1974 in the North Carolina firm of LeRoy, Wells, Shaw, Hornthal & Riley.

Since joining the federal bench Chief Judge Boyle has been appointed twice by Chief Justice Rehnquist to serve on Judicial Conference committees. From 1987 to 1992 he served on the Judicial Resources Committee, and from 1999 to the present he has served as a member of the Judicial Branch Committee. Chief Judge Boyle has sat by designation on the United States Court of Appeals for the Fourth Circuit numerous times, and has issues over 20 opinions for that court.

MICHAEL MC CONNELL, NOMINEE TO THE UNITED STATES COURT OF APPEALS FOR THE 10TH CIRCUIT BIOGRAPHY

He is currently the Presidential Professor at the University of Utah College of Law. McConnell received a B.A. from Michigan State University (1976) and a J.D. from the University of Chicago (1979), where he was Order of the Coif and Comment Editor of the University of Chicago Law Review. Upon graduation, he served as law clerk to Chief Judge J. Skelly Wright on the United States

Court of Appeals for the District of Columbia Circuit, and then for Associate Justice William J. Brennan, Jr., on the United States Supreme Court.

Professor McConnell was Assistant General Counsel of the Office of Management and Budget (1981–83), and Assistant to the Solicitor General (1983—85), after which he joined the faculty of the University of Chicago Law School in 1985. He has published widely in constitutional law and constitutional theory, with a speciality in the Religion Clauses of the First Amendment. He has argued eleven cases in the United States Supreme Court. He has served as Chair of the Constitutional Law Section of the Association of American Law Schools, Co-Chair of the Emergency Committee to Defend the First Amendment, and member of the President's Intelligence Oversight Board.

PRISCILLA OWEN, NOMINEE TO THE UNITED STATES COURT OF APPEALS FOR THE 5TH CIRCUIT

Priscilla Owen is currently a Justice on the Supreme Court of Texas. Prior to her election to that court in 1994, she was a partner in the Houston office of Andrews & Kurth, L.L.P. where she practiced commercial litigation for 17 years. She earned a B.A. cum laude from Baylor University and graduated cum laude from Baylor Law School in 1977. She was a member of the Baylor Law Review. Thereafter, she earned the highest score in the state on the Texas Bar Exam.

Justice Owen has served as the liaison to the Supreme Court of Texas' Court-Annexed Mediation Task Force and to statewide committees regarding legal services to the poor and pro bono legal services. She was part of a committee that successfully encouraged the Texas Legislature to enact legislation that has resulted in millions of dollars per year in additional funds for providers of legal services to the poor.

JEFFREY SUTTON, NOMINEE TO THE UNITED STATES COURT OF APPEALS FOR THE 10TH CIRCUIT

Mr. Sutton is currently a Partner in the firm of Jones, Day, Reavis & Pogue of Columbus, Ohio. After graduating first in his class from the Ohio State University College of Law, Mr. Sutton served as a clerk to the Honorable Thomas Meskill, United States Court of Appeals, Second Circuit. The next year he clerked for United States Supreme Court Justices Lewis F. Powell, Jr., and Antonin Scalia. Mr. Sutton has argued nine cases and filed over fifty merits and amicus curiae briefs before the United States Supreme Court, both as a private attorney and as Solicitor for the State of Ohio. In his role as Solicitor between 1995 and 1998, Mr. Sutton oversaw all appellate litigation on behalf of the Ohio Attorney General, as well as state litigation at the trial level.

For the past eight years Mr. Sutton has held the post of adjunct professor of law at Ohio State University College of Law, teaching seminars on the constitutional law. In addition, Mr. Sutton teaches continuing legal education seminars on the United States and Ohio Supreme Courts to Ohio state court judges and develops curriculum for appellate judges on behalf of the Ohio State Judicial College. Mr. Sutton is a member of the Board of Directors of The Equal Justice Foundation and of the National Council of the College of Law, and is a four-time recipient of the Best Briefs award by the National Association of Attorneys General.

DEBORAH COOK, NOMINEE TO THE UNITED STATES COURT OF APPEALS FOR THE 6TH CIRCUIT

Justice Deborah Cook was elected to the Ohio Supreme Court in 1994 for a six-year term. She was reelected in November 2000. She served as a Judge of the Ninth District Court of Appeals in Ohio for four years prior to taking the Supreme Court bench. Following graduation from Law School until her election to the Court of Appeals, Justice Cook was a member of Akron's oldest law firm, Roderick Linton, and the firm's first female partner. Justice Cook received her Bachelor of Arts and her Juris Doctor degrees from the University of Akron. In 1996 the University of Akron presented her with an Honorary Doctor of Laws Degree. Justice Cook was president of Delta Gamma and president of her senior class at the University of Akron.

Justice Cook is a recipient of the Delta Gamma National Shield Award for Leadership and Volunteerism and the Akron Women's Network 1991 Woman of the Year. In 1997 she received the University of Akron Alumni Award. She and her husband founded a college scholarship program benefitting 23 underprivileged children from the 4th grade through graduation, with the guarantee of four years' college tuition. She has been called by the Cincinnati Post a ''clear-headed, intellectually rigorous jurist with a good grasp of the big picture . . . She has served with distinction.'' (October 8, 2000).

DENNIS SHEDD, NOMINEE TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Dennis Shedd has been a judge for the United States District Court for South Carolina since 1990. Judge Shedd graduated Phi Beta Kappa from Wofford College in 1975, received a juris doctor from the University of South Carolina in 1978, and received a Masters of Laws from Georgetown University in 1980. From 1978 through 1988, Judge Shedd served in a number of different capacities in the United States Senate including Counsel to the President Pro Tempore and Chief Counsel and Staff Director for the Senate Judiciary Committee. Upon leaving the Senate staff in 1988, Judge Shedd became of counsel in the firm of Bethea, Jordan & Griffin while simultaneously maintaining his own Law Offices of Dennis W. Shedd.

From 1989 to 1992, Judge Shedd was an adjunct professor of law at the University of South Carolina. While serving in his current capacity as a United States District Court Judge for the District of South Carolina, Judge Shedd has been a member of the Judicial Conference Committee on the Judicial Branch and its subcommittee on Judicial Independence. Judge Shedd is actively involved in community activities in his home of Columbia, South Carolina including his participation helping to organize and promote drug education programs in the local public schools.

Mr. NICKLES. I yield the floor.

The PRESIDING OFFICER (Mr. JOHNSON). The Senator from Arizona.

Mr. KYL. Mr. President, I ask unanimous consent to lay aside the pending business for the purpose of sending an amendment to the desk.

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

AMENDMENT NO. 3038 TO AMENDMENT NO. 3016

Mr. KYL. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Arizona [Mr. KYL], for himself, Mr. MILLER, Mr. WARNER, and Mr. MURKOWSKI, proposes an amendment numbered 3038 to amendment No. 3016.

In lieu of the matter proposed to be inserted, insert the following:

(a) REQUIREMENT.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(14) GREEN ENERGY.—

''(a) Each electric utility shall offer to retail consumers electricity produced from renewable sources, to the extent it is available.

''(b) Renewable sources of electricity include solar, wind, geothermal, landfill gas, biomass, hydroelectric and other renewable energy sources, as may be determined by the appropriate state regulatory authority.''.

(b) PRESERVATION OF STATE AUTHORITY.—Nothing in this Act affects the authority of a State to establish a program requiring that a portion of the electric energy sold by a retail electric supplier to electric consumers in that State be generated by energy from any particular type of energy.

Mr. KYL. Mr. President, I have laid down an amendment to the underlying Bingaman amendment, which I think sets up a classic choice for our colleagues. We have been selling this energy bill and especially the electricity section of it as promoting competition, the market economy, and deregulation.

The underlying Bingaman bill is exactly the opposite of deregulation. It is reregulation by the U.S. Government in a new and extraordinary way. The amendment I have laid down is an attempt to move forward with deregulation, keeping the Federal Government out of the business of telling Americans what they have to do.

The Bingaman amendment reminds me of the old Soviet-style command economy, where the Soviet government told the people of Russia what it was going to have produced and they had to buy it. It did not allow choice of production or consumption. The United States understands that is a road to ruin, but the Bingaman amendment says the U.S. Government is going to mandate, to require, to compel that 10 percent of the electricity sold at retail in this country be produced with certain fuels, certain politically correct fuels.

They have been described as renewables, but not all renewables count because some renewables are more equal than others, to borrow the phrase from the animal farm. No, only those politically correct renewables will count toward the requirement that 10 percent of the electricity the people of this country buy in the future be from this particular energy source.

It does not matter how much it costs. It does not matter what good it does. It does not matter how hard it is to do. It does not matter how discriminatory it is among different people within the country. None of that matters. What matters is that people in Washington know best, and so the U.S. Government is going to tell people how much electricity they have to buy from these unique sources of fuel: Biomass, wind, solar, and geothermal. Other renewables such as hydropower, for example, do not count. There is something wrong with hydropower. That is the underlying Bingaman amendment.

The Kyl amendment says let us leave it up to the States. Fourteen States already require some percentage production of electricity with renewables, as

defined by the States. They are moving toward the production of power through this so-called green energy, and that is fine. My own State has a requirement that 2 percent of the energy sold at retail be produced in this fashion, all the way up to the State of Maine requirement that 30 percent be produced through this kind of renewable fuel, and that is fine.

What the Kyl amendment says is each electric utility shall offer to retail consumers electricity produced from renewable sources, to the extent it is available. Then it defines renewable sources to include solar, wind, geothermal, landfill gas, biomass, hydroelectric, and any others as the State may determine are appropriate. Then it says that nothing in the act affects the authority of the State to establish a program requiring that a portion of the energy source come from renewables. So we require the States to take a look at it, but we do not tell them what they have to do because I do not think we know best.

I know the conditions in the State of Arizona are a lot different from the conditions in New York, for example. I do not think that New Yorkers would be able to produce much solar electrical power, but we can sure do that out in Arizona.

I heard my colleague from North Dakota, Mr. DORGAN, say his State of North Dakota had been defined as the Saudi Arabia of wind. I say wonderful. Then let them produce electricity through wind power. I am not stopping them. Senator BINGAMAN is not stopping them from doing that. The State of North Dakota can produce 100 percent of its power from wind generation if it wants.

It is interesting to me that North Dakota is not in that list of States that requires any production of retail electricity from renewable fuels—Arizona, Connecticut, Hawaii, Illinois, Iowa, Maine, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, Pennsylvania, Texas, Wisconsin. Where is the Saudi Arabia of wind? It is not here.

The people of North Dakota who have all of this resource must have some reason why they are not taking advantage of it. And since we are providing a tax credit of a billion dollars a year to those who produce electricity through these renewables, one would think that would be a big incentive. As a matter of fact, that is how we are getting the renewable produced energy in the country today. We provide a carrot, a big tax credit. We just extended it for 2 more years in this bill at a cost of $2 billion. So there is a big incentive to produce electricity with taxpayer subsidy.

As I recall, the subsidy is something like 1.7 cents per kilowatt hour for wind generation, which is about 40 percent or so of the cost of producing the power. That is a pretty generous subsidy. So if a State such as North Dakota has that much capacity to produce it, then why does it not produce it? Why does the Senator from that State say, look, we have decided, or we have not decided, to require this in our own State, but we are going to require it for everybody else and then maybe it will work for us.

Maybe what they are saying is we can have a lot of production in our State if everybody else has to buy it from us. Maybe that is it.

As a matter of fact, it transpires that there are a couple of utilities that apparently have access to a lot of wind generation, and they are lobbying pretty hard to get this bill passed. The reason? They are going to get the U.S. Government to tell everybody else they have to buy power from these particular producers.

We have always been against oligarchy, monopolies, in this country. Why would the U.S. Government force people to buy a particular kind of energy knowing it is only produced by a very few sets of utilities today? Talk about a windfall. I suggest the Energy Committee ought to look at this very carefully, take a little inventory of who is producing this and who is not. My guess is there are a very few, very special people who are going to benefit from this big time. I would like to know who they are. I would like to know to whom they have contributed in their campaigns. I would like to know whom they have lobbied.

There has been criticism of energy people talking to Vice President CHENEY before he came up with the administration's energy plan. I would like to know who, on behalf of these particular utilities, has talked to whom and what kind of support there is to enrich this small group of utilities that would take advantage of this particular amendment. I would like to know that.

However, we did not have any markup in the Energy and Natural Resources Committee. That was taken away from the Energy and Natural Resources Committee on which I sit. We had no opportunity to get into that. We are going to be asking some of those questions. We never had a cost-benefit analysis. We have no idea whether this is going to do any good and, if so, how much good, and how you can quantify it, but we do know how much it will cost. On the order of $88 billion, for starters. That is only until the year 2020. After that, it is $12 billion a year. Who pays? The electric customers. Is it equal for all of the electric customers in the country? No, it turns out it is not. If you are fortunate enough to be a State that can produce this renewable energy electricity, it will not cost. You get to sell credits to the States that do not produce it. They have to buy the credits. What do they get for that? Nothing. They do not get any electricity. What they get is a pass from the Federal Government from having to build those renewable energy sources themselves.

What we are doing is creating a big new market in electric credits. This is a la Enron—not producing anything but creating credits. As a matter of fact, as I read the Bingaman amendment, it is not restricted to production in the United States. In fact, I believe it is contemplated British Columbia electrical production could be imported into the United States for the credits it would be provided. As a matter of fact, I don't understand why other countries would not get into this, too. The Three Gorges Dam in China might well qualify. Since the generators have not been put in the Three Gorges Dam, that would be incremental additional electrical production by hydro—the only way you can count hydro.

Since it is not limited by the current language, as I read the amendment, what we are doing is creating a trading market in electrical renewable energy credits which might well enrich not just a few special companies in the United States but some foreign countries as well. Who pays the tab? The electrical retail consumer.

I have this challenge for my friends who think it is a wonderful idea: How will they feel when somebody runs an ad against them in their next campaign that says: Are you sick and tired of high electric energy rates? You have Senator So-and-So to thank for that because he got a bill passed that required, by the authority of the U.S. Government, your electrical retail seller to buy 10 percent of the energy from these costly renewables or, if you do not buy that, to buy the credits. The credits, of course, will cost a lot of money. As a matter of fact, these credits probably will become a very valuable commodity.

The way the Bingaman amendment works, as I understand it, the generator does not get the credits. If I have an electrical generating facility in Arizona and I decide to create a lot of solar-powered generation and I know there is a big market for electricity in California, I sell a lot of this power to California so the folks in Los Angeles can air-condition their homes or for whatever they need the power. I don't get the credit for that. The retailer in Los Angeles is the one that gets the credit for whatever renewable fuel is used in the production of that electricity.

What does that mean? First of all, if I have any retail customers myself, I will try to keep that power. Although electricity is fungible, I will somehow try to allocate it to my retail customers. But if I have extra power, what I might do is, instead of applying it to my requirement, I might simply say I have this much on the market, and I will withhold it from the market, and I will see how much it would bring on the market.

Of course, our friends from California complained about the fact that Enron and others withheld energy from the market, thus driving the cost up.

A retail seller in Los Angeles is going to need a lot of renewable power in order to meet this mandate. Where is

that company going to get the renewable power? It will have to buy it from somebody. If that electricity or those credits are withheld from the market long enough, the cost of the credits will escalate substantially. There is nothing in the bill that prevents that.

There is no regulatory regime, although I am sure once we get going, there will be a very big regulatory regime. It is fraught with potential for fraud and abuse. Once we see all of that happening, we will have to have a director of this and that, with a big bureaucracy and a lot of law enforcement and penalties in order to enforce the law so it will not be abused. We will have the Enron situations, and there will be a big hue and cry, and we will all want to prevent that, so we will establish more bureaucracy. The Soviet survival command economy will march on as we have to enforce the policy we dictate.

What are we going to do? Are we going to force people to sell the credits they have accumulated? Are we going to say they can only sell them for a certain amount of money? As I read the Bingaman amendment, there is one other place you can buy the credits. You can buy them from someone who has already produced the power or, I gather, if it is not available, you can buy it from the Department of Energy. The Department of Energy, even though it does not produce anything, would be able to sell these credits at something like 200 percent their value or 3 cents a kilowatt hour. Actually, the Federal Government might make some money on this.

Who pays the tab? The retail electric customers. Is that what this is all about: Another way to tax the American people? It kind of sounds like it to me. As a matter of fact, there are two new taxes in this legislation. One is the tax of which I just spoke, and the other is a Btu tax by any other name. Remember when we defeated the Btu tax? It was a tax on coal-fired, oil-fired, gas-fired, and nuclear production of electricity. We said: That is not fair. That is what is embodied in the Bingaman amendment and the underlying bill. We are favoring some energy sources over others.

What are the ones in disfavor, out of favor? Nuclear, coal, hydro, oil, and gas. That is how we produce about 98 percent of the power in the country today. Those are out of favor. The people who get their electricity from those sources will pay a tax to those who are willing to pay for and generate the power through the renewable fuels or who buy the credits. There will be a tremendous transfer of wealth in this country. If you live in the State of New York and New York has a hard time producing wind power or solar-powered generation, then the retail seller in New York will have to somehow acquire credits to offset the fact that you cannot generate that kind of power in New York. Who is going to pay the cost of those credits? The retail customers of the New York utilities. And to whom are they going to be paying them? They are going to be paying them to the favored States, those that actually could produce this renewable fuel energy. This is the equivalent of a Btu tax. If you are going to get your power from coal or nuclear, for example, you are going to pay a big premium. Your customers are going to have to pay because you are not producing electricity with the favored fuels.

That is wrong. This legislation is costly, it is discriminatory, it walks away from deregulation, and imposes a massive new regulation of what we can buy in this country, it is anti-American, and it also will favor the few to the cost of the many. We don't even know who those few are. They know who they are. They are lobbying for this legislation. But I suggest we better know who they are before we vote on it or this is going to come around and bite folks.

I know some of my colleagues say, Oh, I need a green vote. I need to impress my environmentalists.

I have two responses to that. Vote your conscience. Do whatever you want to do. But if you are just trying to do this to impress some environmental constituents, think about all the rest of the constituents, the ones who have to buy electricity. Do they count? They are the ones who are going to have to pay the bill. I hope they remember at election time that they are just as important as this environmental community that wants a green vote out of some of my colleagues.

Why are you willing to impose a requirement on others that they buy a particular product that one of your friends has to sell? To me that is very unfair.

This is one more thing that makes this unfair. There was a point of order that lay against part of this amendment as it pertained to a mandate on the municipalities and State-owned and co-ops and others that are the political subdivisions that generate and sell power. Because it would have required a significant expense for them, it was an unfunded mandate and would have been subject to a point of order. So Senator BINGAMAN has wisely agreed to take the mandate out as it relates to those particular sellers of power and generators of power. I think that is a good thing.

The problem is, it creates a great disparity and distinction between those generators on the one hand and the investor-owned generators and sellers on the other hand. Now we have a massive discrimination. The municipals do not have to comply but the investor-owned utilities do have to comply. To their credit, the power association for the municipals, and many of the individual municipals and political subdivisions that are currently exempted, have taken the position that the underlying Bingaman bill is still a bad proposition. It is bad on principle, regardless of the fact they do not have to comply with it now. But they are also concerned that in the end they will have to comply, that they were only removed from its provisions because a point of order lay, and that there would be an attempt later to include them in it—among other things, because it is unfair for one group of utilities to be treated one way and another group to be treated another way.

I appreciate that they have not backed off their opposition to the bill notwithstanding the fact that temporarily they are not subject to its provisions.

I note the cosponsor of my amendment to leave this to the States, the Senator from Georgia, is present. For the purpose of allowing him to comment on this for a moment, I would like to yield to him and then, when he has completed all he wants to say, regain the time so I can make some more comments. I would like to yield to my colleague from Georgia, Senator MILLER.

Mr. MILLER. I thank the Senator from Arizona.

Mr. BINGAMAN. Mr. President, I will not object to this procedure, although it is a little unusual. I would like a chance to respond to the Senator from Arizona at some point here. So I do not want him yielding time to various people around the floor for the whole afternoon. I am glad to have the cosponsor, Senator MILLER, go ahead and speak and then, when the Senator from Arizona concludes, I will expect to speak at that point.

Mr. KYL. That is certainly acceptable to me, and I appreciate the sentiment of the Senator from New Mexico. I simply saw my colleague from Georgia and wanted him to have an opportunity to interrupt my presentation.

The PRESIDING OFFICER. Is the Senator from Georgia seeking recognition in his own right?

Mr. MILLER. I ask to be recognized for up to 5 minutes to speak on the legislation.

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

Mr. MILLER. I thank the Senator from New Mexico. I will be very brief.

I rise in support of the Kyl/Miller amendment on the renewable portfolio standard. As a Governor and now a Senator, I have always been sensitive to the real-world effects of policy. I want to tell you about some of the real-world effects of the issue before us today, the issue of renewable fuels.

I commend the majority leader and the Senator from New Mexico for including the subject of renewable fuels in the debate on the comprehensive energy bill. I think it is very important for us to be able to enjoy the comfortable life we all expect and still leave a clean planet to our children and our grandchildren. Using renewable fuels helps our society to fulfill these goals.

But when I read the original provisions on renewable fuels in S. 517, they give me pause. I understand Senator

BINGAMAN's intent in putting a renewable standard in this bill. I think that is good. With all due respect, however, I believe he is going about it in the wrong way.

Perhaps it is because of my previous life, but I trust State governments. I trust the people who run them, and I think we need to trust the States to create a renewable standard that meets both their needs and their capabilities. We do not need to hand them an expensive Federal standard that they will not be able to meet.

Fourteen States already have renewable programs in place, and this amendment would preempt them. It would be saying to them: We are smarter. We know better.

States would be forced to pass renewable legislation to meet conditions mandated by the Federal Government. I don't think that is how it should work.

These blanket conditions do not take into account the needs and requirements of each individual State, and they are different. What works in Georgia might not work in New Mexico, and vice versa.

My State of Georgia, I am proud to say, has been a leader in the production of reliable low-cost energy. If the underlying amendment is enacted, consumers in Georgia could end up paying for credits to subsidize renewables in other parts of the country. Georgia would be forced to pay for a benefit that it will never receive, and I do not think that is right.

In my State of Georgia, the Governor has commissioned an energy task force to examine current and future needs for energy generation in the State. This will include a formal study and recommendations for how to use renewable fuel sources, and how to best take advantage of Georgia's available natural resources.

The task force will also assess the demand for renewable energy to determine if the cost and benefit will be supported by electricity users in the State. These are the people who know and understand Georgia's energy needs and capabilities. These are the people who should be in charge of regulating Georgia's renewables. That is why Senator KYL and I have introduced this amendment. That is why I urge my fellow Senators to support it. Our amendment encourages the use of renewable fuels, but it lets the States decide how to do this.

This Nation can attain the goal of cleaner energy, but we must do it in the right way. We must let the States decide for themselves the level of renewable fuel that works best for each of them.

Mr. MURKOWSKI addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. KYL. I would like to say to the Senator from Alaska, I have a couple more points I want to make before I conclude as does, I know, Senator BINGAMAN.

I ask unanimous consent to have printed in the RECORD numerous letters in support of the Kyl amendment.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AMERICAN PUBLIC POWER ASSOCIATION,
Washington, DC, March 19, 2002.

Hon. JON KYL,
Senate Hart Building,
Washington, DC.

DEAR SENATOR KYL: On behalf of the American Public Power Association (APPA), an association representing the interests of more than 2,000 publicly owned electric utility systems across the country, I would like to express support for your amendment regarding renewable portfolio standards (RPS) which is expected to be offered during consideration of S. 517, the Energy Policy Act of 2002.

While APPA has consistently supported efforts to expand the use of renewable energy, we nevertheless oppose the use of federal mandates as a mechanism to achieve that goal. APPA has always maintained that decisions of this type are best made at the local level.

Your amendment would shift the RPS program to Section 111(d) of the Public Utility Regulatory Policies Act of 1978. This would, in effect, remove the federal mandate and leave decisions related to a RPS to the discretion of State and local regulatory bodies. Further, your amendment preserves the ability of States and local governing bodies to create and implement their own renewable energy programs. This will enable a balanced approach, which takes into account the unique and diverse characteristics of regions and customer bases, to promoting renewable energy sources. For these reasons APPA supports your amendment.

While APPA continues to have major concerns with the current language in Title II—Electricity of the bill, I commend you for taking a leadership role on this critical issue.

Sincerely,

ALAN H. RICHARDSON,
President & CEO.

NATIONAL ASSOCIATION OF MANUFACTURERS,
Washington, DC, March 14, 2002.

Hon. JON KYL,
U.S. Senate, Senate Hart Office Building, Washington, DC.

DEAR SENATOR KYL: On behalf of the National Association of Manufacturers and the 18 million people who make things in America, I urge you to oppose federal mandated renewable portfolio standards, and support the amendment to be offered by Senator Jon Kyl (R–AZ) to the Energy Policy Act of 2002 (S. 517). The NAM represents 14,000 members (including 10,000 small and mid-sized companies) and 350 associations serving manufacturers and employees in every industrial sector and all 50 states.

The NAM will consider any votes that may occur on the renewable portfolio standards as possible Key Manufacturing Votes in the NAM Voting Record for the 107th Congress. The NAM strongly urges you to support the renewable portfolio amendment that will be offered by Senator Kyl, and oppose the amendments to continue the federal mandates (using different levels) that will be offered by Senator Jeff Bingaman (D–NM) and Senator James Jeffords (I–VT).

Now is not the time to raise electricity rates by mandating construction of renewable (mostly wind) technologies to generate electricity—mandates that may not be achievable and may threaten electricity reliability.

A one-size-fits-all national standard is not in the best interests of the economy and energy security. States that do not have adequate wind resources, or have already invested heavily in renewable energy that will not be counted toward meeting the mandates, will suffer disproportionately under the Jeffords and Bingaman amendments.

Senator Kyl's amendment will encourage the various states to tailor renewable portfolios to meet the needs and wishes of their citizens, instead of having the federal government dictate which energy sources each state must use to generate electricity.

Congressionally mandated renewable portfolio increases will have negative consequences for manufacturers and consumers, while doing little to address our nation's energy security goals. As the manufacturing sector struggles out of its 18-month recession, it is vital that the Senate help—not hurt—America's economy.

The nation needs a balanced energy policy that will serve as the foundation for economic growth. Please support Senator Kyl's amendment to eliminate the federal renewable mandate, which will dramatically improve S. 517 and help to further that goal.

Sincerely,

MICHAEL E. BARODY,
Executive Vice President.

MARCH 5, 2002.

Hon. JON KYL,
U.S. Senate, Senate Hart Office Building, Washington, DC.

DEAR SENATOR KYL: We are writing to express our deep concern over the economic impact of the renewable electricity portfolio mandates contained in the Substitute Amendment (the Energy Policy Act of 2002) to S. 517. This renewable portfolio standard would require that 10 percent of all electricity generated in 2020 must be generated by renewable facilities built after 2001. The renewable portfolio standard would become effective next year, and the amount of renewable generation required would increase every year between 2005 and 2020. While we believe that renewable sources of generation should have an important, and growing, role in supplying our electricity needs, the provisions contained in the Substitute Amendment are not reasonable and cannot be achieved without causing dramatic electricity price increases. This in turn would have the unintended consequence of reducing the competitiveness of American businesses in the global economy and, thereby, reducing economic growth and employment.

Today, according to the Energy Information Administration, non-hydro renewables placed in service over past decades make up only about 2.16 percent of the total amount of electricity generated in the United States. However, even this modest existing renewable capacity will not count under the Substitute Amendment toward satisfying the renewable portfolio requirement. Generally, under that Amendment, renewable facilities that can be used to meet the 10 percent minimum must be placed in service in 2002 or thereafter. Therefore, compliance with the Substitute Amendment's 2.5 percent renewable mandate for 2005 would require doubling the amount of non-hydro renewables that we now have in just three years—even though it took us more than 20 years to get to where we are today.

In addition, because the Substitute Amendment requires that 10 percent of all electricity generation, not capacity, must come from renewables, vast numbers of renewable electricity-generating facilities will have to be built. Wind energy, perhaps the most promising non-hydro renewable technology, operates effectively only between 20 percent to 40 percent of the time. Solar is also intermittent. Therefore, the actual

amount of newly installed capacity needed to generate enough electricity to meet the Daschle Amendment's requirements could well exceed 20,000 negawatts by 2005. To put this into context, according to the American Wind energy Association, we currently have less than 5,000 megawatts of installed wind capacity in the United States.

Simply imposing an unreasonably large, federally mandated requirement to generate electricity from renewables will not guarantee that enough windmills and other renewable facilities can be built on schedule; that the wind (or sun or rain) will cooperate; or that the generating costs will be as low as would be the case from a more diverse, market-dictated portfolio of conventional, as well as renewable and alternative fuels. If retail supplies do not comply with the mandate, they would face a 3 cent per kilowatt hour civil penalty. Some may suggest that this penalty would operate as a ''cap'' on the inevitable run up of electricty costs under the Amendment. Even if this penalty were effective at limiting skyrocketing electricity costs—and experience with similar ''penalties'' indicates that it will not—the penalty still would constitute an almost doubling of current wholesale electricity prices for renewable power. Clearly, electricity rates will substantially increase if the Substitute Amendment becomes law.

The federal government's past record in choosing fuel ''winners and losers'' is dismal. The Powerplant and Industrial Fuel Use Act of 1978, which prohibited the use of natural gas in electric powerplants and discouraged its use in many industrial facilities, was essentially repealed less than a decade later when its underlying premises were conceded to be wrong. While holding back the use of natural gas, the federal government spent billions of dollars attempting to commercialize ''synthetic fuels,'' including oil shale and tar sands, with little to show for its efforts.

While we believe that the federal government has an important role to play in encouraging the development of renewable and other energy technologies, we are troubled when that role turns to mandates and market set-asides for one particular fuel or technology. Mandates and set-asides usually don't work, and create unintended consequences far more severe than the underlying problem being addressed.

For these reasons, we respectfully request that you support efforts to modify the language in section 265 of the Substitute Amendment to S. 517, in order to eliminate or mitigate the harmful economic consequences of the renewable fuels portfolio mandate.

Sincerely,

Adhesive and Sealant Council, Inc.
Alliance for Competitive Electricity.
American Chemistry Council.
American Iron and Steel Institute.
American Lighting Association.
American Paper Machinery Association.
American Portland Cement Alliance.
American Textile Manufacturers Institute.
Association of American Railroads.
Carpet and Rug Institute.
Coalition for Affordable and Reliable Energy.
Colorado Association of Commerce and Industry.
Edison Electric Institute.
Electricity Consumers Resource Council.
Independent Petroleum Association of America.
Industrial Energy Consumers of America.
International Association of Drilling Contractors.
Interstate Natural Gas Association of America.
National Association of Manufacturers.
National Lime Association.
National Mining Association.
National Ocean Industries Association.
North American Association of Food Equipment Manufacturers.
Nuclear Energy Institute.
Ohio Manufacturers' Association.
Oklahoma State Chamber of Commerce & Industry.
Pennsylvania Foundry Association.
Pennsylvania Manufacturers' Association.
Texas Association of Business and Chambers of Commerce.
U.S. Chamber of Commerce.
Utah Manufacturers Association.
Westbranch Manufacturers Association.

MARCH 19, 2002.

Hon. JON KYL,
U.S. Senate, Senate Hart Office Building, Washington, DC.

DEAR SENATOR KYL: The undersigned associations urge you to support the ''renewable portfolio standards'' (RPS) amendment expected to be offered today by Senator Kyl and Senator Miller to S. 517, the Energy Policy Act of 2002.

The Kyl/Miller RPS amendment will preserve the ability of each State to decide for itself and its own citizens which appropriate mix of renewable and alternative energy sources is optimal for their own preferences and needs. In addition, the amendment will ensure that businesses and homeowners alike will have more affordable and reliable electricity supplies in the future, with renewable energies being an important and appropriate part of the energy mix.

The Senate should not adopt a one-size-fits-all national mandate for an arbitrary quota for renewable energy use in producing electricity, such as is currently in section 265 of S. 517. Sen. Bingaman's amendment attempts to make the mandates in S. 517 more technically feasible, but his amendment still mandates an aggressive, nationwide renewable portfolio standard that will raise costs, threaten electricity reliability and create inequities among not only energy sources, but also among States and electricity generators.

Many States do not have access to optimal wind energy locations or large volumes of inexpensive biomass. Under Sen. Bingaman's amendment, consumers in these States would have to pay for electricity generated in other States that have more access to renewable energy. In addition, the Bingaman amendment treats electricity generators differently—large private utilities are covered, but, inexplicably, public electricity generation is exempt, at least for the present.

Finally, adopting a mandated federal renewable quota will establish a framework for additional market interference in the future, such as by raising the percentage of the portfolio or extending the mandate to other electricity generators or other energy users. Such portfolio mandates fly in the face of the goals of reasonable electricity policy—to increase competition and efficiency in the electricity market and to lower consumer costs.

We urge you to vote for the Kyl/Miller amendment to eliminate mandated federal renewable portfolio standards and replace them with a provision that encourages the States and their citizens to determine their own goals for renewable energy sources. Please support the Kyl/Miller amendment to forge a sound energy policy that will promote economic growth and prosperity for all Americans.

Sincerely,

The Adhesive and Sealant Council, Inc.
American Chemistry Council.
American Iron and Steel Institute.
American Paper Machinery Association.
American Petroleum Institute.
American Portland Cement Alliance.
American Textile Manufacturers Institute.
Association of American Railroads.
Edison Electric Institute.
Electricity Consumers Resource Council.
National Association of Manufacturers.
National Electrical Manufacturers Association.
National Lime Association.
Naitonal Mining Association.
Natural Gas Supply Association.
U.S. Chamber of Commerce.
National Restaurant Association.
US Oil & Gas Association.

Mr. KYL. Second, if I could, I would like to make a couple of points in conclusion and then respond to any questions or comments that Senator BINGAMAN would like to make, and I also want to hear what our ranking member, Senator MURKOWSKI, wants to say because I know he and I were both looking forward to having an opportunity to work on this issue in the Energy Committee. As I noted, we didn't have that opportunity.

I appreciate what the Senator from Georgia just said. As a former Governor of the State, he appreciates, probably more than most of us, the responsibilities of the publicly elected officials and the need to know what works and what does not work in any given State and what is fair for the people within their State. That is really the basis for the Kyl-Miller amendment: to allow the States to determine what is in their best interest.

I note that in more than 90 utilities across the country there is already a green pricing policy, what they call green pricing, which allows consumers to request and pay for the cost of this green power. In other words, they can say, I want 50 percent of my power to come from renewable sources, or whatever it is, and whatever the cost of that is, the utility is required to provide that power to them and charge that cost to them. That is a customer's option.

That is one of the specific provisions in the Kyl-Miller amendment. Obviously, this would be preempted, as with the other State programs, with the underlying Bingaman amendment.

I also make the point that I did not make earlier, which is that the administration, Secretary Spencer Abraham specifically, has told me he is supportive of the Kyl amendment and not supportive of the Bingaman proposal.

Another thing I want to do is make the point that section 263 of the bill allows the Federal Government to purchase a percentage of its electricity from renewable sources—I am quoting now—''but only to the extent economically feasible and technically practicable,'' and the minimum required purchase is 7.5 percent, while section 265 imposes a 10-percent mandate on private utilities, and it does not include the ''economically feasible and technologically practicable'' waiver. So again, there is another double standard here. The Federal Government is not required to do as much as

the private utilities are required to do and has a special waiver that it can exercise. If this is such a great idea, why wouldn't we apply it to the Federal Government just as much as we would to the private sector? I do not really have an answer to that.

I make a point, too, that with respect to the cost-benefit analysis, one of the concerns I have had is that the ability of States to provide power through renewables is not without tradeoff. I will show you a couple charts that illustrate this point.

In the case of the Southwest, where we have a lot of sunshine, maybe this is the ''Saudi Arabia for solar power,'' but it is at significant cost. This chart illustrates the fact that you are going to have to have an enormous quantity of desert covered with these reflective mirrors, about 2,000 acres of solar panels, it is estimated, to produce the energy equivalent to 4,464 barrels of oil per day. Two thousand acres of ANWR would produce a million barrels of oil a day. So for the equivalent 2,000 acres: In one case, you get a million barrels of oil, and in the other case you get the equivalent of 4,400 barrels of oil.

It would take 448,000 acres, or two-thirds of the entire State of Rhode Island, of solar panels to produce as much energy as the 2,000 acres of ANWR that are available for energy production here.

I do not know exactly how many square miles, but one of the assessments was it would take 2,000 square miles to produce the same amount of energy that would be produced by a nuclear generating facility. If that is true, you would have a corridor 5 or 10 miles wide on either side of the highway all the way from Tucson to Phoenix with these reflective mirrors. I have not done the environmental analysis of that. I know it would not be very attractive. I do not know what the other costs to the environment would be. But that is the problem. We have had no environmental analysis.

The same problem exists with respect to wind generation. Wind generation, we understand, has certain environmental consequences. It is not very friendly to birds, although with more and more of the Federal subsidy, they have been working on ways to design the propellers so they turn more slowly and therefore give the birds a little bit better chance.

But 2,000 acres of wind generators produce the energy equivalent to only 1,815 barrels of oil each day; again, compared to a million barrels of oil that would be produced out of the same number of acres in ANWR. It would take 3.7 million acres of wind generators, or all of the States of Connecticut and Rhode Island combined, to produce as much energy as just 2,000 acres of ANWR.

Now the 2,000 acres, we have said before, is roughly the equivalent of Dulles International Airport. So you can get an idea, if you take Dulles Airport on the one hand and the States of Connecticut and Rhode Island on the other hand, you get a little bit of an idea of some of the tradeoffs involved. I do think there has been adequate consideration of the kind of tradeoffs that would be required to produce the massive amounts of energy that are called for under this legislation as a substitute for other ways of producing power.

As I understand it, the way the Bingaman amendment works is that each public power, or, that is to say, investor-owned utility supplier, would be annually required to report to the Secretary of Energy several facts: One, how much their electric retail load is; what percentage of that was produced by renewable fuels; how they acquired that renewable fuel—was it by production purchased through a wholesaler or renewable credit, or in whatever form it was—and then there would be an audit done. In the first year, it would be 1 percent required, the year 2005; and it would escalate to 10 percent by the year 2019.

You would exclude the eligible renewables, municipal waste, and hydro from that, and the credits would have to be from sources other than existing hydro. The only way you could get additional hydro, or any hydro credit, would be if you did something such as rewinding the generators or, in some other way, added to the efficiency of a particular unit.

As I said earlier, you could acquire, at a 200-percent market cost, a credit from the Department of Energy as well, even though energy would not be producing any new power. What would the cost of this be?

According to the Energy Information Administration of the Department of Energy, you are looking at a cost, starting in the year 2005, of about $2 billion, escalating, by the year 2020, to a cost of about just a little bit under $12 billion per year. And most of that would be from production. There would be a small amount through penalty payments because of the assumption not a whole 100 percent of the production could actually be achieved at that point. Every year thereafter, for the next 10 years, you would be paying $12 billion a year. So you are talking about $88 billion of gross cost, in addition to $12 billion each year thereafter until the year 2030. That is a lot of money that would have to be paid by the retail customers of the utilities.

Just a couple questions, and then I will give Senator BINGAMAN a chance to respond and perhaps answer some of these questions.

I made the point before that it does not appear to me the generation of the renewables is required to be within the State in which the electricity is sold. So, presumably, you would have a credit trading system throughout the United States. And I do not even see a limitation to power produced in the United States. As a matter of fact, as I understand it, as drafted, incremental hydro from B.C. Hydro would count, and then a retail supplier from the United States could use that as a required percentage to be achieved under the legislation.

One of the concerns—I guess another question I would have—is whether there is actually a reverse incentive not to produce power with renewables. I know that is the intention of the sponsors of the amendment. But I think it could quite work in exactly the opposite direction. Because of the tradeable credits that are being created under this legislation, you would actually have an interest in withholding those credits from the market and even preventing the siting of any new generation.

Here is the concern I have for those of us who are in the West where there is some potential for some new generation. In my State of Arizona, in the State of Nevada, in the State of New Mexico, and others, a very large percentage of the land is owned by the U.S. Government. In the State of Arizona, only 12 percent or 13 percent of the land is privately owned. Another 12 or 13 percent is owned by the State. The rest is held in trust by the U.S. Government. In Nevada, it is approximately 90 percent.

You would have to have a lot of permits to cross Nevada Federal lands for either the generation or the transmission. Every action is a Federal action. They have to have an environmental impact statement. And the opportunities to prevent the establishment of energy generation and transmission throughout the Western United States are substantial.

I suspect there would be an incentive on the part of those who have a monopoly on the generation of this power right now to maintain that monopoly by finding ways to throw roadblocks in the way of the production of this power, especially those States, as I said, where there is substantial Federal land-ownership such as my State of Arizona. Both because there would be an incentive to withhold the credits from the market in order to enhance their value and because there would be the natural tendency to use the Government yet again to advance economic purposes by withholding approval of competitive generation, I suspect there could be actually a diminution in renewable generated power than an enhancement of that power.

I am especially sensitive to the concerns of those from California who charge that there was a deliberate attempt to withhold energy from the California market which jacked up the prices there. And we all know that California consumers suffered as a result of much higher prices just 1 year ago.

These are some of the concerns and questions I have. I am anxious to understand how the amendment is intended to work and how it could be made to work in such a way that it would not be as costly as I indicated; how it would not be discriminatory;

how it would not preempt the States that already have programs such as this, that I indicated; how it wouldn't impact the environment in a negative way; how it would not result in the trading of credits to the detriment of the retail purchasers in States that would have to buy those credits; and, in fact, how it would work in States such as Maine where you already have a very high percentage of renewable energy required, 30 times the amount that is required in my own State of Arizona. Yet there would not be any credit for the sale of that to other States, notwithstanding their high production from renewable energy.

