United States of America

# Congressional Record

PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, FIRST SESSION

Vol. 149 WASHINGTON, TUESDAY, FEBRUARY 11, 2003 No. 25

# Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

## PRAYER

The guest Chaplain, Dr. Dale A. Meyer, Concordia Seminary, St. Louis, MO, offered the following prayer:

Enter into this chamber, O Spirit of God, this chamber of my heart and the hearts of all who sincerely pray with me. O Most High, You know the feelings and thoughts of our hearts before they ever come to our lips. Enter in and work in us the reverence that comes from a humble acknowledgment of Your Lordship. Enter in with the inspiration of Your love for each of us, a love to which prophets, evangelists, and apostles have borne witness for our temporal and eternal good. May that love constrain us to service in this Senate that will result in greater good for our beloved Nation.

Spirit of our Creator and Redeemer, deliver us, we pray, from every evil of body and soul, property and honor this day and until that day when we stand before Your eternal throne. Amen.

## PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

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

## RECOGNITION OF THE MAJORITY LEADER

The PRESIDING OFFICER (Ms. MURKOWSKI). The majority leader is recognized.

## SCHEDULE

Mr. FRIST. Madam President, today the Senate will continue the consideration of the nomination of Miguel Estrada to be a DC Circuit Court judge. The deliberations on the Senate floor yesterday were hearty and robust, and I believe many Senators have now had an opportunity to express their views. It is my objective to reach an agreement with the Democratic leader regarding a time for vote on this nominee.

The schedule for this week, and until the Estrada nomination is completed, is dependent upon reaching an agreement with respect to the pending nomination. I will continue to discuss with the Democratic leader the options for completing work on this important nomination. In the absence of any agreement, the Senate should expect very late evenings. My objective is to complete this nomination process with a vote this week.

The Senate also needs to complete action on the omnibus appropriations conference report when it becomes available. The conferees worked well into last night on the conference report, and I will be speaking to the chairman of the Appropriations Committee as to their success in closing out that conference. These are two very important pieces of business which must be addressed this week.

As a reminder, the Senate will recess today from 12:30 to 2:15 in order to accommodate the weekly policy luncheons.

Finally, I would forewarn all Senators that the Senate will remain in session in order to complete the Estrada nomination as well as the omnibus conference report.

I thank all Senators for their attention and look forward to the debate over the course of today, and hopefully we can reach some agreement, either this morning or this afternoon, on a time certain for a vote.

Mr. REID. Madam President, while the majority leader is on the floor and also the President pro tempore is seated in the Chamber, the chairman of the Appropriations Committee—the same person—while one may disagree with some of the policy stands the chairman of the Appropriations Committee has taken, one has to admire the work he did last night. It was really remarkable that he had every chair and ranking member of the subcommittees there, including the chairs of the full committees and ranking members, and was able to work through that myriad of information. It is now down to where it is really close to something we can vote on this week.

While the chairman of the committee is here, I wanted to acknowledge in front of his leader the remarkable job he did last night. We look forward to some productive work this week. These are two most important matters. I am sure the Senator and our leader will have a conversation in the immediate future about the Estrada nomination.

## RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

## EXECUTIVE SESSION

### NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA

The PRESIDING OFFICER. Under the previous order, the Senate will now go to executive session and resume consideration of Executive Calendar Order No. 21, which the clerk will report.

The legislative clerk read the nomination of Miguel A. Estrada, of Virginia, to be United States Circuit Judge for the District of Columbia Circuit.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I have heard so much misinformation

about Mr. Estrada here on the floor of the Senate for the past few days, I hardly know where to begin to correct the record. It is simply amazing to me that some of my Democratic colleagues claim they cannot support Mr. Estrada because he lacks judicial experience or because he hasn't been a law professor or because he has not published extensively. Let me remind my colleagues there are more than a few nominees confirmed as circuit judges whose record did not include judicial experience or extensive scholarly writings but whom they managed to vote for and confirm anyway. Yesterday I listed 26 circuit court of appeals judges who had no judicial experience when they were nominated but were confirmed anyway. That is just a small fraction of all those who never had judicial experience before the last number of years.

Don't get me wrong. Even though they have had no judicial experience, these are all very qualified judges who deserved confirmation. But I don't believe any of them clerked for a Supreme Court Justice or argued 15 cases before the United States Supreme Court, as has Mr. Estrada.

Take, for example, Clinton Ninth Circuit nominee Sidney Thomas. He graduated from the University of Montana Law School in 1978 and went straight into private practice with a firm in Billings, where he remained for his entire pre-judicial career. Of the 10 writings or speeches he listed in his questionnaire, four of them consisted of outlines of presentations. The fifth was copyrighted while he was still in college and so could not possibly present his legal views. Still another appears to be a study guide for a college class he taught. Given this record, I would not have expected a review of the hearings transcript to reveal demands by my Democratic colleagues for access to internal memoranda Judge Thomas prepared at his law firm, memoranda that are commonly known as attorney work product. Instead, a review of his hearing transcript reveals a grand total of less than two pages of questions, all of them asked by a Republican committee member. The Democratic committee member declined to ask Judge Thomas any questions, despite a record that includes no judicial experience and limited published writings.

Let me read you some of the exacting questions Judge Thomas was asked at his confirmation hearing and some of the answers he gave.

He was asked:

Would you state in detail your best independent legal judgments with regard to existing Supreme Court precedent on the constitutionality of capital punishment?

Judge Thomas replied:

Well, I believe that the Supreme Court has spoken, I think quite appropriately, on the death penalty. I do not possess any moral or religious convictions which would cause me to not apply the death penalty in an appropriate case.

This answer was apparently sufficient to satisfy the members of the committee that Judge Thomas would follow the law regardless of his personal convictions about the death penalty. But when Miguel Estrada gave similar answers to questions from Democratic committee members, he was accused of not being forthcoming. That is a double standard: We will treat President Clinton's nominees differently than we will treat President Bush's nominees.

Judge Thomas was also asked:

Do you believe the Federal Constitution contains . . . a right to privacy?

He replied:

Well, the Supreme Court, again, has spoken on that. There is no explicit right to privacy in the Federal Constitution. Montana has a constitutional protection for privacy. That is another area where I think the appellate courts have to proceed very carefully in light of the Supreme Court precedent in the area.

There were no followup questions demanding to know his personal opinion on whether there is a right to privacy in the Constitution. His acknowledgement of controlling Supreme Court precedent, coupled with his statement that ''courts ought to move very cautiously'' in this area, were deemed sufficient to confirm him, as I think they should have been.

I could go on to discuss other confirmed circuit judges with backgrounds similar to Judge Thomas's, but I think the point is clear: Miguel Estrada is being held to a different standard, even though his qualifications are similar to—or exceed—those of other confirmed circuit court of appeals judges.

Let me next turn to the allegation that Mr. Estrada was not sufficiently responsive to questions he was asked at his hearing.

Let's get to the heart of the matter. The real complaint of some of my Democratic colleagues is that no plausible reason to oppose Mr. Estrada's nomination exists. But instead of saying this, they complain that Mr. Estrada refused to criticize the reasoning of settled Supreme Court precedent.

Of course, if Mr. Estrada is confirmed as a lower court judge, he will be bound to follow Supreme Court precedent regardless of whether he is critical of it. This was what he testified he would do if confirmed, and this was the only responsible answer to the questions he was asked about specific Supreme Court cases.

During the course of this debate, I have already mentioned the statements Lloyd Cutler has made on this point, but I believe they are worth repeating because some of my Democratic colleagues keep resurrecting the spurious allegation that Mr. Estrada was not forthcoming at his hearing.

Mr. Cutler, as we all know, served this country well as counsel to Presidents Carter and Clinton. He also served on two national commissions that addressed problems in the confirmation process.

This chart I have in the Chamber shows what he actually said:

Candidates should decline to reply when efforts are made to find out how they would decide a particular case.

That is the leading Democrat lawyer in this town. He has been Chief Counsel to two Presidents, two Democratic Presidents. He is highly regarded as a constitutional expert and a great lawyer not only in the area of Washington, DC, but throughout the country. He is a fine man. I have always respected him, and I do today.

So regarding judicial nominees, he stated, in unequivocal terms, that:

Candidates should decline to reply when efforts are made to find out how they would decide a particular case.

In his opinion:

What is most important is the appointment of judges who are learned in the law, who are conscientious in their work ethic, and who possess what lawyers describe as ''judicial temperament.''

Mr. Estrada's academic achievement, his professional accomplishments, the letters of support we have received from his colleagues—both Democrat and Republican—and his unanimously well-qualified, highest rating by the American Bar Association, all indicate that Mr. Estrada fits this description and deserves our vote of confirmation.

At the same hearing at which Mr. Cutler made his statements about the appropriate scope of the inquiry for confirming judicial nominees, another legal luminary, Boyden Gray, testified. Mr. Gray, of course, served as White House Counsel in the first Bush administration. During his testimony, he told us that two Democratic Senators, who are former Judiciary Committee chairmen, met with him very early in the administration to let him know in no uncertain terms that if the White House were caught asking any potential nominee any questions about specific cases, that nominee would be flatly rejected. Now, that is arrogance at its height, to tell Boyden Gray that or to have that attitude. Surely, the White House should be able to talk to their potential nominees about what their viewpoints are before they nominate them.

On the other hand, Mr. Gray, of course, is one of the most respected people in Utah. Again, Boyden Gray is one of the great lawyers in Washington; like Mr. Cutler, he is highly respected, has been in very responsible positions, and has fulfilled his service to the U.S. Government very well.

As Mr. Gray pointed out, that same philosophy is reflected in the Judiciary Committee questionnaire, which all judicial nominees must complete before the committee will act on their nominations. The questionnaire asked the following:

Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue, or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule on such a case, issue or question?

The clear goal of this question is to deter any White House from getting commitments from potential nominees on how they would rule on specific cases, or commitments that they would overrule certain Supreme Court decisions.

I happen to know the Republican White Houses have acted honorably with regard to this responsibility. I remember during the Reagan years, some of our friends on the other side were constantly questioning whether the White House was trying to influence its judicial nominees during the Reagan administration to vote a certain way once they got on the courts.

I happen to know that that was totally irresponsible on the part of our colleagues because the person who vetted all of these nominees happened to be a former staffer of mine who is now on the Michigan State Supreme Court and one of the great jurists of this country. I know he never asked or told people what they should be doing with regard to their future, after confirmation, on any particular court.

It now appears that some Senate Democrats want to forbid the White House from asking nominees how they would rule on specific issues while reserving that right for themselves. Call it what you will, but this is a double standard if I have ever seen one. More fundamentally, it threatens the very independence of the Federal judiciary that our constitutional system of checks and balances was designed to preserve.

I cannot believe some of the questions that have been asked and some of the statements that have been made about how unresponsive Miguel Estrada was when they were asking him questions about how he would rule when he became a member of the Circuit Court of Appeals for the District of Columbia. Now, they might say, ''We did not directly ask that,'' but that is what was behind it.

A number of Senators on the other side have indicated they need to know the philosophy of these nominees. I think that is irrelevant, as long as the philosophy is that they will uphold the precedents of the courts above them. And to be honest with you, this is going way too far in some ways.

Let's face it, too many questions in the confirmation hearings of President Bush's judicial nominees seem calculated politically to manipulate the judicial selection process and to frustrate the appointment of judges who would refuse to follow a potentially popular course when the Constitution and settled judicial precedent provide otherwise. Miguel Estrada was right not to fall into the trap of criticizing particular Supreme Court cases that he may be called upon to rely upon as a sitting Federal judge.

My colleagues should be commending him for this, not proffering it as a reason to vote against his confirmation. Unfortunately, that is basically their argument, that they should vote against his confirmation because he has abided by what really are rules that have long been time honored in the Senate.

I yield the floor.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DURBIN. 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. DURBIN. Madam President, this is a historic debate on the floor of the Senate. It is rare in our history that the Senate has considered the nomination of the President of the United States for a circuit judgeship and at least the prospect of a filibuster is looming. It is an interesting issue historically that the Senate would reach this point that the minority in the Senate—in this case, the Democratic side of the aisle with 49 Members—would suggest to the majority party that we will stop this nomination by filibuster. I have asked my staff to take a look historically to find out how often that has occurred. It is extremely rare. Maybe the Senator from Utah can illuminate my knowledge. But I am told only in the case of Abe Fortas, who was being suggested as Chief Justice, was a filibuster suggested. The obvious question by those observing the debate is, Why? Why at this moment in time, with this nominee, is the Senate, maybe for the first or second time in its history, considering a filibuster?

Many of us who serve on the Judiciary Committee believe this nomination and this debate is so historically significant that we must consider an extraordinary response by the minority of the Senate. It certainly goes beyond the question of Miguel Estrada, although I will address what he has said and what he has testified during the course of our committee hearing. But it has been my good fortune to serve now for my fifth year on the Senate Judiciary Committee, both under President Clinton, a Democrat, and President Bush, a Republican; both under Chairman HATCH as Republican chairman of the committee and PATRICK LEAHY of Vermont as the Democratic chairman. I have watched the ebb and flow of this process.

I think we have to stop and reflect for a moment about why we are at this moment considering this nomination and taking it so seriously. It goes to our oath of office. When each of us is sworn into the Senate, we walk down this aisle and stand before the Vice President of the United States and swear to uphold the Constitution. And within that Constitution is an explicit delegation of authority to the Senate not to give blanket approval to any President's judicial nominees but to advise and consent. It is natural that the President's party in Congress will always say forget the advice part, just consent, and let us get on with business. But, like it or not, we understand the responsibility of the Senate is to ask the hard questions, to say if any nominee before you will receive a lifetime appointment to the Federal judiciary, particularly beyond the district level, the lower court level, to the circuit level where, in fact, many policy decisions affecting America are made, we want to know who you are. We want to know what you think. We want to make certain we are putting a person in this position of responsibility who can meet the challenge.

The obvious questions are there. We certainly ask whether a person has a background and a knowledge of the law, whether they have a reputation for honesty, and whether they have appropriate temperament. But other questions arise as well, questions as to whether this person seeking a policymaking position on the court who will stand in judgment of laws passed by the Congress is a person of moderation and is reasonable in their outlook. We cannot reach a conclusion on this simply based on press reports. We have to ask the questions and seek the answers. That has been done time and time again with nominees from Democratic Presidents as well as Republican Presidents.

What is troubling to most of us who come to this floor and suggest there is a problem with Miguel Estrada's nomination to the District of Columbia Circuit Court is he was so purposefully vague and so secretive in terms of his own point of view and his own philosophy. This is a man who has academic and legal credentials. He is not a newcomer freshman from a bar exam coming before us. He is a man who, across the street from this building, sat as a clerk in the Supreme Court. He has advised the Justices of the Supreme Court on some of the most important legal issues of our time.

Yet, when we asked him basic and fundamental questions, I was stunned by his efforts to really stonewall, to basically refuse to tell the Senate Judiciary Committee where he stands. In light of that, what is my responsibility as a Senator? When this nominee refuses to disclose the most basic information about who he is and what he believes and what is in his heart, am I at that point to step back and say let us give him the benefit of the doubt; if he doesn't want to answer the questions, so be it? I am not going to do that, and I will tell you why.

As a Member of the House of Representatives, I watched the Clarence Thomas hearings for the Supreme Court. I was stunned when then-nominee Clarence Thomas was asked his views on the issue of abortion, a major social policy and a major legal issue. He wasn't asked on a specific law whether he would rule one way or the other but just on the issue of abortion. Clarence Thomas said he had not really thought about that issue very much.

That is an incredible statement for a man seeking a position on the Supreme Court in two respects. Clarence Thomas was a Catholic seminarian who went to a Conception monastery in Missouri known as Conception Abbey. To think you could go through that training and never have a view on the issue of abortion is absolutely incredible. To think you can be a law student, as Clarence Thomas was when Roe v. Wade was decided, and never have discussed the issue just defies any credibility.

It, frankly, established a line of attack by those who want to go to the highest courts of the land and avoid the tough and hard questions.

The Clarence Thomas tactic and strategy is being followed today by Miguel Estrada. CHARLES SCHUMER, Senator from New York, asked him a basic open-ended question which you can ask any law student in their first or second year. When you look at the history of the Supreme Court of the United States and 200 years of decisions made by the men and women on the Supreme Court, is there one decision you would disagree with? Is there one you could point to and say the Court made the wrong decision? I hope most Americans would say some are fairly obvious; the Dred Scott decision, which basically recognized slavery in this country; Plessey v. Ferguson, which said separate but equal is a fair civil rights standard—the list goes on and on.

Yet, Miguel Estrada, with all of these academic decisions and all of his experience before the Supreme Court, refused to name one decision by the Supreme Court he would disagree with. What does that tell you? That this man is such a blank slate it has never crossed his mind that a decision by the Supreme Court over time has been found to be wrong for this United States, or a decision by the Supreme Court has been found to be violative of constitutional values and principles?

What is going through his mind? The Clarence Thomas tactic—don't answer anything, don't say a word.

I asked Mr. Estrada a question. I sent it in writing to give him a chance to think about it. I asked, In terms of judicial philosophy, please name several judges, living or dead, whom you admire and would like to emulate on the bench.

Listen. If that were a question in a constitutional law course, you would breath a sigh of relief saying, Thank goodness, this is easy. I ought to be able to find one Justice, either liberal or conservative, that I agree with, and maybe one on each side.

He said there is no judge, living or dead, whom I would seek to emulate on the bench in terms of judicial philosophy, or otherwise.

It is breathtaking. This man wants to be taken into the Federal judiciary in the second highest court of the land for a lifetime appointment and is so cautious and so careful he can't name one Supreme Court decision he disagrees with in the history of the United States, and can't name one judge, living or dead, whom he would seek to emulate on the bench.

What does that tell you? It tells you the Estrada nomination is making a mockery of our constitutional responsibility in the Senate.

He has refused to disclose the legal memoranda he has written as a person working at the Department of Justice and for the court. He has refused to answer the most basic questions. And he comes to us and says: Take it or leave it.

We hear that our opposition to him clearly must be because he is a Hispanic, maybe conservative in his views. Excuse me. As a member of the Judiciary Committee, I have repeatedly voted in favor of conservative nominees from the Bush White House. I understand this is the President's prerogative, but I have tried to find in each of them a reasonable approach to the law and a reasonable understanding of the philosophy of law which will give them a chance to be at least moderate in their approach on the bench. That is something all of us should seek to do.

I will have an opportunity later this morning to come to the floor.

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

Mr. DURBIN. I am happy to yield.

Mr. REID. I ask the Senator from Illinois, who had a long and impressive record in the House of Representatives, is he aware of the stand that the Hispanic caucus has taken on Miguel Estrada?

Mr. DURBIN. I am. It is instructive that this Hispanic nominee to such a high court is opposed by the Hispanic caucus. They have sat down with Mr. Estrada in private and asked him questions about his views on issues, and they have come out in opposition to his nomination. There are many—myself included, and I have appointed Hispanics to the Federal bench in Chicago—who believe there should be more Hispanic nominees. Under the Clinton administration, quite a few nominees were brought before the committee, and many were approved. That should continue. But doesn't it tell you something that this high level, high profile appointment is opposed by the Hispanic caucus?

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

Mr. DURBIN. I am happy to yield.

Mr. STEVENS. Is the Senator aware that Republican Members of the House of Representatives who are not in that caucus because it is purely a Democratic caucus do support this nominee?

Mr. DURBIN. There are those who support this nominee.

Mr. STEVENS. I mean in the House of Representatives. The Senator is trying to leave the impression that people of Spanish background in the House of Representatives all oppose this nominee.

Mr. DURBIN. I didn't say that. I said, if you check the record, that the Hispanic caucus has come out in opposition.

Mr. STEVENS. Which is all Democrats.

Mr. DURBIN. At this point, the vast majority of those serving of Hispanic origin are Democrats.

Mr. STEVENS. It is all Democrats.

Mr. DURBIN. I am sure the Senator from New York will catalog all the Hispanic organizations that oppose this nominee. It is not just the Democratic members of the Hispanic caucus. I see my colleague has come to the floor. I yield to the Senator from New York.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from New York.

Mrs. CLINTON. Mr. President, I appreciate the many points made by my colleagues with respect to this nomination. As I have listened to the debate, not having been a member of the Judiciary Committee, I have tried to educate myself on what this is all about. I put myself into the position of somebody at home who maybe just has turned on C–SPAN or is flipping channels and sees us talking about something. They are trying to understand what this is all about.

I thought I would come to the Chamber and perhaps talk a few minutes about what I think it is about and to try to answer some of the questions that might be in the minds of New Yorkers and Americans.

First, it is about the nomination of a gentleman to become a judge on what everyone, regardless of what party you are or where you live in the country or whether or not you are a lawyer, believes is the second most important court in our land. Everybody knows under our system of government the Supreme Court is the supreme court. It is the most important. But as we have gone through many decades of courts hearing cases, of new causes of action for people to be able to bring cases, what has emerged very clearly is that because the Supreme Court cannot take every case that has to be finally resolved one way or the other, many of the most important cases that are really significant to people living from one end of our country to the other are finally decided in the District of Columbia Court of Appeals.

This is the court that sits here, and it has some special jurisdiction about environmental matters and labor matters and energy matters. This is a really big deal court. This really matters. It is not just any court. It is the DC Court of Appeals.

All of our courts of appeals are important and because as you go up the Federal court system, you start with all of the district courts that are in every State and sometimes, depending upon the size of the State and many parts of the State and decisions there, if you are not satisfied with them, get appealed to the courts of appeal. It is like a pyramid. It starts narrowing because the numbers of cases that can be heard, the kinds of issues that can be heard begin to narrow because, clearly, choices have to be made.

Not everybody who starts a lawsuit in a Federal district court will be able to get to the court of appeals. Even fewer will get to the Supreme Court.

When we face a decision of giving someone a lifetime job, we have to take that seriously. We have to take it seriously whether it is a district court or a court of appeals or the Supreme Court. Actually, that is the way our Constitution set it up.

If the Constitution, which I think is, other than the Bible, the most amazing document the world has ever seen, if the Constitution meant for the President to say OK, this is who I want to sit on that bench, and just pick out any person who the President chose and just send them to the bench, the Constitution would have said that. But that is not what the Constitution says. The Constitution very clearly sets up what we call a balance of power. That is an important concept. That is critical to how successful we have been as a nation. It is absolutely fundamental as to our democracy continuing to function over all these many years because we have a balance of power.

We know human beings are fallible. We know that every one of us is flawed, and people get an idea that they are bigger than they should be; they want more power. And we get this balance of power in our Constitution which has worked extremely well for our country.

Critical to that balance of power is the role that the Senate plays in advising and consenting with respect to the President's nominees for the Federal court. It is right there in the Constitution. This is not something that Democrats or Republicans have made up for the purpose of this debate. It is fundamental to our Constitution.

As a result, those of us who are honored to serve in the Senate—and there haven't been very many over the course of our history; fewer than 2,000 people have sat in this most important deliberative Chamber in the history of the world—are bound by the Constitution. We take an oath to the Constitution. We want to defend and protect the Constitution.

Therefore, when we look at our duties, among our most important duties are advising and consenting when it comes to judicial nominees for lifetime positions on the courts established under our Constitution.

All of us take that responsibility seriously. But whether we are confronted by a nominee to the DC Court of Appeals or certainly, if we are confronted by a nominee to the U.S. Supreme Court, maybe it keeps us up a little longer at night. It makes us feel even more strongly that we have to make sure we are doing the right thing. We have to ask the hard questions. We have to get the information. Because once we sign off on it, that person is there for life.

It would be like somebody hiring someone to do an important job. You want to know that the person you are hiring to be a doctor or nurse in your hospital, or to supervise the construction of your house, that these are people qualified, able to answer your questions, that you confidently believe can get the job done.

That brings us to what we are debating today, a very important court, lifetime appointment, second only to the Supreme Court in the number of important cases decided, rooted in our Constitution where we as Senators, representing the constituents we serve, are required, are duty bound under our Constitution to advise and consent with respect to the President's nominations.

Now, I have voted for many judges since I have been in the Senate over the last 2 years, and those judges are not people, by and large, I ever knew personally or with whom I had any direct dealings. But the Judiciary Committee, which consists of Republicans and Democrats, is charged with the responsibility of doing the work of trying to figure out whether somebody is qualified and whether they should get this lifetime appointment. They are the first of our colleagues to advise and consent, or advise and not consent. I know the members of the Judiciary Committee on both sides of the aisle, and they take that responsibility very seriously.

With respect to Mr. Estrada, it has been a hard task to fulfill the responsibilities entrusted to us in the Constitution to advise and consent because there is no information. It is as though somebody walks into the hospital and says: I want the very best doctor you can give me for the condition that ails me, and I want to know where that person stands on the procedures he is going to use on me; I want to know what he thinks about postoperative treatment, I want to know what drugs he believes are best, and I want to know where he ranks in terms of his belief about whether or not I can be cured. Well, I am sorry we are not going to give you that information. Here is your doctor; you take him.

We are faced with a nominee who has thus far refused to answer legitimate questions about what kind of a judge he would be, where he stands on the great issues of our time and of the past, what his positions are in thinking about these fundamental rights we cherish as Americans, whom he respects or admires on the judiciary already, or with whom he would compare and contrast himself. We cannot get answers to any of those questions. I don't necessarily hold Mr. Estrada responsible for that. I know a little bit about the confirmation process. Having spent some time on the other end of Pennsylvania Avenue, I know he is doing what he has been told to do. He has been told to sit there, don't say anything, don't answer the questions, dodge, duck, don't leave any record, don't let anybody pin you down, and, boy, we are just going to go right through the opening that is given to us and make up this case that will get you on the circuit court.

Well, I suppose that is a strategy, but it is an unconstitutional strategy. It is a strategy that is absolutely contrary to what the Founders intended when they spent all those hot days in Philadelphia writing the Constitution. They expected advise and consent to actually be the responsibility of Senators. How can you advise and, certainly, consent if you cannot even get basic information about where someone you are going to give a lifetime job to stands on all these important issues?

It is not as though members of the Judiciary Committee didn't try. They certainly tried. Led by my colleague and friend from New York, Senator SCHUMER, they tried every which way they knew. You have already heard this morning from Senator DURBIN of Illinois how questions were phrased and, if he could not get an answer from Mr. Estrada, how they would be rephrased, trying to get some information. It was a classic stonewall; there is no information, no record, nothing to which anybody can point.

Now, that puts a Senator in a very difficult position. If you are just going to do what the White House tells you to do, what the President tells you to do, without regard to your constitutional duty to advise and consent, then it is an easy issue; you stand up, salute, and you vote, and that is it. But if you take seriously your constitutional duty, then it is not so easy. I have to go back to New York, and people will say: What kind of a judge do you think this will be on the court that hears all these important issues? I have to say I don't have a clue because we cannot get any information about him. We cannot discharge our constitutional duty to advise and consent.

I know my friends on the other side of the aisle say: Well, there is no information; this man is a blank slate; he has never been a judge; we have no record; he has never been a law professor; he hasn't put a lot of his thoughts down in writing; so you have to take what you see. Here is this gentleman, and you just have to take it on face value that he will fulfill the rather awesome responsibilities for which he has been nominated.

I just don't think that is good enough. I am just amazed that my friends on the other side of the aisle are willing to abdicate the Senate responsibilities embedded in the Constitution, because when you stonewall the Judiciary Committee, when you refuse to answer questions, when you act as if you just came out of nowhere and don't have an opinion on anything, everybody knows that is a charade. Everybody knows that. That is what you were told to do in the White House; therefore, you are sitting there, not giving an answer, because if you gave an answer, even some of the Republicans, people of the President's own party, might be disturbed.

I went back and looked at some of the questions that were asked. I have not been in law school for a very long

time, but I cannot imagine any law student who, with a straight face, could say I don't have an opinion on any Supreme Court case—not one since the beginning of our Republic. I don't think that is a person who belongs on the appellate bench. If you don't have an opinion, move out of the way and let somebody who has opinions, who understands the law, who understands the Constitution, who knows what the Supreme Court has decided—let that person take the position on the appellate bench.

It is hard to imagine someone sitting before the Judiciary Committee and saying he has no opinion on major Supreme Court cases. I find that, frankly, unbelievable. Nobody believes that. My colleagues on the other side are willing to go forward with this charade and pretend that the man has no opinions when everybody knows he has opinions. He could not be in the position he is in without opinions.

I pulled a quote from Chief Justice Rehnquist which I think really bears on this. Here is what Chief Justice Rehnquist had to say:

> Since most justices [you could substitute ''judges'' as well] come to this bench no earlier than the middle years, it would be unusual if they had not by that time formulated at least some tentative notion that would influence them in their interpretation of the sweeping clauses of the Constitution and their interaction with one another. It would be not merely unusual but extraordinary if they had not at least given opinions as to constitutional issues in their previous legal careers.

Well, that is not me talking. That is Chief Justice Rehnquist. I think you could certainly conclude from that that this nominee must be, therefore, extremely unusual—so unusual that I don't think he deserves to be confirmed to the bench. Someone who has no opinions clearly does not deserve the kind of responsibility and honor that this appointment suggests.

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

Mrs. CLINTON. Yes.

Mr. DURBIN. Is the Senator familiar with the statement made by the chairman of the Senate Judiciary Committee, Senator HATCH, before the Federalist Society when he said:

> Many of President Clinton's nominees tend to have limited paper trails. Determining which of the President's nominees will become activist is complicated and will require the Senate to be more diligent and extensive in its questions of a nominee's jurisprudential views.

Mrs. CLINTON. Mr. President, I have heard about that, I respond to my friend from Illinois. There is an old colloquial saying: What is good for the goose is good for the gander. It seems to me, if that is the standard the current chairman of the committee adopted in previous years, then for the sake of consistency that ought to be the standard today. But, of course, that is not what this is all about, as my good friend from Illinois knows.

What was an appropriate standard in the previous administration, when I believe the President nominated mainstream people willing to answer questions, willing to present opinions, is no longer applicable now that there is a different President. I think that is a very dangerous precedent, and I do hope that Americans understand this: That the Constitution does not change from administration to administration.

The advise and consent role stays there for the Senate to exercise. If the Senate willingly abdicates this role and decides, I have a President of my own party in the White House now, so I better not ask any questions because I may not like the answers, that is, I believe, a direct repudiation of our constitutional obligations.

I know my good friend from Illinois asked a number of questions of Mr. Estrada seeking some enlightenment, some information on the basis of which the Senator from Illinois could exercise his advise and consent role. The best I can determine, it is very hard to see that the Senator got any answers.

I know in previous years, with many of the same people on the committee, very specific, explicit questions were asked of nominees. I know that many of the nominees who were nominated by President Clinton were asked very detailed questions about their views of Supreme Court and circuit court cases, and to the best of their ability, those who received hearings which, of course, was not everyone who was nominated by the President, but those of President Clinton's appointments who received hearings felt duty bound to answer those questions, and they did so. They were asked questions such as: Please define judicial activism. Do you agree with the Supreme Court's decision in a specific case, such as United States v. Morrison? If you were a Supreme Court Justice, under what circumstances would you vote to overrule precedent in the Court? And on and on—very specific questions about the Constitution, about our Nation's laws, about Supreme Court decisions.

The nominees from President Clinton believed that was their obligation, and that is what they were instructed to believe from the other end of Pennsylvania Avenue.

Unfortunately, many of them were not even given hearings and many who were given hearings were not given votes, and even some who were given votes were never brought to the floor. That is then. What I am worried about is now and how we are going to discharge our constitutional responsibilities.

If one looks at the long list of people who have appeared before this committee in the past, it has always been the practice to seek information that committee members thought would be relevant to exercising their constitutional duties, to make sure this person at least had an opinion about the Supreme Court decisions, to make sure this person was not just someone sitting there to fill a chair, but could actually discharge the duties that were about to be considered for him.

What bothers me deeply is what I see: a developing of a difference in standards. We are a country that has lasted so long because, among other reasons, we believe in the rule of law. It is not people but laws. That is why we invest so much in our Constitution and setting up courts and ensuring people who serve on those courts for lifetime positions are of the right stuff—not that they are conservative or liberal but that they are people who will not be swayed by political or partisan considerations, but will do the best with their God-given ability the job with which they are entrusted, which is to continue the rule of law and to serve justice.

Therefore, it is troubling that when we had one President of one party, the same people in this body wanted to ask everything they could ask. They wanted to know what meetings you went to that had nothing to do with your law practice. They wanted to know how you stood on referenda as a citizen in States that use referenda to set laws. They wanted to know all this, and the people who were nominated complied. They thought: I do not see the relevance of it, but if this is what is requested, we will comply with it.

Now when we are just focusing on the core issues about the suitability of someone for a lifetime appointment to the second highest court in the land, we cannot even get information that one would expect to get from a first year law student.

Obviously, a political decision has been made by the administration that ''don't ask, don't tell'' applies to judicial nominees and, therefore, we are in a position where we cannot discharge our constitutional responsibilities.

It sort of surprises me, as well as disappoints me, that the administration is taking this position. I guess we have to expect it because time and again this administration has proving itself to flout the rule of law, to be very concerned with secrecy, unwilling to share information with the elected representatives of the American people, and, therefore, a pattern seems to be developing.

I do not care whether you are a conservative or liberal from New York, Texas, California, Alaska, Hawaii—wherever—it is not good for our country to be adopting a policy that elevates secrecy over openness when it comes to judicial nominations and many other matters.

On many grounds, therefore, I stand here today quite troubled about what is developing with respect specifically to Mr. Estrada, with respect to our Constitution, with respect to the refusal by this administration to provide information legally requested by the Senate to fulfill its obligations.

I do not understand why we are in this position. I really do not. I have gone back and read the quotes from the distinguished chairman of the Judiciary Committee, someone I consider a very thoughtful leader on legal issues,

and yet I do not follow the logic of having one standard for one administration's nominees and another standard for this administration, and the willingness of the Senate to cede our constitutional responsibilities. That strikes me as going right to the heart of what the Senate is and should be.

Before I arrived in the Senate, I knew it from a distance, as an admirer, a law student, a lawyer, and a law professor in my previous life. I understood the critical role the Senate played, but I have to confess until I actually came, sat in one of these chairs, looked around this august Chamber, and listened to my mentor and leader, Senator BYRD, describe to us how we happen to be here—not by some accident or bolt of lightning, but because of the genius of our Founders building on the ideas of those who came before, and that every generation of Americans has been obligated to continue this extraordinary experiment in constitutional democracy. We did not get it 100 percent right at the beginning. We had a lot of work to do. And the courts played a major role in saying, wait a minute, America, you say all these nice words. You act like these are your values, all men are created equal. What about black men? What about Native Americans? What about women? Do you not think we ought to kind of make reality coincide with rhetoric and really live up to this Constitution?

So for more than 200 years, that is what we have been doing. It has been a partnership: The executive branch, the legislative branch, the judicial branch. Decade after decade, we have taken stock of ourselves, determining what our real bedrock values are as a nation, and making it absolutely clear we would continue to try to perfect our Union, to live up to those extraordinarily high ideals that no nation in the history of the world had even put down on paper, let alone tried to fulfill.

Part of what we are facing today is an agenda by some to really change the direction of our country. Maybe it is a decision the people of the United States would support if they ever got to vote on it. Maybe it is a decision the people in this Chamber would support if we ever voted on it. But that is not how it is occurring. It really is by secrecy and stealth. It is by nominees to our second highest court who will not tell us what they believe on the most important issues facing us as a nation. It is a deliberate attempt to turn the clock back.

I read the documents that have come from organizations that work hand in hand with the administration about vetting and nominating nominees. I know they refer to the Constitution in exile. By that, I guess they mean the Constitution that expanded the civil rights, human rights, and opportunities of people in cases such as Brown v. Board of Education. That is really sad, that their view of America is so narrow. They want to close doors, take up ladders of opportunity, turn the clock back. I think that is very sad. Certainly they are entitled to their opinion, but their opinion should be explicit. If that is the agenda, then let us have a democratic argument about it. Let's have a vote about it. Let's know what we are voting on, so when decisions get reversed, rights get taken away, people know it was not just foisted on them by secrecy and stealth. It happened because of a debate, which is the heart of democracy, where people stood on both sides of this Chamber and said I do think we have gone too far and others could say, no, we have not gone far enough and where is the middle and how do we come to some resolution.

Why it is so important we focus on Mr. Estrada is because he is a stealth nominee, because he will not answer questions, and because of what we are attempting to determine as to our constitutional responsibilities.

I have reviewed the transcripts of Mr. Estrada's hearings in front of the committee. In a moment, I will relay several of the more concerning areas where we lack information. I want to highlight what two of my colleagues on the Judiciary Committee have said about both the written information, which is very limited, and the oral response to questions from Mr. Estrada. Senator KOHL from Wisconsin has said, and I quote, I personally have voted for 99 percent of the nominees that have come before this committee. In all of those cases, I felt that I knew what we were getting when we voted. There was some record of some writings that gave me an idea about how the nominee would perform as a judge. We do not have much of a public record or written record.

Addressing Mr. Estrada, Senator KOHL went on, you have opinions, of course, on many issues, I am sure, but we do not hardly know what any of them might be, and some of us might have a tough time supporting your nomination when we know so little.

Upon the eve of her vote on Estrada's nomination before the committee, Senator FEINSTEIN said: Over the last few days, I have been reviewing background materials about Miguel Estrada, talking to those who have concerns about him, and I have reread the transcript of Mr. Estrada's hearing. I must say that throughout this process, I have been struck by the truly unique lack of information we have about this nominee, and the lack of answers he has given to the many questions raised by members of this committee.

Let me take a minute or two to highlight some of the important issues that come before the DC Circuit and explain more fully why Mr. Estrada's answers are just not satisfactory. I do not expect to agree with the vast majority of the judges this administration sets forth. I have a different idea about the Constitution, about the philosophy that should govern the rule of law. I am fully prepared to say that. I have already voted for about 100 people I probably do not agree with on a lot of things, but they played by the rules. They respected the Constitution. They answered the Senators' questions, not my questions. I am not on the committee, but I trusted my Republican and Democratic colleagues who were on the committee would ask good questions, as they always do, get answers, and then they would make a judgment.

We have confirmed something like 100 judges in the last 2 years. I trusted the Judiciary Committee, which is the first line of defense on advise and consent, to do the hard work. I would then assess that and make my decision. I cannot do that in this case. I wish I could. I might still vote against the nominee because I might not agree with what he said in his opinions, but at least the process would be respected, the advice and consent clause of the Constitution would be honored.

That is not the case. If we look at the individual areas of concern, I think we begin to get an idea why Mr. Estrada does not want to answer questions and why the administration does not want him to answer questions, because even my colleagues on the other side of the aisle would have some really hard questions if the nominee were permitted to answer questions.

Let's start with the environment. The fact is the DC Circuit hears almost all of the cases challenging environmental rules and regulations issued by the Environmental Protection Agency. These are extremely significant decisions. The court decides issues of national importance. It decides issues of great local and regional importance. We may disagree about the best way to protect the environment, but if we are going to go down a road where we pack the DC Circuit with judges who do not have the idea that protecting the environment is a Federal responsibility, we should know that. We should know what we are getting. We are not buying blindly. We should know what we can expect. Maybe then the Congress, if it so chose, could rewrite laws or be clear about congressional intent, but in the absence of knowledge we do not know anything.

The court, in a 1999 decision, American Trucking Association v. EPA, demonstrated not only its deep division but its potential for circumventing the President and congressional intent. In that case, the DC Circuit decided not to review a ruling that struck down Clean Air Act protections against soot and smog. In fact, in the dissent, one of the judges said the court's ruling ignored the last half century of Supreme Court jurisprudence. When the case got to the Supreme Court, in a decision written by Justice Scalia, the DC Circuit was reversed. This was not a Republican or Democrat or liberal or conservative decision. This was a decision based on the precedence, the jurisprudence, the law.

Many of the cases that the circuit court of appeals decides in DC do not

go to the Supreme Court. Therefore, we have to be conscious of what a nominee's position is on environmental issues.

Across the board, environmental groups have opposed Mr. Estrada's nomination because he has consistently evaded questions on how he might consider cases of vital environmental interest.

With respect to labor decisions and the National Labor Relations Board, the DC Circuit hears many of those labor and worker-related cases. The court has decided more than 1,000 labor cases over the years. The National Labor Relations Board administers the National Labor Relations Act, which is the primary law that governs relationships between employers and employees. Of course, that is at the root of our economy. We want people to be productive and work, but we also want them not to be taken advantage of and mistreated. There is a balance of power, to go back to my favorite concept, embedded in the Constitution. The Congress has worked it out over the last 50 years where workers have some rights, employers have some rights, and there is a system for adjudicating disagreements and grievances. Time and time again, the Circuit Court of the District of Columbia has ruled on these decisions and has consistently said that if a decision from the National Labor Relations Board is supported by substantial evidence, the courts are supposed to uphold it.

Unfortunately, many people are concerned and have spoken out against Mr. Estrada's nomination because they have no way of knowing what, if any, opinions he has on these critical issues. It is a fair set of questions to ask and to receive answers about.

When it comes to energy, certainly one of the most important issues throughout our country, the DC Circuit has exclusive jurisdiction over cases coming from the Federal Energy Regulatory Commission. That is called FERK. These cases are often up in the court of appeals, trying to figure out what is a just and reasonable rate of return for oil, gas, and electric companies. Therefore, the cases coming out of the DC Circuit affect everybody who has any power that is generated by oil, gas, and electricity around our country.

In many of these cases, not only individuals but States have big stakes in their outcome. When we think about ruling on these cases, it is only fair, since it may affect my energy bill, that I have some understanding from the Judiciary Committee whether this nominee has opinions, past track records, clients, anything that might affect his rulings.

Similarly, the DC Court has exclusive jurisdiction over cases arising under the Federal Communications Commission. Again, that affects every one of us. Do you have a television? Do you have cable? Do you enjoy the mass media, the broadcast media? Do you have a telephone? Do you know what rates you pay ultimately for long distance? Do you have a wireless phone? All of these issues fall under the FCC. Without any written record, again, we cannot get answers to questions about matters that will affect every American.

Some of this may sound technical, and I understand that, but it is easily understood that the stark reality is the DC Circuit controls so many of the rules under which we live every single day in our homes and workplaces. This is not some abstract speculative concern about what might happen to somebody else. What happens in this DC Circuit affects each of us. That is why I am so concerned that in the absence of information, in the absence of the Judiciary Committee believing they have been able to make an informed decision and have not just done what they were told to do by the administration, we may be setting up the people we represent for all kinds of changes in their lives that were never aired publicly, were never given due consideration, but which will affect every one of us.

That is why this nomination cannot be handled lightly, why it cannot be rammed through, why the Constitution and the rule of law, the role of the Senate to advise and consent, need to be respected.

When we think about where we are right now in the 21st century, we know we have lots of big challenges ahead. We have national security challenges, homeland security challenges, economic challenges, challenges concerning health care, education, the environment, and energy. There is a lot that lies in front of us. We need to bring to our considerations the same thoughtful, careful analysis that our predecessors in this body brought to theirs.

I am very worried that we are making decisions at home and abroad that will affect our country and our children for generations to come. Certainly, judicial decisions fall into that category. The DC Circuit has served as kind of a bullpen for the Supreme Court. More judges have been appointed to the Supreme Court from the DC Circuit than from any court in the land. That is often where the President looks to find somebody qualified who understands the full range of constitutional and legal issues that will very well end up in the Supreme Court. In fact, the DC Circuit has given us three of the nine current Supreme Court Justices—Justices Ginsburg, Scalia, and Thomas.

Therefore, I have to be doubly careful about my vote. I don't know what will happen on the Supreme Court. I wish every one of the Justices good health and a lot of energy for decades to come, but none of us knows where we will be tomorrow. We have no way of predicting our fate. It could turn out that there might be an opening on the Supreme Court and it might very well be someone from the DC Circuit who could be chosen. So far as I know everyone else serving actually answered questions, offered opinions, went through the process, gave the Senate the opportunity to exercise our constitutional duty to advise and consent.

If Mr. Estrada joins the court and all of a sudden an opening were to occur and the administration said to themselves, this was so good, we got somebody through that nobody could even ask a question of or get a straight answer from, let's just nominate him for the Supreme Court and do the same thing, run the same drill, then I would hope my colleagues on both sides of this aisle would say, no, no, I cannot let that happen to my Constitution. I may love my President but I love my Constitution. Presidents come and go but the Constitution remains.

We, at our peril, undermine it, disrespect it, disregard it, and this body, at its peril, gives up its constitutional prerogative rendering it a debating society, at best, and irrelevancy, at worst. Here we are, debating not just a nomination but debating the Constitution, debating the rule of law, debating whether this Senate and its Judiciary Committee will be able to fulfill its constitutional responsibility. These are high stakes. Talking about many of the nominees to the district court of appeals, I just can't help but use a little history. I think those who do not know history are condemned to repeat it. I know there is always a lot of revisionist history that goes on to suit political, partisan, ideological—even commercial ends. But these are the facts.

The former President nominated highly qualified people for the DC Circuit. Unfortunately, of those three nominees, two of them were given a hearing, one was not; two were not given a committee vote, one was. It took from 15 to 18 months for no action, no vote, and one out of three was confirmed. We didn't even get the courtesy of a vote, even though tons of information was turned over on the first two of these nominees.

From my perspective, that is water under the bridge. But I think it is telling because the Constitution did not change. As far as I know, the same Constitution we had in 1990 is the Constitution we have in 2003. The advice and consent clause didn't change, as far as I know. The advice and consent responsibility was the same throughout the 1990s as it is now in the 21st century. Some nominees went to extreme lengths to provide every scrap of paper, every opinion requested, in order to demonstrate their good faith and their respect for the Senate, their respect for the Constitution.

In a previous time, I know my good friends on the other side of the aisle, were he to have sat there and said, I have no opinion about anything, would have said: You are not getting my vote. You should not even get a hearing. You don't deserve one. Because somebody

who comes before this committee and says he has no opinion about anything is clearly gaming the committee. Everybody knows that. I do not think the committee would have stood for it in the 1990s.

The Democrats this time voted unanimously against Mr. Estrada on the basis of his failure to answer questions and failure to appropriately and respectfully provide written material that was provided in previous instances with respect to Justice Rehnquist and Justice Bork. That material was not provided with respect to Mr. Estrada. So I think we really obviously have a double standard. It is an ideologically driven double standard.

I think that is a mistake. I think it is always a mistake when we try to push through something that in the long run undermines the balance of power, the constitutional framework, the role and responsibility of the Senate.

I have received countless letters, e-mails, and telephone calls about this nomination. Many of the people have expressed their concerns about the process in which we are engaged. A letter from a Utica, NY, constituent, Anna Maria Convertino, sums up the objections my office has been receiving. She gave me permission to quote from her letter. Here is what Anna Maria from Utica, NY, has to say:

I am writing to urge you to filibuster the nomination of Miguel Estrada for the District of Columbia Court of Appeals by voting no on cloture. Estrada has refused to answer questions about his commitment to abortion rights or basic civil rights. The burden should be on the nominee for a lifetime appointment to show that he deserves to serve as a Federal judge. Estrada's lack of an established record and unwillingness to answer questions means that he has failed to make this showing.

I certainly appreciate Anna Maria contacting me and summing up so well the problems with this nomination.

Many people who have followed this closely, many major Latino and Hispanic organizations across our country, and in New York, share those doubts. The Congressional Hispanic Caucus, which has members from New York City to LA, from Texas to Chicago, interviewed Mr. Estrada. After that interview and reviewing his credentials, they concluded that he failed to merit their endorsement. Today, the caucus again opposes his nomination along with the Mexican-American Legal Defense and Education Fund, the Puerto Rican Legal Defense Fund led by the able work of my constituent, Angelo Falcon; the National Association of Latino Elected and Appointed Officials, the California La Raza lawyers, the Southwest Voter Registration Project, the Illinois Puerto Rican Bar Association, and on and on and on.

Mr. REID. Mr. President, will the Senator from New York yield for a question?

Mrs. CLINTON. I certainly will.

Mr. REID. The Senator was on the floor this morning when there was a colloquy between this Senator and the senior Senator from Illinois. There was a question that arose as to the number of people in the Hispanic Caucus in the House. I have since checked that and determined there are 20 in the Hispanic Caucus in the House. The only Hispanic Members of the House of Representatives, I am told, who are not members of that Hispanic Caucus, are three in number. So it is 20 who are members of the Hispanic Caucus and 3 who are not.

Mrs. CLINTON. I appreciate the clarification from my good friend from Nevada. Certainly, having worked with the Congressional Hispanic Caucus over many years, I know they are a national organization, representing people throughout our country. They did not reach this conclusion lightly. They interviewed Mr. Estrada. They asked questions. They sought information. They talked to other people who knew him, had worked with him. They really tried to do due diligence. They tried to do the job that the Judiciary Committee should do, trying to get at what is it about this nominee that we can either oppose or support. At the end of their inquiry and investigation, they concluded that they could not support him.

I am sure that was a difficult decision, from talking with my friends in the Hispanic Caucus. It was a very tough decision because on the face of it, this looked like a no-brainer: Line up behind Mr. Estrada, vote for him, put him on the DC Circuit, and everybody can go home and say: Look what I did; I voted for this nominee.

But that is an abdication of responsibility. That is truly the kind of action that undermines faith in our democratic process—to abdicate your intelligent, careful analysis of someone just to be able to check a box. I thought it was very courageous of the Hispanic Caucus to say: We have looked into this, we have investigated it, and we cannot support him.

Therefore, please—please—at least try to find out what this man stands for, what he would do, what he believes in, because we have not been able to do so.

Part of why many of us are coming to the floor is that this is a troubling nomination on many grounds. I know there are those, such as my friends in the Hispanic Caucus, who are troubled by the nominee and what he stands for or doesn't stand for, what he would do or not do, and the failure to get information.

I know my colleagues on the Democratic side in the Judiciary Committee were extremely troubled—including people, as I have just quoted, who historically vote with a President on a nominee—and were very pained about having to say, I can't do it this time.

I know, too, that many of us are concerned because, if the Judiciary Committee cannot do the work, we can't do the work. We can't call Mr. Estrada into our office and put him under oath and ask him the questions that he wouldn't answer when my colleagues from Illinois and from New York and from Wisconsin and California and everywhere else could not get answers out of him.

But fundamentally, even beyond the procedures—the failure to answer, the kind of stealth campaign that the administration is running, the don't ask, don't tell—the nomination process is the Constitution. I think there are certain duties, whether you are a constitutionalist, an originalist, a Federalist—whatever you are, whatever the label you want to pin on yourself might be—there are certain duties that cannot be delegated. There are responsibilities embedded in the Constitution that were given to us by our Founders in Philadelphia, and among the most important is the importance of the role of the Senate to advise and consent.

Mr. HATCH. Mr. President, will the Senator yield for a question?

Mrs. CLINTON. Certainly.

Mr. HATCH. Is the Senator aware that Miguel Estrada has argued 15 cases before the Supreme Court?

Mrs. CLINTON. Yes, on behalf of clients—not on behalf of himself.

Mr. HATCH. He won 10 of them. Right?

Mrs. CLINTON. I am aware of that.

Mr. HATCH. Has the Senator from New York read any of those briefs that he filed in that court?

Mrs. CLINTON. I have reviewed a number of them. I certainly am no expert on the cases, but I concede the point to the chairman that Mr. Estrada has argued cases on behalf of clients whose positions he was advocating and has done so extremely well.

Mr. HATCH. And he has done it on behalf of clients as an attorney should.

Mrs. CLINTON. Indeed. But he is not representing his clients before the Judiciary Committee. He stands there as Miguel Estrada for a potential lifetime appointment to the second highest court in the land. Therefore, he can no longer speak for clients. He must speak for himself.

Mr. HATCH. He did.

Mrs. CLINTON. That is not the conclusion reached by the Democratic Senators, nor by the Hispanic Caucus, nor by many who have followed this nomination closely—to ask a man of his record before the Supreme Court whether he had an opinion about any Supreme Court decision and for him to say, no, he did not, is absolutely unbelievable.

Mr. HATCH. Is the Senator aware that the Hispanic Caucus in the House is made up of all Democrats because they would not meet the Republicans who were left out of the caucus?

Mrs. CLINTON. I am very well aware of the makeup of the Hispanic Caucus. I have worked with members of the Hispanic Caucus for many years.

I think it is also fair to look at the geographical diversity and the experience base of these people who represent Americans from New York to L.A. and from Texas to Chicago who went to the

trouble to interview the nominee and concluded by their own efforts that he was not going to be acceptable in part because they couldn't get adequate information on which to base a good decision.

Mr. HATCH. Is the Senator aware that the Democratic Hispanic Caucus in the House was actually almost equally divided as to whether or not to support Miguel Estrada, but the majority made the——

Mrs. CLINTON. I think what I judge is by what people say at the end of a conclusive discussion and what they determine based on their own consideration. Much of my concern is based on the Constitution and the role of this body—not on what people did or didn't do, although I think that is instructive, and I think it is very helpful. It does have sway with me because I don't believe we have developed an adequate record in the Judiciary Committee that would give even those of us who might end up opposing his nomination—I don't know that for a fact—an adequate basis on which to exercise our constitutional responsibility.

Mr. HATCH. Will the Senator yield again for a question?

Mrs. CLINTON. Yes. I will.

Mr. HATCH. I will try not to interrupt the Senator anymore, but the point I was making with the briefs in the Supreme Court—15 of them and more—is that there is a record from which you certainly can determine legal reasoning, as well as an extensive stack of records of the Judiciary Committee hearings. And let me say this. Those hearings were conducted by none other than the Senator's colleague from New York, Senator SCHUMER, and other Democrat Senators who said the hearings were fairly conducted. Is the Senator aware of all of that?

Mrs. CLINTON. I say to my good friend from Utah, I am aware of all that. But I have to respectfully point out several responses.

A long time ago I used to practice law. I represented a lot of clients of different kinds, all sorts of folks. Their views and their positions were not necessarily mine. I won some and I lost some in the trial court, in the appellate court, and in the administrative hearing room, but I do not believe that any of my clients spoke for me. My advocacy on behalf of clients was not the same as my positions about the law, about constitutional issues, and about many other matters. So the fact that someone has practiced law and that someone has argued cases is a factor to take into account. I certainly believe that is a significant factor. But that is not determinative. That is not in any way decisive when it comes to giving someone the opportunity to have a lifetime position on the second highest court in the land.

Mr. REID. Mr. President, will the Senator from New York yield for a question?

Mrs. CLINTON. Yes, I will.

Mr. REID. I want the Senator to know that I met with the chairman of the Hispanic Caucus and other members of the caucus, plus a number of people on a conference call a few days ago—in the last week or 10 days. Is the Senator aware that on that telephone call I was told that every member of the Hispanic Caucus—all 20 of them, every one of them—opposed the nomination of Miguel Estrada to be a member of the District of Columbia Court of Appeals?

Mrs. CLINTON. The Senator is absolutely correct. In fact, I have a copy of the September 25, 2002, letter written by the Congressional Hispanic Caucus to the then-chairman of the Judiciary Committee announcing the decision to oppose the nomination.

Mr. HATCH. Will the Senator yield on another point?

Mrs. CLINTON. Yes.

Mr. HATCH. Is the Senator aware that every Republican Hispanic member in the House is totally in support of Mr. Estrada?

Mrs. CLINTON. I am well aware that there are three Republican Hispanic Members in the House who are not members of the Hispanic Caucus. I understand that.

Mr. HATCH. And that there are four of them.

Mrs. CLINTON. I would be more than happy to have them send a letter explaining the reasons as to why they support him other than the fact they have been told to do so by the Republican leadership of the House and the administration.

What I have from the Congressional Hispanic Caucus is a very well reasoned letter setting out the decision as to why all 20 members of the Hispanic Caucus would not support this nomination. I think it is instructive.

It is instructive to read the thinking of the Hispanic Caucus. Of course, much of it rests on the fact that there is such a limited record. It is very hard to determine what it is this gentleman would do. I think the Hispanic Caucus raises some very telling points which have not been adequately addressed in the process up until now.

For reasons of our Constitution, of our rule of law, of our nomination process, of our Senate and its prerogative, as well as the decision apparently made by the administration to adopt a don't ask, don't tell policy when it comes to important lifetime appointments on the Federal judiciary, I certainly will have to oppose this nomination.

I yield the floor.

The PRESIDING OFFICER (Mr. ENZI). The Senator from Utah.

Mr. HATCH. Mr. President, I will speak more to the constitutional issues later.

I have to say that I totally disagree with the distinguished Senator from New York, much as I respect her. I don't think her analysis of the Constitution is anywhere near accurate.

Second, I was told by people for whom I have great respect that when the vote came up, when they were discussing whether or not the Hispanic Caucus in the House, all Democrats, were going to oppose Miguel Estrada, there was almost an equal split of those who thought it was inadvisable to do that. Of course, after the majority makes that decision, I suppose they went along with that. But that was my understanding. If it is incorrect, I would be happy to be corrected.

I also want to make it clear that the three Republican Hispanic Members of the House—all three very outstanding individuals, who have stood up for Hispanics all of their careers, all three of them speak fluent Spanish—they were basically not allowed to meet with the Democratic Hispanic task force or caucus in the House, and they are totally in favor of Miguel Estrada.

Having said those few things, I want to take a moment to talk about what we are seeing on the nomination of Miguel Estrada. What we are seeing is just another step in a campaign to stall action on President Bush's judicial nominees. It has gotten to the point that the tactics that some of my Democratic colleagues are using are so predictable that it is as if they are working from a handbook. I suspect that this handbook had its origins in the Democrats' April 2001 retreat, where leading liberal law professors—of course, most of the law schools in this country are filled with leading liberal law professors, or at least liberal law professors—they urged the Democrats in that conference to change the ground rules on judicial confirmations. What resulted from this retreat is something that can be called—if you will notice this chart—the Senate Democrats' ''weapons of mass obstruction'' handbook.

Let's take a look at some of the weapons in this handbook. Let me turn to the first bullet on the chart. The first weapon suggested by these liberal law professors was to bottle up nominees in committee.

We have seen a lot of that in the last 2 years, is all I can say, especially with regard to circuit court nominees. They have allowed a significant number of district court nominees to go through. These are the trial courts, where it is very unlikely to get into the major questions of law that have to be decided by appellate courts, although they certainly are important.

Since the judiciary is a separate, coequal branch of government to the President and to this Congress, this is important stuff. But their first weapon in their handbook was to bottle up nominees in committee.

When control of the Senate shifted to the Democrats in June 2001, we saw an immediate halt of nomination activity in the Judiciary Committee, especially of circuit court of appeals nominees. The President was not being treated as other Presidents have been. Even though other committees held nomination hearings prior to reorganization, and even though the Judiciary Committee held other hearings, no nomination hearings were held for more than

a month, despite the fact of a looming vacancy crisis and plenty of nominees awaiting a hearing. In fact, as we stand in the Chamber right now, we have a crisis of around 25 or 26 emergency seats, most of them circuit court of appeals seats, in this country today. It is a judicial crisis where people cannot get their cases decided.

Then, once we did start considering nominees, the committee considered only one circuit court nominee at a time. When I was chairman during the Clinton administration, I considered more than one circuit nominee at 11 different hearings. But not once during the 107th Congress did the Democrats hold a hearing on more than one circuit nominee at a time. So bottling them up in committee has been a definite practice that came out of that retreat.

The point is, as I have been making it here, the first weapon in the Democrats' handbook—that of bottling up nominees in committee—was something that worked only as long as the Democrats controlled the committee. Since this is no longer the case, and we are now holding orderly hearings, fair hearings, with expedition, because the Republicans were fortunate enough to be able to take over control of the Senate, the President is now being treated fairly, as I believe I treated President Clinton in almost every instance—in fact, in every instance as far as I was concerned.

We put through 377 Clinton judges, the second highest total in the history of the country for any President, and only five less than the highest total of Ronald Reagan. And Reagan had 6 years of a Republican—his own party—Senate to help him. President Clinton had 6 years with an opposition party—the Republicans—to help him. And we did. You can point to some instances where I wish we had done better, but as far as totality, as far as getting it done, we did the job for President Clinton, and we treated him fairly. And he, I think, knows it.

Let's look at some of the other weapons they have used that came out of that retreat. One of the most potent weapons of mass obstruction has been to try to inject ideology into the confirmation process—yes, try to inject ideology into the confirmation process. Miguel Estrada's nomination is a prime example of how that has worked.

Some of my Democratic colleagues claim they oppose Mr. Estrada's nomination because he allegedly was not responsive to their questions at his hearing. I think we just heard an hour's worth of that. This is a laughable assertion. Mr. Estrada's hearing, which was held while the Democrats controlled the committee, and chaired by the distinguished other Senator from New York, Mr. SCHUMER, lasted all day. Mr. Estrada was asked dozens and dozens of questions, all of which he answered.

The real problem that some of my Democratic colleagues have with Mr. Estrada is not that he did not answer their questions but that his answers did not give them any reason to oppose him. That is what the real problem is here. He testified that he would follow binding precedent—what more could you ask of a circuit court of appeals nominee—that nothing in his personal views would interfere with his ability to follow the law. What more could you ask of a circuit court of appeals nominee?