To cite an analogy, one of my staff members said he didn't quite understand why this was such a great idea. I tried to explain it to him. He said: I still don't understand. Grapefruit is really good for you, but I don't quite understand. Should the Federal Government then pass a law that mandates 10 percent of all the fruit sold in the country be grapefruit?

He said: That might help my State of Arizona because we grow a lot of grapefruit. I guess we could set up a trading deal where people in New York would have to buy a credit since they couldn't actually produce grapefruit. Since it is so good for you, if I am in a preferred position politically, I might have the clout to pass a law that says that 10 percent of the fruit has to be grapefruit. That might be a good idea.

I really don't think that it is any business of the Federal Government to impose that on the American people. Let the free market work. Let's get back to deregulation. That is what this whole electric section of the energy bill was supposed to be about in the first instance: To deregulate, to reduce cost; not to reregulate and increase costs; to provide more local control of the situation, not more Federal control.

This underlying Bingaman amendment goes exactly in the wrong direction, which is why Senator MILLER and I have proposed an amendment to require the States to look at this but not require them to impose any particular percentage mandate. Let's let each State decide what is best for their local retail electrical customers. If after a period of years that we carry these significant tax credits, where we are promoting renewables, we still haven't gotten to the point where people think we need to be, we can take another look at this.

My guess is we are going to continue to march on to produce as much of this energy as we can in an economic and feasible way, and the percentage is going to increase over time. And we can at that time determine whether we want to replace some of the existing generation with this kind of new generation.

Now is not the time to be imposing this kind of requirement on the country with its additional costs, with its discrimination, and with so many questions that could have been answered, had we done this in committee, that obviously have not been answered.

I ask my colleagues to support the Kyl amendment. Let's lay this Bingaman amendment aside, see how things work for a while before we try to regulate the market with a brandnew, very costly and discriminatory Federal mandate.

Mr. MURKOWSKI. Mr. President, I wonder if the Senator will yield for a question.

Mr. KYL. I am happy to yield.

Mr. MURKOWSKI. I didn't hear all the debate. Do I understand that there is nothing in the Bingaman-Daschle bill that would prohibit a scenario that would suggest that maybe the Three Gorges dam, which is in the process of being completed and would classify perhaps as an incremental renewable, could theoretically sell credits to U.S. firms that would need credit in order to comply with a 10-percent mandate by the year 2020; so this is not limited to just encouraging U.S. construction and development of new renewables that would give them credit?

Mr. KYL. Mr. President, I asked the question of the staff people, who have read and reread and reread the underlying bill and the Bingaman amendment, if there was any limitation on from where the credits came. And they told me they could find none. There is no State limitation, no border between the United States and Canada, or other border, so that indeed you could end up with a worldwide credit system, not just one as among the different States of the United States.

Mr. MURKOWSKI. And a follow-up to that: As an example, I have been over to the Yangtze River. I have seen the construction of the Three Gorges dam. It is truly one of the largest construction projects in the history of the world, much like the projects that occurred on the Columbia River in the 1930s where we attempted to reduce flooding and combat the tremendous source of energy.

But my question is, With the potential credits available to them because of the size of that project, wouldn't it be attractive to acquire these credits at a relatively inexpensive price rather than putting in renewables that would be mandated by the amendment?

Mr. KYL. I say to the Senator, I think he is on to something here. That is really a third reason why there would be a disincentive to produce new renewables here in the United States. The Senator is quite right. There would be an incentive to acquire those credits from abroad because you could undoubtedly do it much cheaper because there would be so much hydroenergy produced out of this dam.

Of course, Senator BINGAMAN can answer this question, but under his amendment, if we were—obviously, we will not be able to do this—able to build a dam here in the United States, you would not be able to get any renewable credit from that. The only way you get any credit from hydro would be if you went back in and made the generator more efficient. Then all you would get is that incremental improvement in output in terms of renewable credit.

As I understand it, the Three Gorges dam is essentially constructed, but the generation equipment has not yet been embedded in it. Therefore, if that is the situation when the bill becomes effective, that would qualify as incremental electrical generation above and beyond what the dam produced on the effective date of the act.

Mr. MURKOWSKI. That is something I think we should bring out in the debate, and perhaps we can get enlightenment. Clearly, I am sure that is not what it was designed to do. The obvious objective was to try to encourage renewables being built and not to acquire credits that might be relatively inexpensive.

I thank the Senator.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I will be very brief. I rise to make a couple of comments in response to the presentation by the Senator from Arizona. He has clearly thought through this and done a fair amount of homework. He brought some charts with him and gave some examples of why he thinks this is bad legislation.

I think he makes a terrible mistake by suggesting that this is not national in scope. The implication of the proposal by the Senator from Arizona is to say: If it is to be done, let's let the States do it. This is not something that ought to be a matter of national policy.

Let me make a couple of comments about that. We would have had the same kind of discussion over 20 years ago when we first discussed the Clean Air Act in Congress. People said: Let's leave it to the States. This isn't something we ought to do nationally. This is not a national responsibility or a national goal. Let the States do it.

We didn't do that. We said: As a matter of national purpose, this country deserves clean air. We passed clean air standards. Why? Because the Congress demanded it and said: This is a matter of national purpose and a matter of developing national standards, and national aspirations for our country.

On the issue of energy, the question is: Are we going to write a national energy bill and have an energy policy that turns the corner and moves us in a different direction in certain areas—Yes or no? It is not a question of can we do it. We can. The question proposed by the Senator from Arizona is, Should we do it? He says no.

Now, can we do it? Let me show you this chart. This is from the U.S. Department of Energy's National Renewable Energy Laboratory. This chart shows the biomass resources in this country. The dark shades of green represent the potential kilowatts per county in America. Solar, geothermal,

and wind resources: all of these represent real potential to extend America's energy supply with renewable energy.

Now, it is perfectly reasonable for someone to say, I don't think we ought to do it. I don't think it is a matter of national policy. It is a perfectly reasonable position—wrong, but reasonable.

If we are going to address energy policy in the Senate, then we have to begin describing a new policy, and we have to begin describing it as a sense of national purpose.

I recall a story about Mark Twain being asked to debate. He said he would be happy to debate as long as he could be on the negative side. They said: You don't even know the subject yet. He said: The negative side requires no preparation.

The affirmative proposal that is offered by Senator BINGAMAN is to develop a renewable portfolio standard. That is an affirmative proposal. Why? Because it will advance the interests of this country, extend America's energy supply, reduce our reliance on foreign energy, and improve America's security.

What are the consequences of doing nothing? My colleague mentions the free market. The free market has allowed us to import 57 percent of our oil supply from overseas, largely from Saudi Arabia. Is that the free market that helps this country? I don't think so. I think it makes our country and our economy more dependent on an oil supply that comes from one of the most unsettled areas in the world.

What if, God forbid, tomorrow morning a terrorist should shut off that supply of oil from Saudi Arabia and Kuwait to the United States? Our economy would be flat on its back. If we wake up tomorrow morning at 6:30 and turn on the morning news and discover that, God forbid, somebody has interrupted this flow of energy from the Middle East, our country's economy is going to be flat on its back. We all know that this puts America's economy in jeopardy. That is why, as we develop a new energy policy, it is incumbent upon us to look at these new approaches.

The renewable portfolio standard can be controversial, yes, I understand that. Every new idea is controversial. But it is essential to pull this new policy along and to say that it is good for our country, good for our economy, and good for American security. That is our requirement in the Senate.

Now, my colleague from Arizona said that the State of North Dakota doesn't have a renewable portfolio standard. That is true. It should. I am not in the State legislature. If I were, I would propose it. But North Dakota doesn't have an RPS. That is precisely why we need a national policy. Some might have an RPS at the State level; some states might not. Some might care about it; some might not. Some might think it would be fine to go from a 57-to a 70-percent reliance on foreign oil. Some might think that is fine because the cheapest oil in the world comes from the Persian Gulf. But it is not fine. We all understand that. It puts our economy in jeopardy. It imposes on our national security in a very significant way.

So the question is not, Do we understand these things? The question is, Are we as a Congress going to do something about it? Are we really going to decide there are certain national energy goals and aspirations that we have as a country?

Let me end as I began. We have had this debate before. We had this debate on clean air and clean water standards over two decades ago. We had people who didn't want those standards. ''Don't you dare impose these burdens on State and local governments,'' they said. Good for those policymakers. Good for them for having the courage to say, let's do this as a country, let's make progress in addressing this national issue.

That is exactly what the Bingaman renewable portfolio proposal in this energy bill is designed to accomplish. It says, let's address this issue, let's aspire to higher goals, let's understand that energy comes not just in a pipe or by digging it out of the ground. It comes from the sun, wind, biomass, and geothermal resources. There isn't any reason that this country ought not aspire to do more in these areas. That is what this standard is about.

As I said, it is easy to take the opposing side. It is more difficult to assume the responsibility to be on the affirmative side. But the affirmative side here is saying, let's do this as a country. That is the right side.

I hope when the Senate finishes this debate, it will say, yes, this is the right thing to do—not State by State, but as a nation. This is what we aspire to do as a nation, to extend our energy supply, to make us less dependent upon Middle East oil, and to use limitless and renewable sources of energy to help strengthen our country.

I yield the floor.

Mr. MURKOWSKI. I wonder if my good friend will yield for a question.

Mr. DORGAN. I am happy to yield for a question.

Mr. MURKOWSKI. I appreciate that. We have had a long relationship on energy matters. I look with interest at the chart the Senator has displayed. The one thing that strikes me is the areas. Obviously, the areas that can generate solar relatively efficiently is the South and Southwest, as indicated by my colleague, with the red concentrated area, including Arizona and New Mexico. To some extent, that leaves the rest of the country without the same potential advantage.

I find it rather curious, in looking across from the solar down to geothermal, most of that is on the west coast, in California. There is not much on the east coast. The wind, on the far right of the chart, suggests that the northern areas along the Canadian border, and other areas, have a predominance of wind. Of course, the green is the biomass.

If we address the combination of circumstances on how we resolve our energy crisis and address renewables, there seems to be a tradeoff, because I am sure the Senator from North Dakota would agree that the biomass concepts suggest burning carbon, and we can address that through technology. Nuclear, of course, would not show any significant emissions.

The problem I have is that portions of this bill do not really get us there from here. For example, in this bill, we are prohibited from using any timber products from public land sales, with the exception of preconditioned thinning. So I can refer to the language specifically. It says:

> With respect to material removed from national forest systems land, the term biomass means fuel and biomass accumulated from preconditioned, thinning slash and brush.

So I take that to mean there would be a very narrow use of any of the products from public lands. In my State, we are all public lands, so we could not develop biomass because we can't use the slash, the bark, any of the remains for biomass. I think that is an effort in this legislation. I ask if my colleague agrees with me or not, where clearly we have an oversight, because that doesn't allow some States that really have no private or State timber to utilize the waste for biomass production. Is that not kind of an inconsistency?

Mr. DORGAN. My colleague from New Mexico will speak next and will describe some of the policies with respect to public lands.

I say this to the Senator from Alaska. If you take a look at this chart—the import of this chart—it shows a fairly balanced representation across the country, to be able to achieve limitless, renewable sources of energy that we don't really aspire to harness these days. We are trying to see if we can pull the country along with a national standard to actually harness energy from these renewable resources.

I understand there are some concerns about certain areas of the portfolio standard, and we can have some discussion about those concerns. But I do believe that the principle here to aspire to have the country using more renewable energy.

The Senator from Arizona, I think, toward the end of his presentation, described his real objection. It is not with some problems over resources on public lands.

His problem is he believes that we ought not to mandate anything and that the free market ought to help increase our use of renewables. That is the underlying objection.

I do not know whether the import of the question of the Senator from Alaska is——

Mr. MURKOWSKI. In my State of Alaska, for example, I am precluded by

this language, and I am going to have to go out——

Mr. DORGAN. Let me finish my thought. I have the floor, Mr. President.

Mr. MURKOWSKI. I am going to have to go out and buy credits which is not——

The PRESIDING OFFICER. The Senator from North Dakota has the floor.

Mr. DORGAN. My point was this: If the Senator from Alaska is saying he has some concerns about timber, but he believes there ought to be a renewable portfolio standard, that is one thing. My point is the author at the end of his presentation said: I do not think we ought to impose a mandate on the States. This should be left to the States, No. 1, so it is not a national policy to embrace. Second, let's let the free market handle this.

My response to that is, the free market has gotten us to the point where over 50 percent of our oil is imported, mostly from Saudi Arabia. If you think it strengthens national security, good for you. I am not saying you believe that. No one believes we are in the position of increasing our national security by increasing the amount of oil that comes from the most unstable part of the world.

That is the point and the reason we need a renewable portfolio standard.

Mr. MURKOWSKI. I assume the Senator from North Dakota is aware that some of the predominant wind areas are in my State of Alaska in the high Arctic. I suggest there is little enthusiasm for putting up windmills associated with the Arctic National Wildlife Refuge where there is lots of wind. We have inconsistencies in this. We expended $7 billion in renewables, and now we are talking about a mandate that is going to cost the consumers of this country a considerable amount of money. The problem I have with the bill is we have not had this kind of conversation, as the Senator knows, in the committee process. We are doing this on the floor, and that is difficult.

The problem I have with this particular application of the chart is the inequity associated with what is good for the Southwest does not necessarily address what is good for the east coast or the South.

The PRESIDING OFFICER. Senators are advised that the Senator from North Dakota has the floor.

Mr. DORGAN. Mr. President, let me make a final point that I think is important. The mandate here is going to strengthen this country's national security and energy security. We can decide to do nothing. We can decide, as my colleague from Arizona has, that we ought to essentially ignore this and let State-by-State judgments be made. We can decide that whatever the free market determines is our future. But that, in my judgment, does not resolve the need for a national energy policy that stretches this country and moves it in a different direction—one that I believe will strengthen national security by reducing our reliance on foreign oil.

Does anybody in the Senate want to stand at their desk in the Senate and say: We really think it is good for the country, we really believe it strengthens America's national security to have 57 percent of our oil coming from the Middle East or from foreign sources? Is anyone missing what is happening in the Middle East these days? Does anybody believe it does not injure our national security to be so dependent on that source of oil?

If you believe—and I think almost everyone in this Chamber does believe—it actually hurts our national security to be that dependent, then we ought to strive as a nation to find ways to change that. I am not talking about Arizona, Alaska, North Dakota, or New Jersey by themselves. The Nation ought to strive to back away from that dependency.

If my colleagues believe that, the question is, What is the menu of changes that allows us to reduce our dependence on foreign oil?

One answer is the Bingaman proposal in the energy bill that aspires to have a renewable portfolio standard of 10 percent; 10 percent coming from renewable, limitless sources of energy.

Mr. REID. Mr. President, will the Senator yield for a question?

Mr. DORGAN. I would be happy to yield.

Mr. REID. The Senator is aware, I am sure, that out of all the petroleum reserves in the world, the United States has 3 percent, and the rest of the world has 97 percent. Is the Senator aware of that?

Mr. DORGAN. Yes.

Mr. REID. Is it pretty fair to state it is very difficult for us to produce our way out of the problem we have with petroleum products?

Mr. DORGAN. I say to my colleague from Nevada, that is the case. We cannot produce our way out of this problem. We certainly can produce. We had a vote in the Senate about production in the Gulf of Mexico. I supported that. I also support incentives to increase production of oil and natural gas.

Yes, I do think we have to increase production and do it in an environmentally sensitive way. We have to do a lot of other things and do them well as a matter of national policy. That is the point of having an energy policy debate on the floor of the Senate.

If, in fact, the result of an energy policy debate is to say let the States do whatever they want to do, that is a kind of yesterday-forever strategy. Members of the Senate will, 25 years from now, be having the same debate. The suits will have changed, the names will have changed, and the people occupying the desks in the Senate will have changed, but nothing else will have changed.

Mr. MURKOWSKI. Will the Senator yield for another question?

Mr. DORGAN. I will be happy to yield.

Mr. MURKOWSKI. I wonder if the Senator can explain to me how any of the examples he has given on that chart will significantly reduce our imports of oil from foreign nations? He is talking about the generation of electricity from these sources, but we do not move out of Washington, DC, on hot air. It takes oil. There is no oil associated with those particular examples.

We have to be careful in our definition of energy. There are many kinds of energy. The Senator is absolutely right, those are important alternatives. But to suggest somehow this is directly related to reducing our dependence on imported oil, I think the Senator would agree with me there is very little coalition there because we are talking about two different things.

Mr. BINGAMAN. Will the Senator yield for another question?

Mr. DORGAN. Let me say, I do not agree with him, but I will be happy to yield for a question.

Mr. BINGAMAN. Will the Senator from North Dakota acknowledge one reason why we are interchanging these various issues of wind power, solar power, and oil is because the Senator from Alaska has been using charts for the last 2 weeks that try to equate the two and try to make the point that we have to keep drilling more and more of Alaska in order to avoid using wind power?

Mr. DORGAN. Not just the Senator from Alaska, but the Senator from Arizona, in the points he made toward the end of his presentation, specifically talked about the size of the devices to gather solar energy that would be required to offset X amount of oil. I believe it was 2,000 acres, something the size of Dulles Airport.

He said: Here is the amount of wind energy; here are the number of wind turbines it would take to offset a certain amount of oil.

The point is, when we talk about a renewable source of energy, we are talking about electricity. That is the case. How do you generate electricity? You generate it through electric generating plants. We can put coal in them, use natural gas—there are a number of ways to generate electricity.

Our colleague, for example, from Utah, now drives this hybrid car I saw parked in front of the Capitol yesterday. His car uses less petroleum, because it runs, in part, on battery-powered electricity.

Renewable and limitless sources of energy will help us reduce our supply of imported oil. I am not suggesting, and I would not suggest, that doing all we can on renewables takes us far down the road in relieving us from the substantial amount of oil we now receive from abroad. I am not suggesting that at all.

I do believe, especially in the area of production of electricity, we have opportunities to do things in a different way. The question in the Senate is, Do you want to do that or don't you?

Some say, no. The same attitude prevailed, as I mentioned, on the clean air and clean water debates about 20 years ago with respect to this energy debate.

My hope is that at the end of the day on the Kyl amendment we will vote no and say we really do want to be involved in a different way with respect to production of electricity.

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

Mr. DORGAN. I will be happy to yield.

Mr. REID. Just a few miles out of Las Vegas—I explained this to the Senator, and I want to see if he remembers this—we are going to build a wind site at the Nevada Test Site. We have permission from DOE to do that. Within 2½ years, that will be producing 260 megawatts of electricity, enough to satisfy the needs of 260,000 people in Las Vegas.

Will the Senator agree that is a pretty good step in the direction for wind energy?

Mr. DORGAN. A leading question, but of course I agree. Take a quarter of an acre of land, put on it a 1-megawatt, new, very efficient wind turbine, and produce electricity that is used to power 1,000 homes. Pretty good deal? I think so. With 160 acres of land, especially with the new turbines, you can produce electricity for nearly 160,000 homes in this country.

My point is, this is the right thing to do. Let's do it as a matter of national policy. Let's establish a national renewable portfolio standard.

Let me finally say, as I conclude, I understand it is controversial. I understand why some people do not want to do it. In fact, there are some people who have never wanted to do anything for the first time. I understand that, too. But if we are talking about national energy policy, and we end the day in the Senate having done nothing that is new, then we have only postponed for another 25 years a debate that is identical to the one we are having today, and we will find ourselves in exactly the same situation. Let's hope between now and then we do not encounter some dramatic circumstance that really shuts off the supply of energy that is critical to our country.

Mr. REID. Will the Senator yield for one last question?

Mr. DORGAN. Yes.

Mr. REID. The Senator's predecessor, Quentin Burdick, I remember once when he came back from North Dakota in February. I read in the papers and saw on the news there was a terrible storm in North Dakota. I said to him: That must have been a bad weekend, Senator Burdick.

He said: Bad weekend? It was a good weekend. I love that weather. The wind blows there all the time, and we like the wind.

I say that to remind the Senator from North Dakota, as he said earlier today, the Saudi Arabia of wind is North Dakota. I can see that from the map. I never realized, even though Senator Burdick told me the wind blew there all the time, he was really right.

I have said in this Chamber, if one looks at geothermal resources, the Saudi Arabia of geothermal is Nevada. So I would hope Nevada—we have a lot of wind. We do not nearly match what happens in North Dakota, but it is not bad. I hope when we complete this legislation there are some goals set whereby the potential of Nevada with geothermal and the potential of North Dakota with wind can be realized.

Is that what the Senator is saying, simply that we should set some marks and guidelines and try to reach them?

Mr. DORGAN. That is exactly the case. We have the potential to do things in a different way, and we ought to use that potential. Now we can decide to ignore it, as my colleague from Arizona would have us do, or we can decide to embrace it, believing it will strengthen this country and move us toward greater energy security.

I believe it makes sense to take the natural, renewable resources that exist and produce energy from them. I do not want the Senator from Nevada to leave this Chamber somehow describing to others that North Dakota has bad weather. That certainly should not be a conclusion that is left. North Dakota is a wonderful State. It has perhaps more sunshine than the State of Nevada. We have a little bit of a breeze, and it is fairly constant. That is why it ranks well in wind energy. It is a great State, with a great temperature, and a great climate, and the Senator from Nevada should visit it more often.

The point is, we also have the opportunity to, from that general breeze I have described, capture the energy and use it to extend America's energy supply, just as is done with geothermal in the Southwest, biomass in the East, and solar resources in much of the country, especially the Southwest.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I think the expectation was I would speak at this point in response. I know Senator JEFFORDS from Vermont has been waiting to speak, and I will allow him to go ahead at this point. Then Senator VOINOVICH will follow Senator JEFFORDS, and then I will respond after Senator VOINOVICH.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I listen to this debate and at times it gets discouraging because I was around 27 years ago when the cars were lined up trying to get gasoline and the people of this country were absolutely ballistic about the fact that we were hostage to the oil suppliers in the Middle East.

We did some authorization in the hopes we would build an energy supply and this Nation would make it so that those kinds of situations would never occur again. Here we are, with the recognition of the volatility in the Middle East, again ignoring the possibility of moving forward to ensure we do not become subject to that kind of control by the Middle East.

So I oppose very strongly the practical effect of Senator KYL's amendment. The practical effect will be to remove all renewable energy production from this bill. It would strike the modest 10 percent provision in the underlying Daschle bill and leave us with effectively nothing. It would strike the 10 percent renewable energy standard, even though most recent studies by the Department of Energy estimate that a 10 percent national renewable energy standard would cause consumer energy prices to decline by almost $3 billion by the year 2020. It is hard to understand why we would not want to encourage clean energy, energy which causes our consumer costs to go down.

The amendment before us, however, says no to clean energy, no to reducing carbon dioxide, no to reducing smog and acid rain, and no to assisting our American companies to expand domestically and to compete in the thriving international market.

I cannot support this amendment. It simply is not an option for me to go home to my State of Vermont and tell them I have done nothing to try to slow the flow of emissions from fossil fuel powerplants into Vermont's air and water. Remember, this is an air pollution problem as well.

As chairman of the Environment and Public Works Committee, it is not an option for me to ignore the fact that electricity production is the leading source of carbon dioxide emissions in this country, accounting for over 40 percent of that total. I cannot be blind to the fact that the powerplants contribute significantly to emissions of sulfur dioxide, nitrogen oxide, and mercury. These pollutants greatly increase asthma, lung cancer, and other health risks, and contaminate our air and our water. We must enhance production of clean, domestically produced, renewable energy in this country, and we can.

The amendment offered by my colleague from Arizona would reject all Federal renewable energy standards and instead require utilities to offer consumers energy from renewable resources. It would also allow States to continue to establish State standards for renewable energy.

States already are establishing State renewable energy standards, and utilities are already offering consumers green energy. Federal legislation along that line is already happening. It is not necessary. Even if such legislation were needed, it would not be enough. We would still have a national renewable energy shortage. We would have no standard.

A nationwide standard would address the reality that electricity is generated on a regional basis. Many State standards require that renewable energy credits come from energy generated from within State boundaries. A national renewable standard would enable

utilities to meet requirements by purchasing and selling renewable energy outside of the State boundaries. A national renewable standard would therefore guarantee broad, long-term, and cross-regional renewable power generation.

To date, only 12 States have established State renewable energy mandates, although others are actively considering them. A national standard would increase renewable energy production, thereby expanding environmental and health benefits and facilitating greater market entry of renewables into the energy sector.

As is indicated by this chart, public opinion polls constantly show that an overwhelming majority of voters nationwide favor requiring power companies to generate electricity from alternative energy sources. A 2002 survey conducted by the Mellman Group found that 70 percent of those surveyed favor requiring power companies to generate 20 percent—that was my amendment awhile back, which received a pretty good vote—from renewable sources, even if it would raise their monthly electricity bills by $2 or more.

Polls conducted by Texas utilities show consumers are willing to pay as much as $5 per month to receive energy from renewable sources. This is almost five times as much as the Department of Energy has found that the national renewable energy standard of 20 percent would cost consumers.

Without a strong provision to expand the use of renewable fuels, I have to question why we are here at all. If all we are doing is continuing business as usual, we might as well finish up and go home. We do not need massive new legislation simply to preserve the status quo. Before we do that, however, I think we need to remember that renewables will not only help clean our environment and provide countless new high-tech jobs, they will also diversify our energy use. In our current security conscious environment, that is worth doing.

Mr. President, I ask unanimous consent to have printed a letter written to myself and other Members by several former national security experts regarding a contribution of renewable portfolio standards to our national energy security.

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

SEPTEMBER 19, 2001.

Senators THOMAS A. DASCHLE, TOM HARKIN, ROBERT C. BYRD, CARL LEVIN, JEFF BINGAMAN, JAMES M. JEFFORDS, MAX BAUCUS, JOSEPH R. BIDEN, JR., TRENT LOTT, RICHARD LUGAR, TED STEVENS, JOHN W. WARNER, FRANK H. MURKOWSKI, ROBERT C. SMITH, CHARLES E. GRASSLEY, JESSE HELMS.

DEAR SENATORS: Americans are aware of the enormous and complicated tasks ahead in dealing with the consequences of the unprecedented September 11th attack against our Nation.

There are many corrective actions that require lead-times that could be months or even years. But, there are actions that can and must be taken now. One of those critical actions is to advance America's energy security. The Congress will soon act on that issue.

It is not enough just to ensure uninterruptible supplies of transportation fuels and electricity. We must also act to advance the security of those supplies, and the nation's ability to meet its needs in all corners of the country at all times. Our refineries, pipelines and electrical grid are highly vulnerable to conventional military, nuclear and terrorist attacks.

Disbursed, renewable and domestic supplies of fuels and electricity, such as energy produced naturally from wind, solar, geothermal, incremental hydro, and agricultural biomass, address those challenges. Fortunately, technologies to deliver these supplies have been advancing steadily since the Middle East fired its first warning shot over our bow in 1973. They are now ready to be bought, full force, into service.

But, while the U.S. Government has committed intellectual and monetary resources to developing these technologies, the status quo marketplace is unwilling to accommodate these new supplies of disbursed and renewable fuels and electricity. Speedy action by the Administration and the Congress is critical to establish the regulatory and tax conditions for these renewable resources to rapidly reach their potential.

Fortunately, such actions are under consideration by the Energy, Environment, and Finance Committees. We urge the Energy Committee to immediately adopt the Renewable Portfolio Standard (for electricity) as well as provisions to ensure ready interconnection access to the electric grid, and cost-shared funds to the state public benefit funds to continue essential support for emerging technologies and the provision of electricity to the truly needy. We urge the Environment Committee to immediately adopt the Renewable Fuels Standards in conjunction with measures to deal with environmental issues. Finally, we urge the Finance Committee to immediately adopt residential solar credits and renewable energy production tax credits, including a provision for fuels (liquid, gaseous and solid fuels), or their Btu equivalent, similar to the fuel provision tax credit made available in Section 29 of the Internal Revenue Code.

These actions will also develop new industries and jobs, strengthen communities, enhance the environment, and assist in the stabilization of greenhouse gases. On the transportation fuels issue, ethanol, biodiesel and other biofuels will slow the flow of dollars to the Middle East, where too many of those dollars have been used to buy weapons and fund terrorist activities.

Consequently, we also recommend a major and concerted effort to assemble the talent and resources needed to launch a ''Liberty Ship'' type program to convert agricultural wastes and cellulosic biomass into biofuels, biochemicals and bioelectricity. The technology to do so is in place; all that is lacking is the political will to deploy it.

Sincerely yours,

R. JAMES WOOLSEY,
Former Director, Central Intelligence.
ROBERT C. MCFARLANE,
Former National Security Advisor to President Reagan.
Admiral THOMAS H. MOORER, USN (Ret),
Former Chairman, Joint Chiefs of Staff.

Mr. JEFFORDS. On September 19, shortly after the attacks on the World Trade Center and the Pentagon, James Woolsey, former Director of the CIA, ADM Thomas H. Moorer, former Chairman of the Joint Chiefs of Staff, and Robert C. McFarlane, former National Security Adviser to President Reagan, sent a letter urging in the strongest possible terms that we must take immediate action to address our energy security.

One portion of the letter reads:

Americans are aware of the enormous and complicated task ahead in dealing with the consequences of the unprecedented September 11 attack against our nation. . . . There are actions that can and must be taken now. One of these critical issues is to advance America's energy security. . . . We urge the Energy and Natural Resources Committee to immediately adopt the renewable portfolio standard.

Mr. President, I urge my colleagues to join with me in heeding this advice from the great leaders of our Nation who know best why we should do this. I strongly disagree with the amendment offered by Senator KYL.

I yield the floor.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. I rise today in support of the amendment offered by my colleague, Senator KYL. I ask unanimous consent I be made a cosponsor of this amendment.

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

Mr. VOINOVICH. Mr. President, I applaud the efforts of my colleagues on the other side of the aisle to encourage the use of renewable electricity generation. I agree that renewable energy is an important part of the future and should be developed. I also strongly believe renewable energy sources are vital as this country seeks to diversify energy supplies and decrease our dependence on foreign sources to meet our energy needs.

However, I cannot support the renewable portfolio standard included in the underlying amendment because it mandates unrealistic levels of renewable usage in a short period of time at the virtual expense of all other sources of electricity generation. Instead, I believe the amendment of the Senator from Arizona is a reasonable approach to making renewable energy a greater piece of our overall energy mix. One point that seems to get lost in the debate over the use of renewables is America relies very little on renewable sources of energy right now and will for the foreseeable future.

This chart shows a breakdown of how our electricity is generated today. Coal contributes 52 percent; nuclear energy is 20 percent; natural gas is 16 percent. For all electricity generation by renewables nationwide, and that includes geothermal, hydro, biomass, as well as wind and solar, the total generation is only 9 percent. When that is broken down, hydro is 7.3 percent of the renewables; biomass, wood, waste, and others is 1.1 percent; geothermal is .4 percent; and wind and solar is .2 percent.

This last number is important, since a number of my colleagues have put

quite a bit of faith in solar and wind power. However, the American consumer does not appear to share that enthusiasm which is evidenced by the fact that wind and solar combined make up only .2 percent of our current electricity generation. Another startling but little known fact is, if you do not include existing hydropower as renewable, which the underlying amendment does not, again, renewables are only 1.7 percent of our electricity generation.

Although the amendment includes incremental hydropower prospectively, it still will make up a very small portion of the electricity generation in our country.

Now, when you factor what the Department of Energy believes our electricity usage will be over the next 20 years, you see that the use of coal will continue to rise, natural gas will rise dramatically, nuclear fuel remains fairly level and hydropower remains steady. At the bottom is petroleum, and just above that, non-hydro renewables increase slightly. These projections show, renewables will make up a very small portion of the production of energy in this country for the next 15 to 20 years.

However, the underlying amendment says, regardless of market forces, America is going to dramatically increase its use of renewables. In fact, the underlying amendment stipulates we must develop a mandatory minimum standard for renewable energy of 10 percent for our electricity generation by the year 2020. The only way I can see that we can accomplish this mandate, if it is implemented, is for energy-producing companies to take a dramatic turn toward using renewables. That means they have to cut back on clean coal technology, put the brakes on natural gas, which is the current energy source of choice in America, and restrict the further development and use of nuclear power. This will have a particularly dramatic impact on energy producers in regions of our country that do not currently rely on a tremendous amount of renewable resources.

For example, in my home State of Ohio, our use of renewable energy is much lower than the national average. Renewables, including hydropower, generate 1 percent. Remove hydro from this number and the State of Ohio generates less than .4 percent of its electricity from renewable sources. This is predominantly biomass power which comes mostly from wood-burning boilers in woodworking and paper manufacturing industries.

However, there are many other States which rely on renewable sources for electricity generation. According to 1998 data from the Energy Information Administration, at least 10 percent of the electricity generated in 16 States comes from renewable power sources. Of these 16 States, 5 States receive more than 50 percent of their electricity from renewable sources, and the primary source is hydroelectric power. Four of the five States—Idaho, Oregon, South Dakota, Washington—rely on hydroelectric power for more than 60 percent of their electricity.

Maine is the only State east of the Mississippi to rely on more than 50 percent of electricity generation from renewables, 30 percent coming from hydro and 30 percent coming from other renewable fuels. Regions, and even individual States, that currently have a high percentage of renewable energy sources would be less impacted by the requirements of the underlying provisions. However, forcing a mandatory minimum will unduly burden States such as Ohio.

I don't want my colleagues to misunderstand me. I do believe we need to continue to invest in renewable forms of energy. They are environmentally friendly and contribute to meeting the requirement of national energy self-reliance, and as the technology gets better, have the potential to become inexpensive.

Right now, electricity from renewable energy sources is very expensive. However, we need to realize that the current research and development costs make a practical national application of a mandatory minimum renewable standard very difficult. Renewables simply do not have the capacity to meet our needs in the timeframe established in the underlying amendment. Their growth will come, however, and we should support research funding that will get us to the point where renewables are a viable energy option.

In fact, over the past 5 years, Congress has provided more than $7 billion in tax incentives and other programs to assist renewables. Recently, we extended a renewable energy tax credit for $1 billion, and the Finance Committee has reported legislation that provides an additional $3 billion.

However, I believe it is not prudent for the Senate to mandate a renewable standard. The amendment offered by the Senator from Arizona, on the other hand, lets the free market decide.

If the demand for energy derived from renewable sources exists, then I have no doubt that energy suppliers will respond to their customers and satisfy the demand, just as they are doing in Cleveland, OH.

Last year, the Northeast Ohio Public Energy Council made an agreement with Green Mountain Energy Company in Texas to supply customers in eight northeast Ohio counties with electricity. Green Mountain Energy Company uses a blend of sources including wind, water, and solar energy. Customers in these counties were able to make the decision themselves if they wanted to purchase the power instead of being mandated to purchase green power.

Having spent 10 years as Mayor of Cleveland, and as mayor I ran a municipally-owned utility, and 8 years as Governor, I have developed some very strong beliefs regarding federalism and the role of our various levels of government.

The Kyl amendment lets the States decide whether a mandatory renewables program is something they would want to implement for their residents. Right now, 14 States have already implemented mandatory RPS programs. This is consistent with the policy of the National Governors' Association, which states that any Federal legislation should:

> . . . allow a State to decide what mix of renewable technologies should be included in any renewable portfolio package implemented in a State.

The amendment offered by the Senator from New Mexico does eliminate the original language which would require that larger municipally owned utilities meet the RPS standard, but it still does not address the fact that this mandate will ultimately be paid for by ratepayers. In Cleveland, and in many of our cities and communities nationwide, a lot of these ratepayers are poor and a lot of them are elderly and it would be hard for them to afford the cost of this standard.

If you look at this chart, the people who seem to be left out are the ratepayers. They seem to be left out so often from debates we have here on the floor of the Senate. These are the least of our brethren, the ones who were the most affected a year ago when the demand for natural gas in this country went way up and their utility bills skyrocketed.

If you look at people with annual income under $10,000, you see that almost 30 percent of their income goes for energy costs. If you are in an income bracket between $10,000 and $24,000, you spend 13 percent on energy costs; and of course if you make over $50,000, only 4 percent of your income is spent on energy. There are a lot of people in this country who can afford that. But I have to tell you, there are a lot of people in this country who cannot afford it.

Last winter, in the midst of the heating cost increase, I held a meeting in Cleveland with Catholic Charities, Lutheran Housing and the Salvation Army and heard first-hand the effects of the high energy costs were having on the people who could least afford it. Many of them were just hanging on trying to stay in their own homes.

I am concerned about them and I think that the Senate should be concerned about them as well.

I honestly believe if the decision to implement a Renewable Portfolio Standard is left to the discretion of the Governors in the States, many of them will go forward with it. Some states will not go as fast as other ones, but overall we will probably achieve the goal of the sponsors of the Bingaman amendment, but do it without mandating it throughout the country in each and every State.

Renewables and conservation need to be a bigger part of our energy policy—

I agree with that. But we have to be realistic about our challenge. These two strategies do not have the capacity to meet our growing energy needs in the timeframe mandated in the underlying amendment.

I have to say, anyone who says renewables are going to take care of the energy needs of this country by the year 2020 just is not being intellectually honest in terms of what renewables can do.

We are going to need more coal, we are going to need more nuclear power, we are going to need more natural gas, we are going to need more hydropower and other renewables, we are going to need more conservation. We are going to need it all.

I think the Senator from Arizona is on the right track with his amendment and I urge my colleagues to support his amendment. It encourages the use of renewable power without mandating it and meets our energy, environmental and economic needs in a responsible way.

I yield the floor.

Mr. WELLSTONE. Will the Senator yield for a moment?

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. Mr. President, I ask unanimous consent I be allowed to follow Senator CANTWELL, since we are both in the Chamber.

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

Mr. BINGAMAN. Mr. President, I have heard the discussion by the two sponsors of the amendment, Senator KYL and Senator MILLER, and, of course, now Senator VOINOVICH and my colleague, Senator MURKOWSKI, who is the ranking member of the Energy Committee. I want to try to respond to some of the points that were made and put this issue in some kind of perspective as I see it.

First of all, why are we even proposing this amendment? Why does my underlying amendment that Senator KYL would propose to eliminate—why does my underlying amendment try to move us in the direction, as a country, of using more renewable energy to produce electricity? Why is that a priority for the country?

I have essentially the same chart as that to which my good friend from Ohio referred. and it has the same basic information on it.

This chart points out that when you look ahead—we do now depend primarily on coal. We do now depend heavily on nuclear. We do now depend heavily on natural gas. And renewables are not a major part of our energy mix, particularly the nonhydro renewables are not a major part of our energy mix.

One of the purposes we have in this energy legislation—and in this particular renewable portfolio standard provision—is to diversify the sources from which we generate power, so when we get to 2020 the chart I show you in this Chamber does not look exactly like it looks now as I am pointing to it here.

Today, in 2002, about 69 percent of the electricity we generate in this country is produced from coal and natural gas. If we do not adopt something such as this renewable portfolio standard, the expectation is that by 2020 it will be 80 percent produced by those two fuels. That is too much concentration. That is not smart.

The Presiding Officer is familiar with investment strategies. One of the simplest, most basic investment strategies is to diversify so you are not too dependent on what happens to one particular thing. We are too dependent today on what happens to the price of natural gas.

My colleague from Ohio was citing the terrible plight which many people in this country faced when natural gas prices went up 100 percent, 200 percent 18 months ago. I certainly saw that in my State. Many of the people I represent were very adversely affected. That is what we are trying to get away from with this renewable portfolio standard.

We are trying to say some of this electricity that is produced in the country—some modest amount of it—I would be the first to admit that this amendment to require up to 10 percent by the year 2020 is a modest amendment. I think it is very doable. It is a movement in the right direction, but it is a modest requirement. We are saying, let's at least do that. Let's at least require utilities to do the best they can, wherever they are located, to generate some of the electricity they sell from renewable sources. So that is what we are about here.

This chart I have shown before on the Senate floor. It tries to make the point that as compared to other countries, particularly in Europe—that is what is reflected on the chart—the United States has done much less in the way of trying to generate energy from renewable sources. It shows on the chart that Spain has had a 300-percent increase from the years 1990 to 1995; Germany, over 150 percent; Denmark, nearly 150 percent; the Netherlands, over 50 percent; France, a substantial amount. The United States is the one shown on the chart with the yellow circle around it. We have been moving ahead at a very, almost imperceptible, rate.

So what we are trying to do with this legislation is incentivize and require that some action be taken to move toward more production of energy from renewable sources.

My friend from Arizona, in his zeal, referred to this as ''Soviet style command and control.'' This proposal, which we brought to the Senate floor, is essentially the same as President George W. Bush signed into law in Texas. We all know how sympathetic he is to Soviet style command and control. It has worked tremendously in Texas. In fact, there are all sorts of articles being written about how successful that State has been in increasing the use of renewables, and increasing the generation of power from renewables, and how the rest of the country ought to learn something from Texas. What we are trying to do here is learn something from Texas.

I see the majority leader in the Chamber. If he has comments or a statement to make, I would be glad to yield to him at this point.

The PRESIDING OFFICER. The majority leader.

Mr. DASCHLE. I thank the distinguished Senator from New Mexico for his kindness.

Mr. President, I make an announcement that there will be no more rollcall votes tonight. We will pick up, hopefully, on the Kyl amendment tomorrow and have a vote on it at some point shortly after we reconvene.

TECHNICAL AMENDMENTS NEGOTIATIONS

Mr. President, I also announce that it appears it is unlikely we are going to reach an agreement with regard to the so-called technical amendments that have been the subject of a good deal of discussion and negotiation over the last several days. I appreciate the effort made by many of our colleagues. That will, as we have all understood, necessitate the cloture vote tomorrow.