For some of my Democratic colleagues, this is not enough. They want to delve into Mr. Estrada's ideology to understand his personal views on whether Supreme Court cases were correctly decided, and use those personal views as the yardstick by which they measure whether he is worthy of confirmation.

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

Mr. HATCH. I am delighted to yield.

Mr. DURBIN. Does the Senator recall a speech he made to the Federalist Society? I will quote from his statement there:

> [M]any of President Clinton's nominees tend to have limited paper trails. Determining which of the President's nominees will become activists is complicated and will require the Senate to be more diligent and extensive in its questions of a nominee's jurisprudential views. . . .

Does the Senator recall making that speech to the Federalist Society?

Mr. HATCH. I sure do. I agree with that statement to this day. I agree where there are no paper trails, you should ask questions. I am sure the Senator will agree with me, the Democrats controlled the committee, they controlled the hearing that day. It was a lengthy hearing. They asked every question they wanted to ask. They weren't happy with some of the answers, but that was probably par for the course. It was, certainly, when I was chairman of the committee.

But injecting ideology into the confirmation process is misguided, at best, and down right irresponsible at worst. It is not, as some Senators have suggested, essential to executing our duty of advise and consent. But do not merely take my word for it. My goodness, Heaven forbid.

During the course of this debate, I have already mentioned the statements that Lloyd Cutler made on this point. Again, I mention Lloyd Cutler because both sides of this body respect him. We both know he has been an excellent servant of the people. We both know he is a great lawyer, not just in the District of Columbia but throughout the country.

I have participated in forums with Lloyd Cutler, and I have nothing but respect for him. I have not always agreed with him—I have to admit that—but, by and large, we have agreed on most issues.

I have already mentioned statements Lloyd Cutler has made on this point, but I believe they are worth repeating because some of my colleagues keep resurrecting the spurious allegation that Mr. Estrada was not forthcoming at his hearing.

Mr. Cutler, as we all know, served this country as counsel to President Carter, and President Clinton, by the way. He also served on two national commissions that addressed problems in the confirmation process.

He said:

> Candidates should decline to reply when efforts are made to find out how they would decide a particular case.

That is just a rule that both sides have followed even before Mr. Cutler made that very erudite statement.

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

Mr. HATCH. Sure.

Mr. DURBIN. Can the Senator point to any question asked of Miguel Estrada by either a Democratic or Republican Senator as to how he would rule in a particular case during the course of the confirmation hearing? Did any Senator violate the standard Lloyd Cutler enunciated in asking Miguel Estrada to tell us how he would rule in a particular case?

Mr. HATCH. One of the Democrats on the floor said, if I recall correctly, he asked the question, what is your belief about the first amendment. Gee whiz, I could teach law school class for over 3 months on that subject alone. Another—it may have been the same Senator—said he wanted to know in his questions whether he was going to overturn all of the clean air, clean water, and environmental rules, because this court is so important.

Mr. DURBIN. Does that relate to a particular case we are asking him to tell us about or rather his views on the Constitution?

Mr. HATCH. The Senator is an excellent lawyer. I know he is. I have tremendous respect for him. He sits on the committee. I enjoy him. But when you ask questions like that, those are areas where cases come before the Circuit Court of Appeals in the District of Columbia.

Mr. DURBIN. Is it the Senator's position we should not ask a question of a nominee in any area of law that might come up in any case a judge would rule on?

Mr. HATCH. No, I think the Senators on the committee can ask any questions they want to, but I think it is incumbent upon the nominee to follow Mr. Lloyd Cutler's suggestion that ''candidates should decline to reply when efforts are made to find out how they would decide a particular case.''

I suspect anybody can discuss general law, but that is not what the distinguished Senators were interested in.

Mr. DURBIN. I ask the Senator one last question: Can he point to any question asked by any Senator that went beyond general law and asked Miguel Estrada how he would rule on a particular case?

Mr. HATCH. I think I just gave two illustrations that certainly were questions of law that could come before the

court. I might add Mr. Estrada was asked to criticize Supreme Court cases. Here a Supreme Court advocate who has to appear before the nine Justices on the Court is asked to criticize Supreme Court cases that he will be bound to follow as a circuit court judge.

By the way, if I recall it correctly, the distinguished Senator from Illinois just a short while ago was criticizing Mr. Estrada because in the whole history of American jurisprudence, from the beginning to the end, he couldn't come up with cases like Dred Scott, Plessy v. Ferguson, but the question, if you read in the record was, in the last 40 years, could you tell us three cases you disagreed with.

I believe he could have, maybe. I don't know. But when you are under pressure and you are sitting there and you are trying to answer questions, I don't think we should hold him to a standard that he has to meet these questions head on and absolutely come up with spur-of-the-moment comments. I mean, I can come up with some, I am sure, right off the bat, but that was the last 40 years. There were three references to it, twice referring to 40 years. The middle one between the two I am sure he felt he was talking about the last 40 years, not the whole history of jurisprudence. The first case that has come to your mind perhaps would be Dred Scott; certainly Plessy v. Ferguson. Could you name a whole raft of others, perhaps. I don't know. I don't know how I would do if I was sitting there under pressure as Miguel Estrada was.

He is a young man. He has a lot of experience. He can talk about current Supreme Court law as well as anybody in our existence. The fact is, I thought it was kind of unfair to try and hold him to that particular standard. I am not criticizing my friend from Illinois, but to go back and read the record, you will find that was what the questions were.

Now, regarding judicial nominees, Mr. Cutler has stated in unequivocal terms that candidates should decline to reply when efforts are made to find out how they would decide a particular case.

I would have trouble with a nominee if the nominee did try to reply in those cases. In his opinion, that is Mr. Cutler's opinion, ''what is most important is the appointment of judges who are learned in the law''—certainly, Estrada is as learned in the law as anybody we have had before the committee—''who are conscientious in their work ethic''—my gosh, you can't find any fault with Mr. Estrada there; he is a hard worker—''and who possess what lawyers describe as judicial temperament.''

We have heard some criticize Mr. Estrada because they think he might have a temper. I think everybody in this body might have a temper. That is one heck of a poor allegation.

Mr. Estrada's academic achievement, his professional accomplishments, his letters of support we received from his colleagues, many of whom are Democrats and top Democrats at that, and his ABA rating, the highest the American Bar Association can give, ''unanimously well qualified,'' all indicate Mr. Estrada fits this description and deserves our vote of confirmation—this description of none other than Lloyd Cutler.

At the same hearing at which Mr. Cutler made his statements about the appropriate scope of the inquiry for confirming judicial nominees, another legal luminary, one of the great lawyers in this town, a man I think almost all of us look up to—certainly I do, and I think I am in a position to know great lawyers when I see them—Boyden Gray, testified for Mr. Estrada. Mr. Gray, of course, served as White House counsel in the first Bush administration.

During his testimony, he told us that two Democratic Senators who are former Judiciary Committee chairmen met with him very early in the administration to let him know in no uncertain terms that if the White House was caught asking any potential nominee any questions about specific cases, that nominee would be flatly rejected.

As Mr. Gray pointed out, that same philosophy is reflected in the Judiciary Committee questionnaire which all judicial nominees must complete before the committee will act on their nominations. It is an extensive questionnaire. The questionnaire asks:

> Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue, or question in a manner that could reasonably be interpreted as asking or seeking a commitment as to how you would rule in such a case, issue, or question?

The clear goal of this question is to deter the White House from getting commitments from potential nominees on how they would rule in specific cases or commitments that they can overrule certain Supreme Court cases. It now appears certain Senate Democrats want to forbid the White House from asking nominees how they would rule on specific issues while reserving that right for themselves. That seems a little inconsistent to me. Call it what you will, but this is a double standard if I have ever seen one.

More fundamentally, it threatens the very independence of the Federal judiciary that our constitutional system of checks and balances was designed to preserve.

Let's face it—too many questions in the confirmation hearings of President Bush's judicial nominees seem calculated politically to manipulate the judicial selection process and to frustrate the appointment of judges who would refuse to follow a popular or politically popular course when the Constitution and settled judicial precedent provide otherwise.

Miguel Estrada was right not to fall into the trap of criticizing particular Supreme Court cases that he may be called upon as a sitting Federal judge to uphold. My colleagues should be commending him for this, not proffering it as a reason to vote against his confirmation.

Another weapon in the Democrat handbook is to, as we can see here, seek all unpublished opinions. This all came from that retreat: Bottle up the nominees as much as you can in committee. I think that even goes further—bottle them up on the floor, too. We will get to that. Inject ideology into the confirmation process so you can say this fellow just isn't what we want on the court. Seek all unpublished opinions. Let's talk about that.

For some nominees who have been judges for a decade or more, this demand has resulted in the production of hundreds of opinions and required the expenditure of a significant amount of Federal dollars, of resources, of money, of effort, and of time. All the time judges spend producing unpublished opinions meant they were not spending that time adjudicating cases before them.

While demands for unpublished opinions were outstanding, the Democrats in control of the committee had a perfect excuse for not acting on their nominations. But the fact is that these nominees had ample records on which to evaluate their qualifications for the Federal bench without seeking their unpublished opinions and diverting them from doing their job to be judges to satisfy the whim of a few Democratic Senators.

I remember in the case of, I believe, Dennis Shedd—who is now confirmed to the circuit court of appeals in his district—they asked for all of his unpublished opinions which were, as I recall, in Atlanta, GA, and what was the reason? It was only to see if they could dig up something that would be against Dennis Shedd. Unpublished opinions? My gosh, I don't ever remember when we did that. But that was a tool that was used throughout the process to delay. It was an expensive tool to the taxpayers, with no real good fruit coming from it.

I will refer to the fourth one here. Another weapon is to demand that the nominee produce internal memoranda that are not within the nominee's control. Isn't that an interesting one? We Democrats demand that you produce your internal memoranda that you made, and did the research on, and that you wrote while you served the Federal Government—even though you don't control that and even though it is tightly controlled—or should I say those memoranda are tightly controlled.

We saw the debut of this weapon to obstruct the confirmation of Mr. Estrada, and I expect we will see it again. I don't believe a day of this debate has gone by without one Democratic colleague complaining that there is an ''incomplete record'' on him without the record he offered as an Assistant Solicitor General of the United States.

This complaint ignores many facts. First, every living Solicitor General opposes the Democratic efforts to obtain these memoranda. Second, both the Washington Post and the Wall Street Journal—many would say they are on opposite sides of the fence—also oppose these efforts. Third, this demand for internal Department of Justice memoranda is unprecedented, as the Department itself has explained in a lengthy letter.

Finally, this demand for internal memoranda ignores the abundant record of Mr. Estrada. This man has argued 15 cases before the U.S. Supreme Court. He won 10 of them. In each one of those cases, he authored a brief that anybody can get ahold of. In each one of those cases, there is a transcript of the oral arguments that anyone can get ahold of. Certainly, members of the Senate Judiciary Committee can get ahold of them. Surely, my Democratic colleagues can evaluate Mr. Estrada's legal reasoning and fitness for the Federal appellate bench by examining these briefs and transcripts.

Each weapon of obstruction that I have mentioned was most potent when the Democrats controlled the Judiciary Committee. Now things have changed. Democrats no longer control the committee and, as a result, Miguel Estrada's nomination is being debated on the Senate floor. This means that the Senate Democrats must turn to their ultimate weapon of obstruction. I am going to peel off that last one. The ultimate weapon is the filibuster.

Well, filibuster is a potent but extreme weapon to rely upon for the defeat of a judicial nominee. It is potent because it requires a supermajority of 60 votes by 60 Senators to end it. It is extreme because it unduly politicizes the Federal judiciary, the one branch intended to be insulated from political pressure. Let's go through these again. At the retreat, these law professors, who should have known better but are more interested in ideology, in partisanship, Democratic Party politics, in control of the judiciary, made these recommendations: Bottle up nominees in committee. We saw a lot of that when they were in control. Now they cannot do that anymore, except that I suspect that because the Judiciary Committee has a rule that once these nominees are put on a markup, any member of the committee can put them over for a week, we will see that right exercised in every case. At least, we have so far. So bottle them up in committee. Then inject ideology into the confirmation process because, by doing that, you can say I disagree with you and maybe you think you have a right to vote against him.

Look, we don't know how any nominee is going to vote once they become a judge; it is a lifetime appointment. It is important to ask questions and try to do what we can to understand whether the nominee is capable or should be confirmed. To inject ideology into the confirmation process is a very dangerous thing. Thirdly, seek all unpublished opinions. That is the ultimate delay tactic, at a tremendous cost to the taxpayers. I don't remember in the past where that was done, except it may have been done in a case where they were critical to the final determination. But it is done today because they want fishing expeditions, or they wanted them to see if they could find some reason to oppose. Then, seek privileged internal memoranda.

Can you imagine what would happen to the Solicitor General's Office if secret memoranda that were used to determine what the Solicitor General should do would be disclosed to the public in every case? Can you imagine how that would chill getting responsible, accurate, and honest opinions, so that the Solicitor General can rely upon them? Anybody who wanted to be a Federal judge would have to think, how can I write this so it won't come back to haunt me in the future rather than, how can I write this to do it right and help my Solicitor General. And then the ultimate weapon, if you cannot do anything else, is the filibuster.

Now, to filibuster a nominee would be an unprecedented, dangerous weapon to use. As best I can tell, a true filibuster has never been used to defeat a circuit court nominee. In fact, no filibuster has been used to defeat a circuit court nominee. Its contemplated use now against Miguel Estrada's nomination has been soundly criticized. I was told a short while ago that my colleagues on the other side have decided to filibuster. I don't believe the reasonable people on the Democratic side are going to resort to that type of a weapon. But if they do, they will be following the advice of these law professors who have never been Senators and who are from the far left of the political and legal spectrum.

The filibuster is an unprecedented and very dangerous weapon, never before used to defeat a circuit court nominee. In fact, it has never been used to defeat a district court nominee either. Let me go a little bit further here.

Just last week, the Washington Post, our local newspaper—but national in scope—declared:

> [A] world in which filibusters serve as an active instrument of nomination politics is not one either party should want.

That was February 5—last week. The Post is absolutely right. Once we go down that road, that works both ways. I would not want it to, but it naturally will.

The Wall Street Journal concurred in the Washington Post's sentiment. You can see the quote:

> Filibusters against judges are almost unheard of. . . . If Republicans let Democrats get away with this abuse of the system now, it will happen again and again.

Mr. President, copies of these editorials have been printed in the RECORD.

Filibusters of judicial nominees allow a few Members of this body to block the confirmation of any Federal judge, a prospective member of our third coequal branch of Government.

I have taken to the floor time and again for Democratic and Republican nominees alike to urge my fellow Senators to end debate by voting to invoke cloture which requires the vote of 60 Senators. Most, if not all, of these occasions did not represent true filibusters but were situations in which nominees were, nevertheless, forced to overcome a procedural obstacle of a cloture vote.

I am not alone in my disdain for forcing judicial nominees to a cloture vote. The distinguished minority leader himself once said, on this double standard for the use of the weapons, Democrat leader TOM DASCHLE, one of my friends and a person for whom I have a lot of respect:

> As Chief Justice Rehnquist has recognized: ''The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.'' An up-or-down vote, that is all we ask.

I think that was wise advice then, and I think it is wise advice now.

The ranking member of the Judiciary Committee, my friend Senator PATRICK LEAHY, said:

> I, too, do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41.

In other words, 41 Senators can stop any judge once that road is taken. And once we go down that path, that will be a doggone mess and a doggone tragedy to this country.

Another one of my Democratic colleagues, himself a former chairman of the Judiciary Committee and a friend of mine, Senator TED KENNEDY, had this to say:

> Nominees deserve a vote. If our Republican colleagues don't like them, vote against them. But don't just sit on them—that's obstruction of justice.

He was right then and that quote is right today. Of course, each of my Democratic colleagues made these remarks when a Democratic President was appointing judicial nominees. It appears that if they filibuster this nominee on the thinnest of excuses—in fact, I do not think they have any reasons to, other than their fear that he is a Hispanic conservative Republican who may not rule the way they want him to rule in the future and who may some day be considered for the Supreme Court of the United States of America—it appears there must be a double standard for the use of these weapons.

Let me tell you the origin of the word ''filibuster'' because that is an important word here today. It comes from the Spanish word ''filibustero,'' meaning a pirating or hijacking. It is just one more obstruction that has never been used in the case of Federal judges, for either the circuit court of appeals or for the district court.

That is exactly what an unprecedented filibuster of this nominee would

be: A hijacking of the Senate. What it amounts to is two more simple English words: More obstruction.

There was one true filibuster in the history of the Senate—I have to acknowledge that—and that was a filibuster of a Supreme Court nominee, Abe Fortas, back in 1968, if I recall it correctly. There was a bipartisan filibuster. There were plenty of Democrats and plenty of Republicans who voted against cloture in that case. I think they were wrong, whoever voted that way. Richard Nixon was for allowing the vote to go forward without a filibuster. But the Senate wisely has never utilized a true filibuster since that day. To use it on this nominee because some have said he is not Hispanic enough, to use it on this nominee because some have said he does not have any judicial experience—although Miguel Estrada was a clerk to Amalya Kearse of the Second Circuit Court of Appeals and a clerk to Justice Anthony Kennedy on the Supreme Court of the United States of America, and has argued 15 cases before that august body and numerous cases elsewhere. It seems to me he has a lot of judicial experience, though he has not sat on the bench.

If we take that opinion, then that virtually consigns almost every Hispanic in this country, probably most African Americans—in fact, probably everybody of a minority status—to never being a Federal judge because most Hispanics have never sat on a bench. There are those who have, admittedly. Most African Americans have never sat on a bench, although there have been some on lower court benches in the State courts particularly, and even in the Federal courts. But it basically says you cannot make it if you have to have served as a judge before, no matter how brilliant you are. There are brilliant African Americans. There are brilliant Hispanics. There are brilliant Native Americans. There are brilliant Asian Americans. And we have brilliant people who have never served as a judge who might have this opportunity some day that Miguel Estrada hopefully will have.

Others have used other phony arguments against Miguel Estrada, such as he did not answer all the questions. That is par for the course. I do not know many contested judicial nomination proceedings where all the questions have been answered the way the questioners expected them to be answered.

Then they say: We cannot get hold of all these documents because he did them confidentially while he worked at the Solicitor General's Office, even though four of those seven living Solicitors General who are opposed to that type of release of documents are leading Democrats in this country. They will not even listen to their own leading Democrats, let alone leading Republicans.

I am just imploring my colleagues on the other side: Do not go down the terrible path of filibustering this nominee or any other nominee. It is not only dangerous, it would establish a precedent that literally would be offensive to the country, offensive to the Constitution, offensive to the judicial system, offensive to the third branch of Government, and offensive to any reasonable person who believes the President's nominees ought to get a fair hearing and they ought to get a vote up or down on the Senate floor. That is where we make that determination.

If the Democrats have enough votes to defeat Miguel Estrada, I am not going to complain about it. I might feel badly about it, and I might say it was the wrong thing to do, but they have a right to do that. If we have enough votes on this side, with hopefully the help of a number of our friends on the other side, then that is the way it should be. Miguel Estrada should go on that bench.

Unfortunately, I believe one of the arguments that is flitting around in the background in the penumbras and emanations of the Senate is he might some day be asked to be the first Hispanic on the U.S. Supreme Court, and that is the real reason, among a few others that are not valid as well, for the slowdown in a vote on Miguel Estrada.

Mr. President, I do not think we should have a filibuster, or a pirating or hijacking of the judicial process. I think it would be a terrific mistake for Democrats to do. Every Republican is going to vote for Miguel Estrada, and I believe a number of Democrats will as well—I hope a great number of them will—and they ought to have that right, right here on the floor.

If my colleagues who disagree do not like it, they can speak out. They can give their reasons, and they can vote no. That will be what they should do if they feel sincerely about this. Politics ought to be left out of it. The fact that they suspect Miguel Estrada may not be exactly the way they would want a judge to act on their issues—I do not know whether he will or will not, to be honest, but if the mere suspicion is enough to vote against him without any real basis otherwise, then I think we are treading on some very dangerous ground.

I believe in Miguel Estrada. I believe this President is doing everything in his power to reach out to people of color in this country. I believe we ought to help him. He certainly has indicated his desire to do so, and he certainly has been doing it. This is a President who has put a number of Democrats on the Federal bench. I think he wants to make sure we fill these seats and we get them done as best we can. Naturally, any President worth his or her salt is going to try to appoint people who, hopefully, agree with him or her. I think that is the nature of the process, and that is what we get when we elect a President; we get that President's nominations to the various Federal courts.

This President is very sincere and has approached it probably less politically than Presidents, Republican and Democrat, whom I have seen in the past. He deserves support. He deserves to be treated fairly. His nominees deserve to be treated fairly. Above all, Miguel Estrada should be treated fairly. If the ''filibustero'' occurs, I guarantee he is not being treated fairly.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, this is an important debate. I acknowledge my colleague, friend, and chairman of the Senate Judiciary Committee, Senator HATCH, who has argued very vigorously day after day in support of the Miguel Estrada nomination.

For those who wonder why the Senate would be taking up time to discuss one man's nomination to one court, this debate goes to the heart of a very basic issue. The issue is the constitutional responsibility of the Senate. After most of us who serve in the Senate are long gone and forgotten, some will harken back to this debate and make reference to it to determine whether at this moment in history the Senate stood up for its constitutional authority and responsibility.

That constitutional authority and responsibility is found in article II, section 2, of the U.S. Constitution, which says that the Senate shall have the power to advise and consent to the nominees of the President to the courts of our land. That is an important responsibility from the very beginning of this Republic.

There are those in the President's party who might like to change the Constitution when it comes to President Bush's nominees, to take out the word ''advise'' and basically say ''consent''—just move on with it. If they could, we would move from a Senate to a rubber stamp. That is the choice: The Constitution or a rubber stamp.

I hope the Senate never reaches the point where we do not stop to ask important questions of nominees who are seeking a lifetime appointment to the Federal bench—no review by voters, no review by Congress. The judge is there for life, and, subject to malfeasance or the commission of a crime, they will stay in that position until they die or quit. That is what is at stake.

Miguel Estrada was nominated by President Bush to serve on the DC Circuit Court of Appeals, a lifetime appointment to the second highest court of the land. This is an important nominee, important because we know that when it comes to the DC Circuit Court of Appeals, it is the AAA team for the Supreme Court. The White House has made it clear that Miguel Estrada may be in line to move up to the major leagues. So Miguel Estrada is not just another judicial nominee.

If we look at him—and I have had a chance to sit down and talk to him—what a compelling life story he tells. Senator HATCH has recounted it, as others have. His legal credentials are

impressive, but his views are so suspect that he has consistently refused to say publicly what he believes.

I believe the decision of the Bush administration to affirmatively act to put a Hispanic nominee on the Federal bench is the right thing. A few weeks ago, President Bush said he was not in favor of affirmative action. With the nomination of Miguel Estrada, the White House is affirmatively acting to put a Hispanic on the bench. I support it. I salute it. It is the right thing to do. I have been honored to appoint a Hispanic to the district court in Chicago. I think it is important that that court reflect the diversity of my city, my State, and our Nation. The same thing is true on this court.

We have the question being raised by the Senator from Utah as to whether or not Miguel Estrada, during the course of his nomination hearing, should be asked questions about his views on the Constitution. Excuse me, but if this Senate decides that we cannot ask a nominee to the Federal court a question as basic as his views on our Constitution, then we have been transformed into a rubber stamp: Take it or leave it. The President sent the nominee. Vote for him or else.

A lot has been said of the quote from Lloyd Cutler, a man who is well respected, about whether or not a nominee should be asked how he would rule in a particular case. Lloyd Cutler is right. If one of the nominees came before us and we would ask that nominee, there is a case pending in the DC Circuit Court of Appeals, tell us how you would rule on that case if you sat on the bench, that is just plain wrong. We cannot do that. But it is not unfair to ask of a nominee his or her views on constitutional issues.

It is interesting to me that Senator HATCH would raise this point because only a week ago, three circuit court nominees, nominated by President Bush, came before the Judiciary Committee and we spent the better part of a day or more asking them probing questions about their views on constitutional issues. To their credit, they were forthcoming, honest, and candid in all of their answers. I did not agree with some of their points of view, but that is not what this is all about. They do not have to say what I need to hear.

I have voted over 100 times now for President Bush's nominees, many of whom I disagree with on constitutional issues and policy issues, but that is not what it is about. If they strike me as people who are moderate, honest, skilled, with good temperament, I am going to vote to put them on the bench, even if I do not agree with their political view. I think that is what the process should be.

When it comes to Miguel Estrada, when we asked him the most generic questions to open up and tell us his thinking about constitutional legal issues, he fended us off; he refused.

Justice Antonin Scalia on the U.S. Supreme Court was picked by President Bush as one of his favorite Justices. He likes his conservative bent. He may like him personally. Whatever reason, then-candidate Bush said Antonin Scalia was his kind of Supreme Court Justice. Do my colleagues know what Justice Antonin Scalia said about questions of judicial candidates regarding their political views? In the case of Republican Party of Minnesota v. White, in an opinion written by Justice Scalia which overruled restrictions against candidates for elective judicial office from indicating how they would rule on legal issues while campaigning, Justice Scalia said:

> Even if it were possible to select judges who do not have preconceived views on legal issues, it would hardly be desirable to do so. Proof that a Justice's mind at the time he joined the Court was complete tabula rasa in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias. And since avoiding judicial preconceptions on legal issues is neither possible nor desirable, pretending otherwise by attempting to preserve the appearance of that type of impartiality can hardly be a compelling state interest, either.

Did you note the words of Justice Antonin Scalia, the favorite of President Bush and many of my Republican colleagues on the floor?

> Proof that a Justice's mind at the time he joined the Court was a complete tabula rasa in the area of constitutional adjudication would be evidence of lack of qualification, not lack of bias.

Going back to Latin courses I took too many years ago to recount in this speech, tabula rasa is a blank slate. What the Justice has said in this opinion is, when nominees come before you saying they never thought about a certain issue, never reflected on a constitutional position, don't have an opinion to share with you, that's not evidence of lack of bias, that's evidence of lack of qualification. And that is what this debate is all about.

There is no doubt in my mind Miguel Estrada has his own point of view, understands constitutional issues, and would express it. But he has been carefully coached and managed by the Department of Justice and the White House to come before the Senate Judiciary Committee and, frankly, deny any opinion on any constitutional issue.

My colleague, Senator SCHUMER, asked him to just point out a Supreme Court case he disagreed with.

No, he said, if I didn't hear the arguments and I didn't read the briefs, I am not going to do it.

We asked him not only in the hearings but in written questions I sent to him afterwards, what is your view on Roe v. Wade, the landmark decision related to abortion in America.

Again he said, Well, since I didn't hear the arguments and I wasn't there, I am just not going to say what I understand when it comes to Roe v. Wade.

What a sharp contrast to John Ashcroft, the new Attorney General under President Bush who, when asked the same question in his confirmation hearing, said he would view that as established law and, unless it were overturned by the Supreme Court, would enforce it. Miguel Estrada would not even go that far.

I asked him as well to give the name of a judge, living or dead, whom you would emulate on the bench—a wide open, softball question. He could have picked the most conservative judge in history and the most liberal judge and said both of them brought the following qualities to the court and I hope to follow those qualities. He had been so carefully prepared, so cautioned by the Department of Justice, he wouldn't even go that far to suggest there was a Supreme Court Justice or a living judge, or one who has passed away, he would seek to emulate.

So what does that mean? Here is a man who will not tell us the most basic information about his views on the Constitution, on judicial philosophy, general questions you would ask of any nominee. And the Republican majority comes and tells us approve him anyway. Give him that lifetime appointment.

Roll the dice. Gamble he is going to be the right person. The Republican majority says to the Senate: Be a rubberstamp. Don't ask these questions. Now you are getting into ''advice.'' That is what the Constitution says, ''advice and consent.''

Let me point out some things that ought to be part of the record. I am proud to have named a Puerto Rican judge to the district court in Chicago. During President Clinton's tenure, 10 of his more than 30 Hispanic nominees were delayed or blocked from receiving hearings or votes by the Republican Senate Judiciary Committee, chaired by the Senator from Utah; 10 out of 30 Hispanic nominees.

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

Mr. DURBIN. I am happy to yield.

Mr. REID. The Senator recalls, I am confident, that one of the nominees, one of the 20 who made it through, a man named Paez from California, waited 4 years before he was able to get confirmed by the Senate?

Mr. DURBIN. Four years. And there was never any question raised about his qualifications or answers to questions.

Mr. REID. In fact, the Senator will recall he was a judge and had been for many years and had voluminous judicial opinions people could look at.

Mr. DURBIN. Absolutely. I might say to the Senator from Nevada, the Senator from Utah, in a speech to the Utah Federalist Society, said when you have a nominee like Miguel Estrada with no published opinions, then you have to really ask questions. Get to the bottom of his jurisprudential views, in the words of the Senator from Utah. In the case of Judge Paez, there was not only ample record about how he ruled, he answered the questions. Miguel Estrada has ducked the questions time and time again and believes if he can

hold us back long enough he will get a lifetime appointment to the Federal bench. That would be a dereliction of duty on the part of the Senate and that is why we are spending this time on this nominee. An important constitutional principle is at stake here, a principle of whether or not the Senate will have the right and the authority to ask the questions, to make a reasoned judgment before we give our advice and consent to a President's judicial nominees.

Mr. REID. Will the Senator yield for one more question?

Mr. DURBIN. I am happy to yield.

Mr. REID. I am not sure the Senator is aware from Congressional News, this publication that quotes what we say in the press every day—the distinguished chairman of the Judiciary Committee appeared on MSNBC Hardball last evening. Among other things, are you aware he said, talking about the Democrats in the Senate:

What they are really worried about is Estrada is so qualified and so good and he's Hispanic, that he's on the fast track to the Supreme Court. They think they don't want a Hispanic Republican, let alone a conservative, on the Supreme Court of the United States of America, and that's what this is all about.

What is the Senator's comment in that regard?

Mr. DURBIN. I can tell the Senator, as I said earlier, I was happy to appoint a Hispanic to the Federal District Court in Chicago. I hope sooner rather than later there will be a Hispanic on the United States Supreme Court. If you look at this nominee, Miguel Estrada, it is really instructive to me that the Hispanic Caucus of Congress has come out in opposition to his nomination. Some have dismissed that and said there are three Republican Hispanics in the House who favor his nomination. I am going to make that part of the RECORD. I ask unanimous consent if I might have a list of letters in opposition and concern to the nomination of Miguel Estrada be printed in the RECORD.

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

LETTERS OF OPPOSITION TO AND CONCERN ABOUT THE NOMINATION OF MIGUEL ESTRADA TO THE D.C. CIRCUIT COURT OF APPEALS

CONGRESSIONAL GROUPS

Congressional Hispanic Caucus, Congressional Black Caucus.

HISPANIC GROUPS

Mexican American Legal Defense and Educational Fund and Southwest Voter, Registration and Education Project, Letter of Opposition, January 29, 2002.

Mexican American Legal Defense and Educational Fund, National Association of Latino Elected & Appointed Officials, National Council of La Raza, National Puerto Rican Coalition, Puerto Rican Legal Defense & Education Fund, Washington, DC, Letter of Concern, May 1, 2002.

California La Raza Lawyers & Mexican American Legal Defense and Educational Fund, Letter of Concern, September 24, 2002.

Southwest Voter Registration Education Project, Letter of Concern, September 24, 2002.

Puerto Rican Legal Defense and Education Fund, Re-issue of Position Statement in Opposition, January 27, 2003; Position Statement in Opposition, September 17, 2002; Letter of Concern, June 11, 2001.

52 Latino Labor Leaders including the following: Linda Chavez Thompson, AFL–CIO, Washington, DC; Milton Rosado, President, LCLAA, Trenton, NJ; Eliseo Medina, Executive V.P., SEIU, Los Angeles, CA; Miguel Contreras, Exec. Sec. Treas., LA County AFL–CIO, Los Angeles, CA; Dennis Rivera, President, SEIU, 1199NY, New York, NY; Christina Vazquez, International VP, UNITE, Los Angeles, CA; Arturo S. Rodrijez, President, United Farm Workers, Keene, CA; Maria Elena Durazo, President, Local 11, HERE, Los Angeles, CA; Mike Garcia, President, SEIU Local 1877, Los Angeles, CA; Oscar Sanchez, Exec. Dir. LCLAA, Washington, DC; Debra Renteria-Styers, UAW, Macomb, MI; Maria Armesto, AFT, Washington, DC; Dionisio Gonzalez, USWA, Los Angeles, CA; Tony Padilla, TCU, Rockville, MD; Celestino Torres, USWA, Hayden, AZ; Guillermo Zeleya, IUPAT, Washington, DC; Al Ybarra, Exec. Sec-Treasurer, AFL–CIO, Orange County, CA; Ray Arguello, UAW, Detroit, MI; Patricia Campos, Pres., DC Metro LCLAA, Washington, DC; Rocio Saenz, President, SEIU Local 615, Boston, MA; Rose Rangel, SEIU, South Pasadena, CA; Salvador Aguilar, USWA, Griffith, IN; Jose A. Caez, IBEW, Farmington, CT; Elsa Lopez, AFT, Miami, FL; Lorenzo Rivera, UAW, Oxford, MI; Heriberto (Ed) Vargas, UNITE, New York, NY; Henry Gonzalez, UAW, South Gate, CA; Gerardo Becerra, ILA, Miami, FL; Jorge Rodriguez, SEIU, Los Angeles, CA; E.J. Himenez, USWA, Corpus Christi, TX; Hector Figueroa, Secretary Treasurer, SEIU Local 32BJ, New York, NY; Roberto Jordan, UNITE 62–32, New York, NY; Gary R. Allen, IAM, Albuquerque, NM; Joe Calvo, UAW, Lombard, IL; Susie Luna Saldana, AFT, Corpus Christi, TX; Johnny Rodriquez, UFCW, Dallas, TX; Baldemar Velasquez, FLOC, Toledo, OH; Henry (Hank) Lacayo, UAW, Newbury Park, CA; Lawrence Martinez, GCIU, Washington, DC; Jimmy Matta, Kent Co. WA LCLAA, Seattle, WA; A Polinar Quiroz, USWA, Chicago, IL; Walter Hinojosa, Texas AFL–CIO, Austin, TX; Maria Portalatin, AFT, New York, NY; Manuel Armenta, USWA, AZ; Santos Crespo, Jr., AFSCME, Brooklyn, NY; Angela Mejia, CWA, Channelview, TX; Jose Rodriquez, IAM, Ontario, CA; Armando Vergara, UBC, South Pasadena, CA; Jack Otero, CTC, TCU, Washington, DC, Rudy Mendoza, CWA, Santa Barbara, CA; Tania Rosario, Kent Co. WA LCLAA, Seattle, WA; and Chuck Rocha, USWA, Pittsburgh, PA.

National Council of La Raza (NCLR), Letter of Concern, September 24, 2002.

National Association of Latino Elected and Appointed Officials (NALEO), Letter of Concern, September 25, 2002.

Puerto Rican Bar Association of Illinois, Letter of Opposition.

LABOR

AFL–CIO, Letter of Opposition, January 29, 2003; Letter of Concern, September 26, 2002.

UAW, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, Letter of Opposition, February 3, 2003.

CIVIL RIGHTS ORGANIZATIONS

Leadership Conference on Civil Rights, Letter of Opposition, January 29, 2003.

Alliance for Justice; Letter of Opposition, January 24, 2003.

Leadership Conference on Civil Rights, Alliance for Justice, Letter of Concern, September 26, 2002:

Signed by: Leadership Conference on Civil Rights; National Association for the Advancement of Colored People; National Organization for Women; National Black Women's Health Project; Mexican American Legal Defense and Educational Fund; Lawyers' Committee for Civil Rights Under Law; Alliance for Justice; People for the American Way; National Council of Jewish Women; National Family Planning and Reproductive Health Association; and Feminist Majority.

Sierra Club, Letter of Opposition, January 31, 2003.

Friends of the Earth, Letter of Opposition, February 3, 2003.

National Association for the Advancement of Colored People (NAACP), Letter of Opposition, October 24, 2002.

People for the American Way, Letter of Opposition, January 29, 2003, Letter of concern, September 25, 2002.

National Women's Law Center, Letter of Opposition, January 29, 2003.

National Partnership for Women and Families, Statement of Opposition, January 30, 2003.

American Association of University Women, Letter of Opposition, January 23, 2003.

Planned Parenthood Federation of America, Inc., Statement of Opposition, January, 2003.

NARAL Pro-Choice America, Letter of Opposition, January 29, 2003.

National Organization for Women, Letter of Opposition, January 29, 2003.

National Family Planning and Reproductive Health Association, Letter of Concern, January 31, 2003.

National Council of Jewish Women, Letter of Opposition, February 3, 2003.

Others Opposed to Confirmation, Statement, January 31, 2003: ADA Watch/National Coalition for Disability Rights; Americans for Democratic Action; Earthjustice; Feminist Majority; Moveon.org.; NAACP Legal Defense and Educational Fund, Inc.; National Fair Housing Alliance; and Working Assets.

Consumer Federation of America, Letter of Concern, September 25, 2002.

LAW PROFESSORS

Society of American Law Teachers, Letter of Concern, October 9, 2002.

Rodriquez, Marc, Princeton University, Princeton, NJ.

CITIZENS

University of Virginia Law Democrats; Urging no vote until production of documents, February 3, 2003.

Mark and Debra Loevy-Reys, Shrewsbury, VT.

Harry Callahan, Ft. Lauderdale, FL.

Eugene Hernandez, San Fernando, CA.

Paul Moreno, Mission Viejo, CA.

Hall, George, Manhattan Beach, CA.

Lizbeth Stevens, Los Angeles, CA.

Christopher Chase, Lansing, MI.

Mr. DURBIN. The list of organizations that oppose Miguel Estrada is extremely long. It goes on for pages. Congressional Hispanic Caucus and Black Caucus—but listen to these. The Mexican-American Legal Defense and Education Fund—this is the premier Hispanic civil rights organization in America—opposes the nomination of Miguel Estrada. Frankly, I hope we do have a nominee of Hispanic origin who is on the Supreme Court as quickly as possible, as soon as there is a vacancy and a qualified candidate. But I hope Members will take pause to realize that just having a Hispanic surname is not enough. We need to bring a person

to the highest court of the land who really understands that responsibility and is not so cagey and careful when it comes to explaining his point of view. That has been the case with Miguel Estrada.

He is, in fact, a stealth candidate. It's an effort by the Bush White House to put in a secret judiciary, judicial nominees who do not share their point of view with the public so you, frankly, have to gamble, when they come to the bench, that they will be moderate and reasonable in their judicial views. That is not the case with Miguel Estrada.

Let me make note, too, of the Federalist Society, to which Mr. Estrada belongs. He appears to be following the advice of DC Circuit Judge Lawrence Silberman, who recently told the Federalist Society that he provided key advice to Antonin Scalia in 1986 that led to his smooth confirmation. Lawrence Silberman told the great Federalist Society that he said to Antonin Scalia: Don't answer any questions about judicial philosophy or views.

It goes back to the Clarence Thomas model. When Clarence Thomas, like Miguel Estrada, told the Senate Judiciary Committee at the time that he had no opinion on the issue of abortion—that is a red flag. There have been judicial nominees from the Bush White House who disagree with my position on this important issue, but they have been honest enough to say that, regardless of my personal and private points of view, when it comes to my responsibility as a judge, I will follow Roe v. Wade until it is overruled by the Supreme Court. As John Ashcroft, another person who opposes Roe v. Wade, has said, it is the established law of the land until overturned. Why couldn't Miguel Estrada, who has been a Supreme Court clerk, go that far—to acknowledge that point of law, that stare decisis and precedent would guide him on an issue as important as Roe v. Wade?

His refusal to do that has caused alarm on this side of the aisle, among the majority of the Members.

Let me speak to you about some of the other issues that have been raised by some of my Republican colleagues during the course of this debate. We have heard from a Republican Senator in the Dallas Morning News that if we deny Mr. Estrada the position on the DC Circuit, it would be to shut the door on the American dream of Hispanics everywhere.

The reality is that until last week, Mr. Estrada was the only Latino nominated by President Bush to any of the 42 vacancies that have existed on the courts of appeal. In contrast, President Clinton nominated 11 Latinos to our appellate courts, and he also nominated 21 to district courts. Republicans blocked several of these, including Enrique Moreno, Jorge Rangel, and Christine Arguello.

Let me also note this argument about Estrada which Senator TRENT LOTT said to the Associated Press last year, that they—the Democrats—don't want Miguel Estrada because he is Hispanic. The reality is that 8 of 10 Hispanic appellate court judges were appointed by President Clinton. Three other nominees of President Clinton to the courts would apply, as well as others for the district courts.

Mr. Estrada, in his background, has never in his legal career provided any pro bono legal expertise to the Latino community. He has never joined, supported, volunteered for, or participated in events of any organization dedicated to serving and advancing the Latino community. He has never made any effort to open the doors of opportunity to Latino law students or junior lawyers.

Let me refer to another comment made by some of the Republicans in the Chamber. Senator RICK SANTORUM said this on Fox News on April 10 of last year:

> They don't want any examples out there for America to see of somebody who is conservative and also minority. . . . [I]f you are a conservative, we don't like it. But if you are a minority and a conservative, we hate you.

Under Senator LEAHY, then chairman of the Judiciary Committee, the committee approved the following Bush nominees: Phillip Martinez, Jose Martinez, Alia Ludlum, Randy Crane, and Judge Jose Linares.

Time and again, when Republicans controlled the Senate, the Judiciary Committee has approved these judges who are conservatives and minorities.

The point made by our colleague, Senator SANTORUM, just does not wash.

Let me note some of the other statements that have been made.

They argue that requesting Mr. Estrada to produce his writings is unprecedented.

Here is a man who has not been a judge but is in the Solicitor General's Office who had a bounty of legal writings, and we are asking that he present them so we can have an insight into his thinking—not unlike a judicial nominee who has served as a judge and we read his opinions to try to understand where this judge is coming from. It is not unusual, frankly, in the Judiciary Committee to point out that a judge has been overruled a certain number of times to know whether or not they have clear thinking and whether or not they understand the law. But when it comes to Miguel Estrada, the Bush White House under Republicans refused to give us the documentation so we can see into the mind of Miguel Estrada who has carefully avoided answering direct questions on judicial philosophy.

The Department of Justice provided memos by attorneys during the nominations of William Bradford Reynolds, nominated to be Associate Attorney General; Robert Bork, nominated to be a Supreme Court Justice; Benjamin Civiletti, nominated to be Attorney General; Stephen Trott, nominated to the Court of Appeals for the Ninth Circuit; and even Judge William Rehnquist when he was nominated to be Chief Justice of the Supreme Court.

So asking for this documentation is certainly not unprecedented. In fact, there is ample precedent. When we look at the Estrada nomination, we see a clear effort to stonewall. Mr. Estrada has refused to say whether he would strictly interpret the U.S. Constitution.

Listen carefully to what I say here. There is not a single Clinton nominee who would have made it past this question before the Republican Senate Judiciary Committee. They were each asked point blank that question. If they did not answer in a fashion acceptable to the Judiciary Committee, it was over, their nomination was finished.

Miguel Estrada comes before us and refuses to even answer the question. I think I know what his answer would be. But why is he so afraid to share his judicial philosophy with us? Is it so radical, so unusual, is it so out of the ordinary that he is afraid people across America will be worried about putting him on the second highest court in the land for a lifetime appointment? That is the only conclusion I can draw from that.

When it came to Mr. Estrada, he refused to discuss the judicial or legal philosophy of any current Supreme Court Justice.

When I asked nominees for district court judgeships in my State to give me an insight into their thinking about Supreme Court Justices—which you think is good or somebody you disagree with—I got really interesting answers from Democrat and Republican nominees. Sometimes I am surprised by the things they pick out. It gives you an insight into what they are looking for and perhaps the role model on whom they might model their own judicial career.

When it comes to Estrada, a man on the fast track to the Supreme Court, he wouldn't discuss the judicial or legal philosophy of any current Supreme Court Justice. When we asked him to name any Supreme Court decision in history with which he disagreed—as I reflect on this question, this is not about a particular case. This is about a case that was decided 20 or 30 or 40 years ago. In this case, we have a situation where Miguel Estrada refused to answer the question.

So what we have before us, unfortunately, is a situation where we have a candidate who has not brought before us the kind of background, the kind of answers to questions which can give us solace that we are appointing to the second highest court in the land a man who has the qualifications and the temperament and the skill to handle the job.

Our colleagues have emphasized that Mr. Estrada received a well-qualified rating from the American Bar Association. The ABA committee rating of Mr.

Estrada, as for all nominees, is advisory and not binding. But it is interesting to look at that rating and what it has meant in the past.

Last fall, a number of Republicans complained that a Bush nominee with a well-qualified rating from the ABA received votes against their confirmation, but there was no acknowledgment that many of these same Republicans had voted against Clinton nominees who received well-qualified ratings.

While the Republicans were in control of the Senate, and when the Judiciary Committee was chaired by Senator HATCH, the following nominees received well-qualified ratings, and many Republicans voted against them:

Judge Merrick Garland, the last judge confirmed to the DC Circuit; Judge Gerald Lynch, of the Southern District of New York; Judge Rosemary Barkett—who is, incidentally, a Latina—who was found well-qualified for the Ninth Circuit was voted against by the Republicans; Judge William Fletcher of the Ninth Circuit; Judge Ray Fisher of the Ninth Circuit; Marcia Berzon of the Ninth Circuit; Sonia Sotomayor, another Latino, a nominee found well-qualified by the ABA and voted against in the Second Circuit by Republicans; Judge Margaret McKowen, of the Ninth Circuit; Richard Paez, to whom the Senator from Nevada just made reference, another Latino, to the Ninth Circuit, and was held up for 4 years, was found well-qualified, not voted for by Republicans; Judge Margaret Morrow, of California, voted well-qualified.

Incidentally, the line of inquiry on Margaret Morrow I thought was the most intrusive I have ever heard. Under the Republican-controlled Senate Judiciary Committee, Margaret Morrow, with the most amazing legal credentials and who answered every question, finally in her frustration, when the Republican majority on the Senate Judiciary Committee said to her: We want you to tell us how you voted throughout your life on propositions on the California ballot. Did you vote yes or no, and why?—we are asking Miguel Estrada what his position is on Roe v. Wade, and the Republican majority on the floor here is saying: You are going too far.

When it came to Clinton nominees such as Margaret Morrow, they wanted her to violate the secrecy and sanctity of her vote in the polling place and explain how she voted on a proposition before the California electorate. That shows you how far they were going to go—way too far in the extreme to stop the well-qualified nominee.

All we are asking of Miguel Estrada is the basics: What is your position on basic constitutional issues? When it comes to Supreme Court decisions, discuss one of them you might have disagreed with in the last 40 years, or in the history of the Supreme Court.

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

Mr. DURBIN. In one moment.

Asking him: Give us the name of one Supreme Court Justice, living or dead, whom you would emulate as a member of the bar or as a member of the bench. He refuses to answer any of those questions.

I will yield to the Senator from Utah.

Mr. HATCH. Does the Senator remember—you may or may not have been there at the time—he was asked about Roe v. Wade, and he said it was settled law and that he would apply it? Does the Senator remember that?

Mr. DURBIN. I am happy to read exactly what he said when I asked the question because I sent it to him in the written questions that came.

Mr. HATCH. That is what it said in the transcript.

Mr. DURBIN. If the Senator will bear with me.

Mr. HATCH. It is on page 128 of the transcript. Specifically asked, he said it is settled law and he would apply it. I do not know what more he could say.

Mr. DURBIN. I am looking for it.

Mr. HATCH. I certainly do not know what more he should have said. If you go to page 128——

Mr. DURBIN. This isn't what I am referring to. These are written questions which were sent to him. I just read his answer. It was curious to me, I say to the Senator from Utah, when he was given an opportunity to say just that, he did not. He did not.

Mr. HATCH. Well, he did. In his oral questions he was asked about Roe v. Wade, and he said it was settled law, he would apply it. Maybe he did not say exactly what you wanted him to at the time, but that is what he did say.

Mr. DURBIN. Let me read my question:

> You and I met privately before your hearing—
>
> I addressed this to Miguel Estrada—
>
> and I asked you for your views on Roe v. Wade. You indicated you considered the answer to that question to be a private matter, but your answer suggested you do have an opinion. Do you have an opinion on the merits of Roe v. Wade? If so, have you read the briefs and transcripts of the oral argument?

This is Miguel Estrada's response:

> I stated during our meeting, like many Americans, I have personal views on the subject of abortion, which views I consider a private matter that I was unprepared to share or discuss with you. I also stated I do not harbor any personal views of any kind that if I were a judge would preclude me from applying controlling Supreme Court law in the area of abortion. I did not state that I have private views on whether Roe v. Wade was correctly decided. As I stated during my hearing, it would not be appropriate for me to express such a view without doing the intensive work that a judge hearing that case would have to undertake, not only reading briefs and hearing the arguments of counsel but also independently investigating the relevant constitutional text, case law, and history.

Had he answered exactly as the Senator from Utah had said—it is controlling law, and that is what I will apply, or this is my view on the general issue of privacy—I think it would have opened our eyes to an insight into what he was thinking. But again, he was careful to avoid——

Mr. HATCH. Will the Senator yield again?

Mr. DURBIN. I am happy to yield.

Mr. HATCH. Senator FEINSTEIN asked him about Roe v. Wade. He basically said that he should not discuss his views on it, but he said, on page 128:

> I have had no particular reason to go back and look at whether it was right or wrong as a matter of law as I would if I were a judge that was hearing the case for the first time. It is there. It is the law as it is subsequently refined by the Casey case. And I will follow it.

And Senator FEINSTEIN said:

> So you believe it is settled law?

Mr. Estrada said:

> I believe so.

So maybe he did not answer exactly the way you wanted him to in the written questions, but in the oral testimony he made it very clear that he would follow the law and that he believes it is settled law. I do not know what more he should have said.

Mr. DURBIN. I say to my colleague from Utah, I thank him for the question. And I just say that I cannot quite understand how we could get so many different versions of answers from this nominee. That is troubling to me. It concerns me. And I think it raises the question of whether or not he was coached in terms of avoiding or trying to avoid expressing his personal point of view.

I see other colleagues in the Chamber seeking recognition at this time. I have spoken earlier, and I will just say, before closing, I hope that those following this debate will understand the historic nature of the debate. What is at stake here is the question of the constitutional authority and responsibility of the Senate when it comes to the advice and consent given on judicial nominees.

We believe, on this side of the aisle—at least many of us do—that Miguel Estrada should be more forthcoming, should give us his writings so we can understand what is in his mind and what he would bring to this bench so we would have better answers to the basic questions we should ask every nominee from every President. To do otherwise is to relegate us to a minority status in terms of our major responsibility under the Constitution.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, it is my understanding the Senator from Mississippi wishes to speak now. He told me earlier that he wishes to speak for 10 or 15 minutes. That would take us past 12:30. I ask unanimous consent that the distinguished Senator from Mississippi be recognized for up to 15 minutes, and following that the Senate recess for its normal Tuesday recess.

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

The Senator from Mississippi.

Mr. LOTT. Mr. President, I thank the Senator from Nevada for making that

request. I believe I can make my remarks in that time.

Mr. President, I take this occasion to speak on behalf of this nominee. I think he certainly deserves to be confirmed by the Senate, in a normal vote which would require a majority of the Senators, and that this matter not be subject to a protracted debate, which could, in fact, turn it into a filibuster.

I wish to speak first in support of this specific nominee, but then also as one who has viewed the judicial nominations and the debate that has taken place over the past 7 years.

There has been a lot of interesting discussion. It is amazing that when the majority changes, the debate seems to shift sides, both ways. Some of the arguments we are hearing now we were criticized for making in the past. But I do not want to get into statistics or what may have happened with this judge or that judge.

At the beginning, I want to talk about this nominee, this outstanding man who has lived the American dream in an incredible way. I am pleased and honored to be able to come to the floor and express my support for Miguel Estrada to be a U.S. circuit judge for the District of Columbia Circuit Court of Appeals.

I think he is highly qualified to be a Federal judge. Beyond that, however, his American success story exemplifies what the American dream is really all about. It is about hard-working immigrants who moved to the United States and searched for a better life. It is people, such as Mr. Estrada, who have made our country stronger by contributing to our society with their strong work ethic and desire to achieve. Others have made those points, but I want to be on record talking about them myself.

First, Miguel Estrada was born and raised in Honduras, and immigrated to the United States at age 17, speaking little English at the time. He quickly learned English, however, and excelled in academics, graduating with a bachelor's degree magna cum laude and Phi Beta Kappa from Columbia College. Then he went on to earn his J.D. degree magna cum laude from Harvard Law School. I might add, he was editor of the Harvard Law Review, a high honor and great achievement.

He had valuable opportunities to learn the intricacies of the Federal appeals court system by clerking for a Second Circuit court of appeals judge—who was a Carter appointee—and serving as a clerk for U.S. Supreme Court Justice Anthony Kennedy.

He has built a distinguished record as an attorney in private practice, as a Federal prosecutor in New York, and as an Assistant to the Solicitor General under both President Clinton and President George H.W. Bush.

Mr. Estrada has argued 15 cases before the U.S. Supreme Court, including a death penalty case in which he represented a death row inmate pro bono. The point was made that maybe he had not done any pro bono work for Hispanics specifically, but when you do pro bono work, you do not always check that kind of background. You do this work on behalf of a client who would not be represented if you were not willing to serve without pay on behalf of this individual.

It is rare to see an attorney or judge with such an outstanding record even at the time of retirement. The experience this young man has had is incredible in terms of his background, his education, the variety of the experience he has with the judiciary and with the application of law—and even before the Supreme Court, both as a clerk and also in appearances he has made. So, clearly in terms of experience and education, Miguel Estrada is highly qualified.

I find it very curious and exacerbating, quite frankly, that some Members of the Senate are questioning whether or not he is qualified. After all, he was rated unanimously well-qualified by the American Bar Association, a rating that has been considered—I believe Senator HATCH and others have described it as the ''gold standard'' for the Democrats as to whether or not a man or woman should be qualified to serve on the Federal judiciary. So certainly to get a unanimously well-qualified rating from the ABA should make a tremendous difference here as to this nominee.

He does have the support of a lot of people in the Hispanic community. In fact, I know Hispanics all across America are asking the question: What is the problem here?

This is a well-qualified man who is Hispanic and has the educational background and experience. Why are they still opposing him? Is it because he is brilliant? I suspect maybe that is part of the problem. Is it because he has a conservative philosophy of strict construction and interpretation of the Constitution? Maybe that is part of it, too. Is it because he is Hispanic? I don't understand the basis for the opposition.

The only thing I heard is that maybe he hasn't revealed enough of what he might do in a hypothetical case or the argument just being made, or that he would not name a decision with which he disagreed. It is a catch-22. If you begin to speculate or if you begin to identify a particular case, then you are attacked because you identified that particular case.

We have a right and an obligation to ask any question we want to ask. Judicial nominees have a right to have their own private views, but they also, as he has done, have to speak up and say they will support the law as it exists. They should state that they will support the rulings of the Supreme Court. He has done that.

No, there is something more going on. It probably has something to do with the debate that just took place, with speculation or suspicion as to what his position privately may be on Roe v. Wade. That is partially what is going on here.

We have argued back and forth over the years about what should be the basis for our votes. I talked to my senior colleague from Mississippi, Senator COCHRAN, who served on the committee and is a senior Member of this body, about what should be the basis of these votes. Generally speaking, the nominee is selected by the President of the United States, who won an election. A lot of people understand one of the most important things a President does is to select the men and women who will go on our Federal judiciary and the Supreme Court. They make that selection. If that man or woman is qualified by temperament, by education, and by experience, and unless there is some ethical limitation or something of that nature, generally speaking you ought to give them the benefit of the doubt and vote for them.

That is why I stood here in the Senate and explained why I would vote for Justice Ruth Bader Ginsburg. I knew I wouldn't agree with a lot of her decisions. I didn't agree with her philosophy. But she didn't have a conflict of interest. She didn't have an ethical problem. She was qualified. I voted for her, even though philosophically I had problems with the nomination. There were others where that situation applied, where I wound up voting for them even though I would not agree with the decisions that they would make. That is the way we should do it.

Other times I spoke against nominees and I voted against them, even though as the Majority Leader, I had the responsibility sometimes to call them up. I remember two very controversial judges nominated to the Federal bench, Paez and Berzon from California. Senator HATCH and I were criticized because we, in fact, moved them through the process. They wound up coming before the Senate and were voted on. I voted against them both, but I helped move the process forward. I stated my problems with them and voted against them. I wouldn't dare, however, try to filibuster them because I had some concerns about how they would rule in the Federal judiciary positions for which they had been nominated.

If a decision is made to prolong debate and turn it into a filibuster and we wind up having to have votes on a cloture petition, we will be on the verge of setting a very dangerous precedent, one that has not happened, in fact, in 35 years or so.

I remember a couple of years ago there was a nominee supported, as a matter of fact, during the Clinton years by Senator HATCH, I believe it was. We started having the movement toward a filibuster. I think we maybe even had a cloture vote. I remember the discussion across the aisle. Both sides were saying: Wait a minute, do we want to set this precedent; do we want to do this? Does the Senate want to start voting on judges requiring 60

votes to get a confirmation? The Senate responsibly, wisely, backed away from that position.

I urge my colleagues, come to the floor, state your concerns. If you have additional questions, I guess there is still time to get some answers. But we need to have an up-or-down vote on this nominee this week. He has been pending since May 9, 2001, as have some other very qualified nominees for the Federal judiciary. How long is enough? How much time do you need to review the record and look at the credentials, the qualifications of a nominee?

It is actually embarrassing, the way the questions are being raised about this nominee, that we wouldn't give this nominee an overwhelming and perhaps unanimous confirmation to this position. Is it a fear that this brilliant, young Hispanic who has lived and taken advantage of the American dream might some day be recommended for the Supreme Court? Is that what is going on here? If it is, why don't we at least wait and worry about that when he gets nominated to the Supreme Court.

He is qualified. He will be an outstanding Federal judge. I urge my colleagues to stop using very weak arguments about how maybe he didn't answer detailed questions about what his rulings might be in a hypothetical case. That is not usually the basis we use for voting against a nominee.

I thank Senator HATCH for the job he has done on the committee. I am glad this process is beginning to break loose now for men and women, minorities, who have been pending for close to 2 years and who deserve to be considered by the Senate. I wholeheartedly endorse this nominee and look forward to seeing the leadership he will provide on this particular circuit court of appeals.

I yield the floor.

## RECESS

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

Thereupon, at 12:37 p.m., the Senate recessed until 2:15 p.m., and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

## NOMINATION OF MIGUEL A. ESTRADA, OF VIRGINIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT—Resumed

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mr. CORNYN. Mr. President, I have listened with great interest, and even great concern, to the debate that has taken place in this Chamber on the issue of Miguel Estrada's nomination to serve on the DC Circuit Court of Appeals, and I feel impelled to stand and explain the reasons why I think not only Miguel Estrada deserves confirmation by this body—indeed, he deserves a vote—but why I think the judicial confirmation process is broken and has fallen into a state beneath the dignity of this institution and this body.

Indeed, I think if you could characterize what has been going on with regard to this confirmation process, you could talk about ''delay''—the fact that Miguel Estrada's name had been sent up for consideration by the Senate some 18 months ago, on May 9, 2001.

Second, I would choose the word ''defeat'' in talking about this nomination. It is clear the overarching objective of those who choose to oppose this nomination are those who wish to defeat President Bush on any and every front they can find, where they don't believe they will have to pay a political price.

You could also talk about ''deny''—denying an opportunity for immigrants like Miguel Estrada, someone who is living the American dream, to serve in a position of public trust.

Finally, I will use the word ''dispirit.'' Clearly, there is an attempt to dispirit those who would offer themselves for public service, to make it so burdensome and so distasteful that they will choose not to offer themselves for public service.

So I believe much of this debate encompasses these four concepts: Delay, defeat, deny, and dispirit.

Now, how have opponents to Miguel Estrada's confirmation chosen to approach their opposition? First, I believe they have used scare tactics. The Senator from Massachusetts said the other day:

> When this or any other administration nominates judges who would weaken the core values of our country and roll back the basic rights that make our country a genuine democracy, the Senate should reject them.

And then we heard from the Senator from Vermont:

> We see an emboldened executive branch wielding its rising influence over both Houses of Congress and ever more determined to pack the Federal courts with activist allies, to turn the independent judiciary into a political judiciary.

Mr. President, if either one of those statements were true, if I believed those accusations were supported by the evidence, I would not support this nomination, nor would, I believe, any Senator, Republican or Democrat, support this nomination. But I believe more than anything else that sort of rhetoric, unsubstantiated in fact, is proof positive this confirmation process is broken. And I say enough is enough.

Opponents of Miguel Estrada's confirmation claim he has an inadequate record. They claim he has little relevant practical experience. They claim because he would not engage with them in a debating tactic, asking him whether there is any Supreme Court decision with which he disagreed, and finally, they claim that he has not clearly stated his judicial philosophy.