My expectation is that we will come in late morning and then have the cloture vote and begin the debate on the campaign finance reform bill. Perhaps we still may reach some agreement with regard to the technical amendments, but at least as of this hour no agreement has been reached.

Senator MCCAIN has indicated to me he is not in a position to agree to the amendments that have been discussed. As a result, while I encourage further discussion, I do want people to know that it is very likely, I would say, we could have that cloture vote as early as late tomorrow morning. So I want to inform my colleagues of that.

I would be happy to yield to the Senator from Kentucky.

Mr. MCCONNELL. If the leader will yield, I must say that I am somewhat frustrated. The leader may or may not know that Senator MCCAIN and I have had three meetings on this subject. My staff and his staff, and others on the other side of that issue, worked for 3 weeks to resolve six very small items. There were 10 meetings between the staffs of Senator MCCAIN and FEINGOLD and mine, several phone conversations daily when staff was permitted to speak to each other, phone conversations late at night and over the weekend. Late last night, Senators MCCAIN and FEINGOLD provided a draft incorporating two technical changes of their own, to which we immediately agreed. In fact, we agreed to all of Senator MCCAIN's and Senator FEINGOLD's provisions and their changes. And I have been representing to my colleagues for over a week now we were almost there.

I was hoping we would be able to end this debate with everybody feeling good about the situation, but I must say I am not sure I have been dealt with in good faith, having worked on

this now for 3 weeks, and every time I am told we are almost there, we are never there.

So I think the majority leader is correct. That is where we seem to be. But I am going to say, I am astounded. This is my 18th year in the Senate. I have been involved in a lot of negotiations—never one so painful over so little: six rather small items.

So I do think we are going to wrap this bill up tomorrow. It is too bad we will not, apparently, be able to pass a technical package that would benefit both sides because of our inability to bring this to conclusion.

But I say to the leader, as I have said repeatedly over the last week, we are anxious on this side, those of us who oppose this bill, to complete it. And, hopefully, we can wrap it up tomorrow, not only the cloture vote but final passage, and the resolution that I believe we have agreed upon, which is separate from the technical amendments. It is really regretful that we negotiate for 3 weeks over relatively small items and cannot seem to get there.

So let me say to the leader, we look forward to wrapping this bill up tomorrow—we know it is essentially over—and hope we can do it in a minimal amount of time.

Mr. DASCHLE. I thank the Senator from Kentucky. I appreciate all of his efforts. I said a moment ago, I still hold out the possibility that some agreement can be reached. And, of course, the cloture vote does not preclude that. So we will keep talking.

I think Senators should be on notice that the cloture vote will take place, and, hopefully, we can then reach some kind of unanimous consent agreement with regard to the time required for further debate on the bill prior to the time we have a final passage vote.

I thank my colleagues and yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 3038

Mr. BINGAMAN. Mr. President, let me just speak for a few more minutes and conclude my comments. I know there are others waiting to speak on this Kyl amendment.

One of the issues that was raised by the Senator from Georgia was a concern about whether or not this preempted States from doing what they wanted to do about renewable energy generation. It does not do that. There is no way that we in any way preempt a State from taking action.

There are many States that have taken action which far exceeds the standards to which we would be holding them. So this is not in any way an effort to preempt States. It is an effort to move them along this road, and some of them are already a great deal of distance down this road.

Let me also discuss the idea of wealth transfer. My colleague from Arizona has said repeatedly that this is a terrible thing because some States are at such a terrible disadvantage. The truth is—and the various maps that my friend from North Dakota showed earlier make the point very clearly—we do not specify in this legislation which type of renewable resource be used. Instead, we allow each State to use whatever is available to them. There are a great many different resources available.

Finally, let me talk about cost. There has been a real concern that the cost of this provision would be substantial for ratepayers, for various individuals.

I have the Energy Daily, which is a well-known publication in town and around the country. This is dated March 12. There is an article entitled ''EIA Sees RPS Having Little Impact On Prices.''

What that means is that the Energy Information Administration was asked by my colleague, Senator MURKOWSKI, to do a study on what would be the impact of this provision on prices?

Mr. VOINOVICH. Mr. President, will the Senator yield for a question?

Mr. BINGAMAN. I am pleased to yield.

Mr. VOINOVICH. You have just stated that many States have already implemented greater RPS standards than required in your amendment. In my statement, I said 14 already have RPS standards. But this bill does mandate a 10-percent renewable requirement on all the States. In a State like Ohio, we are currently generating less than four-tenths of 1 percent of our electricity with non-hydro renewable power sources. We are also facing some dramatic increases in electric generation costs to reduce the pollution from coal-fired plants by using clean coal technology. About 85 percent of our plants use coal today.

I can't believe an RPS in Ohio will reach 10 percent because in all probability, the utilities that serve my State, if this goes in as a mandate, will buy credits and then the cost of those credits will be passed on to Ohio ratepayers.

Mr. BINGAMAN. Let me respond: There clearly are some challenges for some States in this legislation, but I am persuaded that there are ways for them to meet those challenges through coal-fired generation, using biomass. That is one way to do it. We are glad to work with the Senator to be sure that the legislation has the flexibility in it so that this is a goal that can be achieved in his State by utilities operating in his State. I think it can be.

If I could just conclude the description of this study, this is the study by the Energy Information Administration, it concludes:

> . . . that the retail price impacts of a requirement that electricity generators provide at least 10 percent of their output from renewable sources by 2020 ''are projected to be small because the price impact of [the program] is projected to be relatively small when compared with the total electricity costs and to be mostly offset by lower gas prices.''

Then they go on to say:

> The study, which was requested by Sen. Frank Murkowski of Alaska . . . concludes that increased electricity generation from renewables would have the biggest impact on natural gas-fired prices, which EIA said would drop as a result of competitive pressure from renewables.

So the chart my friend from Ohio put up showing gas prices going through the ceiling, as they did 18 months ago, that would be less likely if there were other sources from which energy was being generated.

Mr. President, I have other points I can make. I know there are several Senators who have been waiting quite a while to speak. I may have an opportunity later on before the vote to conclude my comments.

Mr. President, I have a series of letters in support of the underlying Bingaman amendment that Senator KYL would wipe out with his amendment. I ask unanimous consent those letters be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

NATIONAL HYDROPOWER ASSOCIATION,
Washington, DC, February 20, 2002.

Hon. JEFF BINGAMAN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR BINGAMAN: The National Hydropower Association (NHA) writes to ask you to support Majority Leader Tom Daschle and Energy & Natural Resources Committee Chairman Jeff Bingaman for their inclusion of ''incremental hydropower'' in the Renewable Portfolio Standard (RPS) contained in S. 517, the ''Energy Policy Act of 2002.'' Additionally, we ask that you oppose any efforts to modify or remove incremental hydropower from the RPS when the bill is considered on the Senate floor and to support S. 517's RPS in the event of an ''up-or-down'' vote.

Both Democrats and Republicans have recognized the importance of hydropower—our nation's leading renewable technology—in meeting future energy demands. What's more 93 percent of registered voters overwhelmingly support an important role for hydropower in the future, and 74 percent favor incentives for increased hydropower production at existing facilities.

With the inclusion of incremental hydropower in the RPS, approximately 4,000 Megawatts (MWs) of new hydro generation could be developed meeting today's environmental standards at existing hydropower facilities—none of which would require the construction of a new dam or impoundment. This is enough power for four million homes—clearly a significant contribution to our nation's energy supply.

The most commonly used definition of incremental hydropower, including that of S. 517, allows new hydro generation to be achieved from increased efficiency or additions of new capacity at an existing hydroelectric dam. This concept is based on extensive discussions and a general agreement between the hydropower industry, a segment of the environmental community and other members of the renewable energy community.

NHA strongly supports Senators Daschle and Bingaman for their inclusion of incremental hydropower in S. 517 and hope you will do the same. What's more, we hope you'll support the RPS when it is debated on the Senate floor as it will allow America to rely more on clean, renewable energy.

If you have any questions, please contact Mark R. Stover, NHA's Director of Government Affairs, at 202–682–1700 x-104, or at mark@hydro.org.

Sincerely,

LINDA CHURCH CIOCCI,
Executive Director.

FLORIDA POWER & LIGHT COMPANY,
Washington, DC, March 14, 2002.

Hon. JEFF BINGAMAN,
Chairman, Energy and Natural Resources Committee, U.S. Senate, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN BINGAMAN: Please consider this letter an endorsement of the compromise Renewable Portfolio Standard (RPS) contained within S. 517, the Energy Security Policy Bill.

As you may know, FPL Group, comprised of its two major subsidiaries, Florida Power & Light (FPL) and FPL Energy (FPLE), is one of America's cleanest, most progressive energy companies. Our commitment to the environment is manifested by FPL's diverse generation mix and by FPLE's largely renewable energy portfolio. FPLE operates the two largest solar projects in the world, over 1,000 megawatts of hydroelectric power, a number of geothermal projects, and a number of biomass plants. And, significantly, with over 1,400 megawatts of net ownership in wind energy, FPLE is the nation's largest generator of wind power.

FPLE plans on adding up to 2,000 megawatts of new wind generation over the next two years. Due to the wind energy production tax credit (IRC Sec. 45(c)(3)) and the industry's success in reducing production costs, wind energy has become economically feasible. A long-term extension of the credit combined with your RPS will allow wind generation—and, hopefully, other renewable sources—to contribute to America's energy independence and security. Ultimately, such an aim should be the keystone of any American energy policy.

We appreciate your leadership on this important issue, and we strongly support your efforts to enact a fair and balanced RPS. Please do not hestitate to call on me should you require any assistance in your endeavor.

Sincerely,

MICHAEL M. WILSON,
Vice President.

CALPINE CORP.,
Washington, DC, March 14, 2002.

Hon. JEFF BINGAMAN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR BINGAMAN: On behalf of Calpine Corporation, I am writing to convey our support for the Renewable Portfolio Standards (RPS) amendment that I understand you plan to offer.

We support a reasonable RPS that will provide a market-based incentive for increasing the amount of energy that is produced by renewables. Your amendment is a significant improvement over both the existing Senate energy bill language and the Jeffords amendment to be offered on this subject. We particularly support the fact that your amendment treats all types of renewable energy the same.

We also believe that an RPS is only workable when it is coupled with tax incentives for the production of renewable energy and we strongly support the production tax credit for basic renewables that is contained in the underlying energy bill.

As the world's largest producer of geothermal energy, we are concerned, however, that only new renewable capacity will be eligible to receive tradable credits under the RPS. While I understand your desire it to encourage new capacity rather than reward past behavior, it seems that there should be some recognition for early action. Perhaps when this issue comes to conference, you might consider a system whereby existing renewable capacity is eligible for credits that phase out over time. We would certainly be willing to work with you on such a proposal.

Finally, I want to thank you for your leadership in guiding this energy legislation through the Senate. The bill contains some important features that will help to promote more competitive markets and we appreciate everything you have done to maintain these features and oppose amendments that would turn away from open access and competition.

Sincerely,

JEANNE CONNELLY.

MIDAMERICAN
ENERGY HOLDINGS COMPANY,
Omaha, NE, March 14, 2002.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BINGAMAN: I am pleased to write in support of your efforts to include provisions to promote the development of renewable energy resources for electric generation in the Senate's comprehensive energy bill. MidAmerican Energy Holdings Company is one of the world's largest developers of renewable energy, including geothermal, wind, biomass and solar.

MidAmerican has been a long-time proponent of both a production tax credit for electricity generated by renewables and a federal government purchase standard for renewable electricity. We strongly support these provisions in the comprehensive energy bill before the Senate, as well as recent modifications to the bill's renewable portfolio standard (RPS) section that will ensure that implementation of the RPS is achievable and affordable.

Renewable electricity can play a critical role in diversifying the nation's fuel mix and providing emissions-free electricity for American consumers. By including both supply and demand side components in the comprehensive energy package, your legislation will benefit the environment and American energy security.

Thank you again for your leadership in promoting renewable energy.

Sincerely,

DAVID L. SOKOL,
Chairman and Chief Executive Officer.

AMERICAN WIND ENERGY ASSOCIATION,
Washington, DC, March 13, 2002.

Hon. JEFF BINGAMAN,
Chairman, Senate Energy and Natural Resources Committee, U.S. Senate, Washington, DC.

DEAR CHAIRMAN BINGAMAN: I write on behalf of the Board of Directors and member companies of the American Wind Energy Association (AWEA) in support of the Renewables Portfolio Standard (RPS) contained in the proposed substitute to S. 517, the Energy Policy Act of 2002.

While we believe that all of America's renewable energy technologies—wind, solar, geothermal, biomass, and hydropower—are capable of contributing higher levels of electricity generation than would be required by the proposed RPS, the provision is a significant step forward in meeting America's growing energy needs.

In 2001 alone the wind energy industry installed close to 1,700 megawatts of new generating capacity, enough to meet the needs of about 475,000 households. More than half of this new wind power development (915 megawatts) was produced in Texas—a state with the most effective renewable energy requirement law in the nation. In addition to producing electricity without emitting any pollutants, each megawatt of wind power creates at least $1 million in economic activity.

The wind industry is proud to support the RPS contained in S. 517, aimed at diversifying America's energy production while also enhancing our effort to secure cleaner air and a more sustainable energy future. Thank you.

Sincerely,

RANDALL SWISHER,
Executive Director.

GEOTHERMAL ENERGY ASSOCIATION,
Washington, DC, March 14, 2002.

DEAR SENATOR: This afternoon, Senator Bingaman plans to offer a substitute for the RPS provisions in S. 517 that the geothermal industry urges you to support.

While we believe that significantly more renewable energy could be brought on-line over the next twenty years, the Bingaman amendment would establish an important national minimum requirement for new renewable development. This will help ensure the continued growth and health of renewable industries and will have positive economic and environmental benefits for our Nation.

Moreover, the Bingaman proposal would preserve the essential market-based approach that is at the heart of a renewable portfolio standard. This proposal—together with the provisions proposed by the Senate Finance Committee that would equalize renewable tax treatment by expanding the production tax credit to include geothermal energy—will stimulate market forces to develop reliable and cost-effective renewable technologies to help meet our country's energy needs.

On behalf of the geothermal industry, I strongly encourage you to support the Bingaman amendment and the renewable energy tax provisions reported by the Senate Finance Committee.

Sincerely,

KARL GAWELL,
Executive Director.

The PRESIDING OFFICER. Under a previous order, the Senator from Minnesota is recognized, followed by the Senator from Washington.

Mr. WELLSTONE. What I can do is—I would be pleased to speak for myself; I know Senator MCCAIN wants to speak—if I could get 10 minutes before the vote tomorrow to speak, I would be pleased to relinquish the floor last.

Mr. BINGAMAN. Mr. President, I am not in a position to commit to that without the assistant majority leader, floor leader, to talk about that. I don't know what the procedure is. Since we are jumping from the energy bill to the campaign finance reform bill and back every few minutes, it is very difficult for me to commit to that.

Mr. MCCAIN. May I just ask my friends from Minnesota and from New Mexico—three of us are on the floor. We would take about 2 minutes to kind of clear up a problem that has arisen. If I could ask unanimous consent that we could take a maximum of 3 minutes, 1 minute each.

Mr. WELLSTONE. Mr. President, that would be fine. I ask unanimous consent that I just immediately follow them.

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

Mr. WELLSTONE. And then I would be followed by Senator CANTWELL as in the original agreement.

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

The Senator from Arizona.

TECHNICAL AMENDMENTS NEGOTIATIONS

Mr. MCCAIN. Mr. President, I will take less than 1 minute. We have been working with the Senator from Kentucky, the Senator from Wisconsin and I have, and our staffs. We have come up with a package of technical amendments with which we are in agreement. We are ready to move that package. There seems to be a problem with another Member, a very senior Member. I hope we can get that worked out.

I do have it worked out. I think we should be ready to move forward tomorrow. I think we have had good-faith negotiations.

I yield to either one of my colleagues.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. MCCONNELL. I said before the Senator from Arizona had arrived that I was totally frustrated. I recounted all the meetings he and I and our staffs had had, and I was exasperated that we seemed to have gotten so close and not been able to complete it. I confirm what the Senator from Arizona said, that we have reached an agreement among the three of us on this technical package. We would like to be able to move it, and we would plead with our colleagues on both sides of the aisle to give us a chance. I don't think there are three Members of the Senate who know any more about the subject than we do. Our positions are pretty well established. We have actually reached agreement, and we would hope that the Senate would let us act on it in some kind of consent arrangement sometime tomorrow.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, there have been good-faith negotiations. I agree with the Senators from Arizona and Kentucky that we have finally reached agreement on the technical amendments package. There is a different Member of the Senate who has a concern about it. Because we are operating on the basis of a unanimous consent, we have to deal with that. But we have finally reached the point where the actual provisions are something we can agree on, and we are hoping we can work this out.

I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. WELLSTONE. Mr. President, I assume we will have time to talk about campaign finance reform.

AMENDMENT NO. 3038

As a matter of fact, I think I can do it in just a couple of minutes. Last week when we had the debate on the Jeffords amendment, to increase the renewable portfolio to 20-percent electricity, I spoke at some length. I just want to pick up on a couple of points that Senator BINGAMAN made, and probably my colleague from Washington can speak about this with more eloquence. Nobody, to respond to the Senator from Ohio, is making the argument that, by 2020, we will be totally independent from fossil fuels. No one is making that argument. It's really a ''straw man'' argument.

I think the question is whether or not we will, no pun intended, continue to barrel down the fossil fuel energy path. Will we continue to rely primarily on oil, coal, or on other fossil fuel? Or do we want to take a new direction. I, frankly, think this is going to be a test vote for a new direction in energy policy. I think the Senator from New Mexico agrees that this is going to be a test vote on this bill. This 10-percent renewable energy portfolio, which is from my point of view too little, makes this legislation a reform bill—it makes this an energy bill that is sensitive to how we produce energy in connection with the environment. It takes us down a different energy path.

The different path is significant for many States. For example, in Minnesota, we produce enough wind to produce all of our electricity through wind, when the technology is there. In fact, Minnesota, South Dakota, and North Dakota, Nebraska and Kansas could produce enough energy through wind generation to produce electricity for the whole country.

So there is enormous potential here. In addition to wind, we have biomass to electricity, solar, and geothermal. When my colleague from Ohio was giving some projections, I think he missed the point about the potential of efficient energy use and where that figures in. Again, one more time, it is a marriage ready to be made between being much more respectful of the environment, clean technology, many more small business opportunities, keeping dollars and capital in our States and our communities, national security, and less dependent on Middle Eastern oil.

Look at what happened last year with natural gas prices. We would be much less dependent on a few giant energy conglomerates for energy.

This is pro-environment, pro-consumer, pro-small business, pro-clean technology, and is going to be a huge growth industry in our country. Frankly, the only folks who are really opposed to this renewable portfolio standard are some Senators are opposed because they think it is a mistake to have a mandate or a subsidy. Although I have to tell you, the oil and gas industry have gotten huge subsidies over the years. Last year the House passed a bill with over $30 billion in tax breaks, most of them going to oil, coal, and the nuclear industry. Now that is a government subsidy. If I were to look back over the last 50 years of energy policy, it would be a massive amount of money we have given to the fossil fuel energy industry. We don't want to stack the deck against renewables. We want to nurture and promote energy policy for all of the good reasons I have tried to outline.

Frankly, if we can't hold on to this 10 percent renewable energy portfolio, then I don't think we have much of a form bill here at all.

This is a key vote. That is why I wanted to speak briefly about it. I hope we will get a strong vote against the Kyl amendment, and I think we will. I think it should be defeated.

I yield the floor.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Ms. CANTWELL. Mr. President, I rise to speak in opposition to the Kyl amendment. We are debating this energy bill against the backdrop of one of the country's most severe energy crises, which has definitely impacted ratepayers in my State and in many parts of the West.

After September 11, the war against terrorism even more underscores the need for us to develop a national energy policy that helps create more independence. It is clear that the time has come for us to enact a 21st century energy policy. But we will fail if this bill is simply about the extent to which we should increase oil production or determine the best route for pipelines. We will fail if we do not learn from the lessons of the past and recognize that we are on the cusp of a revolution of energy technology that could be as significant as the revolution in computing technology.

We are faced with a clear choice: We can go down the path of debating false choices of conservation versus production, regulation versus deregulation, nuclear versus fossil. But I think it is time that we recognize what is at the core of the debate is this 21st century energy policy; about developing a new policy that will lead us to a system of cleaner, more efficient, distributed power, located closer to the homes and businesses that it is built to serve.

Mr. President, the renewable portfolio standard we are debating today is the centerpiece of our effort of a 21st century energy policy marked by environmentally responsible sources of energy. An aggressive renewables portfolio standard will help this Nation diversify its energy, level the playing field for renewable resources, and encourage investment in clean energy technology. A transition to clean, renewable sources of energy will help stabilize increasing and volatile fossil fuel prices, ease energy supply shortages and disruptions, clean up dangerous air pollution, and reduce emissions of greenhouse gases.

Again, arguments in favor of a strong Federal renewables portfolio standard are straightforward. An RPS will spur more environmentally responsible generation, diversify electricity sources, and that is enhancing and helping to protect our economy from price spikes; and, three, create a national market

for renewables and clean energy technology, spurring innovation and reducing their cost—potentially for international export.

Today, less than 2 percent of the Nation's electricity is generated by nontraditional sources of power such as wind, solar, and geothermal energy. This has to change. By putting a renewables portfolio standard in place, we will set the Nation down a path toward a more independent, sustainable, and stable power supply.

I want to emphasize just how important it is to diversify our generating resources. As many of my colleagues are aware, last year the Pacific Northwest suffered the second worst drought in the history of our State. In Washington State, about 80 percent of our generation comes from hydroelectric sources. So because of this drought, consumers in my State were exposed far more directly to the pervasive market dysfunction activity that happened in the West. As a result, many of our utilities have had to raise their retail rates by as much as 50 percent.

So I believe we must diversify our resource portfolio, but to accomplish this goal, many of our utilities are making a tremendous investment in new generation. Much of it is from ample renewable resources. We realize the investment in renewables is affordable and a perfect complement to our hydroelectric base. For example, I visited, in our State, the Stateline Wind Project last August, which is located in Walla Walla, WA. The wind farm, which went into operation December 13, consists of 399 turbines and has a capacity to produce 263 megawatts of electricity. That is enough energy to serve almost 70,000 homes. So this is working.

The Bonneville Power Administration, which supplies about 70 percent of the power consumed in Washington State, has set a goal of obtaining a total of a thousand megawatts of energy.

Many of our small and rural utilities are banding together to invest in wind projects, and the Yakima Tribe is also exploring similar options.

As we consider the renewables portfolio standards provisions of this bill, I think it is important to recognize the tremendous untapped potential that these renewables represent. Washington State and the Pacific Northwest have begun to make this investment. With the construction now underway, our regional renewable resources, excluding most hydropower, will soon approach 4 percent—far surpassing the national average. But I believe we can still do better.

A strong renewables portfolio standard will create the market certainty that companies and utilities need to continue down the path toward resource diversification and technological innovation. Specifically, increasing our supply of renewable resources makes not just environmental sense but also economic sense. A study released last November, sponsored by a group of Northwest utilities and interest groups, estimated that the international market for clean energy technologies will grow to $180 billion a year over the next 20 years—that's right, $180 billion a year over the next 20 years.

It is in our national economic interest to set policy that will ensure the United States captures a major part of this market.

Already the Northwest has a $1.4 billion clean energy industry that is on track to grow to $2.5 billion over the next several years, creating 12,000 new jobs in our region. That is right, 12,000 new jobs in our region.

With the right public policies in place, we can attain 3.5 percent of the worldwide market for clean energy technologies, including not just generation but smart-grid transmission technologies needed to bring power to market more efficiently and create as many as 35,000 new jobs in the Northwest.

Developing the clean energy technology industry on a national level means job creation. We need a Federal renewable portfolio standard both to break our century-old reliance on traditional fossil fuels and to create predictable markets for renewable technologies and lay the groundwork for even greater innovations.

Last week, the Senate was unable to make meaningful progress on the important issue of corporate average fuel economy standards for our Nation's vehicles. We had an opportunity before us to alleviate threats to our national energy and economic security posed by our dependence on imported oil. Nonetheless, it is important that we make progress today in this particular area and make sure that we make a renewable standard an important part of this legislation.

The renewable portfolio standard is one of the thresholds that will determine whether the Senate really does create an energy policy that sets itself apart from the 19th century focus of digging, burning, and drilling and focuses more importantly on these 21st century technologies.

Now is the time to enact an energy policy that will help us meet these goals. A strong renewable portfolio standard will encourage use of renewable sources and reduce harmful air and water pollution from coal and fossil fuels. It will help ensure a sustainable, secure energy supply and protect our environment for future generations. It will create the investment, income, and jobs in our communities, especially our rural areas.

These are the characteristics that I think should be part of our 21st century energy policy. I ask my colleagues to support a strong renewable portfolio standard and, most importantly, oppose any efforts to strip from this bill or in any way undermine this measure which I believe is critical. I urge my colleagues to vote against the Kyl amendment and to vote instead for a strong renewable portfolio standard.

I yield the floor.

The PRESIDING OFFICER (Mr. DAYTON). The Senator from Arizona.

Mr. KYL. Mr. President, I wish to respond to some of the comments made relative to my amendment by various Senators who have spoken since I laid that amendment down earlier this afternoon.

First, I ask unanimous consent to print in the RECORD two letters from the Public Service Commission of the State of Florida, both dated March 18, 2002, one to the Honorable BILL NELSON and the other to the Honorable BOB GRAHAM, the two Senators from the State of Florida.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

STATE OF FLORIDA,
PUBLIC SERVICE COMMISSION,
Tallahassee, FL, March 18, 2002.

Re: Energy Legislation (Substitute Amendment 2917 to S. 517).

Hon. BILL NELSON,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR: The purpose of this letter is to let you know that the Florida Public Service Commission has major concerns with the 400-page Substitute Amendment currently being addressed by the Senate. It is extremely preemptive of State Commission authority. If legislation moves forward, we ask that it provide a continuing role for States in ensuring reliability of all aspects of electrical service-including generation, transmission, and power delivery services and should not authorize the FERC to preempt State authority to ensure safe and reliable service to retail customers. Also, we support the Kyl amendment on the renewable portfolio standard.

In particular, our concerns are:

(1) Electric Reliability Standards.

The substitute amendment would limit the States' authority and discretion to set more rigorous reliability standards than the Federal Energy Regulatory Commission (FERC) over transmission and distribution. In fact, the Substitute Amendment appears to provide no role for States at all on transmission reliability. Yet, the Florida Legislature has carefully set cut statutory authority for the PPSC over transmission.

If legislation moves forward, Congress should expressly include in the bill a provision to protect the existing State authority to ensure reliability transmission service. We note that the Thomas amendment passed. The amendment appears to strengthen state authority. In that regard, the amendment is better than the overall bill under consideration. Our interpretation is that the amendment will not restrict state commission authority to adopt more stringent standards, if necessary.

(2) Market Transparency Rules.

The section is silent on State authority to protect against market abuses, although it does require FERC to issue rules to provide information to the States. State regulators must be able to review the data necessary to ensure that abuses are not occurring in the market.

(3) Public Utilities Regulatory Policy Act (PURPA).

The FPSC supports lifting PURPA's mandatory purchase requirement, but States should be allowed to determine appropriate measures to protect the public interest by

addressing mitigation and cost recovery issues. Thus, we do not support preempting State jurisdiction by granting FERC authority to order the recovery of costs in retail rates or to otherwise limit State authority to require mitigation of PURPA contract costs. States that have already approved these contracts are better able to address this matter than the FERC.

(4) Federal Renewable Portfolio Standards.

This requires that beginning with 2003, each retail electric supplier shall submit to the Secretary of Energy renewable energy credits in an amount equal to the required annual percentage to be determined by the Secretary. For the year 2005, it will be less than 2.5 percent of the total electric energy sold by the retail electric supplier to the electric consumer in the calendar year. For each calendar year from 2006 through 2020, it shall increase by approximately .5 percent.

The Secretary will also determine the type of renewable energy resource used to produce the electricity. A credit trading system will be established. While a provision is established to allow states to adopt additional renewable programs, we continue to have concerns. Thus, we strongly support the Kyl amendment which provides some flexibility to the States.

The FPSC believes that States are in the best position to determine the amount, the time lines, and the types of renewable energy that would most benefit their retail ratepayers. This is particularly true in the case of States without cost-effective renewable resources. A one-size-fits-all standard will likely raise rates for most consumers.

(5) Consumer Protection.

The FPSC is concerned with language in Section 256 that requires that State actions not be inconsistent with the provisions found in the bill. While the FPSC favors strong consumer protection measures, preempting States by Federally legislating retail consumer protections is not necessary. States are better positioned to combat retail abuses. States are partners with federal agencies in these efforts to ensure consumer protection.

The critical role of State Commissions in the analogous area of implementing the Federal Telecommunications Act provision against slamming (the unauthorized switch of a customer's primary telecommunications carrier) serves as a good example. The Federal Communications Commission saw the benefit of having State Commissions carry out the anti-slamming program. State Commissions are simply better situated and have a more in-depth understanding of the abuses in the consumer protection arena. As a result, Florida's slamming rules are actually more strict and provide better remedies to the consumers than the FCC rules. We would like to retain the ability to take similar steps in the energy area if warranted.

It is our understanding that there are now 100–200 amendments. We are in the process of reviewing all of them. In the meantime, please call us with questions on them. We appreciate that your staff has been in frequent contact with FPSC staff.

In conclusion, we request that you take these points into consideration as energy legislation progresses. Please do not hesitate to call if we may be of further assistance.

Sincerely,

LILA A. JABER,
Chairman.

STATE OF FLORIDA,
PUBLIC SERVICE COMMISSION,
Tallahassee, FL, March 18, 2002

Re Energy Legislation (Substitute Amendment 2917 to S. 517).

Hon. BOB GRAHAM,
U.S. Senator, Hart Senate Office Building, Washington, DC

DEAR SENATOR GRAHAM: The purpose of this letter is to let you know that the Florida Public Service Commission has major concerns with the 400-page Substitute Amendment currently being addressed by the Senate. It is extremely preemptive of State Commission authority. If legislation moves forward, we ask that it provide a continuing role for States in ensuring reliability of all aspects of electrical service—including generation, transmission, and power delivery services and should not authorize the FERC to preempt States authority to ensure safe and reliable service to retail customers. Also, we support the Kyl amendment on the renewal portfolio standard.

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If legislation moves forward, Congress should expressly include in the bill a provision to protect the existing State authority to ensure reliable transmission service. We note that the Thomas amendment passed. The amendment appears to strengthen state authority. In that regard, the amendment is better than the overall bill under consideration. Our interpretation is that the amendment will not restrict state commission authority to adopt more stringent standards if necessary.

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The FPSC supports lifting PURPA's mandatory purchase requirement, but States should be allowed to determine appropriate measures to protect the public interest by addressing mitigation and cost recovery issues. Thus, we do not support preempting State jurisdiction by granting FERC authority to order the recovery of costs in retail rates or to otherwise limit State authority to require mitigation of PURPA contract costs. States that have already approved these contracts are better able to address this matter than the FERC.

(4) Federal Renewable Portfolio Standards.

This requires that beginning with 2003, each retail electric supplier shall submit to the Secretary of Energy renewable energy credits in an amount equal to the required annual percentage to be determined by the Secretary. For the year 2005, it will be less than 2.5 percent of the total electric energy sold by the retail electric supplier to the electric consumer in the calendar year. For each calendar year from 2006 through 2020, it shall increase by approximately .5 percent.

The Secretary will also determine the type of renewable energy resource used to produce the electricity. A credit trading system will be established. While a provision is established to allow states to adopt additional renewable programs, we continue to have concerns. Thus, we strongly support the Kyl amendment which provides some flexibility to the States.

The FPSC believes that States are in the best position to determine the amount, the time lines, and the types of renewable energy that would most benefit their retail ratepayers. This is particularly true in the case of States without cost-effective renewable resources. A one-size-fits-all standard will likely raise rates for most consumers.

(5) Consumer Protection.

The FPSC is concerned with language in Section 256 that requires that State actions not be inconsistent with the provisions found in the bill. While the FPSC favors strong consumer protection measures, preempting States by Federally legislating retail consumer protections is not necessary. States are better positioned to combat retail abuses. States are partners with federal agencies in these efforts to ensure consumer protection.

The critical role of State Commissions in the analogous area of implementing the Federal Telecommunications Act provision against slamming (the unauthorized switch of a customer's primary telecommunications carrier) serves as a good example. The Federal Communications Commission saw the benefit of having State Commissions carry out the anti-slamming program. State Commissions are simply better situated and have a more in-depth understanding of the abuses in the consumer protection arena. As a result, Florida's slamming rules are actually more strict and provide better remedies to the consumers than the FCC rules. We would like to retain the ability to take similar steps in the energy area if warranted.

It is our understanding that there are now 100–200 amendments. We are in the process of reviewing all of them. In the meantime, please call us with questions on them. We appreciate that your staff has been in frequent contact with FPSC staff.

In conclusion, we request that you take these points into consideration as energy legislation progresses. Please do not hesitate to call if we may be of further assistance.

Sincerely,

LILA A. JABER,
Chairman.

Mr. KYL. Mr. President, what those two letters say is that the Kyl amendment should be adopted and the Bingaman amendment should lose. They are echoing the sentiments of a lot of other groups both in the private and public sectors. I have put in the RECORD some other letters from the public sector and associations that strongly support the Kyl amendment.

I wish to respond to some of the comments from colleagues that have been made in response to my presentation. My colleague from North Dakota made the point that we should have a national energy policy just like the Clean Air Act and that is why we need a national energy bill.

There is a difference between a national policy and a Federal policy. We do have national problems, but not all national problems are best solved by a Federal solution.

In this case, we have a combination because we have clearly decided that the Federal Government does need to be directly involved in the national energy policy debate, but we do not say —none of us says—the Federal Government should take it all over; it is a

Federal problem; therefore, we have a Federal solution.

Most of what we do as a nation we do as private sector operatives, as State and local governments, and then, of course, the U.S. Government does a fair amount of directing and financing of programs, but clearly we cannot run everything from Washington, DC.

The Bingaman amendment does deviate from this otherwise pretty commonsense approach to American life by saying: This is not just a national problem; we do not need just a national solution, we need a Federal solution to the point that we are going to mandate, compel, require, under penalty of law, that you will produce 10 percent of your power through renewable sources or else.

I actually misstated that a little bit. It is not produce, it is sell. We are requiring that the retailer account for 100 percent of the power sold so that you can prove to the Department of Energy that 10 percent of that power sold came from renewable sources. You do not have to produce it yourself. You either have to buy it from somebody who produced it or you have to buy credits from somebody who produced it or you have to buy credits from the Department of Energy that does not produce anything. But if you are willing to assess your retail customers for that, then you can get away without producing it yourself.

Either way, the energy is going to cost you something; it is going to cost them something. In one case, you actually have to buy it from somebody, and, in the other case, you have to buy it from somebody or the Department of Energy. There is a big difference between having a national policy and having a Federal mandate.

There are a lot of items in this bill that are OK, and they have national scope to them. There are a lot of items in the President's plan that are national in their scope, but they do not all provide for Federal mandates, and that is a distinction we need to make.

As a matter of fact, the Senator from Washington just talked about the need for Federal encouragement. In fact, her exact statement was: We need a policy to encourage the use of renewable energy as part of a 21st century national plan. I agree we need to encourage, but there is a big difference between encourage and require.

The encourage part we already have in the law. As a matter of fact, under this bill we are actually extending and expanding the tax credit that we currently provide for renewable energy sources to encourage greater production of that renewable energy. In fact, it would not make any economic sense to produce this without the Federal Government subsidy of 1.7 cents per kilowatt hour, for example, for wind generation. One could not compete in wind generation without this Federal tax credit which provides roughly 40 percent of the cost of the production of the power.

We do encourage, in a big way. We are already doing the encouraging part. The question is whether we should have both a carrot and a stick. I am all for the carrot approach, but I do not think the Federal Government should be taking a stick to people who buy electricity and say you have to buy 10 percent renewable power or we are going to make you pay for it. That is exactly what the Bingaman amendment does.

What the Kyl-Miller amendment says is, let the States decide. If we are going to have a national policy for this national problem, then let's let all the States within the country decide what is best for them.

I am intrigued by the chart that is on the easel behind the distinguished chairman of the Energy Committee. The Senator from North Dakota used that chart to illustrate that we have potential renewable resources throughout the country.

He demonstrated that by pointing to four different kinds of renewable energy power source. Biomass and solar, I guess that is the one that is very bright red down in my part of the country. Then geothermal in the lower left, and wind power in the lower right, and certainly in the State of North Dakota there is a bright red color, the Saudi Arabia of wind power in North Dakota, and in South Dakota, it seems.

What one can see from those four charts is the renewable opportunities are very divergent around the country. They are distributed not fairly in one sense but in a very disparate way.

The distinguished Presiding Officer does not have much of a shot, it seems, for wind power or geothermal power or solar power, but there might be some good biomass opportunities. I certainly hope so, because it is going to have to be produced or credits are going to have to be bought from somebody else who can produce it.

The real story behind these four charts is not the disparity and the fact there are winners and losers and there will have to be trading among the States, but according to the EIA report dated February 2002—that is the Energy Information Agency of the Department of Energy—on page 16, and I am quoting, only wind capacity is projected to make significant change between the renewable portfolio standard and the baseline, or the status quo.

In other words, of all of these renewables—solar, geothermal, biomass, and wind—that have been examined by the Department of Energy, the only one projected to make a significant change is wind power. There are a couple of reasons for that. The amount of the subsidy that has been used to develop the wind power industry and the general efficiencies with respect to wind power make it the only one economically viable, even close to being economically viable, as a producer of mass amounts of energy of the four basic renewables.

As much as we would like to produce it from solar power in the Southwest, the economics are not there, even with the substantial Federal subsidies. The same is true with respect to geothermal and biomass. I would like to burn more biomass in the State of Arizona. It is not an efficient way to produce power. The Btu content is not there.

So of these four basic energy sources, only wind power, the Department of Energy says, can really make a significant difference. That is a fact.

What is the importance of that fact? Well, first of all, the Senator from South Dakota and the Senator from North Dakota are sitting pretty good when it comes to production of electricity from wind power, it would seem, and maybe a couple of other States which I cannot quite see on that chart. Maybe northern Idaho, it looks like, and it looks like a little piece of Oklahoma. I hear the wind blows pretty well there, and I think there is a red dot where Oklahoma is, but that is about it. The rest of us do not appear to have a great deal of capacity to generate by wind power.

What does that mean? That means a transfer of wealth from all of the other parts of the country into those regions.

I am not suggesting the proponents of the legislation all are from those particular States. That is not true. But it is true that those who would utilize that resource in those areas would stand to gain the most. That is why I ask my colleagues to consider the discrimination that exists in this legislation. If we left it to the States to decide what percentage to set and how to define the renewable so as to take advantage of what is available in their locales, and how to set the timeframe so they could achieve some reasonable level, that would be one thing. That is what we have done. Fourteen of the States, including my State of Arizona, do have a renewable requirement. If we mandate at the Federal level, we are saying in Washington we know best for the entire country and this is a one-size-fits-all proposition now, we are going to define what counts as renewable and, by the way, hydropower does not. That is the first big difference.

We know full well going into this that only one of these sources, wind power, has a chance to really make a significant difference anytime in the foreseeable future. So the reality is we are not talking about renewables, we are talking about wind.

As I said before, I would kind of like to know who the winners and losers are if we are going to pass this bill. I do not want to buy a pig in a poke.

There was a lot of talk about Enron investing in certain kinds of energy and then trying to get the Federal Government to make everybody else trade in that particular energy or to make it easier to trade in that energy, and there were a lot of us in the Senate and elsewhere who criticized a Federal policy that would have favored a particular entity or group of entities within our economy. That should not be

what the use of Federal power is all about.

If we are going to talk about deregulation as the goal in this legislation, why would we be imposing a brandnew kind of regulation over the market that mandates that fully 10 percent of the energy has to come from a particular source—in this case, the reality, wind? That is what the Department of Energy says is the only renewable that can make a significant difference as part of a renewable portfolio. It only exists in a few parts of the country in abundance, apparently. So who are the winners and losers? What are the people in other parts of the country going to have to pay to the producers in this limited area of the United States for the privilege of continuing to generate power from oil or gas or coal or nuclear or hydro?

What are we going to have to pay to those areas that have the benefit of a lot of wind in their State? Nobody knows for sure. The Department of Energy calculates the gross cost at about $88 billion for the first 15 years; $12 billion each year thereafter. Of what is that cost comprised? It is the equivalent of credits or penalties. In other words, one is either going to have to produce it or they are going to have to buy a credit—and they estimate what that credit will cost—or they will pay a penalty because they did not do one of those two things. They calculate the cost of that at $88 billion, plus $12 billion a year thereafter after the first 15 years, after the year 2020. That is a huge cost passed on to the retail consumer.

There is also some evidence that if that much of the market replaces other energy sources, and there is a big footnote here, the question is: Will it replace or will it be providing additional energy because the energy needs of the country will grow over time? Let us assume we remain static, stagnant, and therefore the universe is exactly what we can envision today; we actually replace some natural gas or coal. The idea is the cost of that fuel will then go down because there is not as much demand for it, and so the people who get generation from those sources will be paying less because there will be lower fuel. As a theoretical proposition, that cannot be argued.

I suggest we have done no cost-benefit analysis. The committee has not looked at this. We really do not know what might happen 25 years out into the future in terms of the market price of these various kinds of fuels, but we do have pretty good numbers as to what the penalties and the credits are going to cost because they are fixed in the statute.