In my remarks over these next few minutes, I hope to address each one of those objections and show they are merely pretext for what is really going on here.

The American people know what is going on here, though, regardless of what Members may claim. They realize the judicial confirmation process in the Senate has become a game of political football, where the participants think they are going to score points against their opponent—Republicans against Democrats, Democrats against Republicans. But while the people who engage in this game of political football may believe they are scoring points, it is the American people who lose.

Again, I want to associate myself with the thoughtful remarks made the other day by the senior Senator from Pennsylvania who called for an end to the fingerpointing, the recriminations and the faultfinding. He called for the beginning of a new protocol, a new process that befits the dignity of this institution, one that would provide a timely, comprehensive, and efficient way to evaluate and vote on judicial nominees, regardless of which party is in power in the White House.

First of all, I want to address the objection that has been noted about Mr. Estrada's refusal to state a political position or ideological position on a whole range of issues that will, in all likelihood, come before him on the bench.

Everyone knows judges are not supposed to be politicians, running on the basis of a party platform, and, worse yet, everyone knows judges are not supposed to prejudge cases that may come before them. Why have a trial? Why have the adversaries in a court of law argue about what the facts are or what the application of the law to those facts should be if a judge is going to prejudge that case? That is not justice; that is the antithesis of justice and the dispassionate impartiality we expect from judges.

Every lawyer—and this body is chock full of lawyers—knows that cases are decided on the basis of the facts and the law, not—in a court of law, at least—on the basis of a political persuasion or an ideological position. Of course, Mr. Estrada is well within his rights to say, I am not going to prejudge a case because I do not know exactly how the facts may come before me; I do not know how the jury may decide the facts, and therefore I cannot tell you how the law may apply to that particular set of facts on a case-by-case basis.

Under our system of government, judges hold a very different job from that held by a member of the legislature or even the President, a member of the executive branch. Judges, if they are going to be true to their oath, if they are going to interpret the law, not make law, are bound by what this body says the law should be when we pass a bill or the President signs a bill into law, by the Constitution, and by precedents; that is, earlier decisions made by high court.

Any judge who presumes to take on the role of a lawmaker is, I submit, a lawbreaker. A judge should not be a politician campaigning for confirmation, and I applaud Mr. Estrada for refusing to submit himself to that sort of process and refusing to prejudge cases or to act like a politician campaigning for confirmation.

During the Judiciary Committee hearing and during the executive sessions in which I participated as a member of the executive committee, Mr. Estrada was asked: Do you disagree with any previous decision of the U.S. Supreme Court? I am afraid that demonstrates again what the judicial confirmation process has degenerated into. It should not be trivialized, and it should not be reduced to a law school classroom where narrow and provocative points of law are debated.

Does anyone really doubt that if any nominee disagreed with a Senator's view on policy issues, no matter how wrong under the law, we would see nothing but further degeneration of the confirmation process?

I believe that Mr. Estrada, being a good lawyer and highly qualified to serve on the DC Court of Appeals, is following the dictum of a Supreme Court Justice who said the Supreme Court is not final because it is always right; it is right because it is final. In other words, the way the Supreme Court decides a case puts it to rest unless, in the legislative area, Congress comes back and passes a statute that, in effect, overrules that decision by changing the law and making it perhaps clearer what its intent is, or even, in the rarest of circumstances on a constitutional point, that the people choose to amend the Constitution and say that does not represent what we, the people, want the Constitution to reflect or it does not reflect our values. And there is a process, of course, for that as well.

One of the most extraordinary arguments I have heard by opponents to Miguel Estrada's confirmation is that he does not have the experience to sit on the DC Court of Appeals.

I have been honored during my career to serve as a judge at a trial court level, at a State supreme court level, and I have been honored to serve as an attorney general of my State, the State of Texas, before I came to the Congress. I will tell you that Mr. Miguel Estrada has exactly the kind of experience that has prepared him better than virtually anyone could possibly be for service on this court.

Of course, we all know his record, a distinguished academic record. We know he served in the Solicitor General's Office during the Clinton administration and argued 15 cases before the U.S. Supreme Court. As attorney general of Texas, I had the honor of arguing twice before the U.S. Supreme Court myself, and I must tell you that is the Super Bowl for someone in my profession and someone in Miguel Estrada's profession. That is the peak of your career. That is the highlight of your legal experience, and to do it 15 times, it is as if he had Super Bowl rings on every finger of both hands, and to claim he is not qualified is preposterous.

Of course, you cannot have the experience of being a judge until you have actually been one. People have to start somewhere. Even the senior Senator from New York has stated that Miguel Estrada passes his self-styled test for excellence. He said: Excellence is legal excellence, the quality of the mind. We don't want political hacks on these important courts. No one disputes that Mr. Estrada passes this point with flying colors. He comes highly recommended in this regard. When the ABA, the American Bar Association, recommends him, that is all they are evaluating.

I believe it is a red herring to argue that Miguel Estrada has insufficient experience to serve on this important court.

What is really going on? I think a comment in the CONGRESSIONAL RECORD on February 5, 2003, by the ranking minority member of the Judiciary Committee, the Senator from Vermont, is very telling, and I want to read this twice so there is no missing what he said.

He said:

> I have friends who range across the political spectrum. But I think I also would be willing to state what my political philosophy is, or certainly what my judicial philosophy is, if I am going to ask for a lifetime appointment to the bench, just as I have to state what my political philosophy is when I ask the people of Vermont to elect or reelect me.

So it is clear, what the Senator is saying is he expects a person nominated by the President, before this body for confirmation, to express a political philosophy, just like he or any other Member of this body would running for the Senate.

I believe that demonstrates exactly how wrong the concept is of what the advice and consent function of the Senate should be under our Constitution, and how wrong the concept is of what a judge should be under our Government of separated powers. I want to talk about that in a moment.

When I think about the scare tactics that have been employed over the last few weeks with regard to Miguel Estrada, it becomes crystal clear to me why our Government has a difficult time recruiting talented individuals to leave the private sector and offer themselves for public service. Why would anyone in Miguel Estrada's position, a successful lawyer, someone who, as I said, has been to the Super Bowl 15 times, subject himself to such a spectacle?

Mr. Estrada is very good at what he does. He has a successful law practice as a partner in a prestigious firm. In the 16 years he has practiced law, his reputation is unblemished. For the first time in his career, his professionalism, his temperament, his willingness to put his hand on the Bible and take an oath and abide by that in performing the job of a judge are all being called into question. Again, I ask: Why would he or anyone else like him subject himself to this broken process?

If he were here today, he would say, as he told me in my office, that accepting this nomination to serve on the DC Court of Appeals is not about personal accomplishment, personal achievement, but it is a sense of duty and obligation to our country, his adopted country.

This country took in his mother and his sister, and himself. At age 17, he came from Honduras to America, barely speaking English. Working together and at great sacrifice, his mother put Miguel through law school, with his help. He worked odd jobs. It is also worthwhile to note, they put his sister through medical school.

These immigrants, one a distinguished lawyer, another a distinguished doctor, by dint of hard work, access to a good education, have achieved what we all recognize as the American dream and what every immigrant hopes for. Indeed, we are a nation of immigrants. Through education and hard work, they have found prosperity, and this opportunity, this hope, is the best civil right this country can give to any immigrant.

Miguel Estrada sees this as an opportunity to contribute to a way of life that provided him a way out, an opportunity for great achievement and success, and an opportunity for public service. Only under our broken, destructive judicial confirmation process, as it has now become in this body, someone can be demonized, not just criticized but demonized, for such an honorable goal. It is a shame.

America has always been, and God willing will always be, a land of opportunity. Yes, despite our imperfections, despite our mistakes, millions have flocked to these shores seeking a better life for themselves, their children, and their grandchildren. America is, of course, a land of immigrants, where those who come look for freedom to speak as they wish, to associate with whom they choose, to worship according to the dictates of their conscience and, yes, to seek justice. Those who have come have spared nothing, sometimes even their own lives, seeking opportunities for those who come after. At different times during the course of this Nation's history, they have come from England, Italy, Ireland, Spain, Mexico, Canada, Asia. They have come by the thousands and tens of thousands. What has drawn them irresistibly to this country is their hope and their ambition, not just for themselves but for those who would come after them.

It is that diversity, that desire, that dedication, that is the bedrock of American strength and resilience, and which has made America a beacon of hope for the rest of the world.

To me, one of the most amazing things about Miguel Estrada's story is in many ways it is not unique. It is exemplary, but it is not unique. His learning to speak English at 17, his subsequent admission and outstanding accomplishment at the premier institutions of higher learning in this country, have all been remarkable, but the simple immigrant story that is his life has been repeated time and again over the course of this Nation's history. People have come to work in this country with little but their hopes and their dreams, and by dint of faith, hard work, determination, sacrifice, they achieve the American dream. Each time this happens, and it has happened time and again during the course of this Nation's history, America redeems a promise it makes to all who would come here: Liberty and justice for all.

Too often, we focus on what is wrong with our country. No doubt we should strive to correct our mistakes, strive to overcome our shortcomings whenever and however we can, but we would be a cynical people, knowing the costs of everything and the worth of nothing, if we did not also celebrate what is right in America. We should celebrate occasions like this when the hopes, dreams, and aspirations of an immigrant family from Honduras have become a reality, confirming once again America is indeed the last best hope of mankind, where all who come here and who are willing to work hard to sacrifice can live up to their God-given potential.

We have heard it said Mr. Estrada has not laid out his judicial philosophy. I was surprised to hear that in the Senate Judiciary Committee the other day, when the senior Senator from New York made that charge, and said all he has told us is he will follow the law, he has not told us what his judicial philosophy is. Well, I think Mr. Estrada has articulated the best judicial philosophy that we as Americans could possibly hope for, a judicial philosophy and a dedication to the law that the American people who appear before the bench require.

What he has said is he will not pursue his own agenda. He will not pursue a social or political agenda. He will not try to make the law according to his liking. He will give the legislatures' enactments and the acts of Congress deference and will seek to determine our intent as policymakers and as those in the political branch who run for office based on a platform saying what we are for and then are voted for by the people of our State to come here. By saying he would follow the law, he is saying he would not only honor legislative acts, he would follow judicial precedence. That is the decisions by the highest court in the land.

As legislators, as those in the Senate who have the awesome responsibility of advice and consent, we should want to hear that. We should embrace it. There is no role for advocacy of personal beliefs or political agendas on the part of a judge under our Constitution. Judges are bound to follow Supreme Court precedent, whether they agree with it or not as a personal matter. If there is such a thing as the rule of law as opposed to the rule of men, judges are bound to follow the acts of the legislature and judicial precedent, whether they agree with them or not. Mr. Estrada has committed to follow the law, whether he agrees with it or not. Personal views and ideology have no role whatsoever to play. I believe that under our Constitution—and I believe that is what is taught in our classrooms in civics every day across this Nation—this is the appropriate role for a judge and for our judicial branch. We don't want them making legislative policy. We do not want judges who are legislators in robes.

My colleagues across the aisle in this Chamber know, we all know, that is our job. We stand accountable to the American people and to the voters of our States for doing that job. That is what we have accepted by coming here and agreeing to represent our States.

A lot of the debate we are hearing today, this week—and who knows how long this will go on—is not just about Miguel Estrada but about what is the appropriate role for our three branches of Government. Heaven knows, this is not a brandnew debate. But I would think most of the country would have thought that matter already settled. Indeed it was. Alexander Hamilton wrote about it in the Federalist Papers, of course, as the President knows, when the people of New York were considering this new Constitution, whether to ratify it. He was explaining the various provisions of this new Constitution to the people at that ratifying convention in New York. It is addressed in Federalist No. 78, what is the role we expect of the judiciary and how does that relate or compare to the role we have for the legislature or for the executive branch—the President.

He said:

> Whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous [branch] to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive [on the other hand] not only dispenses the honors, but holds the sword of the community.

In other words, the executive's job is to execute the laws passed by the legislature.

> The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated.

In other words, the legislature makes policy, makes the law.

He goes on to say:

> The judiciary, on the contrary, has no influence over the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

I would like to address one other comment that is made from time to time about the role of the Senate in performing its advice and consent functions. Some Senators I have heard say they perceive their role as seeking to achieve balance of the courts, by which I take them to mean they believe that a court, the District of Columbia Court of Appeals, must be evenly split with judges of different philosophies.

That concept is completely alien to our Constitution. Balance and independence, in our judicial branch, are not meant to be determined by Republicans and Democrats choosing their respective champions. The President has a right granted to him under the Constitution to appoint judges of his choosing, subject to the advice and consent of the Senate. That is one of the reasons we vote for a candidate to serve as President of the United States. All we should rightly do as Senators is determine whether or not a nominee has the qualifications and the temperament to be a judge. Included, of course as an element of that temperament, we should expect that nominees will pledge to a sound judicial philosophy, to uphold the law, by giving the legislature deference and by following judicial precedent. Miguel Estrada has pledged to do exactly that, and we should ask no more and no less of any nominee.

I said earlier I believe our judicial confirmation process is broken, that the kind of things we see going on in the process—delay, defeat, denial, and a dispiriting of those who would offer themselves for public service—has created a terrible situation. The process has become so politicized that we find ourselves in situations such as this, where Senators on the other side of the aisle are now talking filibuster, to deny this President the prerogative, granted to him under the Constitution, to appoint a highly qualified individual such as Miguel Estrada to serve on the District of Columbia Court of Appeals.

It is obvious to any reasonable person that the Senate needs a fresh start. We need a fresh start on judicial nominees and on the judicial confirmation process. Miguel Estrada, like other nominees, has waited for an inordinate amount of time—18 months so far. We owe it to the men and women who are nominated by the President to do our job on a timely basis, and to do it applying constitutional standards, not those that we make up or which we perhaps prefer, or those which serve the political interests of some constituency. The truth is, we owe it not only to the men and women who are nominated, we owe it to the American people to do our job, to do it on a timely basis, and to apply correct constitutional standards, because we know, and common sense will tell us, that the failure of this body to timely act on the President's nominees means that

very real human beings with real live cases and controversies that they need to have resolved are simply being told there is no room for their case. Justice delayed is justice denied.

As someone new to this body, I hope a new system can be devised enabling us to consider, on a bipartisan basis, new rules, a new agreement, a new paradigm, a new protocol that will guide us in the manner in which we consider the President's nominees. That is not just for this President, but anyone elected by the people to serve in that important office, regardless of who is in power, whether it is a Republican or a Democrat.

The result of this fresh start should be timely consideration of a nominee's qualifications and an up-or-down vote by the Judiciary Committee—and certainly no one is suggesting that any Senator ought to do anything other than to cast their vote either for or against a nominee. But they ought to do so on a timely basis. We should not have the kind of delay which we have had in this case. But if a nominee is voted out of the Judiciary Committee, then, of course, there ought to be that timely vote by the entire Senate regardless of who is President. Let us not hold to the delays and obstructions of the past as methods for treating judicial nominees in the future.

In closing, I urge my colleagues to confirm Miguel Estrada. I believe we ought to have a vote today on his nomination. We have had many days of debate. We have had 18 months since the President first proposed his name. Mr. Estrada has been scrutinized and questioned. His background has been investigated by the FBI. I believe he deserves a vote either up or down today.

Of course, I will, for the reasons I have just stated, vote for his confirmation. I believe the Nation will benefit from his experience, and he will be given the opportunity to give back to his adopted country through this position of honorable public service.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, first, I have enjoyed the presentation of the Senator from Texas. But I would suggest that my experience here over for now more than two decades indicates that the problem isn't a matter of whether it is a Democrat or a Republican President. The process is broken down there. It is not up here. The advice and consent role which we have under the Constitution is something that should work and should continue to work.

I suggest here on the floor myself that we need to do something to speed up the process down there. When these people apply for judgeships, the work is unending. For people who want to have Cabinet or sub-Cabinet jobs, the process is unending, and we have to do something to get that speeded up. The problem is not up here.

The Senator from North Carolina wishes to speak for up to 10 minutes. Following that—I always want to refer to Senator BYRD as the leader, and he is a leader but he is now the President pro tempore emeritus—I ask unanimous consent that Senator BYRD, the distinguished Senator from West Virginia, be recognized following the remarks of Senator EDWARDS.

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

The Senator from North Carolina.

Mr. EDWARDS. Mr. President, I believe judges have no greater responsibility than to ensure fair treatment and equal justice under the law. I also believe one of our greatest responsibilities as Senators is to advise and consent on the President's nominees to the bench. I, for one, take this responsibility very seriously. It is not our duty as Members of the Senate to just rubber stamp the President's nominees—particularly nominees who we doubt are committed to protecting equal rights for every single American.

Having read the record of this nominee very carefully, I feel compelled to oppose the nomination of Miguel Estrada for two reasons. First, what we know about his record raises serious questions about his commitment to protecting equal rights under the law.

Second, and more importantly, his refusal to answer reasonable questions during the confirmation process makes it impossible to examine his views of the law and determine whether his personal views would overrule law and legal precedent.

Federal judges wield enormous power and have a huge impact on the rights of individuals all across America. Given the fact that the Supreme Court reviews fewer than 100 cases per year, circuit courts, such as the DC Circuit where Miguel Estrada is being nominated to, ends up as the courts of last resort for nearly 30,000 cases each year.

Let me repeat that. Fewer than 100 cases are reviewed before the Supreme Court, and 30,000 cases are decided at the circuit court level.

These cases affect the interpretation of the Constitution as well as statutes enacted by us to protect equal rights. The circuit courts are the courts where Federal regulations will be upheld or overturned, where many personal rights will either be kept or lost, and where invasions of freedom will be allowed or curtailed. They are the courts where thousands of individuals will have a final determination in matters that affect their financial future, their health, their liberty, and their lives.

The District of Columbia Circuit is an especially important court in our judicial system. It is the most prestigious and powerful appellate court below the Supreme Court level because it has exclusive jurisdiction over critical Federal constitutional rights.

About Mr. Estrada: The little that we know of Miguel Estrada's approach to the law is troubling. But Mr. Estrada's record is not the main reason I can't support his nomination at this time. The main reason is that he has not explained his views. Before his hearing, I looked forward to hearing Mr. Estrada discuss his views, but he refused to do so. Instead, he stonewalled serious and valid questions—serious and valid questions that have been answered by many other nominees who have appeared before the committee.

Other judicial nominees of President Bush have discussed at length their views in hearings before the Senate Judiciary Committee. For example, Michael McConnell, whom I voted for and who was recently confirmed to the Court of Appeals for the Tenth Circuit, thoroughly discussed his views on subjects such as Roe v. Wade and the Supreme Court's recent ''federalism'' or ''States rights'' decisions limiting the authority of Congress.

But with Mr. Estrada, it is very different. The Justice Department refused to produce any legal memoranda written by Mr. Estrada during his 5 years as a lawyer in the Solicitor General's office. In this position, Mr. Estrada researched the law, he wrote memoranda, pleadings, and briefs on behalf of the Federal Government on critical and constitutional and statutory questions that were before the U.S. Supreme Court.

I understand the administration has concerns about executive privilege, but there are ways to strike a balance between the privileges of the executive and the rights of the Senate to learn about a nominee before we make a decision about him. That is what has happened during the judicial nomination process of other nominees who have worked in the Solicitor General's office, including Robert Bork and Chief Justice William Rehnquist. We tried to discuss Mr. Estrada's views with him during the hearing, but instead of being forthcoming in answering our questions, Mr. Estrada was extraordinarily evasive. Time after time, Mr. Estrada refused to answer our questions because he claimed not to have an opinion since he has not been personally involved, read the briefs, listened to oral arguments, or independently researched the case.

Anybody who has attended law school, including myself, knows that law students and lawyers express opinions about Supreme Court cases every day because of their ramifications for current cases with similar issues.

Nine times during his testimony Mr. Estrada refused to name any Supreme Court case with which he disagreed. And time after time after time, Mr. Estrada just flat out refused to offer us any explanation of or insight into his view of his judicial philosophy.

For example, we have heard the President state on many occasions that he intended to appoint judges who are strict constructionists—a term commonly used in describing judicial philosophy and often applied to Justices Scalia, Thomas, and Rehnquist. I asked Mr. Estrada a simple question of whether he considered himself within that category; did he consider himself

a strict constructionist? But he refused to provide a straight answer.

Question to Mr. Estrada:

Are you a strict constructionist?

Answer:

I am a fair constructionist, I think.

Question:

Do you consider yourself to be a strict constructionist?

Answer:

I consider myself to be a fair constructionist. I mean, that is today. I don't think that it should be the goal of our courts to be strict or lax. The goal of the courts is to get it right. . . .

I tried again.

Question:

Let me ask the same question a little differently. The President gave a speech last night at a fundraiser and specifically referred to your nomination, among others. The President said, ''For a stronger America, we need good judges. We need people who will not write the law from the bench, but people who''—and I am quoting him now—''strictly interpret the Constitution.''

Do you fall within the President's definition?

Mr. Estrada's answer:

I have not spoken with the President about this or any other subject. I don't know what he meant. If I had to take his text as a statute, I would want to know more about the circumstances in order to figure out whether I can answer your question.

Question:

You haven't been asked that question by anyone during the course of your nomination process?

If I can interject here, this is something the President talks about regularly—appointing judges who are strict constructionists.

He has now been asked several times by me in the hearing whether he is a strict constructionist. His answer was artifice language without answering the question.

I asked the question whether he is a strict constructionist. I asked:

You haven't been asked that question by anyone during the course of your nomination process?

Answer:

No. I was asked very similar questions, and they generally had to do with how I go about generally interpreting the Constitution and statutes—and I gave the answer that I gave you a few minutes ago.

In other words, ''none of your business'' was the answer.

Other Senators tried to get a straight answer from Mr. Estrada.

Question:

Of the current members of the Supreme Court, who would you characterize as a strict constructionist? Who would you characterize as a fair constructionist?

That was his language.

How would you characterize the remaining Justices?

Answer:

I would characterize each member of the current Court as a ''fair constructionist.''

The people on the Supreme Court today have totally different philosophies. Everyone knows that. You have a broad spectrum from someone such as Justice Scalia to someone such as Justice Stevens. But Mr. Estrada said they were all ''fair constructionists,'' which basically meant the term had no meaning at all.

It is like asking someone, ''Which Member of the Senate has your philosophy?'' and the answer being, ''Well, they all do.'' We do not all have the same philosophy in the Senate. I do not think anyone would question that.

He refused to answer a question about his views of any judge, living or dead.

Question:

In terms of judicial philosophy, please name several judges, living or dead, whom you admire and would like to emulate on the bench?

Answer:

There is no judge, living or dead, whom I would seek to emulate on the bench, whether in terms of judicial philosophy or otherwise. . . .

Again, ''none of your business.''

As a judge on the D.C. Circuit, Miguel Estrada would have an enormous impact on the lives of millions of Americans. The American people deserve to know about this man who will have such an effect on their lives. They deserve to know whether he will respect and protect their civil rights. They deserve to know this before he dons the cloak of silence he will get once he is on the bench. The American people deserve more from Miguel Estrada than ''none of your business.''

I look forward to working on a bipartisan basis to elevate qualified, moderate nominees to the Federal bench. In particular, in the Fourth Circuit, where North Carolina is, I have high hopes President Bush will nominate a highly qualified candidate whom I will be able to support.

But, based upon Mr. Estrada's record, this is clearly not the right man. I will not just rubberstamp nominees who have not proven they are qualified for the extraordinary responsibilities of a Federal judge, and particularly the extraordinary responsibilities of a judge who would sit on the DC Circuit Court of Appeals. As a result, I urge my colleagues to oppose this nomination.

I thank you, Mr. President.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from West Virginia.

Mr. BYRD. Mr. President, parliamentary inquiry. Is the Senate in executive session?

The PRESIDING OFFICER. The Senate is in executive session.

Mr. BYRD. I thank the Chair.

Mr. President, I ask unanimous consent to speak as in legislative session.

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

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

Mr. REID. Mr. President, the Senator from Minnesota is here. I am holding the floor now because the Democratic leader has been waiting since 2:15 to come and speak. I am wondering how long the Senator from Minnesota wishes to speak?

Mr. COLEMAN. Mr. President, I say to the Democratic whip, I have about 2½ pages typed, probably no more than 10 minutes, 5 to 10 minutes maximum.

Mr. REID. Why don't you go ahead and speak for, what did you say, up to 10 minutes?

Mr. COLEMAN. At the maximum.

Mr. REID. I ask unanimous consent that following the statement of the Senator from Minnesota, the Democratic leader be recognized.

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

Mr. COLEMAN. Mr. President, this morning the distinguished Senator from New York made some statements about the Senate's constitutional advice and consent responsibility. I would like now to respond to those statements because some of her views of the Senate's appropriate role in judicial nominations are different from mine.

I speak as a former solicitor general of the State of Minnesota. I had an opportunity to argue on many occasions before the highest courts in my State. I have a great love and appreciation for our Constitution and its history.

In its enumeration of the President's powers, the Constitution has provided a role for the Senate in the appointment of various Federal officials, including Federal judges. The relevant text, which is set forth in article II, section 2, of the Constitution, reads:

The President . . . shall nominate, and by and with the Advice and Consent of the Senate, shall appoint . . . Judges of the Supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by law[.]

As one scholar has noted:

a reasonable reading of the text suggests that because the Senate's role in the appointments process is outlined in Article II enumeration of presidential powers, rather than described in the Article I enumeration of congressional powers, the Senate plays a more limited role in the appointment of judges.

A reading of Alexander Hamilton's commentary on the Appointments Clause sheds some additional light on how the Framers viewed the Senate's duty of advise and consent. Hamilton acknowledged the danger that the Senate's advise and consent role could create an overly indulgent Senate relationship to appointed officeholders engaged in malfeasance. Hamilton rebutted this point by arguing that the Senate would have a strong interest in appointing qualified leaders and in protecting its reputation for appointing quality officeholders. He further pointed out—and this is important—that the Senate does not have the power to choose officeholders, but only to advise and consent. In a moment of amazing prescience, he stated that he felt that Senators might have political reasons for confirming or rejecting a nominee. He nevertheless observed—or perhaps hoped—that since the President alone

makes the nominations, Senators would be somewhat constrained in their voting decisions and that self-interested decisions would be offset by other Senators. He predicted that voting decisions on the merits would become much more the norm.

I wonder what Alexander Hamilton would say about the debate we have had over Miguel Estrada's nominations. I can't imagine that he would be pleased.

Hamilton believed that the appointments powers were wisely vested in the hands of two parties, the President and the Senate. On one hand, Hamilton believed the President, acting alone, would be the better choice for making nominations, as he would be less vulnerable to personal considerations and political negotiations than the Senate and more inclined, as the sole decision maker, to select nominees who would reflect well on the presidency. On the other hand, he argued that the Senate's role would act as a powerful check on unfit nominees by the President. As he put it, Senate confirmation ''would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity.''

So there you have it, straight from Alexander Hamilton himself. The role of the Senate is a limited one of protecting against the appointment of nominees who are unfit for the federal bench. I agree that the Senate owes some deference to the President's choices.

Hamilton also believed that the Senate would act on judicial nominees with integrity in order to avoid public disapproval. Now, the last thing I want to do is cast aspersion on the integrity of my colleagues who oppose Mr. Estrada's nomination. But I must say that the amount of misinformation being repeated here on the Senate floor about Mr. Estrada, and the manner in which his opponents have ignored his vast legal experience and record, is cause for grave concern.

Historically, deliberation by the Senate on judicial nominations was quite short, especially when compared to what we are seeing on the Senate floor on Mr. Estrada's nomination. Take, for example, the 1862 nomination and confirmation of Samuel F. Miller to the United States Supreme Court. The Senate formally deliberated on the nomination for only 30 minutes before confirming him. Confirmations on the same day, or within a few days of the nomination were the norm well into the 20th century.

Contrast this with what we are seeing on Mr. Estrada's nomination. We are now on our fourth day of debate with no end in sight. The Republicans have offered at least two generous time agreements to set a vote for Mr. Estrada's nomination, but the Democratic leadership rejected both of them.

I have taken the time to share with my colleagues some of the historical details of the judicial confirmation process in order to put the debate over Mr. Estrada's nomination into perspective. What was enumerated in the Constitution as ''advice and consent'' has in practice devolved to ''negotiation and cooperation'' in the best cases, and ''obstruct and delay'' in the worst cases, aided and abetted by the liberal Washington special interest groups. I fear that we are seeing the latter at work in Mr. Estrada's case.

I was recently elected to get things done. I was elected, and I heard my voters say: Put aside the bitter partisanship that is stopping the Senate from moving forward and that has prevented the Senate from getting a prescription drug benefit and Medicare for seniors, that stopped us from getting disaster relief assistance, that stopped us from getting a budget and appropriations bills passed.

Now we are facing the first partisan filibuster of a circuit court judicial nominee. Now we are facing a new standard—not the gold standard of the American Bar Association but talks about qualified, or well-qualified, of which Mr. Estrada has received the highest ranking—a new Federal standard. But, instead, we are facing a standard of political acceptability. Our Constitution is being tested. It is being tested by the reaction to Mr. Estrada's nomination.

He is someone who comes to us as an immigrant who worked his way up, who became the top of his class in college, the top of his class in law school, magna cum laude from Harvard, editor of the Law Review, clerked for Federal judges, clerked for Supreme Court Judges, and comes to us with the highest qualification rating by the American Bar Association. But now we are facing a new standard.

I urge my colleagues on both sides of the aisle to reject the political considerations and get back to that view and that perspective on whether they are fit, whether they are qualified, and whether they have the right kind of judicial temperament. Let us put an end to this debate. Let us support and confirm Mr. Estrada's nomination.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The Democratic leader.

Mr. DASCHLE. Mr. President, last night the Senate voted on three judicial nominations. And we voted unanimously—Republicans and Democrats. We voted unanimously, recognizing that those nominations were very likely ones with which we had perhaps even broad philosophical differences. But we voted. We didn't delay. We had debate. We all had an opportunity to make our evaluation. We came to some conclusion.

That is how it should work. That is what our Founding Fathers had envisioned. That is what the distinguished Senator from Minnesota was just alluding to—advise and consent. When it works, there are very few glitches. When it works, Republicans and Democrats can come together and make their best judgment.

It worked in this case. Why did it work? It worked in part because these nominees came before the Judiciary Committee and they did their best to answer the questions presented to them. They did their best to offer as much information as they could about their past, about their record, about others' judgments, and about their record. Having presented their information, having made their case, the Judiciary Committee voted, they were passed out of committee, they came to the floor, and the Senate voted.

Not one Republican Senator has mentioned that process today. They say that somehow we are abrogating our responsibilities in requesting exactly the same information from Miguel Estrada—not any more but not any less.

So this is not a question about disallowing conservative judges. We do that. We actually do it fairly regularly. It is my view that there are times when judges we view to be outside the mainstream—extreme, in other words—ought to be considered on the basis of their philosophical points of view. But if they fall within what we view to be, as best as we can tell, the philosophical mainstream in spite of their conservatism, I think a President has a basic right to nominate those in whom he has confidence.

There are those who have argued in the last couple of days that this is really about our opposition to diversity, that somehow we are opposed to Hispanic judges. That is not only unfortunate and not only in error, but I think it does a disservice to this debate. Frankly, they ought to know better than to resort to that kind of rhetoric which demeans the debate. If this were about diversity, if this were about some concern for Hispanic judges as some have asserted, we would be hard pressed to find one, much less virtually the entire Congressional Hispanic Caucus, in opposition. Yet that is what we find. Virtually every member of the Hispanic Caucus in the House of Representatives has opposed this nomination. Why? In large measure for the same reasons we oppose this nomination, unless we have more information. They don't know either where Mr. Estrada stands. They have no record either. In spite of their best efforts, there is a shroud of secrecy around this nominee that is very disconcerting.

Why is it that nominee after nominee comes before the Judiciary Committee and provides the information required? Why is it we have access to the information, the records of virtually every other nominee? Why is it, with that record of performance, that when it comes to this nominee—whether it is before the Judiciary Committee or before the Hispanic Caucus or before anybody else seeking information—we come up with nothing?

Mr. President, either this nominee knows nothing or he feels he must hide something. It is one or the other: He knows nothing or feels the need to hide something.

Now, I suppose if this were a temporary nomination, if this were something within the administration, with a beginning and an end to the term—a commission, even a Secretary—perhaps we could let this go by, perhaps we should not feel quite as troubled by this lack of willingness to be more forthcoming. But this is for the second highest court in the land. And not only the second highest court in the land, this is actually for, arguably, the most important court in all of the circuits in this country.

It is within this circuit that we find perhaps the single most complex, the most serious, the most hotly debated, the most contentious issues to come before the courts. Those who will serve on this court will decide the future of title IX, the future of workers rights, the future of campaign finance, the status of toxic waste cleanup. Those and many more issues will be decided in the D.C. Circuit.

So we are left with a very serious dilemma: Do we vote on what is essentially a blank slate or do we say: ''Look, we will vote, we will be prepared to move forward on this and any other nomination so long as that information can be provided''?

Today, Senator LEAHY and I have sent a letter to the President asking that the documentation that has been provided on numerous other occasions—the Solicitor General records—be provided as they were with Mr. Bork, Mr. Rehnquist, Benjamin Civiletti, and many others. That precedent has long since been established. We have asked for the same information provided to the Senate that was provided on those nominees. Why? Because there is no record. Why? Because there is no basis upon which to make a public judgment unless we have that information.

That is all we are asking: Give us some record upon which to make our judgment, No. 1. And, No. 2, let us just ask Mr. Estrada to present to us the answers to the same questions that have been asked by Republican colleagues to nominees in past Congresses and by Democratic and Republican Senators to nominees in this Congress.

Why is it we should give some exclusion to this particular nominee? What is it about this nominee that gives him that right to say: ''No, I'm above that. I don't have to provide that information. I don't have to provide the same information that Mr. Bork provided or that Mr. Rehnquist provided. I don't have to do that. I'm unique''?

There is nothing unique about defying the Senate. Others have attempted to do so. But when one defies the Senate, defies the Constitution, when someone undermines the constitutional obligation we have to advise and consent, we take that seriously.

So we have no choice. We have an obligation to live up to the same standard with this nomination that we have with all the others. All we are suggesting is that our colleagues live up to it as well. Provide us with the information. Answer the questions. Once that happens, we will make our judgment on this nomination. Some already have. But there are many others who deserve the right to make a proper evaluation.

I must say, based on the limited information available to us, there already are serious questions about Mr. Estrada's qualifications. His immediate supervisor at the Justice Department said: I cannot, in good conscience, recommend this man to serve on the Circuit Court of the United States of America. I cannot do that. In fact, he went on to say: I can't even trust this person. That is from the supervisor, the person who probably knows this man the best.

Mr. President, if a supervisor at the Justice Department cannot find within himself to support this nominee, how in the world is it we say we know better?

If Mr. Estrada has more information he can share that would shed some light on what it is that has caused his supervisor to be as concerned as he was to oppose this nomination, then I would say it would be in his interest to bring it forward, to let us look at it. And that is why the Solicitor General papers are so critical.

So, Mr. President, I do not know how long this debate will go on, but I will say this: We have thought about this very carefully now for many days. And it is not without a great deal of concern and disappointment that I come to the floor with the report I have just shared.

Our colleagues feel as strongly about this as anything that has been presented to us. There is no doubt we have the votes to sustain whatever procedural efforts are made to bring this debate to a close. I would hope that would not be necessary.

This matter can be resolved if we simply have access to the documents and have answers to the questions.

Mr. President, I ask unanimous consent that the letter Senator LEAHY and I sent to the President be printed in the RECORD.

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

U.S. SENATE,
*Washington, DC, February 11, 2003.*

The PRESIDENT,
*The White House,*
*Washington, DC.*

DEAR MR. PRESIDENT: We are writing in reference to your nomination of Miguel Estrada to the U.S. Court of Appeals for the District of Columbia Circuit. Pursuant to the Constitution, the Senate is to act as a co-equal participant in the confirmation of judges to the federal bench. Unlike nominations made by a President for Executive Branch appointments, judicial nominees are reviewed by the Senate for appointment to lifetime positions in the Judicial Branch.

The Senate has often requested and received supplemental documents when it is considering controversial nominations or when evaluating a candidate with a limited public record. The Chairman of the Senate Judiciary Committee wrote to your Administration on May 15, 2002 to request such supplemental documents to assist in Senate consideration of the Estrada nomination. In particular, the request was made for appeal recommendations, certiorari recommendations, and amicus recommendations that Mr. Estrada worked on while at the Department of Justice.

Prior Administrations have accommodated similar Senate requests for such documents. Such documents were provided during Senate consideration of the nominations of Robert H. Bork, William Bradford Reynolds, Benjamin Civiletti, Stephen Trott, and William H. Rehnquist.

Your Administration has refused to accommodate the Senate's request for documents in connection with the Estrada nomination. That refusal was a matter of inquiry at the confirmation hearing held on this nomination on September 26, 2002. Following the hearing, Senator Schumer wrote to the Attorney General on January 23, 2003, to follow up on the request.

In addition to requests for documents, Senators frequently question judicial nominees during their confirmation hearings to determine their judicial philosophy, views and temperament. For example, then-Senator John Ashcroft asked nominees: ''Which judge has served as a model for the way you would conduct yourself as a judge and why?'' Mr. Estrada refused to answer a similar question.

During consideration of President Clinton's judicial nominees, Republican Senators asked repeated questions regarding nominees' judicial philosophy, views or legal matters, and approaches to interpreting the Constitution. They insisted on and received answers. During his consideration before the Senate Judiciary Committee, Mr. Estrada failed to answer these kinds of questions. These questions have not only been routinely asked by the Senate, they have been routinely answered by other nominees—including other nominees from your Administration.

For the Senate to make an informed decision about Mr. Estrada's nomination, it is essential that we receive the information requested and answers to these basic legal questions. Specifically we ask:

1. That you instruct the Department of Justice to accommodate the requests for documents immediately so that the hearing process can be completed and the Senate can have a more complete record on which to consider this nomination; and

2. That Mr. Estrada answer the questions that he refused to answer during his Judicial Committee hearing to allow for a credible review of his judicial philosophy and legal views.

We would appreciate your personal attention to this matter.

Sincerely,

TOM DASCHLE.
PATRICK LEAHY.

Mr. DASCHLE. Answer the questions. Provide the information. Let's move this debate forward. Let's do the right thing. Let's live up to our constitutional obligation. Let's respect the advice and consent clause of the United States Constitution. Let's do what our forefathers expected of us. Let's not carve out an exemption for Mr. Estrada or anybody else. Let us make a wise decision about this nomination, as we have in so many other cases.

I yield the floor.

The PRESIDING OFFICER. The Democratic whip.

Mr. REID. Mr. President, earlier today there was a colloquy between the junior Senator from New York and this Senator, following remarks of the distinguished Chair of the Judiciary Committee, who said the Congressional Hispanic Caucus was divided on their feelings about the nominee now before this body.

I mentioned to the Senator from New York I had been privy to a conversation just a few days ago with the chairman of the Hispanic Caucus and other members of that caucus who said they unanimously oppose Miguel Estrada to be district judge for the District of Columbia.

I will now read into the record a statement of the Chair of the Hispanic Caucus, Congressman CIRO D. RODRIGUEZ, dated today, which reads:

''It is disheartening to see that Members of the Republican Senate continue to make misleading and unfound statements regarding the Congressional Hispanic Caucus's opposition to Bush judicial nominee Miguel Estrada,'' said Congressman Ciro D. Rodriguez, chair of the Congressional Hispanic Caucus. ''The CHC will continue to stand by its unanimous opposition to this unqualified nominee and will not waiver.''

''Senate Republicans continue to hit below the belt, insulting Hispanic Members of this Congress who have been elected to serve as a voice for the people in their community,'' continued Congressman Rodriguez. ''Today, Senate Judiciary Chairman Orrin Hatch continues to make misleading, partisan swipes. He incorrectly claims that the CHC is split in its opposition, and he mischaracterizes our arguments. Yesterday, the CHC released a letter to Senator Hatch demanding an apology for comments he made during Senatorial debate, likening Members of the CHC 'to the lioness eating her cubs . . .' We have yet to receive an apology or even an acknowledgment from the Senator that his comments were out of line and insulting.''

''The CHC has supported numerous highly qualified Hispanic appointees by the Bush Administration,'' noted Congressman Rodriguez. ''We oppose Mr. Estrada, however, based on our review of his inadequate qualifications for what is viewed as the second most powerful court in the nation.''

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, I have been on the Senate floor since the debate on the Miguel Estrada nomination commenced last week. I have stated in the strongest terms my support for his qualifications. I am not alone. Virtually anybody who knows him, anybody who has any background on Miguel Estrada, feels the same way. I have stated in the strongest terms this support. The record is replete with reasons why he would be an excellent addition to this DC Circuit and with facts dispelling the specious arguments of his detractors.

I will now address the procedural tactic that is being used against Miguel Estrada, and I am talking about a filibuster of this nomination. A filibuster of Mr. Estrada's nomination will require a cloture vote by the Senate to end debate, unless reasonable minds on the Democratic side can prevail.

I know there are some who are working to try to prevail, just like I had to work on our side to prevail over those who wanted to filibuster some of President Clinton's nominees. I am hoping reasonable people on the Democrat side will prevail. They simply must prevail because we really do not want to start down the road of a filibuster.

As I say, a filibuster of Mr. Estrada's nomination will require a cloture vote by the Senate to end debate. This means that a supermajority of 60 votes will be required to allow us to proceed to an up-or-down vote on Miguel Estrada's nomination. That is an insult to Miguel Estrada. It is an insult to the Senate. It is an insult to Hispanic people all over this country who are watching what is happening. Actually, it is an insult to this coequal branch of government, the judiciary.

I have taken the Senate floor on more than one occasion to decry the tactic of enforcing judicial nominees through a cloture vote. My position has been the same, regardless whether the nominee was appointed by a Democratic or Republican President. I am proud to say during my nearly 30 years in the Senate, I have never voted against cloture for a judicial nominee, even on the rare occasion when I opposed a judicial nomination and ultimately voted against that nomination.

An example in point is the nomination of Lee Sarokin to the Third Circuit. Even though I voted against his nomination, I voted in favor of cloture because I strongly believed his nomination deserved to succeed or fail on the basis of the votes of a simple majority of the Senate, not on the will of merely 41 Senators who vote against cloture. I argued strenuously in favor of invoking cloture on two of President Clinton's judicial nominees, Marcia Berzon and Richard Paez.

There are times when legislators must, to be effective, demonstrate mastery of politics, but there are also other times when politics, though available, must be foresworn. This is one of those times. There is a quote of Disraeli that addresses this situation perfectly. To paraphrase, next to knowing when to seize an opportunity, the most important thing is knowing when to forgo an advantage.

I hope my colleagues will forgo their perceived advantage of a filibuster of Miguel Estrada's nomination. Forcing a supermajority vote on any judicial nominee is a maneuver that needlessly injects even more politics into the already overpoliticized confirmation process. I believe there are certain areas that should be designated as off limits from political activity. The Senate's role in confirming lifetime appointed article III judges and the underlying principle that the Senate perform that role through the majority vote of its Members are such issues. Nothing less depends on the recognition of these principles than the continued untarnished respect for our third branch of Government, the one branch of Government intended to be above political influence, the Federal judiciary.

On the basis of principle, I have always tried to be fair to judicial nominees, regardless of the political affiliation of the President making the nomination. The opposition to now Judge Berzon and now Judge Paez, two Clinton nominees, was led by members of my own party. They believed very deeply that Marcia Berzon, with her very liberal philosophy, would become an activist judge. They knew, in their eyes—and I think they were pretty right—that Judge Paez as a Federal district court judge was an activist judge, writing activist decisions. I met Judge Paez, and he said he would be very careful not to be activist in the future. It did not take him long on the Ninth Circuit Court of Appeals, in the eyes of some, to go back to his activist ways. Activism means acting as a superlegislator on the bench, making laws that should be made by those who have to stand for reelection—Members of Congress and the President.

When members of my own party fought against Judge Berzon, now Judge Berzon, and then Judge Paez, during that time I stood against the use of cloture to attempt to thwart a vote on their nominations, and I was successful. Now it is my friends across the aisle first subjecting Miguel Estrada's nomination to a cloture vote. I stand just as firmly today against the use of this tactic to prevent his nomination from coming to the floor of the Senate for an up-or-down vote, which is what the President deserves. If we are going to be fair to the President of the United States, whoever the President may be, we should always provide that opportunity to have an up-or-down vote on these nominees.

To be sure, this body has on occasion engaged in the dubious practice of filibusters of judicial nominees, but forcing the filing of cloture on a judicial nominee remains the exception rather than the rule. We have always been able to thwart the attempted filibuster by some who I think at the time did not fully realize the import of their actions.

We have always been successful. Overall, these episodes have been infrequent and they have been unfortunate in each case. I hope they will remain as such and that what we are seeing today is not the beginning of a long battle of fighting filibuster threats against President Bush's judicial nominees. There is real cause for concern that is not to be taken lightly in the wake of the November elections. Leading liberals hit the newspapers to urge my

Democratic colleagues to use the filibuster as a tool to defeat President Bush's judicial nominees.

On November 11 of last year, the Legal Times published an article: ''A Major Shift in the Battle for the Bench.'' The article was subtitled: ''With GOP steering the Judiciary Committee, liberal advocates turn to more desperate measures.'' The article reported on the plans of liberal interest groups to refocus their energies against President Bush's judicial nominees on the Senate floor where ''filibusters and legislative horse trading may give liberal interest groups their best shot at influencing the process.''

The senior legislative counsel of one liberal group called the filibuster a ''plausible weapon.''

Also on November 11, two liberal law professors published an op-ed in the Los Angeles Times entitled: ''No to a Far-Right Court: Use Filibusters.'' In an implicit nod to the rarity of the use of a filibuster to defeat a judicial nominee, the article urged ''courageous Democrats'' that a filibuster is the only way to thwart President Bush's nominees.

The New York Times on November 10 similarly urged Democrats ''not [to] be afraid to mount a filibuster,'' which, again, implicitly acknowledges the extremity of filibustering a judicial nomination.

On November 14, the Madison Capital Times reported that a Federal feminist group was targeting Wisconsin for a grassroots campaign to drum up support for the filibustering of Bush Supreme Court nominees. The paper candidly reported:

The tactic would call on Senators to filibuster in order to block [pro-life] nominees. A filibuster is a parliamentary technique that allows a majority of Senators to keep a vote from being taken. Defeating a nominee requires a majority vote in the Senate, but only 41 of the 100 Senators are needed to sustain a filibuster.

The rallies in Madison and Milwaukee were only 2 of 12 such campaigns by this group on college campuses nationwide to drum up support for filibustering judicial nominees based on the single litmus test issue of abortion.

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

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

[From Capital Times, Nov. 14, 2002]

ACTIVIST: URGE SENATORS TO SAVE ABORTION RIGHTS

(By Samara Kalk Der)

Women's rights leader Eleanor Smeal was in Milwaukee and Madison Wednesday urging grass-roots abortion rights supporters to send a message to U.S. Sens. Russ Feingold and Herb Kohl.

Smeal said she came to Wisconsin because it is the only state where both of its senators sit on the Judiciary Committee, which wields considerable power when it comes to the scrutiny and confirmation of Supreme Court justices.

While Democrats Feingold and Kohl both take positions supporting abortion rights, women in Wisconsin must not take for granted, Smeal told an overflow crowd of 250 that packed into the Marquee Room at the Madison Civic Center Wednesday night for ''Never Go Back,'' a national campaign aimed at putting a spotlight on the protection of abortion rights.'' I hope this campus organizes like it has never organized before,'' Smeal told the group, which was nearly all female and filled with many UW-Madison students.

The political landscape is making those who cherish the right to choose an abortion nervous, and Smeal and local activists who spoke.

''What Nov. 5 (the midterm election) has done is made it clear to everybody what we are up against,'' said Smeal, president of the Feminist Majority Foundation and three-time president of the National Organization for Women.

Smeal led the first national abortion rights march in 1986, which drew about 100,000 to rally in Washington, D.C. In 1989, more than twice as many marched, she said. And then, in 1992, the march turned out more than 700,000.

''I believe we are going to have to march again and again and again,'' she said.

Vacancies on the U.S. Supreme Court may appear as early as this summer, and it is expected that President George W. Bush will seek to appoint justices who oppose abortion.

Smeal is touting a plan to save abortion rights now that the country has a conservative president and U.S. Senate majority. The strategy focuses on the Senate because it has the power to confirm, reject or block nominees to he U.S. high court.

The tactic would call on senators to filibuster in order to block anti-abortion nominees. A filibuster is a parliamentary technique that allows a minority of senators to keep a vote from being taken. Defeating a nominee requires a majority vote in the Senate, but only 41 of the 100 senators are needed to sustain a filibuster.

''It's the safest tool we have to save the lives of the next generation of women,'' Smeal said.

If the Supreme Court overturns Roe v. Wade, the 30-year-old decision that struck down restrictive state abortion laws, abortion rights will again be determined state by state. That means rich women will be able to hop a plane to get an abortion, while poor women will be left to bring unwanted pregnancies to term or seek dangerous, ''back alley'' abortions, Smeal said.

''We'll lose centuries,'' she added.

Dr. Dennis Christensen, medical director of the Madison Abortion Clinic, also spoke. He said the huge turnout for the event was one of the few bright spots he's seen since last week's election. For the first time in 30 years he really feels the urgency of the abortion rights cause, he said.

''Where were the women in this election?'' he asked.

''Christensen said he is not a politician or a fund-raiser. He is a physician who is able to help women ''with this problem that they have.''

''I don't have to worry about it. I'm not going to get pregnant,'' he added.

If Roe v. Wade is overturned, abortion in Wisconsin will become illegal the next day, Christensen said. Wisconsin is one of just 14 states where abortion will be considered illegal should the federal law get struck down, he added.

''I don't think I'm ready to spend my retirement in jail,'' he quipped. ''I plan to spend it on the golf course.''

[From the New York Times, Nov. 10, 2002]

DEFENDING THE JUDICIARY

The biggest fallout from last week's Republican capture of the Senate may be that it will now be harder to block ideologically extreme nominees to the federal courts. But contrary to what some conservatives claim, nothing in the election returns suggests that Americans want the courts packed with such judges. Given the new political lineup, Democratic and moderate Republican senators must be more involved in the confirmation process to ensure that Justice Department ideologues do not have a free hand in shaping the federal judiciary for decades to come.

For all of the talk of Republican ascendancy, last week's election returns did not produce anything like a right-wing mandate. Republicans running in the hardest-fought elections hewed to the political center. The victory margins in the races that ended up shifting the Senate—Minnesota and Missouri—were less than three percentage points.

Despite President Bush's campaign promise to ''unite, not divide,'' many of his judicial nominees have done the reverse. They favor taking away the right to abortion, striking down reasonable environmental regulations and turning back the clock on race. (One pending nominee at one point criticized the Supreme Court's ruling that Bob Jones University should lose its tax-exempt status for discriminating against black students.) With the Senate in Republican control, the administration is likely to choose even more troubling nominees.

Senate Democrats must insist on two things going forward: consultation and consensus. Senator Patrick Leahy, who will be the ranking minority member of the Judiciary Committee, should ask to meet with the administration in advance to head off unacceptable candidates before they are nominated. Consultation of this kind occurred in the Clinton years, and it should be the norm for judicial selections, no matter which party holds the White House.

Senate Democrats should also make it clear that they will not accept extremist nominees. They must draw a line in the sand and say that those whose politics cross it will not be confirmed.

Democrats in the Senate no longer control the Judiciary Committee, which has until now been screening out the worst nominees, and cannot win party-line votes. But they should reach out to moderate Republican senators and build a mainstream coalition. And when a judicial nominee is unacceptable, they should not be afraid to mount a filibuster, which Republicans would need 60 votes to overcome.

Rumors have been swirling around Washington that there could be one or more Supreme Court vacancies in the next few months, making the stakes as high as can be. With the White House representing the far right in the nominating process, it remains up to the Senate—even in its new configuration—to represent the rest of the country.

Mr. HATCH. What these articles suggest is that the liberal interest groups are just as intent as ever on using every trick in the book to defeat President Bush's judicial nominees. From the start of their record, as they have tried to do with Miguel Estrada and others, by forcing a cloture vote, it appears the liberal interest groups will stop at nothing to further their agenda. What is more, it looks as if the defeat we are seeing on Miguel Estrada is

not so much about him as it is about seeing how well a filibuster works in case there is a Supreme Court nominee this summer.

It also may have a more sinister purpose: To desensitize the American people to filibustering judicial nominees so that the practice will become more acceptable and so that less outrage will be expressed over the filibustering of other circuit nominees and ultimately a Supreme Court nominee. This is all part of the strategy of changing the ground rules on judicial nominations that Senate Democrats discussed at their retreat back in April of 2001.

I am not the only one who recognized the dangerous precedent that some Democrats would set in filibustering qualified nominees. The Washington Post, hardly a bastion of conservatism, warned in a December 5, 2002, editorial that ''a world in which filibusters serve as an active instrument of nomination politics is not one either party should want.''

The Washington Post urged Democrats to ''stand down'' on any attempt to deny Miguel Estrada a vote because his nomination ''in no way deserves a filibuster.''

I couldn't agree more.

I hope I am wrong about the extent to which the liberal interests groups have had a role in orchestrating this lengthy debate on Miguel Estrada's nomination. I hope that this is not another example of an attempt by some of my Democratic colleagues to change the ground rules on judicial nominees. I hope that my Democratic colleagues will exercise the same independence that I did when I joined them to invoke cloture on the nominations of Clinton judicial nominees who were opposed by many of my Republican colleagues.

When I argued to invoke cloture on the nominations of Judge Berzon and Judge Paez, I noted several important reasons for avoiding a filibuster of judicial nominees. One is that the Senate's constitutional duty of advise and consent contemplates that a vote by a simple majority of the Senate determine the fate of a judicial nominee. There is nothing in the Constitution that gives that power to a minority of 41 Senators, just as that power should not be yielded by 10 Senators in a party-line vote in committee.

Another reason is that most of the fight over a nomination has occurred well before a nominee arrives at the Senate floor. The battles are largely fought between the White House and the Judiciary Committee, since it is our job to vet the nominees. By the time a judicial nominee reaches the Senate floor, he or she deserves a vote on the merits without having to clear the procedural hurdle of a cloture vote.

In the past, several of my Democratic colleagues have joined me in condemning the practice of forcing judicial nominees through a cloture vote. For example, during the debate on Clinton nominees, one of my Democratic friends spoke passionately about this tactic. He said:

I . . . do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41.

He continued:

I . . . took the floor on occasion to oppose filibusters to hold . . . up [nominations] and believe that we should have a vote up or down.

On a different occasion, the same colleague said:

I have stated over and over again on this floor that . . . I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported; that I felt the Senate should do its duty.

And another Democratic colleague put it simply when she said:

A nominee is entitled to a vote. Vote them up or vote them down . . . If someone has an opposition to a judge, they should come to the floor and say that.

I agree wholeheartedly with these statements.

Miguel Estrada waited more than 16 months for his confirmation hearing. He waited another 4 months for a committee vote on his nomination. And now his nomination is being subjected to yet another hurdle: Extended floor debate on his nomination with no end in sight. If we're going to debate Mr. Estrada's nomination, then let's do it, vote on it, and get on with the other important matters that are the work of this body.

I hope my colleagues are not going to the unworthy ends of filibustering the President's nominees. It is unfair to the President. It is unfair to the process. It is unfair to Miguel Estrada who has earned the right to be here.

I think it is important to remind my Democratic colleagues of statements they have made over the years opposing filibusters of judicial nominees. Of course, there was a Democratic President in the White House at the time these statements were made. I guess that is the double standard for Mr. Estrada, in more ways than one.

I remember, on the nomination of Merrick Garland, here was a statement of Senator SARBANES, who came to the Senate the same time I did, and whom I respect, the Senator from Maryland. It was on the nomination of Merrick Garland, President Clinton's nominee to the very same court, the Circuit Court of Appeals for the District of Columbia, for which Miguel Estrada has been nominated. He said this:

It is worse than that. It is not whether you let the President have his nominees confirmed. You will not even let them be considered by the Senate for an up-or-down vote. That is the problem today. In other words, the other side will not let the process work so these nominees can come before the Senate for judgment. Some may come before the Senate for judgment and be rejected by the Senate. That is OK. But at least let the process work so the nominees have an opportunity and the judiciary has an opportunity to have these vacant positions filled so the court system does not begin to break down because of the failure to confirm new judges. The Senator from Delaware, when he was chairman of the committee, always measured up to that responsibility, I think often taking a lot of political heat for doing it. But he was out to make sure the system could function. He had Republican Presidents nominating judges. He processed their nominations. He brought them to the floor of the Senate. He gave the Senate a chance to vote on them up or down for those people to get confirmed. that process is breaking down.

On another occasion Senator BIDEN said:

So any member who is nominated for the district or circuit court who, in fact, any Senator believes will be a person of their word and follow stare decisis, it does not matter to me what their ideology is, as long as they are in a position where they are in the general mainstream of American political life and they have not committed crimes of moral turpitude, and have not, in fact, acted in a way that would shed a negative light on the court. But I also respectfully suggest that everyone who is nominated is entitled to have a shot, to have a hearing and to have a shot to be heard on the floor and have a vote on the floor.

That was a statement of Senator JOSEPH BIDEN, CONGRESSIONAL RECORD, March 19, 1997 at S2540.

This is a statement of Senator BARBARA BOXER on the nomination of Margaret Morrow, to the Ninth Circuit Court of Appeals:

According to the U.S. Constitution, the President nominates, and the Senate shall provide advice and consent. It is not the role of the Senate to obstruct the process and prevent numbers of highly qualified nominees from even being given the opportunity for a vote on the Senate floor.

That statement of Senator BOXER was printed in the CONGRESSIONAL RECORD, May 14, 1997 at S4420.

On the nomination of Judge Richard Paez, to the Ninth Circuit, Senator LEAHY, the distinguished ranking member and Senator from Vermont, said:

I have heard rumors that some on the Republican side planned to filibuster this nomination. I cannot recall a judicial nomination being successfully filibustered. I do not recall earlier this year when the Republican Chairman of the Judiciary Committee and I noted how improper it would be to filibuster a judicial nomination. During this year's long-delayed debate on the confirmation of Margaret Morrow, Senator Hatch said: 'I think it is a travesty if we ever start getting into a game of filibustering judges.' Well, it appears that travesty was successfully threatened by some on the Republican side of the aisle and kept the Minority Leader from fulfilling his commitment to call up the nomination for a confirmation vote.

That is printed in the CONGRESSIONAL RECORD, October 14, 1997 at S12578.

He said:

If Senators are opposed to any judge, bring them up and vote against them. But don't do an anonymous hold, which diminishes the credibility and respect of the whole U.S. Senate. I have had judicial nominations by both Democrat and Republican Presidents that I intended to oppose. But I fought like mad to make sure they at least got a chance to be on the floor for a vote. I have stated over and over again on this floor that I would refuse to put an anonymous hold on any judge; that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported; that I felt the Senate should do its duty.

That was printed in the CONGRESSIONAL RECORD, June 18, 1998 at S6523.

He said:

I hope we might reach a point where we as a Senate will accept our responsibility and vote people up or vote them down. Bring the names here. If we want to vote against them, vote against them.

That was printed in the CONGRESSIONAL RECORD, October 22, 1997 at S10925.

He also said:

I hope that when we return . . . there will be a realization by those in this body who have started down this destructive path of attacking the judiciary and stalling the confirmation of qualified nominees to the Federal bench that those efforts do not serve the national interest or the American people I hope that we can once again remove these important matters from partisan and ideological politics.

That is a statement of Senator PATRICK J. LEAHY printed in the CONGRESSIONAL RECORD of November 13, 1997 at S12569.

There are other statements by my colleagues, but I don't want to bore the Senate with any more. Let me just say, I hope we do not have a double standard, but it sure looks as if we do. If Miguel Estrada's nomination is truly filibustered—and I hope it is not, but we are getting to the point where we know it will be and we know that it is because the time is passing—then I think this body is going to be sorry because in the past we have been able to stop filibusters. Both sides have labored diligently to do so.

I have to tell you, if this is the way it is going to be in the future, nobody is going to be able to stop them. It just means that really highly qualified candidates who are controversial to one side are going to be filibustered. It is that simple. I don't want to see that day come.

I am disappointed and somewhat outraged with the recent letter that was sent to the President of the United States. This was sent by the distinguished minority leader and the distinguished Democrat leader on the Judiciary Committee. The fact of the matter is, Miguel Estrada's hearing was held in September of last year while the Senate was under Democratic control. The Democrats remained in control for the rest of the 107th Congress. If they weren't satisfied with Miguel Estrada's answers at the hearing, they could have held another hearing.

But this is what the letter said:

DEAR MR. PRESIDENT: We are writing in reference to your nomination of Miguel Estrada to the Estrada to the U.S. Court of Appeals for the District of Columbia Circuit. Pursuant to the Constitution, the Senate is to act as a co-equal participant in the confirmation of judges to the federal bench. Unlike nominations made by a President for Executive Branch appointments, judicial nominees are reviewed by the Senate for appointment to lifetime positions in the Judicial Branch.

The Senate has often requested and received supplemental documents when it is considering controversial nominations or when evaluating a candidate with a limited public record. The Chairman of the Senate Judiciary Committee wrote to your Administration on May 15, 2002 to request such supplemental documents to assist in Senate consideration of the Estrada nomination. In particular, the request was made for appeal recommendations, certiorari recommendations, and amicus recommendations that Mr. Estrada worked on while at the Department of Justice.

Prior Administrations have accommodated similar Senate requests for such documents. Such documents were provided during Senate consideration of the nominations of Robert H. Bork, William Bradford Reynolds, Benjamin Civiletti, Stephen Trott, and William H. Rehnquist.

Your Administration has refused to accommodate the Senate's request for documents in connection with the Estrada nomination. That refusal was a matter of inquiry at the confirmation hearing held on this nomination on September 26, 2002. Following the hearing, Senator Schumer wrote to the Attorney General on January 23, 2003, to follow up on the request.

I note parenthetically that was after President Bush won the election and the control of the Judiciary Committee was on its way to the Republicans in the Senate.

To continue with the letter:

In addition to requests for documents, Senators frequently question judicial nominees during their confirmation hearings to determine philosophy, views and temperament. For example, then-Senator John Ashcroft asked nominees: ''Which judge has served as a model for the way you would conduct yourself as a judge and why?'' Mr. Estrada refused to answer a similar question.

During consideration of President Clinton's judicial nominees, Republican Senators asked repeated questions regarding nominees' judicial philosophy, views on legal matters, and approaches to interpreting the Constitution. They insisted on and received answers. During his consideration before the Senate Judiciary Committee, Mr. Estrada failed to answer these kinds of questions. These questions have not only been routinely asked by the Senate, they have been routinely answered by other nominees—including other nominees from your Administration.

For the Senate to make an informed decision about Mr. Estrada's nomination, it is essential that we receive the information requested and answers to these basic legal questions. Specifically we ask:

1. That you instruct the Department of Justice to accommodate the requests for documents immediately so that the hearing process can be completed and the Senate can have a more complete record on which to consider this nomination; and

2. That Mr. Estrada answer the questions that he refused to answer during his Judiciary Committee hearing to allow for a credible review of his judicial philosophy and legal views.

We would appreciate your personal attention to this matter.

Sincerely,

TOM DASCHLE.
PATRICK LEAHY.

Madam President, as I said before, if they weren't satisfied with Miguel Estrada's answers at his hearing which they conducted and which they controlled, then they could have held another hearing. Nothing would have stopped them. They had the power to do so. They did not. They could have asked him followup questions in writing. Only two of the Democrats did. The fact of the matter is Estrada did answer the questions he was asked by the Democrats and Republicans back in September when he had his hearing. My Democratic colleagues are unhappy only because Mr. Estrada did not say anything they could use to oppose him. In other words, he didn't tell them what they really wanted to hear, which would have been mistakes, or some error, or some difference in opinion they could then use to oppose him. He answered the questions. He just didn't answer them the way they wanted him to answer.

That is why they are trying to engage in this fishing expedition and demanding unprecedented, unfettered access to the internal privileged memoranda Mr. Estrada offered at the Department of Justice. These memoranda are attorney work product done for our country when he worked for the Solicitor General. Any lawyer would object to having to hand them over. He didn't. He was proud of his work. He didn't care if the Government would give them over. But the Government has taken a principled position; that is, these internal documents should not be turned over to the Senate Judiciary Committee to be used to try to thwart the nomination of anybody, or to be used, since they were internal confidential documents. They were the work products of attorneys within the Solicitor General's Office. It is like asking a nominee to give up all of the confidential information his law firm had and that he worked on during the time at his law firm that is not in the public record. Any lawyer would object to turning that over.

What are we going to do when we disagree with somebody who worked for Senator HATCH? Are we going to ask for all of the internal documents the man or woman did while he worked for me that were given for my purview as their supervisor, and as their Senator, so I could take those documents and determine what to do in the future?

Let us make it even more clear.

Should Senator DASCHLE's staff be subject to this kind of thing?

Why would the Solicitor General's Office be subject to having to turn over confidential documents that were meant to help the Solicitor General make decisions on behalf of our country? Can you imagine how that would chill the work of the people in that office if attorneys there wanted to become judges someday? You don't think that would cause them to be putting their fingers up into the wind and asking, How will this be interpreted someday if I ever come up for a judicial nomination? Hopefully they wouldn't, but, of course, they would. Let us be honest about it.

But here, unlike Senator DASCHLE's representations—he certainly is a friend of mine. He signed this letter. It is the Department of Justice, not Mr. Estrada, that holds the memos. The Department has set forth the reasons why it is so inappropriate to release these memos. It is crystal clear to me—to all seven remaining former Solicitors General of the United States,

and to the Washington Post. It is clear to them, and to the Wall Street Journal. It is to just about everyone, it appears, except to my Democratic colleagues. Why would they want these memoranda? To see if they could find some reason to again attack Mr. Estrada? Is this Hispanic gentleman so unqualified they have to go on fishing expeditions to try to find things to give him a difficult time with?

The fact of the matter is he is as qualified as anybody we have had before the committee, and the American Bar Association said so. I know the Supreme Court Justices feel so. I know a lot of leading Democratic lawyers in this town are saying this is the man who deserves confirmation. Why is he being treated differently?

One of my colleagues the other day was complaining he thinks some of us over here are calling our Democratic colleagues racists because they are against Miguel Estrada. No. Nobody over here has made that comment. Nobody over here has even implied that. But what I have said is it isn't because he is Hispanic they are against him—it is because he is a Hispanic Republican who they think is conservative and who is going on a court they think is equally divided—where over 90 percent of the cases are unanimous decisions, anyway, in that court.

It is the worst excuse for voting against him I have ever heard. But it is because he is a Hispanic Republican conservative. That is the reason they are against him. They are so afraid he might not please them when he gets on the Circuit Court of Appeals for the District of Columbia.

I suggest to them he is a great lawyer. He understands precedent. He understands the rule of precedent. He understands the rule of what we call stare decisis in the law, and he more than told every one of them who questioned him over and over that he would apply the law as it is, regardless of his personal beliefs.

What more can anybody say? They are accusing him of not being responsive? I am accusing them of not being fair to a Hispanic conservative Republican. I do not know what his point of view is on Roe v. Wade. To this day, I don't know. I do know he at one time helped the National Organization for Women in a serious case, which I think if they were offering him as a nominee they would argue means he is all right. I do not know what his position is. But I will tell you this. He deserves to be confirmed as a jurist on the Circuit Court of Appeals for the District of Columbia.

Let me address in a little more detail why this letter Senator DASCHLE and Senator LEAHY sent to President Bush is so outrageous in its continuous demand for privileged documents.

At the outset, I must note the nature of this request for unfettered access to the universe of Mr. Estrada's work product is truly extraordinary. Contrary to what Senator DASCHLE and others would have us believe, and as I have mentioned before, during the last Congress the Senate confirmed Jonathan Adelstein, a former aide to Senator TOM DASCHLE to a position on the FCC. The Republicans did not demand all of Mr. Adelstein's memoranda to Senator DASCHLE on telecommunications issues before confirming him, despite the fact they would have been useful in determining how Mr. Adelstein would have approached his decisions as a commissioner. This is because of the obvious reason that to do so would have intruded into the deliberative relationship between Mr. Adelstein and Senator DASCHLE. Nobody here ever wanted to do that, even if we didn't like the appointment of Mr. Adelstein. And some on our side definitely did not like that appointment. I was not one of them, but there was a considerable number who did not agree with this appointment for the same reason, and for other equally sound reasons that I will detail.

No Member of this body should advocate holding Mr. Estrada's nomination hostage to demands for access to internal, confidential documents he authored at the Solicitor General's Office.

My Democratic colleagues have claimed that the Department of Justice has a history of disclosing previously confidential, internal documents in connection with confirmation proceedings. This is simply not accurate.

In a letter dated October 8, the Department of Justice points out that since the beginning of the Carter administration there have been 67 former Department of Justice employees confirmed as Federal circuit judges—38 of whom, like Mr. Estrada, had no prior judicial experience. Eight of these nominees, again like Mr. Estrada, had worked in the Solicitor General's Office.

The Department of Justice could find no record of having produced internal, deliberative materials created by the nominee while a DOJ lawyer in any of these cases.

Madam President, one of my Democratic colleagues listed six nominees in connection with which he claimed that the Department of Justice released confidential, internal documents. In its October 8 letter, the Department of Justice explained that of these nominees, the hearings of only one—only one; Judge Bork—involved documents from their service in the Solicitor General's Office.

I think there have been those misrepresentations made to Senators in their caucus, and they are absolutely false, because I chatted with some of my Democratic friends on my way over to the medical liability hearing I conducted this afternoon, and they were citing these same specious arguments that they had been told. Look, if we are going to tell our colleagues things, they ought to be accurate.

In that one case—Judge Bork's—the Department of Justice produced a limited number of documents related to specific topics of interest to the committee. The Department of Justice did not agree to the fishing expedition that was demanded, and they certainly did not agree to the type of fishing expedition that my Democratic colleagues now seek to impose upon Mr. Estrada in the Justice Department.

As the Department of Justice observed:

> The vast majority of memoranda authored or received by Judge Bork when he served as Solicitor General were neither sought nor produced. And the limited category of documents that were produced to the Committee did not reveal the internal deliberative recommendations or analysis of assistance to the Solicitor General regarding appeal, certiorari, or amicus recommendations in pending cases.

Exactly what they have been asking for here is something that has not been done. Yet I know it has been represented to some of my Democratic colleagues that the Department of Justice did give these kinds of documents. Well, they did not. And I hope my colleagues are watching this so they can get the truth.

This is hardly the unfettered, unprecedented access to privileged work product that my Democratic colleagues now seek. And why do they seek it for this fellow who has every qualification to be on the Circuit Court of Appeals for the District of Columbia, and more, who they have not laid a glove on, who they cannot name one thing that would refute his nomination other than these specious arguments that he has not answered the questions? Sure, he has answered the questions. They just don't like the answers.

My Democratic colleagues also claim that policy considerations weigh heavily on the side of disclosure. Curiously, however, they fail to mention the letter that the committee received from all seven living former Solicitors General of the United States, four of whom are leading Democrat lawyers, leading Democrat former Solicitors General.

I know some of my colleagues on the other side have not heard that yet because I asked some of them what is going to happen here and they indicated they are probably going to filibuster. And then one of them said: Why don't you give up those documents from the Justice Department? I said: Well, seven former Solicitors General, four of whom are Democrats, said that would be preposterous, that they should not do that. Those are confidential. That is the work product of attorneys in the Solicitor General's Office.

You should have seen the surprised look on some of my colleagues' faces? ''Really?'' It seems to me, if you are going to argue against a person, you ought to at least tell the truth and the facts on the other side.

Why is it they are picking on this young, terrific Hispanic candidate for this job, who has the highest rating from the American Bar Association, a unanimously well-qualified rating?

The letter, dated June 24, 2002, was signed by Democrat Seth Waxman—we

all respect Seth; he is a great lawyer—Walter Dellinger—one of the great teachers in this country; taught at Duke; a fine man; I have grown to think a great deal of him as I have listened to him on a variety of matters, where in the early days I was not sure I did—Drew Days, who is a wonderful African-American former Solicitor General, and a very adamant Democrat; all of them are—and Archibald Cox. You have to go pretty far to find somebody more prestigious than Archibald Cox. All Democrats: Waxman, Dellinger, Days, and Cox. And it was signed, as well, by Republicans Ken Starr, Charles Fried, and Robert Bork.

The letter notes that when each of the Solicitors General made important decisions regarding whether to seek Supreme Court review of adverse appellate decisions and whether to participate as amicus curiae in other high-profile cases, they ''relied on frank, honest and thorough advice from [their] staff attorneys like Mr. Estrada. . . .''

The letter explains that the open exchange of ideas, which must occur in such a context, ''simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure.''

The letter concludes that:

> [A]ny attempt to intrude into the Office's highly privileged deliberations would come at a cost of the Solicitor General's ability to defend vigorously the United States' litigation interests—a cost that also would be borne by Congress itself.

This is a bipartisan group of seven former Solicitors General—all the living ones.

The former Solicitors General are not the only ones who are disturbed by my Democratic colleagues' efforts to obtain privileged Justice Department memoranda. The editorial boards of two prominent newspapers have also criticized the attempt to obtain these records. I am sure there are others as well.

On May 28 of last year, the Washington Post—as I say, hardly a bastion of conservative thought—editorialized that the request ''for an attorney's work product would be unthinkable if the work had been done for a private client. The legal advice by a line attorney for the federal government is not fair game either.''

According to the Washington Post:

> Particularly in elite government offices such as that of the solicitor general, lawyers need to speak freely without worrying that the positions they are advocating today will be used against them if they ever get nominated to some other position.

Gee, that is a pretty good reason from the Washington Post. I have to tell you, that is a wise editorial, and it is true. And it goes along with the seven former Solicitors General, four of whom are Democrats.

The Wall Street Journal also criticized my Democratic colleagues' request in two editorials. In its second editorial, which appeared on June 11, they called the request ''outrageous'' and noted that the true goal was ''to delay, [to] try . . . to put off the day when Mr. Estrada takes a seat on the D.C. Circuit Court of Appeals, from which President Bush could promote him to become the first Hispanic-American on the U.S. Supreme Court.''

The Wall Street Journal got it pretty right. What is really behind all this is to damage this person as much as they can so this Hispanic gentleman, with all of these qualifications, can never receive a nomination to the U.S. Supreme Court, can never be considered.

Well, I am doing my best to make sure that does not happen, that he will have a chance, just as any other great lawyer in this country, to someday be nominated. And that is one reason why I have spent so much time on the floor.

Let me conclude. The bottom line is that my Democratic friends are seeking internal, confidential material that any reasonable person, thinking about it, would agree should not be delivered by the Justice Department to the Senate for partisan purposes—for any purposes.

Those seven former Solicitors General had no axes to grind. They understand how important those documents are, and how important they are to be held confidential. Yet my colleagues on the other side keep acting as if that is a right they should have no matter what.

Their attempts have been criticized by all seven living former Solicitors General and by at least two major newspapers of which I am aware. But more fundamental is the fact that Mr. Estrada does not object to turning over these memoranda. He has nothing to hide. It is the Department of Justice that has an institutional interest and a rightful institutional interest in refusing to comply with my Democratic colleagues' request. I, for one, understand and agree with the Department's position but the Department's recalcitrance in this dispute should neither be imputed to nor held against Mr. Estrada.

What bothers me is that we have had colleague after colleague from the other side come to the floor knowing that these seven Solicitors General have given this opinion—knowing it—and have not informed their colleagues, some of whom are very mixed up about this. Why? Why wouldn't they tell them the truth? I guess to embarrass Mr. Estrada.

This is a fishing expedition par excellence. It is wrong. They just don't want a conservative Hispanic Republican on this court at this time, especially one who has all the credentials that Miguel Estrada has because he would have to be on anybody's short list for the Supreme Court of the United States of America. The longer they can delay him from taking his seat, the more difficult it will be for him to have any chance of being on the Supreme Court and become the first Hispanic not only on the Circuit Court of Appeals for the District of Columbia but the first Hispanic to serve on the U.S. Supreme Court.

I am not saying the court is going to pick Miguel Estrada, but he would be on the short list; He is that good. How many Senators have argued 15 cases before the Supreme Court, winning 10 of them? How many Senators graduated magna cum laude from Columbia or from Harvard, which he did? How many Senators held the prestigious position of editor of the Harvard Law Review? I don't know of any.

All I can say is, how many Senators could have served not only a circuit court of appeals judge but also as a clerk to a Justice of the U.S. Supreme Court, Justice Anthony Kennedy? I don't think any of them. Maybe some, but I don't know of them.

We have reached the point where it is just terrible. We have waited long enough. We have been going on this debate now for a week. That is longer than most Supreme Court nominations. This man certainly deserves to have an up-or-down vote and not a vote on cloture.

I have been asked by the leader to make the following unanimous consent request: I ask unanimous consent that there be an additional 6 hours for debate on the Estrada nomination; provided further that the time be equally divided between the chairman and ranking member or their designees, and that following the conclusion of that time, the Senate proceed to a vote on the confirmation of the nomination with no intervening action or debate.

The PRESIDING OFFICER (Mr. ALEXANDER). Is there objection?

Mr. DODD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HATCH. I would modify my unanimous consent request to 8 additional hours in addition to the 6 I have asked for.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HATCH. Let me modify it to 10 additional hours.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HATCH. Let me go further, let me modify it to 20 additional hours, which would probably be close to 3 more days.

The PRESIDING OFFICER. Is there objection?

Mr. DODD. Madam President, reserving the right to object, the good Senator, my friend from Utah, can add as many hours as he would like, but the Senate wants to be heard on this matter. There will be objections noted on every request for additional time.

Mr. HATCH. Is the Senator telling me no matter what I offer that Senate Democrats are going to object?

Mr. DODD. To try to limit debate on this matter, I tell my good friend from Utah, that any effort to limit debate will be objected to.

Mr. HATCH. Even if I go up to 40 or 50 hours?

Mr. DODD. This is not about the amount of time. The Senate wishes to be heard on this matter. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. HATCH. I don't blame the distinguished Senator from Connecticut for having to make these objections.

Mr. DODD. I don't blame the good Senator from Utah for making the requests.

Mr. HATCH. I am going to keep making them because it is apparent now that we are in the middle of a filibuster. I just want to warn the Senate, that is not a good thing. It is not fair to the President. It is not fair to Miguel Estrada. It is not fair to the process. It is not fair to the judiciary. It is not fair to Senators who have been fair to Democrat nominees who were heavily contested where there were no cloture votes or no, should I say, real filibuster. It is just plain not fair.

What is so wrong with giving this Hispanic man, who may be conservative and who is Republican, an opportunity to serve, to break through that intellectual glass ceiling that suddenly seems to have been erected and give him an opportunity to serve since he has such great ability to be able to do so and has proven it?

I repeat again, he has the highest recommendations of the American Bar Association, the gold standard of my colleagues on the other side. They are the ones who said that the ABA recommendations are the gold standard, and he holds a unanimously well-qualified, highest rating of the American Bar Association. How can we stand here and filibuster somebody like that?

All I can say is that I hope everybody in America is watching us because it is just plain not fair nor is it right. If we are going to do this, it is a road I surely don't want to see the Senate go down. I am hoping that my good friend from Connecticut will talk to his friends on the other side and my friends on the other side and get some reason.

We are now at a new point in history for this body. In the confirmation of judicial nominees, this will be the first time in the history of this country and of this body that a filibuster will be conducted against a circuit court of appeals nominee, a true filibuster. I am going to keep the door open for my colleagues to see the error of their ways, and hopefully we can resolve this matter before the end of this week or in any reasonable time. I offered up to 50 hours that were objected to. I am surely hoping that my colleagues who think a little more clearly on the other side will influence all of our other colleagues who are seemingly so caught up in an ideological warfare and give this vote to Miguel Estrada who deserves it.

I notice my colleague has been patiently waiting for a long time. I apologize to him, but I had to make these comments.

I yield the floor.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. DODD. Madam President, I am not a member of the Judiciary Committee. I was in the other body some years ago when I served there. But like many of my colleagues here who have served in this institution for some time and have been involved in any number of judicial nominations, going back now over the past two decades, this is a unique moment.

My friend and colleague from Utah has called this a moment of historic significance. I agree with him about that. This is an important moment historically. It is an important moment for this institution.

I enjoy carrying every day with me in my pocket a copy of the Declaration of Independence and the Constitution given to me some years ago by my seatmate, Senator ROBERT C. BYRD of West Virginia, a rather tattered looking copy now. I carry it with me and refer to it quite frequently as a reminder to myself of what a wonderful privilege it is to serve in this institution and the sacred obligation we bear, each and every one of us, when we are sworn in as Members of this body to uphold and defend this Constitution.

There are two important relevant points during the next few moments as I share my thoughts on the matter of this nomination. The first begins with article III of the Constitution written more than 200 years ago by our Founding Fathers. It says:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.
>
> The judges, both of the supreme and inferior Courts, shall hold their offices during good Behaviour . . . [in a sense for life].

It is a unique office in the judicial branch in this country. Unlike article II on the Presidency, in article III, judicial nominations serve, during good behavior, for the rest of their lives.

This nominee is in his early forties, I am told. God willing, Miguel Estrada may have as many as 40 or 50 years to serve on the judicial branch of this country, either at the circuit court level, or possibly the Supreme Court level, having listened to my friend from Utah about the possibility of being on a short list.

So in assessing this nomination and the process, it is critically important that my colleagues and others be mindful of this article III, section 1 provision, that judges are nominated by the President and serve, if confirmed, for life. These are unique positions in the entire constellation of offices that could be held in the Federal Government—for life, during good behavior.

The second provision that is important to take note of as you engage in this discussion is in article II, section 2. I will quote it. Article II, section 2, in part, reads, in the second paragraph:

> He [the President] shall have, Power by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, judges of the Supreme Court, and all other Officers of the United States. . . .

By and with the advice and consent of the United States Senate.

Those two provisions are critically important to keep in mind as you listen to this debate and discussion about this particular nomination. The debate and discussion, I suggest, goes far beyond the individual attributes, qualifications of Miguel Estrada.

For those reasons, I totally agree with my colleague from Utah that this is a historic moment in terms of how we consider this process, which has survived for more than 200 years. It has never been changed. Over the history of this institution, Senates have taken the role of advice and consent to varying degrees with more or less seriousness. There have been times when there was hardly any advice and consent, and matters went through here rather routinely. I think most historians look back on those periods and would define those moments as being less than stellar periods of this institution's history. When this institution, a coequal branch of Government with the article I and article III branches of government, has taken its advise and consent role seriously—particularly with lifetime appointments—then I think we have lived up to the Founding Fathers' ambitions for this body.

I have voted for almost every Presidential nominee to serve in a cabinet or ambassadorial post. I received significant criticism when I voted for John Tower more than a decade ago during the administration of the first President Bush. I voted for John Ashcroft to be Attorney General of the United States and received substantial criticism, and still do, to this day from people in my own party. I did so not because I agreed with John Ashcroft or with John Tower, but I happen to believe that, when it comes to cabinet officers or ambassadors for periods of limited duration, Presidents ought to be able to have their counsel and official team to advance the ideas and values they articulated during their campaigns and which the American public supported through the election process. That is not to say I would vote for every single nominee of whatever kind, because I take the advice and consent role seriously.

I have always felt when it comes to judicial nominations, because of that article III, section 1 language that gives them the right to serve for life, far beyond the tenure of the President who appoints them or the Congress that confirms them, far beyond any tenure of anyone who serves in any office in the Federal Government, there is a heightened degree of responsibility

to fulfill the article II, section 2 provisions of the Constitution to provide our advice and consent.

So it is with that background I come to this nomination, not because I want to necessarily become embroiled in the conditions or qualifications of Miguel Estrada, but because I am deeply concerned we are getting away from fulfilling the Senate's historic responsibilities of fulfilling its article II, section 2 functions and responsibilities.

So I rise to express my opposition to this confirmation and to vote, when the matter occurs, against this nomination, for one simple reason: The administration and Mr. Estrada have failed to provide this Member and this institution and its Members with sufficient evidence to demonstrate that Mr. Estrada would fairly and objectively decide cases that will come before the Court of Appeals for the DC Circuit.

I have no doubt in my mind, nor should anyone, that Mr. Estrada was not chosen in some sort of a blind lottery. His name wasn't just picked out of the blue because we thought we would like to have a Hispanic on the bench—he has a Hispanic heritage; therefore, we will take Mr. Estrada. I promise you there were people who questioned Mr. Estrada about his views before his nomination was made by the President of the United States. Let there be no doubts or illusions about that. The question remains, then, if the President is satisfied this nominee is qualified to sit on the District's Circuit Court of Appeals, why should those of us who have to vote on this nomination not also be entitled to the same opportunity to be full informed about his views? Not about particular cases that may or could come before the court. I have always felt we have no business inquiring of a judicial nominee what his or her views might be about a pending matter that might come before them. But on general questions about their judicial philosophy, their demeanor, how a nominee would conduct him or herself as a judge, those are entirely legitimate issues. In fact, we bear a responsibility to see that those questions are raised—certainly, just as the President or his appointees have questioned Mr. Estrada on those matters. Before they sent his name up here, I promise you they did that. Certainly those of us who have the responsibility under the Constitution to provide our advice and consent, and ultimately our votes, should be entitled to the same opportunity. We have been denied that opportunity. But whatever reasons and motivations there may be this is a process issue that should not be tolerated.

To suggest a nomination can be made by the President and sent to this body, and that this body should confirm such a nominee without having a meaningful opportunity to solicit information from the nominee is a precedent I don't think we ought to make. That is why I agree with my colleague from Utah that this is a historic moment. We should not walk away from our responsibility simply because Mr. Estrada is Hispanic and, apparently, of good background. I am not arguing about all of the good things I've heard about Mr. Estrada. What concerns me is the President and the nominees, or the appointees at the Justice Department, have had an opportunity to inquire of Mr. Estrada about his views, and that this body—a coequal branch—the Constitution requires we who exercise our advice and consent function are being denied that same opportunity. So no one that I know of—maybe there are some, but certainly not this Member—is questioning the accomplishments of Mr. Estrada. What many in the Chamber have questioned, however, is whether Mr. Estrada is likely to be a fair and unbiased appeals court judge for life.

This is an extremely important nomination for the reasons I have just tried to articulate. The Court of Appeals for the District of Columbia is an important court that has exclusive jurisdiction to review many Federal administrative law questions. In a sense, the Court of Appeals for the District of Columbia is the Nation's second highest court, because its decisions can profoundly impact how the Federal Government conducts the people's business. The decisions made by the court of appeals affect all of us across the country. This is not a debate, as I said a moment ago, about whether Mr. Estrada should be appointed to serve as a trial judge where he might gain some judicial experience, although were he to go through the process and refuse to respond to the questions, I would have the same concerns, even for a district court nominee. I think the precedent is dangerous. When the President nominates someone to serve as an appellate court judge and we allow the nonanswers to stand, the matter is even that much more serious because it is an appellate court.

Rather, this is a debate about whether Mr. Estrada, who has never served as a judge anywhere before, should be appointed as a judge who will judge judges and issue final decisions on a wide-ranging set of legal questions that will have national impact.

My colleague from New York, Senator SCHUMER, as well as others who are members of the Judiciary Committee, has pointed out Mr. Estrada is a young man, as I mentioned earlier. He is in his early forties. If confirmed, he may spend the next half century making decisions that will affect our children, our grandchildren, and generations to come. This is a lifetime appointment.

Again, I emphasize that point under article III, section 1. There is no going back if we find out Mr. Estrada is not a good judge. This vote is final, and if we confirm Mr. Estrada, we are all going to have to live with that decision the rest of our lives. We are being asked to confirm Mr. Estrada even though we have been provided with virtually no information about his judicial philosophy or judicial competency.

We have been offered some evidence that Mr. Estrada is a good lawyer, but good lawyers do not necessarily make good judges and, in my view, Mr. Estrada, like all judicial nominees, has an obligation to show the Senate he can be a good judge. He showed the President he can be a good judge, obviously. He showed the staff at the Justice Department he could be a good judge. But he has not shown the Members of this body, nor has the American public had the opportunity, through us, to draw that same conclusion.

We are not hiring a lawyer, we are confirming a judicial nomination. One of the fundamental differences between lawyers and judges is that lawyers are supposed to zealously represent the interests of their clients, but judges are supposed to be balanced, of even temperament, fair, impartial. We want lawyers to be passionate in advocating the causes of their clients, defending those who deserve to be defended and prosecuting those who deserve to be prosecuted. We have an entirely different expectation of judges in terms of demeanor and behavior.

Again, the fact that Mr. Estrada is a very good lawyer, a passionate advocate on behalf of his clients, is certainly a good recommendation, but not necessarily a recommendation that he bears the temperament to sit as a judge on the circuit court of appeals. That may be the case, but when we are denied the opportunity to inquire of him about his judicial temperament, about his philosophy, then, in my view, we really don't know. And if we confirm a nomination when we really don't know we are setting a precedent that I think is dangerous indeed.

Mr. Estrada, apparently on the advice of the administration, has chosen not to respond to the Senate's questions, refusing to answer questions on what he thinks about legal issues. He was asked by Senator SCHUMER, I am told, in the committee to name one Supreme Court decision over the last 40 or 50 years with which he disagreed. I do not know of a person in this Chamber who could not answer that question in about 2 minutes, particularly those who are members of the bar, attorneys by profession. Certainly, we all know of cases, maybe even cases we learned when we were in law school that we thought were wrong.

If Mr. Estrada, this terrific lawyer, a graduate of Harvard Law School, Phi Beta Kappa, cannot name one Supreme Court case with which he disagrees, then we are getting a message: I am not going to answer your questions about these matters, period. I think it is dangerous to allow nominees to refuse to respond.

My colleague from Utah, the chairman of the committee, Senator HATCH, once noted that when it comes to judicial nominations:

> The Senate has a duty not to be a rubberstamp.

I could not agree more with my friend and colleague from Utah on that point. This is not a trivial matter to be taken lightly. I believe it would be irresponsible to vote to confirm a judicial nominee without knowing something about his or her judicial temperament.

Not every judicial nominee comes to the Senate with years of experience on the bench, but when a nominee, such as Miguel Estrada, has no judicial experience, we bear a responsibility to look for other evidence of his demeanor and his ability to put aside rancor in favor of balanced judicial reasoning.

I would like to add that when nominees with similar backgrounds as Mr. Estrada have provided us with evidence, they have been confirmed by the Senate regardless of their ideologies. It was a few months ago the Senate Judiciary Committee and the full Senate voted unanimously to confirm Professor Michael McConnell as a judge on the Tenth Circuit Court of Appeals. Despite his impressive credentials as a lawyer and scholar, he had never been a judge before and, as we all know, a number of groups were concerned that his clearly conservative ideologies would influence his decisions on the bench.

However, after Professor McConnell openly and extensively discussed his opinions on issues, such as federalism and Roe v. Wade, in his hearing before the Judiciary Committee, then the full Senate, Democrats as well as Republicans, agreed that he would fulfill his duties as a judge impartially regardless of his personal views.

That is a recent example of a nominee unanimously confirmed by this body. But Professor McConnell had the courage of his convictions. He was not ashamed to stand up and say what he believed and why he believed it. As a result of that kind of forthrightness, this body unanimously confirmed him to be a circuit court judge. He had no judicial experience, but he was not ashamed of who he was or in what he believed.

I do not know Mr. Estrada, and I presume he is not ashamed of his views, but the reluctance to share those views with the membership of the Senate, with the members of the Judiciary Committee, is troubling, to put it mildly. When a nominee will not answer questions, when they cannot name a single Supreme Court case with which they disagree, then we begin to get concerned that this is a stonewalling operation.

During a hearing before the Senate Judiciary Committee, Mr. Estrada refused to answer a long list of questions about his positions on important legal matters. Mr. Estrada refused to explain whether he is inclined to support the interests of business, States rights, the rights of workers, consumers, or children. He refused to comment on whether he would approve the administration's environmental rollbacks. He even declined to give his opinion on a wide range of constitutional issues—the merits of Roe v. Wade, the constitutionality of affirmative action programs, the death penalty, employment discrimination against homosexuals, the balance between environmental protection and property rights, the public's right to know about health and safety standards versus a litigant's right to privacy in product liability cases.

Is there any doubt that the President or his appointees or staff at the Justice Department have a good idea of how Mr. Estrada feels about those questions? Does anyone believe for a second they would send his nomination to the Senate without having some idea of where he stood on these questions? And do not I as a Member of this body, in a coequal branch of Government, have a right, before I cast my vote, to at least have the opportunity to raise these questions and get some answers to them? I think I do.

If we set the precedent of saying you can be nominated by a President of any party, that your appointed staff at the Justice Department can ask these questions and know the answers, but Members of the Senate, Democrats or Republicans, have no right to solicit or find out this information, that is dangerous. That is precedent setting. That is troubling, indeed.

Regardless of who the nominee is, regardless of who the President is who sends a nominee to this Chamber, if we set the precedent that people can go through the confirmation process and not share with us their general views—not their views on how they would rule on individual pending cases; I would strenuously object to questions like that—but to get some sense of the nominee's demeanor, judicial philosophy and ideas. Much to the great credit of Professor McConnell, with whom I would disagree on many matters, I believe, I admire the fact he had the intestinal fortitude to stand up and say: This is what I believe.

As a result of that, the full support of the Senate. But I am deeply troubled with the idea that a person can stonewall, not answer these questions, and then be confirmed by this body. This issue goes far beyond Miguel Estrada. Our failure to understand that, I think, is dangerous.

When asked about each and every one of the issues I've discussed, Mr. Estrada refused to articulate an opinion to the members of the Judiciary Committee. It ought to be troubling to every one of us, regardless of our views, to set that precedent. It is troubling, to say the least, that a prospective appellate court judge and one who clearly, should a vacancy arise in the Supreme Court, according to my friend from Utah—and I believe he is correct—will be on the short list to be on the Supreme Court—that he would have no opinions on any of these matters.

If Mr. Estrada does indeed have opinions on these issues, it is even more troubling that he refuses to make those opinions known, not just to me or members of the committee but to the American public who have sent us to the Senate to represent them. They have a right to know how this individual would at least view some of these basic fundamental constitutional questions.

Instead of honestly and openly answering questions about his judicial philosophy, Mr. Estrada decided to keep quiet, to take his chances, and roll the dice on the floor of the Senate, hoping that the dice would be loaded in his favor and that there would be no way to stop this nomination from going forward.

Senator SCHUMER once again pointed out that if we confirm Miguel Estrada, we are ratifying a don't-ask-don't-tell policy for judicial nominees. Tragically, I think that characterization is correct.

Mr. Estrada sat before the Judiciary Committee and said nothing, believing if he did not say a word, the majority of the Senate would rubberstamp his nomination. And in turn, the administration has willingly participated in this conspiracy of silence to deny the Senate and the American people access to information by refusing to release copies of Mr. Estrada's legal memoranda from his time in the Solicitor General's Office.

I listened to my colleague from Utah go on at some length about this point. There is no legal requirement that memoranda from the Solicitor General's Office be withheld from the Senate. It is true that previous Solicitors General have said they would prefer that these documents not be forwarded to the Senate for the reason that this might make it difficult in future years to get the kind of candid assessments by Justice Department lawyers. I am somewhat sympathetic to that argument forwarded by my colleague from Utah, but in the absence of any other information it is more necessary to see documents. Certainly, if a person is forthcoming in sharing their views and thoughts, then the necessity to go and solicit documents from the Justice Department where a nominee may have worked before ought to be avoided, but the issue arises when a nominee refuses to answer any questions. Where there are no other papers, no documents, very few written materials that the nominee has produced, the value of these legal memoranda is heightened. So that in the absence of being forthcoming when the questions are asked, where does one go? What do I rely on? Do I say to my constituents back home that I am sorry he would not say anything and, by the way, there is no legal requirement but the Solicitor General's Office won't share information either?

Now, based on some research that has been done, there is precedent for the Solicitor General sharing information, that is really true, and I will leave it to my friend and former chairman of the

Judiciary Committee, the Senator from Vermont, Mr. LEAHY, to comment specifically on that.

Going back a number of years ago, the Judiciary Committee sought and received a number of documents, I believe during the Bork nomination and several others. I think Judge Trott was another case. There were two or three others who had worked in the Solicitor General's Office or other offices at the Department of Justice, and they shared with the Senate Judiciary Committee the work product of those employees. Those documents were used by the Judiciary Committee during the confirmation process.

I do not disagree with the Senator from Utah that there are some concerns about going that route for the reasons I have stated, but there is precedent where that information has been made available to the Senate Judiciary Committee when considering nominations for the Federal judiciary.

Mr. HATCH. Will the Senator yield on that point?

Mr. DODD. Let me finish my statement, and I will come back because I am going to put in the RECORD a large number of documents that make that case.

Mr. HATCH. I just ask the Senator to yield on that narrow point.

Mr. DODD. I would like to finish my statement rather than engage in a debate on this particular point.

Mr. HATCH. I do not want to debate. I just want to make one point.

Mr. DODD. I yield for one question.

Mr. HATCH. Is the Senator aware that I just went through that the Justice Department proved that these types of documents have never been given to anybody?

Mr. DODD. I was not going to dwell on the point.

Mr. HATCH. We go over and over it.

Mr. DODD. Then I will go over and over it. In the past documents were submitted to the Senate Judiciary Committee.

Mr. HATCH. No, they weren't.

Mr. DODD. There are four pages of list here that go on. They sent us a long list.

Mr. HATCH. Is the Senator aware of the list from the Justice Department?

Mr. DODD. In fact, I have a letter from the Justice Department dated May 10, 1988, signed by Thomas M. Boyd, Acting Assistant Attorney General, in which he says to Chairman Biden:

As assistant attorney general John Bolton noted in an August 24, 1987, letter to you, many of the documents provided to the committee reflect or disclose purely internal deliberations within the Executive Branch, the work product of attorneys in connection with government litigation or confidential legal advice received from or provided to client agencies within the Executive Branch. We provided these privileged documents to the committee in order to respond fully to the Committee's request and to expedite the confirmation process.

Would you send them back, in essence. These were documents in the committee that were provided by the Solicitor General's Office, and the assistant attorney general is asking for them back. What do you mean, they had not been sent up? They were.

I do not want to dwell on this point, but when we get no information from the nominee about where he stands on important matters—by the way, here is a list of the documentation in that particular case that goes on for four pages. I ask unanimous consent that these matters be printed in the RECORD.

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

U.S. DEPARTMENT OF JUSTICE, OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
*Washington, DC, September 2, 1987.*

Hon. JOSEPH R. BIDEN, Jr.,
*Chairman, Senate Judiciary Committee,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: Attached is one set of copies of documents assembled by the Department in response to your August 10, 1987 request for documents relating to the nomination of Robert Bork to the supreme court of the United States, and provided in response to requests made to date by Committee staff. These documents are being provided under the conditions stated in my August 24, 1987 letter to you.

Sincerely,

JOHN R. BOLTON,
*Assistant Attorney General.*

Attachments.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
*Washington, DC, August 10, 1987.*

Hon. EDWIN MEESE III,
*Attorney General, Department of Justice,*
*Washington, DC.*

DEAR GENERAL MEESE: As part of its preparation for the hearings on the nomination of Judge Robert Bork to the Supreme Court, the Judiciary Committee needs to review certain material in the possession of the Justice Department and the Executive Office of the President.

Attached you will find a list of the documents that the Committee is requesting. Please provide the requested documents by August 24, 1987. If you have any questions about this request, please contact the Committee staff director, Diana Huffman, at 224–0747.

Thank you for your cooperation.

Sincerely,

JOSEPH R. BIDEN, Jr.,
*Chairman.*

REQUEST FOR DOCUMENTS REGARDING THE NOMINATION OF ROBERT H. BORK TO BE ASSOCIATE JUSTICE OF THE UNITED STATES SUPREME COURT

Please provide to the Committee in accordance with the attached guidelines the following documents in the possession, custody or control of the United States Department of Justice, the Executive Office of the President, or any agency, component or document depository of either (including but not limited to the Federal Bureau of Investigation):

1. All documents generated during the period from 1972 through 1974 and constituting, describing, referring or relating in whole or in part to Robert H. Bork and the so-called Watergate affair.

2. Without limiting the foregoing, all documents generated during the period from 1972 through 1974 and constituting, describing, referring or relating in whole or in part to any of the following:

a. Any communications between Robert H. Bork and any person or entity relating in whole or in part to the Office of Watergate Special Prosecution Force or its predecessors- or successors-in-interest;

b. The dismissal of Archibald Cox as Special Prosecutor;

c. The abolition of the Office of Watergate Special Prosecution Force on or about October 23, 1973;

d. Any efforts to define, narrow, limit or otherwise curtail the jurisdiction of the Office of Watergate Special Prosecution Force, or the investigative or prosecutorial activities thereof;

e. The decision to reestablish the Office of Watergate Special Prosecution Force in November 1973;

f. The designation of Mr. Leon Jaworski as Watergate Special Prosecutor;

g. The enforcement of the subpoena at issue in *Nixon* v. *Sirica*;

h. Any communications on October 20, 1973 between Robert H. Bork and then-President Nixon, Alexander Haig, Leonard Garment, Fred Buzhardt, Elliot Richardson, or William Ruckelshaus;

1. Any communications between Robert H. Bork and then-President Nixon, Alexander Haig and/or any other federal official or employee on the subject of Mr. Bork and a position or potential position as counsel to President Nixon with respect to the so-called Watergate matter;

m. Any action, involvement or participation by Robert H. Bork with respect to any issue in the case of *Nader* versus *Bork*, 366 F. Supp. 104 (D.D.C. 1975), or the appeal thereof;

n. Any communication between Robert H. Bork and then-President Nixon or any other federal official or employee, or between Mr. Bork and Professor Charles Black, concerning Executive Privilege, including but not limited to Professor Black's views on the President's ''right'' to confidentiality as expressed by Professor Black in a letter or article which appeared in the New York Times in 1973 (see Mr. Bork's testimony in the 1973 Senate Judiciary Committee hearings on the Special Prosecutor);

O. The stationing of FBI agents at the Office of Watergate, Special Prosecution Force on or about October 20, 1973, including but not limited to documents constituting, describing, referring or relating to any communication between Robert H. Bork, Alexander Haig, or any official or employee of the Office of the President or the Office of the Attorney General, on the one hand, and any official or employee of the FBI, on the other; and

p. The establishment of the Office of Watergate Special Prosecution Force, including but not limited to all documents constituting, describing, referring or relating in whole or in part to any assurances, representations, commitments or communications by any member of the Executive Branch or any agency thereof to any member of Congress regarding the independence or operation of the Office of Watergate Special Prosecution Force, or the circumstances under which the Special Prosecutor could be discharged.

3. The following documents together with any other documents referring or relating to them:

a. The memorandum to the Attorney General from then-Solicitor General Boark, dated August 21, 1973, and its attached ''redraft of the memorandum intended as a basis for discussion with Archie Cox'' concerning ''The Special Prosecutor's authority'' (typeset copies of which are printed at pages 287–288 of the Senate Judiciary Committee's 1973 ''Special Prosecutor'' hearings);

b. The letter addressed to Acting Attorney General Bork from then-President Nixon, dated October 20, 1973., directing him to discharge Archibald Cox;

c. The letter addressed to Archibald Cox from then-Acting Attorney General Bork,

dated October 20, 1973, discharging Mr. Cox for his position as Special Prosecutor;

d. Order No. 546–73, dated October 23, 1973, signed by then-Acting Attorney General Bork, entitled ''Abolishment of Office of Watergate Special Prosecutor Force'';

e. Order No. 547–73, dated October 23, 1973, signed by then-Acting Attorney General Bork, entitled ''Additional Assignments of Functions and Designation of Officials to Perform the Duties of Certain Offices in Case of Vacancy, or Absence therein or in Case of Inability or Disqualification to Act'';

f. Order No. 551–73, dated November 2, 1973, signed by then-Acting Attorney General Bork, entitled ''Establishing the Office of Watergate Special Prosecution Force'';

g. The Appendix to Item 2.f., entitle ''Duties and Responsibilities of Special Prosecutor'';

h. Order No. 552–73, dated November 5, 1973, signed by then-Acting Attorney General Bork, designating ''Special Prosecutor Leon Jaworski the Director of the Office of Watergate Special Prosecution Force'';

i. Order No. 554–73, dated November 19, 1973, signed by then-Acting Attorney General Bork, entitled ''Amending the Regulations Establishing the Office of Watergate Special Prosecution Force''; and

j. The letter to Leon Jaworski, Special Prosecutor, from then-Acting Attorney General Bork, dated November 21, 1973, concerning Item 2.i.

4. All documents constituting, describing, referring or relating in whole or in part to any meetings, discussions and telephone conversations between Robert H. Bork and then-President Nixon, Alexander Haig or any other federal official or employee on the subject of Mr. Bork's being considered or nominated for appointment to the Supreme Court.

5. All documents generated from 1973 through 1977 and constituting, describing, referring or relating in whole or in part to Robert H. Bork and the constitutionality, appropriateness or use by the President of the United States of the ''Pocket Veto'' power set forth in Art. I, section 7, paragraph 2 of the United States Constitution, including but not limited to all documents constituting, describing, referring or relating in whole or in part to any of the following:

a. The decision not to petition for certiorari from the decision of the United States Court of Appeals for the District of Columbia Circuit in *Kennedy* v. *Sampson*, 511 F.2d 430 (1947);

b. The entry of the judgment in *Kennedy* v. *Jones*, 412 F. Supp. 353 (D.D.C. 1976); and

c. The policy regarding pocket vetoes publicly adopted by President Gerald R. Ford in April 1976.

6. All documents constituting, describing, referring or relating in whole or in part to Robert H. Bork and the incidents at issue in *United States* v. *Gray, Felt & Miller*, No. Cr. 78–00179 (D.D.C. 1978), including but not limited to all documents constituting, describing, referring or relating in whole or in part to any of the exhibits filed by counsel for Edward S. Miller in support of his contention that Mr. Bork was aware in 1973 of the incidents at issue.

7. All documents constituting, describing or referring to any speeches, talks, or informal or impromptu remarks given by Robert H. Bork on matters relating to constitutional law or public policy.

8. All documents constituting, describing, referring or relating in whole or in part either (i) to all criteria or standards used by President Reagan in selecting nominees to the Supreme Court, or (ii) to the application of those criteria to the nomination of Robert H. Bork to be Associate Justice of the Supreme Court.

9. All documents constituting, describing, referring or relating in whole or in part to Robert H. Bork and any study or consideration during the period 1969–1977 by the Executive Branch of the United States Government or any agency or component thereof of school desegregation remedies. (In addition to responsive documents from the entities identified in the beginning of this request, please provide any responsive documents in the possession, custody or control of the U.S. Department of Education or its predecessor agency, or any agency, component or document depository thereof.)

10. All documents constituting, describing, referring or relating in whole or in part to the participation of Solicitor General Robert H. Bork in the formulation of the position of the United States with respect to the following cases:

a. *Evans* v. *Wilmington School Board*, 423 U.S. 963 (1975), and 429 U.S. 973 (1976);

b. *McDonough* v. *Morgan*, 426 U.S. 935 (1976);

c. *Hills* v. *Gautreaux*, 425 U.S. 284 (1976);

d. *Pasadena City Board of Education* v. *Spangler*, 427 U.S. 424 (1976);

e. *Roemer* v. *Maryland Board of Public Education*, 426 U.S. 736 (1976);

f. *Hill* v. *Stone*, 421 U.S. 289 (1975); and

g. *DeFunis* v. *Odegaard*, 416 U.S. 312 (1975).

GUIDELINES

1. This request is continuing in character and if additional responsive documents come to your attention following the date of production, please provide such documents to the Committee promptly.

2. As used herein, ''document'' means the original (or an additional copy when an original is not available) and each distribution copy of writings or other graphic material, whether inscribed by hand or by mechanical, electronic, photographic or other means, including without limitation correspondence, memoranda, publications, articles, transcripts, diaries, telephone logs, message sheets, records, voice recordings, tapes, film, dictabelts and other data compilations from which information can be obtained. This request seeks production of all documents described, including all drafts and distribution copies, and contemplates production of responsive documents in their entirety, without abbreviation or expurgation.

3. In the event that any requested document has been destroyed or discarded or otherwise disposed of, please identify the document as completely as possible, including without limitation the date, author(s), addressee(s), recipient(s), title, and subject matter, and the reason for disposal of the document and the identity of all persons who authorized disposal of the document.

4. If a claim is made that any requested document will not be produced by reason of a privilege of any kind, describe each such document by date, author(s), addressee(s), recipient(s), title, and subject matter, and set forth the nature of the claimed privilege with respect to each document.

Mr. DODD. I ask unanimous consent that the letter to Senator BIDEN from Thomas Boyd dated May 10, 1988, requesting these materials back from the Senate Judiciary Committee also be printed in the RECORD at this point.

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

DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
*Washington, DC, May 10, 1988.*

Hon. JOSEPH R. BIDEN, JR.,
*Chairman, Senate Judiciary Committee,*
*U.S. Senate, Washington, DC.*

DEAR CHAIRMAN BIDEN: This letter requests that the Committee return to the Justice Department all copies of documents produced by the Department in response to Committee requests for records relating to the nomination of Robert Bork to the Supreme Court. As Assistant Attorney General John Bolton noted in an August 24, 1987, letter to you, many of the documents provided the Committee, ''reflect or disclose purely internal deliberations within the Executive Branch, the work product of attorneys in connection with government litigation or confidential legal advice received from or provided to client agencies within the Executive Branch.'' We provided these privileged documents to the Committee in order to respond fully to the Committee's request and to expedite the confirmation process.

Although the Committee's need for these documents has ceased, their privileged nature remains. As we emphasized in our August 24, 1987, letter, production of these documents to the Committee did not constitute a general waiver of claims of privilege. We therefore request that the Committee return all copies of all documents provided by the Department to the Committee, except documents that are clearly a matter of public record (e.g., briefs and judicial opinions) or that were specifically made a part of the record of the hearings.

Please contact me if you have any questions. Thank you for your cooperation.

Sincerely,

THOMAS M. BOYD,
*Acting Assistant Attorney General.*

Mr. DODD. So there is precedent for this. I do not want to dwell on that point because we ought to avoid that at least when we get nominees who are more forthcoming when questions are asked.

I will wrap this up because I see my colleague from New Jersey is in the Chamber and wants to speak on this matter. The Senator from Vermont, who knows far more about this than this Senator does, is also present.

Since the matter was raised by my friend and colleague from Utah earlier in his remarks, I thought it was appropriate to address and respond to the issue of whether or not documents from the Solicitor General's Office had, in fact, been provided to the Judiciary Committee in the past. Of course, there is ample evidence that they have been.

I do not blame Mr. Estrada for this, by the way. These are not his documents. These documents are the documents of the Solicitor General's Office, and therefore the allegation that Mr. Estrada is unwilling to provide these documents is not fair. It is the Department of Justice that has made that decision. I am disappointed that Mr. Estrada has not been willing to respond to Senators' questions about judicial philosophy and temperament but, rather, refused to answer any questions. That is a separate matter, but I thought it was important for our colleagues to make the distinction.

It is unfortunate this has come to be seen as a partisan debate. This should not be the case. This ought to be a matter of concern to every single Member. If this is the way we conduct these judicial nominations in the future and this becomes the precedent, then I think this institution suffers terribly in terms of fulfilling its article II, section 2, requirements of the advice and

consent when the President submits nominations. Of course, for lifetime appointees, this matter becomes even that much more serious.

I will not take more of the Senate's time on my feelings on this. I do not speak on all of these matters. I pointed out earlier that this Member has, in the overwhelming majority of cases, voted to confirm nominees from all these administrations over the years where the nominations have been for a limited duration. I pointed out I voted for John Tower and John Ashcroft. I believe Presidents ought to have their teams. I recall very vividly, with great warmth, voting for the Presiding Officer when he was considered as a nominee before this body.

When someone gets elected President, they ought to have their team. The public ought to understand that when the President appoints someone to a high office, a Cabinet office or an ambassador, that certainly requires the advice and consent of the Senate. But for a lifetime appointee, particularly a young man of 40 years of age, who could be on that bench for 40 or 50 years, far beyond the tenure of this President's term of office, far beyond the tenure of probably every single Member who would vote on his nomination, that rises to a different level, with all due respect, to the other nominees who come before this institution.

The advice and consent function on a lifetime appointment requires a heightened degree of responsibility, in my view, and when nominees will not answer questions about judicial temperament and demeanor, it is deeply troubling to me. Conservatives and liberals ought to join together in saying: I am sorry, but, Mr. President, if you send us nominees and instruct them to do this, then all of us will join together against that. Regardless of whether it is a Democrat or Republican in the White House, as Senators, as Members of a coequal branch of Government, we cannot fulfill our constitutional responsibility if that is the way in which the President conducts his business.

This goes beyond Miguel Estrada. I regret he has been caught in this. He has, for whatever reason, decided to be used in this way. That is terribly unfortunate for him but far more unfortunate for this institution and the future of judicial nominations if, in fact, this becomes the platelet on how you get confirmed for a lifetime appointment: Don't answer any questions; don't respond to issues about constitutionality of various provisions.

I repeat: I have on numerous occasions voted for judicial nominees with whom I have disagreed. But because they have been forthcoming, they have been honest about their views, because they have convinced me they would be impartial and fair sitting on a bench, I have never used the litmus test whether I ideologically disagree with a judicial nominee. But when you do not answer my questions or the questions of my colleagues on whom I rely under our committee system, that troubles this Senator deeply. Whether this nominee was made by a Democratic President or a Republican President, I would stand here and make the same case, that this institution and its Members have an obligation in this historic hour to say to the President, this is not the way to do business around here. You cannot send up nominees in this manner and expect this body to rubber stamp a nomination and to send the nominee off for the many years he may serve, making decisions without any knowledge of whether or not he will conduct his affairs as a judge in a way that will bring credit to himself and to the federal courts, let alone the institution which is responsible for ultimately voting to confirm this nominee.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I agree with my colleague that what he was saying is true, as I am sure he intended it to be. He is a dear colleague and close friend. I agree he has an open mind with regard to nominees and has exhibited that through the years. He has been totally misled on these matters.

That is something that is starting to bother me. I have run into a number of Democrat Senators who have spouted the same things that are just plain not right or factual—not everything he said.

But he is correct, I did make a speech at one time where I said we should not rubber stamp these people, and I still believe that. However, this is not rubber stamping.

First, it was 516 days before Miguel Estrada even got his hearing. For those who think he did not answer any questions, take a look at this hearing record. My gosh, I can hardly lift the doggone thing. He answered question after question after question. He just did not answer questions the way they wanted. I suspect, as is very evident here today, and evident throughout this matter, they do not have anything on him.

The distinguished Senator from Vermont wanted to speak and I am prepared to turn the time over to him when he returns. I ask unanimous consent that after my remarks the distinguished Senator from New Jersey—how much time does the Senator desire?

Mr. CORZINE. About 30 minutes.

Mr. ALLARD. I need about 15 minutes.

Mr. HATCH. I ask unanimous consent that the distinguished Senator from New Jersey immediately follow me for 30 minutes, the distinguished Senator from Colorado follow the distinguished Senator from New Jersey for 15 minutes, and that the distinguished Senator from Alabama be permitted then to speak.

Mr. REID. I have no objection, but just so we have some idea, and I really don't care how long the Senator from Alabama speaks, but do you how long you might speak tonight?

Mr. SESSIONS. Probably 15 minutes.

Senator DODD mentioned some documents. Have those been offered for the RECORD?

Mr. DODD. Yes.

Mr. SESSIONS. I would be pleased to take a look at those.

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

Mr. HATCH. Mr. President, I tell my dear colleague from Connecticut that I think he has been very badly misled by some of the people on his side. Mr. Estrada waited over 500 days for a hearing conducted by Democrats. Senator SCHUMER is no shrinking violet. We all know that. He is another friend of mine, and he is no shrinking violet.

They asked questions for a lengthy, extraordinary period of time compared to other nominees. This is the hearing transcript. My gosh. He answered question after question after question. But he just did not answer them the way he wanted them to answer. And he did not make any mistakes, apparently, and he did not give them anything to hang him with.

There is a double standard being played here. I remember the distinguished Senator from Connecticut saying he is sorry that Miguel Estrada has to be used in this way as a bad example. He is being used all right because they cannot pin anything on him that they do not like other than they claim he did not answer the questions.

Well, they had the committee. They could have asked all the questions they wanted to, and they did, and it went on for hours. I might add that he answered them. He just did not answer them the way they wanted him to answer. Talk about a double standard.

Why is this Hispanic person going through this? I will tell you why. Because he is a Hispanic conservative Republican who they are afraid will tip the balance of power on the Circuit Court of Appeals for the District of Columbia and might even be considered for the Supreme Court of the United States of America. They are going to do everything they can in their power to delay his nomination.

It is pathetic. It is shameful. I am sick and tired of it. I am tired of my colleagues being misled by their own colleagues. We go over and over the facts in this matter. The requests they were making of the Justice Department were for confidential documents.

I will take a few minutes, because it is important, after this last speech. I know my colleague would not have said some of the things he said if he had been given the true facts. I am not disagreeing with everything he said, but I certainly disagree with an awful lot of what he said.

Fact versus fiction—I will cite what has really gone on here. Their base is People for the American Way, a national abortion rights league, the Alliance for Justice—you can name 20 other far left organizations that just plain do not want any of President Bush's circuit court of appeals nominees being treated fairly. They do not

want them at all. They disagree with them because they are left wing and these nominees are moderate to conservative. At least, we hope they are. Certainly, the President hopes they are.

And I might add, the President does not tell them what to say up here, which was implied in the last remark. I know how they vote these judges. They do not ask them questions like that. We know darned well the minute they do our questionnaire would bring it up. We make it very clear in the questionnaire that is not supposed to happen, but, naturally, they help these people understand what is going on.

Let me use People for the American Way, just for one of these left-wing groups that is almost always wrong. Here is an argument against Miguel Estrada. This is in the Senate Democratic Policy Committee briefing book on the nomination of Miguel Estrada: Lack of judicial experience. Mr. Estrada has no judicial experience. He has had no publication since a banking law article he wrote in law school. He is not a distinguished legal scholar or professor and he has never taught a class. The bulk of his career has been spent in the Solicitor General's Office and in private practice.

Hey, that ain't bad right there, Solicitor General's Office and private practice. But the fact he has no judicial experience is a joke—as if that is an inhibiting factor.

This is what People for the American Way said in a letter from the president, Ralph Neas, to the Senate Judiciary Committee, dated January 29, 2003: Mr. Estrada has worked for the Justice Department for more than half of his career and has never served as a judge or a magistrate or law professor and, indeed, has not published any legal writings since law school. It is virtually the same thing in the Democratic policy books. But here are the facts. Only 3 of the 18 judges confirmed to the DC Circuit since President Carter's term began in 1977 previously had judicial experience—only 3 of them of the 18 judges.

Here is another fact. Democrat-appointed DC Circuit judges with no prior judicial experience include Harry Edwards—I think he is the current chief judge, isn't he, or he was—Merrick Garland, Ruth Bader Ginsburg, Abner Mikva, David Tatel, and Patricia Wald. They are all Democrats, of course. All were appointed by either Carter or Clinton and had no prior judicial experience.

Why is it fair for them to be on this court with no prior judicial experience but it is not fair for Mr. Estrada? Why the double standard? My gosh, they are not treating this guy fairly at all.

Let me give another fact. Several other Clinton appointees to the courts of appeals received their appointments despite having no prior judicial experience. Ninth Circuit appointees Richard Tallman, Marsha Berzon, Ronald Gould, Raymond Fisher, William Fletcher, Margaret McKeown, Sidney Thomas, and Michael Hawkins all had no judicial experience prior to taking the bench. Seven of these eight—all but Fletcher, who was a law professor—were in private practice when they were nominated by President Clinton and confirmed by the Senate.

Several Supreme Court Justices had no prior judicial experience before their first appointment to the bench. Louis Brandeis spent his entire career in private practice before he was named to the Supreme Court in 1916. Byron White, a personal friend of mine, one of the great Justices, spent 14 years in private practice and 2 years in the Justice Department. He worked for the Justice Department. I guess that was an inhibiting factor before his appointment to the Court by President Kennedy in 1962. He had no prior judicial experience.

Thurgood Marshall had no judicial experience when President Kennedy recess appointed him to the Second Circuit in 1961. Marshall served in private practice and as special counsel and director of the NAACP prior to his appointment.

Why is Miguel Estrada, this Hispanic gentleman, being treated differently? Because he is a Hispanic conservative Republican, or at least they think he is conservative. I am not sure.

Let me go back to the Democratic Policy Committee.

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

Mr. HATCH. Sure.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I know the Senator is so knowledgeable about these matters. This is an appellate bench, which handles appellate matters. But isn't it true that Mr. Estrada was a law clerk for a Second Circuit Federal judge and a U.S. Supreme Court Justice?

Mr. HATCH. He was a law clerk to Amalya Kearse on the Second Circuit Court of Appeals and law clerk to Justice Kennedy. He had lots of experience on the judiciary. I am glad the Senator pointed that out.

The Senate Democratic policy book on the nomination:

Mr. Estrada often refused to answer questions.

We are getting this bullcorn on the floor today, and we have gotten it every day we have been here. They don't seem to listen to the facts.

Mr. Estrada often refused to answer questions, or provided extremely evasive answers during his confirmation hearing.

You should have heard all of their nominees, whom we allowed to go through. OK. It goes on to say:

He declined to answer all questions about his judicial philosophy and his views on important Supreme Court cases. For example, when Senator Schumer asked Mr. Estrada to name a single case from the entire history of the Supreme Court law that he disagreed with, Mr. Estrada refused.