As a matter of fact, one could buy the credits from the Department of Energy at a very specific 200 percent of market or certain kilowatts per hour. So the costs are going to be significant to the retail purchasers of power. There is going to be discrimination from one part of our country to the next because the only real renewable that can be utilized under this legislation, according to the Department of Energy, is wind power, and the opportunities for that are somewhat limited.

As a result, to those who say we need a national policy, I say, yes, we need a national policy, not a Federal policy, one that takes into account all of these differences. So let us stick with the State option that currently exists.

Tomorrow our colleague from Texas, Senator GRAMM, is going to address the allegation that this bill is, after all, patterned after the Texas legislation, so what could possibly be wrong with it? Well, somebody from Texas can explain what the Texas legislation does, and I will let Senator GRAMM do that, but I would note the first point, which is that Texas did something on its own for the State of Texas does not mean therefore that the Senate should say everybody else has to do the same thing. I daresay, as much as I like Texas and Texans—I did not say how much; I said ''as much as I do''—I am not willing to say whatever Texas does is what everybody else in the country should be mandated to do. So bully for Texas.

Arizona has a standard as well. I am not really keen on mandating that the rest of the country do exactly what Arizona did. So I am not much impressed by the fact that part of this is patterned after what Texas did. The Senator from Texas will point out why it really is not that much like the Texas plan.

Leaving that aside, it is irrelevant. The fact that one State did it a certain way suggests to me that the State found a way to make it work for itself and other States ought to look at it, too. But the State of Maine did not copy Texas. Maine has a 30-percent requirement. Should we pick Maine instead of Texas as the great example to follow and require everybody to have 30 percent? If 10 percent is good, why not 30 percent? I ask my friends, if the object is to diversify, if 10 percent is good, why not 30 percent?

One of my colleagues said the United States is too dependent on coal and natural gas. I have an answer. We can drill for oil at ANWR and produce more nuclear power. That is a great way to diversify.

There is a problem. One of my colleagues from Washington State said: We need to diversify because in the Northwest, where we rely so much on hydro, we are getting killed by the drought. And it shows there won't be as much hydro available, so we need to diversify.

Let's examine that. We get some hydropower in the State of Arizona, but we have diversified by relying a lot more on nuclear, oil, and coal. We know there can be a drought and therefore that renewable is not as much of a sure thing as our coal supply, our natural gas supply, or our nuclear energy supply.

How about wind? Can you get wind power when the wind does not blow? No. How about solar? Can you get solar power when the Sun does not shine? No. That is why with all of the so-called renewables, because they are not as sure a thing as the other sources—which is why we use the other sources—we have to combine them with some other source. We have to combine them with a storage capacity or some other source so when the Sun is not shining, where the wind is not blowing, or the water is not flowing, you have stored the energy or you have an alternative source to provide that energy. That is one of the reasons these are not part of the baseline energy production in the country.

Think about it. It is why you would not want to have too much dependence on these unreliable resources. We call them renewable because we know there will always be wind, sun, and water, but you do not know exactly when or where.

We have an almost inexhaustible supply of coal in this country and we have spent millions to generate clean coal technology. We are producing a very large percentage of power in this country on clean coal. We added scrubbers. We demand all kinds of things that take the pollution out of the air. We now produce very clean power with coal.

Natural gas is even cleaner. It is available where we are able to provide the exploration. Today we have an abundant supply of natural gas. And, of course, nuclear is virtually inexhaustible. We can produce nuclear power energy for centuries to come. It is the cleanest burning fuel, in effect. It produces no pollution whatever. Its supply is virtually inexhaustible.

To those who say we should diversify in order not to be dependent upon a particular source of energy, and use the example of hydropower, I say you are absolutely right; that is why we do not rely upon these renewables. They are not dependable, as are the other major sources of electrical generation in the country today.

Why should the Federal Government be mandating unreliable sources for generation if we want to become more energy dependent and diversify our capacity and have greater ability to be assured of power production in the future? This is folly. This is like going back to the 18th century. Windmills are great. If you are in the middle of ranch country, you have to have a windmill to pump the water. It is a great way to do it. But it is not a great way to generate thousands of megawatts of power to serve our great cities in the United States in the 21st century. At best, it is a supplemental source of power and we encourage it. We provide tax credits for it.

The Kyl amendment will permit customers to say this is what we want, and if they want it, the States let them buy it at cost. I don't think we should be mandating all sellers of electricity have to provide more and more and more of their power from less and less

and less reliable sources—all in the name of diversification and a new energy policy that is going to make us ''safer'' and less reliant upon others? It does not make any sense.

There was a suggestion that the Federal mandate is not a preemption of the State plans. I beg to differ with my colleague. It certainly preempts the States that have decided to have no renewable portfolio and preempts those that want a different kind of standard than the Federal standard. There may be some things in common with some of the States that provide a requirement but only to the extent is it not preemption. To a far greater extent it is preemption.

To say it does not transfer wealth from one part of the country to another clearly is erroneous. It will result in that disparity and differential treatment.

I also pointed out other discriminatory features: this does not apply to governmental entities such as Bonneville and TVA or other governmental producers but investor-owned utilities. Why? What is the policy rationale for that? I happen to know, so I will explain.

If it had applied to the governmental entities, that part of the bill would have been subject to a point of order because it constitutes an unfunded mandate, imposing huge costs on those governmental subdivisions which under our law, now at least, we cannot do without subjecting that proposal to a point of order by the Members of the body. To avoid that point of order, the sponsor of the amendment wisely removed those utilities from the requirement of renewables. That creates a great imbalance. The investor utilities have to comply.

The public sector utilities do not have to comply. That is not fair. I guarantee we will see the customers of one screaming because they have higher utility bills.

I take my hat off to the municipal power producers that have written letters saying, notwithstanding the fact we are temporarily out of this bill, we still think it is a bad idea. It is not fair for our competitors that we have an advantage over them. And besides that, we are not too sure you will not try to come back and do it to us at a later time.

I appreciate their willingness to help out their competitors. There is probably some self-interest in it, but it does not matter. They are right.

There is also discrimination with respect to States such as Maine that have a huge hydro generation right now. They call that a renewable. But the Bingaman amendment does not. Maine says hydro is good; This is a renewable source and we count it toward our 30-percent requirement. The Bingaman amendment says, no, we do not let you count that for this Federal standard. The only thing you can count is if you somehow rewind the generators there and get a little more capacity out of this hydrodam in the future. We will let you count that incremental savings, that economy that you effected or the additional production, as going toward the renewable. Why do we discriminate in that way? Why do we count solar twice as much as geothermal? Why do you get twice as much credit on an Indian reservation? It looks as if there was a lot of looking at special interests and politics and issues such as dealing with the point of order issue rather than sound policy.

They talk about national energy policy. This looks to me as if it is a lot more than a national energy policy. There are a lot more different considerations than would go into a real national energy policy.

I hope my colleagues who have already said to some folks—and I acknowledge this—I need a green vote, I need to show I am pro-environment, that being for renewable energy will demonstrate that, I hope they ask themselves the following questions: What are all of my constituents who buy power going to think about that? I suggest that is almost everybody who is eligible to vote. You might want to please an energy company here or there or some environmental group here or there. But you are going to have to be accountable to all of the people who use electricity in your State.

For those who are going to have to buy credits from elsewhere, it is going to cost and they are going to wonder why their power bills have gone up. If that is the way you are inclined to vote, you are going to have to be prepared to explain that to them. I daresay there are probably going to be some political opponents or people in the media who are going to remind the folks about how this happened. So that is the first thing I think you are going to have to answer; you are going to have to answer to the people who buy the power at greater cost because you needed to have an environmental vote.

Second, there is the matter of discrimination. How are you going to be able to explain that it is going to cost you, but it doesn't cost somebody else in the country, just because of where you happen to live and where the wind happens to blow? You are going to have to explain that.

Frankly, to the extent solar power could be produced in my State, I could say I am really for this and I might benefit. The problem is, we don't have that much wind potential, as a result of which we are still going to be losers, so it wouldn't matter anyway.

I don't want to make somebody else suffer to buy a product I produce except at the marketplace. If people need to buy what I can make available because they need it and the market is open to their purchase of it, then that is great and I am willing for Arizona companies to make some money on that. But I don't want to use the Federal Government as my hammer, as my agent, to say I have something I want to sell and I can't figure out a way to make people buy it. I know, I will get the Federal Government to pass a law to say people have to buy it. That is the way I will take care of my investment.

That is wrong and that is what a few people are urging us to do. I am not talking about people in the body here, of course. I am talking about some folks on the outside. They have the good fortune of having a resource they would like to be able to sell. They would like to make some money on it and they haven't been able to do it that well yet because it is not that economical. The way they get it done is to have Congress pass a law to say you have to buy it. I don't think that is what the Federal Government should be all about.

We are going to be taking up campaign finance reform tomorrow and my colleague, Senator MCCAIN, has made a point that I totally agree with him on, that the real problem here ultimately is that the Federal Government has become so powerful now that everybody comes running to the Federal Government to seek special benefits because the Government can grant those benefits. It becomes very valuable after a while, so people decide they want to spend money influencing governmental policy.

In the abstract that is fine. We understand that is the way it is in a democracy, and there is nothing wrong with spending money to influence Government policy. But when you have a lot of money and you can influence the Federal Government to make people buy something that you have to sell that you could not sell to them otherwise, that is wrong. It is an abuse of power. Frankly, it is something that we as Senators should not countenance.

We should say to those people: Look, go develop a product that can sell. We have already given you a big tax break. If you can't sell it based upon that and you can't convince the State utility commissions or Governors or legislators to mandate a particular level of renewable energy resource in your own State, don't come to the Federal Government and ask us to do your work for you by forcing everybody to buy your product.

That is wrong. That is what creates the problem with the campaign finance issue—we make the Government so powerful that it can make or break businesses and therefore they all come rushing to us to get us to change Federal policy and to use it as a hammer rather than as an inducement.

I hope my colleagues will be able to answer these questions when they vote and that they will conclude we are really better off at this point in our history saying: We are not ready for an absolute Federal mandate. It is better to let the States decide this. With the encouragement that we provide through the tax incentives, we will see what kind of progress we can make toward the goal that we want. Then we

will reevaluate it to see if we really want to impose something on the American purchaser of electricity.

As I said before, we have to be very careful about mandating the use of unreliable energy sources. The renewables, with all due respect to those who think they are the great wave of the future, renewables provide some capacity for diversification, some ability to produce power in the future, but they should not be considered a good idea for baseload or for any significant portion of power requirements as a mandate because they are simply not that reliable.

I hope colleagues will consider supporting the Kyl amendment, and, as a result of that, it will eliminate the underlying Bingaman amendment.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, I have a unanimous consent request, that amendment No. 3023 be modified with the language that is at the desk. This modification is technical in nature.

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

The amendment (No. 3023), as modified, is as follows:

(Purpose: To expand the eligibility to receive biodiesel credits and to require the Secretary of Energy to conduct a study on alternative fueled vehicles and alternative fuels)

On page 185, strike lines 9 through 14 and insert the following:

SEC. 817. TEMPORARY BIODIESEL CREDIT EXPANSION.

(a) BIODIESEL CREDIT EXPANSION.—Section 312(b) of the Energy Policy Act of 1992 (42 U.S.C. 13220(b)) is amended by striking paragraph (2) and inserting the following:

''(2) USE.—

''(A) IN GENERAL.—A fleet or covered person—

''(i) may use credits allocated under subsection (a) to satisfy more than 50 percent of the alternative fueled vehicle requirements of a fleet or covered person under this title, title IV, and title V; but

''(ii) may use credits allocated under subsection (a) to satisfy 100 percent of the alternative fueled vehicle requirements of a fleet or covered person under title V for 1 or more of model years 2002 through 2005.

''(B) APPLICABILITY.—Subparagraph (A) does not apply to a fleet or covered person that is a biodiesel alternative fuel provider described in section 501(a)(2)(A).''.

(b) TREATMENT AS SECTION 508 CREDITS.—Section 312(c) of the Energy Policy Act of 1992 (42 U.S.C. 13220(c)) is amended—

(1) in the subsection heading, by striking ''CREDIT NOT'' and inserting ''TREATMENT AS''; and

(2) by striking ''shall not be considered'' and inserting ''shall be treated as''.

(c) ALTERNATIVE FUELED VEHICLE STUDY AND REPORT.—

(1) DEFINITIONS.—In this subsection:

(A) ALTERNATIVE FUEL.—The term ''alternative fuel'' has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(B) ALTERNATIVE FUELED VEHICLE.—The term ''alternative fueled vehicle'' has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(C) LIGHT DUTY MOTOR VEHICLE.—The term ''light duty motor vehicle'' has the meaning given the term in section 301 of the Energy Policy Act of 1992 (42 U.S.C. 13211).

(D) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(2) BIODIESEL CREDIT EXTENSION STUDY.—As soon as practicable after the date of enactment of this Act, the Secretary shall conduct a study—

(A) to determine the availability and cost of light duty motor vehicles that qualify as alternative fueled vehicles under title V of the Energy Policy Act of 1992 (42 U.S.C. 13251 et seq.); and

(B) to compare—

(i) the availability and cost of biodiesel; with

(ii) the availability and cost of fuels that qualify as alternative fuels under title V of the Energy Policy Act of 1992 (42 U.S.C. 13251 et seq.).

(3) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report that—

(A) describes the results of the study conducted under paragraph (2); and

(B) includes any recommendations of the Secretary for legislation to extend the temporary credit provided under subsection (a) beyond model year 2005.

Mr. BINGAMAN. Mr. President, I know my colleague from Nevada is here to speak on this amendment, so I yield the floor to him.

The PRESIDING OFFICER. The Senator from Nevada.

UNANIMOUS CONSENT AGREEMENT—H.R. 2356

Mr. REID. Mr. President, I have a unanimous consent request I would like to propound to the Senate. I see my friend from Kentucky, who has spent so much time allowing us to arrive at this point. I hope we can work this out for everyone's benefit.

Mr. President, I ask unanimous consent that at 10 a.m. tomorrow, that is Wednesday, the Senate resume consideration of H.R. 2356, the campaign finance reform bill, with the time until 1 p.m. equally divided between the leaders or their designees prior to the vote on the motion to invoke cloture, with the mandatory live quorum under rule XXII being waived; further that, if cloture is invoked, there be an additional 3 hours of debate equally divided between the two leaders or their designees, that upon the use or yielding back of time, the Senate vote on passage of the act with no amendments or motions in order, with no intervening action or debate; further, if cloture is not invoked this agreement is vitiated.

I further ask unanimous consent that immediately after final passage of the bill, the Senate proceed to the immediate consideration of a Senate resolution, the text of which is at the desk, and that the resolution be agreed to and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection? The Senator from Kentucky.

Mr. MCCONNELL. Reserving the right to object, and I am not going to object, I say, once again, that what is missing from this consent agreement is a technical corrections package which Senator MCCAIN, Senator FEINGOLD, and I have agreed to. This is the first time in the history of this debate, over all of these years, that the three of us have actually agreed to something.

Regrettably, it has now been objected to by someone else on that side of the aisle. I say to my friend, the assistant majority leader, I hope at sometime during the course of the day tomorrow we can get that objection cleared up and hopefully Senator MCCAIN, Senator FEINGOLD, and I will offer a unanimous consent agreement tomorrow related to this technical package which the three of us have agreed to and hopefully we can work out some way tomorrow to clear that as well.

But I have no objection to this package as far as it goes. The only caveat I issue is that we hope to be able to achieve yet another consent agreement tomorrow, to move a technical package out of the Senate.

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

Mr. REID. Mr. President, I am grateful to the Senator from Kentucky for his work on this issue. It has been a very difficult thing for him, but he has persevered and we have gotten to the point where we are now and look forward to trying to work on the other problem that he mentioned today.

I will be very brief. I know the hour is late. I say to the Republican manager of this legislation that at such time as the Senate gets back on this legislation, the first thing that will be done is move to table this Kyl amendment. I explained that to the floor staff. I have explained that to Senator KYL. But we thought, rather than doing that today—we had the right to do that earlier today—that there was interest in this. Even though we had the right to do that, we wanted to make sure everyone had an opportunity to speak on this. People can speak as long as they want on this tonight.

But I do say that as soon as we get back to this legislation, unless there is some kind of an agreement that we will vote on this motion where we would have 10 minutes equally divided or 20 minutes equally divided, something reasonable, the majority leader will seek recognition to move to table because we have spent enough time on renewables.

AMENDMENT NO. 3038

Mr. President, I feel very strongly we need to diversify the Nation's energy supply by stimulating the growth of renewable energy.

America's abundant and untapped renewable resources are essential for the energy security of the United States, for the protection of our environment, and for the health of the American people.

We should harness the brilliance of the Sun, the strength of the wind, and the heat of the Earth to provide clean, renewable energy for our Nation.

I rise in opposition to the amendment by Senator KYL to strike provisions in this important legislation that would establish a renewable portfolio standard. The prospect of passing an energy bill without a renewable portfolio standard, to me, is embarrassing. It should be, I would think, to the country.

We have already told the automobile industry to build the cars as big as they want, using as much gas as they want. We are not going to increase fuel efficiency standards. So I think we can at least go this step further.

In the United States today, we get less than 3 percent of our electricity from renewable energy sources about which I have spoken—wind, Sun, geothermal, and biomass—but the potential is much greater.

This visual aid in the Chamber says it all.

In Nevada, we have great resources for geothermal. If you look on the map, you'll see that we also have wind all over the State. As the Senator from Alaska has heard me say, Nevada is the most mountainous State in the Union, except for Alaska. We have over 300 mountain ranges. We have 32 mountains over 11,000 feet high. By Alaska standards, I guess that is not very high. We have one mountain that is 14,000 feet high. By most standards, Nevada is a pretty mountainous part of the world.

In many of those areas we already have people who are beginning the development of wind farms, especially with the production tax credit that was passed for wind energy as part of the economic stimulus package. So, the credit for wind energy has been renewed, which is good. There is a 260-megawatt wind farm being constructed at the Nevada test site, as we speak. So there really are a lot of resources in Nevada and around America for this alternative energy.

My friend, who I have the greatest respect for, the junior Senator from Arizona, has talked a lot about the cost in dollars of renewable energy. It reminds me that many years ago there was a company called the Luz Company, which was in Eldorado Valley, near Boulder City, NV. In this big valley, they wanted to build a big solar energy plant—about 400 megawatts.

They went to the Nevada Public Service Commission, and they were turned down. Why? Because, in effect at that time there was a law and a regulation by the utilities commission saying that you had to have power produced that was the cheapest. Solar was not the cheapest in actual dollars. But it is cheaper in many ways when it comes to providing clean air for my children and grandchildren who live in Las Vegas.

What has happened? In that valley today they have natural gas plants. They are clean, but they are not as clean as solar energy. I think it would have been wonderful to build that solar facility. The cost is not always the dollars it takes to build a power plant. The cost is other things including environmental and health effects. What does it do to foul the air? What does it do to people's health? What does it do to the environment?

That is why we need more alternative energy. It is more than just the cost that we see in dollars and cents that you can add up when you build a plant. It is the dollars and cents in people's health, people's comfort.

Eldorado Valley used to be as clear as the complexion of a newborn baby. Not anymore. So the potential for renewable energy in real terms is significant.

Senator DORGAN from North Dakota has talked about wind. The ''Saudi Arabia in America for wind'' is North Dakota. The ''Saudi Arabia in America for geothermal'' is Nevada. We need to change what we have been doing in the past and diversify the Nation's energy supply.

My State could use geothermal energy to meet one-third of its electricity needs—a State which will soon have 2.5 million people—but today this source of energy only supplies about 2½ percent of the electricity needs in Nevada.

I have said before that I remember the first time I drove from Reno to Carson City. I saw this steam coming out of the ground. I thought, what is that? I had never seen anything like that. It was heat coming from the depths of the Earth. Every puff that came out of the ground was wasted energy. We need to harness that steam energy and produce electricity.

Other nations are doing better than we are doing. We started out doing great, but now we are falling behind. They are using a lot of equipment that we have developed. We need to stimulate the growth of renewable energy and become a world leader.

Drawing energy from a diversity of sources will protect consumers from energy price shocks and protect the environment from highly polluting fossil fuel plants.

Fourteen States have already enacted a renewable portfolio standard, including Nevada, which has the most aggressive standard in the Nation.

I hope the Senate will be willing to establish a national portfolio standard with achievable goals. I support Senator BINGAMAN, but I think his goal of 10 percent is too low. I supported Senator JEFFORDS' amendment. I think we should go for 20 percent.

In Nevada, we are going to require 15 percent of the State's electricity needs be met by renewable energy by the year 2013. That is pretty quick.

We must diversify the Nation's energy supply by stimulating the growth of renewable energy. This is essential to the energy security of the United States, the protection of the environment, and the health of the American people.

My friend from Arizona, the junior Senator, has stated that renewables are more expensive than conventional power sources, including nuclear. But I would just mention in passing, no electric utility of which I am aware—I could be wrong—has ever declared bankruptcy because of investments in renewable energy. But I do know that El Paso Electric, on the other hand, was driven into bankruptcy by its investment in the Palo Verde nuclear plant in Arizona.

I think we need to be aware of the volatile nature of the supplies and price of natural gas. There have been charts shown earlier today where you see the amount of natural gas that is going to be used in the future.

From 1970 up until 2020, natural gas is just going up in consumption, but the price variables during that period of time, because of supply and demand, have been really like a teeter-totter. With renewables, you do not have that. You have price stability.

I am a big fan of coal. We have a lot of resources in America for coal. But I am for clean coal technology. We should be spending more, not less, money on clean coal technology. In the United States, we have more coal than the rest of the world. We need to figure out a way to use coal that burns clean. We have not done a real good job on that. We have made progress, but we need to do more.

I hope we defeat the Kyl amendment. I cannot imagine an energy bill that has no renewable energy in it. I heard people get on the floor and say: Well, we have to look at this State by State. Some States are more able to produce alternative or renewable energy. That is probably true, but remember, we are not saying, in this legislation, it has to be State by State. We are saying utilities have to do that. As we know, we have excluded co-ops and a lot of the smaller producers.

But there is no reason in the world these big utilities should not use renewables for part of their portfolio. That is what we are saying. It is not a State by State issue; it is a utility by utility issue.

I hope we resoundingly defeat the Kyl amendment. If there were ever an amendment that deserves defeat, it is the Kyl amendment. We need to encourage the growth and development of renewable energy resources in our great country.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from Alaska.

Mr. MURKOWSKI. Mr. President, I have listened very carefully to my good friend, the majority whip, and I am certainly fascinated by the example he has given with regard to geothermal.

Geothermal has a tremendous potential in certain parts of the United States. One of the problems, however, is that a lot of our geothermal is adjacent to or in national parks. Clearly, there is a tradeoff there as to whether or not we want to develop that. But in many cases, particularly out in California, there has been enough public

pressure to suggest that this natural phenomena should remain untouched. As a consequence, to a large degree the potential has not been realized to the extent it might have.

I am also inclined to question the tactics and the strategy of the Democratic side relative to the announcement that the amendment is going to be tabled. That sounds like a fishing expedition to me. They are going to make a determination of just where the votes are, and it might make it easier for some Members to simply justify their vote by saying, well, we tabled it. That doesn't really mean that we have a position one way or another on it.

Mr. REID. Will the Senator yield for a comment?

Mr. MURKOWSKI. Without losing the floor, I will.

Mr. REID. Of course. We would be happy if Senator KYL and/or the Senator from Alaska wanted to have an up-or-down vote. We would agree to that also.

Mr. MURKOWSKI. All I know is that I was advised that the majority had made the decision to table it. I was not aware that the minority had made the decision. I can only comment on what I have heard. In any event, I would certainly honor the statement by the whip, as well as Senator KYL, as to just how this is disposed of. But if indeed the commitment and the agreement is that we will have a tabling motion, it appears we will have a tabling motion.

Again, I remind my colleagues, that kind of determination, in my opinion, is a bit of a finesse. There is other terminology I could use. Members have different ways of justifying tabling motions. We are all quite aware of it. I would prefer to see an up-or-down vote.

We have had a good debate on this issue. Some of the things, however, that I think we have overlooked are, this isn't the first time we have come up with renewables in this country or discussed it or debated it or argued the merits. Clearly, there is a tremendous merit to renewables. But the question is, How fast and how far can we move?

I am told that about 4 percent of our entire energy mix comes from renewables. That includes hydro. Two percent of our electricity is generated from renewables. That is significant as well. But, clearly, when you understand we have spent some $6.5 to $7 billion investing in renewables, in tax credits, in subsidies, in loans, I am sure it is well spent, but we have had a reasonable concentration.

So as we look at the mix now and say, here we are going to have a mandate, a 10-percent mandate, we ought to look at just what the cost of this is and how significant it is going to be, what effect it is going to have on the economy. I know that is what Senator KYL has been commenting on for some time.

First, I would like to address a couple of statements made in this debate. One is that the U.S. is too dependent on coal and natural gas. I would be happy to be corrected, but I believe that was the statement made by the chairman. We can do something about that if we wish. We could concentrate on nuclear energy. I don't see any great support for nuclear energy in this package, even though it is clean and the consequences of any air quality emissions are nonexistent. We have a problem with the waste, but everything seems to have a tradeoff.

Certainly, we could go to my State and open up ANWR. That would address dependence on coal and natural gas.

But we have to recognize the role of coal in this country. The United States is the Saudi Arabia of coal. U.S. coal, for all practical purposes, is never going to run out. The question is the technology of cleaning up the coal.

I notice a good deal of attention has been given to the chart of the majority. That chart was rather interesting because it proposed biomass. Let's not make any mistake; I don't think a lot of people know what biomass is.

Biomass is primarily wood waste. What do you do with wood waste? You burn it. And when you burn it, you generate heat. The heat generates, in the process of generating in a boiler, steam. The steam goes into a turbine, and it generates electricity.

But is it magic? No, it has tremendous emissions. I know in my State, a few small sawmills that, by the Environmental Protection Agency, have been mandated to burn their waste. They have to use so darn much fuel oil to get it hot enough to burn that the economics are out the window.

Another thing that I can't understand why the majority doesn't face up to is the provision in here that says you can't use any wood waste from public land. What does that mean?

In my opinion, that is another finesse. I have another word for it, but I shall refrain. It simply is in response to America's environmental community. It doesn't want any timber harvesting in the national forests, which is where the public lands are. It says you can't, in your biomass mix, use anything from the national forests other than residue that has come from thinning. In other words, you can have a mill that has a timber sale in the forest, and they have mill ends, they have bark, they have sawdust. In this legislation, you can't use it.

That is not a practical way. The specific reading deserves to go into the RECORD. These are the things that are wrong with this particular bill. That is why I think it is so important to recognize the contribution of the Kyl amendment. We will pick that up in a minute.

Nevertheless, it is a crass inconsistency. Good heavens, what difference does it make? Waste is waste. If you have cut a tree from a national forest legitimately, you could make lumber out of it, but you can't use the residue for biomass. The issue here is obvious to those of us out West. This is to discourage harvesting in the national forests.

What are you going to do in my State of Alaska? I don't have any nonpublic timber. We have two forests. We would have to, under this legislation, go out and buy credits. We couldn't make biomass because all our timber, all our sawdust, all our mill ends come from those forests. Let's get realistic.

I will have to offer an amendment, and I am prepared to do it.

Let me read what it says here. This is on page 6:

> With respect to material removed from the national forest system lands, the term ''biomass'' means fuel and biomass accumulation from precommercial thinning, slash and burn.

That is the limitation. You can't use the residue from a commercial tree that you take out of the forest.

That is inconsistent with the utilization of the product. What are you supposed to do, waste it? Save this and waste that?

The chart wasn't ours, but it was an interesting chart because it showed biomass. And, again, biomass is not the magic it is cracked up to be because you have to burn it. To burn it, you have emissions. Because of emissions, you have to address air pollution. Air pollution means technology. Technology means cost. Don't think you are going to get a free ride with biomass.

Solar works great in Arizona and New Mexico, the Southern States. It doesn't work in Barrow, AK. We have a long dark winter where the sun never rises above the horizon for about 3 months. Solar has an application, I grant you. I don't belittle it. But nevertheless, the footprint is pretty broad. You would have to cover several States with solar panels to equal what I can produce from ANWR in 2000 acres. I can produce 1 million barrels a day, and it would take somewhere in the area of two-thirds, three-quarters of the entire State of Rhode Island.

We had some discussion earlier today relative to wind generation. Wind generation has an application. I think one of the tremendous application of wind generation is using it to fill dams. In other words, the technology is relatively simple because when the wind blows, the wind powers electric pumps or generators that pump water from a lower area to an upper area. And then you have the fall into the turbines and you can generate. There is a lot of thought that says that some areas near saltwater, where you have canyons and so forth, you could theoretically dam up a little inlet where you have wind, and you could have the wind generating power for the pumps. And then you pump the saltwater up and run it through the generator. You are really picking up something if that is the kind of technology you are talking about. But make no mistake, there is a footprint.

This chart shows San Jacinto, CA, between Banning and Palm Springs. I

have driven through there many times. If you look at it, it is rather astounding because you see literally hundreds of these windmills. And some of them are turning; some are not. Sometimes they have technical problems because the wind pitch and velocity is such that it can tear up the transmissions.

We have some in a few areas of Alaska where they actually have brakes on the ends of the blades. It has a tendency to brake itself rather than tear the transmissions up or to get ice on them, and so forth.

But the point I want to make here is that this is about 2,000 acres of a wind-generating area that is committed to the placement of the wind generators and the towers, and that equates to making about 1,815 barrels of oil. So the footprint there, 2,000 acres, equates to 1,815 barrels of oil in an equivalent energy Btu comparison. Yet 2,000 acres of our area, in ANWR, will produce a million barrels of oil. So there is a tradeoff. So we have solar, and we have wind, and we have biomass. They are all meaningful, they all make a contribution, but they have a certain cost to them. Now, there is either biomass, wind, solar, geothermal—I mentioned geothermal and a good portion of those, unfortunately, are in or adjacent to our parks.

Another point made earlier in the debate is that this is not a State preemption. It really is a State preemption, Mr. President. It preempts those States that have decided that a renewables portfolio standard is not in the consumers' interests. There are 14 now that have come in voluntarily. But this legislation would mandate that all States achieve it.

Let's take the State of Michigan, for example. What is in it for Michigan? I am not from Michigan. I can't speak about it, other than to share some observations that the staff has made. But we have some wind in Michigan; some solar; not much hydro potential; biomass—I suppose there is some; geothermal, very little. But they clearly don't have a significant segment of one of these alternatives available. So what are they going to do? Well, probably buy credits.

Another thing that came out of the debate that is wrong with this legislation is there is nothing to prohibit. The Three Gorges dam on the Yangtze River in China, which is about completed—but they are putting in turbines now, and so forth—it is my understanding that would qualify for credits. That is a pretty big project—one of the largest hydroprojects ever undertaken in the history of the world. Are we going to see a situation where utilities are going to be allowed to go buy credits? There is nothing in the legislation to prohibit it.

That isn't the intent. The intent is to encourage the development of renewables.

That is another thing wrong with this legislation. I am sure this can be corrected; nevertheless, it suggests that we have left an open door in this concept of buying credits.

Another point that was brought up in the debate is the issue of transferring wealth from one part of the United States to another. It is fair to say that the State of California, with a large population, dynamic economy, depends on energy coming from the outside. They would rather buy energy than develop their own. We saw that last year in the crisis in California. We have seen it time and time again. My good friends from Louisiana have indicated that they get a little tired of this ''not in my backyard'' business. Louisiana is developing oil and gas offshore. They are subject to the impact of that on their school systems, roads, and so forth. Do they get anything extra? No. The OCS goes into the Federal Government fund. Yet they are generating this for the benefit of other States.

So it is not fair, necessarily, to consider this transfer of wealth from one part of the United States to another. In other words, those areas that have the potential of generating biomass from either solar or wind are not going to have to buy credits. Others that don't have this availability are going to have to do so. I suggest to you this is not necessarily equitable.

There are other examples that I think deserve a little examination; that is, under this mandate, each electric utility, other than public power—and why is that, Mr. President? We have investor-owned power and we have public power. But we make a distinction here. We do the mandate on every electric utility other than public power. What is the politics of that? I don't know, Mr. President, but I know public power opposes it, and they have prevailed. They don't have to maintain a mandate. You are a businessman, Mr. President, and so am I. What does this mean?

This means that investor-owned power companies are not necessarily going to have the same comparative cost mechanism because investor-owned companies are going to have to go out and buy credits or put an investment in renewables.

Does that mean public power can increase their rates a little bit to coincide within investor-owned? Who pays that, and is that kind of a windfall profit? I don't know, but I think every Member who is going to vote on this ought to be able to go home and explain this because it is not equitable. Power produced by investor-owned and by public power—they both do a good job, but why are we excluding one? It is because of the politics. They don't want it. I would like to hear the debate from the other side, but I see they have adjourned for the evening—at least on that side of the aisle. I would like to hear an explanation of that.

So what we have here is each electric utility other than public power must have one renewable credit for the required percentage of its retail sales. That starts at 1 percent and increases to 10 percent in the year 2020. Who are we exempting, Mr. President? We are exempting Bonneville, which you heard of, out West, and TVA, WAPPA, which are significant power groups in their own right, entitled to the process; nevertheless, the public and we should question this.

To obtain a credit, a utility can, one, count its existing wind, solar, geothermal, or biomass, but not hydro. Well, I have been chairman of the committee, and I have been ranking, and how they can conclude that hydro is nonrenewable is beyond me. But I have made my case. It looks as if they have put this in here so it will fit. That is what is wrong.

This legislation has been shopped on the other side to the point where it has accommodated virtually every special interest group. That is what is wrong with it. It never had the process that normally takes place around here, and that is the committee process, where the legislation is developed within the committee, the bill is introduced, referred to the committee, hearings held and markups and so forth. We know the history. But it is beyond me that the media has not picked up on the injustice of that.

The majority leader obstructed the committee of jurisdiction —Energy and Natural Resources—to do this. He said it was too contentious. He pulled it away from the chairman. Here we are on the floor of the Senate at 7:10 enlightening one another as to what is in the legislation. That should have been done in the committee process. It was not and that is a tragedy.

It is kind of interesting, to make a parallel—I will not make an issue of this, but what is good for the goose is good for the gander. Somebody made an observation of that nature, where we had the majority leader, in the Pickering nomination, on a question relative to sending the matter directly to the floor, taking it up, and resolving it on the floor. Oh, no, we had to observe the traditional process of the committee jurisdiction. I don't know why it is not good enough for the Energy Committee, but it certainly applies in the case of Judge Pickering. I don't want to go down too many rabbit trails this evening, but I wanted to point out an inconsistency.

As I have indicated, to obtain a credit, a utility can count existing wind, solar, geothermal, and biomass, but not hydro.

It can build a new renewable powerplant or purchase the credit from another new renewable powerplant or purchase the credit from the Secretary of Energy. Is the Secretary of Energy going to be selling these credits? Is that revenue to the Federal Government? What is it worth? What is it going to cost?

My understanding is the average cost of electricity is about 3 cents per kilowatt hour. You are going to have to pay something for these credits. I am told it may be another 3 cents. So that

is 6 cents. That is going to be passed on to the consumer, Mr. President. Public power is not going to pay it, just investor-owned companies. Isn't there some kind of subsidy, tax credit, associated with this of about 1.7 cents?

We are now taking power that usually goes to the consumer, about 3 cents, and that consumer is now going to be paying about 7.5 cents. Is anybody concerned about that? I do not see a lot of concern. Evidently the public is just willing to pay from the investor-owned business only an increase from 3 cents to 7.5 cents. Think about that: Every Member and staff who is watching, you had better be prepared to explain that to your ratepayers and your consumers. That is the price you are paying for this mandate.

In the early years of the renewable portfolio program, there will be few tradeable credits because only new facilities produce credits for sale. The renewable credit would be, as I said, about 3 cents per kilowatt hour through the wholesale market price of power. This is on top of the 1.7 per kilowatt hour renewable tax credit. That substantiates what I said.

Let's talk about a few key States.

West Virginia: American Electric Power serves the bulk of West Virginia. Ninety-seven percent of the American Electric Power Generation is from coal. A smaller portion is from natural gas and nuclear, and eight-tenths of 1 percent is hydro. We are told that American Electric Power could not meet the renewable portfolio standard through existing renewable generation. They would have two choices: Build new renewable powerplants or purchase credit.

New York: Consolidated Edison serves New York City. Con Ed has disposed of most of its generation, as we know, and now purchases 95 percent of its electricity. All of its remaining generation is gas fired and located within the city of New York. Con Ed could not build renewables production in New York City to satisfy its renewable portfolio requirement. It would have to purchase credits to satisfy the renewable portfolio standard requirement. They simply cannot do it in New York. They acknowledge that.

Arkansas: Arkansas is served by Entergy. It is 98 percent natural gas, nuclear, and coal, and only 2 percent hydro or wind. It would not meet its RPS—renewable portfolio standard—requirement through existing wind generation. It would have to purchase credits to satisfy the RPS requirement.

Illinois: Exelon serves most of Illinois, including Chicago. It is 88 percent nuclear, coal, and natural gas, and 8 percent hydro. They would have to build renewables or purchase credits to meet the RPS requirement.

What are they going to do? Are they going to purchase them or build them? They are going to make a business decision, and the business decision is going to be made on the quickest return on investment. That is what you make business decisions on—the least risk and the highest return. Are they going to build renewables or buy? It depends on the mix.

I do not think we have really reflected because the other side is so anxious to salvage something in this energy bill. This energy bill can only be salvaged by good amendments because it was a bad bill to start with. It has been improved dramatically. I support the continued process, but the continued process toward a good bill can only be resolved by amendments.

The Kyl amendment is not a vote against renewables; it is a vote for States, it is a vote for consumers, and it is a vote for the freedom to choose.

This is not in the House bill. What is going to happen when it goes over to the House for conference? There is nothing in the House bill. We all have a little idea what the House is going to do.

The Bingaman amendment, in my opinion, subsidizes renewables at the expense of coal, natural gas, and nuclear power. What does that mean? To me that is a Btu tax, British thermal unit tax. It was the first legislation introduced by former President Clinton when he first took office, looking for revenues: We are going to put on a Btu tax.

Do my colleagues know what happened? He was defeated because the public said: This country is energy rich. We have a broad choice of energy mix. We have coal, we have oil, we have natural gas, we have renewables, we have biomass, and you want to tax us first thing.

This is a Btu tax on coal, natural gas, and nuclear power, make no mistake about it. Fourteen States have existing programs with different fuel mixes, and they would be preempted by this legislation.

Senator KYL's amendment replaces the Bingaman renewable mandate—and remember, renewable mandate; we all know what mandate means: you must do it—Senator KYL's amendment would replace it with a program to encourage renewables without preempting the States, without micromanaging the market.

What is the matter with the way this market is working? Fourteen States have initiated programs because they believed it was in the interest of their State, the consumers, the air quality, and good citizenship. But, no, we are going to mandate it, and at what cost?

The Kyl amendment requires State utility commissioners—and I use the words ''to consider''; it is not a mandate—''to consider the merits of a green energy program.'' It does not order them to implement one. It says consumers can purchase green power if they want to; they are not required to. And I guess the utilities can charge them for green power if it is higher. There is nothing wrong with that if that is what they want.

Over the past 5 years, Congress has provided more than $7 billion in subsidies, tax incentives, and other programs to assist renewables. As I said earlier, I support those. That is how we bring on technology. But you do not get a free ride from it. If we do make this mandate the law, we are going to increase the cost of electricity to the consumer, but only for the investor-owned company, because that is to whom it applies. It does not apply to public power. I have yet to get an explanation as to why. We all know why. It is politics. They do not want it. They want to enjoy a differential. Is the public aware of that? Are they aware why one source of power should enjoy the benefits and not another?

If you happen to have public power providing you with energy, you are going to break. If you are an investor-owned business, you do not. This is not the American way, and people ought to begin to understand this. Members had better be able to explain it when they go home.

Now the Bingaman amendment, in my opinion, is not good policy, frankly. I have the greatest fondness for my friend Senator BINGAMAN, but what it does, it picks winners and losers; it favors types of fuel based on politics, not policy; exempts public power, although there is no policy justification.

On the other hand, the Kyl amendment points out fundamental philosophical differences between—and we have heard that today—Daschle-Bingaman. We really want consumers to choose for themselves. On the other side, they want the Government to choose for the consumer. That is what this Daschle-Bingaman proposal is all about.

We want the States to make decisions on the needs of the people. They want the Federal Government in charge. This issue, renewable mandates, is opposed by the United Mine Workers, Public Power, Investor Owner Utilities, Chamber of Commerce—well, I have an explanation, and I appreciate that. I want to make sure the record reflects it because I have been saying that this would benefit Public Power, but I have been corrected by my staff to say that Public Power also is opposed to it.

Why is Public Power opposed to it? Because they are fearful it will be lost in committee, and they will in the committee process be also included in this mandate.

The record should reflect my reference to Public Power and the clarification.

So the renewable mandate is opposed by the Chamber of Commerce, United Mine Workers, Public Power, Investor Owned Utilities.

The fear that Public Power has is they will be exposed in committee and have to be subject to this as well.

I think all Members should consider the merits of what we are getting into, the precedence we are setting, and the emotional argument associated with: Gee, we have to do something on renewables. We have not been able to respond on CAFE. We have not been able

to move in a manner in which we could address even the pickup issue, on which we had a vote. Let us make sure the legislation we pass is good legislation; that it is well thought out; it is applicable; that it does something meaningful that is in the appropriate role of government to do, as opposed to what I think the States are doing very nicely by themselves. They are proceeding, should they wish, with their own renewable mandate proposal, and that is where I think these types of decisions belong.

I think we would all agree as Members of the Senate that one size does not fit all.

With the recognition it is late, I am prepared to yield the floor. I believe we will be on this bill in the morning. Might I ask the Presiding Officer what the order of tomorrow might be again for those of us who might not have heard the majority whip?