My goodness. The policy statement says:

Other judicial nominees of President Bush, including some with significant ''paper trails, have discussed their jurisprudential views extensively in hearings before the Senate Judiciary Committee. Just last year, Michael McConnell—

You heard Senator DODD bring this up—

confirmed to the 10th Circuit, thoroughly discussed his views on such subjects as Roe v. Wade and the Supreme Court's recent ''federalism'' decisions limiting the authority of Congress.

Here is what People for the American Way have to say:

Mr. Estrada refused to reveal his jurisprudential views . . . in response to questions by Senators. For example, despite repeated attempts by Senator Schumer, he refused to identify even a single Supreme Court decision over the past 40 years with which he disagrees.

At least they got that right—the 40 years part—because we have had Senator after Senator come here and say he refused to talk about any decisions with which he disagreed. Wouldn't he have disagreed with Dred Scott or Plessy v. Ferguson? Those were a long time before the 40 years that Senator SCHUMER asked about. But let's go a little further. People for the American Way says:

Estrada refused to answer key questions at his Senate Judiciary Committee hearing about his judicial philosophy, such as his views on important Supreme Court decisions. For example, he refused to name a single Supreme Court decision in the last 50 years that he thought was wrong.

Then they go on to say this. This is again a letter from Ralph Neas.

Other judicial nominees of President Bush, including some with significant ''paper trails have discussed their jurisprudential views extensively in hearings before the Senate Judiciary Committee. Just last year, Michael McConnell, who was recently confirmed to the Court of Appeals for the 10th circuit, thoroughly discussed his views on such subjects as Roe v. Wade and the Supreme Court's recent federalism or States rights decisions limiting the authority of Congress.

That was a letter dated January 24, 2002.

Let me give you the facts to show how wrong they are. That is what is killing me, that my colleagues would misrepresent like this on the floor of the Senate and misrepresent to their own colleagues. That is what is killing me. Here are the facts.

Cannon 5A(3)(d) of the American Bar Association's Model Code of Judicial Conduct states that prospective judges ''shall not . . . make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of office . . . [or] make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court.

Justice Thurgood Marshall made the same point in 1967 when he refused to answer questions about the fifth amendment.

I do not think you want me to be in a position of giving you a statement on the Fifth Amendment and then, if I am confirmed and sit on the Court when a Fifth Amendment case comes up, I will have to disqualify myself.

Or Lloyd Cutler, who is one of the great lawyers in Washington, DC, and, frankly, in the country:

Lloyd Cutler, President Clinton's former White House Counsel, testified before the Senate Judiciary Committee last year that ''it would be a tragic development if ideology became an increasingly important consideration in the future. To make ideology an issue in the confirmation process is to suggest that the legal process is and should be a political one. That is not only wrong, it is a matter of political science; and also serves to weaken public confidence in the courts.''

Think about it. Think about it. The reason Mike McConnell had to answer very carefully is that he had written so extensively that he pretty well had to acknowledge that that is what he wrote on Roe v. Wade. He was highly critical of Roe v. Wade. I respect my colleagues for accepting Professor McConnell. On the other hand, he had 305, many of whom were the most liberal law professors in the country, supporting him because he is so honest and decent and smart, rated as one of the two or three top constitutional experts in the country.

Just think about it. These kind of things bother me. Let me just talk about the SG memo, the Solicitor General memos we have heard so much about here. This is what the Democratic Policy Statement says:

Due to Mr. Estrada's almost nonexistent paper trail, the Judiciary Committee Democrats have tried to obtain legal memoranda he wrote while serve at DOJ. DOJ has refused to provide these documents which presumably would show Mr. Estrada's constitutional analysis of cases and statutes and give members a window into his judicial reasoning.

Here is what People for the American Way said in a letter from Ralph Neas dated January 29:

As several Senators have explained, Mr. Estrada has a limited paper trail, particularly because the Justice Department has refused to release the legal memoranda he wrote while serving in the Department.

Let's get the real facts. All seven living former Solicitors General of the United States—Seth Waxman, Drew Days III, Walter Dellinger, Kenneth Starr, Charles Fried, and Robert Bork—have written the Judiciary Committee defending the need to keep such documents confidential. Four of those are leading Democrats.

The letter noted that the SG, the Solicitors General:

relied on frank, honest and thorough advice from their staff attorneys like Mr. Estrada—

And that the open exchange of ideas which must occur in such a context—

simply cannot take place if attorneys have reason to fear that their private recommendations are not private at all, but vulnerable to public disclosure.

I have said that on the floor of the Senate so many times I am getting sick of saying it. Yet I have had Democrats tell me today: You mean seven Solicitors General said that, four of whom are Democrats?

They were amazed to hear that.

Why did the people for the American Way say that? Because they are partisans. They are left-wing partisans. I don't blame them. They believe in that left-wing philosophy of theirs, and I respect people who believe in their philosophies. The ones I don't respect are those who distort the record. That is unfortunate. That is what they have been doing.

On May 28, 2002, the Washington Post editorialized that the committee's request for attorney work product ''would be unthinkable if the work had been done for a private client. The legal advice by a line attorney for the federal government is not fair game either.''

According to the Post editorial:

Particularly in elite government offices such as that of the solicitor general, lawyers need to be able to speak freely without worrying that the positions they are advocating today will be used against them if they ever get nominated to some other position.

These people in the Solicitor's Office are generally the top lawyers around. Many of them are going to serve in other positions in the Government. A number of them are going to be judges. We just named eight of them. There are seven former Deputy Assistants for the Solicitor General now serving on Federal circuit courts of appeals. None had any prior judicial experience, and the committee did not ask the Justice Department to turn over any confidential internal memoranda those nominees prepared while serving in the Solicitor General's Office.

Why is Miguel Estrada being treated like this? Why is he being treated so unfairly and differently from anybody else? Why is he being treated differently than those seven others, many of whom are Democrats? Is there a double standard here? You doggone right there is. It is because he is a Hispanic conservative Republican. That is why—because they cannot pin anything on him. When you can't pin something on somebody, you do fishing expeditions to find any amount of dirt you can get. A fishing expedition into confidential memoranda in the Solicitor General's Office should not be allowed, and it has not been.

Let me go back to the Democrat policy statement:

LACK OF SUPPORT FROM HISPANIC AND OTHER ORGANIZATIONS

Mr. Estrada is opposed by, among others, the following organizations: Congressional Hispanic Caucus, Congressional Black Caucus, Mexican American Legal Defense and Education Fund, Puerto Rican Legal Defense and Education Fund, Leadership Conference on Civil Rights, AFL–CIO, Sierra Club, NOW, National Women's Law Center, NARAL and SEIU.

On January 30, People for the American Way again; this is a press release rather than a letter:

Neas noted that leading Hispanic organizations opposing Estrada's confirmation—including the Congressional Hispanic Caucus, Mexican American Legal Defense and Education Fund, Puerto Rican Legal Defense and Education Fund—have been joined in opposition by a diverse coalition of environmental protection, women's rights, and other public interest groups.

But they don't tell you that the following groups, among others, have announced their support for Estrada: League of United Latin American Citizens (LULAC) (nation's oldest and largest Hispanic civil rights organization); U.S. Hispanic Chamber of Commerce; Hispanic National Bar Association; Hispanic Business Roundtable; the Latino Coalition; National Association of Small Disadvantaged Businesses; Mexican American Grocers Association; and the Hispanic Contractors of America, Inc.

Of course, you can see many other things. There are so many groups that support him.

I attended a press conference today where the head of LULAC was so outraged at the double standard and the way Miguel Estrada is being treated—and, I might add, LULAC is not a conservative organization but it is a respected organization, and I have always respected them. Its leader ripped into what is going on over on the other side of the floor like you can't believe. He is one of the leading Hispanics in America, and rightfully so.

Let me tell you, I think the Hispanic people are starting to catch on—that it is outrageous the way this man is being treated. He is being treated with a double standard. He is being mistreated with a double standard.

I must say that I was a little surprised when I saw the similarities between the Democrats' handbook on Mr. Estrada and the propaganda being circulate by People for the American Way. I guess it's now clear where my Democratic colleagues' talking points are coming from. Maybe my Democratic colleague should examine a little more closely the euphemistically-named People for the American Way.

Over the past two years, I have watched the war of propaganda waged against President Bush's judicial nominees. I have seen the records of good men and women distorted and smeared simply because they are the nominees of a conservative President. And I have decried the pertpetrtors of these smear campaigns who have nothing to lose by their misrepresentations but everything to gain when it come to raising money to promote their left-wing agenda.

I am taking about the liberal Washington special interest groups that are the ones manufacturing the weapons of mass obstruction.

That is what they are—weapons of mass obstruction in this case, and others as well.

One of these groups, People for the American Way, claims that ''Americans could lose fundamental rights, freedoms, and protections that they have enjoyed for decades'' if the Senate confirms Miguel Estrada. How low can you get? When I learned this, I said to myself, with a name like People for the American Way, maybe I should rethink my position on the Estrada nomination. I began thinking, Who are these folks who call themselves People for

the American Way and who want me to oppose Miguel Estrada?

Obviously, I am not a member of their organization. But, given its name, I thought to myself, maybe I should look into joining it. After all, I am a person, and I am all for the American way—which, in my book, stands for truth, civility, fidelity, and justice. So I asked around my neighborhood and, well, it doesn't appear that any of my neighbors are members. My family and friends aren't members. Nor does it appear that any of my veteran friends are members.

So who are they, these People for the American Way? I went to their Web site to find out. It appears that they are a very busy bunch of people who raise money for left-wing causes. Indeed, their Web page on President Bush's judicial nominees contained four separate solicitations for donations, four on one page. Profiting at the expense of trashing other people's reputation may qualify for the National Enquirer way—but it is not the American way. Of course, this organization should be free to raise money and exercise its first amendment rights. But the Senate is not obligated to do its bidding or jump when it says so.

Unfortunately, you can see where a lot of the language is coming from—People for the American Way over and over. It is false.

So I became more curious. Maybe if I learned who its board members are I would be convinced that they truly are people who stand for the American Way.

I did a little more surfing on this Web site and found out that People for the American Way, board members, include a Hollywood actor.

Gee, I think that is great—to have a Hollywood actor acting in politics. We certainly have a few of them, don't we?

The board members include a record executive, a Democratic lobbyist, and a former Clinton White House staffer who was the center of the FALN terrorist clemency debacle. Are these mainstream Americans? Are these people to whom we defer on what qualifies as the American way? Maybe in Hollywood or on the Upper East Side of Manhattan. But not in my neighborhood nor, would I say, in most of America.

This is something that deeply troubles me. Too many of my colleagues on the other side of the aisle appear beholden to groups such as People for the American Way. But their brand of politics includes obstructing the confirmation of qualified men and women to the Federal judiciary using any available weapon. To them, this is war, and all is fair—even if it means smearing the reputation of good, solid nominees such as Miguel Estrada.

Not qualified? Give me a break. An ABA rating, unanimously well-qualified, the highest you can have; 15 U.S. Supreme Court arguments; Columbia, and Harvard Law magna cum laude; editor of the Harvard Law Review; law clerk for the U.S. Supreme Court for Justice Kennedy; and Assistant Solicitor General for both Presidents Bush and Clinton.

That sort of politics is not the American way at all.

I hope my colleagues on the other side of the aisle will stand up to the pressure tactics of the left and recognize that only in America can a teenage immigrant from Honduras apply his intellect and talent to rise to a Presidential appointment to our Nation's highest court. That is the American way.

Only in America can someone such as Miguel Estrada come here hardly speaking English, accomplish so much and rise to the point where the President of the United States has nominated him to one of the most important courts in the country. And only in America can his record be distorted like it is being distorted by the People for the American Way, and others. They have a right, I suppose, under the first amendment to do any kind of distortions they want, but it isn't right for them to do so.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from New Jersey is recognized.

Mr. CORZINE. Mr. President, I rise today to express my opposition to the nomination of Miguel Estrada to the U.S. Court of Appeals for the District of Columbia.

As many of my colleagues have expressed—and my remarks are not from the talking points of the People for the American Way—there are a few responsibilities of Senators that are more important than the review of judicial nominations. There are few things we will involve ourselves in on the floor of the Senate that actually will survive many of us in our careers in the Senate. The Constitution delegates us both the authority to advise the executive about possible nominations and the power to give or withhold consent. It is critical that we exercise these responsibilities seriously and with the utmost care. We need to be judicious.

After all, judicial nominations are fundamentally different than nominations for executive branch appointments. Unlike the nominations of Cabinet officers, judges, ambassadors, they do not serve the President. They function in an entirely independent branch of Government, a branch with significant power to shape the actions and policies of the other two. As a consequence, there is far less reason to be deferential to a President's judicial nominations than executive branch nominations. A President deserves to have his own team, but when we are talking about the judiciary, we are talking about an independent branch of Government.

Perhaps even more important, judges, unlike executive branch officials, have lifetime appointments. Once the Senate approves their nominations, there are few effective ways to hold them accountable for their decisions. Only in extraordinary circumstances—when a judge is guilty of high crimes and misdemeanors—can the legislative branch recall a judge who does a bad job. That is why it is especially important that Senators assure themselves about the quality of a nominee and their philosophy before he or she is sent to the bench. This power should not be just a review of their biographical information or their academic credentials, their resume. It ought to be complete with regard to understanding their judicial philosophy and how they may approach their demeanor on the bench.

Of course, while all judicial nominations deserve careful review, the particular nomination before us is unusually important. I think it is pretty clear that the Court of Appeals for the District of Columbia is widely acknowledged to be the most powerful appellate court in the Nation, below only the Supreme Court itself. Because it hears appeals for so many cases, involving Federal agencies, the work of Government, its decisions often have broad national impact. It regularly establishes rules with profound implications for workers' safety, consumer protection, civil rights, the environment, and on and on. And its decisions help determine the extent to which ordinary Americans are allowed to challenge the decisions of their Government or the judiciary.

Moreover, the person who is ultimately selected to fill the current vacancy is likely to be a swing vote on the court. The fact is, there currently are eight active judges in place, who are often divided on a 4–4 split. So this individual will almost certainly have an enormous impact on the lives of millions of Americans and vital concerns to them, for better or worse. That, no doubt, is largely why the President and the majority of the Senate have made it such a high priority. And it is a high priority. That is why all Senators need to think long and hard before approving this or any nomination.

Unfortunately, at this point, all of my colleagues face a serious problem in evaluating the nomination before us. We simply do not have enough information to do the job properly. At least that is my view. That is because this nominee has no record in public office, and basically has refused to provide us with information necessary to evaluate his judgment, fitness for appointment to the second highest court in the land. He has refused to answer many basic questions that were posed during the Senate Judiciary Committee review. And he has withheld examples of his work and thought in the past, things I think would be available to anyone who would be actually scrubbing down this nominee if he were in the executive branch.

As a result, it is extremely difficult—frankly, impossible—for any Senator to

evaluate his full set of views, his temperament, values, and method of analyzing legal issues, and his likely approach to the bench.

Fundamental questions on issues before the Nation are at stake very regularly in this court with respect to affirmative action, Roe v. Wade, how our labor laws are interpreted, interpretation of the commerce clause, basic fundamental directions I think Senators should understand and at least have a little bit of perspective about on how this nominee might feel about it.

Let me be clear, I recognize it is not appropriate to ask judicial nominees to say anything in the nomination process that would undermine their ability to judge particular cases in the future. They should not be asked to evaluate particular facts, nor to comment on specific legal issues likely to come before them, if confirmed. Nominees have a right and responsibility to exercise reasonable discretion throughout the nomination process. I respect that. I think my Senate colleagues do.

That said, we still need to have an understanding of how one might approach generally the philosophy of being a judge, how one might look at the Constitution, their judicial temperament. All those kinds of things seem to be fair questions people ought to have some understanding of before someone is approved.

While it is not appropriate to expect to comment on specific cases, it is entirely appropriate for nominees to answer general questions about their philosophy, their views and thoughts on broad types of legal issues. In fact, it is essential to do so. Otherwise, Senators, in my view, will be unable to exercise their own constitutional responsibilities to provide serious advice and consent in this process.

By the way, this is fundamental. It is clearly a bipartisan viewpoint. It certainly was as we looked at the judicial appointment process under the previous administration. People wanted to understand what a candidate's judicial philosophy was and how issues might be framed in a general context as they went forward and looked at nominees forthcoming from the previous administration.

Unfortunately, the nominee before us today—and I believe this is really the heart of the matter—has essentially refused to answer any of those relevant questions. He won't provide any information about his approach to the legal issues. He won't comment about any past cases. He won't give us even a clue about his judicial philosophy or his views on the way judges should handle their responsibilities. Instead, time after time, in his appearance before the Judiciary Committee, he simply refused to answer questions at all.

Now, that does not mean there wasn't any testimony or there were no questions answered. I saw a big book raised up that has a transcript of the hearing, but when it got to the basic questions of judicial philosophy, temperament, and how one would approach issues, there were no answers to the questions. Nor has the administration been willing to share any of Mr. Estrada's work product during his service in the Solicitor General's Office—a refusal that is apparently not consistent with precedent, at least in a number of cases in recent history, Justice Bork's nomination being one of those cases. But there are a number of others as well.

This is the kind of stonewalling, frankly, that I find unacceptable, and I think the American people would find unacceptable if they were focused on it. We, as Senators, must not tolerate it either. If this stealth and secretive approach to nominations is validated in this case, I am afraid all nominees in the future will adopt a similar ''secret strategy.'' It will not reveal anything, and so we will sort of play Russian roulette with how candidates will serve once they get to the bar.

Senators will be asked to exercise their constitutional duties with little or no information. Frankly, being blindfolded as a Senator when you are considering such an important issue is not acceptable.

Governing in the dark, governing in secret is most certainly contrary to the philosophy underlying our constitutional premises, and approving a nomination in such circumstances would represent a gross abdication of our responsibilities. In effect, we become nothing more than a rubberstamp. I hear there has been some argument about the rubberstamp concept. The distinguished Senator from Utah used that phrase when he was taking a different view about judicial philosophy for other candidates at another point in time and didn't appreciate it. I don't think we should at this point accept it and embrace it as our approach.

We need to be a part of this process and understand more about the nominee. Remember the stakes that could well be involved in the pending nomination. Is the Senate really willing to put the fate of worker safety in the hands of someone we know so little about? What about the myriad of consumer protections or civil rights, environmental protections, and so on?

Would any of my colleagues be willing to hire a legal counsel into their own staff, would any of us bring anybody into our own activities, as we represent the people from our States, without knowing at least something about their general approach to how they would deal with issues and how they approach their worklife? Who would do that? I don't know that anybody would do that in the private sector where I came from, and I doubt very seriously anybody would do that right here with their own staffs. That is true even though any of us can easily remove our own staffers if they fail to perform adequately.

In the case of a judicial nomination, by contrast, we are talking about a lifetime appointment over which we will have no control once confirmation is in place.

Let me ask my colleagues this: Do we really think the White House and the Justice Department nominated Mr. Estrada without knowing his views and approach to the law? Do we really think the same kinds of questions we would expect to ask ourselves, maybe of our own employees or someone who was giving us legal advice, don't we think that process was followed by the Justice Department and the White House? Once again, if that didn't happen, I would be disappointed. I would think the executive branch would not be following its responsibilities. I doubt anyone would take on someone with a lifetime appointment in a most serious position without understanding where they stood philosophically, temperament-wise, and with regard to how they view the law.

Beyond the constitutional issue, which by a wide margin is the most important, I would like to take a moment to respond to some claims that have been made by supporters of the nomination during the course of the debate. I am actually a little bit offended by it.

First, some of the supporters of Mr. Estrada have suggested those opposed to the nomination somehow are obstructing the process of filling vacancies on the Federal bench. This is a ridiculous statement on its face. During the last 17 months of the last Congress, under Democratic leadership, the Senate confirmed 100 of President Bush's judicial nominees. In fact, under Democratic leadership, the Senate worked at a rate almost twice the average during the preceding years when a Republican-led Senate repeatedly blocked the nominees of a Democratic President.

I can tell you in my own experience in New Jersey, we had four openings on the district court. We worked very carefully and thoughtfully and cooperatively with the administration to fill those vacancies with a diverse set of candidates, quite broad based. And we are now working very cooperatively to try to fill a circuit court judgeship in the same way that is now being debated with regard to the district court in Washington, DC. This is not something where cooperation is lacking. Over and over and over again people are prepared to reach out even when people have different judicial philosophies and work together.

I am not suggesting Democrats should block nominations in some sort of a tit for tat. In fact, we have not. I don't agree with that approach. I don't think it would be appropriate. But it is wrong and unfair for others to argue we are being obstructionist just because we refuse to serve as rubberstamps. I don't plan on being one. I was not elected to be a rubberstamp.

Let's remember, Senator SCHUMER has pointed out so eloquently that in the case of judicial nominations, the burden of proof does not lie with the Senate or those opposed to a nomination. The burden appropriately rests

with the nominee himself or herself and the President who made the nomination. It is their affirmative obligation to convince the Senate of a nominee's suitability.

It is clear in this case Mr. Estrada and the administration have not met this obligation. To the contrary, they have tried to say as little as possible about Mr. Estrada and his views. Again, we have a stealthy, secretive nomination process going on, and it is inconsistent with what our responsibilities are. It degrades the integrity of our role as Senators in the confirmation process.

Unfortunately, others in this body have also gone so far as to say that opposition to Mr. Estrada's nomination has been based on an ethnic background. I heard that just recently. It has even been suggested that opponents of the nomination are intent on keeping Hispanics off the court and opposition is disrespectful to our Hispanic citizens.

Let's get real. These kinds of attacks are outrageous, part of an attempt to intimidate those opposed to the Estrada nomination. Frankly, they just don't represent the kind of debate we should be having in the Senate, and they won't work. After all, most major national organizations that exist to represent the Hispanic community are actively opposing this nomination. I know this from actual dialog, not from some lobbying organization that represents a particular judicial philosophy. I hear it from the Congressional Hispanic Caucus, hardly an anti-Hispanic organization. I hear it from the National Association of Latino Elected and Appointed Officials; again, hardly an anti-Hispanic organization; Mexican American Legal Defense and Education Fund—I could go on and on—National Puerto Rican Coalition; Puerto Rican Legal Defense and Education Fund. None of these organizations are anti-Hispanic.

By the way, those of us on this side of the aisle who are trying to express a principle with regard to the Constitution are not, either. To have any kind of implication that we are is over the top. When virtually every credible Hispanic group opposes this nomination, it simply does not pass the laugh test to argue otherwise. The claim is ridiculous.

It is similarly preposterous to claim the Democratic Party is anti-Hispanic. Of the 10 Hispanic appellate judges currently seated in the Federal courts, eight were appointed by President Clinton. Three of President Clinton's first 14 judicial nominees were Hispanic, and he nominated more than 30 Hispanic men and women to Federal courts.

Let's contrast that record to that of our friends from the other side of the aisle. First, let's look at the Bush administration record. Of the 42 vacancies that existed in the 13 circuit courts of appeal during President Bush's tenure, the President has nominated only two Hispanics. That is 42 vacancies, two Hispanics.

Now let's look at the record of Republicans in the Congress. During President Clinton's tenure, 10 of the more than 30 Hispanic nominees were delayed or blocked from receiving hearings or votes, and many highly qualified Hispanic nominees were delayed for extended periods of time.

Take Richard Paez, for example. He was a highly qualified candidate, well respected in his profession, yet his confirmation was delayed for more than 1,500 days—1,500 days and we are complaining about 500 here. And 39 Republican Senators voted against him then.

In sum, the other party doesn't have a strong record when it comes to promoting this. I think it is hard to put it into a framework that somehow or another this campaign is anti-Hispanic.

Speaking for myself, I strongly believe in promoting diversity on the Federal bench. I was proud to join my colleagues who spoke about the efforts of working together with the White House and actively supporting the nomination of Jose Linares to the district court last year. Mr. Linares, a first-generation American born in Cuba, has been a leader in the Hispanic community in my State for many years, serving as president of the New Jersey Hispanic Bar Association and representing many clients of Hispanic origin while operating in private practice. Mr. Linares is just one example of my continued dedication, and I believe most of us in the Senate on both sides of the aisle, to promoting diversity on the Federal bench.

While I strongly believe in the value of promoting diversity and increased Hispanic representation in the judiciary, that doesn't mean the Senate should be rubberstamping any and every Hispanic nomination. In this case, we have a nominee who has consistently refused to answer any substantive questions regarding judicial philosophy, has no judicial experience, and is actively opposed by most of the mainstream organizations that represent the Hispanic community.

I hope my colleagues will remember what is at stake here. This is not just another vacancy on a single court. This debate, ultimately, is about our responsibilities as Senators. The question is whether we are going to become nothing more than that proverbial rubberstamp, abandoning our duty of advice and consent on judicial nominations. The question is whether we are going to start approving nominees about whose philosophies we know virtually nothing; whether we are going to vote like a gambler, blindly spinning a wheel of chance and hoping for the best.

I don't think the American people want that. I know the folks in New Jersey don't want that kind of attitude out of their Senator. I, for one, hope that the Senate will live up to our constitutional duties and that Senators will embrace the responsibilities entrusted to us by the people who elected us. That is why we are here: To ask those questions, to be diligent, thorough, and judicious, and to make sure we have an impartial judiciary after we go through the process.

I hope enough of my colleagues will have the strength to stand up to the demagogic attacks coming from many proponents and supporters of this nomination. I hope some of those on the other side will reconsider their approach.

Speaking for myself, this is one Senator who cannot and will not face down under these irresponsible attacks. This is one Senator who will not abandon his sense of responsibility to our Constitution. I simply cannot, in good conscience, support this nomination as it stands today without the information being provided that is necessary to understand the context of the nominee.

I would very much like to see a more diverse court, and I will work to make sure it happens. But I will not put my seal of approval on an individual who has basically challenged the nomination process in refusing to answer the kinds of questions that would allow me to have the assurance, when I speak to the people of New Jersey, that I understand how someone with a lifetime appointment might think about some of the most important issues that impact their lives in the days and years and decades ahead, particularly for a 43-year-old nominee. I do not intend to be a rubberstamp.

I thank the Chair.

The PRESIDING OFFICER (Mr. TALENT). Under the previous order, the Senator from Colorado is recognized for 15 minutes.

Mr. ALLARD. Mr. President, I rise to share an observation made by my colleague on this side of the aisle—the chairman of the Judiciary Committee, Senator HATCH from Utah—that, like him, I believe there is a double standard.

Last week, I came to the floor to urge my colleagues to support the confirmation of Miguel Estrada, President Bush's nominee to the DC Circuit Court. Last week, I had my statement focused on the late Byron White, Justice to the U.S. Supreme Court. During my comments, I pointed out that Justice White's judicial career began in a manner very similar to that of Miguel Estrada. Justice White was nominated by President John F. Kennedy when he was only 44 years old. He went on to serve his country for three decades, without having any judicial experience prior to joining the Supreme Court. And he did an exemplary job on the bench.

Yet opponents of Miguel Estrada have pointed to his lack of judicial experience as the ''poison pill'' to his nomination. This is an unacceptable double standard. This experience litmus test, as I call it, is nothing but an obstructionist argument that is intended to undermine the entire judicial nomination process. It is wreaking havoc with our constitutional duty to confirm the President's nominations.

To say that Mr. Estrada, one of the best appellate court lawyers in the country, should not be confirmed because he lacks prior judicial experience is simply ridiculous. Justice White, a great Coloradan, would never have been confirmed had he faced such a strenuous litmus test; nor would another great Coloradan, Carlos Lucero, have been confirmed had that test been applied to him.

Judge Lucero was nominated to the Tenth Circuit Court of Appeals by President Bill Clinton on March 23, 1995, and was confirmed by the Senate on June 30, 1995. Three months is all it took. Like Justice White and Miguel Estrada, Judge Carlos Lucero had never served as a judge prior to joining the court. Regardless of this fact, within 3 months of his nomination, the Judiciary Committee, then under the leadership of Chairman HATCH, held a confirmation hearing for Mr. Lucero. At no point during the confirmation hearing—not even once—did a member of the committee discuss his lack of judicial experience; nor did they consider it to be an impediment to his nomination. Instead, the Judiciary Committee moved forward with the nomination in a Republican-controlled Senate.

Judge Lucero had served as a staff assistant to a U.S. Senator. He had served on the staff of the Senate Judiciary Committee, clerked for Judge Doyle of the Colorado District of the U.S. District Court, and practiced law in the private sector prior to joining the Federal bench.

Let's look at Miguel Estrada. He was a graduate from Harvard Law School with high honors. We have a lot of his qualifications listed on the board behind me. He served as a law clerk to Supreme Court Justice Anthony Kennedy, and he worked as an Assistant Solicitor General of the United States in both the Bush and the Clinton administrations. Neither Carlos Lucero—now Judge Lucero—nor Miguel Estrada had judicial experience at the time of their nomination. They both had a breadth of legal experience that ensured success on the bench. Miguel Estrada's outstanding record of accomplishment and real-life experiences prove that he will be no different than Judge White or Judge Lucero and that he will perform his judicial duties with great conviction and enthusiasm.

Within 3 months, Mr. Lucero was nominated, confirmed, and seated on the bench of the Tenth Circuit, becoming that court's first Hispanic judge. Somehow, the fact that Mr. Lucero had no judicial experience did not stop a Clinton appointee from being confirmed, but that is not the only ironic argument.

The Lucero nomination points out a second double standard being put forward by his opponents that Miguel Estrada is too political. Carlos Lucero was a two-time candidate for the Senate and a member of one of President Carter's advisory committees. Yet he still was confirmed without a concern being voiced by a single Senator that he was involved in a Senate race which was hailed by local newspapers as a bitter interparty slugfest, and the opposition to Miguel Estrada wants to complain about politics.

Upon his confirmation, Judge Lucero correctly stated it was ''an unfortunate vestige of history'' that it had taken so long for the Tenth Circuit to seat a Hispanic judge. It certainly was not because of delays in a Republican Senate.

With the nomination of Miguel Estrada, the Senate has an opportunity to place the first Hispanic judge on the bench of the DC Circuit Court, a man who came to this country at age 17 as an immigrant from Honduras, and a man who is well equipped to serve as the Nation's second most important court, certainly a success story of America and one that I like to herald time and again.

When Judge Lucero was before the committee, he was not asked his position on one issue, and yet my colleagues just saw my colleague from Utah show the Members of this Senate three pages of facts and testimony that had been collected on Miguel Estrada.

There were a couple questions in committee. I have them right here. This is the committee record on Lucero. We saw the 3-inch committee record on Miguel Estrada. When Judge Lucero from Colorado was on the Tenth Circuit Court of Appeals, they asked him two questions: No. 1—it was an open-ended question—give this committee some idea why you think you qualify to serve on the Tenth Circuit Court of Appeals. It was an open-ended question, a softball. No. 2—it was intended to be somewhat humorous and bring some levity to the committee hearing—they simply kidded him with a question: Is it easier to become a Senator or is it easier to become a judge? That was the extent of the questions, other than a few introductory remarks that were made in committee on Carlos Lucero.

Yet we have information collected of an extremely qualified candidate, Miguel Estrada. I have to tell you, there is a double standard. Unlike Judge Lucero who was nominated by President Clinton, Miguel Estrada has been forced to put his life on hold while special interests play games with our system of justice, delaying his confirmation and perpetrating an unfortunate status quo.

Miguel Estrada's nomination has been pending since May 9, 2001. That is nearly 2 years, and this is simply ridiculous. Judge Lucero was nominated and confirmed in 3 months. Miguel Estrada has been waiting for 2 years. Judge Lucero ran for the Senate twice. Miguel Estrada is far less political than Judge Lucero.

Judge Lucero clerked for a U.S. district judge but had no judicial experience. Miguel Estrada served as a clerk to Justice Kennedy of the U.S. Supreme Court, Assistant to the Solicitor General, assistant U.S. attorney, and deputy chief of the appellate section, and law clerk to Judge Amalya L. Kearse of the U.S. Court of Appeals for the Second Circuit.

Judge Lucero practiced law in Colorado. Miguel Estrada practiced law in front of the U.S. Supreme Court where he argued 15 cases. Mr. Estrada's qualifications are clear and abundant. The obstructionist charade must stop.

Over the past 2 years, many of my colleagues have come to the floor to make statements regarding the sad pace of judicial nominations during the last Congress. They have made excellent points, but I believe the most telling statistic is simply that more appeals court nominees have had to wait over a year for a hearing in President Bush's Presidency than in the last 50 years combined.

Let me repeat that. The most telling statistic is simply that more appeals court nominees have had to wait over a year for a hearing in President Bush's Presidency than in the last 50 years combined.

The stalemate on the Bush nominees must end. In the wake of September 11, we now understand the somber reality that the most basic of our country's values and traditions are under attack. That is why it is so important that we move the nomination process forward and provide the judiciary branch of Government the tools that are necessary to carry out its constitutional duty. We cannot continue to allow partisan politics to interfere with principled jurisprudence that is intended to serve justice on those who have done us harm.

Justice cannot be delivered from an empty bench. Miguel Estrada's life story defines the very notion of our Republic. Like Judge Lucero and Justice White, he is an American success story, building his success by combining energy and opportunity with self-respect and integrity and values.

It is time for the confirmation process to move forward and for a vote on the floor of the Senate. At least we can have a vote on the floor of the Senate. And it is time to drop the double standard and to confirm this very highly qualified nominee. I thank the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. BENNETT. Mr. President, I have been watching these proceedings on television in my office. I have heard some of the presentations that have been made. It seems that emotions are running high on this issue on both sides, and I can understand that, and maybe, given the stakes we are playing with, applaud the fact that people feel strongly enough to come to the floor and express themselves.

I wish to make a few comments simply in reaction to some of the statements I heard this afternoon, however. Perhaps no one will notice, but in my own mind I will have done something to set the record straight.

The Democratic leader talked at some length about Miguel Estrada's supervisor at the Department of Justice,

a supervisor who has now publicly stated that he does not think Mr. Estrada should be confirmed. That is obviously that supervisor's right, and it is something I think we should appropriately take into consideration.

That which I would point out, however, is that while Mr. Estrada was working there, that same supervisor gave him the highest possible ratings in his annual performance reviews. We are told there is no paper trail on Mr. Estrada, but there is a paper trail in terms of the written performance reviews of his activities while he was in the Department of Justice, and those reviews are unanimously and unchangingly glowing, giving us the indication, at least in the written opinion of his supervisors filed for the record in a situation where there was no political pressure one way or the other, that Mr. Estrada is certainly qualified in every way for the assignment he had at the Department of Justice and the implication, of course, is that he would be qualified for further assignments later in his career.

I should also like to point out that this was not the Ed Meese Justice Department, this was not the Richard Kleindienst Justice Department, those who have been attacked as being unduly partisan because of the nature of the particular Attorney General and his closeness to the President. This was the Janet Reno Justice Department, and Mr. Estrada was there not for a week or two in transition but he was there for a matter of years. If he is part of the vast right-wing conspiracy, as some have suggested, why did the people of the Reno Justice Department speak so highly of him and retain him for so long?

There can be only one logical answer. Either the people involved in the hiring of the Justice Department under Janet Reno were incredibly blind to Mr. Estrada's ideological bent or they saw in him a lawyer of incredible and significant ability and wanted his services and retained his services.

The Democratic leader made a great point out of the fact that none of Mr. Estrada's memos, while he was at the Justice Department, is being supplied to the committee for review. He did not tell us that Mr. Estrada's supervisor, the Solicitor General of the United States, appointed by President Clinton and serving under Attorney General Reno, says those memos should not be made public. The Solicitor General, not Mr. Estrada, was the client. The client who received the memos is the one saying the memos should not be made public, and yet the lawyer who prepared the memos, in confidentiality for his client, is being attacked for not violating his client's request.

I think it is fairly clear that the client is right in this case and that Mr. Estrada is acting in the highest levels of his profession to see to it that those memos are not made public. If they were made public, I do not think they would find anything in them that would expose Mr. Estrada as part of the vast right-wing conspiracy. I think they would find the excellent work of a superb lawyer so that it would probably help Mr. Estrada's case if those memos were brought forth in establishing his competence and his ability. But professional ethics say that a lawyer does not disclose that which he has prepared for a client, particularly in the case where the client says: Do not do it. Mr. Estrada has not done it and is being attacked now on the floor of the Senate for what, in my opinion, is his appropriate professional stance.

So we have the circumstance where a man who is responding to his professional requirements, a man whose career is fully open and clear for everyone to see, a man who has hidden nothing and has no holes at any point in his chronological resume, is being held up and being denied a vote on the floor of the Senate. As I have said before, we do not really know why. We do not know what particular test is being applied to this confirmation.

We know there are others whose rating by the American Bar Association is not as good as Mr. Estrada's who have gone through without any difficulty. We know there are those whose ''lack of judicial experience'' is exactly the same as Mr. Estrada's, others for whom the lack of judicial experience made no difference but which in his case suddenly is touted as making all the difference in the world.

We know these are straw arguments because we can find plenty of cases where others in exactly the same situation as Mr. Estrada did not have them raised against them.

So what we have is a situation where an additional test, unannounced and therefore unknown, is being applied in this case. I have tried to figure it out. I have asked Senator LEAHY to disclose what particular test he is applying in this situation. I have been unable to find a satisfactory answer. As I have said, perhaps facetiously but with some seriousness, I have come to the conclusion that the test that is being applied is passing muster with the editorial board of the New York Times. If the New York Times editorial board decides Mr. Estrada is not to be accepted, that means he must be turned down because the New York Times is the voice of what I call the responsible left in this country. We have the irresponsible left, but we have the responsible left.

There are those who claim the New York Times is completely middle of the road, the New York Times has no ideology. Those who are making that claim do not read the New York Times, or if they do, they do not understand it. It is the voice of the left in this country, the responsible left.

If its editorial board has decided that Miguel Estrada must not be confirmed, there are those who say we cannot cross the editorial board of the New York Times, we must follow their dictates, and therefore, without announcing it, we recognize that Estrada has failed that test and therefore must be opposed, and we will make up these other reasons to oppose him, even though we cannot apply these same reasons to other candidates for whom we have voted.

I hope I am wrong. Some will say: That is a facetious, almost capricious, statement on your part, Senator BENNETT. But I renew the request. I ask those who have determined in advance the test that Estrada must pass, and who have determined that he has failed to pass that test, to do us the courtesy of telling us what that test is, telling us in advance what hoop the nominees must pass through in order for them to allow the nominees a vote on the floor of the Senate. Until they tell us, this whole process we are going through will remain somewhat of a mystery.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, we are about to wrap up for this evening. I have been very disappointed with some of the debate today because it is apparent that some of our colleagues have not looked at the record, have not gotten the facts, that they are listening to People for the American Way and all the distortions that come from there. That is disturbing to me.

When I was chairman of this committee for 6 years during the Clinton administration, we put through 377 Federal judges. There were a number who gave great angst to people on my side because of the differences in philosophy, differences in judging, differences in approaches to judging, but we put them through. We did not mistreat people, at least as far as I can see, not like this.

It is important for people to realize what he has been through, because to hear this talk on the other side, one would think nobody ever even looked at this man; that they had not had a chance to question him; that he did not answer any questions.

This binder contains the hearing record. Most hearing records would be 10 pages. This is his hearing record. My gosh, the hearing was conducted by Democrats. They controlled the whole shebang. They asked every question they wanted to, and he answered them. I can see today he did not answer them the way they wanted him to, so that they could complain about him, but he did answer them. I think he answered them better than most of their judges whom I put through answered our questions.

Think about what he has been through. Before a person gets nominated, the White House does a thorough review. They do a thorough research on whether or not to nominate the person. They also interrogate the person as to whether there are any difficulties that person might have. Then if they decide they are ready to go forward, they are subject to an FBI report. They then send out the Federal Bureau of Investigation.

The Federal Bureau of Investigation does a terrific investigation. Generally on a judgeship like Estrada, it is a notebook at least this thick, where they interview the nominee's friends, neighbors, business associates, enemies, wackos, crazies. This is what you call a raw FBI report. Then assuming that goes well, the administration then makes a determination whether to submit the name. As they submit the name, they generally notify—sometimes even before they submit the name—the American Bar Association.

The American Bar Association then takes one of their examiners after all the FBI has done and their examiner generally is from the same area as the nominee. That examiner then goes and talks to the leading attorneys, the leading lawyers in the area—and others, if the person is so led—to determine ethical standards, legal ability, industriousness, health, strength, temperament, and so forth. All that is investigated by the ABA. Most nominees get a rating of ''qualified.'' That is a high rating. Anytime you can get the rating of ''qualified'' from the American Bar Association, you have done something pretty worthwhile. That means you have achieved in this life.

I used to be pretty upset at the American Bar Association when I saw partisan politics being played with the standing committee that investigated people. The perfect illustration was in the Bork case. Unanimously well qualified when he came up for the Circuit Court of Appeals for DC, the same court we are talking about here, and just a few years later, found to be ''well qualified'' by a majority of the standing committee, and ''not qualified''—one of the leading intellects in law in the history of this country? I happen to know one or two of the people on there who voted ''not qualified'' who were very partisan Democrats and did not want a conservative like Bob Bork on the court. They won in the end.

Since then we have had our problems with the ABA. When I became chairman, I took the ABA out of the process, and my argument was then, and it is still a good argument, why let one of the bar associations, even though it is the largest one, and not all the other ones, vote these people? If we let them all vote, we would never get through the process. In fact, it takes at least 2 months to 3 months for the ABA. They say they can do it in 30 days, but it is generally between 35 and 60 days to do their research. When the nominee comes up to the Judiciary Committee, all of that is submitted to the Senate Judiciary Committee.

Now, the chairman and the ranking member, in particular, have staff—skilled, honest, decent staff on both sides—who, along with the chairman and ranking member, go through all of those materials that the FBI especially has collected. Sometimes it is extremely voluminous. If we see, in going through the materials, that something has not been answered, or something has not been investigated, then we go to the FBI and say, You have to do further investigation. We want this done. And the FBI then does it, pursuant to our rules. It is, again, a very big, arduous, difficult process.

Then, as in the case of Estrada, the Democrats controlled the committee. They took a total of 516 days—16 months—before they even had a hearing. Now, generally these hearings go 2 or 3 hours at the most. Estrada's hearing was virtually all day. It was conducted by the Democrats. In fact, Senator SCHUMER chaired the hearing. Senator SCHUMER, as I have said before, is no shrinking violet. He is a tough guy. He is a very smart lawyer. I value our friendship because he is always straightforward. We have a decent, good, workable relationship. But he, along with other Democrats, then came in and asked questions of Miguel Estrada. They asked voluminous questions. That is what this hearing transcript is all about. You do not see many hearing transcripts that big. I have been here almost 30 years and I have seen very few that large until there is some real problem. But in all of this hearing, out of it came their comments that he really did not answer the questions. But he did answer the questions. Some of the questions he did not want to answer because they may have involved issues that could come before him as a judge. And he was not supposed to answer those questions. Lloyd Cutler, whom I quoted over the last week many times, says they should not answer questions that involve matters that might come before them.

The Circuit Court of Appeals for the District of Columbia has a tremendously broad jurisdiction. It is, like the people said, the second most important court in the country and in some ways the most important court because they have thousands of cases that the Supreme Court of the United States of America will never hear because they can only take 80 to 100 cases a year. So it is a very important court. It is a court of last resort to many. Because, as I said, those cases do not go to the Supreme Court.

Not only did they ask questions all day long and ask serious questions and he gave serious answers—and if you read the transcript, you will see that—they had every crack they wanted. If they did not have it, they could have called for another day of hearing. That would have been extremely unusual for a circuit court nominee, but they could have. They controlled the committee. There would have been absolutely nothing I as ranking member on that committee could have done other than complain. I probably would not have complained. But they did not do that. They did not ask anymore questions.

Now, after the full hearing and all of this time it took to do that, and all of the questions all of the Democrats asked at that time—which he answers; maybe, I admit, he did not answer the way they wanted him to, but that is not his obligation; he didn't make any mistake—he did not give them something to feed on to destroy him with.

There has not been a good argument against him made since we have started this debate other than ''he did not answer the questions.'' Well, some questions did not deserve being answered, but he answered a lot of questions.

Then, when the hearing is closed, they do a transcript. That is what this big document is, a transcript of that hearing. That is given to the Senators who want it. And most everyone does. Then the Senators pour over that transcript and if they see questions that were not answered in that transcript, then they have a right to write written questions. And the Senators who are really interested then write written questions for him to answer. Guess how many Democrats wrote written questions? Two. And he answered those written questions. He may not have answered them the way they wanted him to do so they could attack him and try to destroy his nomination, but he answered them. Where were all of the questions they are now raising when they had every opportunity to ask those questions?

By the way, that hearing was finished in September of last year. Ordinarily when you have a hearing—not always but ordinarily—the next Judiciary Committee markup, the persons put on that Judiciary Committee markup where you can raise anything you want to. Did they put him on a markup between September and January of this year? Not on your life. They did not give him a chance. He would not have made it. And the Republicans then won control of the Senate. He would not have had a chance. So they relied on being able to kill this nomination by never calling it up. Why would they want to kill a nomination of one of the brightest young Hispanic leaders in America who is totally qualified for the Circuit Court of Appeals for the District of Columbia? I'll tell you why. It is a very simple reason, to be honest with you. It is because he is a Hispanic Republican, appointed by a Republican President. They didn't like it. And they think he is conservative. I don't know whether he is or isn't. I presume he is. I guess they think he is on the fast track to the Supreme Court, and I suspect Miguel Estrada has a chance of becoming not only the first Hispanic nominee on the Circuit Court of Appeals for the District of Columbia, but the first Hispanic on the United States Supreme Court. And he is not the right kind of Hispanic.

I am the chairman of the Republican Senatorial Hispanic Task Force. That task force is made up of Democrats, Republicans, and Independents. We didn't worry about their political ideology. We worried about getting together with them and seeing what we

could do to help the Hispanic community. That has been an amazingly successful Hispanic task force.

I can tell you I fought very hard for Hispanics my whole Senate career, and for other people of color, other minorities as well. But the reason they don't like him is because he was appointed by a Republican; a Hispanic appointed by a Republican, who is conservative, they believe, and a Republican himself. That is enough to give him this kind of a rough time here on the floor of the Senate.

But even then, they had between September of last year and January of this year. As a matter of fact, they had between September of last year and February of this year to ask even further questions if they wanted to. It would have been very improper for them to do so because he had already been questioned. They controlled, certainly right up to January, the middle of January of this year. They could have asked any questions they wanted. They could have had another hearing if they wanted. It would have been highly extraordinary and highly unusual, but that is what they could have done.

It is partisanship. That is what is showing its ugly face here.

As chairman of the Hispanic Task Force in the Senate, I can tell you the Hispanic people in this country, the Latino people, have helped to make this country what it is. The Latino people are basically conservative. They believe in families. They believe in staying together in their marriages. They believe in educating their children. They believe in hard work. They have built the railroads. They have helped mine the mines. They have helped build our buildings.

Now we have young Hispanics such as Miguel who have gone on to professional schools and they are making a difference in this country that deserves commendation. Look what Miguel Estrada is going through for all of that, a fellow who is fulfilling the dream that America makes for us.

Miguel deserves better than what he is getting. Frankly, he is being treated very unfairly. I, for one, am really disturbed by it. To filibuster Miguel Estrada with the thin line of complaints they have is, I believe, going beyond the pale; to filibuster for the first time in a true filibuster the first Hispanic ever nominated to the Circuit Court of Appeals for the District of Columbia because he is a Hispanic Republican who they think is conservative, appointed by a Republican President who they don't like. I am not saying all the Democrats don't like him, but the ones who are making these, I think, very unsubstantiated arguments, do not.

Time after time we have refuted their arguments in absolute terms and they come right back and keep spewing out the same stuff. The reason I went through People for the American Way is because all of that stuff has been coming from People for the American Way. That, as I have said earlier today, is not the American way, to treat a human being the way this man is being treated.

I warn my friends on the other side, if you are going to filibuster Miguel Estrada, then Katie bar the door because I know people on our side who are going to filibuster anybody they disagree with when the Democrats have the Presidency. That will be a sorry state of affairs.

As chairman of this committee, I worked very hard to make sure some of our firebrands did not get their way in wanting to filibuster Carter and Clinton judges. And I won. I was able to convince people it was not the thing to do.

I question, under the Constitution, whether you can do this. I really question it. I don't believe you can. I think it is outrageous to try. It is dangerous to try. And it is not fair to the first Hispanic nominated to the Circuit Court of Appeals for the District of Colombia, especially when they have had every chance and we are now in the 21st month for Mr. Estrada.

I guess we can learn to expect that because Mr. Roberts, who is on our markup on Thursday, who is considered one of the two greatest appellate lawyers in the country—Estrada is considered one of the top appellate lawyers, but Roberts is considered one of the two greatest in the country and that's from Supreme Court Justices themselves and many others—Roberts has been sitting here for 11 years, waiting for approval by the Senate; nominated three times by two different Presidents.

That is what we are going through. This is a big slowdown, trying to thwart the process because they don't like President Bush.

A lot of our people didn't care too much for President Clinton. I did, but a lot of the others didn't. But that didn't stop us from treating him fairly.

We have taken enough time.

Mr. REID. Has the Senator yielded the floor?

Mr. HATCH. I will be happy to yield the floor to my colleague.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, my father-in-law, may he rest in peace, was a chiropractor, but he knew a lot about people's illnesses and how people handled sickness. One thing he always said—he died as a young man—one thing he always said was, when somebody says they are sick, you believe they are sick. We have all said ''they are not really sick.'' When someone says they are sick, they are sick.

This debate here reminds me of my father-in-law's statement. My friend, no matter how many times the distinguished chairman of the committee says there is not a problem with Estrada, there is a problem with Estrada. You can say there is not. You can have pictures of him. You can do all kinds of things, say all kinds of things that there is not a problem. There is a problem. In this country, the Constitution of the United States, article II, section 2, says that we as a Senate have a right to advise and consent on nominations the President gives us for a wide variety of offices, not the least of which is the judiciary.

That is something that has been done in this country for a long time and it will continue a long time after the Estrada matter has ended. For my friend, who has served with such distinction as the chairman of the Judiciary Committee and ranking member for many years, to say he thinks it is unconstitutional to do what we are doing leaves me without any logic. I don't understand how he could say that.

I repeat, there is a problem with Estrada. You may not agree with what we believe is a serious problem, a flawed nominee, but we believe there is a problem. This isn't something we have jumped into in a matter of 10 minutes, 20 minutes, 10 hours. This has taken a matter of days, to take a look at this nominee and to make a decision about what we were going to do.

The majority has various things they can do at their disposal. We believe there are questions he did not answer. All nine members of the Judiciary Committee who are Democrats agree this man is not, for many different reasons, a person who should go on the District Court of Appeals.

We have heard it before, and I am reminded of my friend, Mo Udall, a longtime Member of Congress from Arizona, who said:

Everything has been said, but not everyone has said it.

That is what has happened here. We have talked for days and days, and we will tomorrow, and if someone can come up with something that hasn't been said by either side—I doubt it. They will continue to say what has been said in the last few days. We have opposition of the Congressional Hispanic Caucus. We believe, as has been done with a number of other people who have been sent to the Senate by Presidents, we are entitled to the memos he wrote when he was a member of the Solicitor's Office.

I recognize that some say that is not a good idea. It has been done in the past. If the majority believes this man is as good as they say he is, why don't they give us those memos? Are they afraid he said something there that may weigh against his being a judge? I do not know. But I think they protest too much.

There is a problem with this nomination. We don't need a numbers game here. But this is a filibuster. There are ways you can get rid of a filibuster: Take down the nomination, and vote to invoke cloture. That is about what you can do. Or you can do what has been suggested by the ranking member of the Judiciary Committee and the Democratic leader in a letter sent to the President, which basically says let

us have another hearing, let us ask some questions of this man, and have him submit those memos. It wouldn't take very long. I assume he didn't write too many memos, but we could tell. I am sure they could be reviewed in a day. I am sure the hearing could take place in a day.

To say that this opposition is because he is Hispanic and he is a conservative simply is not based on the facts.

But I accept what my friend from Utah has said. That is what he believes. I know he believes that. I submit that it is not right. He has a right to believe that. As I have said before, people have made statements over here about why they oppose Miguel Estrada. That doesn't mean that my friend from Utah has to agree. But that is how people over here feel.

We have a problem with this nomination. We are now in the throes of a filibuster. The majority leader has said he thinks the debate tomorrow should go for a long time. If that is what he wants, that is fine. I spend all of my legislative life here in the Chamber. I can spend a night or two here. It doesn't really matter that much. We have a lot to do. I know we have other things the leader wants to do. I know we have a very important appropriations bill that should be coming forward in the form of a conference report very soon. We have to do that.

The other reason we may be going through this process is that the leader doesn't want to bring any of that stuff forward. Maybe this is an excuse for doing nothing. But whatever the majority leader wants to do, I understand the procedures here in the Senate, and we are here because he determines what we do on this floor. But one of the things we have a right to do is take a look, because of the Constitution of the United States, at nominations that are given us. That is what we are doing.

As I started my brief little talk here tonight, you may not think there is a problem. But take the word of my father-in-law. May he rest in peace. There is a problem. I would suggest there are well over 40 Democrats who believe there is a problem. It seems to me that is the case; there is a problem.

There are only a few ways to deal with it. You can stay here and talk day after day after day and run TV ads, as they are doing right now, saying that we are anti-Hispanic. It is not going to change the belief of people over here that Miguel Estrada should answer questions and that he should provide his memos.

If they do not want to do that, they can continue running their ads and having to stay here late at night—stay here all night, and have us stay here during our vacation. When I say ''vacation,'' as everyone knows, they are not vacations; we go back to the States and work. But we are here. We have signed onto this. We as a matter of principle oppose this nomination. People may disagree with our principle. But that is in fact why we are here. We think there is a problem with this man being given this appointment. According to us, he has not answered questions, and he has not submitted his memos. And he is opposed by a lot of groups who should be supporting him and don't because they believe he is not a person who should go on the District Court of Appeals.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate my colleague. I agree with him; there is a problem here. I don't think there is any question about it. There is a problem of whether we are going to treat a person fairly. I appreciate my colleague in his own characteristic quiet and cautious and decent way. He has outlined what he feels.

Think about it. Where were the questions during the time they controlled the Senate right up through the middle of January? They didn't ask any further questions. Only two Senators gave written questions. They could have held an additional hearing. They did not do it. I guess they rolled the dice, figuring they were going to win anyway, and they would kill this nomination no matter what happened. The fact is they lost, and now the Republicans are in control of the Senate, and we want to see this man get fair treatment.

I admit there is a problem. But the Constitution doesn't say the Senate should advise and filibuster these nominations. It says the Senate should advise and consent to these nominations. That is a far cry from filibustering.

I question a filibuster in the case of judges in the third branch of Government. They are a coequal branch of Government.

With regard to the memos, Mr. Estrada said it is fine with him if they give up the memos. He doesn't have anything to hide. He is proud of his work. But the Justice Department, in its wisdom, says we don't give up these kinds of memos; it is a bad precedent, and we are not going to do it. So why blame Estrada for that? Why hide behind that when Estrada isn't the one causing the problem.

I happen to agree with the Justice Department. I don't think they should give up confidential memoranda that could chill the work that goes on in the Solicitor General's Office. I don't see how anybody with a straight face could make that argument as much as it has been made with straight faces today.

## LEGISLATIVE SESSION

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate now return to legislative session.

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

## MORNING BUSINESS

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate proceed to a period of morning business.

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

## AMERICA UNGUARDED

Mr. BYRD. Mr. President, as President Bush gears up for a possible war in Iraq, we have been treated to repeated announcements of troop deployments and callups of Reserve forces. A fourth aircraft carrier battle group centered around the USS *Theodore Roosevelt* is steaming toward the Persian Gulf, and the Navy is reportedly prepared to send up to three more carrier battle groups to the region. Two Marine amphibious groups of seven ships each are also already in the gulf. Military installations around the Nation are taking on an empty, shuttered feeling as unit after unit after unit packs up, says goodbye, wipes the tears away from their faces, from the faces of loved ones, and ships out. This is happening more and more and more all over this country.

National Guard and Reserve forces have been mobilized not only to go to the Persian Gulf but also to guard military installations around the United States. And more and more and more, one will look at dinner tables and at countless workplaces, and there they will see vacant chairs, vacant spots.

The 300th Chemical Company, headquartered in Morgantown, WV, was ordered, on January 3, 2003, to report to Fort Dix, NJ, in anticipation of deployment to some as yet undetermined final destination.

West Virginia: one State, the 35th State in the Union. Every Senator here can look at his or her own State and see what is happening, see the same thing happening as I am seeing in West Virginia. These troops may be gone for a year. They may be gone longer.

Other West Virginia Guard and Reserve units have already been called up, including members of the Bluefield-based 340th Military Police Company. That is on the southern border of West Virginia, on the border with the State of Virginia. And then there is the Romney-based 351st Ordnance Company. Romney is in the northeastern part of West Virginia, a community that changed hands 56 times in the Civil War.

There, too, we see vacant chairs at the dinner tables. We see the families, the spouses with the children, spouses who have remained behind. They and their children bow their heads at mealtime and say: ''God is great. God is good. And we thank Him for this food. By Thy goodness all are fed. Give us, Lord, our daily bread.''

And the same scene is repeated and repeated in Kansas, in Florida, in California, in Washington, in Oregon, in Virginia, in South Carolina, in North Carolina, Pennsylvania, New York, Massachusetts, and on and on and on. And pretty soon it adds up.

Then there is the Kenova-based 261st Ordnance Company and the Bridgeport-

based 459th Engineer Company. Kenova is down near Huntington in southern West Virginia. Bridgeport is adjacent to Clarksburg in the north central part of West Virginia.

Everywhere one looks, one sees these men and women departing, leaving—to return when? We know not when, and in some cases perhaps never.

West Virginia Army National Guard members have been recalled to active duty, as have members of the Charleston, WV-based 130th Airlift Wing and the 167th Airlift Wing in Martinsburg.

So over and over and over again, we see this happening, day after day after day.

West Virginia is playing an active role in our Nation's military operations, and the story is the same in the other 49 States and the District of Columbia around the Nation as, week after week after week, small town newspapers display the smiling portraits of guardsmen and reservists called into the active service of their country.

I suggest to other Members of the Senate that they take a look at what is happening within the borders of their own States, the States they represent in this great Chamber, and they will see what I see when I look at West Virginia.

Even the Coast Guard is sending 8 of its 49 patrol boats and two port security units—some 600 personnel—to the Persian Gulf. By mid-February, some 150,000 or more service personnel are expected to be in the Persian Gulf region, with the total expected to top 200,000 by early March—not even a month away.

These new deployments to the Persian Gulf come on top of many other ongoing military operations around the globe. Approximately 9,000 U.S. service personnel remain active in Afghanistan battling Taliban forces and continuing to root out Osama bin Laden's followers. We spent $27 billion in Afghanistan. Now we have upped that by an additional $10 billion; 27 plus 10, that is $37 billion that the war in Afghanistan and the adjacent region has already cost, $37 billion; $37 for every minute since Jesus Christ was born; $37 billion spent in Afghanistan and the region.

And where is Osama bin Laden? Where is he? Thirty-seven billion dollars? Yes. And has the countryside been subjugated? No. Only the city of Kabul, perhaps in the daytime.

I went to Kabul 48 years ago with a codel from the House of Representatives, flew up the Khyber Pass in that landlocked country, Afghanistan. There it is today, the same country, landlocked, still ruled by tribal men warring with one another.

Approximately 9,000 U.S. service personnel remain active in Afghanistan, battling Taliban forces and continuing to root out Osama bin Laden's followers. Yes, there it is. American service men and women all around the globe, around that globe around which Jules Verne wrote that great novel, ''Around the World in Eighty Days.''

Military and political tensions in South Korea are as high as they have been at any time since the Korean war. I remember that Korean war, yes. Here we are, a half century later, with thousands of our American fighting men and women still there looking across the divided country that separates South from North Korea. Over 51,000 U.S. personnel live in South Korea, including 35,654 active duty military personnel. I visited there when Syngman Rhee was President. I visited the Korea Parliament. Men wore overcoats in the Parliament. It was cold. Can you imagine men and women seated in this Chamber in their overcoats? It is the dead of winter, isn't it? Yes, it is.

Some 6,900 U.S. forces remain in Bosnia as part of the NATO Operation Joint Force. By mid-February, by this short count, 201,554 American service personnel will be far, far away, far from home, far from the lights of home, far from the warm fireplaces of home, far from the sisters and brothers and mothers and fathers and wives and children and husbands and children engaged in dangerous missions around the globe. This figure does not include forces permanently stationed in Europe, Japan, and elsewhere but those on temporary deployment. These deployed troops will be supported by many more military forces based in the United States.

And how much are we debating that? Little is being said. Scarce to nothing is being said on the Senate floor as we prepare to go to war in all likelihood in a foreign land. Little or nothing is being said in this Chamber or in the other Chamber about what may happen at home once the attack upon Saddam Hussein is unleashed. Are we under a gag rule? What is going on? I can scarcely believe my eyes and my ears when I look about me. I sometimes say to someone, pinch me, pinch me. Is it real?

What has happened to the U.S. Senate, this great forum, the greatest upper body in the world, the U.S. Senate? What has happened? What would the Framers think if they could come back and see this Chamber, austere, practically vacated? Of course, they knew nothing about television in their day. They didn't know that a few Senators could sit back in their offices because they didn't have the kind of offices that we have in our day either. But what would those Framers think?

What would the 39 signers of the Constitution of the United States think if they could sit in these galleries and look down upon this Chamber today? What would George Washington have to say about that? What would James Madison have to say, or John Blair have to say? Or Charles Cotesworth Pinckney, what would he say about that? What would Hugh Williamson have to say? How would he feel about it? How would Benjamin Franklin gauge the situation if he saw the U.S. Senate today as we are about to prepare to launch an attack upon a sovereign nation that has not attacked our own country? Benjamin Franklin, what would he say?

What would David Brearley say as he looked about him and saw few Senators discussing the greatest issue of all—the issue of war and peace? What would James Wilson say? What would John Dickinson say? What would Thomas Fitzsimons have to say about it? What would Abraham Baldwin or William Few say about it? These were signers of the Declaration of Independence. Would George Read have any questions to ask? How far have we fallen short of the expectations of those who framed this Constitution? Here it is. I hold it in my hand. There were 39 signers. How about John Langley? Rufus King; would he rise to his feet and have anything to say? What would Nathaniel Gorham and Nicholas Gilman say about this?

Would they say: Awaken, awaken, take to the ramparts. In musical terms, the operational tempo of the U.S. Armed Forces has moved from adagio, which is slow, to allegro, which is fast, and is rapidly moving to prestissimo, as fast as possible, or too fast.

No one wants our military to go to war without the resources that it needs, and we will certainly do everything within our power if our forces are sent into war by the executive. The Senate has attempted to wash its hands of the matter and hand the matter over to the President of the United States: Here it is; it is all in your hands. We have relegated ourselves to the sidelines. Yes. No one wants our military to go to war without the advantage of overwhelming force. But in this new era of terrorist attacks in the homeland, I have some concerns that we are leaving America unguarded as we attempt to initiate and sustain so many military operations overseas.

Oh, yes, we see the national alert, the orange alert. Well, the forces that remain here to protect the American people are fast dwindling. How long before they dwindle more and more and more? Yet we are on ''orange alert.'' Where are the policemen, the National Guardsmen, the reservists, the firefighters, and the schoolteachers—those all about us in our daily walks as citizens? More and more, we look to the right and then we look to the left and we see a vacant spot here and there. Yet we are on orange alert. Where are those who are to guard this country when it is on orange alert? Where are they?

I am not alone in thinking our country is vulnerable to another massive terrorist attack. On Friday, Attorney General Ashcroft and Homeland Security Secretary Ridge announced to the Nation that credible, corroborated intelligence reports required an increase in the homeland security alert level. Yet look about you, and everywhere to the north, east, west, and south one sees line after line, busload after busload, planeload after planeload of National Guardsmen, reservists, men and

women leaving their spouses, their children, shedding their tears, going away—miles away, hundreds of miles away, thousands of miles away across the seas. When will they see one another again?

In light of this danger, it is almost bizarre that our military continues to run at full tilt to ready for war in the Persian Gulf. It is as if two ships are passing in the night—one filled with our soldiers headed for the hot sands of the Arabian Peninsula, the other carrying terrorists headed for our shores. Time after time, this administration and its Department heads have put this Nation on alert. If the risk to the American people were not so great, the situation would be almost comical.

If an attack strikes a city in the United States, who will respond? Governors might wish to call out the National Guard in order to respond to an attack and restore order, but will any units be left to pick up the phone? The military's only mobile chemical and biological laboratory has deployed to the Persian Gulf. Chemical decontamination units, like Morgantown, West Virginia's 300th Chemical Company, have been called up and shipped out. Gone. The vacant chairs are still there. The vacant pews in the local churches are still there. But the men and women are gone. Many of our Nation's policemen, firemen, and other first responders are members of the National Guard and Reserves. They have been called up, and they have been shipped out, leaving one important national security job for another.

It would be a mistake to assume that these troops would soon return home after defeating Iraq in battle. We may be lucky, pray God. The supreme fact in this universe of universes is a Living God. Men can study and plot and plan all they want to as to what created this Earth, created the universe, and created man, and come up with this idea and that thesis and that hypothesis, one after another. But the remaining supreme fact is that there is God. I hope God will give this country the good judgment, the wisdom it needs in the days ahead. We may be lucky. It may all be over in a day or two. Someone may be able to talk to Saddam Hussein and get him to leave and go somewhere else. Who knows? But suppose we are not lucky.

Saddam Hussein's military is not as strong as it once was, but there is still the looming specter that one sees at night when the shades of darkness have fallen. One hears the rustling robes of night, those sable robes. One sees the specter, the possible specter of hand to hand to hand, building to building to building, block by block by block, street fighting in the megalopolis of Baghdad. That could become real.

Then what will those who seem to be impelled to drive our Nation into war say, those who seem to look upon this forthcoming trial as but a video game? We press a button here, press a button there, poof, it is gone; Saddam Hussein is out of it, and his legions have been conquered and decimated and destroyed. Just a video game.

I sometimes pinch myself as I sit down and watch the television. I wonder, can it be real that these people who have never shot a shot in their life probably—I cannot complain about that; I have not shot a shotgun either—but they are all for going to war. What do they have to lose? I do not know. But I wonder what is happening in our country today when everything is bent for war.

Turn on the television set. The first television set we had at my house was in 1955. I was in my third year in Congress, my second term, and went home one afternoon, took some mail with me and was sitting after supper—we still think in terms of supper at my house, not dinner. We do not wear these monkey suits, certainly not as much as we used to. So we do not put on these fancy suits and go out to dinner at night.

There I sat. I was signing my mail, and my wife and I sat there with our two daughters. She said: Robert, what do you see? Take a look around the room. What's new? I looked around the room. And there it was—a black-and-white television set, 1955.

That is the year when the House of Representatives passed legislation providing that the words ''In God We Trust'' will be on the currency of this country—''In God We Trust.'' Those words were already on some of the silver coins, but we passed legislation in that year, 1955—it was June 7, 1955, when we passed legislation providing that the words ''In God We Trust'' would be on our currency. Here it is. It is right on there. Here it is on the $1 bill, with the greatest President of all, George Washington. There it is on that bill.

That was June 7, 1955, and on June 7, 1954, we had passed in the House of Representatives legislation adding the words ''under God'' to the Pledge of Allegiance.

There we were, sitting around my living room. I turned on that black-and-white television set. Ah, I wish I could call those days back. There was Jackie Gleason and ''The Honeymooners,'' really a wholesome, fun picture. Then there was Matt Dillon in ''Gunsmoke.'' And there was Elliott Ness in ''The Untouchables.'' Those were the days, black-and-white television.

Anyhow, I turn the television on now in the evenings, when I can bear to look at it for a little while, and the same old story over and over is just beating into my ears; this go to war, this beating the drums of war. That is going to be a game. We hear that the game is over. This is not a game, as the French President reminded our own. This is not a game, and it is not over. But there I hear it every night over and over and over and over again. That is all the American people hear, this ''going to war'' theme.

I hope we will be lucky. I hope we will be. I hope we will find a way out of going somehow. I think this Senate ought to debate it. I think we ought to talk about it in this Senate. What would those Framers say if they could see the Senate today, tucking its tail between its legs and running away from this, the greatest issue of our time: War and peace.

Nothing is being said about it. Are we afraid to ask questions? Is it unpatriotic to ask questions? I say to these pages—we have a new flock of pages and they are all these fine young people who come into this Chamber. They are such wonderful young people—I say to them: What did you think before you came here? Did you expect to hear some great debates about the greatest issue of our day, our time? Did you think you were going to come here and hear about the problems of war and peace? Are you disappointed? Have you been disillusioned? You are not hearing it, are you? Here we are silent.

Is it deemed to be unpatriotic to ask questions? The American people out there want us to ask questions. How much is it going to cost? We have already spent $37 billion now through the end of last December in Afghanistan, in that region. Where is Osama bin Laden? Where is he? $37 billion. He was wanted dead or alive; $37 billion and still no Osama bin Laden. Now our troops are going to be sent to a foreign land, some of whom will die, will have their blood shed in the hot desert sands of a foreign country. And how many people there will die? How many men and women and children, little children, boys and girls, will die unless we are lucky and the bullets do not fly?

Our troops could be forced into a wild goose chase for Saddam Hussein, just as Osama bin Laden has eluded our grasp for the last 14 months. We could get lucky; we could win the war in a matter of days. Saddam Hussein could be served up to us on a silver platter by his generals who are desperate to save their own lives. But is that the end of the story? That is not the end of the story. Someone will have to occupy Iraq and purge the government of the Baathist Party elites who might wish to succeed one dictatorship with another dictatorship. Someone will have to calm the situation in the North where the Kurds might seek to form their own country, which is a serious concern for our ally Turkey.

If the United States goes forward with a war with only token support from some of our allies, it is not hard to see that we will also bear the greatest burdens in the occupation of Iraq. Who knows that it is going to be all that easy?

They should sit down in front of their television set tonight, as they listen to those talking heads as they gloss over the serious question of war and peace and they talk about going to war as though it were a video game.

Somebody is going to die. America has lost men and women in wars, large and small, over these 215 years since ours became a republic. People always

die in war. Have we discussed this one? Have we debated it? Have we asked the questions our people expect us to ask?

Suppose we get into a war and it does not go well. Suppose it turns out to be something other than a video game. Then our people back home will say: Where were you?

The first question that was ever asked in the history of mankind was asked in the Garden of Eden, in the cool of the day, when God searched for Adam and Eve and He asked the first question that was ever asked: Adam, where art thou? Old Adam and Eve were over behind some bushes, wearing some fig leaves, trying to hide from God.

No, one cannot hide from God. One cannot hide from the Creator. And we will not be able to hide from our constituents if this war goes sour, if it goes south. They will ask: ROBERT BYRD, where were you when they voted to turn this matter over to the Commander in Chief, turn it over to the Chief Executive, hand it over to him and wash your hands? Were you there, ROBERT? Did you wash your hands on that day? Where were you?

We will be asked the question. I kind of hate to look at myself in the mirror and ask myself that question, Where were you when you turned your back on the Constitution of the United States, which says Congress shall have power to declare war? Did you turn that over to the President, ROBERT BYRD? Did you vote to turn that authority over to the President? If you did, did you sunset it so that that same power would not be in the hands of the next President? No, the Senate did not even want to sunset it.

What would those Framers say to us? Where were you? You stood up at that desk, put your hand on the Bible, and said you would swear to support and defend the Constitution of the United States against all enemies, foreign and domestic. Where were you on that day?

If the United States goes forward with a war with only token support from some of our allies, it is not hard to see that we will also bear the greatest burdens in the occupation of Iraq. Then look in the shadows, look into the shadowy mists halfway around the world, and see what is there. North Korea, with its nuclear programs. Now we are becoming a little afraid of Iran. We are becoming wary of Iran, which is third in the forces of evil that have been named. Are they next?

The Department of Defense has so far been reluctant to hazard a guess at how many troops might be required and how long their mission might last. Perhaps those numbers—we are talking about a postwar Iraq, a post-Saddam Iraq. The Department of Defense has been reluctant to hazard a guess at how many troops might be required and how long their mission might last. Perhaps those numbers are too alarming to discuss at this point, but one British think tank has estimated that occupation of Iraq may require 50,000 to 200,000 troops and cost $12 billion to $50 billion per year for 5 years, perhaps more.

Who knows what the ultimate costs will be—$200 billion, $300 billion, $500 billion, a trillion? Add up all of the costs. So long as this occupation continues, how is the National Guard supposed to help our States in the homeland security mission? Our police forces can hardly pick up the slack. They are already working full tilt, performing the myriad tasks that keep our streets and schools safe 24 hours a day, with crime increasing 7 days a week, 52 weeks a year.

Just because the threat of terrorist activity is higher does not mean that run-of-the-mill villains go on vacation. Just because Osama bin Laden is still on the loose does not mean that the John Allen Muhammeds of the world will decide not to go on random nationwide shooting rampages.

At a time when port security has become increasingly important, and in which we have learned what a tiny fraction of incoming ships and containers are being searched for weapons of mass destruction, the Coast Guard is reducing its interdiction capability by sending one-sixth of its patrol craft to the Persian Gulf.

How many more Haitian refugees will be able to land on our shore? How many more drug shipments will make it in? How many ships in distress will have to wait to get help? How many terrorists will be able to land on our shores? One key problem, in trying to balance the demands of States for National Guard to perform homeland security missions with the deployment of guardsmen to deal with international crises in Afghanistan, Iraq, and perhaps elsewhere, is that the military reserves are the well from which the Active-Duty Forces must draw for units with unique skills. If the military needs large numbers of military police, engineers, or civil affairs specialists, it has no choice but to draw from the Reserve components.

Our military is arranged so that the Active Forces alone simply are not able to carry out long periods of conflict or peacekeeping missions. The Department of Defense has announced that it will seek to realign some units so that our Active-Duty Forces will be better able to perform specialized missions without drawing so heavily from our citizen soldiers. But would the Framers have questions about how this will be done? How will it be done? Will the 300th Chemical Company be ripped out from its home in West Virginia and sent to a military base hundreds or thousands of miles away? If so, on whom would Governor Weiss of West Virginia then call if a chemical attack were to occur in my State?

Each Senator should ask themselves the same question about their own State. The President has repeatedly said our country is in this war on terrorism for the long haul. We should not seek Band-Aid solutions to important problems. Realignment of Reserve and Active Forces might make sense for fiscal year 2004, but what are we going to do about the problem today? What needs to be done to prepare for 10 years down the road? I will not be here.

You may not be here or you may be here, Mr. President. But that problem will face this country. Years will come and the years will go, problems will come ever nearer. Let us start by asking some tough questions.

Do we need more Active-Duty forces to do everything that the President is asking our military to do? If so, can we increase our recruiting to find more Americans who are willing to serve in the military? Do we want to go back to the draft? That question may come ever closer.

While the White House is prepared to dedicate ever greater sums to our military, have we underestimated the manpower requirements for the war on terrorism or for nationbuilding in Afghanistan or for a war in Iraq or for maintaining our security guarantees to South Korea? Let us not shy away from asking these questions simply because we are afraid of honest answers that could expose a weakness in our military planning.

Our States, cities, and towns are in a homeland security crunch. Security demands are increasing. State budget deficits are soaring. Ask the Governors of this land about their budget deficits. Ask them about the shortfalls within their own States. Perhaps the homeland security crunch could not have been avoided completely, but its effects could have been mitigated.

In November 2001 I offered a $15 billion package to address urgent homeland security needs. Did the White House support it? Did the White House support that package? No. This White House opposed it.

In December 2001 I proposed $7.5 billion in homeland security funds. Did the administration support that? No. The administration shaved that down to a fraction of its size. Wouldn't our communities be better prepared today for the current terrorism warnings, for the current orange alert, if those funds had reached our communities more than a year ago?

With the homeland security crunch now affecting virtually every State in the Union, one would think that we should have learned a lesson. Have we?

Just last month I offered a $5 billion amendment to H.J. Res. 2, the fiscal year 2003 omnibus appropriations legislation to fund these programs that the President had authorized in earlier legislation. Did the White House support my amendment? No. The White House opposed that amendment, terming it ''new extraneous spending.'' How about that?

My opinion differs from that of the White House. I believe that providing funding for programs that have been requested and authorized, and which are critical pieces of homeland security, is just as critical as going for the

public acclaim that comes from proposing a bureaucratic reorganization.

Words, and promises, need to be backed up with the money to make those words a reality. Empty promises and hollow rhetoric, no matter how stirring, how bedecked in flags and bunting, will not protect our families, our neighbors, and our fellow citizens.

Iraq is not the only crisis on the American agenda. Hundreds of thousands of troops are shipping out for distant lands while the threat of terrorism is growing here at home; while the Nation, for the first time, is being put on orange alert.

These troops have our support and our prayers for their safe return. The families they leave behind also need the very best that we can do for them. They need our prayers, and they need more than our prayers; they need to have programs designed to improve their safety and security funded and implemented, not put on hold.

Having lost the $5 billion, then I sought to come through with a $3 billion homeland security amendment. The same thing happened.

I hope the view from the White House will expand to focus, not just beyond our shores, but also within our shorelines. We must not leave America unguarded.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, the Senator from West Virginia has had a cold the last week or so, so we have missed him in the Chamber. It is good to hear you have your voice back and are gaining your strength. It is good to sit and listen to you.

I have had a lot of good education. As I said once in a debate in the Senate Chamber—we were talking about the distinguished Senator from Maryland, who is a Rhodes scholar. It was a colloquy between the Senator from West Virginia and the Senator from Maryland. I interrupted, with the consent of the Chair, and said: I am not a Rhodes scholar; I am a Byrd scholar. And I really am. I appreciate the Senator's remarks. He always pushes to better things. Better parts of us come out when you lead us. I appreciate very much the Senator's statement.

Mr. BYRD. Mr. President, I thank the distinguished whip for his comments. I thank him for his work that he performs here daily for his country, for his State, and for his colleagues in the Senate.

Mr. REID. I thank Senator BYRD very much.

## VOTE EXPLANATION

Mr. DURBIN. Mr. President, before I address the issue of Miguel Estrada, as a matter of personal privilege, I note I missed three rollcall votes last night on the three judicial nominees. I would have voted in the affirmative on all three nominees. The reason for my absence has to do with the fact—and I am holding two boarding passes—I boarded a plane in Chicago to come to Washington and we were grounded because of mechanical difficulties. Because of the delay in that flight, it was impossible for me to make the rollcall votes. As I said earlier, I would have voted affirmatively on all three of President Bush's nominees who came before the Senate last night.

Mr. BIDEN. Mr. President, as you know, yesterday the Senate unanimously confirmed the nominations of John R. Adams to be a judge for the United States District Court for the Northern District of Ohio, S. James Otero to be a judge for the United States District Court for the Central District of California, and Robert A. Junell to be a judge for the United States District Court for the Western District of Texas. I was in Delaware meeting with constituents and, accordingly, was unable to attend yesterday's votes. I wish to note for the RECORD, however, that I would have voted in favor of all three nominees yesterday, having voted to report favorably their nominations from the Judiciary Committee last week.

## SENATOR LIEBERMAN'S REMARKS TO NATO ALLIES

Mr. DASCHLE. Mr. President, last weekend in Munich, our colleague, Senator LIEBERMAN, gave a remarkable speech to the annual Wehrkunde Security Conference. Alliances have contributed to America's strength since the end of World War II, and Senator LIEBERMAN, like many of us, has watched with concern as those alliances have weakened over the last 2 years. He makes a compelling case on why those alliances remain vital to our security and why it is important that the administration redouble its efforts to strengthen those alliances.

I ask unanimous consent that the text of his speech be printed in the RECORD.

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

''HALTING THE CONTINENTAL DRIFT AND REVITALIZING THE U.S.-EUROPE RELATIONSHIP''

(By U.S. Senator Joe Lieberman; Feb. 8, 2003)

REMARKS TO WEHRKUNDE CONFERENCE (AS PREPARED FOR DELIVERY)

We come together in trying times with an urgent responsibility: to fortify our transatlantic alliance, which has vanquished many foes, spawned many democracies, and promoted many freedoms—but is now struggling to find a common voice in the face of many dangers.

The growing reach of NATO and its principles belies a disheartening truth. In a world facing new and evolving threats—terrorists, rogue regimes, and Weapons of Mass Destruction—NATO is split, and risks not only becoming the shell some predicted it would be after the fall of the Berlin Wall... but a dangerous stumbling block to a safer world.

The big question before us today is not who will join NATO or whether NATO will field a rapid response force, but instead, can our alliance survive a world in which our enemies are less defined, the dangers are more dispersed, and the road to victory is much less clear?

We who are privileged to be leaders of NATO countries must make sure that the answer to that question is yes. The world of the 21st Century and each of our nations will be much safer if our alliance becomes not just larger but stronger, united around shared principles and the need for a common defense to the uncommon new threats that now face us all.

This process might best begin with some family therapy, since we have been acting too often in recent years like a dysfunctional family.

Let me begin with our side of the family. Since NATO'S inception, the strength of our alliance has always depended on American power. But America's power to lead has always depended on America's ability to listen. During the last two years, the American administration has turned a deaf ear to Europe. Some in America have sent the message that they see NATO and its member countries as a rubber stamp for the crisis that matters most to the United States at the moment, instead of a multilateral alliance of nations who listen to each other's concerns.

But I assure you that most Americans understand that America is not an island; it is part of an interconnected world. No matter how mighty a country's army or how large its treasury, vigorous and resilient alliances built on mutual respect are essential to securing the peace and making the world a safer place.

At the same time, we Americans are upset that so many Europeans seem so much less anxious about the new threats of terrorism, rogue nations, and weapons of mass destruction than we are. We accept the fact that for more than 50 years, U.S. leadership of NATO and our unique role in the world has meant that our security responsibilities have been more global than Europe's. While we worry about missiles in North Korea or conflict in the Taiwan Straits, Europe has mostly been able to focus on securing its own borders. But if September 11th has taught us anything, it's that none of us can retreat behind borders—because terror recognizes no borders. In today's world, enemies of freedom anywhere are a threat to safety everywhere.

I understand why the heavy hand from Washington has lately been seen less as a source of protection and more as a cause of resentment. But I'm here today to argue for your enlightened self-interest. Robert Kagan rightly asks: why should free people—citizens of our closest European allies—seem more worried about America than about terrorism—more anxious about Bush than about bin Laden?

We must urgently and honestly confront and resolve the differences that now divide us. If we fail to, the current continental drift will become a permanent rift, and we will all risk losing much more than family harmony. We will endanger our common security and future prosperity. And the world will lose its most reliable force for freedom and stability.

THE ANATOMY OF OUR DISHARMONY

We NATO allies still share three basic bonds, as we have since the beginning: common values and aspirations, common enemies who threaten those values, and common fates should we fail to work together. That those bonds are being weakened is an urgent threat that we must confront and resolve without delay.

THE WORLD WE SEE

The first wedge between us is in the way we see the world and its newest problems. Prime Minister Blair put it well when he said recently: ''The problem people have

with the U.S.—not the rabid anti-Americans but the average middle ground—is not that, for example, they oppose them on WMD or international terrorism. People listen to the U.S. on these issues and may well agree with them; but they want the U.S. to listen back.'' As an American, I believe we haven't and we must—and many of my fellow Americans agree.

Consider global warming. America is the single biggest global contributor to the problem. Americans know it, and in strong majorities consider global warming to be a serious problem. Yet the Bush Administration turns a deaf ear to American opinion and European pleas to do something about it.

It is also clear that the Bush Administration's precipitous withdrawal from the long-term efforts to build an International Criminal Court and strengthen the Nuclear Test Ban Treaty. Again, in large numbers the American people support joining the court and improving the Test Ban Treaty. Even with imperfect world agreements such as these, removing our nation and our priorities from the global conversation creates an unnecessary breach with our allies.

If some in America have viewed the world with blinders on—blocking out all concerns except our own—some in Europe seem to us unable to see threats that stare you and us right in the face.

For example, when we speak of the terrorists as evil—and of Saddam Hussein as a dangerous tyrant and torturer who has viciously murdered his own people, we are puzzled why many Europeans recoil at those descriptions—which, to us, are thoroughly justified by the facts.

Terrorism is not just America's problem. We know full fell that Europe has known more than its share of terror, so we don't presume to preach. But Al Qaida and its ilk consider all of our people as their enemies and targets—because all our nations represent the values and the way of life they hate. They also seek to inflict pain upon moderate Muslim regimes. The fact that citizens from more than 70 countries—including many Muslims—died in the attacks on the World Trade Center is more than a symbolic reality. If we cannot cement our alliance in our own minds, let the hatred of our terrorist foes for all of us do it for us.

WHAT WE SAY

Second, the differences between us have been exacerbated by the words we use to describe each other. Along the way, honest policy differences and critiques have given way to caricature and hyperbole.

We in America should work for a strong and united Europe, not divide it with our words. There is no ''old Europe'' separate from a ''new Europe.'' A Europe divided was the incubator for mankind's bloodiest century. A Europe united provides the best hope for a more peaceful and secure future, for you and us.

And when Europeans caricature America and its leaders as naive or ignorant ''cowboys,'' it offends Americans—even some of us who hail from a place far from cowboy country called New England. The point is: we should challenge each other's policies, not personalities, and question each other's decisions, not motives.

Europe and America have often had our differences. Just think about these news headlines about U.S.–European disputes: ''Allies Complain of Washington's Heavy Hand,'' ''France to NATO: Non, Merci,'' ''U.S. Declares Economic Warfare on Allies,'' and ''Protesters Rally Against American Arms Plan.'' As former President Clinton once reminded us, the first of these headlines is from the Suez crisis in 1956. The second is from 1966, when France left NATO's military command. The third is from 1981, during the Siberian Pipeline Crisis. The Fourth is from 1986 during the debate about deploying intermediate nuclear missiles in Europe.

Like any good dysfunctional family, we've hurled invectives and insults across the Atlantic intermittently for more than 50 years. But the difference is, leaders on both sides have always in the past worked to douse the rhetorical flames, not fan them. It's time we return to that shared compact. Now, more than ever, words have consequences.

HOW AND WHEN WE FIGHT

The last and most serious area of contention is when, why, and how we commit our military might to protect our people and principles.

We Americans must recognize that no matter how strong our military or our economy, we still need help. Defeating the dangers arrayed against us requires more than the forced compliance of our European allies; it requires a genuine partnership.

Regrettably, over the past two years, the Bush Administration has too often kept our European friends at bay. NATO's invocation of Article 5, declaring the September 11th attacks an attack on us all, was a powerful and moving act of solidarity and sacrifice. But the Bush Administration failed to grasp NATO's outstretched hand in Afghanistan, and that was a mistake. When we made the war our own, the subsequent peace became far too much our own as well.

The Administration's declaration of its policy of military preemption has also understandably and unnecessarily raised anxieties in Europe and throughout the world. It made no sense to publicly announce this doctrine without offering our friends and foes alike clarification as to how and when the policy might be exercised. The fact is, the United States, like most countries in the world, has always reserved the right to use force to prevent an attack against its people. But some policies are best left undeclared, to be announced only when it is necessary to implement them. In the case of pre-emptive military action, that ought to be rarely.

But it takes two hands to tear a seam. And the fact is, the hand of the Bush Administration has been assisted by the hand of many in Europe in tearing the seam that has united us for more than a half century now.

Rather than coming together with one voice to enforce United Nations Resolutions all have supported to disarm Saddam Hussein, we hear many reflexive notes of discord from Europe. Rather than consent to the use of force when all other options have been exhausted, important parts of Europe have pulled back from our shared responsibility to put military muscle behind our policies to protect our security.

And the transatlantic gulf between military capabilities doesn't help us overcome this rift. We all know that Europe has grown too dependent on American strength, and that that dependency undermines our partnership. I understand that Europe is focused today on the remarkable challenges of finishing the peaceful integration of Europe, new membership in the E.U., the Euro, and a constitutional convention.

But as John Lennon once said, ''life is what happens to us while we're making other plans.'' Global terrorists are not waiting for our European allies to complete their domestic work before planning their next attacks—and it's not enough for Europe to rely upon the military might of America to ensure its own safety. It's time for Europe to take more of its own responsibility. The new NATO rapid response force, authorized at last year's Prague summit, is a start in a better direction. But it is only a first step. A deeper commitment and more money must follow.

As I said a few moments ago, we have heard the European complaints that NATO has been ignored by the United States. But now President Bush has come to NATO and asked for the alliance to help in disarming Iraq. While we are very grateful that most member nations have responded positively, two of our closest and most important allies, France and Germany, have resisted NATO requests and taskings. That hurts. The NATO alliance itself made possible the historic reconciliation between Germany and France. I would hope the shared principles that led to that reconciliation would be remembered now.

In the interest of our security and our unity, I want to urgently appeal to all NATO nations to rise to help the U.N. and the U.S. meet the threat posed by Saddam Hussein. Thousands of years ago, Sophocles told the Greeks, ''What you cannot enforce, do not command.'' The contemporary corollary of that axiom is: what the world through the United Nations commands, it must enforce—or the judgments of the U.N. will lose their force, and the world that we and you live in will grow much less secure.

Our friend Joe Joffe, editor of De Zeit, has said with characteristic insight and edge: ''We are now living through the most critical watershed of the postwar period, with enormous moral and strategic issues at stake, and the only answer many Europeans offer is to constrain and contain American power. So by default they end up on the side of Saddam, in an intellectually corrupt position.''

I respectfully suggest that the nations of Europe define their positions on Iraq independently and affirmatively—not in reaction to America or its President. As you know, I am a Democrat. In fact, I'm a Democrat seeking to replace George Bush in the Oval Office. But he and I agree on the danger posed by Saddam and the need to do something soon to eliminate that danger to us, to you, and most immediately to his neighbors in the Arab world—as do most other Democrats, Republicans, and Independents in the U.S.

In fact, five years ago, after Saddam ejected the U.N. inspectors, JOHN MCCAIN and I gave up on containment and introduced the Iraqi Liberation Act, which, when it became law, made a change of regime in Baghdad official U.S. policy. You might therefore say that, when it comes to Iraq, President Bush is just enforcing the McCain-Lieberman policy.

The facts here are stark and even more clear after Secretary Powell's chilling and convincing testimony at the U.N. on Wednesday. For twelve long years, Saddam has flaunted every attempt to get him to keep his promise to disarm and instead has continued building weapons of mass destruction. If we shrink from challenging his defiance, we will not only leave a ticking time bomb ticking, we will have undermined the remaining credibility of the United Nations, and further diminished the power of NATO to protect the peace of the world.

CONCLUSION

The battles against tyranny, terrorism, and weapons of mass destruction, and for freedom, opportunity, and security, are the great causes of our time, and the greatest alliance of all time must lead the way in winning those battles.

More than forty years ago, on the Fourth of July, 1962, President Kennedy spoke at Independence Hall in Philadelphia. His words echoed the covenant of our American Constitution, and should guide us now in our Transatlantic relations. ''Acting on our own, by ourselves, we cannot establish justice throughout the world; we cannot insure its domestic tranquility, or provide for its common defense, or promote its general welfare,

or secure the blessings of liberty to ourselves and our posterity. But joined with other free nations, we can do all this and more.''

Americans and Europeans are proud people—and justifiably so. We both want to control our own destinies. We both want to shape our own futures. But neither one of us can let pride or politics block the unity by which we will all achieve greater security, freedom, and prosperity. Our values are shared. Our fates are interlocking. We will rise or fall together.

And when we rise, the terrorists and tyrants will fall. America still needs Europe, and Europe still needs America, and it is time that all the leaders on both sides of the Atlantic started acting in a way that says we understand that overarching truth.

Thank you.

## THE SARBANES-OXLEY BAN ON INSIDER CORPORATE LOANS

Mr. LEVIN. Mr. President, about 6 months ago, we enacted into law an important set of reforms to curb some of the corporate abuses that have shaken investor confidence in American business, from dishonest accounting to price manipulation to cases in which company executives have walked away from poor corporate performance with millions of dollars in their pockets, while investors, shareholders, and employees have watched their savings evaporate.

These corporate reforms, included in the Sarbanes-Oxley Act of 2002, addressed a host of problems. Today, I want to take a few minutes to discuss one of the most important reforms included in that bill, Section 402, which has so far received very little attention.

Section 402 established, for the first time, a prohibition against publicly traded corporations using company funds to give personal loans to company officers and directors. This simple prohibition is having an impact on corporate America, and I want to take a few minutes to explain the importance of this loan prohibition, the abuses it is correcting, and why it must be protected from efforts to narrow or weaken it.

Last year, the Permanent Subcommittee on Investigations, which I then chaired, conducted an extensive, bipartisan investigation into the collapse of Enron. The Subcommittee reviewed 2 million pages of documents, conducted 100 interviews, held four hearings, and issued two reports. One of the issues we looked at were the loans that Enron gave to its CEO.

In a report entitled, ''The Role of the Board of Directors in Enron's Collapse,'' issued in July, the subcommittee found that multimillion-dollar loans, using company funds, had been approved by the Enron board for the personal use of Mr. Lay, then chairman of the board and chief executive officer. The subcommittee found that the board's compensation committee first gave Mr. Lay access to a $4 million line of credit, increased this credit line in August 2001 to $7.5 million, and authorized repayment with either cash or company stock.

The subcommittee found that, in 2000, Mr. Lay began using what one Enron board member called an ''ATM approach'' toward his credit line, repeatedly drawing down the entire amount available and then repaying the loan with Enron stock. Records show that Mr. Lay at first drew down the line of credit once per month, then every 2 weeks, and then, on some occasions, several days in a row.

In the 1-year period from October 2000 to October 2001, Mr. Lay used his company credit line to obtain over $77 million in cash from the company. In every case, he repaid the borrowed cash by tendering shares of Enron stock. In most cases, he obtained these shares by exercising stock options granted to him as part of his executive compensation. Mr. Lay withdrew these millions of dollars from company coffers at a time when Enron was experiencing cash flow shortages, Enron's shares were dropping, and Enron shareholders were suffering losses. After Enron's collapse, it was discovered that Mr. Lay had borrowed a total of $81 million from the company in 2001, and failed to repay about $7 million.

When asked about these loans at a subcommittee hearing, the head of Enron's compensation committee said that his committee had no duty to monitor the CEO's loan activity. He also indicated that, while Mr. Lay's loans were more extensive than anticipated, appeared to have functioned as secret stock sales to the company, and affected company cash flow at a critical time, he was not prepared to characterize the CEO's actions or failure to repay $7 million as an abuse. He declined to criticize Mr. Lay's conduct. The subcommittee concluded that the Enron board had failed to monitor or halt abuse by Mr. Lay of his company-financed credit line.

Enron was an eye-opener, but it turns out that it is far from the only U.S. company handing out multimillion-dollar loans to executives, often without regard to whether the issued loans benefit the corporation or whether they will be repaid.

In December 2002, the Corporate Library, a non-profit organization that provides information to help investors and stockholders, published the most comprehensive analysis yet of the pervasiveness of company loans to executives prior to enactment of Section 402. The report, entitled ''My Big Fat Corporate Loan,'' presents information compiled from reviewing SEC filings for 1,526 of the largest U.S. corporations in the United States. This report relies solely on what companies have disclosed to the public about their loans to executives, without any attempt to verify or supplement these disclosures. The result is data that may provide a conservative picture of company lending to executives.

The Corporate Library report has determined that over one-third of the largest 1,500 companies in the U.S. have outstanding loans to company executives. According to the report, the average size of these loans was 10.7 million in 2001, and the total amount of lending exceeded $4.5 billion. The report also points out that when company loans to purchase split dollar life insurance, described later, for corporate executives are included, the percentage increases to over 75 percent. When short-term company loans allowing executives to exercise stock options are included, the percentage tops 90 percent.

The list of companies issuing these loans include not only companies marked by scandal, such as Enron, Tyco, Adelphia, WorldCom, and Global Crossing, but also many companies perceived as solid investments with good corporate practices and reasonable executive pay.

The report describes the purpose of the loans as reported by the companies in their SEC filings. The largest proportion of the loans, about 35 percent, had a stock-related purpose, such as to allow a company executive to exercise stock options, purchase stock, or retain stock after a margin call. The report expresses dismay at examples of executives using interest-free loans to buy company stock, being excused from repayment of the loan, and thereby acquiring a substantial company investment without expending any of their own money.

Loans to help an executive relocate to a new area, including buying a house, comprised the second largest portion of company loans to executives. These loans comprised about 27 percent of the total, according to the report. While relocation loans sound reasonable, the report provides examples of disturbing abuses, including loans for millions of dollars. In one case, Millennium Pharmaceutical issued a loan to a senior vice president to buy a house in the Boston area and allowed the loan to be forgiven over time. In another case, the president of a Nike business unit was given a so-called loan for a second home. By its terms, that loan was intended to be forgiven over 5 years. Another example, not mentioned in the report but discussed in the media, is the $16.5 million loan issued by Tyco International to its CEO Dennis Kozlowski to buy property in Boca Raton and Nantucket. Tyco also loaned $14 million to its general counsel, Mark Belnick, for a New York apartment and to build a home in Utah, a State where Tyco has no operations.

It boggles the mind to think that high-paid corporate executives were using company funds to build themselves mansions and then, in some cases, skipping repayment of the funds altogether. It is unlikely that a company would issue a loan to an average employee to build a multimillion-dollar residence or to build a second home, since there would be no business justification for it. There is no justification for lending company funds to a corporate executive either, yet these

types of loans were becoming commonplace. Section 402 was intended to stop these loans cold.

The Corporate Library report tells us that the third most frequent type of company loan for company executives was issued for ''unspecified'' reasons. In other words, millions of dollars of stockholder funds were loaned without disclosing to the stockholders the purpose of the loans. The authors of the report not only express dismay at this unexplained use of company funds, they also suggest that the absence of this information is a clear violation of SEC disclosure requirements.

Another issue highlighted in the report is the extent to which individual companies were devoting substantial dollars to executive loans. According to the report, Wachovia Corporation led the pack last year with a total of $2.2 billion in company loans to executives. Adelphia issued over $263 million in loans to members of the Rigas family that owned it. Worldcom loaned its CEO $160 million. Kmart, now operating in bankruptcy, has outstanding executive loans of $30 million, including a $5 million so-called ''retention'' loan that it gave to its former CEO.

The report also presents data showing that companies are issuing substantial loans to executives on terms that disadvantage the company. Many companies have been charging below-market interest rates or no interest at all. Others have been allowing their executives to escape all loan repayment, simply by forgiving the debt owed. The report states that only half of the companies it examined indicated any plan to charge interest, and a careful examination of loan terms revealed a number of methods to forgive interest or provide additional loans to cover it. The report also identifies over 100 companies that had, or were in the process of, forgiving loans to their executives. It also describes a number of companies that increased outstanding loan amounts to include a ''gross up'' to take care of taxes owed by the executive as a result of the forgiven loan.

Finally, let's look at split dollar life insurance loans. These loans had become very popular among corporate executives in the last few years. The way they work is that the company obtains the insurance policy for its executive and pays the premiums, while the executive names the policy beneficiaries. The policies are called ''split dollar'' because, when the policy pays out, the company is reimbursed from the benefits for the cost of the premiums. The remainder of the insurance benefits, often millions of dollars, goes to the named beneficiaries, such as the executive's family. Because the funds are insurance benefits, the payments to the beneficiaries are mostly tax-free. The result is a company-financed loan to the executive to cover the cost of the insurance premiums, enabling the executive to afford a generous policy and provide tax-free benefits for his or her beneficiaries.

Many of the split dollar life insurance policies that U.S. companies provide to their top executives involve large payouts and large premiums. At Enron, for example, Enron provided its CEO, Ken Lay, with a $12 million split dollar life insurance policy and agreed to pay premiums exceeding $1 million.

The Corporate Library report found that over 60 percent of the companies it examined had purchased split dollar life insurance for one or more of their executives. The report determined that a number of these policies involved substantial sums of money. For example, the report stated that many of the policies cost ''up to $25 million per officer''; Estee Lauder disclosed paying $26 million for premiums on a split dollar life insurance policy for its CEO; Comcast disclosed paying more that $6.5 million in 1 year and $20 million over 3 years for premiums on a policy for its chairman; and First Virginia Banks reported providing all of its executives with insurance coverage of up to a $1 million each.

Since Section 402 has gone into effect, most companies have apparently discontinued providing their executives with split dollar life insurance loans, and the executives themselves have declined to pay the premiums. The result has been a dramatic drop in sales of this insurance. Insurance groups have been lobbying the SEC and Congress to create an exception to Section 402 to permit companies to resume providing split dollar life insurance loans to their executives, but so far they have been unsuccessful in reversing Section 402's ban on this type of corporate loan.

All of the loans banned by Section 402 are loans to corporate officers or directors who are among the highest paid individuals in our society. In 2001, for example, average CEO pay at the top 350 U.S. companies was $11 million. That is 400 times the pay of an average worker in this country. These loans were on top of that pay.

All of these executives could have turned to a bank for their loans. Instead, they turned to their employer and asked to use company funds. The practice of U.S. companies loaning company funds to their executives is relatively new. Given the huge amounts involved, the absence of reasonable interest rates, and the common practice of companies forgiving the debt altogether, the question becomes whether many of these ''loans'' were simply elaborate ways to enrich corporate executives at the expense of the investing public. The Corporate Library report shows that these loans were pervasive and that abuses were commonplace. The work of the Permanent Subcommittee on Investigations suggests that too many boards of directors do not have the will or incentive to limit the loan amounts or to detect or prevent abuses.

That is why, last July, our subcommittee included in its first Enron report a recommendation to stop companies from loaning company funds to executives. That is why, later that same month, Congress enacted Section 402. That is why, in September of last year, Senator COLLINS and I sent a letter to the SEC urging it to resist any attempts to narrow or weaken Section 402's ban on insider loans to allow corporate executives to purchase company stock, exercise stock options, obtain insurance, relocate for work or pay taxes.

Section 402 has put an end to a large set of abuses associated with company loans to executives. They include loans issued without interest; loans used to build personal mansions at company expense; loans used to provide executives' families with tax-free insurance benefits; loans for every purpose and loans that are never repaid. Company funds belong to shareholders and are intended to benefit them and the company they own; they were never intended to act as a pool of funds available to be loaned or given to company executives.

Congress acted wisely in passing Section 402. This measure, alone, is stopping companies from giving billions of dollars in insider loans to corporate executives. Ending these loan abuses should help restore investor confidence in corporate America. Opponents of this reform are continuing to seek ways around it, but I hope my colleagues will join me in understanding the importance of this reform and the need to ensure it reaches it full potential.

I ask unanimous consent that the Levin-Collins letter to the SEC be printed in the RECORD.

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

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
*Washington, DC., September 25, 2002.*

Hon. HARVEY L. PITT
*U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC.*

DEAR MR. CHAIRMAN: The purpose of this letter is to urge the Commission to resist any efforts to narrow or weaken the insider loan prohibition established by Section 402 of the Sarbanes-Oxley Act, codified at 15 U.S.C. 78m(k), a key reform designed to stop a common insider abuse found at Enron Corporation, Worldcom, Tyco International, and other publicly traded companies.

Issued related to insider corporate loan abuses were examined by the Permanent Subcommittee on Investigations in connection with its ongoing review of Enron. In its bipartisan report, ''The Role of the Board of Directors in Enron's Collapse'' (July 2002), copy enclosed, the Subcommittee found that multi-million dollar loans, using company funds, had been approved by the Enron Board for the personal use of Kenneth Lay, then Chairman of the Board and Chief Executive Officer (CEO). The Subcommittee found that the Board's Compensation Committee first gave Mr. Lay access to a $4 million line of credit, increased this credit line in August 2001 to $7.5 million, and authorized repayment with either cash or company stock. The Subcommittee found that, in 2000, Mr. Lay began using what one Board member called an ''ATM approach'' toward his credit line, repeatedly drawing down the entire amount available and then repaying the loan

with Enron stock. Records show that Mr. Lay at first drew down the line of credit once per month then every two weeks and then, on some occasions, several days in a row. In the one-year period from October 2000 to October 2001, Mr. Lay used the credit line to obtain over $77 million in cash from the company and repaid the loans exclusively with Enron stock, at a time when the company had significant cash flow issues. After Enron's collapse, it was discovered that Mr. Lay had failed to repay and still owes the company about $7 million. The Subcommittee concluded that the Enron board had failed to monitor or halt abuse by Mr. Lay of his multi-million-dollar, company-financed credit line.

Enron, of course, is not alone in having experienced corporate loan abuses. Similar abuses by corporate executives given company-financed loans for millions of dollars have taken place at other U.S. publicly traded companies. At the time of Worldcom's collapse, for example, Board Chairman and CEO Bernard Ebbers was found to have outstanding company-financed loans exceeding $400 million. Apparently, most of these loans had been provided to enable him to purchase Worldcom stock. At Tyco International, Board Chairman and CEO Dennis Kozlowski and other executives apparently managed to secure not only multi-million-dollar personal loans using company funds, but to arrange to have these loans deemed ''forgiven'' in amounts allegedly totaling more than $100 million. Apparently these loans were to pay for employee relocation expenses, including the purchase of expensive residences. Numerous other publicly traded companies have also provided troubling, multi-million-dollar, company-financed loans to corporate executives, including Adelphia, AMC Entertainment, Dynegy, FedEx, Healthsouth, Home Depot, Kmart, Mattel, Microsoft, Priceline.com, SONICblue, and more.

Given the extent of insider abuse in this area and the lack of effective Board or management oversight, the Subcommittee recommended in its July report that Board members at publicly traded companies bar the issuance of company-financed loans to company directors and senior officers. Later that same month, Senator Charles Schumer offered on the Senate floor the amendment that led to inclusion of the Section 402 prohibition in the final corporate reform law.

Media reports indicate that some companies may be pressing the SEC to narrow the scope of the prohibition or otherwise weaken it through regulation, guidance, or other means. These media reports suggest that opponents want exemptions, for example, for company loans used by executives to purchase company stock, exercise stock options, obtain insurance, relocate for work, or pay taxes. But the legislative history provides no basis for creating these exemptions or otherwise weakening the provision. To the contrary, the statutory prohibition makes it clear that publicly traded companies are not supposed to be using company funds to provide personal financing to company directors or officers for any reason; financing is to be provided instead by lenders, credit card operators, or other third parties engaged in the ordinary course of business.

In light of the abusive record compiled by the Permanent Subcommittee on Investigations among others, the Subcommittee's bipartisan recommendation to bar company-financed loans to corporate directors or officers, and the plain language of the statutory prohibition itself, the Commission should continue to resist efforts to weaken this significant post-Enron reform. Congress enacted and the SEC must enforce this brightline measure to end corporate loan abuses by top executives.

Thank you for your attention to this important matter. If your staff has any questions or concerns about this letter or would like additional copies of the Subcommittee report, please have them contact Elise Bean, Subcommittee Staff Director, at (202) 224–9505 or Kim Corthell, Minority Staff Director, at (202) 224–3721.

Sincerely,

SUSAN M. COLLINS,
*Ranking Minority Member.*
CARL LEVIN,
*Chairman.*

## LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. In the last Congress Senator KENNEDY and I introduced the Local Law Enforcement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred September 2, 2001 in Athens, GA. Christopher Gregory, 20, was attacked while leaving a gay bar. Gregory was walking with friends when a group of people started shouting anti-gay epithets at them. After Gregory turned and yelled ''Leave us alone!'' an attacker punched him, knocking him to the ground. As the attacker walked away he directed another anti-gay slur toward Gregory.

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 is 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.

## TURKEY'S REQUEST TO NATO FOR ASSISTANCE

Mr. BIDEN. Mr. President, I rise today to condemn in the strongest terms the rejection yesterday by France, Germany, and Belgium of Turkey's formal request for defensive help under Article 4 of the North Atlantic Treaty. This was the first invocation of Article 4 in the 54-year history of NATO.

Article 4 mandates alliance members to consult ''whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened.'' Fearing a preemptive attack by Iraq, Turkey requested Patriot missile batteries, AWACS radar planes, and specialized units for countering chemical and biological warfare.

Sixteen of the 19 NATO members voted to grant Turkey its request. France, Germany, and Belgium, however, refused, thereby blocking the request under the alliance's consensus principle. Paris, Berlin, and Brussels argued that even this kind of defensive action by NATO would appear to commit the alliance to war before the U.N. weapons inspectors in Iraq had issued their second report this Friday.

I have spoken at length on the situation in Iraq on the floor of this chamber and in many other venues. Today, therefore, I will restrict my comments to yesterday's action in NATO's North Atlantic Council, NAC, and the potential ramifications for the future of the alliance.

Frankly, I am shocked and outraged at the behavior of France, Germany, and Belgium. I could easily give an emotional response, but I will not descend to the level of caricature and vitriolic insults that, unfortunately, one increasingly hears from Western European America-bashers.

Nor will I indulge in blanket criticism. France is this country's oldest ally and in the last 12 years took part in the Gulf War, the Kosovo air campaign, and in Operation Enduring Freedom. Germany too has participated in recent military and peacekeeping operations and on this very day, together with the Netherlands, is assuming command of the International Security Assistance Force, ISAF, peacekeeping operation in Afghanistan. Belgium is also contributing troops to peacekeeping in the Balkans.

This is, however, only part of the story. Recent history, unfortunately, gives us a foretaste of yesterday's action in the NAC. One might recall Belgium's refusal during the Gulf War to sell ammunition to NATO ally Great Britain. Or more directly applicable was the Bundestag speech early in 1991 by Mr. Otto Lambsdorff, then a leader of the German Free Democratic Party, opposing military shipments to NATO ally Turkey because of elements of Ankara's domestic policy.

Germany's action yesterday was particularly distasteful, since that country's postwar economic miracle or ''Wirtschaftswunder'' was to a considerable extent built by the sweat of Turkish guest workers.

Aside from moral considerations, the refusal of assistance to Turkey by these three countries gravely undermines the solidarity that is the bedrock of the North Atlantic Alliance.

At first glance, their behavior is puzzling, since they surely know that the United States will stand by its Turkish ally and either unilaterally, or in conjunction with other NATO members, will provide the equipment that Ankara feels it needs.

Already one European ally has stepped up to the plate. The Dutch Foreign Ministry has declared that ''the Netherlands is strongly opposed'' to the French-German-Belgian move and ''will go ahead with providing Patriot missiles to Turkey.'' The Dutch, in fact, have already sent an air force team to Turkey to prepare for the dispatch of the Patriot missile batteries, which will be manned by 370 Dutch military personnel.

So since Turkey will receive defensive assistance, the French-German-

Belgian refusal can only be seen as a symbolic gesture—a direct swipe at American leadership of the alliance—but one with more than symbolic importance. U.S. Ambassador Nick Burns declared that it is causing NATO to face ''a crisis of credibility.''

I would use a metaphor to describe yesterday's action: Paris, Berlin, and Brussels are playing with fire. If the United States believes that NATO is a hindrance to its security requirements, it will continue to bypass the alliance, and NATO will quickly atrophy. No serious observer believes that the European Union has either the capability or the will to provide a credible military alternative to a NATO deprived of American muscle. A security vacuum would quickly develop on the continent, thereby undoing more than a half-century of common effort and endangering the EU itself.

Finally, let me address the faulty logic offered by France, Germany, and Belgium for their action yesterday. To repeat: their ambassadors argued that if NATO were to furnish Turkey with the defensive materiel it requested, it would appear that the alliance was committing itself to war before the U.N. weapons inspectors in Iraq had issued their second report this Friday.

Paris, Berlin, and Brussels might be interested to learn that U.N. Secretary General Kofi Annan will brief the members of the Security Council this Thursday on the status of contingency planning by the United Nations for humanitarian assistance for Iraq in the event of war.

According to the argument used yesterday in the NAC by the French, Germans, and Belgians, the U.N.'s action, therefore, is hastening the outbreak of war.

I fully anticipate that French President Chirac, German Chancellor Schroeder, and Belgian Prime Minister Verhofstadt will condemn Secretary General Annan for his recklessness.

## RULES OF THE COMMITTEE ON VETERANS' AFFAIRS

Mr. SPECTER. Mr. President, the Committee on Veterans' Affairs has adopted rules governing its procedures for the 108th Congress. Pursuant to Rules XXVI, paragraph 2, of the Standing Rules of the Senate, on behalf of myself and Senator GRAHAM, I ask unanimous consent that a copy of the committee rules be printed in the RECORD.

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

### COMMITTEE ON VETERANS' AFFAIRS

### RULES OF PROCEDURE 108TH CONGRESS

#### I. MEETINGS

(a) Unless otherwise ordered, the Committee shall meet on the first Wednesday of each month. The Chairman may, upon proper notice, call such additional meetings as deemed necessary.

(b) Except as provided in subparagraphs (b) and (d) of paragraph 5 of rule XXVI of the Standing Rules of the Senate, meetings of the Committee shall be open to the public. The Committee shall prepare and keep a complete transcript or electronic recording adequate to fully record the proceedings of each meeting whether or not such meeting or any part thereof is closed to the public.

(c) The Chairman of the Committee, or the Ranking Majority Member present in the absence of the Chairman, or such other Member as the Chairman may designate, shall preside at all meetings.

(d) Except as provided in rule XXVI of the Standing Rules of the Senate, no meeting of the Committee shall be scheduled except by majority vote of the Committee or by authorization of the Chairman of the Committee.

(e) The Committee shall notify the office designated by the Committee on Rules and Administration of the time, place, and purpose of each meeting. In the event such meeting is canceled, the Committee shall immediately notify such designated office.

(f) Written notice of a Committee meeting, accompanied by an agenda enumerating the items of business to be considered, shall be sent to all Committee members at least 72 hours (not counting Saturdays, Sundays, and Federal holidays) in advance of each meeting. In the event that the giving of such 72-hour notice is prevented by unforeseen requirements or Committee business, the Committee staff shall communicate notice by the quickest appropriate means to members or appropriate staff assistants of Members and an agenda shall be furnished prior to the meeting.

(g) Subject to the second sentence of this paragraph, it shall not be in order for the Committee to consider any amendment in the first degree proposed to any measure under consideration by the Committee unless a written copy of such amendment has been delivered to each member of the Committee at least 24 hours before the meeting at which the amendment is to be proposed. This paragraph may be waived by a majority vote of the members and shall apply only when 72-hour written notice has been provided in accordance with paragraph (f).

#### II QUORUMS

(a) Subject to the provisions of paragraph (b), eight members of the Committee shall constitute a quorum for the reporting or approving of any measure or matter or recommendation. Five members of the Committee shall constitute a quorum for purposes of transacting any other business.

(b) In order to transact any business at a Committee meeting, at least one member of the minority shall be present. If, at any meeting, business cannot be transacted because of the absence of such a member, the matter shall lay over for a calendar day. If the presence of a minority member is not then obtained, business may be transacted by the appropriate quorum.

(c) One member shall constitute a quorum for the purpose of receiving testimony.

#### III. VOTING

(a) Votes may be cast by proxy. A proxy shall be written and may be conditioned by personal instructions. A proxy shall be valid only for the day given.

(b) There shall be a complete record kept of all Committee action. Such record shall contain the vote cast by each member of the Committee on any question on which a roll call vote is requested.

#### IV. HEARINGS AND HEARING PROCEDURES

(a) Except as specifically otherwise provided, the rules governing meetings shall govern hearings.

(b) At least 1 week in advance of the date of any hearing, the Committee shall undertake, consistent with the provisions of paragraph 4 of rule XXVI of the Standing Rules of the Senate, to make public announcements of the date, place, time, and subject matter of such hearing.

(c) The Committee shall require each witness who is scheduled to testify at any hearing to file 40 copies of such witness' testimony with the Committee not later than 48 hours prior to the witness' scheduled appearance unless the Chairman and Ranking Minority Member determine there is good cause for failure to do so.

(d) The presiding member at any hearing is authorized to limit the time allotted to each witness appearing before the Committee.

(e) The chairman, with the concurrence of the Ranking Minority Member of the Committee, is authorized to subpoena the attendance of witnesses and the production of memoranda, documents, records, and any other materials. If the Chairman or a Committee staff member designated by the Chairman has not received from the Ranking Minority Member or a Committee staff member designated by the Ranking Minority Member notice of the Ranking Minority Member's nonconcurrence in the subpoena within 48 hours (excluding Saturdays, Sundays, and Federal holidays) of being notified of the Chairman's intention to subpoena attendance or production, the Chairman is authorized following the end of the 48-hour period involved to subpoena the same without the Ranking Minority Member's concurrence. Regardless of whether a subpoena has been concurred in by the Ranking Minority Member, such subpoena may be authorized by vote of the Members or the Committee. When the Committee or Chairman authorizes a subpoena, the subpoena may be issued upon the signature of the Chairman or of any other member of the Committee designated by the Chairman.

(f) Except as specified in Committee Rule VII (requiring oaths, under certain circumstances, at hearings to confirm Presidential nominations), witnesses at hearings will be required to give testimony under oath whenever the presiding member deems such to be advisable.

#### V. MEDIA COVERAGE

Any Committee meeting or hearing which is open to the public may be covered by television, radio, and print media. Photographers, reporters, and crew members using mechanical recording, filming or broadcasting devices shall position and use their equipment so as not to interfere with the seating, vision, or hearing of the Committee members or staff or with the orderly conduct of the meeting or hearing. The presiding members of the meeting or hearing may for good cause terminate, in whole or in part, the use of such mechanical devices or take such other action as the circumstances and the orderly conduct of the meeting or hearing may warrant.

#### VI. GENERAL

All applicable requirements of the Standing Rules of the Senate shall govern the Committee.

#### VII. PRESIDENTIAL NOMINATIONS

(a) Each Presidential nominee whose nomination is subject to Senate confirmation and referred to this Committee shall submit a statement of his or her background and financial interests, including the financial interests of his or her spouse and of children living in the nominee's household, on a form approved by the Committee which shall be sworn to as to its completeness and accuracy. The Committee form shall be in two parts——

(A) information concerning employment, education, and background of the nominee

which generally relates to the position to which the individual is nominated, and which is to be made public; and

(B) information concerning the financial and other background of the nominee, to be made public when the Committee determines that such information bears directly on the nominee's qualifications to held the position to which the individual is nominated. Committee action on a nomination, including hearings or a meeting to consider a motion to recommend confirmation, shall not be initiated until at least five days after the nominee submits the form required by this rule unless the Chairman, with the concurrence of the Ranking Minority Member, waives this waiting period.

(b) At any hearing to confirm a Presidential nomination, the testimony of the nominee and, at the request of any Member, any other witness shall be under oath.

VIII. NAMING OF DEPARTMENT OF VETERANS AFFAIRS FACILITIES

It is the policy of the Committee that no Department of Veterans Affairs facility shall be named after any individual unless——

(A) such individual is deceased and was——

(1) a veteran who (i) was instrumental in the construction or the operation of the facility to be named, or (ii) was a recipient of the Medal of Honor or, as determined by the Chairman and Ranking Minority Member, otherwise performed military service of an extraordinarily distinguished character.

(2) a member of the United States House of Representatives or Senate who had a direct association with such facility;

(3) an Administrator of Veterans' Affairs, a Secretary of Veterans Affairs, a Secretary of Defense or of a service branch, or a military or other Federal civilian official of comparable or higher rank; or

(4) an individual who, as determined by the Chairman and Ranking Minority Member, performed outstanding service for veterans;

(B) each member of the Congressional delegation representing the State in which the designated facility is located has indicated in writing such member's support of the proposal to name such facility after such individual; and

(C) the pertinent State department or chapter of each Congressionally chartered veterans' organization having a national membership of at least 500,000 has indicated in writing its support of such proposal.

IX. AMENDMENTS TO THE RULES

The rules of the Committee may be changed, modified, amended, or suspended at any time, provided, however, that no less than a majority of the entire membership so determine at a regular meeting with due notice, or at a meeting specifically called for that purpose. The rules governing quorums for reporting legislative matters shall govern rules changes, modification, amendments, or suspension.

## WHY NATIONAL MISSILE DEFENSE DOES NOT PROTECT HAWAII

Mr. AKAKA. Mr. President, in December 2002 President Bush announced his decision to deploy a limited national missile defense system by 2004. Our distinguished colleague, Senator LEVIN, detailed the limitations of the proposed system and testing procedures in an article in the Detroit News on December 29 entitled, ''Untested Missile Defense Setup Poses Risks.'' I ask unanimous consent that his entire article be placed in the RECORD following my statement. I would like to elaborate on some of the concerns raised by the distinguished ranking member of the Armed Services Committee and discuss my concern that this system does nothing to protect my State or other parts of the United States from attack.

President Bush's limited national missile defense system, first proposed by the administration in March 2001 and called ''the Alaska Option,'' consists of 5 to 10 silos/interceptor launchers in Fort Greely, AK and an upgraded Cobra Dane radar on Shemya Island, AK.

At that time, Deputy Secretary of Defense Paul Wolfowitz and Missile Defense Agency Director Gen Ronald Kadish called the Alaska site a ''test bed'' that could be transformed into a fully operational facility easily. During an Armed Services Committee hearing in July 2001, Mr. Wolfowitz stated, ''This developmental capability could become, with very little modification, an operational capability.'' In a later statement, he added that ''it would be essentially a software change to turn it into an operational capability.''

I believe that more than modest modifications would be required. Even if the test bed was functioning and proven effective, significant changes would be needed to make it an operational system. The changes may not be technically difficult but they are very complicated when applied as a whole system. They involve many command, control, communication issues that will determine who makes the decision to fire and when and with how much information. In large and complex research and development programs, one should always be wary of anything that is described as ''just a software fix.''

In July 2001 Phil Coyle, former Director of Operational Test and Evaluation in the Pentagon testified before the Senate Armed Services Committee and defined effective deployment as the fielding of an operational system with some military utility that is effective under realistic combat conditions, against realistic threats and countermeasures, possible without adequate prior knowledge of the target cluster composition, timing, trajectory, or direction, and when operated by military personnel at all times of the day or night and in all weapons.