The PRESIDING OFFICER. There will be a cloture vote tomorrow at 1 p.m. on campaign finance reform.

Mr. MURKOWSKI. If I may ask further, upon the conclusion is there any order from the leader as to what we would go to?

The PRESIDING OFFICER. There is no special order. The Senate, by default, will resume consideration of the energy bill.

Mr. MURKOWSKI. I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

AMENDMENT NO. 3039 TO AMENDMENT NO. 2917

Mr. REID. Mr. President, I send a technical correction to the desk with respect to amendment No. 2917. I ask unanimous consent that the amendment be agreed to and the motion to reconsider be laid upon the table.

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

The amendment (No. 2917) was agreed to, as follows:

On page 555, line 14, after ''Secretary'', insert ''shall''.

Mr. REID. Mr. President, for the information of the Senate, this technical correction is simply the addition of the word ''shall'' on page 555 of the amendment.

MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to a period for morning business, with Senators permitted to speak not to exceed 5 minutes each.

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

HONORING FRED SCHEFFOLD

Mrs. CLINTON. Mr. President, I would like to take this opportunity to honor the late Fred Scheffold, a battalion chief with the New York City Fire Department and one of the many NYC firefighters who so bravely gave their lives on September 11, 2001.

Today, I had the honor of meeting Fred's widow, Mrs. Joan Scheffold, and their daughter, Karen Scheffold-Onorio, at a news conference in the Mansfield Room of the U.S. Capitol Building. They were here to join my distinguished colleagues, Senator STABENOW, Senator ALLEN, Senator KYL, and me to announce the next steps in the implementation of the Unity in the Spirit of America Act, the USA Act.

The USA Act is legislation introduced by Senator STABENOW that establishes a program to name national and community service projects in honor of victims killed as a result of the terrorist attacks on September 11. The measure was signed into law by President Bush in January. To recognize the heroism of New York Firefighter Fred Scheffold, and all the victims of September 11, I ask unanimous consent that the statement of Joan Scheffold be printed in the RECORD. It is a warm and loving tribute to a heroic husband, father, and American.

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

REMARKS BY MRS. JOAN SCHEFFOLD, MARCH 19, 2002

The world lost many treasures on September 11th, and I mourn the loss of my own gem, my husband Fred. Fred's 32 year career with the NYC Fire Department brought him to many corners of New York and on the morning of September 11th, he was just finished his 24 hour tour as a Battalion Chief in East Harlem. When the alarm came in, he rushed to the scene along with the Chief who was relieving him. Like so many others that day, he was not obligated to respond to the alarm but he did so out of the sense of duty and the simple fact that he knew his help and expertise would be needed.

But, he was so much more than just a fireman who was lost on September 11th. As an avid runner, skier, and golfer, he inspired our 3 daughters to reach their highest goals and set them higher once again. A talented painter and sculptor, our home and yard are decorated with many of his pieces, including a giant insect made of metal and wood on the front lawn and a front door painted purple. A self-proclaimed ''news junkie'', he read everything that he could get his hands on and could hold an intelligent conversion about any topic. Essentially, he had a lifelong love of learning.

He had the unique ability to make you feel like you were the only one of the room when you were talking to him and that what you were saying was the most interesting thing he's heard all day. But he never failed to end the conversation by making you laugh.

We mourn the loss of Freddie every single day. He was a magnificent human being and a beautiful soul who will never be forgotten. Fred's memory has been celebrated in many ways including a scholarship fund that has been established at his alma mater in the Bronx and trees that have been planted in his honor. We hope that we can continue to honor his life and the lives of those 3000 others lost on September 11th through projects of the Unity in the Spirit of America Act.

SALT LAKE 2002 PARALYMPIC WINTER GAMES

Mr. HATCH. Mr. President, during the last 2 weeks of February, the world watched the 2002 Winter Olympic Games held in our home State of Utah. The success of these games and the achievement of the competing athletes have been recognized as high points in the long Olympic tradition. We are all proud of the spectacular athletic accomplishments of the participation and support of this outstanding event.

Today I rise, as a Senator from the great State of Utah, to call attention to and express support for the Salt Lake 2002 Paralympic Games which concluded with the closing ceremony this past Saturday.

As meaningful and significant as the 2002 Winter Olympic Games have been, the Paralympic Winter Games, perhaps, elevate that significance, for paralympic athletes must not only excel in athletic skill and prowess, but must also accommodate a disabling condition.

During the 10 days of the Salt Lake 2002 Paralympic Winter Games, world-class athletes brought together their minds, their bodies, their spirits, and their determination to pursue the highest level of performance and commitment.

I especially want to recognize the fantastic achievements of our athletes from Utah. Steve Cook showed incredible speed and skill earning four silver medals in cross country skiing events—the 5K, the 10K, as an anchor on the relay, and the biathlon.

No less exceptional was Muffy Davis who was awarded three silver medals in alpine skiing. Her performances were stellar.

Lacey Heward excelled in both the Super G and the Giant Slalom, winning bronze medals in both events.

Also winning two bronze medals was Christopher Waddell in the Giant Slalom and downhill skiing event. Christopher also captured a silver medal in alpine skiing.

Monte Meier, through strength and courage won a silver medal in alpine skiing. Our alpine skiing is exceptional in Utah.

Stephani Victor earned a bronze in the downhill skiing through her great diligence and prowess.

No less outstanding is the participation of Daniel Metivier and Keith Barney, who also gave their all in these games. The stellar achievement of our Utah athletes has been magnificent. I am so proud of their excellence.

While it is fitting that the U.S. Senate express recognition and praise to these outstanding athletes, I cannot forget to applaud their dedicated coaches, trainers, and families. These individuals provide the needed unconditional support for the athletes. Though they stand in the background, they are no less deserving of Olympic glory.

I compliment the U.S. Olympic Committee, which is designated as the National Paralympic Organization. Under

the direction of President Sandy Baldwin and Chief Executive Officer Lloyd Ward, the U.S. Olympic Committee has offered their incredible support for these games.

I also pay tribute to the Salt Lake Organizing Committee, SLOC, for taking the challenge to improve on the success of the Utah Winter Olympics by organizing and carrying out the 2002 Paralympic Winter Games. Nancy Gonsalves, who has been at the head of this venture for the Salt Lake Organizing Committee, is to be commended.

My colleagues might be interested to learn that this was the first time the Paralympic Winter Games have been held in the United States. It was also the first time a local organizing committee assumed the responsibility for the organization, acquiring of sponsors, and staging of the games. The contributions of the sponsors, the volunteers, and SLOC were essential to the success of the Salt Lake 2002 Winter Paralympic Games. The commitment of the people in Salt Lake City and the great state of Utah deserve our appreciation and recognition.

In addition, I wish to give special recognition to the national media for the attention they gave to the Paralympic Winter Games. The purpose of the 2002 Paralympic Winter Games, the events, and the individual stories of the athletes were covered more extensively by the national and international media than in any previous Paralympic games. This coverage suggests that we, as a society, not only recognize outstanding physical performance requiring concentration, dedication, and discipline, but, in addition, we recognize the challenges that must be accommodated by people with disabilities. These Paralympic Games proved that there is no limit to what an individual can accomplish.

The Salt Lake 2002 Paralympic Winter Games enriched the lives of thousands of people with disabilities and their families. Even more important, they enriched the lives of those of us fortunate enough to live free of disability. I wish to commend the dedication and commitment of the athletes, their families, their trainers, the Salt Lake Organizing Committee, and the citizens of the great State of Utah.

Mr. BENNETT. Mr. President, I rise today to join my colleague from Utah in recognizing the outstanding success of the Salt Lake 2002 Paralympic Winter Games. Ten days after the conclusion of the Winter Olympic Games, another group of elite athletes from around the world gathered in Salt Lake City to push the limits of physical achievement. These athletes, along with their coaches, trainers, families, and many volunteers, made the 2002 Paralympic Winter Games a remarkable 10-day event.

The paralympic movement began in 1948, when Sir Ludwig Guttmann organized a sports competition for World War II veterans with spinal cord injuries in Stoke Mandeville, England. From that small beginning came what we now know as the Paralympic Games, which have grown dramatically in recent years. The Salt Lake games were the eighth official Paralympic Winter Games, with over 1,000 world class athletes from 36 countries competing in 100 medal events.

While the athletes at the Paralympic Games all have some form of disability, the level of competition is no less intense. Because the games emphasize the participants' athletic achievements rather than their disabilities, spectators quickly forget that these athletes face special challenges and instead focus on the thrill of competition.

I am proud of the accomplishments of my State during the past 2 months. The Paralympic Games were an outstanding partner to the Olympic Games. I congratulate everyone involved, especially the athletes, who showed us that with dedication and commitment, no obstacle is too great to overcome.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred February 8, 2002, in Missoula, MT. A lesbian couple and their 22-month-old son were victims of an arson attack. An intruder broke into their home, poured accelerant throughout, and set it on fire while the victims slept. The attack came 4 days after the couple received statewide publicity for suing their employer for same-sex domestic partner benefits.

I believe that government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ADDITIONAL STATEMENTS

SORROW TO SOLACE

• Mr. HELMS. Mr. President, I decided that the CONGRESSIONAL RECORD should use the same heading, ''Sorrow To Solace,'' on what I am about to say to the Senate as the Raleigh (N.E.) News and Observer used on its heart-rending story on March 12 about Christelle Geisler.

Who is Christelle Geisler? For openers, she is a charming student at Raleigh Meredith College whose home is in Hickory, NC, in the western part of my State. But that does not tell the real story about Christelle, so let me begin at the beginning of my brief relationship with her a few days ago.

James Humes was waiting for me when I arrived at my Senate office in the Dirksen Building. In the hallway were a number of other visitors. James Humes is well known and highly respected in this city. He looks like Winston Churchill, he walks like Winston Churchill, he sounds like Winston Churchill. He served a stint as speech writer for a President of the United States; he is a well-known and highly respected author, his most recent book bearing the title, ''Eisenhower and Churchill,'' with a subtitle reading, ''The Partnership That Saved The World.''

Jamie Humes and I met Christelle Geisler at the same moment. Christelle giggled quietly in appreciation of Jamie Humes' imitation of Churchill. The three of us had our picture taken together; then Jamie departed with her appealing smile and her good manners. I recall being disappointed that she could not stay longer.

An hour or so later I found a portion of The News and Observer's March 12th story about Christelle. It began with the three-word heading I asked to appear at the top of these remarks in the Senate this morning. The subhead: ''A Girl Scout uses what she learned from grief to help other teens''.

It is touching story about how Christelle having written a brochure designed to help other teenagers cope with grief. Catawba County, Christelle's home county, has distributed hundreds of copies of the brochure.

At this point, allow me to ask to print in the RECORD the News and Observer story, written by Kelly Starling, to finish the heart-warming story about a young lady who has been honored by the Girl Scouts of America because she wanted to help others in their time of grief.

The article follows:

[From the Raleigh News and Observer, Mar. 12, 2002]

SORROW TO SOLACE

A GIRL SCOUT USES WHAT SHE LEARNED FROM GRIEF TO HELP OTHER TEENS

(By Kelly Starling)

At the sound of the front door closing, her ears always perked up. She listened for the rap of a briefcase hitting the wood floor. Then the patter of shoes that meant Daddy was home. Christelle Geisler would dart from her bedroom, speed down two flights of stairs and into his arms. He kissed her and his two younger daughters. Then he gave the gifts: a coral necklace from the Philippines or dolls from Indonesia, a Japanese kimono.

She was dad's girl.

Phillippe Geisler traveled a lot, looking for new merchandise for his furniture store. He journeyed to foreign countries searching, and attended North Carolina furniture shows. Home in Hickory, Christelle was his buddy. She filed papers at his office. They played tennis. He teased her about practicing violin.

He was on a business trip in Florida one July night when the doorbell rang.

Christelle, then 15, turned away from ''Law and Order,'' got up and squinted through the peephole. Two policemen stood on her porch. They asked for her mother, then ushered her to another room: There had been a car accident, they explained. Police suspected that . . .

Christelle, who had been listening by the open door, howled.

''I don't think I've screamed so loud in my life,'' Christelle said. ''It was just raw emotion.''

She recalled that three-year-old memory last week sitting on a wooden bench across from the chapel at Meredith College, where she is a freshman. Gazing at the pond, Christelle wore a distant look. Grief is hard for adults to manage. But when you're a teenager, she said, the voyage can be even lonelier. Everyone thinks they know what you're feeling. There are few resources to help you cope.

The night she learned of her father's crash, Christelle walked around like a zombie, she said. When her boyfriend, Brian Giovannini, called later that night, she was crying.

''She was always daddy's little girl,'' he said. ''She went to him for strength, for advice. When something came up in her life, he was the first person she talked to.''

That night, Christelle slept with her mother, Marie-Alix, in bed. Her baby sister, Margot, who would turn 2 in the following week, was asleep in a nearby cradle. In coming days, they picked up her sister Emilile from violin camp. And the ordeal began.

She learned the details of her father's death: His car had malfunctioned, gone over the median strip, landed in oncoming traffic, flipped over. He was 40. She endured the days-long wait for his body to be brought home. Neighbors cleaned their house. They brought food.

''We had ham for about two months,'' she said.

But Christelle couldn't eat. She kept to herself, stayed away from the phone. The one time she did pick it up, the caller asked about her father's organs; her dad was a donor. She just wished the reality would go away: She had just one parent. No father to help her choose her first car that fall. Or walk her down the aisle one day.

''She couldn't believe it,'' Giovannini said. ''Even after the funeral, it was hard for her to accept.''

Life changed. At school that fall, Christelle kept up with homework and her clubs. But in the evening, with time alone to focus on herself, she faced the pain. Christelle cried in her room. Her mother sent her to a church counselor, and to a school counselor. Christelle resented them, feeling that they didn't understand what she was facing. Mail addressed to him arrived. Friends who had been out of town when the crash happened asked about her dad. People kept dredging up his death.

''You have to face it again and again,'' she said. ''What I hated the most was 'I've been there' from people who hadn't even lost a parent yet. How could the tell me it was going to be OK?''

A CHANCE TO HELP

Christelle found solace in going to church each week and becoming more active in youth group. ''It had more meaning for me,'' she said.

Then Christelle came up with the idea of researching teen grief for a Girl Scout project. She had been a Girl Scout since second grade, rising from Brownie to Senior Cadette. She loved the support system the organization gave her, which helped her learn more about herself. She earned all of the pins and completed almost all the projects she needed to earn a Gold Award, the Scouts' highest honor. The only thing left to do was a research project: Teen grief, she decided, was the perfect subject.

She started working toward the award in January of her senior year, going to public and college libraries. She found scant to nothing on the subject of teen grief. She tried Barnes & Noble: same thing.

She met JoAnn Spees, director of the Council on Adolescents of Catawba County. Spees helped her find enough information to start her research and talked with her about her plan to present it. Christelle decided that her research could benefit more than herself: She would create a teen-to-teen brochure for others struggling with grief.

''She is one of the most capable young women I've ever met,'' Spees said. ''She's very talented, has an incredible joie de vivre and a maturity level beyond her years.''

Now, Christelle had a cause, Spees said. After visiting the Council, Christelle left with books and diaries on grief to read at home. She read everywhere, even on the beach. She interviewed classmates who had lost parents to illness. She talked to psychologists, to teachers whose parents had died when they were young. The Gold Award project required 50 hours of research; Christelle, who completed the project that October, logged more than 92.

Her desire to learn was never sated. What were the stages of grief she would go through? What would Emilie and Margot face? Her notebook was the size of a phone book when she finished. Her journal was full of pages expressing her jumble of feelings: denial sometimes, longing the next.

The brochure she created is simple and powerful. A childlike drawing of a heart graces the cover. Inside, there's a road map showing the journey through grief with exits to shock, the ''whys'' (why them? why me? why now?) and healing. She reminds teens that there's no speed limit or deadline for working through grief. On the back, she offers tips and explains that she is a teen who has lost someone too.

The brochure not only earned Christelle her Gold Award—an honor achieved by about 3,500 Girl Scouts each year—but also led to her being named one of this year's Girl Scout Gold Award Young Women of Distinction—an honor shared by only 10 Scouts. Christelle was chosen because of the impact her brochure had on the community, said Michele Landa, spokeswoman for Girl Scouts of the USA. Catawba County's council on Adolescents has circulated more than 800 copies to school counselors, pediatricians and psychologists. It has been used to help students at a school where three teens died in a car accident. Everyone always wants more, Spees said.

As part of her award, Christelle is in Washington, D.C., this week for a Girl Scout anniversary celebration and gala. She is thought to be the first North Carolina Girl Scout to receive the honor since the award began three years ago, Landa said. Christelle will receive a White House tour and attend a luncheon presided by U.S. Supreme Court Justice Sandra Day O'Connor. She is scheduled to meet influential women such as fashion designer Vera Wang U.S. Senate candidate Elizabeth Dole and Kathryn Sullivan, the first American woman to walk in space.

''Isn't that cool?'' Christelle said.

AN EMERGING WOMAN

Doing the research, Spees said, gave her a deeper sense of maturity. She had always been self-assured. But when Christelle spoke at a luncheon put on by the Council on Adolescents last year, Spees saw an emerging woman.

''She was calm, confident,'' Spees said. ''She just had a sense of new control, a peace that she was conveying. Before it was a cause, but now that the project was finished she found a sense of closure.''

At Meredith, Christelle looks young in a pale yellow cardigan and jeans, her smooth skin and dark brown ponytail accented by a red and green striped bow. But she has grown in ways that don't show. She pulls out a memorial card with a grainy black and white picture of her dad, showing his hair parted on the side, his quirky smile.

''I see so much of my sisters in him now,'' she said, looking at the picture while the chapel bells ring. ''His smile is exactly like my little 4-year-old's. I'll never be able to look at her and not see him. Dad is with us in his own way.''

It has been three years, but Christelle still returns to her grief from time to time. Thinking about a special moment with her dad can cause the tears to run again. She gains comfort from the silver circle of moons and suns on her finger—the ring he bought her in Charleston, S.C., and that she still wears every day. And she leans on her faith. She has even taught her youngest sister that to talk to Daddy she can pray Sometimes you have to turn things over to God, she said, and everything will be OK.●

IN RECOGNITION OF NOTTINGHAM INSURANCE & FINANCIAL SERVICES

● Mr. TORRICELLI. Mr. President, I rise today to recognize Nottingham Insurance & Financial Services which is being honored by the Mercer County Chamber of Commerce with its Outstanding Small Business of the Year.

Nottingham Insurance & Financial Services represents one of the great success stories of family owned businesses. Since its founding in 1917, it has seen 4 generations of family members in successful perpetuation grow and expand its business. Over the years, it has grown from providing property and casualty services to the residents of Central New Jersey to providing group health and life insurance, and financial services.

While also providing valuable insurance and financial services to the residents of Central New Jersey, Nottingham Insurance & Financial Services has also played a vital role in the community. They support numerous youth leagues and teams while also serving on several local board and organizations such as the Hamilton Township Library Board of Trustees and Meals on Wheels of Hamilton.

Nottingham Insurance & Financial Services is a fine example of the positive and vital role that local businesses play within our communities.●

HONORING SHARON DARLING

● Mr. BUNNING. Mr. President, I rise today to pay tribute to a truly inspiring woman, Ms. Sharon Darling. Ms. Darling is this year's recipient of the prestigious National Humanities Medal. President Bush and First Lady Laura Bush will be personally presenting this award to Ms. Darling at a ceremony to take place next month.

Sharon Darling is the founder and president of the National Center for

Family Literacy, NCFL, a non-profit organization located in Louisville, KY, recognized world-wide for their effectiveness and innovativeness in teaching children and adults to read. The NCFL, founded in 1989, has worked diligently year after year in an attempt to bring about a positive change in the level of family literacy rates. This group has been soulfully dedicated to placing family literacy on the national agenda and has been very successful through their efforts. The NCFL rightly understands that to live without an education is to live without a future.

Sharon Darling got her start in education 35 years ago in the basement of the Ninth & O Baptist Church. The basement of this Baptist Church is where she first began to teach illiterate adults to read. It was also the first time she began to realize that she could make a difference in people's lives. She recognized that without access to knowledge, these people would never possess the ability to fight their way out of poverty or empower themselves with the gift of rational thought. If they cannot read, no amount of money or Federal assistance will help.

Throughout her career in education, Sharon has spent time as a teacher, administrator, and educational entrepreneur, constantly working to develop new and improved strategies for teaching children and adults how to read and how to interpret what they read. She has served as an advisor on issues dealing with education to governors, policy makers, business leaders, and foundations across the country. She has been and remains an invaluable resource to the educational community.

The National Humanities Medal will not be the first time Sharon has been recognized for her work. She received the 2000 Razor Walker Award from the University of North Carolina for her contributions to the lives of children and youth; the Woman Distinction Award from Birmingham Southern University in 1999; the Albert Schweitzer Prize for Humanitarianism from Johns Hopkins University in 1998; the Charles A. Dana Award for Pioneering Achievement in education in 1996; and the Harold W. McGraw Award for Outstanding Educator in 1993. She has also received several honorary doctorate degrees for her contributions to education and has been featured on the Arts & Entertainment television network's series, ''Biography.'' Her latest accolade places her in the company of such great men and women as Stephen Ambrose, Ken Burns, and Toni Morrison. The National Humanities Medal is the Federal Government's highest honor recognizing achievement in the humanities.

Sharon Darling has been a shining star for the literacy movement throughout her career as an educator, guiding the unfortunate into a land of opportunity. I congratulate Ms. Darling for this much deserved distinction and thank her for striving to make the world a better place to live and to learn.●

TRIBUTE TO MICHIGAN'S OLYMPIANS

● Ms. STABENOW. Mr. President, I rise to commend the residents of the State of Michigan who participated in the recently concluded 2002 Winter Olympics.

''Swifter! Higher! Stronger!'' That's the Olympic motto.

I am proud to say that at least 13 athletes who call or have called Michigan their home followed that motto and competed with the world's best in this year's Winter Olympics. Among them was Naomi Lang, the first Native American to compete in the history of the Winter Olympics and who placed 11th in ice dancing.

Athletes included members of the men's Silver Medal hockey team: Chris Chelios, of Detroit; Mike Modano, of Livonia; Brian Rafalski, of Dearborn, Brian Rolston, of Flint; Doug Weight, of Warren, and Mike York, of Waterford.

Other athletes from Michigan were: Women's hockey team Silver Medalists Shelley Looney, of Brownstown Township and Angela Ruggiero, of Harper's Woods; Mark Grimmette, of Muskegon, and Chris Thorpe, of Marquette, who won the Silver and Bronze medals respectively in the men's luge doubles; Jean Racine, of Waterford, who placed 5th in the women's bobsled, and Todd Eldredge, of Lake Angelus, who placed sixth in men's singles figure skating.

I am so proud of all of them!

Besides these wonderful athletes, I am pleased to say that another 15 Olympic competitors and one coach came from the U.S. Olympic Education Center based at Northern Michigan University in Marquette.

These athletes didn't just do Michigan proud, or the Nation proud; they made the whole world of amateur athletics proud.

They, and all the great athletes who participated, gave us a chance to share together in another motto of the Winter Olympics, ''Celebrating Humanity.''

It was impossible to watch these games without marveling at all the hard work and dedication these young people brought to the games.

So, again, let me congratulate the athletes from Michigan as well as the athletes from across our Nation and around the world who gave us a chance to watch the best compete against each other and together celebrate the spirit of humanity, the spirit of the Olympics.●

TRIBUTE TO MR. CLIFFORD C. LAPLANTE

● Mr. WARNER. Mr. President, I rise today to pay tribute to a great American who has served his country well. For over five decades, Cliff LaPlante has dedicated himself to supporting the defense needs of the Nation. Born in upstate New York, Cliff entered the service of his country as an Air Force officer during the Korean War. During his 20 years of Air Force service, Cliff specialized in acquisition matters where he helped ensure that our troops were provided with the best equipment our industrial base could provide.

Cliff became well known to this body long before leaving the Air Force in his role as a legislative liaison officer to Capitol Hill. He truly distinguished himself as a trusted and admired representative of the Air Force.

Selected to be a full Colonel in 1970, Cliff decided to forgo this much deserved promotion and instead served for eight years as the Boeing Company's first full-time liaison representative to Capitol.

In 1979, Cliff joined the General Electric Company where he has remained for the past 23 years helping General Electric to ''Bring Good Things to Life.''

Now, after more than 50 years of service, Cliff is retiring from General Electric, to begin yet another chapter in his life. Together with his wife, Cecilia, Cliff has established a charitable foundation called ''Children Come First.'' This foundation is dedicated to helping underprivileged children. In the same spirit that has exemplified all of Cliff's past undertakings, he will devote much of his time lending a helping hand to kids to ensure they have a chance filled with hope for tomorrow.

I will miss this jaunty man with the fast walk and warm, charming personality. Along with all my colleagues who have enjoyed his friendship over the years, I wish him well in his latest ''retirement'' and the best of luck with his ''Children Come First'' Foundation.●

IN RECOGNITION OF MAYOR DOUGLAS H. PALMER

● Mr. TORRICELLI. Mr. President, I rise today to recognize Mayor Douglas Palmer of Trenton, NJ who is being honored by the Mercer County Chamber of Commerce as its Citizen of the Year.

Mayor Palmer has achieved a long list of accomplishments since becoming the mayor of his hometown. Under Mayor Palmer's leadership, tremendous strides have been made in the Trenton area. He has overseen the construction and rehabilitation of hundreds of new homes for working families and created numerous economic development projects that have led to the lowest unemployment rate in a decade.

Some of Mayor Palmer's most impressive achievements include the work he has done for the children of Trenton. He established the ''Trenton Loves Children'' program, representing the city's first comprehensive program for children that ensures preschoolers will receive free immunizations against childhood diseases. He also brought the

country's first federally funded Weed and Seed anti-drug program to Trenton.

In light of Mayor Palmer's achievements as mayor of Trenton, he serves as an exemplar of the positive goals that can be achieved by a mayor who is a tireless advocate for his community.●

TRIBUTE TO DESIGNER TICKETS & MORE

● Mr. BUNNING. Mr. President, I rise today to honor a very special teacher and group of students from Estill County High School. Yesterday in Frankfort, Connie Witt and her students received a Springboard Award and a $2,000 grant from the Appalachian Regional Commission. Ms. Witt and her students were recognized for their success running Designer Tickets & More, a school-based printing business, which prints designs on everything from bumper stickers to ball caps.

Six years ago, Connie Witt, who has taught business classes at Estill County High School for nine years, received free ticket-making software in the mail. Ms. Witt, an entrepreneur at heart, thought it would be a shame to let this software go to waste, so she decided that, with the help of a few students, she could be in charge of printing tickets for the district basketball tournament. Soon, Ms. Witt and her student staff realized the value of their work and were suddenly printing designs on business cards, buttons, mousepads, and mugs. Today, the business known as Designer Tickets & More serves more than 300 customers in Estill County. They have been lauded by their customers as efficient, creative, and affordable. The students redirect their profits back into the business as an insurance policy for progressive thinking.

Students who wish to participate in this business venture must submit resumes and go through an interview process just as if they were applying for a job in my office. From among the applicants, Ms. Witt chooses chief executive officers, department heads, and employees. The students are held responsible for clocking in and out and must inform their boss if they will be unable to come to work due to sickness or vacation. Up to 30 students are in charge of running the business each semester. They are required to make sales calls, fill out order forms, design creative products, and prepare invoices. I applaud Ms. Witt for the phenomenal job she has done creating an educational atmosphere where students can learn not only about business basics such as inventory and sales but also life-skills such as leadership and responsibility.

I ask that my fellow colleagues join me in congratulating Designer Tickets & More on receiving a Springboard award and for their hard work and dedication. I believe Ms. Witt has discovered an effective and educational way to teach Kentucky's future business leaders the importance of teamwork, commitment, and responsibility.●

IN RECOGNITION OF THE ROBERT WOOD JOHNSON UNIVERSITY HOSPITAL

● Mr. TORRICELLI. Mr. President, I rise today to honor The Robert Wood Johnson University Hospital. At the forthcoming 132nd Mercer County Chamber of Commerce annual awards dinner, the Robert Wood Johnson University Hospital will be recognized with the Mercer County Chamber of Commerce's Distinguished Corporation of the Year Award for its outstanding efforts in providing support for the postal workers facing the potential exposure to anthrax.

As our nation's Capitol, Florida, and the New York/New Jersey Area faced the fallout of anthrax laced letters, the Robert Wood Johnson University Hospital did its part to help our nation. After it came to light on October 13th that the anthrax-tainted letter sent to the NBC offices was processed at the United States Post Office on Route 130 in Hamilton, the Robert Wood Johnson University Hospital stepped forward to meet the needs of the community. Under the dynamic leadership of Christy Stephenson, the hospital assessed the potential need for Cipro within the community and took steps to secure the amount of Cipro the situation required.

Further, understanding the urgent need for its services, the hospital accommodated its schedule to treat the patients from the anthrax exposure area while continuing to keep its appointments with regular clients.

As an exemplary corporate citizen of the Mercer County community, Robert Wood Johnson University Hospital's efforts during this time of crisis were of life saving importance to over sixteen hundred individuals. I am proud to know that we have such fine institutions looking after the healthcare of New Jersey residents.●

PERIODIC REPORT ON THE NATIONAL EMERGENCY WITH RESPECT TO NATIONAL UNION FOR THE TOTAL INDEPENDENCE OF ANGOLA (UNIT) FOR THE PERIOD SEPTEMBER 26, 2001 THROUGH MARCH 25, 2002—MESSAGE FROM THE PRESIDENT—PM 77.

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:

As required by section 401(c) of the National Emergencies Act, 50 U.S.C. 1641(c), and section 204(c) of the International Emergency Economic Powers Act, 50 U.S.C. 1703(c), I transmit herewith a 6-month periodic report prepared by my Administration on the national emergency with respect to the National Union for the Total Independence of Angola (UNITA) that was declared in Executive Order 12865 of September 26, 1993.

GEORGE W. BUSH.

THE WHITE HOUSE, *March 19, 2002.*

THE 2002 TRADE POLICY AGENDA AND 2001 ANNUAL REPORT ON THE TRADE AGREEMENTS PROGRAM—MESSAGE FROM THE PRESIDENT—PM 78.

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 Finance.

To the Congress of the United States:

As required by section 163 of the Trade Act of 1974, as amended (19 U.S.C. 2213), I transmit herewith the 2002 Trade Policy Agenda and 2001 Annual Report on the Trade Agreements Program, as prepared by my Administration as of March 1, 2002.

GEORGE W. BUSH.

THE WHITE HOUSE, *March 19, 2002.*

MEASURE HELD AT THE DESK

The following resolution was ordered held at the desk by unanimous consent:

S. Res. 227. A resolution to clarify the rules regarding pro bono legal services by Senators.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–5784. A communication from the Regulations Officer of the Federal Motor Carrier Safety Administration, transmitting, pursuant to law, the report of a rule entitled ''Motor Carrier Identification Report'' ((RIN2126–AA57)(2002–0002)) received on March 12, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5785. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations: Saugatuck River, CT'' ((RIN2115–AE47)(2002–0025)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5786. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Harlem River, NY'' ((RIN2115–AE47)(2002–0024)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5787. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Three Mile Creek, Alabama'' ((RIN2115–AE47)(2002–0023)) received

on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5788. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations: Norwalk River, CT'' ((RIN2115–AE47)(2002–0028)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5789. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations: Jamaica Bay and Connecting Waterways, NY'' ((RIN2115–AE47)(2002–0030)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5790. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations: Spanish River Boulevard (N.E. 40th Street) Drawbridge, Atlantic Intracoastal Waterway, Boca Raton, Florida'' ((RIN2115–AE47)(2002–0029)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5791. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations: Hackensack River, NJ'' ((RIN2115–AE47)(2002–0027)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5792. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations: Hampton River, NH'' ((RIN2115–AE47)(2002–0026)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5793. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Port of Tampa, Tampa Florida (COTP Tampa 01–097)'' ((RIN2115–AA97)(2002–0047)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5794. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Missouri River, Mile Marker 646.0 to 645.6, Fort Calhoun, Nebraska (COTP St. Louis 02–001)'' ((RIN2115–AA97)(2002–0046)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5795. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: Missouri River, Mile Marker 532.9 to 532.5, Brownville, Nebraska (COTP St. Louis 02–002)'' ((RIN2115–AA97)(2002–0045)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5796. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations: Jamaica Bay and Connecting Waterways, NY'' ((RIN2115–AE47)(2002–0031)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5797. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Chevron Multi-Point Mooring, Barbers Point Coast Honolulu, HI (COTP Honolulu 01–005)'' ((RIN2115–AA97)(2002–0052)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5798. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations; Ohio River Mile 119.0 to 119.8, Natrium, West Virginia (COTP Pittsburgh 01–001)'' ((RIN2115–AA97)(2002–0050)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5799. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: Ohio River Mile 34.6 to 35.1, Shippingport, Pennsylvania (COTP Pittsburgh 01–001)'' ((RIN2115–AA97)(2002–0049)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5800. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Safety/Security Zone Regulations: Port of Charleston, South Carolina (COTP Charleston 01–145)'' ((RIN2115–AA97)(2002–0048)) received on March 14, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5801. A communication from the Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Sea Grant Fellowships: (1) National Marine Fisheries Service—Sea Grant Joint Graduate Fellowship Program in Population Dynamics and Marine Resource Economics; and (2) Sea Grant—Industry Fellowship Program: Request for Applications for FY 2002'' received on March 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5802. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; North Pacific Halibut and Sablefish IFQ Cost Recovery Program'' received on March 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5803. A communication from the Legal Advisor, Wireless Telecommunications Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems: Petition of Richardson, Texas'' ((FCC 01–293)(CC Doc. No. 94–102)) received on March 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5804. A communication from the Legal Advisor to the Chief, Cable Services Bureau, Federal Communications Commission, transmitting , pursuant to law, the report of a rule entitled ''Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues'' ((CS Doc No. 00–96)(FCC–01–249)) received on March 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5805. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Department's Annual Report of the Maritime Administration (MARAD) for Fiscal Year 2000; to the Committee on Commerce, Science, and Transportation.

EC–5806. A communication from the Assistant Administrator of the Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''NOAA Climate and Global Change Program, Program Announcement'' received on March 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5807. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area'' received on March 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5808. A communication from the Attorney/Advisor, Department of Transportation, transmitting, pursuant to law, the report of a nomination confirmed for the position of Administrator, received on March 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5809. A communication from the Attorney/Advisor, Department of Transportation, transmitting, pursuant to law, the report of a nomination for the position of Under Secretary of Transportation for Security, received on March 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5810. A communication from the Acting Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Actions for the Recreational and Commercial Salmon Seasons from the U.S.-Canada Border to Cape Falcon, Oregon'' (I.D. 092601B) received on March 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5811. A communication from the Acting General Counsel, Consumer Product Safety Commission, transmitting, pursuant to law, the report of a rule entitled ''Child-Resistant Packaging for Certain Over-The-Counter Drug Products; Correction'' (FR Doc. 01–31400) received on March 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5812. A communication from the Senior Legal Advisor to the Bureau Chief, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations; McCall, Idaho and Pinesdale, Montana'' (MM Doc. No. 01–93) received on March 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5813. A communication from the Senior Legal Advisor to the Bureau Chief, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations; Savoy, Texas'' (MM Doc. No. 01–149) received on March 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5814. A communication from the Senior Legal Advisor to the Bureau Chief, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations; Oswego and Granby, New York'' (MM Doc. No. 00–169) received on March 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5815. A communication from the Senior Legal Advisor to the Bureau Chief, Mass Media Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, TV Broadcast Stations; Elk City, Oklahoma and Borger, Texas (MM Doc. No. 01–134) received on March 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–5816. A communication from the Director of the Workforce Compensation and Performance Service, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Cost-of-Living Allowances (Nonforeign Areas); Commissary/Exchange Rates; Survey Frequency; Gradual Reductions'' (RIN3206–AJ40) received on March 15, 2002; to the Committee on Governmental Affairs.

EC–5817. A communication from the Office of the Special Counsel, transmitting, pursuant to law, the Counsel's Annual Report for Fiscal Year 2000; to the Committee on Governmental Affairs.

EC–5818. A communication from the Executive Director, Office of Navajo and Hopi Indian Relocation, transmitting, pursuant to law, the agency's report submitted in accordance with the requirements of the Federal Managers' Fiscal Integrity Act of 1982, and the Inspector General Act of 1988; to the Committee on Governmental Affairs.

EC–5819. A communication from the Director of the Trade and Development Agency, transmitting, pursuant to law, a report on the activities of the U.S. Trade and Development Agency Currently Procures from Outside Sources; to the Committee on Governmental Affairs.

EC–5820. A communication from the Chairman of the Consumer Product Safety Commission, transmitting, pursuant to law, the Semiannual Report of the Office of the Inspector General for the period April 1, 2001 through September 30, 2001; to the Committee on Governmental Affairs.

EC–5821. A communication from the Administrator of the General Service Administration, transmitting, pursuant to law, a report concerning new mileage reimbursement rates for Federal employees who use privately owned vehicles while on official travel; to the Committee on Governmental Affairs.

EC–5822. A communication from the Comptroller General of the United States, transmitting, pursuant to law, the report of the lists of General Accounting Office reports for October 2001; to the Committee on Governmental Affairs.

EC–5823. A communication from the Chairman of the Federal Trade Commission, transmitting, pursuant to law, the Semiannual report of the Office of the Inspector General for the period April 1, 2001 through September 30, 2001; to the Committee on Governmental Affairs.

EC–5824. A communication from the Executive Director of the District of Columbia Financial Responsibility and Management Assistance Authority, transmitting, pursuant to law, the Authority's unaudited general-purpose Financial Statements for the fiscal year ending September 30, 2001; to the Committee on Governmental Affairs.

EC–5825. A communication from the Chairman of the Federal Housing Finance Board, transmitting, pursuant to law, the report of the Office of the Inspector General for the period April 1, 2001 through September 30, 2001; to the Committee on Governmental Affairs.

EC–5826. A communication from the Vice President of Human Resources, CoBank, transmitting, pursuant to law, a report relative to the ACB Retirement Plan for the year calendar year 2000; to the Committee on Governmental Affairs.

EC–5827. A communication from the Secretary of the Treasury, transmitting, pursuant to law, the Department's Accountability Report for fiscal year 2001; to the Committee on Governmental Affairs.

EC–5828. A communication from the Secretary of Energy, transmitting, pursuant to law, the Department's Performance and Accountability Report for Fiscal Year 2001; to the Committee on Governmental Affairs.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN, from the Committee on Foreign Relations, without amendment:

H.R. 2739: To amend Public Law 107–10 to authorize a United States plan to endorse and obtain observer status for Taiwan at the annual summit of the World Health Assembly in May 2002 in Geneva, Switzerland, and for other purposes.

By Mr. BIDEN, from the Committee on Foreign Relations, without amendment and with a preamble:

S. Res. 205: A resolution urging the Government of Ukraine to ensure a democratic, transparent, and fair election process leading up to the March 31, 2002, parliamentary elections.

By Mr. BIDEN, from the Committee on Foreign Relations, without amendment and with an amended preamble:

S. Res. 213: A resolution condemning human rights violations in Chechnya and urging a political solution to the conflict.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. BIDEN for the Committee on Foreign Relations:

*James W. Pardew, of Arkansas, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Bulgaria.

(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.)

Nominee: James W. Pardew, Jr.

Post: Ambassador to Bulgaria.

Contributions, Amount, Date, and Donee:

Self: None.

2. Spouse: Mary K. Pardew, None.

3. Children and Spouses: Major and Mrs. Paul Pardew, Jon N. Pardew, David A.J. Pardew, None.

4. Parents; Frances Pardew, $35.00, October 2001, William J Clinton Foundation; James Pardew, deceased.

5. Grandparents: Mr. and Mrs. John Sample, deceased; Mr. and Mrs. Thomas J. Pardew, deceased.

6. Brothers and Spouses: John T. Pardew, none.

7. Sisters and Spouses: None.

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*Richard Monroe Miles of South Carolina, 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 Georgia.

(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.)

Nominee: Richard Monroe Miles.

Post: Georgia.

Contributions, Amount, Date and Donee:

1. Self: None.

2. Spouse: None.

3. Children and Spouses: Richard Lee Miles, none; Elizabeth Miles, none.

4. Parents: Deceased.

5. Grandparents: Deceased.

6. Brothers and Spouses: Deceased.

7. Sisters and Spouses: Louise Angell (Richard Angell), none; Lois Navarro (husband deceased), none; Donna Peabody, none.

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*Peter Terpeluk, Jr., of Pennsylvania, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Luxembourg.

(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.)

Nominee: Peter Terpeluk, Jr.

Post: Ambassador of Luxembourg.

Contributions, Amount, Date, and Donee:

1. Self:

1997–1998 Election Years: $1,000, 10/30/97, ARM PAC; $500, 5/5/98, Defend America PAC; $750, 10/12/98, Susan B. Anthony List PAC; $1,000, 2/10/98, Missourians for Kit Bond (Senate) (MO); $500, 1/26/98, Citizens for Bunning (Congress) (KY); $500, 10/14/97, (John) Ensign for Senate (NV); $50, 9/29/98, Ferguson for Congress (NJ); $1,000, 10/16/98, (Peter) Fitzgerald for Senate (IL); $250, 10/16/97, Friends of Mark Foley for Congress (FL); $1,000, 10/29/97, Matt Fong for US Senate (CA); $250, 3/24/98, (Jon) Fox for Congress (PA); $250, 3/24/98, (Jon) For for Congress (PA); $1,000, 10/29/98, (Jon) Fox for Congress (PA); $125, 3/97, Bill Goodling for Congress (PA); $1,000, 10/20/98, (Jim) Greenwood for Congress (PA); $1,000, 10/22/98, Friends of Connie Morella for Congress (MD); $500, 3/25/98, Friends of Senator Nickles (Senate) (OK); $334, 4/24/97, Paxon for Congress (NY); $300, 8/29/97, Portman for Congress (OH); $500, 9/27/97, Regula for Congress (OH); $350, 10/29/98, Regula for Congress (OH); $500, 2/98, Shelby for Senate (AL); $2,000, 6/97, Arlen Specter for Senate (PA); $1,000, 6/25/97, Voinovich for Senate (OH); $500, 5/19/97, Weldon for Congress (PA); $500, 10/22/97, Weldon for Congress (PA); $335, 10/1997, Hagel for Senate (NE).