Mr. Coyle estimated that it would take a decade, rather than 4 years, to produce an effective defense system. As Senator LEVIN raised in his article, no part of the limited missile defense system has been tested against realistic targets, and there are no plans to test the integrated system as a whole before it is deployed. Senator LEVIN correctly questions whether such a system will be even marginally effective.

One could also question whether this system should be labeled a ''national'' missile defense. Given the geometry of the Cobra Dane radar, the system may be better labeled a continental missile defense. The Cobra Dane Radar on Shemya Island was built to detect Soviet missile launches. It has a fixed orientation and a narrow field of view, northwest from Shemya, towards Russia. This radar cannot see missiles launched from North Korea towards Hawaii, and will have only marginal capability for southern California. The radar cannot see the current missile defense target range between California and Hawaii.

The administration is well aware of the limitations of the radar and exclusion of Hawaii in the proposed deployed system. General Kadish referred to this as ''the Hawaii problem'' during a briefing for Senator REED and members of the Armed Services Strategic Subcommittee on July 27, 2001. At that time, General Kadish said that they were considering using an Aegis cruiser to supplement the Cobra Dane radar. Such a cruiser would have to be permanently on station to provide adequate coverage.

Even with upgrades to increase the radar's field of view, the radar still will not be capable of discriminating launch characteristics or trajectory. An X band radar, such as the one now in Kwajalein, is needed. In fact, no radar in Alaska will be able to discriminate launch characteristics. The administration has not asked for funding to upgrade the existing radar or build a new one.

The President characterized in December 2002 his initiative to field a missile defense system as ''modest.'' The program is less than modest. It is inadequate and expensive. The path towards an effective and efficient missile defense program is the one outlined by Senator LEVIN.

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

[From the Detroit News, Dec. 29, 2002]

LEVIN: UNTESTED MISSILE DEFENSE SETUP POSES RISKS; CAN MISSILE SHIELD BE BUILT?

(By Senator Carl Levin)

President Bush's decision to deploy a limited national missile defense system starting in 2004 before it has been tested and shown to work violates common sense. The Pentagon will spend large amounts of money to deploy an unproven defense, money that could be better used to fight more likely and imminent threats of terrorism.

Many of us have reservations about deployment of a national defense against long-range ballistic missiles because: (1) the intelligence community says such missiles are one of the least likely threats to our security (in part because use of such missiles would leave a ''return address'' that would guarantee a devastating response from the United States); and (2) because deployment of a national missile defense is likely to unleash an arms race with other countries.

However, even ardent proponents of a national missile defense should not support deployment of an untested, unproven system. The United States may eventually succeed in developing a national missile defense system that will actually work against real world threats, but we have not done so yet. According to the Pentagon, the national missile defense system to be deployed in 2004 requires a new booster rocket that has never been tested against any target.

The 2004 system would rely on a radar in Alaska built in the 1970's that was never designed for missile defense, that has no capability to differentiate the target warhead from decoys, that has never been tested against a long-range ballistic missile, and that the administration never plans to test against a long-range missile.

No part of the system has been tested against realistic targets, and there are no plans to test the integrated system as a whole before it is deployed. Secretary of Defense Donald Rumsfeld has said that this is just an ''initial capability'' in a program that ''will evolve over time'' and will ultimately ''look quite different than it begins.''

What the Pentagon has tried not to emphasize is that this ''initial capability'' is likely to be marginally effective, if it works at all. Declaring this untested, marginal system ready to deploy is like declaring a newly designed airplane ready to fly before the wings have been attached to the airframe and the electronics installed in the cockpit.

In his previous tenure as Secretary of Defense, Rumsfeld had to preside over the dismantling of the Safeguard missile defense system which he had inherited and which was operational for less than six months because the technical limitations of the system rendered it ineffective. The development, deployment and dismantling of the Safeguard system cost the taxpayers tens of billions of dollars without enhancing our national security in any way. This is an experience that we should not want to repeat.

Since that time, Congress has instituted reforms in the Defense Department to help prevent the premature and costly fielding of unproven systems. Congress established the Pentagon's Director of Operational Test and Evaluation to oversee major defense programs and ensure they are adequately tested and demonstrated to work before they are deployed—in other words, that any new system is proven to ''fly before we buy.''

Congress also established the Joint Requirements Oversight Council, which gives the military services oversight over weapons programs to ensure that they perform well enough to be useful on the battlefield.

The Bush administration, however, has unwisely exempted all missile defense programs from the normal oversight of these important organizations. As a result, these programs are not subject to normal review by senior military and civilian acquisition officials, and they are not subject to the normal operational test and evaluation process.

Instead, the secretary of defense has delegated many of the functions of these offices to the Missile Defense Agency, effectively making that agency responsible for overseeing itself. History shows that without real oversight, major weapon systems don't work well, suffer serious schedule delays and have major cost overruns.

The Bush administration should re-establish effective oversight of missile defense programs by the Director of Operational Test and Evaluation, the Joint Requirements Oversight Council, and other oversight organizations with the Department of Defense. Rather than rushing to deploy an unproven national missile defense system, the administration should focus on completing the development of a missile defense that will be effective against likely threats and that is shown to work through proper testing.

## DUCHENNE MD AWARENESS WEEK

Ms. COLLINS. Mr. President, this week is the Parent Project Muscular Dystrophy's Duchenne MD Awareness Week. It is also the 2-year anniversary of the introduction of the MD CARE Act, which I was pleased to cosponsor with our late colleague, Senator Paul Wellstone, to raise awareness and expand Federal support for medical research to find a cure for this devastating disease.

The need for this legislation was first brought to my attention by one of my constituents, Brian Denger, of Biddeford, ME, who has not one, but two wonderful boys—Matthew and Patrick—with Duchenne Muscular Dystrophy. The Dengers—who also have a daughter, Rachel, with juvenile diabetes—are a loving and courageous family whose strength and spirit inspired me to become involved in advocating for more research funding for muscular dystrophy.

Until I met Brian, I really did not know much about Duchenne Muscular Dystrophy. He was the first to tell me that 1 in 3,500 male children worldwide will be born with the disease and lose the ability to walk by age 10. He told me about the terrible progression of the disease. As it progresses, muscle deterioration in the back and chest begins to put pressure on the lungs, making it more and more difficult for the child to breathe.

What really caught my attention was the fact that the lifespan of children suffering from this disease has not been extended in any significant way in recent years. Current treatment options for boys like Matthew and Patrick are minimal and aimed simply at managing their symptoms in an effort to optimize their quality of life for the limited time they have with us.

Given our Nation's wealth of scientific expertise coupled with the tremendous infusion of resources we have poured into the NIH in recent years, we can and should do more for families like the Dengers. That is why I joined with Senator Wellstone in introducing the MD CARE Act, which President Bush signed into law in December of 2001.

Since the passage of this important legislation, the National Institutes of Health have established grants for the creation of three Centers of Excellence in Muscular Dystrophy Research, which will provide focused research and development in all phases—including basic, clinical, and transitional—of the research spectrum. In addition, the Centers for Disease Control and Prevention have developed an in-depth surveillance and epidemiology study of Duchenne and Becker muscular dystrophy. A population-based epidemiological study of Duchenne and Becker muscular dystrophy will provide the extensive data necessary to inform research decisions, standards of care, physician training, and public health approaches to assist families living with Duchenne and Becker muscular dystrophy.

The NIH and the CDC are to be commended for the progress they are making in their research efforts related to muscular dystrophy. These efforts to improve the quality and length of life for thousands of children diagnosed with muscular dystrophy are invaluable, and I commend the researchers and all of the families who have worked so hard to combat this devastating disease.

## THE ''COLUMBIA'' TRAGEDY

Mr. WYDEN. Mr. President, it has been said that a journey of a thousand miles begins with a single step. In the same way, a journey of a million miles must be completed with one final step.

It was at the moment of that ultimate step on February 1, 2003, that the Space Shuttle *Columbia* could go no further. In its last moments, America's first shuttle took with it the brave souls of its crew. It is those seven heroes and human beings I honor today, on behalf of every Oregonian who mourns them.

In recent years, the names of shuttle astronauts have seldom been known by most Americans. Now, the names of the *Columbia* Seven have entered the nation's consciousness through the floodgates of our shared grief: Flight Commander Rick Husband; Pilot William ''Willie'' McCool; Payload Commander Michael Anderson; Mission Specialist Kalpana ''K.C.'' Chawla; Mission Specialist David Brown; Mission Specialist Laurel Clark; and Payload Specialist Ilan Ramon.

As the recent chair of the Subcommittee on Science, Technology and Space, I came to know firsthand that America's astronaut corps, and indeed the teams of engineers and experts that support them, are the best this country has to offer. It seems that this particular group of astronauts was the best of the best. And they were not only America's finest, they were India's finest and Israel's finest as well.

Many of this crew were devoted husbands, wives, fathers and mothers. They leave a dozen children behind them who deserve this nation's sympathy and gratitude for the sacrifice their parents' final mission required.

But the *Columbia* crew also leaves behind their ideals of persistence and patriotism, the humility and humor that called so many people to love them so much, and above all their love of learning and life. Each brought a different background and unique experience to this mission. All defeated great odds and exhibited enormous courage in becoming the astronauts they hoped to be.

From childhood, Rick Husband, Willie McCool and David Brown cherished dreams of liftoff and landing, of spaceships and spirits aloft.

Laurel Clark dove to the depths of the sea in her naval career before reaching the heights of heaven on *Columbia*.

Michael Anderson was able to break even the barrier of sound, even the barrier of Earth's atmosphere as one of the nation's few African American astronauts.

Kalpana Chawla's mother reportedly had hoped for a son 41 years ago in India. She now says with pride that this daughter did better than any boy could, coming to America less than 20 years ago and twice being chosen as her adopted nation's envoy to space.

Ilan Ramon had led his nation into battle many times. On this expedition, he envisioned Israel at peace. Looking down from the windows of *Columbia*, he imagined that the quiet and calm of the heavens would someday find his country men and women on Earth.

As President Bush said on Saturday, *Columbia* is lost. But the optimism of Ilan Ramon and the visions *Columbia*'s crew embodied never need pass away.

Oliver Wendell Holmes once said this: ''Through our great good fortune, in our youth our hearts were touched with fire. It was given to us to learn at the outset that life is a profound and passionate thing.'' Today I say that it was the great good fortune of every American, of every citizen of the world, that these seven hearts were touched in youth with fire—that it became their profound passion to reach into the skies and grasp the knowledge that lies beyond our planet.

Even as our hearts grieve, there is reason to rejoice. The United States of America and the nations of the world are still called to farther frontiers by these seven, so deserving of our respect.

## HONORING SPECIALIST BRIAN CLEMENS

Mr. BAYH. Mr. President, I rise today with great sadness and tremendous gratitude to honor the life of a brave young man from Kokomo, IN. Specialist Brian Clemens was just 19 years old. He died last week in Kuwait as he and his comrades in the 1st Battalion, 293rd Infantry of the Indiana Army National Guard prepared for a war that may soon begin. Brian was there, in a far away land, to fight for values we hold close to our hearts.

Specialist Clemens was the first Indiana National Guard member killed overseas since Operation Desert Storm ended more than a decade ago. He was also the first American to perish while dutifully serving our Nation in a build-up for possible war with Iraq. I mourn along with Brian's family, friends and community. While our pride in Brian shall certainly live on, so too will our sorrow. But Brian's life, his courage, and his strength of character should serve as a powerful and consoling force in the difficult days ahead.

Brian Clemens was an energetic and caring young man. He was adored by all who knew him for his charismatic personality. He was a positive force within his community, never failing to give of himself whenever possible. In the months following his graduation from Maconaquah High School in 2001, Brian returned to the school regularly to help wrestlers on the team hone their skills. He was selfless with his time and constantly gave back to the community in which he lived, cherishing his relationships above all else. Deeply devoted to his family, Brian was especially close to his younger sister, Jennifer.

As President Abraham Lincoln wrote in a letter to the mother of a fallen Union soldier: ''I pray that our Heavenly Father may assuage the anguish of your bereavement, and leave you only the cherished memory of the loved and lost, and the solemn pride that must be yours to have laid so costly a sacrifice upon the altar of freedom.'' These words ring as true today as they did 140 years ago, as we mourn the loss of Brian Clemens and honor the sacrifice he made for America and for all of humanity.

It is my sad duty to enter the name of Brian Clemens in the official RECORD of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy, and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Brian's can find comfort in the word of the prophet Isaiah who said, ''He will swallow up death in victory; and the Lord God will wipe away tears from off all faces.''

May God grant strength and peace to those who mourn, and may God bless the United States of America.

## ADDITIONAL STATEMENTS

### TRIBUTE TO PAM BONRUD

• Mr. JOHNSON. Mr. President, the South Dakota Public Utilities Commission recently announced that Pam Bonrud will serve as the PUC's new executive director. I wish to congratulate Ms. Bonrud for her selection to lead the PUC and to formally thank her for her 10 years of service to the Lewis and Clark Rural Water System.

During that time, Ms. Bonrud distinguished herself as an effective and dedicated leader. While with Lewis and Clark, Ms. Bonrud was instrumental in helping me and my colleagues secure the successful passage of legislation authorizing the project. Through her leadership, we were able to build a strong coalition supporting the project at the local, State and Federal levels within the States of South Dakota, Minnesota, and Iowa.

Ms. Bonrud displayed all the qualities necessary to help make sure this critically important water project would receive Federal authorization. She was professional, persistent, and determined, and always had a positive attitude, even though the authorization process took 6 years from the time the first version of the legislation was introduced in 1994.

I always enjoyed working with Ms. Bonrud, and she was able to work effectively with Senators and House Members of all three States involved and on both sides of the aisle. She has been one of South Dakota's best advocates and supporters of rural water development, and the entire southeast region of South Dakota, as well southwestern Minnesota and northwestern Iowa, will always be thankful for her 10 years of hard work, dedication, and foresight to help bring this much needed drinking water project from the drawing board to construction.

In fact, the Lewis and Clark System will be undertaking a groundbreaking ceremony this spring, and Ms. Bonrud is a major reason it will be the beginning of making this project a reality. She leaves the project in good stead and her leadership and fine character will be sorely missed.•

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the PRESIDING OFFICER laid before the Senate messages from the President of the United States submitting sundry nominations, a withdrawal, and a treaty which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MESSAGE FROM THE HOUSE

At 2:22 p.m., a message from the House of Representatives, delivered by Mr. Niland, one of its reading clerks, announced that pursuant to the provisions of section 201(a)(2) of the Congressional Budget and Impoundment Control Act of 1974, Public Law 93–344, the Speaker of the House of Representatives and the President pro tempore of the Senate appoints Mr. Douglas Holtz-Eakin as Director of the Congressional Budget Office for a term of office expiring on January 3, 2007.

## MEASURES REFERRED

The Committee on Energy and Natural Resources was discharged from further consideration of the following measure which was referred to the Committee on Environment and Public Works:

S. 277. A bill to authority the Secretary of the Interior to construct an education and administrative center at the Bear River Migratory Bird Refuge in Box Elder County, Utah.

The Committee on Governmental Affairs was discharged from further consideration of the following measure which was referred to the Committee on Rules and Administration:

S. Res. 51. Resolution authorizing expenditures by the Committee on Governmental Affairs.

## 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–1068. A communication from the Assistant Secretary Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule that amends 42.32(9)(d) of Part 22 of the Code of Federal Regulations concerning certain victims of the September 11, 2001 terrorist attacks to file for classification as special immigrants, received on January 30, 2003; to the Committee on the Judiciary.

EC–1069. A communication from the Director, Regulations and Forms Services, Immigration and Naturalization Service, transmitting, pursuant to law, the report of a rule entitled ''Establishment of a $3 Immigration User Fee for Certain Commercial Vessel Passengers Previously Exempt (RIN1115–AG47) (INS No. 2180–01)'' received on January 29, 2003; to the Committee on the Judiciary.

EC–1070. A communication from the Director, Regulations and Forms Services, Immigration and Naturalization Service, transmitting, pursuant to law, the report of a rule entitled ''Release of Information Regarding Immigration and Naturalization Service Detainee in Non-Federal Facilities (RIN1115–AG67) (INS No. 2203–02)'' received on January 29, 2003; to the Committee on the Judiciary.

EC–1071. A communication from the Deputy White House Liaison, Department of Education, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary, received on January 31, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–1072. A communication from the Administrator, Energy Information Administration, Department of Energy, transmitting, pursuant to law, the report of document entitled ''Annual Energy Outlook 2003 with Projections to 2025'' received on January 28, 2003; to the Committee on Energy and Natural Resources.

EC–1073. A communication from the Secretary of Energy, transmitting, pursuant to law, the report relative to Implementing U.S. Plutonium Disposition At The Savannah River Site; to the Committee on Energy and Natural Resources.

EC–1074. A communication from the Acting Chair, Federal Subsistence Board, Fish and Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Subsistence Management Regulations for Public Lands in Alaska, Subpart C and D—2003–2004 Subsistence Taking of Fish and Shellfish Regulations (1018–AI09)'' received on January 29, 2003; to the Committee on Energy and Natural Resources.

EC–1075. A communication from the Deputy General Counsel, Board of Veterans' Appeals, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Appeals Regulations: Title for Members of the Board of Veterans' Appeals (2900–AK62)'' received on February 5, 2003; to the Committee on Veterans' Affairs.

EC–1076. A communication from the Deputy General Counsel, Veterans Health Administration, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Payment or Reimbursement for Emergency Treatment Furnished at Non-VA Facilities (2900–AK08)'' received on February 4, 2003; to the Committee on Veterans' Affairs.

EC–1077. A communication from the Deputy General Counsel, Office of Acquisitions & Material Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''VA Acquisition Regulations: Simplified Acquisition Procedures for Health-Care resources (2900–AI71)'' received on February 4, 2003; to the Committee on Veterans' Affairs.

EC–1078. A communication from the Administrator, Food Safety and Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Termination of Designation of the State of Maine With Respect to the Inspection of Meat and Meat Food Products and Poultry and Poultry Food Products (Doc. No. 02–028F)'' received on February 4, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1079. A communication from the Secretary, Office of the General Counsel, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule ''Implementation of Standards of Professional Conduct for Attorneys (RIN3235–AI72)'' received on January 29, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1080. A communication from the Director, Financial Crimes Enforcement Network, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Amendment to the Bank Secrecy Act Regulations—Requirement that Currency Dealers and Exchanges Report Suspicious Transactions (1506–AA34)'' received on February 4, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1081. A communication from the Assistant Secretary, Office of the Chief Accountant, Securities & Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Strengthening the Commission's Requirement Regarding Auditor Independence (RIN3235–AI73)'' received on January 29, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1082. A communication from the Assistant Secretary for Export Administration, Bureau of Industry and Security Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Revision of Export Controls for General Purpose Microprocessors (0694–AC66)'' received on January 28, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–1083. A communication from the Secretary of Commerce, transmitting, the report relative to the President's Export Council and the current vacancy of two positions on that Council; to the Committee on Banking, Housing, and Urban Affairs.

EC–1084. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–553 ''Public Insurance Adjuster Licensure Act of 2002'' received on February 1, 2003; to the Committee on Governmental Affairs.

EC–1085. A communication from the Chairman of the Council, Council of the District of Columbia, transmitting, pursuant to law, the report on D.C. Act 14–554 ''Public Health Laboratory Fee Amendment Act of 2002'' received on February 1, 2003; to the Committee on Governmental Affairs.

EC–1086. A communication from the Assistant Administrator, Bureau for Legislative and Public Affairs, U.S. Agency for International Development, transmitting, pursuant to law, the report of the pre-publication version of Fiscal Year 2002 Performance and Accountability Report (PAR); to the Committee on Governmental Affairs.

EC–1087. A communication from the Secretary of Energy, transmitting, pursuant to law, the report of a document entitled ''U.S. Department of Energy Performance and Accountability Report Fiscal Year 2002''; to the Committee on Governmental Affairs.

EC–1088. A communication from the Attorney General, transmitting, pursuant to law, the report of Fiscal Year 2002 Performance and Accountability Report for the Department of Justice; to the Committee on Governmental Affairs.

EC–1089. A communication from the Executive Director, Federal Mine Safety and Health Review Commission, transmitting, pursuant to law, the report of the Federal Mine and Health Review Commission's inventory of activities; to the Committee on Governmental Affairs.

EC–1090. A communication from the Colonel, Corps of Engineers Secretary, Mississippi River Commission, transmitting, pursuant to law, the Annual Report for the Mississippi River Commission covering calendar year 2002; to the Committee on Governmental Affairs.

EC–1091. A communication from the Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration, transmitting, pursuant to law, the report of a rule entitled ''Federal Acquisition Regulation; Federal Acquisition Circular 2001–11 (FAC2001–11)'' received on January 21, 2003; to the Committee on Governmental Affairs.

EC–1092. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Prevailing Rate Systems; Change in Federal Wage System Survey Job (RIN3206–AJ63)'' received on January 21, 2003; to the Committee on Governmental Affairs.

EC–1093. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled ''Prevailing Rate Systems; Definitions of Santa Clara, CA, Nonappropriated Fund Wage Area (RIN3206–AJ61)'' received on January 28, 2003; to the Committee on Governmental Affairs .

EC–1094. A communication from the Chairman, Defense Nuclear Facilities Safety Board, transmitting, pursuant to law, the Annual Report on Commercial Activities at the Defense Nuclear Facilities Safety Board; to the Committee on Governmental Affairs.

EC–1095. A communication from the Secretary of Labor, Chairman of the Board, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the Annual Report of the Pensions Benefit Guaranty Corporation; to the Committee on Governmental Affairs.

EC–1096. A communication from the President of the United States, transmitting, pursuant to law, the report of the Reorganization Plan Modification for the Department of Homeland Security (DHS); to the Committee on Governmental Affairs.

EC–1097. A communication from the Administrator, National Aeronautics Space Administration, transmitting, pursuant to law, the Fiscal Year 2002 Performance and Accountability Report; to the Committee on Governmental Affairs.

EC–1098. A communication from the Chair, Railroad Retirement Board, transmitting, pursuant to law, the Railroad Retirement Board's Financial Statements for Fiscal Year 2002; to the Committee on Governmental Affairs .

EC–1099. A communication from the Chairman , Board Governors, United States Postal Service, transmitting, pursuant to law, the Annual Report regarding compliance of the Board of Governors with the Sunshine Act; to the Committee on Governmental Affairs.

EC–1100. A communication from the Director, Federal Emergency Management Agency, transmitting, pursuant to law, the Federal Emergency Management agency (FEMA) Inspector General's and Director's

semiannual reports that respectively address the Agency's audit and audit follow-up activity during the period April 1, 2002 through September 30, 2003; to the Committee on Governmental Affairs.

EC–1101. A communication from the Director, Office of Personnel Management, transmitting, pursuant to law, the Fiscal Year 2002 Annual Report on the Federal Equal Opportunity Recruitment Program (FEORP); to the Committee on Governmental Affairs.

EC–1102. A communication from the Comptroller General of the United States, General Accounting Office, transmitting, pursuant to law, the report relative to General Accounting Office (GAO) employees who were assigned to congressional committees during fiscal year 2002; to the Committee on Governmental Affairs.

EC–1103. A communication from the Comptroller General of the United States, United States General Accounting Office, transmitting, pursuant to law, the report relative to General Accounting Office (GAO) employees detailed to congressional committees as of January 21, 2003; to the Committee on Governmental Affairs.

EC–1104. A communication from the Comptroller General of the United States, General Accounting Office, transmitting, pursuant to law, the report relative to the requirements of the Competition in Contracting Act of 1984; to the Committee on Governmental Affairs.

EC–1105. A communication from the President, James Madison Memorial Fellowship Foundation, transmitting, pursuant to law, the Annual Report in accordance with the Federal Managers Financial Integrity Act of 1982; to the Committee on Governmental Affairs.

EC–1106. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Insurance Demutualization ((Rev. Rul. 2003–19)(2003–7))'' received on January 29, 2003; to the Committee on Finance.

EC–1107. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''355 active conduct of a trade of business - auto dealer expansion ((Rev. Rul. 2003–16)(2003–7))'' received on January 29, 2003; to the Committee on Finance.

EC–1108. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Dissolution Clause Requirements for 501(c)(3) Entities Seeking a 115(1) Private Letter Ruling (Rev. Rul. 2003–12)'' received on January 29, 2003; to the Committee on Finance.

EC–1109. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Rev. Proc. 2003–19 (RP–137446–02)'' received on January 31, 2003; to the Committee on Finance.

EC–1110. A communication from the Chief, Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Leveraged Partnerships Under Section 45D (Rev. Rul. 2003–20)'' received on January 29, 2003; to the Committee on Finance.

EC–1111. A communication from the Acting Director, Statutory Import Programs Staff, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Changes in Insular Possessions Watch, Watch Movement and Jewelry Program (0625–AA57)'' received on February 1, 2003; to the Committee on Finance.

EC–1112. A communication from the Deputy Chief, Regulations Division, Bureau of Alcohol , Tobacco and Firearms, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Reorganization of Title 27 Code of Federal Regulations (1512–AD06)'' received on January 29, 2003; to the Committee on Finance.

EC–1113. A communication from the Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board, Department of Commerce, transmitting, pursuant to law, the Annual Report of the Foreign-Trade Zones Board for Fiscal Year 2001, received on January 28, 2003; to the Committee on Finance.

EC–1114. A communication from the Assistant Director for Executive and Political Personnel, Department of Defense, transmitting, pursuant to law, the report of a nomination for the position of Assistant Secretary of Defense, received on January 31, 2003; to the Committee on Armed Services.

EC–1115. A communication from the Supervisor, Headquarters Oklahoma City Air Logistics Center, Department of the Air Force, transmitting, pursuant to law, the report relative to correspondence between The Supervisor and Deputy Chief, Congressional Inquiry Division, Office of Legislative Liaison; to the Committee on Armed Services.

EC–1116. A communication from the Assistant Secretary of Defense, Reserve Affairs, transmitting, pursuant to law, the National Guard Challenge Program Annual Report for Fiscal Year 2002; to the Committee on Armed Services.

EC–1117. A communication from the Attorney/Advisor, Department of Transportation , transmitting, pursuant to law, the report of a nomination for the position of Associate Deputy Secretary of Transportation, received on February 1, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1118. A communication from the Administrator, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the Capitol Investment Plan (CIP) for Fiscal Years 2004–2008; to the Committee on Commerce, Science, and Transportation.

EC–1119. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Final Rule to Implement Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic (0648–AP41)'' received on February 4, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1120. A communication from the Under Secretary of Commerce, Oceans and Atmosphere, Department of Commerce, transmitting, pursuant to law, the Annual Report of Coastal Zone Management Fund for the National Oceanic and Atmospheric Administration for Fiscal Year 2002; to the Committee on Commerce, Science, and Transportation.

EC–1121. A communication from the Administrator, National Aeronautics and Space Administration, transmitting, pursuant to law, the report relative to NASA's 2003 Strategic Plan, received on February 4, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1122. A communication from the Senior Rulemaking Analyst, Office of the Chief Counsel, Transportation Security Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Threat Assessment Regarding Alien Holders of, and Applicants for, for FAA Certificates (2110–AA17)'' received on January 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1123. A communication from the Senior Rulemaking Analyst, Office of the Chief Counsel, Transportation Security Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Threat Assessments Regarding Citizens of the United States Who Hold or Apply for FAA Certificates (2120–AA14)'' received on January 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1124. A communication from the Chief, 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; Escorted Vessels-Philippine Sea, Guam Apra Harbor, Guam and Tanapag Harbor, Saipan, Commonwealth of the Northern Mariana Islands (CGD14–02–002)(2115–AA97) (2003–0008)'' received on January 31, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1125. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Mississippi River, Dubuque, IA (CGD08–02–042)(2115–AE47)(2003–0005)'' received on January 31, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1126. A communication from the Attorney/Advisor, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a Nomination for the position of Deputy Administrator, received on January 31, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1127. A communication from the Assistant Chief Counsel, Maritime Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Requirements to Document U.S. Flag Fishing Industry Vessels of 100 Feet or Greater in Registered Length and to hold a Preferred Mortgage on Such Vessels (2133–AB46)'' received on January 29, 2003; to the Committee on Commerce, Science, and Transportation.

EC–1128. A communication from the Acting Director, 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—Closes First Seasonal Allowances of Pollock in Area 610, Gulf of Alaska'' received on February 4, 2003; to the Committee on Commerce, Science, and Transportation.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HATCH, from the Committee on the Judiciary:

Report to accompany S. 151, A bill to amend title 18, United States Code, with respect to the sexual exploitation of children (Rept. No. 108–2).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 111. A bill to direct the Secretary of the Interior to conduct a special resource study to determine the national significance of the Miami Circle site in the State of Florida as well as the suitability and feasibility of its inclusion in the National Park System as part of Biscayne National Park, and for other purposes (Rept. No. 108–4).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. 117. A bill to authorize the Secretary of Agriculture to sell or exchange certain land in the State of Florida, and for other purposes (Rept. No. 108–5).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 144. A bill to require the Secretary of the Interior to establish a program to provide assistance through States to eligible weed management entities to control or eradicate harmful, nonnative weeds on public and private land (Rept. No. 108–6).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. 210. A bill to provide for the protection of archaeological sites in the Galisteo Basin in New Mexico, and for other purposes (Rept. No. 108–7).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with an amendment in the nature of a substitute:

S. 214. A bill to designate Fort Bayard Historic District in the State of New Mexico as a National Historic Landmark, and for other purposes (Rept. No. 108–8).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. 233. A bill to direct the Secretary of the Interior to conduct a study of Coltsville in the State of Connecticut for potential inclusion in the National Park System (Rept. No. 108–9).

S. 254. A bill to revise the boundary of the Kaloko-Honokohau National Historical Park in the State of Hawaii, and for other purposes (Rept. No. 108–10).

By Mr. SPECTER, without amendment:

S. Res. 53. An original resolution authorizing expenditures by the Committee on Veterans' Affairs.

## EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. SHELBY for the Committee on Banking, Housing, and Urban Affairs.

*William H. Donaldson, of New York, to be a Member of the Securities and Exchange Commission for the remainder of the term expiring June 5, 2007.

*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.

## 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. BAUCUS (for himself, Mr. HATCH, Mr. MILLER, Mr. GRASSLEY, Mr. BAYH, and Mr. LUGAR):

S. 339. A bill to amend the Internal Revenue Code of 1986 to simplify the application of the excise tax imposed on bows and arrows; to the Committee on Finance.

By Mr. BUNNING:

S. 340. A bill to authorize the Secretary of Health and Human Services to make grants to nonprofit tax-exempt organizations for the purchase of ultrasound equipment to provide free examinations to pregnant women needing such services, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DASCHLE (for himself and Mr. JOHNSON):

S. 341. A bill to designate the Federal building and United States courthouse located at 515 9th Street in Rapid City, South Dakota, as the ''Andrew W. Bogue Federal Building and United States Courthouse''; to the Committee on Environment and Public Works.

By Mr. GREGG (for himself, Mr. KENNEDY, Mr. DODD, and Mr. ALEXANDER):

S. 342. A bill to amend the Child Abuse Prevention and Treatment Act to make improvements to and reauthorize programs under that Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Ms. MIKULSKI (for herself, Mr. JOHNSON, Mrs. MURRAY, Ms. STABENOW, Mr. CORZINE, Mr. INOUYE, and Mr. BINGAMAN):

S. 343. A bill to amend title XVIII of the Social Security Act to permit direct payment under the medicare program for clinical social worker services provided to residents of skilled nursing facilities; to the Committee on Finance.

By Mr. AKAKA (for himself and Mr. INOUYE):

S. 344. A bill expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes; to the Committee on Indian Affairs.

By Mr. NELSON of Florida (for himself, Mr. KENNEDY, Mr. GRAHAM of Florida, Mr. EDWARDS, and Mr. SARBANES):

S. 345. A bill to amend title XVIII of the Social Security Act to prohibit physicians and other health care practitioners from charging membership or other incidental fee (or requiring purchase of other items or services) as a prerequisite for the provision of an item or service to a medicare beneficiary; to the Committee on Finance.

By Mr. LEVIN (for himself and Mr. THOMAS):

S. 346. A bill to amend the Office of Federal Procurement Policy Act to establish a governmentwide policy requiring competition in certain executive agency procurements; to the Committee on Governmental Affairs.

By Mrs. FEINSTEIN:

S. 347. A bill to direct the Secretary of the Interior and the Secretary of Agriculture to conduct a joint special resources study to evaluate the suitability and feasibility of establishing the Rim of the Valley Corridor as a unit of the Santa Monica Mountains National Recreation Area, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SCHUMER (for himself, Mr. BIDEN, Ms. SNOWE, Mr. BAYH, Mr. SMITH, and Mr. DURBIN):

S. 348. A bill to amend the Internal Revenue Code of 1986 to make higher education more affordable, and for other purposes; to the Committee on Finance.

By Mrs. FEINSTEIN (for herself, Ms. COLLINS, Ms. LANDRIEU, Ms. SNOWE, Mr. KENNEDY, Mr. ALLEN, Mr . JOHNSON, Mr. DAYTON, and Mr. BUNNING):

S. 349. A bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions; to the Committee on Finance.

By Mrs. CLINTON (for herself, Mr. GREGG, and Mr. REID):

S. 350. A bill to amend the Atomic Energy Act of 1954 to strengthen the security of sensitive radioactive material; to the Committee on Environment and Public Works.

By Mr. GRASSLEY:

S. 351. An original bill to amend the Internal Revenue Code of 1986 to improve tax equity for military personnel, and for other purposes; from the Committee on Finance; placed on the calendar.

By Mr. LEAHY (for himself, Mr. KENNEDY, Mr. DURBIN, Mr. EDWARDS, Mr. ROCKEFELLER, Mr. REID, Mrs. BOXER, Mr. FEINGOLD, and Mr. CORZINE):

S. 352. A bill to ensure that commercial insurers cannot engage in price fixing, bid rigging, or market allocations to the detriment of competition and consumers; to the Committee on the Judiciary.

By Mrs. FEINSTEIN:

S. 353. A bill for the relief of Denes and Gyorgyi Fulop; to the Committee on the Judiciary.

By Mr. BINGAMAN:

S. 354. A bill to authorize the Secretary of Transportation to establish the National Transportation Modeling and Analysis Program to complete an advanced transportation simulation model, and for other purposes; to the Committee on Environment and Public Works.

By Mrs. LINCOLN (for herself, Mr. GRASSLEY, Mr. HAGEL, Mr. DAYTON, Mr. DURBIN, Mr. HARKIN, Mr. COLEMAN, and Mr. JOHNSON):

S. 355. A bill to amend the Internal Revenue Code of 1986 to allow a credit for biodiesel fuel; to the Committee on Finance.

By Mrs. LINCOLN (for herself, Mr. BOND, and Mr. TALENT):

S. 356. A bill to amend the Energy Policy Act of 1992 to increase the allowable credit for biodiesel use under the alternatively fueled vehicle purchase requirement; to the Committee on Energy and Natural Resources.

By Mrs. LINCOLN (for herself, Mr. HAGEL, Mr. KERRY, and Mr. SMITH):

S. 357. A bill to amend the Internal Revenue Code of 1986 to modify the credit for the production of fuel from nonconventional sources to include production of fuel from agricultural and animal waste; to the Committee on Finance.

By Mrs. LINCOLN:

S. 358. A bill to amend the Internal Revenue Code of 1986 to modify the credit for the production of fuel from nonconventional sources for the production of electricity to include landfill gas; to the Committee on Finance.

By Mrs. LINCOLN (for herself and Mr. AKAKA):

S. 359. A bill to amend the Internal Revenue Code of 1986 to modify the credit for the production of electricity to include electricity produced from municipal solid waste; to the Committee on Finance.

By Mrs. LINCOLN:

S. 360. A bill to amend the Internal Revenue Code of 1986 to treat natural gas distribution lines as 10-year property for depreciation purposes; to the Committee on Finance.

By Mrs. LINCOLN (for herself, Mr. ALLARD, Mr. GRASSLEY, Mr. HARKIN, Ms. STABENOW, Mr. HAGEL, Mr. LEVIN, and Mr. DEWINE):

S. 361. A bill to amend the Internal Revenue Code of 1986 to allow for an energy efficient appliance credit; to the Committee on Finance.

By Ms. MIKULSKI (for herself, Ms. SNOWE, Mr. SARBANES, Ms. COLLINS, Mrs. MURRAY, and Ms. CANTWELL):

S. 362. A bill to amend title II of the Social Security Act to provide that a monthly insurance benefit thereunder shall be paid for the month in which the recipient dies, subject to a reduction of 50 percent if the recipient dies during the first 15 days of such month, and for other purposes; to the Committee on Finance.

By Ms. MIKULSKI (for herself, Mr. SARBANES, Ms. COLLINS, Mr. BINGAMAN, Mr. DASCHLE, Ms. SNOWE, Mr. DORGAN, Ms. LANDRIEU, Mrs. MURRAY, Mr. BREAUX, Ms. CANTWELL, Mr. KENNEDY, and Mrs. CLINTON):

S. 363. A bill to amend title II of the Social Security Act to provide that the reductions

in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation; to the Committee on Finance.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Ms. COLLINS (for herself and Mr. LIEBERMAN):

S. Res. 51. A resolution authorizing expenditures by the Committee on Governmental Affairs; to the Committee on Rules and Administration.

By Mr. CAMPBELL (for himself, Mr. CRAIG, Mrs. LINCOLN, Mr. HATCH, Mr. LOTT, Mr. DORGAN, Ms. LANDRIEU, Mr. KOHL, Mr. INHOFE, Mr. DOMENICI, Mr. SPECTER, Mr. BIDEN, and Mr. ALLEN):

S. Res. 52. A resolution recognizing the social problem of child abuse and neglect, and supporting efforts to enhance public awareness of the problem; to the Committee on the Judiciary.

By Mr. SPECTER:

S. Res. 53. An original resolution authorizing expenditures by the Committee on Veterans' Affairs; from the Committee on Veterans' Affairs; to the Committee on Rules and Administration.

By Mr. MCCAIN (for himself, Mr. LEAHY, Mr. LIEBERMAN, and Mr. HARKIN):

S. Res. 54. A resolution to provide Internet access to certain Congressional documents, including certain Congressional Research Service publications, certain Senate gift reports, and Senate and Joint Committee documents; to the Committee on Rules and Administration.

By Mr. MCCAIN (for himself, Mr. LIEBERMAN, Mr. GRAHAM of South Carolina, and Mr. BAYH):

S. Con. Res. 4. A concurrent resolution welcoming the expression of support of 18 European nations for the enforcement of United Nations Security Counsel Resolution 1441; to the Committee on Foreign Relations.

## ADDITIONAL COSPONSORS

S. 83

At the request of Mr. DURBIN, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 83, A bill to expand aviation capacity in the Chicago area, and for other purposes.

S. 85

At the request of Mr. LUGAR, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 85, A bill to amend the Internal Revenue Code of 1986 to provide for a charitable deduction for contributions of food inventory.

S. 153

At the request of Mrs. FEINSTEIN, the names of the Senator from New York (Mr. SCHUMER) and the Senator from South Dakota (Mr. JOHNSON) were added as cosponsors of S. 153, A bill to amend title 18, United States Code, to establish penalties for aggravated identity theft, and for other purposes.

S. 223

At the request of Mrs. FEINSTEIN, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 223, A bill to prevent identity theft, and for other purposes.

S. 238

At the request of Mr. REED, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 238, A bill to reauthorize the Museum and Library Services Act, and for other purposes.

S. 251

At the request of Mr. LOTT, the names of the Senator from Kentucky (Mr. BUNNING), the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from Nebraska (Mr. NELSON) were added as cosponsors of S. 251, A bill to amend the Internal Revenue Code of 1986 to repeal the 4.3-cent motor fuel excise taxes on railroads and inland waterway transportation which remain in the general fund of the Treasury.

S. 253

At the request of Mr. CAMPBELL, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 253, A bill to amend title 18, United States Code, to exempt qualified current and former law enforcement officers from State laws prohibiting the carrying of concealed handguns.

S. 255

At the request of Mrs. 4Feinstein, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 255, A bill to amend title 49, United States Code, to require phased increases in the fuel efficiency standards applicable to light trucks; to require fuel economy standards for automobiles up to 10,000 pounds gross vehicle weight; to increase the fuel economy of the Federal fleet of vehicles, and for other purposes.

S. 286

At the request of Mr. BOND, the names of the Senator from Ohio (Mr. DEWINE) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. 286, A bill to revise and extend the Birth Defects Prevention Act of 1998.

S. 298

At the request of Mr. BAUCUS, the names of the Senator from California (Mrs. BOXER) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. 298, A bill to provide tax relief and assistance for the families of the heroes of the Space Shuttle Columbia, and for other purposes.

S. 300

At the request of Mr. KERRY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 300, A bill to award a congressional gold medal to Jackie Robinson (posthumously), in recognition of his many contributions to the Nation, and to express the sense of Congress that there should be a national day in recognition of Jackie Robinson.

S.J. RES. 3

At the request of Mr. LIEBERMAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S.J. Res. 3, A joint resolution expressing the sense of Congress with respect to human rights in Central Asia.

S. RES. 40

At the request of Mr. BIDEN, the names of the Senator from Washington (Ms. CANTWELL), the Senator from Connecticut (Mr. DODD), the Senator from Rhode Island (Mr. REED) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. Res. 40, A resolution reaffirming congressional commitment to title IX of the Education Amendments of 1972 and its critical role in guaranteeing equal educational opportunities for women and girls, particularly with respect to school athletics.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BAUCUS (for himself, Mr. HATCH, Mr. MILLER, Mr. GRASSLEY, Mr. BAYH, and Mr. LUGAR):

S. 339. A bill to amend the Internal Revenue Code of 1986 to simplify the application of the excise tax imposed on bows and arrows; to the Committee on Finance.

Mr. BAUCUS. Mr. President, along with my colleagues, Senators HATCH, MILLER, BAYH and GRASSLEY, I am pleased to introduce the Archery Excise Tax Simplification Act of 2003. This bill will protect funding for the Wildlife Restoration Program, the Pittman-Robertson fund, by simplifying administration and compliance with the excise tax and closing an unintended loophole that allows arrows assembled outside the United States to avoid the excise tax imposed on domestic manufacturers.

The creation of the Wildlife Restoration Program is one of the great success stories of cooperation among America's sportsmen and women, State fish and wildlife agencies, and the sporting goods industry. Working together with Congress, Americans who enjoy the outdoors volunteered to pay an excise tax on sporting arms and ammunition to be used for hunter education programs, wildlife restoration, and habitat conservation.

Originally the archery industry did not participate in this program. However, the growth of bow hunting in the '60s and '70s led the archery industry to decide they would support the excise tax that funds State game agencies. As a result, the tax was extended to archery equipment in 1975. The tax on archery equipment was meant to parallel the tax that hunters were paying on firearms and ready-to-fire ammunition. The archery industry and bow hunters are pleased to contribute to the success of the Wildlife Restoration Program.

Because current law taxes components and not arrows, foreign manufacturers are selling arrows in the United States without paying the excise tax

that is imposed on arrows made in the United States. Not only are these untaxed imports unfair to American workers, they threaten the integrity of the Wildlife Restoration Fund.

This issue is important to companies in Montana. Mike Ellig, a manufacturer of archery products in Bozeman, MT, pays this tax. He supports the tax, but asks that it be fair. Mike's company, Montana Black Gold, and the archery industry want to support the Wildlife Restoration Program. But the way the tax works today, American manufacturers are at a competitive disadvantage. That is why the 800 members of the Montana Bowhunters Association support this measure.

This legislation will close the loophole that allows imported arrows to avoid the excise tax paid by domestic manufacturers. While keeping the current 12.4 percent tax on arrow components, the proposal will impose a tax of 12 percent on the first sale of an arrow assembled from untaxed components. U.S. manufacturers and foreign manufacturers will be treated equally.

Since this loophole was inadvertently created in 1997, archery imports, mostly finished arrows, increased from $430,000 in 1998, to $1.6 million in 1999, to $3.2 million in 2000, to $7.8 million in 2001 and to $11.0 million in 2002, through November. If Congress does not act quickly to close this loophole, domestic manufacturers will be forced to relocate outside of the United States. They simply cannot afford to lose market share for a fifth year to competitors who do not pay the same tax they pay. If a few more move overseas, the rest will follow. The result will be a catastrophic loss of revenue for the Federal Wildlife Restoration Fund.

Current law also taxes non-hunters, contrary to Congressional intent. To relieve non-hunters from the requirement to pay for wildlife management, the legislation would eliminate the current-law tax on bows with draw weights of less than 30 pounds. Those bows are not suitable or, in many states, legal for hunting. To preserve the revenue for the Wildlife Restoration Fund, the bill would retain the current tax on bows that are suitable for hunting.

The proposal would also clarify that broadheads are an accessory taxed at 11 percent rather than as an arrow component taxed at 12.4 percent. This will correct the ambiguity in the 1997 Act that led to the misclassification of broadheads.

In summary, the Arrow Excise Tax Simplification Act of 2001 would accomplish worthy objectives. It would close the loophole that allows foreign imported arrows to escape the tax and remove the tax on youth and recreational archery equipment that were never meant to be taxed. We will accomplish these goals while protecting the Wildlife Restoration Program by ensuring that there is no significant diminution of revenues collected by the archery excise tax. The Joint Committee on Taxation estimates the proposal will decrease revenues by $5 million over ten years resulting in small changes in outlays from the Federal Aid in Wildlife Fund. Failure to close the import loophole will eviscerate the archery tax base resulting in devastating losses to the Fund.

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. 339

*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 ''Arrow Excise Tax Simplification Act of 2003''.

**SEC. 2. SIMPLIFICATION OF EXCISE TAX IMPOSED ON BOWS AND ARROWS.**

(a) BOWS.—Section 4161(b)(1) of the Internal Revenue Code of 1986 (relating to bows) is amended to read as follows:

''(1) BOWS.—

''(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any bow which has a draw weight of 30 pounds or more, a tax equal to 11 percent of the price for which so sold.

''(B) ARCHERY EQUIPMENT.—There is hereby imposed on the sale by the manufacturer, producer, or importer—

''(i) of any part or accessory suitable for inclusion in or attachment to a bow described in subparagraph (A), and

''(ii) of any quiver or broadhead suitable for use with an arrow described in paragraph (3),

a tax equal to 11 percent of the price for which so sold.''.

(b) ARROWS.—Section 4161(b) of the Internal Revenue Code of 1986 (relating to bows and arrows, etc.) is amended by redesignating paragraph (3) as paragraph (4) and inserting after paragraph (2) the following:

''(3) ARROWS.—

''(A) IN GENERAL.—There is hereby imposed on the sale by the manufacturer, producer, or importer of any arrow, a tax equal to 12 percent of the price for which so sold.

''(B) EXCEPTION.—The tax imposed by subparagraph (A) on an arrow shall not apply if the arrow contains an arrow shaft subject to the tax imposed by paragraph (2).

''(C) ARROW.—For purposes of this paragraph, the term 'arrow' means any shaft described in paragraph (2) to which additional components are attached.''.

(c) CONFORMING AMENDMENT.—The heading of section 4161(b)(2) of the Internal Revenue Code of 1986 (relating to arrows) is amended by striking ''ARROWS.—'' and inserting ''ARROW COMPONENTS.—''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to articles sold by the manufacturer, producer, or importer after December 31, 2003.

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By Mr. DASCHLE (for himself and Mr. JOHNSON):

S. 341. A bill to designate the Federal building and United States courthouse located at 515 9th Street in Rapid City, South Dakota, as the ''Andrew W. Bogue Federal Building and United States Courthouse''; to the Committee on Environment and Public Works.

Mr. DASCHLE. Mr. President, today I am introducing legislation on behalf of Senator TIM JOHNSON and myself to name the Rapid City United States Courthouse and Federal Building in honor of Judge Andrew W. Bogue, Senior Judge of the U.S. District Court of the District of South Dakota.

The administration of justice in western South Dakota is nearly synonymous with the name of Judge Bogue. He is almost single-handedly responsible for establishing the Federal district court in Rapid City, and worked tirelessly to see the Courthouse and Federal Building constructed there to provide a new home for the administration of justice in the area.

Judge Bogue was the first resident judge in the western division of the U.S. District Court District of South Dakota. Before he came along, judges had to travel into the division from other parts of the State, and court was held in the ancient Deadwood Territorial Courthouse or in makeshift courtrooms throughout the 11-county region. Faced with the logistical hassles of court operations, attorneys were less likely to use the court system.

After Judge Bogue took the bench, he helped transform the justice system in western South Dakota. First, he oversaw the establishment of a new district seat in Rapid City, the population center. Then he worked alongside South Dakota's congressional delegation to secure funding for the construction of the Rapid City Federal Building and United States Courthouse.

During the course of his career as a Federal judge, Bogue has presided over many high-profile cases, including cases stemming from American Indian Movement, AIM, uprisings in the 1970s. He has maintained a reputation for being fair, objective, and compassionate.

Before rising to the U.S. District Court bench, Andrew Bogue was educated at South Dakota State University. After serving our Nation with the U.S. Army Signal Corps during World War II, he returned home to complete a law degree at the University of South Dakota and to marry his lovely wife Liz. He was admitted to the South Dakota Bar in 1947.

Andrew Bogue again answered the call to defend our country during the Korean War, serving in the U.S. Army's Judge Advocate General's corps. Upon his return, he practiced as a private attorney and a State's Attorney before becoming a South Dakota circuit court judge. He joined the Federal bench on May 1, 1970, and was elevated to Chief Judge in 1980. He took senior status in 1985.

It is right and fitting that the Rapid City Federal Building and Courthouse be named for the individual whose legacy pervades its halls. The legislation Senator JOHNSON and I introduce today began with an outpouring of support from Judge Bogue's colleagues. The Pennington County Bar Association and the Seventh Judicial Circuit Court Judges and Magistrate Judges have

passed resolutions supporting this initiative. I am proud to offer this legislation in honor of a great South Dakotan.

I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 341

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

**SECTION 1. DESIGNATION OF ANDREW W. BOGUE FEDERAL BUILDING AND UNITED STATES COURTHOUSE.**

The Federal building and United States courthouse located at 515 9th Street in Rapid City, South Dakota, shall be known and designated as the ''Andrew W. Bogue Federal Building and United States Courthouse''.

**SEC. 2. REFERENCES.**

Any reference in a law, map, regulation, document, paper, or other record of the United States to the Federal building and United States courthouse referred to in section 1 shall be deemed to be a reference to the Andrew W. Bogue Federal Building and United States Courthouse.

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By Mr. GREGG (for himself, Mr. KENNEDY, Mr. DODD, and Mr. ALEXANDER):

S. 342. A bill to amend the Child Abuse Prevention and Treatment Act to make improvements to and reauthorize programs under that Act, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. GREGG. Mr. President, last year our Nation was stunned by a videotape of a mother beating her 4 year old daughter in the parking lot of a shopping center. Yet the unfortunate fact is that each year, behind closed doors, close to one million children in the United States are abused or neglected and as a result, are in need of assistance and out-of-home care.

I am pleased today to be joined by Senators KENNEDY, DODD and ALEXANDER, in introducing legislation aimed at reducing child abuse and neglect and mitigating its very damaging impact. The ''Keeping Children and Families Safe Act of 2003'' reauthorizes four key programs designed to do just that.

First, we reauthorize the Child Abuse Prevention and Treatment Act, CAPTA, which provides grants to States to improve child protection systems and to support community-based family resource and support services. CAPTA also authorizes research and demonstration projects aimed at preventing and treating child abuse and neglect.

The last reauthorization of CAPTA in 1996 made significant changes in this program to better target limited Federal resources and to enhance the ability of States to respond to the most serious cases of abuse and neglect. Unfortunately, the issues facing an overburdened child welfare system are seldom easily resolved. The Keeping Children and Families Safe Act will build upon previous changes to CAPTA, by enhancing the CPS workforce and continuing to ensure that children and families receive appropriate services and referrals.

The legislation my colleagues and I are introducing today encourages new training and better qualifications for child and family service workers. With this reauthorization, States can give additional training to CPS workers on how to best work with families from the time that the CPS worker walks through the door of a home to the point of treatment for the child and family.

In 2000, CPS workers nationwide investigated 1.7 million cases of reported Child Abuse and Neglect. The environments in which CPS workers conduct these investigations can vary greatly in level of safety. With this legislation, States will be able to use Federal dollars to provide some personal safety training for CPS workers for when they enter the home. Additionally, the rights of families are also addressed during the initial stages of investigation, by requiring CPS workers to inform individuals of child maltreatment allegations made against them.

During their investigations, CPS workers encounter a myriad of types of abuse. In 2000, approximately 63 percent of children who were victims of maltreatment suffered neglect, 19 percent suffered physical abuse, 10 percent suffered sexual abuse, and 8 percent suffered emotional maltreatment. In order to help insure that cases of abuse and neglect are properly identified, States would be able to provide cross-training for CPS workers to help them better recognize neglect, domestic violence or substance abuse in a family. This bill would also enhance linkages between child protection services and education, health, mental health, and judicial systems. Further, it would encourage greater collaboration with the juvenile justice system to ensure that children who move between these two systems do so smoothly and receive the proper services.

As a condition of receiving state grant money, we ask States to have policies and procedures, including referral to CPS, to address the needs of infants who have been prenatally exposed to illegal substances. We also require States to perform background checks on all adults in prospective foster care households. Current law only requires that checks be performed on the prospective foster care parent.

We have all heard the horrific accounts in the media of those children who slip through the cracks of the child protective system. It is our hope that with this reauthorization, which includes an increase in authorization to $200 million, we can help States to fill some of those cracks.

The second program we reauthorize is the Adoption Opportunities Act. This Act is intended to eliminate barriers to adoption and to provide permanent homes for children, particularly children who are hard to place, including children with special needs, older children, and disabled infants with life-threatening conditions.

With 131,000 children currently waiting for adoption, we must improve upon this program by seeking to further tear down barriers to adoption. Specifically—we are placing an increased emphasis on the elimination of inter-jurisdictional barriers to adoption.

This Act would require the Secretary of the Department of Health and Human Services to fund public or private entities, including States, to develop a uniform home-study standard and protocols for acceptance of home-studies between States and jurisdictions. The Secretary would also help to facilitate cross-jurisdictional placements by developing models of financing, expanding capacity of all adoption exchanges to serve increasing numbers of children, training social workers on preparing and moving children across State lines, and developing and supporting models for networking among agencies, adoption exchange, and parent support groups across jurisdictional boundaries.

Within one year of enactment, the bill would require the Department of Health and Human Services, in consultation with the General Accounting Office, to facilitate the inter-jurisdictional adoption of foster children. Additionally, the bill would also make inter-jurisdictional adoption issues—including financing and best practices—a part of a larger study HHS would be required to conduct on adoption placements. Current law generally allows HHS to fund services provided by public and nonprofit private agencies only. To help facilitate this process, we would double the current authorization for this title from $20 million to $40 million.

Third, the Keeping Children and Families Safe Act of 2003 reauthorizes the Abandoned Infants Assistance Act. This program authorizes demonstration grants to public and private nonprofit agencies for activities aimed at preventing the abandonment of infants, identifying and addressing the needs of abandoned infants, and recruiting and training foster families for abandoned children.

Currently, grant recipients must ensure that priority for their services is given to abandoned infants and young children who are HIV-infected, perinatally exposed to HIV, or perinatally drug-exposed. This legislation, which includes and increase in authorization to $45 million, would broaden priority for services to include abandoned infants and young children who have life threatening illnesses or other special medical needs.

Finally, we reauthorize the Family Violence Prevention and Services Act, FVPSA, which assists in efforts to increase public awareness about family violence and provide immediate shelter and related assistance to victims of family violence and their children.

This reauthorization increases the authorization for the National Domestic Violence Hotline to $5 million and establishes a National Domestic Violence Shelter Network to link domestic violence shelters and service providers and the National Domestic Violence Hotline on a confidential website. The website would provide a continuously updated list of shelter availability anywhere in the United States at any time and would provide comprehensive information describing the services each shelter provides such as medical, social and bilingual services. It would also provide internet access to shelters that do not have appropriate technology.

Domestic violence and child abuse affect thousands upon thousands of families each year, often with tragic results. In the year 2000 alone, 1200 children died as a consequence of child abuse and neglect, 85 percent of whom were under the age of 6. We must continue our efforts to stem the tide of abuse to prevent these dreadful results. This legislation reauthorizes four programs that address the needs of some of our most at-risk children and families, and I urge my colleagues' support.

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. 342

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

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the ''Keeping Children and Families Safe Act of 2003''.

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

Sec. 1. Short title; table of contents.

TITLE I—CHILD ABUSE PREVENTION AND TREATMENT ACT

Sec. 101. Findings.

Subtitle A—General Program

Sec. 111. National clearinghouse for information relating to child abuse.
Sec. 112. Research and assistance activities and demonstrations.
Sec. 113. Grants to States and public or private agencies and organizations.
Sec. 114. Grants to States for child abuse and neglect prevention and treatment programs.
Sec. 115. Miscellaneous requirements relating to assistance.
Sec. 116. Authorization of appropriations.
Sec. 117. Reports.

Subtitle B—Community-Based Grants for the Prevention of Child Abuse

Sec. 121. Purpose and authority.
Sec. 122. Eligibility.
Sec. 123. Amount of grant.
Sec. 124. Existing grants.
Sec. 125. Application.
Sec. 126. Local program requirements.
Sec. 127. Performance measures.
Sec. 128. National network for community-based family resource programs.
Sec. 129. Definitions.
Sec. 130. Authorization of appropriations.

Subtitle C—Conforming Amendments

Sec. 141. Conforming amendments.

TITLE II—ADOPTION OPPORTUNITIES

Sec. 201. Congressional findings and declaration of purpose.
Sec. 202. Information and services.
Sec. 203. Study of adoption placements.
Sec. 204. Studies on successful adoptions.
Sec. 205. Authorization of appropriations.

TITLE III—ABANDONED INFANTS ASSISTANCE

Sec. 301. Findings.
Sec. 302. Establishment of local projects.
Sec. 303. Evaluations, study, and reports by Secretary.
Sec. 304. Authorization of appropriations.
Sec. 305. Definitions.

TITLE IV—FAMILY VIOLENCE PREVENTION AND SERVICES ACT

Sec. 401. State demonstration grants.
Sec. 402. Secretarial responsibilities.
Sec. 403. Evaluation.
Sec. 404. Information and technical assistance centers.
Sec. 405. Authorization of appropriations.
Sec. 406. Grants for State domestic violence coalitions.
Sec. 407. Evaluation and monitoring.
Sec. 408. Family member abuse information and documentation project.
Sec. 409. Model State leadership grants.
Sec. 410. National domestic violence hotline grant.
Sec. 411. Youth education and domestic violence.
Sec. 412. National domestic violence shelter network.
Sec. 413. Demonstration grants for community initiatives.
Sec. 414. Transitional housing assistance.
Sec. 415. Technical and conforming amendments.

## TITLE I—CHILD ABUSE PREVENTION AND TREATMENT ACT

**SEC. 101. FINDINGS.**

Section 2 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 note) is amended—

(1) in paragraph (1), by striking ''close to 1,000,000'' and inserting ''approximately 900,000'';

(2) by redesignating paragraphs (2) through (11) as paragraphs (4) through (13), respectively;

(3) by inserting after paragraph (1) the following:

''(2)(A) more children suffer neglect than any other form of maltreatment; and

''(B) investigations have determined that approximately 63 percent of children who were victims of maltreatment in 2000 suffered neglect, 19 percent suffered physical abuse, 10 percent suffered sexual abuse, and 8 percent suffered emotional maltreatment;

''(3)(A) child abuse can result in the death of a child;

''(B) in 2000, an estimated 1,200 children were counted by child protection services to have died as a result of abuse or neglect; and

''(C) children younger than 1 year old comprised 44 percent of child abuse fatalities and 85 percent of child abuse fatalities were younger than 6 years of age;'';

(4) by striking paragraph (4) (as so redesignated), and inserting the following:

''(4)(A) many of these children and their families fail to receive adequate protection and treatment;

''(B) slightly less than half of these children (45 percent in 2000) and their families fail to receive adequate protection or treatment; and

''(C) in fact, approximately 80 percent of all children removed from their homes and placed in foster care in 2000, as a result of an investigation or assessment conducted by the child protective services agency, received no services;'';

(5) in paragraph (5) (as so redesignated)—

(A) in subparagraph (A), by striking ''organizations'' and inserting ''community-based organizations'';

(B) in subparagraph (D), by striking ''ensures'' and all that follows through ''knowledge,'' and inserting ''recognizes the need for properly trained staff with the qualifications needed''; and

(C) in subparagraph (E), by inserting before the semicolon the following: '', which may impact child rearing patterns, while at the same time, not allowing those differences to enable abuse'';

(6) in paragraph (7) (as so redesignated), by striking ''this national child and family emergency'' and inserting ''child abuse and neglect''; and

(7) in paragraph (9) (as so redesignated)—

(A) by striking ''intensive'' and inserting ''needed''; and

(B) by striking ''if removal has taken place'' and inserting ''where appropriate''.