1999–2000 Election Years: $500, 9/13/00, Susan B. Anthony List Candidate Fund; $500, 2/19/99, Defend America PAC; $500, 4/29/97, Abraham Senate 2000 (MI); $1,000, 7/28/98, Ashcroft 2000 (for Senate) (MO); $1,000, 9/21/99, Ashcroft 2000 (for Senate) (MO); $300, 10/12/00, Bayou Leader PAC; $1,000, 3/30/99, Bush for President (TX); $1,000, 11/22/99, Bush for President Compliance Fund Ctte; $1,000, 3/23/99, DeWine for Senate (OH); $1,000, 8/5/99, English for Congress (PA); $610, 4/20/99, Foley for Congress (FL); $89, 3/14/00, Foley for Congress (FL); 1,000, 10/26/00, Bob Franks for US Senate, Inc.; $1,000, 9/12/00, friends of Dylan Glenn (for Congress) (GA); $500, 3/22/00, Greenwood for Congress (PA); $73, 10/14/99, Kuykendall for Congress (CA); $500, 3/10/99, John Kyl for US Senate (AZ); $1000, 9/28/00, Lazio for Senate (NY); $1,000, 10/11/00, Stenberg for Senate (NE); $300, 9/28/00, Tauzin for Congress (LA); $1,000, 10/14/00, Shelby for Senate (AL).

2001 Election Year: $1,000, 06/2001, Reynolds for Congress.

2. Diane G. Terpeluk (spouse):

1997–1998 Election Years: $750, 10/12/98, Susan B. Anthony List (PAC); $500, 10/27/97, Weller for Congress (IL); $1,000, 7/17/98, Faircloth for Senate (NC); $250, 3/20/98, Mike Forbes for Congress (NY); $250, 3/20/98, Hayworth for Congress (AZ); $1,000, 11/13/97, Fong for Senate (CA); $1,000, 10/14/98, Fong for Senate (CA); $1,000, 3/27/97, Ferguson for Congress (NJ); $250, 10/13/98, Pappas for Congress (NJ); $250, 3/20/98, Nielsen for Congress (CT).

1999–2000 Election Years: $500, 9/13/00, Susan B. Anthony List (PAC); $1,000, 3/30/99, Bush for President; $1,000, 11/10/99, Friends of George Allen (Senate) (VA); $10,000, 5/11/00, RNC Presidential Trust; $500, 9/28/00, Walsh for Congress (NJ); $1,000, 9/12/00, Friends of Dylan Glenn (for Congress) (GA); $1,000, 10/12/00, Stenberg for Senate 2000 (NE); $1,000, 10/3/00, Republican State Central Committee of MD; $1,000, 10/30/00, Greenleaf for Congress.

2001 Election Year: $1,000, 6/27/01, Collins for Senate (ME).

3. Peter Terpeluk III (son): None; Meredith A. Terpeluk (daughter): None.

4. Catherine L. Terpeluk (mother) (deceased): None; Peter Terpeluk (father) (deceased): None.

5. Katherine Long (maternal grandmother) (deceased): None; Peter Long (maternal grandfather) (deceased): None; Anna Terpeluk (paternal grandmother) (deceased): None; George Terpeluk (paternal grandfather) (deceased): None.

6. Paul Terpeluk (brother): $1,000, 5/14/97, Citizens for Arlen Specter; $1,000, 8/6/97, Committee to Re-elect Ed Towns; $250, 10/22/98, Ellen Sauerbrey for Governor (MD); Sandra Terpeluk (sister-in-law): $250, 10/22/98, Ellen Sauerbrey for Governor (MD); $100, 9/13/00, Maryland Victory 2000.

7. Patricia Lynn Terpeluk Anderson (sister): None; Tom Anderson (brother-in-law): None.

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*Lawrence E. Butler, of Maine, 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 Former Yugoslav Republic of Macedonia.

(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.)

Nominee: Lawrence E. Butler.

Post: Ambassador to the Former Yugoslav Republic of Macedonia.

Contributions, Amount, Date, and Donee:

1. Self: None.

2. Spouse: None.

3. Children and Spouses: Charles E. Butler, none.

4. Parents: Charles L. Butler, deceased; Joan Haskell Hardy, deceased.

5. Grandparents: Lewis and Elizabeth Whipple Butler, deceased; Norman and Lillian Haskell, deceased.

6. Brothers and Spouses: None.

7. Sisters and Spouses: C.J. Butler & Stephen Coughlan, $100, 9/01, Shaheen For Gov.; $100 1996 Dole for Presi; Barbara & Phil Merrill, $3,000, 2000, Mark Lawrence for Senate; $1,000, 1992, DNC.

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*Robert Patrick John Finn, 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 Afghanistan.

(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.)

Nominee: Robert Patrick John Finn.

Post: Kabul, Afghanistan.

Contributions, Amount, Date, Donee:

1. Self: None.

2. Spouse: None.

3. Children and Spouses: Edward Frederick Finn, none.

4. Parents: Deceased.

5. Grandparents: Deceased.

6. Brothers and Spouses: Edward and Linda Finn, $300, 1998, 1999, 2000, 2001, Dem. Party, William and Eileen Finn, none.

7. Sisters and Spouses: John Smith, none; Margaret and James Hartigan, none; Elizabeth and Edwin Dowling, none.

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*Robert B. Holland, III, of Texas, to be United States Alternate Executive Director of the International Bank For Reconstruction and Development for a term of two years.

*Emmy B. Simmons, of the District of Columbia, to be an Assistant Administrator of the United States Agency for International Development.

Mr. BIDEN. Mr. President, for the Committee on Foreign Relations I report favorably the following nomination lists which were printed in the RECORD on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

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

Foreign Service nominations beginning Jeffrey Davidow and ending George E. Moose, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on December 20, 2001.

Foreign Service nominations beginning Gustavio Alberto Mejia and ending Joseph E. Zadrozny, Jr., which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on December 20, 2001.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. SCHUMER (for himself and Mrs. CLINTON):

S. 2028. A bill to authorize the President to award the Medal of Honor posthumously to Henry Johnson, of Albany, New York, for acts of valor during World War I and to direct the Secretary of the Army to conduct a review of military service records to determine whether certain other African American World War I veterans should be awarded the Medal of Honor for actions during that war; to the Committee on Armed Services.

By Mr. WARNER (for himself and Mr. ALLEN):

S. 2029. A bill to convert the temporary judgeship for the eastern district of Virginia to a permanent judgeship, and for other purposes; to the Committee on the Judiciary.

By Mr. CONRAD:

S. 2030. A bill to establish a community Oriented Policing Services anti-meth-amphetamine grant program, and for other purposes; to the Committee on the Judiciary.

By Mr. LEAHY (for himself and Mr. BROWNBACK):

S. 2031. A bill to restore Federal remedies for infringements of intellectual property by States, and for other purposes; to the Committee on the Judiciary.

By Mr. DURBIN:

S. 2032. A bill to amend the Employee Retirement Income Security Act of 1974 to provide for improved disclosure, diversification, account access, and accountability under individual account plans; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CHAFEE (for himself, Mr. REED, Mr. KERRY, and Mr. KENNEDY):

S. 2033. A bill to authorize appropriations for the John H. Chafee Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. VOINOVICH (for himself, Mr. FEINGOLD, Mr. LEVIN, Mr. DEWINE, and Mr. WARNER):

S. 2034. A bill to amend the Solid Waste Disposal Act to impose certain limits on the receipt of out-of-State municipal solid waste; to the Committee on Environment and Public Works.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MCCONNELL (for himself, Mr. MCCAIN, and Mr. FEINGOLD):

S. Res. 227. A resolution to clarify the rules regarding the acceptance of pro bono legal services by Senators; ordered held at the desk.

ADDITIONAL COSPONSORS

S. 606

At the request of Mr. CRAPO, the name of the Senator from Iowa (Mr. GRASSLEY) was added as a cosponsor of S. 606, a bill to provide additional authority to the Office of Ombudsman of the Environmental Protection Agency.

S. 966

At the request of Mr. DORGAN, the name of the Senator from South Carolina (Mr. HOLLINGS) was added as a cosponsor of S. 966, a bill to amend the National Telecommunications and Information Administration Organization Act to encourage deployment of broadband service to rural America.

S. 1022

At the request of Mr. NELSON of Florida, his name was added as a cosponsor of S. 1022, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 1050

At the request of Mr. SANTORUM, the name of the Senator from Oklahoma (Mr. NICKLES) was added as a cosponsor of S. 1050, a bill to protect infants who are born alive.

S. 1606

At the request of Mr. NELSON of Florida, the name of the Senator from Massachusetts (Mr. KENNEDY) was added as a cosponsor of S. 1606, a bill to amend title XI of the Social Security Act to prohibit Federal funds from being used to provide payments under a Federal health care program to any health care provider who charges a membership of any other extraneous or incidental fee to a patient as a prerequisite for the provision of an item or service to the patient.

S. 1617

At the request of Mr. DODD, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from Illinois (Mr. DURBIN) were added as cosponsors of S. 1617, a bill to amend the Workforce Investment Act of 1998 to increase the hiring of firefighters, and for other purposes.

S. 1707

At the request of Mr. JEFFORDS, the name of the Senator from Colorado (Mr. CAMPBELL) was added as a cosponsor of S. 1707, a bill to amend title XVIII of the Social Security Act to specify the update for payments under the medicare physician fee schedule for 2002 and to direct the Medicare Payment Advisory Commission to conduct a study on replacing the use of the sustainable growth rate as a factor in determining such update in subsequent years.

S. 1749

At the request of Mr. KENNEDY, the names of the Senator from California (Mrs. BOXER), the Senator from Louisiana (Mr. BREAUX), the Senator from New Jersey (Mr. CORZINE), the Senator from Connecticut (Mr. LIEBERMAN), and the Senator from Indiana (Mr. LUGAR) were added as cosponsors of S. 1749, a bill to enhance the border security of the United States, and for other purposes.

S. 1777

At the request of Mrs. CLINTON, the names of the Senator from Washington (Mrs. MURRAY) and the Senator from Maryland (Ms. MIKULSKI) were added as cosponsors of S. 1777, a bill to authorize assistance for individuals with disabilities in foreign countries, including victims of landmines and other victims of civil strife and warfare, and for other purposes.

S. 1911

At the request of Mr. INHOFE, the names of the Senator from Arkansas (Mrs. LINCOLN) and the Senator from Tennessee (Mr. THOMPSON) were added as cosponsors of S. 1911, a bill to amend the Community Services block Grant Act to reauthorize national and regional programs designed to provide instructional activities for low-income youth.

S. 1917

At the request of Mr. JEFFORDS, the names of the Senator from Alabama (Mr. SESSIONS) and the Senator from Georgia (Mr. MILLER) were added as cosponsors of S. 1917, a bill to provide for highway infrastructure investment at the guaranteed funding level contained in the Transportation Equity Act for the 21st Century.

S. 1991

At the request of Mr. HOLLINGS, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 1991, to establish a national rail passenger transportation system, reauthorize Amtrak, improve security and service on Amtrak, and for other purposes.

S. RES. 109

At the request of Mr. REID, the names of the Senator from New Jersey (Mr. CORZINE), the Senator from Missouri (Mrs. CARNAHAN), the Senator from Kansas (Mr. BROWNBACK), the Senator from New York (Mr. SCHUMER), and the Senator from Florida (Mr. GRAHAM) were added as cosponsors of S. Res. 109, a resolution designating the second Sunday in the month of December as ''National Children's Memorial Day'' and the last Friday in the month of April as ''Children's Memorial Flag Day.''

S. RES. 219

At the request of Mr. GRAHAM, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. Res. 219, a resolution expressing support for the democratically elected Government of Columbia and its efforts to counter threats from United States-designated foreign terrorist organizations.

AMENDMENT NO. 3008

At the request of Mr. DAYTON, the name of the Senator from Missouri (Mrs. CARNAHAN) was added as a cosponsor of amendment No. 3008 proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

AMENDMENT NO. 3023

At the request of Mrs. LINCOLN, the names of the Senator from Delaware (Mr. CARPER), the Senator from Illinois (Mr. FITZGERALD), the Senator from Minnesota (Mr. DAYTON), and the Senator from North Dakota (Mr. DORGAN) were added as cosponsors of amendment No. 3023 proposed to S. 517, a bill to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WARNER (for himself and Mr. ALLEN):

S. 2029. A bill to convert the temporary judgeship for the eastern district of Virginia to a permanent judgeship, and for other purposes; to the Committee on the Judiciary.

Mr. WARNER. Mr. President, I rise today to introduce bipartisan, bicameral legislation to help ensure the continued effective administration of justice in the Commonwealth of Virginia. I am joined in the Senate on this initiative by my colleague Senator GEORGE ALLEN. Congressman ROBERT SCOTT is introducing similar legislation today in the House of Representatives.

Simply put, the legislation we are introducing today will convert a temporary judgeship in the Eastern District of Virginia into a permanent one. Without swift passage of this legislation, the Eastern District of Virginia could lose an authorized judgeship, thus placing an even greater workload on the already hard working judges that serve in this judicial district.

By way of background, in 1990, Congress authorized a temporary judgeship for the Eastern District of Virginia, bringing the total number of authorized judgeships in that district to ten, nine permanent judgeships and one temporary judgeship.

In 2000, Congress looked closely at the heavy caseload the judges of the Eastern District of Virginia carried, and as a result Congress authorized one additional permanent judgeship. With the advice of Senator ALLEN and me, President Bush has nominated Mr. Henry Hudson to fill this judicial vacancy. I strongly support Mr. Hudson's nomination and look forward to him receiving a confirmation hearing and a vote in the full Senate. Mr. Hudson has been deemed ''well qualified'' by the American Bar Association.

Thus, to date, eleven judgeships are currently authorized on the Eastern District of Virginia's bench. However, the temporary judgeship in the Eastern District of Virginia is set to expire with the first vacancy occurring after April 8, 2002. Thus, when one of the active judges on the Eastern District bench retires, takes senior status, or passes away, that position will not be filled, thus leaving the court with one less authorized judgeship than it has currently. It is important to note that Mr. Hudson's nomination will not be effected by the lapsing of the temporary judgeship.

If the temporary judgeship in the Eastern District of Virginia lapses, and this judicial district loses an authorized judgeship, an already overworked judiciary will be without relief.

The Judicial Conference of the United States recommends that a district have a newly authorized judgeship when the weighted filings per judge exceed 430 cases. In 2001, the weighted caseload per judge on the Eastern District was 617. If Virginia's temporary judgeship expires, the per judge weighted caseload would sky-rocket to 679 cases per judge.

Moreover, it is now clear based on experience that the Department of Justice has prosecuted and will continue to prosecute terrorist cases in the Eastern District of Virginia. Already, the Eastern District is proceeding with the cases of Zacaris Moussaoui and John Walker Lindh. While the judges

on the Eastern District bench stand ready to proceed with these and other cases, these cases could significantly increase the numbers of cases and the complexity of cases the judges on this bench preside over.

Given its already high case load and given the fact that the Eastern District is facing the likelihood of even a higher caseload with the terrorist prosecutions, the Eastern District of Virginia is in a unique position. Converting the temporary judgeship to a permanent one will provide some relief.

Accordingly, Congressman SCOTT, Senator ALLEN and I have joined together in support of this legislation that will simply allow the Eastern District to continue to maintain its current level of eleven district court judges.

This request is inherently reasonable. We are simply asking to maintain the status-quo of eleven authorized judgeships on the Eastern District bench. Meanwhile, the Judicial Conference currently recommends one additional permanent judgeship and the conversion of a temporary judgeship to a permanent judgeship.

I ask Chairman LEAHY and Senator HATCH to swiftly report this legislation from the Judiciary Committee, and I urge my colleagues to support final passage. Time is of the essence. We must ensure that the judicial system in the Eastern District of Virginia continues to be able to serve Virginians, and indeed the country, in an efficient manner.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2029

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

SECTION 1. DISTRICT JUDGESHIP FOR THE EASTERN DISTRICT OF VIRGINIA.

(a) CONVERSION OF TEMPORARY JUDGESHIP TO PERMANENT JUDGESHIP.—The existing judgeship for the eastern district of Virginia authorized by section 203(c) of the Judicial Improvements Act of 1990 (28 U.S.C. 133 note; Public Law 101–650) shall, as of the date of enactment of this Act, be authorized under section 133 of title 28, United States Code, and the incumbent in that office shall hold the office under section 133 of title 28, United States Code (as amended by this Act).

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table contained in section 133(a) of title 28, United States Code, is amended by striking the item relating to Virginia and inserting the following:

''Virginia:
Eastern 11
Western ..... 4''.

By Mr. CONRAD:

S. 2030. A bill to establish a community Oriented Policing Services anti-methamphetamine grant program, and for other purposes; to the Committee on the Judiciary.

Mr. CONRAD. Mr. President, today I introduce legislation intended to marshal the resources of the Federal Government, the expertise of State and local law enforcement, and the eyes, ears, and caring of our Nation's communities, to work together to eradicate the scourge of methamphetamine from our Nation.

Meth statistics are startling, not only for what they say about where we are currently, but even more important about the potential magnitude of the problem in our very near future. Nationwide U.S. Drug Enforcement Administration, DEA, meth lab seizures have increased seven-fold from 1994 to 2000. The North Dakota lab seizure numbers are even more dramatic: a nearly twenty-fold increase from 1998 to 2001. Among 2001 high school seniors, 6.9 percent had tried meth; the eighth-grade figure was 4.4 percent. Even more startling perhaps is that 28.3 percent of high school seniors said it was ''fairly easy'' or ''very easy'' to obtain meth. This is particularly alarming because meth is more addictive than cocaine, leading to paranoia, aggression, violent behavior, and hallucinations, and ultimately, and amazingly quickly, to brain damage similar to Alzheimer's disease, stroke, and epilepsy.

The COPS Anti-Methamphetamine Act of 2002 has one aim, to focus the principles of community policing on the problem of methamphetamine. Since its inception in 1994, the Community Oriented Policing Services COPS, program has been a catalyst for establishing a partnership between police and the community, leading to a reduction in crime and a strengthening of our neighborhoods. It is now time to tightly focus the COPS success on our nation's meth scourge.

Until now, meth use and production has too often occurred underground and below the radar screens of local law enforcement. My COPS methamphetamine initiative, by bringing the community and the local police closer together, will help law enforcement to react more quickly before a meth epidemic get ingrained in a locality, to weed it out before its roots get too deep. If a meth problem already exists in a neighborhood, the community-oriented policing model will allow police to have a better pulse on the drug market, on both the supply and the demand ends to better know the market's pressure points.

My initiative calls for five years of grants, at $75 million a year, to be given to localities for programs aimed at anti-meth enforcement, production, prevention, treatment, training, and intelligence-gathering efforts. And because meth is such a problem in rural States like North Dakota, I include a mechanism to ensure that smaller localities get their fair share of funding.

Meth is a continuing problem and challenge in our nation and in North Dakota, and I have been a strong supporter of providing the resources for local law enforcement to combat this drug. In 1998, for example, I was able to include North Dakota in the Midwest High Intensity Drug Trafficking Area, which has provided additional Federal funding to ensure that Federal, State, and local law enforcement works better as a team. The last piece of the puzzle is to ensure that local police are able to work as closely as possible with the community. It is simply imperative that if we are going to eradicate our Nation's spreading meth epidemic, and the countless associated shattered lives and futures lost, we all need to work together.

I urge my colleagues to support this legislation, and I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 2030

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 referred to as the ''COPS Anti-Methamphetamine Act of 2002''.

SEC. 2. GRANTS AUTHORIZED.

The Attorney General shall make grants on a competitive basis to State and local community policing programs aimed at anti-methamphetamine enforcement, production, prevention, treatment, training, and intelligence gathering efforts.

SEC. 3. USE OF FUNDS.

(a) IN GENERAL.—Grants made under section 2 may be used to support personnel salary, equipment, and technology upgrades, officer overtime, and training.

(b) ASSISTANCE FROM COPS OFFICE.—The Community Oriented Policing Services (COPS) Office in the Department of Justice shall work directly with participating State and local community policing programs to assist in crafting innovative anti-methamphetamine strategies.

SEC. 4. APPLICATION.

Each eligible entity that desires a grant under this Act shall submit an application to the Attorney General at such time, in such manner, and accompanied by such information as the Attorney General may reasonably require.

SEC. 5. SUPPLEMENT AND NOT SUPPLANT.

Grant amounts received under this Act shall be used to supplement, and not supplant, other funds received by State and local community policing programs to assist in the methamphetamine problem.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—There are authorized to be appropriated $75,000,000 for each of fiscal years 2003 through 2007.

(b) LIMITATION.—Not less than 50 percent of the amount appropriated in each fiscal year under subsection (a) shall be awarded to local community policing programs that serve a population of not more than 150,000.

By Mr. LEAHY (for himself and Mr. BROWNBACK):

S. 2031. A bill to restore Federal remedies for infringements of intellectual property by States, and for other purposes; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, in June 1999, the U.S. Supreme Court issued a pair of decisions that altered the legal landscape with respect to intellectual property. I am referring to Florida Prepaid versus College Savings Bank and

its companion case, College Savings Bank versus Florida Prepaid. The Court ruled in these cases that States and their institutions cannot be held liable for damages for patent infringement and other violations of the Federal intellectual property laws, even though they can and do enjoy the full protection of those laws for themselves.

Both Florida Prepaid and College Savings Bank were decided by the same five-to-four majority of the justices. This slim majority of the Court threw out three Federal statutes that Congress passed, unanimously, in the early 1990s, to reaffirm that the Federal patent, copyright, and trademark laws apply to everyone, including the States.

I believe that there is an urgent need for Congress to respond to the Florida Prepaid decisions, for two reasons.

First, the decisions opened up a huge loophole in our Federal intellectual property laws. If we truly believe in fairness, we cannot tolerate a situation in which some participants in the intellectual property system get legal protection but need not adhere to the law themselves. If we truly believe in the free market, we cannot tolerate a situation where one class of market participants have to play by the rules and others do not. As Senator SPECTER said in August 1999, in a floor statement that was highly critical of the Florida Prepaid decisions, they ''leave us with an absurd and untenable state of affairs,'' where ''States will enjoy an enormous advantage over their private sector competitors.''

This concern is not just abstract. Consider this. In one recent copyright case, the University of Houston was able to avoid any liability by invoking sovereign immunity. The plaintiff in that case, a woman named Denise Chavez, was unable to collect a nickle in connection with the university's alleged unauthorized publication of her short stories. Now, just a short time later, another public university funded by the State of Texas is suing Xerox for copyright infringement.

The second reason why Congress should respond to the Florida Prepaid decisions is that they raise broader concerns about the roles of Congress and the Court. Over the past decade, in a series of five-to-four decisions that might be called examples of ''judicial activism,'' the current Supreme Court majority has overturned Federal legislation with a frequency unprecedented in American constitutional history. In doing so, the Court has more often than not relied on notions of State sovereign immunity that have little if anything to do with the text of the Constitution.

Some of us have liked some of the results; others have liked others; but that is not the point. This activist Court has been whittling away at the legitimate constitutional authority of the Federal Government. At the risk of sounding alarmist, this is the fact of the matter: We are faced with a choice. We can respond, in a careful and measured way, by reinstating our democratic policy choices in legislation that is crafted to meet the Court's stated objections. Or we can run away, abdicate our democratic policy-making duties to the unelected Court, and go down in history as the incredible shrinking Congress.

Just last month, the Court decided to intervene in another copyright dispute, to decide whether Congress went too far in 1998, when we extended the period of copyright protection for an additional 20 years. Many of us on the Judiciary Committee cosponsored that legislation, and it passed unanimously in both Houses. A decision that the legislation is unconstitutional could place further limits on congressional power.

About 4 months after the Florida Prepaid decisions issued, I introduced a bill that responded to those decisions. The Intellectual Property Protection Restoration Act of 1999 was designed to restore Federal remedies for violations of intellectual property rights by states.

I regret that the Senate did not consider my legislation during the last Congress. It has now been nearly 3 years since the Court decisions opened such a troubling loophole in our Federal intellectual property laws. We should delay no further.

Last month, the Judiciary Committee held its first hearing on the issue of sovereign immunity and the protection of intellectual property. I want to thank again everyone who participated in that hearing, which helped greatly to clarify the issues and challenges posed by the Court's new jurisprudence.

Today, I am pleased to be reintroducing the Intellectual Property Protection Restoration Act with my friend and fellow Judiciary Committee member, Senator BROWNBACK. I commend the Senator from Kansas for taking a stand on this important issue. I am also proud to have the House leaders on intellectual property issues, Representatives COBLE and BERMAN, as the principal sponsors of the House companion bill, H.R. 3204.

This bill has the same common-sense goal as the three statutes that the Supreme Court's decisions invalidated: To protect intellectual property rights fully and fairly. But the legislation has been re-engineered, after extensive consultation with constitutional and intellectual property experts, to ensure full compliance with the Court's new jurisprudential requirements. As a result, the bill has earned the strong support of the U.S. Copyright Office and the endorsements of a broad range of organizations including the American Bar Association, the American Intellectual Property Law Association, the Business Software Alliance, the Intellectual Property Owners Association, the International Trademark Association, the Motion Picture Association of America, the Professional Photographers of America Association, and the Chamber of Commerce.

In essence, our bill presents States with a choice. It creates reasonable incentives for States to waive their immunity in intellectual property cases, but it does not oblige them to do so. States that choose not to waive their immunity within 2 years after enactment of the bill would continue to enjoy many of the benefits of the Federal intellectual property system; however, like private parties that sue States for infringement, States that sue private parties for infringement could not recover any money damages unless they had waived their immunity from liability in intellectual property cases.

This arrangement is clearly constitutional. Congress may attach conditions to a State's receipt of Federal intellectual property protection under its Article I intellectual property power just as Congress may attach conditions on a State's receipt of Federal funds under its Article I spending power. Either way, the power to attach conditions to the Federal benefit is part of the greater power to deny the benefit altogether. And no condition could be more reasonable or proportionate than the condition that in order to obtain full protection for your Federal intellectual property rights, you must respect those of others.

I hope we can all agree on the need for corrective legislation. A recent GAO study confirmed that, as the law now stands, owners of intellectual property have few or no alternatives or remedies available against State infringers, just a series of dead ends.

We need to assure American inventors and investors, and our foreign trading partners, that as State involvement in intellectual property becomes ever greater in the new information economy, U.S. intellectual property rights are backed by legal remedies. I want to emphasize the international ramifications here. American trading interests have been well served by our strong and consistent advocacy of effective intellectual property protections in treaty negotiations and other international fora. Those efforts could be jeopardized by the loophole in U.S. intellectual property enforcement that the Supreme Court has created.

The Intellectual Property Protection Restoration Act restores protection for violations of intellectual property rights that may, under current law, go unremedied. We unanimously passed more sweeping legislation earlier this decade, but were thwarted by the Supreme Court's shifting jurisprudence. We should enact this legislation without further delay.

I ask unanimous consent that the text of the bill and a section-by-section summary of the bill be printed in the RECORD.

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

S. 2031

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

SECTION 1. SHORT TITLE; REFERENCES.

(a) SHORT TITLE.—This Act may be cited as the ''Intellectual Property Protection Restoration Act of 2002''.

(b) REFERENCES.—Any reference in this Act to the Trademark Act of 1946 shall be a reference to the Act entitled ''An Act to provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes'', approved July 5, 1946 (15 U.S.C. 1051 et seq.).

SEC. 2. PURPOSES.

The purposes of this Act are to—

(1) help eliminate the unfair commercial advantage that States and their instrumentalities now hold in the Federal intellectual property system because of their ability to obtain protection under the United States patent, copyright, and trademark laws while remaining exempt from liability for infringing the rights of others;

(2) promote technological innovation and artistic creation in furtherance of the policies underlying Federal laws and international treaties relating to intellectual property;

(3) reaffirm the availability of prospective relief against State officials who are violating or who threaten to violate Federal intellectual property laws; and

(4) abrogate State sovereign immunity in cases where States or their instrumentalities, officers, or employees violate the United States Constitution by infringing Federal intellectual property.

SEC. 3. INTELLECTUAL PROPERTY REMEDIES EQUALIZATION.

(a) AMENDMENT TO PATENT LAW.—Section 287 of title 35, United States Code, is amended by adding at the end the following:

''(d)(1) No remedies under section 284 or 289 shall be awarded in any civil action brought under this title for infringement of a patent issued on or after January 1, 2002, if a State or State instrumentality is or was at any time the legal or beneficial owner of such patent, except upon proof that—

''(A) on or before the date the infringement commenced or January 1, 2004, whichever is later, the State has waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law; and

''(B) such waiver was made in accordance with the constitution and laws of the State, and remains effective.

''(2) The limitation on remedies under paragraph (1) shall not apply with respect to a patent if—

''(A) the limitation would materially and adversely affect a legitimate contract-based expectation in existence before January 1, 2002; or

''(B) the party seeking remedies was a bona fide purchaser for value of the patent, and, at the time of the purchase, did not know and was reasonably without cause to believe that a State or State instrumentality was once the legal or beneficial owner of the patent.

''(3) The limitation on remedies under paragraph (1) may be raised at any point in a proceeding, through the conclusion of the action. If raised before January 1, 2004, the court may stay the proceeding for a reasonable time, but not later than January 1, 2004, to afford the State an opportunity to waive its immunity as provided in paragraph (1).''.

(b) AMENDMENT TO COPYRIGHT LAW.—Section 504 of title 17, United States Code, is amended by adding at the end the following:

''(e) LIMITATION ON REMEDIES IN CERTAIN CASES.—

''(1) No remedies under this section shall be awarded in any civil action brought under this title for infringement of an exclusive right in a work created on or after January 1, 2002, if a State or State instrumentality is or was at any time the legal or beneficial owner of such right, except upon proof that—

''(A) on or before the date the infringement commenced or January 1, 2004, whichever is later, the State has waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law; and

''(B) such waiver was made in accordance with the constitution and laws of the State, and remains effective.

''(2) The limitation on remedies under paragraph (1) shall not apply with respect to an exclusive right if—

''(A) the limitation would materially and adversely affect a legitimate contract-based expectation in existence before January 1, 2002; or

''(B) the party seeking remedies was a bona fide purchaser for value of the exclusive right, and, at the time of the purchase, did not know and was reasonably without cause to believe that a State or State instrumentality was once the legal or beneficial owner of the right.

''(3) The limitation on remedies under paragraph (1) may be raised at any point in a proceeding, through the conclusion of the action. If raised before January 1, 2004, the court may stay the proceeding for a reasonable time, but not later than January 1, 2004, to afford the State an opportunity to waive its immunity as provided in paragraph (1).''.

(c) AMENDMENT TO TRADEMARK LAW.—Section 35 of the Trademark Act of 1946 (15 U.S.C. 1117) is amended by adding at the end the following:

''(e) LIMITATION ON REMEDIES IN CERTAIN CASES.—

''(1) No remedies under this section shall be awarded in any civil action arising under this Act for a violation of any right of the registrant of a mark registered in the Patent and Trademark Office on or after January 1, 2002, or any right of the owner of a mark first used in commerce on or after January 1, 2002, if a State or State instrumentality is or was at any time the legal or beneficial owner of such right, except upon proof that—

''(A) on or before the date the violation commenced or January 1, 2004, whichever is later, the State has waived its immunity, under the eleventh amendment of the United States Constitution and under any other doctrine of sovereign immunity, from suit in Federal court brought against the State or any of its instrumentalities, for any infringement of intellectual property protected under Federal law; and

''(B) such waiver was made in accordance with the constitution and laws of the State, and remains effective.

''(2) The limitation on remedies under paragraph (1) shall not apply with respect to a right of the registrant or owner of a mark if—

''(A) the limitation would materially and adversely affect a legitimate contract-based expectation in existence before January 1, 2002; or

''(B) the party seeking remedies was a bona fide purchaser for value of the right, and, at the time of the purchase, did not know and was reasonably without cause to believe that a State or State instrumentality was once the legal or beneficial owner of the right.

''(3) The limitation on remedies under paragraph (1) may be raised at any point in a proceeding, through the conclusion of the action. If raised before January 1, 2004, the court may stay the proceeding for a reasonable time, but not later than January 1, 2004, to afford the State an opportunity to waive its immunity as provided in paragraph (1).''.

(d) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) AMENDMENTS TO PATENT LAW.—

(A) IN GENERAL.—Section 296 of title 35, United States Code, is repealed.

(B) TABLE OF SECTIONS.—The table of sections for chapter 29 of title 35, United States Code, is amended by striking the item relating to section 296.

(2) AMENDMENTS TO COPYRIGHT LAW.—

(A) IN GENERAL.—Section 511 of title 17, United States Code, is repealed.

(B) TABLE OF SECTIONS.—The table of sections for chapter 5 of title 17, United States Code, is amended by striking the item relating to section 511.

(3) AMENDMENTS TO TRADEMARK LAW.—Section 40 of the Trademark Act of 1946 (15 U.S.C. 1122) is amended—

(A) by striking subsection (b);

(B) in subsection (c), by striking ''or (b)'' after ''subsection (a)''; and

(C) by redesignating subsection (c) as subsection (b).

SEC. 4. CLARIFICATION OF REMEDIES AVAILABLE FOR STATUTORY VIOLATIONS BY STATE OFFICERS AND EMPLOYEES.

In any action against an officer or employee of a State or State instrumentality for any violation of any of the provisions of title 17 or 35, United States Code, the Trademark Act of 1946, or the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), remedies shall be available against the officer or employee in the same manner and to the same extent as such remedies are available in an action against a private individual under like circumstances. Such remedies may include monetary damages assessed against the officer or employee, declaratory and injunctive relief, costs, attorney fees, and destruction of infringing articles, as provided under the applicable Federal statute.

SEC. 5. LIABILITY OF STATES FOR CONSTITUTIONAL VIOLATIONS INVOLVING INTELLECTUAL PROPERTY.

(a) DUE PROCESS VIOLATIONS.—Any State or State instrumentality that violates any of the exclusive rights of a patent owner under title 35, United States Code, of a copyright owner, author, or owner of a mask work or original design under title 17, United States Code, of an owner or registrant of a mark used in commerce or registered in the Patent and Trademark Office under the Trademark Act of 1946, or of an owner of a protected plant variety under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), in a manner that deprives any person of property in violation of the fourteenth amendment of the United States Constitution, shall be liable to the party injured in a civil action in Federal court for compensation for the harm caused by such violation.

(b) TAKINGS VIOLATIONS.—

(1) IN GENERAL.—Any State or State instrumentality that violates any of the exclusive rights of a patent owner under title 35, United States Code, of a copyright owner, author, or owner of a mask work or original design under title 17, United States Code, of an owner or registrant of a mark used in commerce or registered in the Patent and Trademark Office under the Trademark Act of 1946, or of an owner of a protected plant variety under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.), in a manner that

takes property in violation of the fifth and fourteenth amendments of the United States Constitution, shall be liable to the party injured in a civil action in Federal court for compensation for the harm caused by such violation.

(2) EFFECT ON OTHER RELIEF.—Nothing in this subsection shall prevent or affect the ability of a party to obtain declaratory or injunctive relief under section 4 of this Act or otherwise.

(c) COMPENSATION.—Compensation under subsection (a) or (b)—

(1) may include actual damages, profits, statutory damages, interest, costs, expert witness fees, and attorney fees, as set forth in the appropriate provisions of title 17 or 35, United States Code, the Trademark Act of 1946, and the Plant Variety Protection Act; and

(2) may not include an award of treble or enhanced damages under section 284 of title 35, United States Code, section 504(d) of title 17, United States Code, section 35(b) of the Trademark Act of 1946 (15 U.S.C. 1117 (b)), and section 124(b) of the Plant Variety Protection Act (7 U.S.C. 2564(b)).

(d) BURDEN OF PROOF.—In any action under subsection (a) or (b)—

(1) with respect to any matter that would have to be proved if the action were an action for infringement brought under the applicable Federal statute, the burden of proof shall be the same as if the action were brought under such statute; and

(2) with respect to all other matters, including whether the State provides an adequate remedy for any deprivation of property proved by the injured party under subsection (a), the burden of proof shall be upon the State or State instrumentality.

(e) EFFECTIVE DATE.—This section shall apply to violations that occur on or after the date of enactment of this Act.

SEC. 6. RULES OF CONSTRUCTION.

(a) JURISDICTION.—The district courts shall have original jurisdiction of any action arising under this Act under section 1338 of title 28, United States Code.

(b) BROAD CONSTRUCTION.—This Act shall be construed in favor of a broad protection of intellectual property, to the maximum extent permitted by the United States Constitution.

(c) SEVERABILITY.—If any provision of this Act or any application of such provision to any person or circumstance is held to be unconstitutional, the remainder of this Act and the application of the provision to any other person or circumstance shall not be affected.

INTELLECTUAL PROPERTY PROTECTION RESTORATION ACT OF 2002 SECTION-BY-SECTION SUMMARY

Recent Supreme Court decisions invalidated prior efforts by Congress to abrogate State sovereign immunity in actions arising under the federal intellectual property laws. The Court's decisions give States an unfair advantage in the intellectual property marketplace by shielding them from money damages when they infringe the rights of private parties, while leaving them free to obtain money damages when their own rights are infringed. These decisions also have the potential to impair the rights of private intellectual property owners, discourage technological innovation and artistic creation, and compromise the ability of the United States to advocate effective enforcement of intellectual property rights in other countries and to fulfill its own obligations under international treaties. The Intellectual Property Protection Restoration Act of 2002 creates reasonable incentives for States to waive their immunity in intellectual property cases and participate in the intellectual property marketplace on equal terms with private parties. The bill also provides new remedies for State infringements that rise to the level of constitutional violations.

Sec. 1. SHORT TITLE; REFERENCES. This Act may be cited as the ''Intellectual Property Protection Restoration Act of 2001.''

Sec. 2. PURPOSES. Legislative purposes in support of this Act.

Sec. 3. INTELLECTUAL PROPERTY REMEDIES EQUALIZATION. Places States on an equal footing with private parties by eliminating any damages remedy for infringement of State-owned intellectual property unless the State has waived its immunity from any damages remedy for infringement of privately-owned intellectual property. Intellectual property that the State owned before the enactment of this Act is not affected.

Sec. 4. CLARIFICATION OF REMEDIES AVAILABLE FOR STATUTORY VIOLATIONS BY STATE OFFICERS AND EMPLOYEES. Affirms the availability of injunctive relief against State officials who violate the Federal intellectual property laws. Such relief is authorized under the doctrine of *Ex parte Young*, 209 U.S. 123 (1908), which held that an individual may sue a State official for prospective relief requiring the State official to cease violating federal law, even if the State itself is immune from suit under the eleventh amendment. This section also affirms that State officials may be personally liable for violations of the intellectual property laws.

Sec. 5. LIABILITY OF STATES FOR CONSTITUTIONAL VIOLATIONS INVOLVING INTELLECTUAL PROPERTY. Establishes a right to compensation for State infringements of intellectual property that rise to the level of constitutional violations. Compensation shall be measured by the statutory remedies available under the federal intellectual property laws, but may not include treble damages.

Sec. 6. RULES OF CONSTRUCTION. Establishes rules for interpreting this Act.

Mr. BROWNBACK. Mr. President, I am pleased to join Chairman LEAHY in sponsoring S. 2031, a bill that will protect intellectual property rights fully and fairly by complying with the Court's new constitutional requirements. This bill builds upon the same common-sense goals as the statutes that Senator HATCH championed a decade ago. I would like to commend both members for their outstanding leadership in this area. My hope is that S. 2031 will finally bring closure to our efforts in trying to clarify a complex and difficult issue for both Congress and the Courts.

There are two sides to this issue and both are compelling. For individuals and companies who make the investment and take the risk in creating new products and services, their property rights are at stake when a state infringes upon their intellectual property. States on the other hand also want to protect their sovereignty under the Constitution and want to assert their intellectual property rights especially in the context of private/public partnerships where ownership issues may be in doubt, creating the prospect for protracted litigation.

That is why this inherent conflict demands congressional action. With the arrival of the digital revolution where exact copies and reproductions can be made without limitations, this is an important economic issue for individuals and companies trying to compete in the marketplace. The question is how to fashion a legislative remedy in light of recent Supreme Court decisions that struck down previous attempts to bring clarity to the issue.

I believe the Leahy/Brownback bill is a reasonable compromise solution without running afoul of the constitutional issues highlighted by the Supreme Court in Seminole Tribe and the Florida Pre-paid cases.

S. 2031 presents States with a choice. It creates reasonable incentives for States to waive their sovereign immunity in intellectual property cases. States that choose not to waive their immunity within 2 years after enactment would continue to enjoy many of the benefits in the intellectual property marketplace. However, like private parties that sue States for infringement, States that sue private parties for infringement will not be able to recover any money damages unless they waive their immunity from liability in intellectual property cases. All other remedial actions will continue to be available to State litigants.

As Chairman LEAHY previously observed, this is clearly constitutional and avoids the concerns raised by the Courts with regard to past statutes addressing this matter. Under the Constitution's Article I spending power, Congress can attach limited conditions to a State's receipt of Federal funds. Similarly, it would seem to me that a State's receipt of Federal intellectual property protection under Article I's intellectual property power can similarly be conditioned. Especially in light of the commercial implications of this bill, it seems reasonable to expect that a condition to respect the rights of others is a necessary and logical complement to obtaining the full protections of the Federal intellectual property rights.

I would also add that a recent GAO study initiated by Senator HATCH when he chaired the Judiciary Committee confirmed the lack of alternatives or remedies against State infringers.

I would also like to add that this matter has repercussions which extend far beyond the domestic realm. The United States is one of the leading proponents for the enforcement of intellectual property rights throughout the world. That's why we cannot afford to be inconsistent in our own observance of intellectual property rights. Through international agreements such as TRIPs and NAFTA, the United States has vigorously challenged international institutions and other nations to adopt and enforce more extensive intellectual property laws. When States assert sovereign immunity for the purpose of infringing upon intellectual property rights, it damages the credibility of the United States internationally, and could possibly even lead to violations of our treaty obligations. Any decrease in the level of enforcement of intellectual property rights around the world is likely to harm American businesses, because of our

position as international leaders in industries like pharmaceuticals, information technology, and biotechnology.

I urge my colleagues to support this bill which provides a balanced and appropriate intellectual property remedy for American inventors and investors without compromising the sovereign rights of States under our Constitution.

By Mr. CHAFEE (for himself, Mr. REED, Mr. KERRY, and Mr. KENNEDY):

S. 2033. A bill to authorize appropriations for the John H. Chafee Blackstone River Valley National Heritage Corridor in Massachusetts and Rhode Island, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. CHAFEE. Mr. President, I rise today to introduce a bill to reauthorize funding for the John H. Chafee Blackstone River Valley National Heritage Corridor. I am pleased to be joined by three of my colleagues, Senators REED, KERRY and KENNEDY, as original cosponsors of this legislation. Representative Patrick Kennedy is joining this effort by introducing companion legislation in the House today.

Since the Corridor's inception on November 10, 1986, the Blackstone River Valley has undergone a profound rebirth. The Blackstone River, once polluted and neglected, has been transformed into an object of tremendous community pride and national importance. Historians recognize the Valley of the Blackstone River, gracefully winding through 24 communities in the States of Massachusetts and Rhode Island, as the birthplace of the American Industrial Revolution. Slater Mill, founded by the textile maker Samuel Slater in the 1790's, was the first to adapt English machine technology to cotton-yard manufacturing powered by water wheels. The success of the Slater Mill heralded in America's first factory-based industry of mass production, with accompanying communities dedicated to the production of manufactured goods. Gradually, this new ''Rhode Island System of Manufacturing'' led to profound changes economically, socially and culturally across the new nation.

This nationally significant story was all but forgotten when Senator John H. Chafee authored Federal legislation to establish the Blackstone River Valley National Heritage Corridor with the purpose of preserving and interpreting for present and future generations the uniqueness and significant historical value of the Blackstone Valley. A Corridor Commission, consisting of federally-appointed local and State representatives from Massachusetts and Rhode Island, was established to work in partnership with the National Park Service to carry out the mission of the Blackstone Corridor. For over 15 years, the Corridor Commission and its Heritage Partners have worked to instill a vision of community revitalization, historic preservation, and environmental protection in the Blackstone Corridor. The Corridor is a truly unique national park area, for the Federal Government does not own or manage any of the land or resources within the system. Yet, the Blackstone Corridor includes cities, towns, villages and almost 1 million people, and has become a model for other heritage corridors across the country.

Working in partnership with two State governments, dozens of local municipalities, businesses, nonprofit historical and environmental organizations, educational institutions, and many private citizens, the Corridor Commission has instilled a sense of community and identity to the residents of the Blackstone Corridor. These partnerships have resulted in the reversal of a long-standing lack of investment in the Valley's historic, cultural and natural resources. A Valley-wide identity program has placed over 200 educational signs across the Corridor to guide visitors into the Blackstone and its heritage sites. Key historic districts and sites have been preserved through the assistance of the Commission and its partners working to identify critical historic preservation funding and assistance. The water quality of the Blackstone River has seen dramatic improvements through cooperative, community-driven projects that have worked to ensure more consistent water flows; the protection of open space along the valley; the initiation of local river cleanups; and the remediation of toxic sites along the river's banks.

Since 1986, Congress has established three accounts for the management of the Corridor: the Operation Account providing funding for National Park Service staff support; the Technical Assistance Account to provide assistance to communities and Corridor partners; and the Development Fund to provide construction funding for the implementation of interpretive programming, river restoration, historic preservation, tourism and economic development and educational activities within the Corridor. A 10-year plan, completed by the Commission in 1998, outlines a strategy for the implementation of development funds by focusing on the ''resource protection needs and projects critical to maintaining or interpreting the distinctive nature of the Corridor.''

The legislation I am introducing today, along with Senators REED, KERRY, and KENNEDY, will reauthorize the Development Fund account to provide $10 million in Federal funding from fiscal years 2003 through 2006. This authorization is consistent with the Blackstone Corridor's 10-year Plan guiding the Corridor's future development needs. Development funding will be used to move forward with projects that include a bi-State 45 mile long Blackstone bikeway; construction of river access points for recreational and tourism opportunities; renovation and reuse of historic structures and surrounding landscapes; and educational programs to raise the awareness of the Corridor's significance in the region.

With over 15 years of success and a number of challenges lying ahead, we urge Congress' continued support for the John H. Chafee Blackstone River Valley National Heritage Corridor. The Blackstone Corridor tells the story of the beginnings of America's movement into the industrial era. We must allow the telling of this story to continue.

I ask by unanimous consent that the text of this bill be printed in the RECORD.

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

S. 2033

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

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

Section 10 of Public Law 99–647 (16 U.S.C. 461 note) is amended by striking subsection (b) and inserting the following:

''(b) DEVELOPMENT FUNDS.—There is authorized to be appropriated to carry out section 8(c) for the period of fiscal years 2003 through 2006 not more than $10,000,000, to remain available until expended.''.

Mr. KERRY. Mr. President, I rise in support of legislation that has been filed today to reauthorize the development fund for the John H. Chafee Blackstone River Valley National Heritage Corridor. The bill is sponsored by Senator CHAFEE, and I am proud to be an original cosponsor.

The John H. Chafee Blackstone River Valley National Heritage Corridor was established by Congress in 1986 to recognize and preserve the natural, cultural and historical resources of the region. I would like to read a description of the Blackstone River written by the National Park Service. I think it captures its special nature.

The Blackstone River Valley illustrates a major revolution in America's past: the Age of Industry. The way people lived during this turning point in history can still be seen in the valley's villages, farms, cities and riverways—in a working landscape between Worchester, Massachusetts and Providence, Rhode Island. In 1790, American craftsmen built the first machines that successfully used waterpower to spin cotton. America's first factory, Slater Mill was built on the banks of the Blackstone River. Here, industrial America was born. This revolutionary way of using waterpower spread quickly throughout the valley and New England. It changed nearly everything. Two hundred years later, the story of the American Industrial Revolution can still be seen and told in the Blackstone River Valley. Thousands of structures and whole landscapes show the radical changes in the way people lived and worked. The way people lived before the advent of industry also can be seen on the land, and the choices for the future are visible as well. For good and bad, each generation makes its choices and changes the character of life in the valley. Today, the rural to city landscapes tell the story of this revolution in American history. Native Americans, European colonizers, farmers, craftsmen, industrialists, and continuing waves of immigrants all left the imprint of their work and

culture on the land. The farms, hilltop market centers, mill villages, cities, dams, canals, roads, and railroads are physical products of tremendous social and economic power.

With the assistance of the National Park Service, the Commission has forged collaborative partnerships with a new spirit of ownership among government leaders, private investors and residents for the river resources and communities. The Blackstone has been called ''America's hardest working river'' because of its industrial legacy. That same description could apply to the people who have decided themselves to making the Blackstone River Valley National Heritage Corridor a success today. The natural value and historical importance of the Blackstone and the dedication of the people involved is why I am eager to support Senator CHAFEE's legislation.

By Mr. VOINOVICH (for himself, Mr. FEINGOLD, Mr. LEVIN, Mr. DEWINE, and Mr. WARNER).

S. 2034. A bill to amend the Solid Waste Disposal Act to impose certain limits on the receipt of out-of-State municipal solid waste; to the Committee on Environment and Public Works.

Mr. VOINOVICH. Mr. President, I rise today to introduce legislation along with a bipartisan coalition of my colleagues, Senators FEINGOLD, DEWINE, LEVIN, and WARNER that will allow States to finally obtain relief from the seemingly endless stream of solid waste that is flowing into States like Ohio, Michigan, Wisconsin, and Virginia.

Our bill, the Municipal Solid Waste Interstate Transportation and Local Authority Act, gives State and local governments the tools they need to limit garbage imports from other States and manage their own waste within their own States.

Each year, Ohio receives well over one million tons of municipal solid waste from other States. Over the last four years, annual levels of waste imports have been steadily increasing, and estimates for 2000 indicate that Ohio imported approximately 1.8 million tons of municipal solid waste. While these shipments are not near our record level of 3.7 million tons in 1989, I believe an import level of nearly two million tons of trash is still entirely too high.

Because it is cheap and because it is expedient, communities in a number of States have simply put their garbage on trains or on trucks and shipped it to be landfilled in States like Ohio, Indiana, Michigan, Pennsylvania, and Virginia. This is wrong and it has to stop.

Many State and local governments in importing states have worked hard to develop strategies to reduce waste and plan for future disposal needs. As Governor of Ohio, I worked aggressively to limit shipments of out-of-state waste into Ohio through voluntary cooperation of Ohio landfill operators and agreements with other States. We saw limited relief. However, Ohio has no assurance that our out-of-state waste numbers won't rise significantly, particularly in light of last year's closure of the Fresh Kills landfill on Staten Island. Unfortunately, the Federal courts have prevented States from enacting laws to protect our natural resources from being utilized as landfill space. What has emerged is an unnatural pattern where Ohio and other States, both importing and exporting, have tried to take reasonable steps to encourage conservation and local disposal, only to be undermined by a barrage of court decisions at every turn.

Quite frankly, State and local governments' hands are tied. Lacking a specific delegation of authority from Congress, States that have acted responsibly to implement environmentally sound waste disposal plans and recycling programs are still being subjected to a flood of out-of-state waste. In Ohio, I set up a comprehensive recycling program when I was Governor that was meant to reduce the waste-stream and help protect our environment. However, the actions of other States have worked to undermine our recycling efforts because Ohioans continue to ask why they should recycle to conserve landfill space when it is being used for other States' trash. Our citizens already have to live with the consequences of large amounts of out-of-state waste—increased noise, traffic, wear and tear on our roads and litter that is blown onto private homes, schools and businesses.

Ohio and many other States have taken comprehensive steps to protect our resources and address a significant environmental threat. However, excessive, uncontrolled waste disposal from other States has limited the ability of Ohioans to protect their environment, health and safety. I do not believe the Commerce Clause requires us to service other states at the expense of our own citizens' efforts.

A national solution is long overdue. When I became governor of Ohio in 1991, I joined a coalition with other Midwest Governors—Governor BAYH now Senator BAYH, of Indiana, Governor Engler of Michigan and Governor Casey, and later Governors Ridge and O'Bannon, of Pennsylvania—to try to pass effective interstate waste and flow control legislation.

In 1996, Midwest Governors were asked by congressional leaders to reach an agreement with Governor Whitman of New Jersey and Governor Pataki of new York on interstate waste provisions. The importing States quickly came to an agreement with Governor Whitman of New Jersey—the second largest exporting State—on interstate waste provisions. We began discussions with New York, but these were put on hold indefinitely in the wake of their May, 1996 announcement to close the Fresh Kills landfill.

The bill that my colleagues and I are introducing today reflects the agreement that Ohio, Indiana, Michigan, and Pennsylvania reached with then-Governor Whitman.

For Ohio, the most important aspect of this bill is the ability for states to limit future waste flows. For instance, they would have the option to set a ''permit cap,'' which would allow a State to impose a percentage limit on the amount of out-of-state waste that a new facility or expansion of an existing facility could receive annually. Or, a State could choose a provision giving them the authority to deny a permit for a new facility if it is determined that there is not a local or in-state regional need for that facility.

These provisions provide assurances to Ohio and other States that new facilities will not be built primarily for the purpose of receiving out-of-state waste. For instance, in 1996, Ohio EAP had to issue a permit for a landfill that was bidding to take 5,000 tons of garbage a day—approximately 1.5 million tons a year—from Canada alone, which would have doubled the amount of out-of-state waste entering Ohio. Thankfully this landfill lost the Canadian bid. Ironically though, the waste company put their plans on hold to build the facility because there is not enough need for the facility in the State and they need to ensure a steady out-of-state waste flow to make the plan feasible.

In addition, this bill would ensure that landfills and incinerators could not receive trash from other States until local governments approve its receipt. States could also freeze their out-of-state waste imports at 1993 levels, while some States would be able to reduce these levels to 65 percent by the year 2006. This bill also allows States to reduce the amount of construction and demolition debris they receive by 50 percent beginning in 2007.

States also could impose up to $3-per-ton cost recovery surcharge on out-of-state waste. This fee would help provide States with the funding necessary to implement solid waste management programs.

Unfortunately, efforts to place reasonable restrictions on out-of-state waste shipments have been perceived by some as an attempt to ban all out-of-state trash. On the contrary, we are not asking for outright authority for states to prohibit all out-of-state waste, nor are we seeking to prohibit waste from any one State. We are merely asking for reasonable tools that will enable state and local governments to act responsibly to manage their own waste and limit unreasonable waste imports from other states. Such measures would give substantial authority to limit imports and plan facilities around our own states' needs.

I believe the time is right to consider and pass an effective interstate waste bill. The bill we are introducing today is a consensus of importing and exporting States—States that have willingly come forward to offer a reasonable solution.

States like Ohio should not continue to be saddled with the environmental

costs of other States' inability to take care of their own solid waste. We in Ohio have worked hard to address our own needs. We are actively recycling and working to reduce our waste-stream to preserve our environment for future generations. Congress must act now to prevent this problem from spreading further to our neighbors out West and to help our neighbors in the East better manage the trash they generate.

I ask unanimous consent that the full text of the bill be printed in the RECORD.

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

S. 2034

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 ''Municipal Solid Waste Interstate Transportation and Local Authority Act of 2002''.

SEC. 2. AUTHORITY TO PROHIBIT OR LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT EXISTING FACILITIES.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following:

''SEC. 4011. AUTHORITY TO PROHIBIT OR LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT EXISTING FACILITIES.

''(a) DEFINITIONS.—In this section:

''(1) AFFECTED LOCAL GOVERNMENT.—The term 'affected local government', with respect to a facility, means—

''(A) the public body authorized by State law to plan for the management of municipal solid waste for the area in which the facility is located or proposed to be located, a majority of the members of which public body are elected officials;

''(B) in a case in which there is no public body described in subparagraph (A), the elected officials of the city, town, township, borough, county, or parish selected by the Governor and exercising primary responsibility over municipal solid waste management or the use of land in the jurisdiction in which the facility is located or proposed to be located; or

''(C) in a case in which there is in effect an agreement or compact under section 105(b), contiguous units of local government located in each of 2 or more adjoining States that are parties to the agreement, for purposes of providing authorization under subsection (b), (c), or (d) for municipal solid waste generated in the jurisdiction of 1 of those units of local government and received in the jurisdiction of another of those units of local government.

''(2) AUTHORIZATION TO RECEIVE OUT-OF-STATE MUNICIPAL SOLID WASTE.—

''(A) IN GENERAL.—The term 'authorization to receive out-of-State municipal solid waste' means a provision contained in a host community agreement or permit that specifically authorizes a facility to receive out-of-State municipal solid waste.

''(B) SPECIFIC AUTHORIZATION.—

''(i) SUFFICIENT FORMULATIONS.—For the purposes of subparagraph (A), only the following, shall be considered to specifically authorize a facility to receive out-of-State municipal solid waste:

''(I) an authorization to receive municipal solid waste from any place within a fixed radius surrounding the facility that includes an area outside the State;

''(II) an authorization to receive municipal solid waste from any place of origin in the absence of any provision limiting those places of origin to places inside the State;

''(III) an authorization to receive municipal solid waste from a specifically identified place or places outside the State; or

''(IV) a provision that uses such a phrase as 'regardless of origin' or 'outside the State' in reference to municipal solid waste.

''(ii) INSUFFICIENT FORMULATIONS.—For the purposes of subparagraph (A), either of the following, by itself, shall not be considered to specifically authorize a facility to receive out-of-State municipal solid waste:

''(I) A general reference to the receipt of municipal solid waste from outside the jurisdiction of the affected local government.

''(II) An agreement to pay a fee for the receipt of out-of-State municipal solid waste.

''(C) FORM OF AUTHORIZATION.—To qualify as an authorization to receive out-of-State municipal solid waste, a provision need not be in any particular form; a provision shall so qualify so long as the provision clearly and affirmatively states the approval or consent of the affected local government or State for receipt of municipal solid waste from places of origin outside the State.

''(3) DISPOSAL.—The term 'disposal' includes incineration.

''(4) EXISTING HOST COMMUNITY AGREEMENT.—The term 'existing host community agreement' means a host community agreement entered into before January 1, 2002.

''(5) FACILITY.—The term 'facility' means a landfill, incinerator, or other enterprise that received municipal solid waste before the date of enactment of this section.

''(6) GOVERNOR.—The term 'Governor', with respect to a facility, means the chief executive officer of the State in which a facility is located or proposed to be located or any other officer authorized under State law to exercise authority under this section.

''(7) HOST COMMUNITY AGREEMENT.—The term 'host community agreement' means a written, legally binding agreement, lawfully entered into between an owner or operator of a facility and an affected local government that contains an authorization to receive out-of-State municipal solid waste.

''(8) MUNICIPAL SOLID WASTE.—

''(A) IN GENERAL.—The term 'municipal solid waste' means—

''(i) material discarded for disposal by—

''(I) households (including single and multifamily residences); and

''(II) public lodgings such as hotels and motels; and

''(ii) material discarded for disposal that was generated by commercial, institutional, and industrial sources, to the extent that the material—

''(I) is essentially the same as material described in clause (i); or

''(II) is collected and disposed of with material described in clause (i) as part of a normal municipal solid waste collection service.

''(B) INCLUSIONS.—The term 'municipal solid waste' includes—

''(i) appliances;

''(ii) clothing;

''(iii) consumer product packaging;

''(iv) cosmetics;

''(v) disposable diapers;

''(vi) food containers made of glass or metal;

''(vii) food waste;

''(viii) household hazardous waste;

''(ix) office supplies;

''(x) paper; and

''(xi) yard waste.

''(C) EXCLUSIONS.—The term 'municipal solid waste' does not include—

''(i) solid waste identified or listed as a hazardous waste under section 3001, except for household hazardous waste;

''(ii) solid waste resulting from—

''(I) a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604, 9606);

''(II) a response action taken under a State law with authorities comparable to the authorities contained in either of those sections; or

''(III) a corrective action taken under this Act;

''(iii) recyclable material—

''(I) that has been separated, at the source of the material, from waste destined for disposal; or

''(II) that has been managed separately from waste destined for disposal, including scrap rubber to be used as a fuel source;

''(iv) a material or product returned from a dispenser or distributor to the manufacturer or an agent of the manufacturer for credit, evaluation, and possible potential reuse;

''(v) solid waste that is—

''(I) generated by an industrial facility; and

''(II) transported for the purpose of treatment, storage, or disposal to a facility (which facility is in compliance with applicable State and local land use and zoning laws and regulations) or facility unit—

''(aa) that is owned or operated by the generator of the waste;

''(bb) that is located on property owned by the generator of the waste or a company with which the generator is affiliated; or

''(cc) the capacity of which is contractually dedicated exclusively to a specific generator;

''(vi) medical waste that is segregated from or not mixed with solid waste;

''(vii) sewage sludge or residuals from a sewage treatment plant; or

''(viii) combustion ash generated by a resource recovery facility or municipal incinerator.

''(9) NEW HOST COMMUNITY AGREEMENT.—The term 'new host community agreement' means a host community agreement entered into on or after the date of enactment of this section.

''(10) OUT-OF-STATE MUNICIPAL SOLID WASTE.—

''(A) IN GENERAL.—The term 'out-of-State municipal solid waste', with respect to a State, means municipal solid waste generated outside the State.

''(B) INCLUSION.—The term 'out-of-State municipal solid waste' includes municipal solid waste generated outside the United States.

''(11) RECEIVE.—The term 'receive' means receive for disposal.

''(12) RECYCLABLE MATERIAL.—

''(A) IN GENERAL.—The term 'recyclable material' means a material that may feasibly be used as a raw material or feedstock in place of or in addition to, virgin material in the manufacture of a usable material or product.

''(B) VIRGIN MATERIAL.—In subparagraph (A), the term 'virgin material' includes petroleum.

''(b) PROHIBITION OF RECEIPT FOR DISPOSAL OF OUT-OF-STATE WASTE.—No facility may receive for disposal out-of-State municipal solid waste except as provided in subsections (c), (d), and (e).

''(c) EXISTING HOST COMMUNITY AGREEMENTS.—

''(1) IN GENERAL.—Subject to subsection (f), a facility operating under an existing host community agreement may receive for disposal out-of-State municipal solid waste if—

''(A) the owner or operator of the facility has complied with paragraph (2); and

''(B) the owner or operator of the facility is in compliance with all of the terms and conditions of the host community agreement.

''(2) PUBLIC INSPECTION OF AGREEMENT.—Not later than 90 days after the date of enactment of this section, the owner or operator of a facility described in paragraph (1) shall—

''(A) provide a copy of the existing host community agreement to the State and affected local government; and

''(B) make a copy of the existing host community agreement available for inspection by the public in the local community.

''(d) NEW HOST COMMUNITY AGREEMENTS.—

''(1) IN GENERAL.—Subject to subsection (f), a facility operating under a new host community agreement may receive for disposal out-of-State municipal solid waste if—

''(A) the agreement meets the requirements of paragraphs (2) through (5); and

''(B) the owner or operator of the facility is in compliance with all of the terms and conditions of the host community agreement.

''(2) REQUIREMENTS FOR AUTHORIZATION.—

''(A) IN GENERAL.—Authorization to receive out-of-State municipal solid waste under a new host community agreement shall—

''(i) be granted by formal action at a meeting;

''(ii) be recorded in writing in the official record of the meeting; and

''(iii) remain in effect according to the terms of the new host community agreement.

''(B) SPECIFICATIONS.—An authorization to receive out-of-State municipal solid waste shall specify terms and conditions, including—

''(i) the quantity of out-of-State municipal solid waste that the facility may receive; and

''(ii) the duration of the authorization.

''(3) INFORMATION.—Before seeking an authorization to receive out-of-State municipal solid waste under a new host community agreement, the owner or operator of the facility seeking the authorization shall provide (and make readily available to the State, each contiguous local government and Indian tribe, and any other interested person for inspection and copying) the following:

''(A) A brief description of the facility, including, with respect to the facility and any planned expansion of the facility, a description of—

''(i) the size of the facility;

''(ii) the ultimate municipal solid waste capacity of the facility; and

''(iii) the anticipated monthly and yearly volume of out-of-State municipal solid waste to be received at the facility.

''(B) A map of the facility site that indicates—

''(i) the location of the facility in relation to the local road system;

''(ii) topographical and general hydrogeological features;

''(iii) any buffer zones to be acquired by the owner or operator; and

''(iv) all facility units.

''(C) A description of—

''(i) the environmental characteristics of the site, as of the date of application for authorization;

''(ii) ground water use in the area, including identification of private wells and public drinking water sources; and

''(iii) alterations that may be necessitated by, or occur as a result of, operation of the facility.

''(D) A description of—

''(i) environmental controls required to be used on the site (under permit requirements), including—

''(I) run-on and run off management;

''(II) air pollution control devices;

''(III) source separation procedures;

''(IV) methane monitoring and control;

''(V) landfill covers;

''(VI) landfill liners or leachate collection systems; and

''(VII) monitoring programs; and

''(ii) any waste residuals (including leachate and ash) that the facility will generate, and the planned management of the residuals.

''(E) A description of site access controls to be employed by the owner or operator and road improvements to be made by the owner or operator, including an estimate of the timing and extent of anticipated local truck traffic.

''(F) A list of all required Federal, State, and local permits.

''(G) Estimates of the personnel requirements of the facility, including—

''(i) information regarding the probable skill and education levels required for job positions at the facility; and

''(ii) to the extent practicable, a distinction between preoperational and postoperational employment statistics of the facility.

''(H) Any information that is required by State or Federal law to be provided with respect to—

''(i) any violation of environmental law (including regulations) by the owner or operator or any subsidiary of the owner or operator;

''(ii) the disposition of any enforcement proceeding taken with respect to the violation; and

''(iii) any corrective action and rehabilitation measures taken as a result of the proceeding.

''(I) Any information that is required by Federal or State law to be provided with respect to compliance by the owner or operator with the State solid waste management plan.

''(J) Any information that is required by Federal or State law to be provided with respect to gifts and contributions made by the owner or operator.

''(4) ADVANCE NOTIFICATION.—Before taking formal action to grant or deny authorization to receive out-of-State municipal solid waste under a new host community agreement, an affected local government shall—

''(A) notify the State, contiguous local governments, and any contiguous Indian tribes;

''(B) publish notice of the proposed action in a newspaper of general circulation at least 15 days before holding a hearing under subparagraph (C), except where State law provides for an alternate form of public notification; and

''(C) provide an opportunity for public comment in accordance with State law, including at least 1 public hearing.

''(5) SUBSEQUENT NOTIFICATION.—Not later than 90 days after an authorization to receive out-of-State municipal solid waste is granted under a new host community agreement, the affected local government shall give notice of the authorization to—

''(A) the Governor;

''(B) contiguous local governments; and

''(C) any contiguous Indian tribes.

''(e) RECEIPT FOR DISPOSAL OF OUT-OF-STATE MUNICIPAL SOLID WASTE BY FACILITIES NOT SUBJECT TO HOST COMMUNITY AGREEMENTS.—

''(1) PERMIT.—

''(A) IN GENERAL.—Subject to subsection (f), a facility for which, before the date of enactment of this section, the State issued a permit containing an authorization may receive out-of-State municipal solid waste if—

''(i) not later than 90 days after the date of enactment of this section, the owner or operator of the facility notifies the affected local government of the existence of the permit; and

''(ii) the owner or operator of the facility complies with all of the terms and conditions of the permit after the date of enactment of this section.

''(B) DENIED OR REVOKED PERMITS.—A facility may not receive out-of-State municipal solid waste under subparagraph (A) if the operating permit for the facility (or any renewal of the operating permit) was denied or revoked by the appropriate State agency before the date of enactment of this section unless the permit or renewal was granted, renewed, or reinstated before that date.

''(2) DOCUMENTED RECEIPT DURING 1993.—

''(A) IN GENERAL.—Subject to subsection (f), a facility that, during 1993, received out-of-State municipal solid waste may receive out-of-State municipal solid waste if the owner or operator of the facility submits to the State and to the affected local government documentation of the receipt of out-of-State municipal solid waste during 1993, including information about—

''(i) the date of receipt of the out-of-State municipal solid waste;

''(ii) the volume of out-of-State municipal solid waste received in 1993;

''(iii) the place of origin of the out-of-State municipal solid waste received; and

''(iv) the type of out-of-State municipal solid waste received.

''(B) FALSE OR MISLEADING INFORMATION.—Documentation submitted under subparagraph (A) shall be made under penalty of perjury under State law for the submission of false or misleading information.

''(C) AVAILABILITY OF DOCUMENTATION.—The owner or operator of a facility that receives out-of-State municipal solid waste under subparagraph (A)—

''(i) shall make available for inspection by the public in the local community a copy of the documentation submitted under subparagraph (A); but

''(ii) may omit any proprietary information contained in the documentation.

''(3) BI-STATE METROPOLITAN STATISTICAL AREAS.—

''(A) IN GENERAL.—A facility in a State may receive out-of-State municipal solid waste if the out-of-State municipal solid waste is generated in, and the facility is located in, the same bi-State level A metropolitan statistical area (as defined and listed by the Director of the Office of Management and Budget as of the date of enactment of this section) that contains 2 contiguous major cities, each of which is in a different State.

''(B) GOVERNOR AGREEMENT.—A facility described in subparagraph (A) may receive out-of-State municipal solid waste only if the Governor of each State in the bi-State metropolitan statistical area agrees that the facility may receive out-of-State municipal solid waste.

''(f) REQUIRED COMPLIANCE.—A facility may not receive out-of-State municipal solid waste under subsection (c), (d), or (e) at any time at which the State has determined that—

''(1) the facility is not in compliance with applicable Federal and State laws (including regulations) relating to—

''(A) facility design and operation; and

''(B)(i) in the case of a landfill—

''(I) facility location standards;

''(II) leachate collection standards;

''(III) ground water monitoring standards; and

''(IV) standards for financial assurance and for closure, postclosure, and corrective action; and

''(ii) in the case of an incinerator, the applicable requirements of section 129 of the Clean Air Act (42 U.S.C. 7429); and

''(2) the noncompliance constitutes a threat to human health or the environment.

''(g) AUTHORITY TO LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE.—

''(1) LIMITS ON QUANTITY OF WASTE RECEIVED.—

''(A) LIMIT FOR ALL FACILITIES IN THE STATE.—

''(i) IN GENERAL.—A State may limit the quantity of out-of-State municipal solid waste received annually at each facility in the State to the quantity described in paragraph (2).

''(ii) NO CONFLICT.—

''(I) IN GENERAL.—A limit under clause (i) shall not conflict with—

''(aa) an authorization to receive out-of-State municipal solid waste contained in a permit; or

''(bb) a host community agreement entered into between the owner or operator of a facility and the affected local government.

''(II) CONFLICT.—A limit shall be treated as conflicting with a permit or host community agreement if the permit or host community agreement establishes a higher limit, or if the permit or host community agreement does not establish a limit, on the quantity of out-of-State municipal solid waste that may be received annually at the facility.

''(B) LIMIT FOR PARTICULAR FACILITIES.—

''(i) IN GENERAL.—An affected local government that has not executed a host community agreement with a particular facility may limit the quantity of out-of-State municipal solid waste received annually at the facility to the quantity specified in paragraph (2).

''(ii) NO CONFLICT.—A limit under clause (i) shall not conflict with an authorization to receive out-of-State municipal solid waste contained in a permit.

''(C) EFFECT ON OTHER LAWS.—Nothing in this subsection supersedes any State law relating to contracts.

''(2) LIMIT ON QUANTITY.—

''(A) IN GENERAL.—For any facility that commenced receiving documented out-of-State municipal solid waste before the date of enactment of this section, the quantity referred to in paragraph (1) for any year shall be equal to the quantity of out-of-State municipal solid waste received at the facility during calendar year 1993.

''(B) DOCUMENTATION.—

''(i) CONTENTS.—Documentation submitted under subparagraph (A) shall include information about—

''(I) the date of receipt of the out-of-State municipal solid waste;

''(II) the volume of out-of-State municipal solid waste received in 1993;

''(III) the place of origin of the out-of-State municipal solid waste received; and

''(IV) the type of out-of-State municipal solid waste received.

''(ii) FALSE OR MISLEADING INFORMATION.—Documentation submitted under subparagraph (A) shall be made under penalty of perjury under State law for the submission of false or misleading information.

''(3) NO DISCRIMINATION.—In establishing a limit under this subsection, a State shall act in a manner that does not discriminate against any shipment of out-of-State municipal solid waste on the basis of State of origin.

''(h) AUTHORITY TO LIMIT RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE TO DECLINING PERCENTAGES OF QUANTITIES RECEIVED DURING 1993.—

''(1) IN GENERAL.—A State in which facilities received more than 650,000 tons of out-of-State municipal solid waste in calendar year 1993 may establish a limit on the quantity of out-of-State municipal solid waste that may be received at all facilities in the State described in subsection (e)(2) in the following quantities:

''(A) In calendar year 2003, 95 percent of the quantity received in calendar year 1993.

''(B) In each of calendar years 2004 through 2007, 95 percent of the quantity received in the previous year.

''(C) In each calendar year after calendar year 2007, 65 percent of the quantity received in calendar year 1993.

''(2) UNIFORM APPLICABILITY.—A limit under paragraph (1) shall apply uniformly—

''(A) to the quantity of out-of-State municipal solid waste that may be received at all facilities in the State that received out-of-State municipal solid waste in calendar year 1993; and

''(B) for each facility described in clause (i), to the quantity of out-of-State municipal solid waste that may be received from each State that generated out-of-State municipal solid waste received at the facility in calendar year 1993.

''(3) NOTICE.—Not later than 90 days before establishing a limit under paragraph (1), a State shall provide notice of the proposed limit to each State from which municipal solid waste was received in calendar year 1993.

''(4) ALTERNATIVE AUTHORITIES.—If a State exercises authority under this subsection, the State may not thereafter exercise authority under subsection (g).

''(i) COST RECOVERY SURCHARGE.—

''(1) DEFINITIONS.—In this subsection:

''(A) COST.—The term 'cost' means a cost incurred by the State for the implementation of State laws governing the processing, combustion, or disposal of municipal solid waste, limited to—

''(i) the issuance of new permits and renewal of or modification of permits;

''(ii) inspection and compliance monitoring;

''(iii) enforcement; and

''(iv) costs associated with technical assistance, data management, and collection of fees.

''(B) PROCESSING.—The term 'processing' means any activity to reduce the volume of municipal solid waste or alter the chemical, biological or physical state of municipal solid waste, through processes such as thermal treatment, bailing, composting, crushing, shredding, separation, or compaction.

''(2) AUTHORITY.—A State may authorize, impose, and collect a cost recovery charge on the processing or disposal of out-of-State municipal solid waste in the State in accordance with this subsection.

''(3) AMOUNT OF SURCHARGE.—The amount of a cost recovery surcharge—

''(A) may be no greater than the amount necessary to recover those costs determined in conformance with paragraph (5); and

''(B) in no event may exceed $3.00 per ton of waste.

''(4) USE OF SURCHARGE COLLECTED.—All cost recovery surcharges collected by a State under this subsection shall be used to fund solid waste management programs, administered by the State or a political subdivision of the State, that incur costs for which the surcharge is collected.

''(5) CONDITIONS.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C), a State may impose and collect a cost recovery surcharge on the processing or disposal within the State of out-of-State municipal solid waste if—

''(i) the State demonstrates a cost to the State arising from the processing or disposal within the State of a volume of municipal solid waste from a source outside the State;

''(ii) the surcharge is based on those costs to the State demonstrated under subparagraph (A) that, if not paid for through the surcharge, would otherwise have to be paid or subsidized by the State; and

''(iii) the surcharge is compensatory and is not discriminatory.

''(B) PROHIBITION OF SURCHARGE.—In no event shall a cost recovery surcharge be imposed by a State to the extent that—

''(i) the cost for which recovery is sought is otherwise paid, recovered, or offset by any other fee or tax paid to the State or a political subdivision of the State; or

''(ii) to the extent that the amount of the surcharge is offset by voluntary payments to a State or a political subdivision of the State, in connection with the generation, transportation, treatment, processing, or disposal of solid waste.

''(C) SUBSIDY; NON-DISCRIMINATION.—The grant of a subsidy by a State with respect to entities disposing of waste generated within the State does not constitute discrimination for purposes of subparagraph (A).

''(j) IMPLEMENTATION AND ENFORCEMENT.—A State may adopt such laws (including regulations), not inconsistent with this section, as are appropriate to implement and enforce this section, including provisions for penalties.

''(k) ANNUAL STATE REPORT.—

''(1) FACILITIES.—On February 1, 2003, and on February 1 of each subsequent year, the owner or operator of each facility that receives out-of-State municipal solid waste shall submit to the State information specifying—

''(A) the quantity of out-of-State municipal solid waste received during the preceding calendar year; and

''(B) the State of origin of the out-of-State municipal solid waste received during the preceding calendar year.

''(2) TRANSFER STATIONS.—

''(A) DEFINITION OF RECEIVE FOR TRANSFER.—In this paragraph, the term 'receive for transfer' means receive for temporary storage pending transfer to another State or facility.

''(B) REPORT.—On February 1, 2003, and on February 1 of each subsequent year, the owner or operator of each transfer station that receives for transfer out-of-State municipal solid waste shall submit to the State a report describing—

''(i) the quantity of out-of-State municipal solid waste received for transfer during the preceding calendar year;

''(ii) each State of origin of the out-of-State municipal solid waste received for transfer during the preceding calendar year; and

''(iii) each State of destination of the out-of-State municipal solid waste transferred from the transfer station during the preceding calendar year.

''(3) NO PRECLUSION OF STATE REQUIREMENTS.—The requirements of paragraphs (1) and (2) do not preclude any State requirement for more frequent reporting.

''(4) FALSE OR MISLEADING INFORMATION.—Documentation submitted under paragraphs (1) and (2) shall be made under penalty of perjury under State law for the submission of false or misleading information.

''(5) REPORT.—On March 1, 2003, and on March 1 of each year thereafter, each State to which information is submitted under paragraphs (1) and (2) shall publish and make available to the public a report containing information on the quantity of out-of-State municipal solid waste received for disposal and received for transfer in the State during the preceding calendar year.''.

(b) CONFORMING AMENDMENT.—The table of contents of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding after the item relating to section 4010 the following:

''Sec. 4011. Authority to prohibit or limit receipt of out-of-State municipal solid waste at existing facilities.''.

SEC. 3. AUTHORITY TO DENY PERMITS FOR OR IMPOSE PERCENTAGE LIMITS ON RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT NEW FACILITIES.

(a) AMENDMENT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) (as amended by section 2(a)), is amended by adding after section 4011 the following:

''SEC. 4012. AUTHORITY TO DENY PERMITS FOR OR IMPOSE PERCENTAGE LIMITS ON RECEIPT OF OUT-OF-STATE MUNICIPAL SOLID WASTE AT NEW FACILITIES.

''(a) DEFINITIONS.—In this section:

''(1) TERMS DEFINED IN SECTION 4011.—The terms 'authorization to receive out-of-State municipal solid waste', 'disposal', 'existing host community agreement', 'host community agreement', 'municipal solid waste', 'out-of-State municipal solid waste', and 'receive' have the meaning given those terms, respectively, in section 4011.

''(2) OTHER TERMS.—The term 'facility' means a landfill, incinerator, or other enterprise that receives out-of-State municipal solid waste on or after the date of enactment of this section.

''(b) AUTHORITY TO DENY PERMITS OR IMPOSE PERCENTAGE LIMITS.—

''(1) ALTERNATIVE AUTHORITIES.—In any calendar year, a State may exercise the authority under either paragraph (2) or paragraph (3), but may not exercise the authority under both paragraphs (2) and (3).

''(2) AUTHORITY TO DENY PERMITS.—A State may deny a permit for the construction or operation of or a major modification to a facility if—

''(A) the State has approved a State or local comprehensive municipal solid waste management plan developed under Federal or State law; and

''(B) the denial is based on a determination, under a State law authorizing the denial, that there is not a local or regional need for the facility in the State.

''(3) AUTHORITY TO IMPOSE PERCENTAGE LIMIT.—A State may provide by law that a State permit for the construction, operation, or expansion of a facility shall include the requirement that not more than a specified percentage (which shall be not less than 20 percent) of the total quantity of municipal solid waste received annually at the facility shall be out-of-State municipal solid waste.

''(c) NEW HOST COMMUNITY AGREEMENTS.—

''(1) IN GENERAL.—Notwithstanding subsection (b)(3), a facility operating under an existing host community agreement that contains an authorization to receive out-of-State municipal solid waste in a specific quantity annually may receive that quantity.

''(2) NO EFFECT ON STATE PERMIT DENIAL.—Nothing in paragraph (1) authorizes a facility described in that paragraph to receive out-of-State municipal solid waste if the State has denied a permit to the facility under subsection (b)(2).

''(d) UNIFORM AND NONDISCRIMINATORY APPLICATION.—A law under subsection (b) or (c)—

''(1) shall be applicable throughout the State;

''(2) shall not directly or indirectly discriminate against any particular facility; and

''(3) shall not directly or indirectly discriminate against any shipment of out-of-State municipal solid waste on the basis of place of origin.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 1(b)) is amended by adding at the end of the items relating to subtitle D the following:

''Sec. 4012. Authority to deny permits for or impose percentage limits on new facilities.''.

SEC. 4. CONSTRUCTION AND DEMOLITION WASTE.

(a) AMENDMENT.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) (as amended by section 3(a)), is amended by adding after section 4012 the following:

''SEC. 4013. CONSTRUCTION AND DEMOLITION WASTE.

''(a) DEFINITIONS.—In this section:

''(1) TERMS DEFINED IN SECTION 4011.—The terms 'affected local government', 'Governor', and 'receive' have the meanings given those terms, respectively, in section 4011.

''(2) OTHER TERMS.—

''(A) BASE YEAR QUANTITY.—The term 'base year quantity' means—

''(i) the annual quantity of out-of-State construction and demolition debris received at a State in calendar year 2003, as determined under subsection (c)(2)(B)(i); or

''(ii) in the case of an expedited implementation under subsection (c)(5), the annual quantity of out-of-State construction and demolition debris received in a State in calendar year 2002.

''(B) CONSTRUCTION AND DEMOLITION WASTE.—

''(i) IN GENERAL.—The term 'construction and demolition waste' means debris resulting from the construction, renovation, repair, or demolition of or similar work on a structure.

''(ii) EXCLUSIONS.—The term 'construction and demolition waste' does not include debris that—

''(I) is commingled with municipal solid waste; or

''(II) is contaminated, as determined under subsection (b).

''(C) FACILITY.—The term 'facility' means any enterprise that receives construction and demolition waste on or after the date of enactment of this section, including landfills.

''(D) OUT-OF-STATE CONSTRUCTION AND DEMOLITION WASTE.—The term 'out-of-State construction and demolition waste' means—

''(i) with respect to any State, construction and demolition debris generated outside the State; and

''(ii) construction and demolition debris generated outside the United States, unless the President determines that treatment of the construction and demolition debris as out-of-State construction and demolition waste under this section would be inconsistent with the North American Free Trade Agreement or the Uruguay Round Agreements (as defined in section 2 of the Uruguay Round Agreements Act (19 U.S.C. 3501)).

''(b) CONTAMINATED CONSTRUCTION AND DEMOLITION DEBRIS.—

''(1) IN GENERAL.—For the purpose of determining whether debris is contaminated, the generator of the debris shall conduct representative sampling and analysis of the debris.

''(2) SUBMISSION OF RESULTS.—Unless not required by the affected local government, the results of the sampling and analysis under paragraph (1) shall be submitted to the affected local government for recordkeeping purposes only.

''(3) DISPOSAL OF CONTAMINATED DEBRIS.—Any debris described in subsection (a)(2)(B)(i) that is determined to be contaminated shall be disposed of in a landfill that meets the requirements of this Act.

''(c) LIMIT ON CONSTRUCTION AND DEMOLITION WASTE.—

''(1) IN GENERAL.—A State may establish a limit on the annual amount of out-of-State construction and demolition waste that may be received at landfills in the State.

''(2) REQUIRED ACTION BY THE STATE.—A State that seeks to limit the receipt of out-of-State construction and demolition waste received under this section shall—

''(A) not later than January 1, 2003, establish and implement reporting requirements to determine the quantity of construction and demolition waste that is—

''(i) disposed of in the State; and

''(ii) imported into the State; and

''(B) not later than March 1, 2004—

''(i) establish the annual quantity of out-of-State construction and demolition waste received during calendar year 2003; and

''(ii) report the tonnage received during calendar year 2003 to the Governor of each exporting State.

''(3) REPORTING BY FACILITIES.—

''(A) IN GENERAL.—Each facility that receives out-of-State construction and demolition debris shall report to the State in which the facility is located the quantity and State of origin of out-of-State construction and demolition debris received—

''(i) in calendar year 2002, not later than February 1, 2003; and

''(ii) in each subsequent calendar year, not later than February 1 of the calendar year following that year.

''(B) NO PRECLUSION OF STATE REQUIREMENTS.—The requirement of subparagraph (A) does not preclude any State requirement for more frequent reporting.

''(C) PENALTY.—Each submission under this paragraph shall be made under penalty of perjury under State law.

''(4) LIMIT ON DEBRIS RECEIVED.—

''(A) RATCHET.—A State in which facilities receive out-of-State construction and demolition debris may decrease the quantity of construction and demolition debris that may be received at each facility to an annual percentage of the base year quantity specified in subparagraph (B).

''(B) REDUCED ANNUAL PERCENTAGES.—A limit on out-of-State construction and demolition debris imposed by a State under subparagraph (A) shall be equal to—

''(i) in calendar year 2004, 95 percent of the base year quantity;

''(ii) in calendar year 2005, 90 percent of the base year quantity;

''(iii) in calendar year 2006, 85 percent of the base year quantity;

''(iv) in calendar year 2007, 80 percent of the base year quantity;

''(v) in calendar year 2008, 75 percent of the base year quantity;

''(vi) in calendar year 2009, 70 percent of the base year quantity;

''(vii) in calendar year 2010, 65 percent of the base year quantity;

''(viii) in calendar year 2011, 60 percent of the base year quantity;

''(ix) in calendar year 2012, 55 percent of the base year quantity; and

''(x) in calendar year 2013 and in each subsequent year, 50 percent of the base year quantity.

''(5) EXPEDITED IMPLEMENTATION.—

''(A) RATCHET.—A State in which facilities receive out-of-State construction and demolition debris may decrease the quantity of construction and demolition debris that may be received at each facility to an annual percentage of the base year quantity specified in subparagraph (B) if—

''(i) on the date of enactment of this section, the State has determined the quantity of construction and demolition waste received in the State in calendar year 2002; and

''(ii) the State complies with paragraphs (2) and (3).

''(B) EXPEDITED REDUCED ANNUAL PERCENTAGES.—An expedited implementation of a limit on the receipt of out-of-State construction and demolition debris imposed by a State under subparagraph (A) shall be equal to—

''(i) in calendar year 2003, 95 percent of the base year quantity;

''(ii) in calendar year 2004, 90 percent of the base year quantity;

''(iii) in calendar year 2005, 85 percent of the base year quantity;

''(iv) in calendar year 2006, 80 percent of the base year quantity;

''(v) in calendar year 2007, 75 percent of the base year quantity;

''(vi) in calendar year 2008, 70 percent of the base year quantity;

''(vii) in calendar year 2009, 65 percent of the base year quantity;

''(viii) in calendar year 2010, 60 percent of the base year quantity;

''(ix) in calendar year 2011, 55 percent of the base year quantity; and

''(x) in calendar year 2012 and in each subsequent year, 50 percent of the base year quantity.''.

(b) CONFORMING AMENDMENT.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 3(b)), is amended by adding at the end of the items relating to subtitle D the following:

''Sec. 4013. Construction and demolition debris.''.

SEC. 5. CONGRESSIONAL AUTHORIZATION OF STATE AND LOCAL MUNICIPAL SOLID WASTE FLOW CONTROL.

(a) AMENDMENT OF SUBTITLE D.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) (as amended by section 4(a)) is amended by adding after section 4013 the following:

''SEC. 4014. CONGRESSIONAL AUTHORIZATION OF STATE AND LOCAL GOVERNMENT CONTROL OVER MOVEMENT OF MUNICIPAL SOLID WASTE AND RECYCLABLE MATERIALS.

''(a) FLOW CONTROL AUTHORITY FOR FACILITIES PREVIOUSLY DESIGNATED.—Any State or political subdivision thereof is authorized to exercise flow control authority to direct the movement of municipal solid waste and recyclable materials voluntarily relinquished by the owner or generator thereof to particular waste management facilities, or facilities for recyclable materials, designated as of the suspension date, if each of the following conditions are met:

''(1) The waste and recyclable materials are generated within the jurisdictional boundaries of such State or political subdivision, as such jurisdiction was in effect on the suspension date.

''(2) Such flow control authority is imposed through the adoption or execution of a law, ordinance, regulation, resolution, or other legally binding provision or official act of the State or political subdivision that—

''(A) was in effect on the suspension date;

''(B) was in effect prior to the issuance of an injunction or other order by a court based on a ruling that such law, ordinance, regulation, resolution, or other legally binding provision or official act violated the Commerce Clause of the United States Constitution; or

''(C) was in effect immediately prior to suspension or partial suspension thereof by legislative or official administrative action of the State or political subdivision expressly because of the existence of an injunction or other court order of the type described in subparagraph (B) issued by a court of competent jurisdiction.

''(3) The State or a political subdivision thereof has, for one or more of such designated facilities—

''(A) on or before the suspension date, presented eligible bonds for sale;

''(B) on or before the suspension date, issued a written public declaration or regulation stating that bonds would be issued and held hearings regarding such issuance, and subsequently presented eligible bonds for sale within 180 days of the declaration or regulation; or

''(C) on or before the suspension date, executed a legally binding contract or agreement that—

''(i) was in effect as of the suspension date;

''(ii) obligates the delivery of a minimum quantity of municipal solid waste or recyclable materials to one or more such designated waste management facilities or facilities for recyclable materials; and

''(iii) either—

''(I) obligates the State or political subdivision to pay for that minimum quantity of waste or recyclable materials even if the stated minimum quantity of such waste or recyclable materials is not delivered within a required timeframe; or

''(II) otherwise imposes liability for damages resulting from such failure.

''(b) WASTE STREAM SUBJECT TO FLOW CONTROL.—Subsection (a) authorizes only the exercise of flow control authority with respect to the flow to any designated facility of the specific classes or categories of municipal solid waste and voluntarily relinquished recyclable materials to which such flow control authority was applicable on the suspension date and—

''(1) in the case of any designated waste management facility or facility for recyclable materials that was in operation as of the suspension date, only if the facility concerned received municipal solid waste or recyclable materials in those classes or categories on or before the suspension date; and

''(2) in the case of any designated waste management facility or facility for recyclable materials that was not yet in operation as of the suspension date, only of the classes or categories that were clearly identified by the State or political subdivision as of the suspension date to be flow controlled to such facility.

''(c) DURATION OF FLOW CONTROL AUTHORITY.—Flow control authority may be exercised pursuant to this section with respect to any facility or facilities only until the later of the following:

''(1) The final maturity date of the bond referred to in subsection (a)(3)(A) or (B).

''(2) The expiration date of the contract or agreement referred to in subsection (a)(3)(C).

''(3) The adjusted expiration date of a bond issued for a qualified environmental retrofit.

The dates referred to in paragraphs (1) and (2) shall be determined based upon the terms and provisions of the bond or contract or agreement. In the case of a contract or agreement described in subsection (a)(3)(C) that has no specified expiration date, for purposes of paragraph (2) of this subsection the expiration date shall be the first date that the State or political subdivision that is a party to the contract or agreement can withdraw from its responsibilities under the contract or agreement without being in default thereunder and without substantial penalty or other substantial legal sanction. The expiration date of a contract or agreement referred to in subsection (a)(3)(C) shall be deemed to occur at the end of the period of an extension exercised during the term of the original contract or agreement, if the duration of that extension was specified by such contract or agreement as in effect on the suspension date.

''(d) INDEMNIFICATION FOR CERTAIN TRANSPORTATION.—Notwithstanding any other provision of this section, no State or political subdivision may require any person to transport municipal solid waste or recyclable materials, or to deliver such waste or materials for transportation, to any active portion of a municipal solid waste landfill unit if contamination of such active portion is a basis for listing of the municipal solid waste landfill unit on the National Priorities List established under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 unless such State or political subdivision or the owner or operator of such landfill unit has indemnified that person against all liability under that Act with respect to such waste or materials.

''(e) OWNERSHIP OF RECYCLABLE MATERIALS.—Nothing in this section shall authorize any State or political subdivision to require any person to sell or transfer any recyclable materials to such State or political subdivision.

''(f) LIMITATION ON REVENUE.—A State or political subdivision may exercise the flow control authority granted in this section only if the State or political subdivision limits the use of any of the revenues it derives from the exercise of such authority to the payment of one or more of the following:

''(1) Principal and interest on any eligible bond.

''(2) Principal and interest on a bond issued for a qualified environmental retrofit.

''(3) Payments required by the terms of a contract referred to in subsection (a)(3)(C).

''(4) Other expenses necessary for the operation and maintenance and closure of designated facilities and other integral facilities identified by the bond necessary for the operation and maintenance of such designated facilities.

''(5) To the extent not covered by paragraphs (1) through (4), expenses for recycling, composting, and household hazardous waste activities in which the State or political subdivision was engaged before the suspension date. The amount and nature of payments described in this paragraph shall be fully disclosed to the public annually.

''(g) INTERIM CONTRACTS.—A contract of the type referred to in subsection (a)(3)(C) that was entered into during the period—

''(1) before November 10, 1995, and after the effective date of any applicable final court order no longer subject to judicial review specifically invalidating the flow control authority of the applicable State or political subdivision; or

''(2) after the applicable State or political subdivision refrained pursuant to legislative or official administrative action from enforcing flow control authority expressly because of the existence of a court order of the type described in subsection (a)(2)(B) issued by a court of the same State or the Federal judicial circuit within which such State is located and before the effective date on which it resumes enforcement of flow control authority after enactment of this section,

shall be fully enforceable in accordance with State law.

''(h) AREAS WITH PRE-1984 FLOW CONTROL.—

''(1) GENERAL AUTHORITY.—A State that on or before January 1, 1984—

''(A) adopted regulations under a State law that required or directed transportation, management, or disposal of municipal solid waste from residential, commercial, institutional, or industrial sources (as defined under State law) to specifically identified waste management facilities, and applied those regulations to every political subdivision of the State; and

''(B) subjected such waste management facilities to the jurisdiction of a State public utilities commission,

may exercise flow control authority over municipal solid waste in accordance with the other provisions of this section.

''(2) ADDITIONAL FLOW CONTROL AUTHORITY.—A State or any political subdivision of a State that meets the requirements of paragraph (1) may exercise flow control authority over all classes and categories of municipal solid waste that were subject to flow

control by that State or political subdivision on May 16, 1994, by directing municipal solid waste from any waste management facility that was designated as of May 16, 1994 to any other waste management facility in the State without regard to whether the political subdivision in which the municipal solid waste is generated had designated the particular waste management facility or had issued a bond or entered into a contact referred to in subparagraph (A) or (B) of subsection (a)(3), respectively.

''(3) DURATION OF AUTHORITY.—The authority to direct municipal solid waste to any facility pursuant to this subsection shall terminate with regard to such facility in accordance with subsection (c).

''(i) EFFECT ON AUTHORITY OF STATES AND POLITICAL SUBDIVISIONS.—Nothing in this section shall be interpreted—

''(1) to authorize a political subdivision to exercise the flow control authority granted by this section in a manner inconsistent with State law;

''(2) to permit the exercise of flow control authority over municipal solid waste and recyclable materials to an extent greater than the maximum volume authorized by State permit to be disposed at the waste management facility or processed at the facility for recyclable materials;

''(3) to limit the authority of any State or political subdivision to place a condition on a franchise, license, or contract for municipal solid waste or recyclable materials collection, processing, or disposal; or

''(4) to impair in any manner the authority of any State or political subdivision to adopt or enforce any law, ordinance, regulation, or other legally binding provision or official act relating to the movement or processing of municipal solid waste or recyclable materials which does not constitute discrimination against or an undue burden upon interstate commerce.

''(j) EFFECTIVE DATE.—The provisions of this section shall take effect with respect to the exercise by any State or political subdivision of flow control authority on or after the date of enactment of this section. Such provisions, other than subsection (d), shall also apply to the exercise by any State or political subdivision of flow control authority before such date of enactment, except that nothing in this section shall affect any final judgment that is no longer subject to judicial review as of the date of enactment of this section insofar as such judgment awarded damages based on a finding that the exercise of flow control authority was unconstitutional.

''(k) STATE SOLID WASTE DISTRICT AUTHORITY.—In addition to any other flow control authority authorized under this section a solid waste district or a political subdivision of a State may exercise flow control authority for a period of 20 years after the enactment of this section, for municipal solid waste and for recyclable materials that is generated within its jurisdiction if—

''(1) the solid waste district, or a political subdivision within such district, is required through a recyclable materials recycling program to meet a municipal solid waste reduction goal of at least 30 percent by the year 2005, and uses revenues generated by the exercise of flow control authority strictly to implement programs to manage municipal solid waste and recyclable materials, other than incineration programs; and

''(2) prior to the suspension date, the solid waste district, or a political subdivision within such district—

''(A) was responsible under State law for the management and regulation of the storage, collection, processing, and disposal of solid wastes within its jurisdiction;

''(B) was authorized by State statute (enacted prior to January 1, 1992) to exercise flow control authority, and subsequently adopted or sought to exercise the authority through a law, ordinance, regulation, regulatory proceeding, contract, franchise, or other legally binding provision; and

''(C) was required by State statute (enacted prior to January 1, 1992) to develop and implement a solid waste management plan consistent with the State solid waste management plan, and the district solid waste management plan was approved by the appropriate State agency prior to September 15, 1994.

''(l) SPECIAL RULE FOR CERTAIN CONSORTIA.—For purposes of this section, if—

''(1) two or more political subdivisions are members of a consortium of political subdivisions established to exercise flow control authority with respect to any waste management facility or facility for recyclable materials;

''(2) all of such members have either presented eligible bonds for sale or executed contracts with the owner or operator of the facility requiring use of such facility;

''(3) the facility was designated as of the suspension date by at least one of such members;

''(4) at least one of such members has met the requirements of subsection (a)(2) with respect to such facility; and

''(5) at least one of such members has presented eligible bonds for sale, or entered into a contract or agreement referred to in subsection (a)(3)(C), on or before the suspension date, for such facility,

the facility shall be treated as having been designated, as of May 16, 1994, by all members of such consortium, and all such members shall be treated as meeting the requirements of subsection (a)(2) and (3) with respect to such facility.

''(m) RECOVERY OF DAMAGES.—

''(1) PROHIBITION.—No damages, interest on damages, costs, or attorneys' fees may be recovered in any claim against any State or local government, or official or employee thereof, based on the exercise of flow control authority on or before May 16, 1994.

''(2) APPLICABILITY.—Paragraph (1) shall apply to cases commenced on or after the date of enactment of the Solid Waste Interstate Transportation and Local Authority Act of 1999, and shall apply to cases commenced before such date except cases in which a final judgment no longer subject to judicial review has been rendered.

''(n) DEFINITIONS.—For the purposes of this section—

''(1) ADJUSTED EXPIRATION DATE.—The term 'adjusted expiration date' means, with respect to a bond issued for a qualified environmental retrofit, the earlier of the final maturity date of such bond or 15 years after the date of issuance of such bond.

''(2) BOND ISSUED FOR A QUALIFIED ENVIRONMENTAL RETROFIT.—The term 'bond issued for a qualified environmental retrofit' means a bond described in paragraph (4)(A) or (B), the proceeds of which are dedicated to financing the retrofitting of a resource recovery facility or a municipal solid waste incinerator necessary to comply with section 129 of the Clean Air Act, provided that such bond is presented for sale before the expiration date of the bond or contract referred to in subsection (a)(3)(A), (B), or (C) that is applicable to such facility and no later than December 31, 1999.

''(3) DESIGNATED.—The term 'designated' means identified by a State or political subdivision for receipt of all or any portion of the municipal solid waste or recyclable materials that is generated within the boundaries of the State or political subdivision. Such designation includes designation through—

''(A) bond covenants, official statements, or other official financing documents issued by a State or political subdivision issuing an eligible bond; and

''(B) the execution of a contract of the type described in subsection (a)(3)(C),

in which one or more specific waste management facilities are identified as the requisite facility or facilities for receipt of municipal solid waste or recyclable materials generated within the jurisdictional boundaries of that State or political subdivision.

''(4) ELIGIBLE BOND.—The term 'eligible bond' means—

''(A) a revenue bond or similar instrument of indebtedness pledging payment to the bondholder or holder of the debt of identified revenues; or

''(B) a general obligation bond,

the proceeds of which are used to finance one or more designated waste management facilities, facilities for recyclable materials, or specifically and directly related assets, development costs, or finance costs, as evidenced by the bond documents.

''(5) FLOW CONTROL AUTHORITY.—The term 'flow control authority' means the regulatory authority to control the movement of municipal solid waste or voluntarily relinquished recyclable materials and direct such solid waste or recyclable materials to one or more designated waste management facilities or facilities for recyclable materials within the boundaries of a State or political subdivision.

''(6) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' has the meaning given that term in section 4011, except that such term—

''(A) includes waste material removed from a septic tank, septage pit, or cesspool (other than from portable toilets); and

''(B) does not include—

''(i) any substance the treatment and disposal of which is regulated under the Toxic Substances Control Act;

''(ii) waste generated during scrap processing and scrap recycling; or

''(iii) construction and demolition debris, except where the State or political subdivision had on or before January 1, 1989, issued eligible bonds secured pursuant to State or local law requiring the delivery of construction and demolition debris to a waste management facility designated by such State or political subdivision.

''(7) POLITICAL SUBDIVISION.—The term 'political subdivision' means a city, town, borough, county, parish, district, or public service authority or other public body created by or pursuant to State law with authority to present for sale an eligible bond or to exercise flow control authority.

''(8) RECYCLABLE MATERIALS.—The term 'recyclable materials' means any materials that have been separated from waste otherwise destined for disposal (either at the source of the waste or at processing facilities) or that have been managed separately from waste destined for disposal, for the purpose of recycling, reclamation, composting of organic materials such as food and yard waste, or reuse (other than for the purpose of incineration). Such term includes scrap tires to be used in resource recovery.

''(9) SUSPENSION DATE.—The term 'suspension date' means, with respect to a State or political subdivision—

''(A) May 16, 1994;

''(B) the date of an injunction or other court order described in subsection (a)(2)(B) that was issued with respect to that State or political subdivision; or

''(C) the date of a suspension or partial suspension described in subsection (a)(2)(C) with respect to that State or political subdivision.

''(10) WASTE MANAGEMENT FACILITY.—The term 'waste management facility' means any facility for separating, storing, transferring, treating, processing, combusting, or disposing of municipal solid waste.''.

(b) TABLE OF CONTENTS.—The table of contents in section 1001 of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) (as amended by section 4(b)), is amended by adding at the end of the items relating to subtitle D the following:

''Sec. 4014. Congressional authorization of State and local government control over movement of municipal solid waste and recyclable materials.''.

SEC. 6. EFFECT ON INTERSTATE COMMERCE.

No action by a State or affected local government under an amendment made by this Act shall be considered to impose an undue burden on interstate commerce or to otherwise impair, restrain, or discriminate against interstate commerce.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 227—TO CLARIFY THE RULES REGARDING THE ACCEPTANCE OF PRO BONO LEGAL SERVICES BY SENATORS

Mr. McCONNELL (for himself, Mr. MCCAIN, and Mr. FEINGOLD) submitted the following resolution, which was ordered held at the desk:

S. RES. 227

Resolved, That (a) notwithstanding the provisions of the Standing Rules of the Senate or Senate Resolution 508, adopted by the Senate on September 4, 1980, or Senate Resolution 321, adopted by the Senate on October 3, 1996, pro bono legal services provided to a Member of the Senate with respect to any civil action challenging the constitutionality of a Federal statute that expressly authorizes a Member either to file an action or to intervene in an action—

(1) shall not be deemed a gift to the Member;

(2) shall not be deemed to be a contribution to the office account of the Member;

(3) shall not require the establishment of a legal expense trust fund; and

(4) shall be governed by the Select Committee on Ethics Regulations Regarding Disclosure of Pro Bono Legal Services, adopted February 13, 1997, or any revision thereto.

(b) This resolution shall supersede Senate Resolution 321, adopted by the Senate on October 3, 1996.

AMENDMENTS SUBMITTED AND PROPOSED

SA 3033. Mr. LOTT proposed an amendment to amendment SA 2989 proposed by Mrs. FEINSTEIN (for herself, Ms. CANTWELL, Mr. WYDEN, Mrs. BOXER, Mr. LEAHY, Mr. DURBIN, Mr. FITZGERALD, and Mr. CORZINE) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes.

SA 3034. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 2356, to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform; which was ordered to lie on the table.

SA 3035. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 2356, supra; which was ordered to lie on the table.

SA 3036. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 2356, supra; which was ordered to lie on the table.

SA 3037. Mr. TORRICELLI (for himself and Mr. CORZINE) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table.

SA 3038. Mr. KYL (for himself, Mr. MILLER, Mr. WARNER, Mr. MURKOWSKI, and Mr. VOINOVICH) proposed an amendment to amendment SA 3016 proposed by Mr. BINGAMAN to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

SA 3039. Mr. REID (for Mr. BINGAMAN) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) supra.

TEXT OF AMENDMENTS

SA 3033. Mr. LOTT proposed an amendment to amendment SA 2989 proposed by Mrs. FEINSTEIN (for herself, Ms. CANTWELL, Mr. WYDEN, Mrs. BOXER, Mr. LEAHY, Mr. DURBIN, Mr. FITZGERALD, and Mr. CORZINE) to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

At the appropriate place, add the following:

SEC. . FAIR TREATMENT OF PRESIDENTIAL JUDICIAL NOMINEES.

(a) FINDINGS.—The Senate finds that—

(1) the Senate Judiciary Committee's pace in acting on judicial nominees thus far in this Congress has caused the number of judges confirmed by the Senate to fall below the number of judges who have retired during the same period, such that the 67 judicial vacancies that existed when Congress adjourned under President Clinton's last term in office in 2000 have now grown to 96 judicial vacancies, which represents an increase from 7.9 percent to 11 percent in the total number of Federal judgeships that are currently vacant;

(2) thirty one of the 96 current judicial vacancies are on the United States Courts of Appeals, representing a 17.3 percent vacancy rate for such seats;

(3) seventeen of the 31 vacancies on the Courts of Appeals have been declared ''judicial emergencies'' by the Administrative Office of the U.S. Courts;

(4) during the first 2 years of President Reagan's first term, 19 of the 20 circuit court nominations that he submitted to the Senate were confirmed; and during the first 2 years of President George H. W. Bush's term, 22 of the 23 circuit court nominations that he submitted to the Senate were confirmed; and during the first 2 years of President Clinton's first term, 19 of the 22 circuit court nominations that he submitted to the Senate were confirmed; and

(5) only 7 of President George W. Bush's 29 circuit court nominees have been confirmed to date, representing just 24 percent of such nominations submitted to the Senate.

(b) SENSE OF THE SENATE.—It is the Sense of the Senate that, in the interests of the administration of justice, the Senate Judiciary Committee shall hold hearings on the nominees submitted by the President on May 9, 2001, by May 9, 2001.

SA 3034. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 2356, to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. ___. LIMITATION ON ACCEPTANCE OF OUT-OF-STATE CONTRIBUTIONS BY CANDIDATES.

(a) IN GENERAL.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.), as amended by section 318, is further amended by adding at the end the following new section:

''LIMITATION ON ACCEPTANCE OF OUT-OF-STATE CONTRIBUTIONS BY CANDIDATES

''SEC. 325. (a) LIMITATION.—

''(1) SENATE CANDIDATES.—A Senate candidate and the candidate's authorized committee shall not accept, during an election cycle, contributions from persons other than individuals residing in the candidate's State in an amount exceeding 40 percent of the total amount of contributions accepted during the election cycle.

''(2) HOUSE CANDIDATES.—A House candidate and the candidate's authorized committee shall not accept, during an election cycle, contributions from persons other than individuals residing in the candidate's congressional district in an amount exceeding 40 percent of the total amount of contributions accepted during the election cycle.

''(b) TIME TO MEET REQUIREMENT.—A candidate shall meet the requirement of the applicable paragraph of subsection (a) on the date for filing the post-general election report under section 304(a)(2)(A)(ii).''.

(b) DEFINITIONS.—Section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431), as amended by section 304(c), is further amended by adding at the end the following new paragraphs:

''(27) SENATE CANDIDATE.—The term 'Senate candidate' means a candidate who seeks nomination for election, or election, to the Senate.

''(28) HOUSE CANDIDATE.—The term 'House candidate' means a candidate who seeks nomination for election, or election, to the House of Representatives.''.

SA 3035. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 2356, to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. ___. LIMIT ON CONGRESSIONAL USE OF THE FRANKING PRIVILEGE.

Section 3210(a)(6)(A) of title 39, United States Code, is amended to read as follows:

''(A) A Member of Congress shall not mail any mass mailing as franked mail during a year in which there will be an election for the seat held by the Member during the period between January 1 of that year and the date of the general election for that office, unless the Member has made a public announcement that the Member will not be a

candidate for election to any Federal office in that year (including the office held by the Member).''.

SA 3036. Mrs. HUTCHISON submitted an amendment intended to be proposed by her to the bill H.R. 2356, to amend the Federal Election Campaign Act of 1971 to provide bipartisan campaign reform; which was ordered to lie on the table; as follows:

At the end, add the following:

SEC. ___. RIGHTS OF EMPLOYEES RELATING TO THE PAYMENT AND USE OF LABOR ORGANIZATION DUES.

(a) PAYMENT OF DUES.—

(1) RIGHTS OF EMPLOYEES.—Section 7 of the National Labor Relations Act (29 U.S.C. 157) is amended by striking ''membership'' and all that follows and inserting the following: ''the payment to a labor organization of dues or fees related to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation as a condition of employment as authorized in section 8(a)(3).''.

(2) UNFAIR LABOR PRACTICES.—Section 8(a)(3) of the National Labor Relations Act (29 U.S.C. 158(a)(3)) is amended by striking ''membership therein'' and inserting ''the payment to such labor organization of dues or fees related to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation''.

(b) REQUIREMENTS FOR USE OF DUES FOR CERTAIN PURPOSES.—

(1) WRITTEN AGREEMENT.—Section 8 of the National Labor Relations Act (29 U.S.C. 158) is amended by adding at the end the following:

''(h)(1) An employee subject to an agreement between an employer and a labor organization requiring the payment of dues or fees to such organization as authorized in subsection (a)(3) may not be required to pay to such organization, nor may such organization accept payment of, any dues or fees not related to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation unless the employee has agreed to pay such dues or fees in a signed written agreement that shall be renewed between the first day of September and the first day of October of each year.

''(2) Such signed written agreement shall include a ratio, certified by an independent auditor, of the dues or fees related to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation and the dues or fees related to other purposes.''.

(2) WRITTEN ASSIGNMENT.—Section 302(c)(4) of the Labor Management Relations Act, 1947 (29 U.S.C. 186) is amended by inserting before the semicolon the following: '': *Provided further*, That no amount may be deducted for dues unrelated to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation unless a written assignment authorizes such a deduction''.

(c) NOTICE TO EMPLOYEES RELATING TO THE PAYMENT AND USE OF DUES.—Section 8 of the National Labor Relations Act (29 U.S.C. 158), as amended by subsection (b)(1), is amended by adding at the end the following:

''(i)(1) An employer shall post a notice that informs the employees of their rights under section 7 of this Act and clarifies to such employees that an agreement requiring the payment of dues or fees to a labor organization as a condition of employment as authorized in subsection (a)(3) may only require that employees pay to such organization any dues or fees related to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation. A copy of such notice shall be provided to each employee not later than 10 days after the first day of employment.

''(2) The notice described in paragraph (1) shall be of such size and in such form as the Board shall prescribe and shall be posted in conspicuous places in and about the plants and offices of such employer, including all places where notices to employees are customarily posted.''.

(d) EMPLOYEE PARTICIPATION IN THE AFFAIRS OF A LABOR ORGANIZATION.—Section 8(b)(1) of the National Labor Relations Act (29 U.S.C. 158(b)(1)) is amended by striking ''therein;'' and inserting the following: ''therein, except that, an employee who is subject to an agreement between an employer and a labor organization requiring as a condition of employment the payment of dues or fees to such organization as authorized in subsection (a)(3) and who pays such dues or fees shall have the same right to participate in the affairs of the organization related to collective bargaining, contract administration, or grievance adjustment as any member of the organization;''.

(e) DISCLOSURE TO EMPLOYEES.—

(1) EXPENSES REPORTING.—Section 201(b) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 431(b)) is amended by adding at the end the following:

''Every labor organization shall be required to attribute and report expenses by function classification in such detail as necessary to allow the members of such organization or the employees required to pay any dues or fees to such organization to determine whether such expenses were related to collective bargaining, contract administration, or grievance adjustment necessary to performing the duties of exclusive representation or were related to other purposes.''.

(2) REPORT INFORMATION.—Section 201(c) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 431(c)) is amended—

(A) by inserting ''and employees required to pay any dues or fees to such organization'' after ''members'';

(B) by striking ''suit of any member of such organization'' and inserting ''suit of any member of such organization or employee required to pay any dues or fees to such organization''; and

(C) by striking ''such member'' and inserting ''such member or employee''.

(3) REGULATIONS.—The Secretary of Labor shall prescribe such regulations as are necessary to carry out the amendments made by this subsection not later than 120 days after the date of enactment of this Act.

(f) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in subparagraph (B), this section and the amendments made by this section shall take effect on the date of enactment of this Act.

(2) USE OF DUES.—The amendments made by subsections (b) and (c) shall take effect on the date that is 60 days after the date of enactment of this Act.

SA 3037. Mr. TORRICELLI (for himself and Mr. CORZINE) submitted an amendment intended to be proposed to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. ___. EXTENSION OF SUPERFUND, OIL SPILL LIABILITY, AND LEAKING UNDERGROUND STORAGE TANK TAXES.

(a) EXCISE TAXES.—

(1) SUPERFUND TAXES.—Section 4611(e) is amended to read as follows:

''(e) APPLICATION OF HAZARDOUS SUBSTANCE SUPERFUND FINANCING RATE.—The Hazardous Substance Superfund financing rate under this section shall apply after December 31, 1986, and before January 1, 1996, and after the date of the enactment of the Energy Policy Act of 2002 and before October 1, 2007.''.

(2) OIL SPILL LIABILITY TAX.—Section 4611(f) is amended to read as follows:

''(f) APPLICATION OF OIL SPILL LIABILITY TRUST FUND FINANCING RATE.—The Oil Spill Liability Trust Fund financing rate under subsection (c) shall apply after December 31, 1989, and before January 1, 1995, and after the date of the enactment of the Energy Policy Act of 2002 and before October 1, 2007.''.

(3) LEAKING UNDERGROUND STORAGE TANK RATE.—Section 4081(d)(3) is amended by striking ''April 1, 2005'' and inserting ''October 1, 2007.''.

(b) CORPORATE ENVIRONMENTAL INCOME TAX.—Section 59A(e) is amended to read as follows:

''(e) APPLICATION OF TAX.—The tax imposed by this section shall apply to taxable years beginning after December 31, 1986, and before January 1, 1996, and to taxable years beginning after the date of the enactment of the Energy Policy Act of 2002 and before January 1, 2007.''.

(c) TECHNICAL AMENDMENTS.—

(1) Section 4611(b) is amended—

(A) by striking ''or exported from'' in paragraph (1)(A),

(B) by striking ''or exportation'' in paragraph (1)(B), and

(C) by striking ''AND EXPORTATION'' in the heading.

(2) Section 4611(d)(3) is amended—

(A) by striking ''or exporting the crude oil, as the case may be'' in the text and inserting ''the crude oil'', and

(B) by striking ''OR EXPORTS'' in the heading.

(d) EFFECTIVE DATES.—

(1) EXCISE TAXES.—The amendments made by subsections (a) and (c) shall take effect on the date of the enactment of this Act.

(2) INCOME TAX.—The amendment made by subsection (b) shall apply to taxable years beginning after the date of the enactment of this Act.

SA 3038. Mr. KYL (for himself, Mr. MILLER, Mr. WARNER, Mr. MURKOWSKI, and Mr. VOINOVICH) proposed an amendment to amendment SA 3016 proposed by Mr. BINGAMAN to the amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

In lieu of the matter proposed to be inserted, insert the following:

(a) REQUIREMENT.—Section 111(d) of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2621(d)) is amended by adding at the end the following:

''(14) GREEN ENERGY.—

''(a) Each electric utility shall offer to retail consumers electricity produced from renewable sources, to the extent it is available.

''(b) Renewable sources of electricity include solar, wind, geothermal, landfill gas, biomass, hydroelectric and other renewable energy sources, as may be determined by the appropriate state regulatory authority.''

(b) PRESERVATION OF STATE AUTHORITY.—Nothing in this Act affects the authority of a State to establish a program requiring that a portion of the electric energy sold by a retail electric supplier to electric consumers in that State be generated by energy from any particular type of energy.

SA 3038. Mr. REID (for Mr. BINGAMAN) proposed an amendment to amendment SA 2917 proposed by Mr. DASCHLE (for himself and Mr. BINGAMAN) to the bill (S. 517) to authorize funding the Department of Energy to enhance its mission areas through technology transfer and partnerships for fiscal years 2002 through 2006, and for other purposes; as follows:

On page 555, line 14, after ''secretary'', insert ''shall''.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. INOUYE. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Thursday, March 21, 2002, at 9:45 a.m., in room 485 of the Russell Senate Office Building to conduct a business meeting to be followed immediately by a hearing on S. 958, a bill to provide for the use and distribution of the funds awarded to the Western Shoshone identifiable group under Indian Claims Commission Docket Numbers 326–A–1, 326–A–3, and 326–K.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, March 19, 2002, at 9:30 a.m., in open and closed session to receive testimony on the worldwide threat to United States interests.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mrs. FEINSTEIN. 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 Tuesday, March 19, 2002, at 9:30 a.m., to conduct an oversight hearing on ''Accounting and Investor Protection Issues Raised by Enron and Other Public Companies.''

The committee will also vote on the nominations of the Honorable Joanne Johnson, of Iowa, to be a member of the National Credit Union Administration Board; and Ms. Deborah Matz, of New York, to be a member of the National Credit Union Administration Board.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, March 19, 2002, at 2:30 p.m., on the nomination of VADM Thomas Collins to be commandant of the U.S. Coast Guard and immediately following an Oceans, Atmosphere, and Fisheries Subcommittee on oversight of the U.S. Coast Guard budget.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Tuesday, March 19, 2002, at 2:30 p.m., to conduct a hearing, entitled ''Mobility, Congestion and Intermodalism,'' to examine fresh ideas on transportation demand, access, mobility, and program flexibility. The hearing will be held in SD–406.

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

COMMITTEE ON FINANCE

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session of the Senate on Tuesday, March 19, 2002, at 2:30 p.m., to hear testimony on ''Child Care: Supporting Working Families.''

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

COMMITTEE ON FOREIGN RELATIONS

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, March 19, 2002, at 2:15 p.m., to hold a business meeting.

Agenda

The Committee will consider and vote on the following agenda items:

Legislation: H.R. 2739, an act to amend Public Law 107–10 to authorize a United States plan to endorse and obtain observer status for Taiwan at the annual summit of the World Health Assembly in May 2002 in Geneva, Switzerland, and for other purposes; and S. Res. 213, a resolution condemning human rights violations in Chechnya and urging a political situation to the conflict.

Additional items to be announced.

Nominations: Mrs. Emmy B. Simmons, of the District of Columbia, to be an Assistant Administrator (Economic Growth, Agriculture, and Trade) of the United States Agency for International Development; Mr. Robert B. Holland III, of Texas, to be United States Alternate Executive Director of the International Bank for Reconstruction and Development for a term of 2 years; the Honorable Robert P. Finn, of New York, to be Ambassador to Afghanistan; the Honorable Richard M. Miles, of South Carolina, to be Ambassador to Georgia; the Honorable James W. Pardew, of Arkansas, to be Ambassador to the Republic of Bulgaria; Mr. Peter Terpeluk, Jr., of Pennsylvania, to be Ambassador to Luxembourg; and Mr. Lawrence E. Butler, of Maine, to be Ambassador to the former Yugoslav Republic of Macedonia.

Foreign Service Officer Promotion Lists: FSO Promotion List, Jeffrey Davidow, Ruth Davis, and George Moose, for the personal rank of Career Ambassador in recognition of especially distinguished service over a sustained period, dated December 20, 2001; and FSO Promotion List, Gustavio A. Mejia, dated December 20, 2001.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Children and Families and Committee on Finance. Subcommittee on Family Policy be authorized to meet for a hearing on ''Child Care: Supporting Working Families,'' during the session of the Senate on Tuesday, March 19, 2002, at 2:30 p.m.

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

COMMITTEE ON THE JUDICIARY

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a nominations hearing on Tuesday, March 19, 2002, in Dirksen room 226 at 10 a.m.

Tentative Witness List

Panel I: The Honorable Arlen Specter; the Honorable John B. Breaux; the Honorable Robert Bennett; the Honorable Craig Thomas; the Honorable Rick Santorum; the Honorable Mary L. Landrieu; the Honorable Mike Enzi; and the Honorable W.J. ''Billy'' Tauzin.

Panel II: Terrence L. O'Brien to the U.S. Court of Appeals for the 10th Circuit.

Panel III: Lance Africk to the U.S. District Court for the Eastern District of Louisiana; Paul Cassell to the U.S. District Court for the District of Utah; and Legrome Davis to the U.S. District Court for the Eastern District of Pennsylvania.

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

SUBCOMMITTEE ON INTERNATIONAL SECURITY, PROLIFERATION, AND FEDERAL SERVICES

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs' Subcommittee on International Security, Proliferation and Federal Services be authorized to meet on Tuesday, March 19, 2002, at 10 a.m., for a hearing regarding ''The Federal Workforce: Legislative Proposals for Change.''

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

SUBCOMMITTEE ON SEAPOWER

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the Subcommittee on Seapower of the Committee on Armed Services be authorized to meet during the session of the Senate on Tuesday, March 19, 2002, at 2:30 p.m., in open session to receive testimony on maximizing fleet presence capability and ship procurement and research and development in review of the Defense authorization request for fiscal year 2003.

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

AMENDING PUBLIC LAW 107–10

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 330, H.R. 2739.

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

The legislative clerk read as follows:

A bill (H.R. 2739) to amend Public Law 107–10 to authorize a United States plan to endorse and obtain observer status for Taiwan at the annual summit of the World Health Assembly in May 2002 in Geneva, Switzerland, and for other purposes.

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

Mr. REID. I ask unanimous consent the bill be read the third time and passed, the motion to reconsider be laid upon the table with no intervening action or debate, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 2739) was read the third time and passed.

ORDER FOR MEASURE TO BE HELD AT THE DESK

Mr. REID. I ask unanimous consent that S. Res. 227 be held at the desk.

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

ORDER FOR COMMITTEES TO FILE LEGISLATIVE AND EXECUTIVE CALENDAR BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that notwithstanding any adjournment or recess of the Senate, the Senate committees may file reported legislative and executive calendar business on Wednesday, April 3, from 11 a.m. to 1 p.m.

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

ORDERS FOR WEDNESDAY, MARCH 20, 2002

Mr. REID. I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 10 a.m. tomorrow, Wednesday, March 20. I further ask consent that on Wednesday, immediately following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate proceed under the previous order.

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

PROGRAM

Mr. REID. Mr. President, the Senate will vote on cloture on the campaign finance reform bill at 1 p.m. tomorrow. We will come in at 10 a.m. and vote at 1 p.m.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. REID. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:27 p.m., adjourned until Wednesday, March 20, 2002, at 10 a.m.