### Subtitle A—General Program

**SEC. 111. NATIONAL CLEARINGHOUSE FOR INFORMATION RELATING TO CHILD ABUSE.**

(a) FUNCTIONS.—Section 103(b) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5104(b)) is amended—

(1) in paragraph (1), by striking ''all programs,'' and all that follows through ''neglect; and'' and inserting ''all effective programs, including private and community-based programs, that show promise of success with respect to the prevention, assessment, identification, and treatment of child abuse and neglect and hold the potential for broad scale implementation and replication;'';

(2) in paragraph (2), by striking the period and inserting a semicolon;

(3) by redesignating paragraph (2) as paragraph (3);

(4) by inserting after paragraph (1) the following:

''(2) maintain information about the best practices used for achieving improvements in child protective systems;''; and

(5) by adding at the end the following:

''(4) provide technical assistance upon request that may include an evaluation or identification of—

''(A) various methods and procedures for the investigation, assessment, and prosecution of child physical and sexual abuse cases;

''(B) ways to mitigate psychological trauma to the child victim; and

''(C) effective programs carried out by the States under this Act; and

''(5) collect and disseminate information relating to various training resources available at the State and local level to—

''(A) individuals who are engaged, or who intend to engage, in the prevention, identification, and treatment of child abuse and neglect; and

''(B) appropriate State and local officials to assist in training law enforcement, legal, judicial, medical, mental health, education, and child welfare personnel.''.

(b) COORDINATION WITH AVAILABLE RESOURCES.—Section 103(c)(1) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5104(c)(1)) is amended—

(1) in subparagraph (E), by striking ''105(a); and'' and inserting ''104(a);'';

(2) by redesignating subparagraph (F) as subparagraph (G); and

(3) by inserting after subparagraph (E) the following:

''(F) collect and disseminate information that describes best practices being used throughout the Nation for making appropriate referrals related to, and addressing, the physical, developmental, and mental health needs of abused and neglected children; and''.

**SEC. 112. RESEARCH AND ASSISTANCE ACTIVITIES AND DEMONSTRATIONS.**

(a) RESEARCH.—Section 104(a) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5105(a)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), in the first sentence, by inserting '', including longitudinal research,'' after ''interdisciplinary program of research''; and

(B) in subparagraph (B), by inserting before the semicolon the following: '', including the effects of abuse and neglect on a child's development and the identification of successful early intervention services or other services that are needed'';

(C) in subparagraph (C)—

(i) by striking ''judicial procedures'' and inserting ''judicial systems, including multidisciplinary, coordinated decisionmaking procedures''; and

(ii) by striking ''and'' at the end; and

(D) in subparagraph (D)—

(i) in clause (viii), by striking ''and'' at the end;

(ii) by redesignating clause (ix) as clause (x); and

(iii) by inserting after clause (viii), the following:

''(ix) the incidence and prevalence of child maltreatment by a wide array of demographic characteristics such as age, sex, race, family structure, household relationship (including the living arrangement of the resident parent and family size), school enrollment and education attainment, disability, grandparents as caregivers, labor force status, work status in previous year, and income in previous year; and'';

(E) by redesignating subparagraph (D) as subparagraph (I); and

(F) by inserting after subparagraph (C), the following:

''(D) the evaluation and dissemination of best practices consistent with the goals of achieving improvements in the child protective services systems of the States in accordance with paragraphs (1) through (12) of section 106(a);

''(E) effective approaches to interagency collaboration between the child protection system and the juvenile justice system that improve the delivery of services and treatment, including methods for continuity of treatment plan and services as children transition between systems;

''(F) an evaluation of the redundancies and gaps in the services in the field of child abuse and neglect prevention in order to make better use of resources;

''(G) the nature, scope, and practice of voluntary relinquishment for foster care or State guardianship of low income children who need health services, including mental health services;

''(H) the information on the national incidence of child abuse and neglect specified in clauses (i) through (xi) of subparagraph (H); and'';

(2) in paragraph (2), by striking subparagraph (B) and inserting the following:

''(B) Not later than 2 years after the date of enactment of the Keeping Children and Families Safe Act of 2003, and every 2 years thereafter, the Secretary shall provide an opportunity for public comment concerning the priorities proposed under subparagraph (A) and maintain an official record of such public comment.'';

(3) by redesignating paragraph (2) as paragraph (4);

(4) by inserting after paragraph (1) the following:

''(2) RESEARCH.—The Secretary shall conduct research on the national incidence of child abuse and neglect, including the information on the national incidence on child abuse and neglect specified in subparagraphs (i) through (ix) of paragraph (1)(I).

''(3) REPORT.—Not later than 4 years after the date of the enactment of the Keeping Children and Families Safe Act of 2003, the Secretary shall prepare and submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor and Pensions of the Senate a report that contains the results of the research conducted under paragraph (2).''.

(b) PROVISION OF TECHNICAL ASSISTANCE.—Section 104(b) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5105(b)) is amended—

(1) in paragraph (1)—

(A) by striking ''nonprofit private agencies and'' and inserting ''private agencies and community-based''; and

(B) by inserting '', including replicating successful program models,'' after ''programs and activities''; and

(2) in paragraph (2)—

(A) in subparagraph (B), by striking ''and'' at the end;

(B) in subparagraph (C), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(D) effective approaches being utilized to link child protective service agencies with health care, mental health care, and developmental services to improve forensic diagnosis and health evaluations, and barriers and shortages to such linkages.''.

(c) DEMONSTRATION PROGRAMS AND PROJECTS.—Section 104 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5105) is amended by adding at the end the following:

''(e) DEMONSTRATION PROGRAMS AND PROJECTS.—The Secretary may award grants to, and enter into contracts with, States or public or private agencies or organizations (or combinations of such agencies or organizations) for time-limited, demonstration projects for the following:

''(1) PROMOTION OF SAFE, FAMILY-FRIENDLY PHYSICAL ENVIRONMENTS FOR VISITATION AND EXCHANGE.—The Secretary may award grants under this subsection to entities to assist such entities in establishing and operating safe, family-friendly physical environments—

''(A) for court-ordered, supervised visitation between children and abusing parents; and

''(B) to safely facilitate the exchange of children for visits with noncustodial parents in cases of domestic violence.

''(2) EDUCATION IDENTIFICATION, PREVENTION, AND TREATMENT.—The Secretary may award grants under this subsection to entities for projects that provide educational identification, prevention, and treatment services in cooperation with preschool and elementary and secondary schools.

''(3) RISK AND SAFETY ASSESSMENT TOOLS.—The Secretary may award grants under this subsection to entities for projects that provide for the development of effective and research-based risk and safety assessment tools relating to child abuse and neglect.

''(4) TRAINING.—The Secretary may award grants under this subsection to entities for projects that involve effective and research-based innovative training for mandated child abuse and neglect reporters.

''(5) COMPREHENSIVE ADOLESCENT VICTIM/VICTIMIZER PREVENTION PROGRAMS.—The Secretary may award grants to organizations that demonstrate innovation in preventing child sexual abuse through school-based programs in partnership with parents and community-based organizations to establish a network of trainers who will work with schools to implement the program. The program shall be comprehensive, meet State guidelines for health education, and should reduce child sexual abuse by focusing on prevention for both adolescent victims and victimizers.''.

**SEC. 113. GRANTS TO STATES AND PUBLIC OR PRIVATE AGENCIES AND ORGANIZATIONS.**

(a) DEMONSTRATION PROGRAMS AND PROJECTS.—Section 105(a) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106(a)) is amended—

(1) in the subsection heading, by striking ''DEMONSTRATION'' and inserting ''GRANTS FOR'';

(2) in the matter preceding paragraph (1)—

(A) by inserting ''States,'' after ''contracts with,'';

(B) by striking ''nonprofit''; and

(C) by striking ''time limited, demonstration'';

(3) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking ''nonprofit'';

(B) in subparagraph (A), by striking ''law, education, social work, and other relevant fields'' and inserting ''law enforcement, judiciary, social work and child protection, education, and other relevant fields, or individuals such as court appointed special advocates (CASAs) and guardian ad litem,'';

(C) in subparagraph (B), by striking ''nonprofit'' and all that follows through ''; and'' and inserting ''children, youth and family service organizations in order to prevent child abuse and neglect;'';

(D) in subparagraph (C), by striking the period and inserting a semicolon;

(E) by adding at the end the following:

''(D) for training to support the enhancement of linkages between child protective service agencies and health care agencies, including physical and mental health services, to improve forensic diagnosis and health evaluations and for innovative partnerships between child protective service agencies and health care agencies that offer creative approaches to using existing Federal, State, local, and private funding to meet the health evaluation needs of children who have been subjects of substantiated cases of child abuse or neglect;

''(E) for the training of personnel in best practices to promote collaboration with the families from the initial time of contact during the investigation through treatment;

''(F) for the training of personnel regarding the legal duties of such personnel and their responsibilities to protect the legal rights of children and families;

''(G) for improving the training of supervisory and nonsupervisory child welfare workers;

''(H) for enabling State child welfare agencies to coordinate the provision of services with State and local health care agencies, alcohol and drug abuse prevention and treatment agencies, mental health agencies, and other public and private welfare agencies to promote child safety, permanence, and family stability;

''(I) for cross training for child protective service workers in effective and research-based methods for recognizing situations of substance abuse, domestic violence, and neglect; and

''(J) for developing, implementing, or operating information and education programs or training programs designed to improve the provision of services to disabled infants with life-threatening conditions for—

''(i) professionals and paraprofessional personnel concerned with the welfare of disabled infants with life-threatening conditions, including personnel employed in child protective services programs and health care facilities; and

''(ii) the parents of such infants.'';

(4) by redesignating paragraph (2) and (3) as paragraphs (3) and (4), respectively;

(5) by inserting after paragraph (1), the following:

''(2) TRIAGE PROCEDURES.—The Secretary may award grants under this subsection to public and private agencies that demonstrate innovation in responding to reports of child abuse and neglect, including programs of collaborative partnerships between the State child protective services agency, community social service agencies and family support programs, law enforcement agencies, developmental disability agencies, substance abuse treatment entities, health care entities, domestic violence prevention entities, mental health service entities, schools, churches and synagogues, and other community agencies, to allow for the establishment of a triage system that—

''(A) accepts, screens, and assesses reports received to determine which such reports require an intensive intervention and which require voluntary referral to another agency, program, or project;

''(B) provides, either directly or through referral, a variety of community-linked services to assist families in preventing child abuse and neglect; and

''(C) provides further investigation and intensive intervention where the child's safety is in jeopardy.'';

(6) in paragraph (3) (as so redesignated), by striking ''nonprofit organizations (such as Parents Anonymous)'' and inserting ''organizations'';

(7) in paragraph (4) (as so redesignated)—

(A) by striking the paragraph heading;

(B) by striking subparagraphs (A) and (C); and

(C) in subparagraph (B)—

(i) by striking ''(B) KINSHIP CARE.—'' and inserting the following:

''(4) KINSHIP CARE.—

''(A) IN GENERAL.—''; and

(ii) by striking ''nonprofit''; and

(8) by adding at the end the following:

''(5) LINKAGES BETWEEN CHILD PROTECTIVE SERVICE AGENCIES AND PUBLIC HEALTH, MENTAL HEALTH, AND DEVELOPMENTAL DISABILITIES AGENCIES.—The Secretary may award grants to entities that provide linkages between State or local child protective service agencies and public health, mental health, and developmental disabilities agencies, for the purpose of establishing linkages that are designed to help assure that a greater number of substantiated victims of child maltreatment have their physical health, mental health, and developmental needs appropriately diagnosed and treated, in accordance with all applicable Federal and State privacy laws.''.

(b) DISCRETIONARY GRANTS.—Section 105(b) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106(b)) is amended—

(1) in the matter preceding paragraph (1), by striking ''subsection (b)'' and inserting ''subsection (a)'';

(2) by striking paragraph (1);

(3) by redesignating paragraphs (2) and (3) as paragraphs (1) and (2), respectively;

(4) by inserting after paragraph (2) (as so redesignated), the following:

''(3) Programs based within children's hospitals or other pediatric and adolescent care facilities, that provide model approaches for improving medical diagnosis of child abuse and neglect and for health evaluations of children for whom a report of maltreatment has been substantiated.''; and

(5) in paragraph (4)(D), by striking ''nonprofit''.

(c) EVALUATION.—Section 105(c) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106(c)) is amended—

(1) in the first sentence, by striking ''demonstration'';

(2) in the second sentence, by inserting ''or contract'' after ''or as a separate grant''; and

(3) by adding at the end the following: ''In the case of an evaluation performed by the recipient of a grant, the Secretary shall make available technical assistance for the evaluation, where needed, including the use of a rigorous application of scientific evaluation techniques.''.

(d) TECHNICAL AMENDMENT TO HEADING.—The section heading for section 105 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106) is amended to read as follows:

**''SEC. 105. GRANTS TO STATES AND PUBLIC OR PRIVATE AGENCIES AND ORGANIZATIONS.''.**

**SEC. 114. GRANTS TO STATES FOR CHILD ABUSE AND NEGLECT PREVENTION AND TREATMENT PROGRAMS.**

(a) DEVELOPMENT AND OPERATION GRANTS.—Section 106(a) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(a)) is amended—

(1) in paragraph (3)—

(A) by inserting '', including ongoing case monitoring,'' after ''case management''; and

(B) by inserting ''and treatment'' after ''and delivery of services'';

(2) in paragraph (4), by striking ''improving'' and all that follows through ''referral systems'' and inserting ''developing, improving, and implementing risk and safety assessment tools and protocols'';

(3) by striking paragraph (7);

(4) by redesignating paragraphs (5), (6), (8), and (9) as paragraphs (6), (8), (9), and (12), respectively;

(5) by inserting after paragraph (4), the following:

''(5) developing and updating systems of technology that support the program and track reports of child abuse and neglect from intake through final disposition and allow interstate and intrastate information exchange;'';

(6) in paragraph (6) (as so redesignated), by striking ''opportunities'' and all that follows through ''system'' and inserting ''including—

''(A) training regarding effective and research-based practices to promote collaboration with the families;

''(B) training regarding the legal duties of such individuals; and

''(C) personal safety training for case workers;'';

(7) by inserting after paragraph (6) (as so redesignated) the following:

''(7) improving the skills, qualifications, and availability of individuals providing services to children and families, and the supervisors of such individuals, through the child protection system, including improvements in the recruitment and retention of caseworkers;'';

(8) by striking paragraph (9) (as so redesignated), and inserting the following:

''(9) developing and facilitating effective and research-based training protocols for individuals mandated to report child abuse or neglect;

''(10) developing, implementing, or operating programs to assist in obtaining or coordinating necessary services for families of disabled infants with life-threatening conditions, including—

''(A) existing social and health services;

''(B) financial assistance; and

''(C) services necessary to facilitate adoptive placement of any such infants who have been relinquished for adoption;

''(11) developing and delivering information to improve public education relating to the role and responsibilities of the child protection system and the nature and basis for reporting suspected incidents of child abuse and neglect;'';

(9) in paragraph (12) (as so redesignated), by striking the period and inserting a semicolon; and

(10) by adding at the end the following:

''(13) supporting and enhancing interagency collaboration between the child protection system and the juvenile justice system for improved delivery of services and treatment, including methods for continuity of treatment plan and services as children transition between systems; or

''(14) supporting and enhancing collaboration among public health agencies, the child protection system, and private community-based programs to provide child abuse and neglect prevention and treatment services (including linkages with education systems) and to address the health needs, including mental health needs, of children identified as abused or neglected, including supporting prompt, comprehensive health and developmental evaluations for children who are the subject of substantiated child maltreatment reports.''.

(b) ELIGIBILITY REQUIREMENTS.—

(1) IN GENERAL.—Section 106(b) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(b)) is amended—

(A) in paragraph (1)(B)—

(i) by striking ''provide notice to the Secretary of any substantive changes'' and inserting the following: '' provide notice to the Secretary—

''(i) of any substantive changes; and'';

(ii) by striking the period and inserting ''; and''; and

(iii) by adding at the end the following:

''(ii) any significant changes to how funds provided under this section are used to support the activities which may differ from the activities as described in the current State application.'';

(B) in paragraph (2)(A)—

(i) by redesignating clauses (ii), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi), (xii), and (xiii) as clauses (iv), (vi), (vii), (viii), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi) and (xvii), respectively;

(ii) by inserting after clause (i), the following:

''(ii) policies and procedures (including appropriate referrals to child protection service systems and for other appropriate services) to address the needs of infants born and identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure;

''(iii) the development of a plan of safe care for the infant born and identified as being affected by illegal substance abuse or withdrawal symptoms;'';

(iii) in clause (iv) (as so redesignated), by inserting ''risk and'' before ''safety'';

(iv) by inserting after clause (iv) (as so redesignated), the following:

''(v) triage procedures for the appropriate referral of a child not at risk of imminent harm to a community organization or voluntary preventive service;'';

(v) in clause (viii)(II) (as so redesignated), by striking '', having a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect'' and inserting '', as described in clause (ix)'';

(vi) by inserting after clause (viii) (as so redesignated), the following:

''(ix) provisions to require a State to disclose confidential information to any Federal, State, or local government entity, or any agent of such entity, that has a need for such information in order to carry out its responsibilities under law to protect children from abuse and neglect;'';

(vii) in clause (xiii) (as so redesignated)—

(I) by inserting ''who has received training appropriate to the role, and'' after ''guardian ad litem,''; and

(II) by inserting ''who has received training appropriate to that role'' after ''advocate'';

(viii) in clause (xv) (as so redesignated), by striking ''to be effective not later than 2 years after the date of enactment of this section'';

(ix) in clause (xvi) (as so redesignated)—

(I) by striking ''to be effective not later than 2 years after the date of enactment of this section''; and

(II) by striking ''and'' at the end;

(x) in clause (xvii) (as so redesignated), by striking ''clause (xii)'' each place that such appears and inserting ''clause (xvi)''; and

(xi) by adding at the end the following:

''(xviii) provisions and procedures to require that a representative of the child protective services agency shall, at the initial time of contact with the individual subject to a child abuse and neglect investigation, advise the individual of the complaints or allegations made against the individual, in a manner that is consistent with laws protecting the rights of the informant;

''(xix) provisions addressing the training of representatives of the child protective services system regarding the legal duties of the representatives, which may consist of various methods of informing such representatives of such duties, in order to protect the legal rights and safety of children and families from the initial time of contact during investigation through treatment;

''(xx) provisions and procedures for improving the training, retention, and supervision of caseworkers; and

''(xxi) not later than 2 years after the date of enactment of the Keeping Children and Families Safe Act of 2003, provisions and procedures for requiring criminal background record checks for prospective foster and adoptive parents and other adult relatives and non-relatives residing in the household;''; and

(C) in paragraph (2), by adding at the end the following flush sentence:

''Nothing in subparagraph (A) shall be construed to limit the State's flexibility to determine State policies relating to public access to court proceedings to determine child abuse and neglect.''.

(2) LIMITATION.—Section 106(b)(3) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(b)(3)) is amended by striking ''With regard to clauses (v) and (vi) of paragraph (2)(A)'' and inserting ''With regard to clauses (vi) and (vii) of paragraph (2)(A)''.

(c) CITIZEN REVIEW PANELS.—Section 106(c) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(c)) is amended—

(1) in paragraph (4)—

(A) in subparagraph (A)—

(i) in the matter preceding clause (i)—

(I) by striking ''and procedures'' and inserting '', procedures, and practices''; and

(II) by striking ''the agencies'' and inserting ''State and local child protection system agencies''; and

(ii) in clause (iii)(I), by striking ''State'' and inserting ''State and local''; and

(B) by adding at the end the following:

''(C) PUBLIC OUTREACH.—Each panel shall provide for public outreach and comment in order to assess the impact of current procedures and practices upon children and families in the community and in order to meet its obligations under subparagraph (A).''; and

(2) in paragraph (6)—

(A) by striking ''public'' and inserting ''State and the public''; and

(B) by inserting before the period the following: ''and recommendations to improve the child protection services system at the State and local levels. Not later than 6 months after the date on which a report is submitted by the panel to the State, the appropriate State agency shall submit a written response to the citizen review panel that describes whether or how the State will incorporate the recommendations of such panel (where appropriate) to make measurable progress in improving the State and local child protective system''.

(d) ANNUAL STATE DATA REPORTS.—Section 106(d) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106a(d)) is amended by adding at the end the following:

''(13) The annual report containing the summary of the activities of the citizen review panels of the State required by subsection (c)(6).

''(14) The number of children under the care of the State child protection system who are transferred into the custody of the State juvenile justice system.''.

(e) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services shall prepare and submit to Congress a report that describes the extent to which States are implementing the policies and procedures required under section 106(b)(2)(B)(ii) of the Child Abuse Prevention and Treatment Act.

**SEC. 115. MISCELLANEOUS REQUIREMENTS RELATING TO ASSISTANCE.**

Section 108 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106d) is amended by adding at the end the following:

''(d) GAO STUDY.—Not later than February 1, 2004, the Comptroller General of the United States shall conduct a survey of a wide range of State and local child protection service systems to evaluate and submit to Congress a report concerning—

''(1) the current training (including cross-training in domestic violence or substance abuse) of child protective service workers in the outcomes for children and to analyze and evaluate the effects of caseloads, compensation, and supervision on staff retention and performance;

''(2) the efficiencies and effectiveness of agencies that provide cross-training with court personnel; and

''(3) recommendations to strengthen child protective service effectiveness to improve outcomes for children.

''(e) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary should encourage all States and public and private agencies or organizations that receive assistance under this title to ensure that children and families with limited English proficiency who participate in programs under this title are provided materials and services under such programs in an appropriate language other than English.

''(f) ANNUAL REPORT ON CERTAIN PROGRAMS.—A State that receives funds under section 106(a) shall annually prepare and submit to the Secretary a report describing the manner in which funds provided under this Act, alone or in combination with other Federal funds, were used to address the purposes and achieve the objectives of section 105(a)(4)(B).''.

**SEC. 116. AUTHORIZATION OF APPROPRIATIONS.**

(a) GENERAL AUTHORIZATION.—Section 112(a)(1) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106h(a)(1)) is amended to read as follows:

''(1) GENERAL AUTHORIZATION.—There are authorized to be appropriated to carry out this title $120,000,000 for fiscal year 2004 and such sums as may be necessary for each of the fiscal years 2005 through 2008.''.

(b) DEMONSTRATION PROJECTS.—Section 112(a)(2)(B) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106h(a)(2)(B)) is amended—

(1) by striking ''Secretary make'' and inserting ''Secretary shall make''; and

(2) by striking ''section 106'' and inserting ''section 104''.

**SEC. 117. REPORTS.**

Section 110 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5106f) is amended by adding at the end the following:

''(c) STUDY AND REPORT RELATING TO CITIZEN REVIEW PANELS.—

''(1) STUDY.—The Secretary shall conduct a study by random sample of the effectiveness of the citizen review panels established under section 106(c).

''(2) REPORT.—Not later than 3 years after the date of enactment of the Keeping Children and Families Safe Act of 2003, the Secretary shall submit to the Committee on Education and the Workforce of the House of Representatives and the Committee on Health, Education, Labor, and Pensions of the Senate a report that contains the results of the study conducted under paragraph (1).''.

**Subtitle B—Community-Based Grants for the Prevention of Child Abuse**

**SEC. 121. PURPOSE AND AUTHORITY.**

(a) PURPOSE.—Section 201(a)(1) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116(a)(1)) is amended to read as follows:

''(1) to support community-based efforts to develop, operate, expand, enhance, and, where appropriate to network, initiatives aimed at the prevention of child abuse and neglect, and to support networks of coordinated resources and activities to better strengthen and support families to reduce the likelihood of child abuse and neglect; and''.

(b) AUTHORITY.—Section 201(b) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116(b)) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A) by striking ''Statewide'' and all that follows through the dash, and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate) that are accessible, effective, culturally appropriate, and build upon existing strengths-that—'';

(B) in subparagraph (F), by striking ''and'' at the end; and

(C) by striking subparagraph (G) and inserting the following:

''(G) demonstrate a commitment to meaningful parent leadership, including among parents of children with disabilities, parents with disabilities, racial and ethnic minorities, and members of other underrepresented or underserved groups; and

''(H) provide referrals to early health and developmental services;''; and

(2) in paragraph (4)—

(A) by inserting ''through leveraging of funds'' after ''maximizing funding'';

(B) by striking ''a Statewide network of community-based, prevention-focused'' and inserting ''community-based and prevention-focused''; and

(C) by striking ''family resource and support program'' and inserting ''programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)''.

(c) TECHNICAL AMENDMENT TO TITLE HEADING.—Title II of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116) is amended by striking the heading for such title and inserting the following:

**''TITLE II—COMMUNITY–BASED GRANTS FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT''.**

**SEC. 122. ELIGIBILITY.**

Section 202 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116a) is amended—

(1) in paragraph (1)—

(A) in subparagraph (A)—

(i) by striking ''a Statewide network of community-based, prevention-focused'' and

inserting ''community-based and prevention-focused''; and

(ii) by striking ''family resource and support programs'' and all that follows through the semicolon and inserting ''programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate);''

(B) in subparagraph (B), by inserting ''that exists to strengthen and support families to prevent child abuse and neglect'' after ''written authority of the State)'';

(2) in paragraph (2)—

(A) in subparagraph (A), by striking ''a network of community-based family resource and support programs'' and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)'';

(B) in subparagraph (B)—

(i) by striking ''to the network''; and

(ii) by inserting '', and parents with disabilities'' before the semicolon;

(C) in subparagraph (C), by striking ''to the network''; and

(3) in paragraph (3)—

(A) in subparagraph (A), by striking ''Statewide network of community-based, prevention-focused, family resource and support programs'' and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)'';

(B) in subparagraph (B), by striking ''Statewide network of community-based, prevention-focused, family resource and support programs'' and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)'';

(C) in subparagraph (C), by striking ''and training and technical assistance, to the Statewide network of community-based, prevention-focused, family resource and support programs'' and inserting ''training, technical assistance, and evaluation assistance, to community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)''; and

(D) in subparagraph (D), by inserting '', parents with disabilities,'' after ''children with disabilities''.

**SEC. 123. AMOUNT OF GRANT.**

Section 203 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116b) is amended—

(1) in subsection (b)(1)(B)—

(A) by striking ''as the amount leveraged by the State from private, State, or other non-Federal sources and directed through the'' and inserting ''as the amount of private, State or other non-Federal funds leveraged and directed through the currently designated'';

(B) by striking ''State lead agency'' and inserting ''State lead entity''; and

(C) by striking ''the lead agency'' and inserting ''the current lead entity''; and

(2) in subsection (c)(2), by striking ''subsection (a)'' and inserting ''subsection (b)''.

**SEC. 124. EXISTING GRANTS.**

Section 204 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5115c) is repealed.

**SEC. 125. APPLICATION.**

Section 205 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116d) is amended—

(1) in paragraph (1), by striking ''Statewide network of community-based, prevention-focused, family resource and support programs'' and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)'';

(2) in paragraph (2)—

(A) by striking ''network of community-based, prevention-focused, family resource and support programs'' and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect (through networks where appropriate)'';

(B) by striking '', including those funded by programs consolidated under this Act,'';

(3) by striking paragraph (3), and inserting the following:

''(3) a description of the inventory of current unmet needs and current community-based and prevention-focused programs and activities to prevent child abuse and neglect, and other family resource services operating in the State;'';

(4) in paragraph (4), by striking ''State's network of community-based, prevention-focused, family resource and support programs'' and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'';

(5) in paragraph (5), by striking ''Statewide network of community-based, prevention-focused, family resource and support programs'' and inserting ''start up, maintenance, expansion, and redesign of community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'';

(6) in paragraph (7), by striking ''individual community-based, prevention-focused, family resource and support programs'' and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'';

(7) in paragraph (8), by striking ''community-based, prevention-focused, family resource and support programs'' and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'';

(8) in paragraph (9), by striking ''community-based, prevention-focused, family resource and support programs'' and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'';

(9) in paragraph (10), by inserting ''(where appropriate)'' after ''members'';

(10) in paragraph (11), by striking ''prevention-focused, family resource and support program'' and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect''; and

(11) by redesignating paragraph (13) as paragraph (12).

**SEC. 126. LOCAL PROGRAM REQUIREMENTS.**

Section 206(a) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116e(a)) is amended—

(1) in the matter preceding paragraph (1), by striking ''prevention-focused, family resource and support programs'' and inserting ''and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'';

(2) in paragraph (3)(B), by inserting ''voluntary home visiting and'' after ''including''; and

(3) by striking paragraph (6) and inserting the following:

''(6) participate with other community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect in the development, operation and expansion of networks where appropriate.''.

**SEC. 127. PERFORMANCE MEASURES.**

Section 207 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116f) is amended—

(1) in paragraph (1), by striking ''a Statewide network of community-based, prevention-focused, family resource and support programs'' and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'';

(2) by striking paragraph (3), and inserting the following:

''(3) shall demonstrate that they will have addressed unmet needs identified by the inventory and description of current services required under section 205(3);'';

(3) in paragraph (4),

(A) by inserting ''and parents with disabilities,'' after ''children with disabilities,''; and

(B) by striking ''evaluation of'' the first place it appears and all that follows through ''under this title'' and inserting ''evaluation of community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect, and in the design, operation and evaluation of the networks of such community-based and prevention-focused programs'';

(4) in paragraph (5), by striking '', prevention-focused, family resource and support programs'' and inserting ''and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect'';

(5) in paragraph (6), by striking ''Statewide network of community-based, prevention-focused, family resource and support programs'' and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect''; and

(6) in paragraph (8), by striking ''community based, prevention-focused, family resource and support programs'' and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect''.

**SEC. 128. NATIONAL NETWORK FOR COMMUNITY-BASED FAMILY RESOURCE PROGRAMS.**

Section 208(3) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116g(3)) is amended by striking ''Statewide networks of community-based, prevention-focused, family resource and support programs'' and inserting ''community-based and prevention-focused programs and activities designed to strengthen and support families to prevent child abuse and neglect''.

**SEC. 129. DEFINITIONS.**

(a) CHILDREN WITH DISABILITIES.—Section 209(1) of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116h(1)) is amended by striking ''given such term in section 602(a)(2)'' and inserting ''given the term 'child with a disability' in section 602(3) or 'infant or toddler with a disability' in section 632(5)''.

(b) COMMUNITY-BASED AND PREVENTION-FOCUSED PROGRAMS AND ACTIVITIES TO PREVENT CHILD ABUSE AND NEGLECT.—Section 209 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116h) is amended by striking paragraphs (3) and (4) and inserting the following:

''(3) COMMUNITY-BASED AND PREVENTION-FOCUSED PROGRAMS AND ACTIVITIES TO PREVENT CHILD ABUSE AND NEGLECT.—The term 'community-based and prevention-focused programs and activities designed to strengthen

and support families to prevent child abuse and neglect' includes organizations such as family resource programs, family support programs, voluntary home visiting programs, respite care programs, parenting education, mutual support programs, and other community programs or networks of such programs that provide activities that are designed to prevent or respond to child abuse and neglect.''.

**SEC. 130. AUTHORIZATION OF APPROPRIATIONS.**

Section 210 of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5116i) is amended to read as follows:

**''SEC. 210. AUTHORIZATION OF APPROPRIATIONS.**

''There are authorized to be appropriated to carry out this title $80,000,000 for fiscal year 2004 and such sums as may be necessary for each of the fiscal years 2005 through 2008.''.

**Subtitle C—Conforming Amendments**

**SEC. 141. CONFORMING AMENDMENTS.**

The table of contents of the Child Abuse Prevention and Treatment Act, as contained in section 1(b) of such Act (42 U.S.C. 5101 note), is amended as follows:

(1) By striking the item relating to section 105 and inserting the following:

''Sec. 105. Grants to States and public or private agencies and organizations.''.

(2) By striking the item relating to title II and inserting the following:

''TITLE II—COMMUNITY-BASED GRANTS FOR THE PREVENTION OF CHILD ABUSE AND NEGLECT''.

(3) By striking the item relating to section 204.

**TITLE II—ADOPTION OPPORTUNITIES**

**SEC. 201. CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE.**

Section 201 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5111) is amended—

(1) in subsection (a)—

(A) by striking paragraphs (1) through (4) and inserting the following:

''(1) the number of children in substitute care has increased by nearly 24 percent since 1994, as our Nation's foster care population included more than 565,000 as of September of 2001;

''(2) children entering foster care have complex problems that require intensive services, with many such children having special needs because they are born to mothers who did not receive prenatal care, are born with life threatening conditions or disabilities, are born addicted to alcohol or other drugs, or have been exposed to infection with the etiologic agent for the human immunodeficiency virus;

''(3) each year, thousands of children are in need of placement in permanent, adoptive homes;'';

(B) by striking paragraph (6);

(C) by striking paragraph (7)(A) and inserting the following:

''(7)(A) currently, there are 131,000 children waiting for adoption;''; and

(D) by redesignating paragraphs (5), (7), (8), (9), and (10) as paragraphs (4), (5), (6), (7), and (8) respectively; and

(2) in subsection (b)—

(A) in the matter preceding paragraph (1), by inserting '', including geographic barriers,'' after ''barriers''; and

(B) in paragraph (2), by striking ''a national'' and inserting ''an Internet-based national''.

**SEC. 202. INFORMATION AND SERVICES.**

Section 203 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5113) is amended—

(1) by striking the section heading and inserting the following:

**''SEC. 203. INFORMATION AND SERVICES.'';**

(2) by striking ''SEC. 203. (a) The Secretary'' and inserting the following:

''(a) IN GENERAL.—The Secretary'';

(3) in subsection (b)—

(A) by inserting ''REQUIRED ACTIVITIES.—'' after ''(b)'';

(B) in paragraph (1), by striking ''nonprofit'' each place that such appears;

(C) in paragraph (2), by striking ''nonprofit'';

(D) in paragraph (3), by striking ''nonprofit'';

(E) in paragraph (4), by striking ''nonprofit'';

(F) in paragraph (6), by striking ''study the nature, scope, and effects of'' and insert ''support'';

(G) in paragraph (7), by striking ''nonprofit'';

(H) in paragraph (9)—

(i) by striking ''nonprofit''; and

(ii) by striking ''and'' at the end;

(I) in paragraph (10)—

(i) by striking ''nonprofit''; each place that such appears; and

(ii) by striking the period at the end and inserting ''; and''; and

(J) by adding at the end the following:

''(11) provide (directly or by grant to or contract with States, local government entities, or public or private licensed child welfare or adoption agencies) for the implementation of programs that are intended to increase the number of older children (who are in foster care and with the goal of adoption) placed in adoptive families, with a special emphasis on child-specific recruitment strategies, including—

''(A) outreach, public education, or media campaigns to inform the public of the needs and numbers of older youth available for adoption;

''(B) training of personnel in the special needs of older youth and the successful strategies of child-focused, child-specific recruitment efforts; and

''(C) recruitment of prospective families for such children.'';

(4) in subsection (c)—

(A) by striking ''(c)(1) The Secretary'' and inserting the following:

''(c) SERVICES FOR FAMILIES ADOPTING SPECIAL NEEDS CHILDREN.—

''(1) IN GENERAL.—The Secretary'';

(B) by striking ''(2) Services'' and inserting the following:

''(2) SERVICES.—Services''; and

(C) in paragraph (2)—

(i) by realigning the margins of subparagraphs (A) through (G) accordingly;

(ii) in subparagraph (F), by striking ''and'' at the end;

(iii) in subparagraph (G), by striking the period and inserting a semicolon; and

(iv) by adding at the end the following:

''(H) day treatment; and

''(I) respite care.''; and

(D) by striking ''nonprofit''; each place that such appears;

(5) in subsection (d)—

(A) by striking ''(d)(1) The Secretary'' and inserting the following:

''(d) IMPROVING PLACEMENT RATE OF CHILDREN IN FOSTER CARE.—

''(1) IN GENERAL.—The Secretary'';

(B) by striking ''(2)(A) Each State'' and inserting the following:

''(2) APPLICATIONS; TECHNICAL AND OTHER ASSISTANCE.—

''(A) APPLICATIONS.—Each State'';

(C) by striking ''(B) The Secretary'' and inserting the following:

''(B) TECHNICAL AND OTHER ASSISTANCE.—The Secretary'';

(D) in paragraph (2)(B)—

(i) by realigning the margins of clauses (i) and (ii) accordingly; and

(ii) by striking ''nonprofit'';

(E) by striking ''(3)(A) Payments'' and inserting the following:

''(3) PAYMENTS.—

''(A) IN GENERAL.—Payments''; and

(F) by striking ''(B) Any payment'' and inserting the following:

''(B) REVERSION OF UNUSED FUNDS.—Any payment''; and

(6) by adding at the end the following:

''(e) ELIMINATION OF BARRIERS TO ADOPTIONS ACROSS JURISDICTIONAL BOUNDARIES.—

''(1) IN GENERAL.—The Secretary shall award grants to, or enter into contracts with, States, local government entities, public or private child welfare or adoption agencies, adoption exchanges, or adoption family groups to carry out initiatives to improve efforts to eliminate barriers to placing children for adoption across jurisdictional boundaries.

''(2) SERVICES TO SUPPLEMENT NOT SUPPLANT.—Services provided under grants made under this subsection shall supplement, not supplant, services provided using any other funds made available for the same general purposes including—

''(A) developing a uniform homestudy standard and protocol for acceptance of homestudies between States and jurisdictions;

''(B) developing models of financing cross-jurisdictional placements;

''(C) expanding the capacity of all adoption exchanges to serve increasing numbers of children;

''(D) developing training materials and training social workers on preparing and moving children across State lines; and

''(E) developing and supporting initiative models for networking among agencies, adoption exchanges, and parent support groups across jurisdictional boundaries.''.

**SEC. 203. STUDY OF ADOPTION PLACEMENTS.**

Section 204 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5114) is amended—

(1) by striking ''The'' and inserting ''(a) IN GENERAL.—The'';

(2) by striking ''of this Act'' and inserting ''of the Keeping Children and Families Safe Act of 2003'';

(3) by striking ''to determine the nature'' and inserting ''to determine—

''(1) the nature'';

(4) by striking ''which are not licensed'' and all that follows through ''entity'';''; and

(5) by adding at the end the following:

''(2) how interstate placements are being financed across State lines;

''(3) recommendations on best practice models for both interstate and intrastate adoptions; and

''(4) how State policies in defining special needs children differentiate or group similar categories of children.''.

**SEC. 204. STUDIES ON SUCCESSFUL ADOPTIONS.**

Section 204 of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5114) is amended by adding at the end the following:

''(b) DYNAMICS OF SUCCESSFUL ADOPTION.—The Secretary shall conduct research (directly or by grant to, or contract with, public or private nonprofit research agencies or organizations) about adoption outcomes and the factors affecting those outcomes. The Secretary shall submit a report containing the results of such research to the appropriate committees of the Congress not later than the date that is 36 months after the date of the enactment of the Keeping Children and Families Safe Act of 2003.

''(c) INTERJURISDICTIONAL ADOPTION.—Not later than 1 year after the date of the enactment of the Keeping Children and Families Safe Act of 2003, the Secretary, in consultation with the Comptroller General, shall submit to the appropriate committees of the Congress a report that contains recommendations for an action plan to facilitate the interjurisdictional adoption of foster children.''.

**SEC. 205. AUTHORIZATION OF APPROPRIATIONS.**

Section 205(a) of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (42 U.S.C. 5115(a)) is amended to read as follows:

''There are authorized to be appropriated $40,000,000 for fiscal year 2004 and such sums as may be necessary for fiscal years 2005 through 2008 to carry out programs and activities authorized under this subtitle.''.

## TITLE III—ABANDONED INFANTS ASSISTANCE

**SEC. 301. FINDINGS.**

Section 2 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended—

(1) by striking paragraph (1);

(2) in paragraph (2)—

(A) by inserting ''studies indicate that a number of factors contribute to'' before ''the inability of'';

(B) by inserting ''some'' after ''inability of'';

(C) by striking ''who abuse drugs''; and

(D) by striking ''care for such infants'' and inserting ''care for their infants'';

(3) by amending paragraph (5) to read as follows:

''(5) appropriate training is needed for personnel working with infants and young children with life-threatening conditions and other special needs, including those who are infected with the human immunodeficiency virus (commonly known as 'HIV'), those who have acquired immune deficiency syndrome (commonly known as 'AIDS'), and those who have been exposed to dangerous drugs;'';

(4) by striking paragraphs (6) and (7);

(5) in paragraph (8)—

(A) by striking ''such infants and young children'' and inserting ''infants and young children who are abandoned in hospitals''; and

(B) by inserting ''by parents abusing drugs,'' after ''deficiency syndrome,'';

(6) in paragraph (9), by striking ''comprehensive services'' and all that follows through the semicolon at the end and inserting ''comprehensive support services for such infants and young children and their families and services to prevent the abandonment of such infants and young children, including foster care services, case management services, family support services, respite and crisis intervention services, counseling services, and group residential home services;'';

(7) by striking paragraph (11);

(8) by redesignating paragraphs (2), (3), (4), (5), (8), (9), and (10) as paragraphs (1) through (7), respectively; and

(9) by adding at the end the following:

''(8) private, Federal, State, and local resources should be coordinated to establish and maintain services described in paragraph (7) and to ensure the optimal use of all such resources.''.

**SEC. 302. ESTABLISHMENT OF LOCAL PROJECTS.**

Section 101 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended—

(1) by striking the section heading and inserting the following:

**''SEC. 101. ESTABLISHMENT OF LOCAL PROJECTS.'';**

and

(2) by striking subsection (b) and inserting the following:

''(b) PRIORITY IN PROVISION OF SERVICES.—The Secretary may not make a grant under subsection (a) unless the applicant for the grant agrees to give priority to abandoned infants and young children who—

''(1) are infected with, or have been perinatally exposed to, the human immunodeficiency virus, or have a life-threatening illness or other special medical need; or

''(2) have been perinatally exposed to a dangerous drug.''.

**SEC. 303. EVALUATIONS, STUDY, AND REPORTS BY SECRETARY.**

Section 102 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended to read as follows:

**''SEC. 102. EVALUATIONS, STUDY, AND REPORTS BY SECRETARY.**

''(a) EVALUATIONS OF LOCAL PROGRAMS.—The Secretary shall, directly or through contracts with public and nonprofit private entities, provide for evaluations of projects carried out under section 101 and for the dissemination of information developed as a result of such projects.

''(b) STUDY AND REPORT ON NUMBER OF ABANDONED INFANTS AND YOUNG CHILDREN.—

''(1) IN GENERAL.—The Secretary shall conduct a study for the purpose of determining—

''(A) an estimate of the annual number of infants and young children relinquished, abandoned, or found deceased in the United States and the number of such infants and young children who are infants and young children described in section 101(b);

''(B) an estimate of the annual number of infants and young children who are victims of homicide;

''(C) characteristics and demographics of parents who have abandoned an infant within 1 year of the infant's birth; and

''(D) an estimate of the annual costs incurred by the Federal Government and by State and local governments in providing housing and care for abandoned infants and young children.

''(2) DEADLINE.—Not later than 36 months after the date of enactment of the Keeping Children and Families Safe Act of 2003, the Secretary shall complete the study required under paragraph (1) and submit to Congress a report describing the findings made as a result of the study.

''(c) EVALUATION.—The Secretary shall evaluate and report on effective methods of intervening before the abandonment of an infant or young child so as to prevent such abandonments, and effective methods for responding to the needs of abandoned infants and young children.''.

**SEC. 304. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—Section 104 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) IN GENERAL.—

''(1) AUTHORIZATION.—For the purpose of carrying out this Act, there are authorized to be appropriated $45,000,000 for fiscal year 2004 and such sums as may be necessary for fiscal years 2005 through 2008.

''(2) LIMITATION.—Not more than 5 percent of the amounts appropriated under paragraph (1) for any fiscal year may be obligated for carrying out section 102(a).'';

(2) by striking subsection (b);

(3) in subsection (c)—

(A) in paragraph (1)—

(i) by inserting ''AUTHORIZATION.—'' after ''(1)'' the first place it appears; and

(ii) by striking ''this title'' and inserting ''this Act''; and

(B) in paragraph (2)—

(i) by inserting ''LIMITATION.—'' after ''(2)''; and

(ii) by striking ''fiscal year 1991.'' and inserting ''fiscal year 2003.''; and

(4) by redesignating subsections (c) and (d) as subsections (b) and (c), respectively.

(b) REDESIGNATION.—The Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended—

(1) by redesignating section 104 as section 302; and

(2) by moving that section 302 to the end of that Act.

**SEC. 305. DEFINITIONS.**

(a) IN GENERAL.—Section 301 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is amended to read as follows:

**''SEC. 301. DEFINITIONS.**

''In this Act:

''(1) ABANDONED; ABANDONMENT.—The terms 'abandoned' and 'abandonment', used with respect to infants and young children, mean that the infants and young children are medically cleared for discharge from acute-care hospital settings, but remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives.

''(2) ACQUIRED IMMUNE DEFICIENCY SYNDROME.—The term 'acquired immune deficiency syndrome' includes infection with the etiologic agent for such syndrome, any condition indicating that an individual is infected with such etiologic agent, and any condition arising from such etiologic agent.

''(3) DANGEROUS DRUG.—The term 'dangerous drug' means a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

''(4) NATURAL FAMILY.—The term 'natural family' shall be broadly interpreted to include natural parents, grandparents, family members, guardians, children residing in the household, and individuals residing in the household on a continuing basis who are in a care-giving situation, with respect to infants and young children covered under this Act.

''(5) SECRETARY.—The term 'Secretary' means the Secretary of Health and Human Services.''.

(b) REPEAL.—Section 103 of the Abandoned Infants Assistance Act of 1988 (42 U.S.C. 670 note) is repealed.

## TITLE IV—FAMILY VIOLENCE PREVENTION AND SERVICES ACT

**SEC. 401. STATE DEMONSTRATION GRANTS.**

(a) UNDERSERVED POPULATIONS.—Section 303(a)(2)(C) of the Family Violence Prevention and Services Act (42 U.S.C. 10402(a)(2)(C)) is amended by striking ''underserved populations,'' and all that follows and inserting the following: ''underserved populations, as defined in section 2007 of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796gg–2);''.

(b) REPORT.—Section 303(a) of such Act (42 U.S.C. 10402(a)) is amended by adding at the end the following:

''(5) Upon completion of the activities funded by a grant under this title, the State shall submit to the Secretary a report that contains a description of the activities carried out under paragraph (2)(B)(i).''.

(c) CHILDREN WHO WITNESS DOMESTIC VIOLENCE.—Section 303 of such Act (42 U.S.C. 10402) is amended—

(1) by redesignating subsections (c) through (f) as subsections (d) through (g), respectively; and

(2) by inserting after subsection (b) the following:

''(c) For a fiscal year described in section 310(a)(2), the Secretary shall use funds made available under that section to make grants, on a competitive basis, to eligible entities for projects designed to address the needs of children who witness domestic violence, to—

''(1) provide direct services for children who witness domestic violence;

''(2) provide for training for and collaboration among child welfare agencies, domestic violence victim service providers, courts, law enforcement, and other entities; and

''(3) provide for multisystem interventions for children who witness domestic violence.''.

**SEC. 402. SECRETARIAL RESPONSIBILITIES.**

Section 305(a) of the Family Violence Prevention and Services Act (42 U.S.C. 10404(a)) is amended—

(1) by striking ''an employee'' and inserting ''1 or more employees'';

(2) by striking ''of this title.'' and inserting ''of this title, including carrying out evaluation and monitoring under this title.''; and

(3) by striking ''The individual'' and inserting ''Any individual''.

**SEC. 403. EVALUATION.**

Section 306 of the Family Violence Prevention and Services Act (42 U.S.C. 10405) is amended in the first sentence by striking ''Not later than two years after the date on which funds are obligated under section 303(a) for the first time after the date of the enactment of this title, and every two years thereafter,'' and inserting ''Every 2 years,''.

**SEC. 404. INFORMATION AND TECHNICAL ASSISTANCE CENTERS.**

Section 308 of the Family Violence Prevention and Services Act (42 U.S.C. 10407) is amended by striking subsection (g).

**SEC. 405. AUTHORIZATION OF APPROPRIATIONS.**

(a) GENERAL AUTHORIZATION.—Section 310(a) of the Family Violence Prevention and Services Act (42 U.S.C. 10409(a)) is amended to read as follows:

''(a) IN GENERAL.—

''(1) AUTHORIZATION.—There are authorized to be appropriated to carry out sections 303 through 311, $175,000,000 for each of fiscal years 2004 through 2008.

''(2) PROJECTS TO ADDRESS NEEDS OF CHILDREN WHO WITNESS DOMESTIC VIOLENCE.—For a fiscal year in which the amounts appropriated under paragraph (1) exceed $150,000,000, the Secretary shall reserve and make available 50 percent of the excess to carry out section 303(c).''.

(b) ALLOCATIONS FOR OTHER PROGRAMS.—Subsections (b), (c), and (d) of section 310 of such Act (42 U.S.C. 10409) are amended by inserting ''(and not reserved under subsection (a)(2))'' after ''each fiscal year''.

(c) GRANTS FOR STATE DOMESTIC VIOLENCE COALITIONS.—Section 311(g) of such Act (42 U.S.C. 10410(g)) is amended to read as follows:

''(g) FUNDING.—Of the amount appropriated under section 310(a) for a fiscal year (and not reserved under section 310(a)(2)), not less than 10 percent of such amount shall be made available to award grants under this section.''.

**SEC. 406. GRANTS FOR STATE DOMESTIC VIOLENCE COALITIONS.**

Section 311 of the Family Violence Prevention and Services Act (42 U.S.C. 10410) is amended by striking subsection (h).

**SEC. 407. EVALUATION AND MONITORING.**

Section 312 of the Family Violence Prevention and Services Act (42 U.S.C. 10412) is amended by adding at the end the following:

''(c) Of the amount appropriated under section 310(a) for each fiscal year (and not reserved under section 310(a)(2)), not more than 2.5 percent shall be used by the Secretary for evaluation, monitoring, and other administrative costs under this title.''.

**SEC. 408. FAMILY MEMBER ABUSE INFORMATION AND DOCUMENTATION PROJECT.**

Section 313 of the Family Violence Prevention and Services Act (42 U.S.C. 10413) is repealed.

**SEC. 409. MODEL STATE LEADERSHIP GRANTS.**

Section 315 of the Family Violence Prevention and Services Act (42 U.S.C. 10415) is repealed.

**SEC. 410. NATIONAL DOMESTIC VIOLENCE HOTLINE GRANT.**

(a) DURATION.—Section 316(b) of the Family Violence Prevention and Services Act (42 U.S.C. 10416(b)) is amended—

(1) by striking ''A grant'' and inserting the following:

''(1) IN GENERAL.—Except as provided in paragraph (2), a grant''; and

(2) by adding at the end the following:

''(2) EXTENSION.—The Secretary may extend the duration of a grant under this section beyond the period described in paragraph (1) if, prior to such extension—

''(A) the entity prepares and submits to the Secretary a report that evaluates the effectiveness of the use of amounts received under the grant for the period described in paragraph (1) and contains any other information the Secretary may prescribe; and

''(B) the report and other appropriate criteria indicate that the entity is successfully operating the hotline in accordance with subsection (a).''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 316(f) of such Act (42 U.S.C. 10416(f)) is repealed.

**SEC. 411. YOUTH EDUCATION AND DOMESTIC VIOLENCE.**

Section 317 of the Family Violence Prevention and Services Act (42 U.S.C. 10417) is repealed.

**SEC. 412. NATIONAL DOMESTIC VIOLENCE SHELTER NETWORK.**

The Family Violence Prevention and Services Act is amended by inserting after section 316 (42 U.S.C. 10416) the following:

**''SEC. 317. NATIONAL DOMESTIC VIOLENCE SHELTER NETWORK.**

''(a) IN GENERAL.—For a year in which the Secretary makes an amount available under subsection (g)(2), the Secretary shall award a grant to a nonprofit organization to establish and operate a highly secure Internet website (referred to in this section as the 'website') that shall—

''(1) link, to the greatest extent possible, entities consisting of the entity providing the national domestic violence hotline, participating domestic violence shelters in the United States, State and local domestic violence agencies, and other domestic violence organization, so that such entities will be able to connect a victim of domestic violence to the most safe, appropriate, and convenient domestic violence shelter; and

''(2) contain, to the maximum extent practicable, continuously updated information concerning the availability of services and space in domestic violence shelters across the United States.

''(b) ELIGIBLE ENTITIES.—To be eligible to receive a grant under this section, a nonprofit organization shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require. The application shall—

''(1) demonstrate the experience of the applicant in successfully developing and managing a technology-based network of domestic violence shelters;

''(2) demonstrate a record of success of the applicant in meeting the needs of domestic violence victims and their families; and

''(3) include a certification that the applicant will—

''(A) implement a high level security system to ensure the confidentiality of the website;

''(B) establish, within 5 years, a website that links the entities described in subsection (a)(1);

''(C) consult with the entities described in subsection (a)(1) in developing and implementing the website and providing Internet connections; and

''(D) otherwise comply with the requirements of this section.

''(c) USE OF GRANT AWARD.—The recipient of a grant award under this section shall—

''(1) collaborate with officials of the Department of Health and Human Services in a manner determined to be appropriate by the Secretary;

''(2) collaborate with the entity providing the national domestic violence hotline in developing and implementing the network;

''(3) ensure that the website is continuously updated and highly secure;

''(4) ensure that the website provides information describing the services of each domestic violence shelter to which the website is linked, including information for individuals with limited English proficiency and information concerning access to medical care, social services, transportation, services for children, and other relevant services;

''(5) ensure that the website provides up-to-the-minute information on available bed space in domestic violence shelters across the United States, to the maximum extent practicable;

''(6) provide training to the staff of the hotline and to staff of the other entities described in subsection (a)(1) regarding how to use the website to best meet the needs of callers;

''(7) provide Internet access, and hardware in necessary cases, to domestic violence shelters in the United States that do not have the appropriate technology for such access, to the maximum extent practicable; and

''(8) ensure that after the third year of the website project, the recipient will develop a plan to expand the sources of funding for the website to include funding from public and private entities, although nothing in this paragraph shall preclude a grant recipient under this section from raising funds from other sources at any time during the 5-year grant period.

''(d) RULE OF CONSTRUCTION.—Nothing in this Act shall be construed to require any shelter or service provider, whether public or private, to be linked to the website or to provide information to the recipient of the grant award or to the website.

''(e) DURATION OF GRANT.—The term of a grant awarded under this section shall be 5 years.

''(f) TECHNICAL ASSISTANCE AND OVERSIGHT.—The Secretary shall—

''(1) provide technical assistance, if requested, on developing and managing the website; and

''(2) have access to, and monitor, the website.

''(g) AUTHORIZATION OF APPROPRIATIONS.—

''(1) IN GENERAL.—There are authorized to be appropriated to carry out section 316 and this section, $5,000,000 for fiscal year 2004 and such sums as may be necessary for each of fiscal years 2005 through 2008.

''(2) CONDITIONS ON APPROPRIATIONS.—Notwithstanding paragraph (1), the Secretary shall make available a portion of the amounts appropriated under paragraph (1) to carry out this section only for any fiscal year for which the amounts appropriated under paragraph (1) exceed $3,000,000.

''(3) ADMINISTRATIVE COSTS.—Of the amount made available to carry out this section for a fiscal year the Secretary may not use more than 2 percent for administrative costs associated with the grant program carried out under this section, of which not more than 5 percent shall be used to assist the entity providing the national domestic violence hotline to participate in the establishment of the website.

''(4) AVAILABILITY.—Funds appropriated under paragraph (1) shall remain available until expended.''.

**SEC. 412. DEMONSTRATION GRANTS FOR COMMUNITY INITIATIVES.**

(a) IN GENERAL.—Section 318(h) of the Family Violence Prevention and Services Act (42 U.S.C. 10418(h)) is amended to read as follows:

''(h) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $6,000,000 for each of fiscal years 2004 through 2008.''.

(b) REGULATIONS.—Section 318 of such Act (42 U.S.C. 10418) is amended by striking subsection (i).

**SEC. 414. TRANSITIONAL HOUSING ASSISTANCE.**

Section 319(f) of the Family Violence Prevention and Services Act (42 U.S.C. 10419(f)) is amended by striking ''fiscal year 2001'' and inserting ''each of fiscal years 2004 through 2008''.

**SEC. 415. TECHNICAL AND CONFORMING AMENDMENTS.**

The Family Violence Prevention and Services Act (42 U.S.C. 10401 et seq.) is amended—

(1) in section 302(1) (42 U.S.C. 10401(1)) by striking ''demonstrate the effectiveness of assisting'' and inserting ''assist'';

(2) in section 303(a) (42 U.S.C. 10402(a))—

(A) in paragraph (2)—

(i) in subparagraph (C), by striking ''State domestic violence coalitions knowledgeable individuals and interested organizations'' and inserting ''State domestic violence coalitions, knowledgeable individuals, and interested organizations''; and

(ii) in subparagraph (F), by adding ''and'' at the end; and

(B) by aligning the margins of paragraph (4) with the margins of paragraph (3);

(3) in section 303(g) (as so redesignated)—

(A) in the first sentence, by striking ''309(4)'' and inserting ''320''; and

(B) in the second sentence, by striking ''309(5)(A)'' and inserting ''320(5)(A)'';

(4) in section 305(b)(2)(A) (42 U.S.C. 10404(b)(2)(A)) by striking ''provide for research, and into'' and inserting ''provide for research into'';

(5) by redesignating section 309 as section 320 and moving that section to the end of the Act; and

(6) in section 311(a) (42 U.S.C. 10410(a))—

(A) in paragraph (2)(K), by striking ''other criminal justice professionals,;'' and inserting ''other criminal justice professionals;'' and

(B) in paragraph (3)—

(i) in the matter preceding subparagraph (A), by striking ''family law judges,,'' and inserting ''family law judges,'';

(ii) in subparagraph (D), by inserting '', criminal court judges,'' after ''family law judges''; and

(iii) in subparagraph (H), by striking ''supervised visitations that do not endanger victims and their children'' and inserting ''supervised visitations or denial of visitation to protect against danger to victims or their children''.

Mr. KENNEDY. Mr. President, I am pleased to join my colleagues in introducing the Keeping Children and Families Safe Act of 2003. This Act continues our Federal commitment to ensuring that the Nation's most vulnerable children are protected and safe.

Recent cases of abuse and neglect have made national headlines as local authorities have failed to identify abused children. These failures have led to tragic consequences—the deaths of innocent and unprotected children.

Clearly, we must do better—at the national, State, and local levels. And the bill we introduce today will enhance the Federal partnership with local officials to bring greater protection to our children.

Since 1974, the Child Abuse Prevention and Treatment Act, or CAPTA, has been a great support in reaching the nearly 900,000 children who suffer abuse and neglect each year. This year's bipartisan reauthorization of CAPTA will continue and expand that support through FY 2008, and extend CAPTA's related programs, including the Abandoned Infants Assistance Act, the Adoption Opportunities Act, and the Family Violence Prevention and Services Act.

Child abuse and neglect continues to be a serious and daunting problem in our nation. In local communities, child protective services agencies bear the responsibility of receiving and investigating reports of child abuse and neglect. Each year those agencies respond to nearly 3 million reports of abuse. It is a tremendous challenge, and caseworkers in local agencies perform an admirable task worthy of our thanks.

But despite the hard work of child protective services, nearly half of all children in substantiated cases of abuse receive no follow-up services or support. In 2000, over 900 children under the age of 6 died of abuse and neglect. Those children in desperate circumstances need and deserve our help, and we must do better.

The Keeping Children and Families Safe Act will bring us closer toward our goal of responding more effectively to child abuse and neglect. Our bipartisan bill encourages better training and qualifications for child abuse caseworkers, creates linkages to better facilitate referrals for neglected children, and coordinates best practices to improve systems that currently serve and protect children.

Actions to prevent and address child abuse and neglect must be strengthened and expanded. This bill will improve current systems of child abuse treatment by coordinating information on best practices among child protective services agencies through the National Child Abuse Clearinghouse, and disseminating those practices that hold promise to improve systems. The bill will also ensure that local citizen review panels oversee, review, and bolster the practices of child protective services. Access to technical assistance and grants will also be broadened to private entities working to prevent and treat child abuse.

The identification and treatment of abused children cannot be improved without better preparation of those responsible for investigating abuse and neglect. By improving the training, retention, and supervision of child protective caseworkers, the bill will ensure that children receive the help they need. New training will help caseworkers become familiar with their legal duties and receive guidance on how to best work with families. Training will also be provided to protect the personal safety of caseworkers as they enter homes to investigate allegations of abuse.

More must also be done to ensure that abused children receive ongoing support and services. This bill will encourage states to adopt a comprehensive approach to treating and preventing abuse by linking child protective services and education, health, mental health, and judicial systems to more effectively follow-up with support and services to abused and neglected children. The bill will also promote partnerships between public agencies and community-based organizations to support child abuse prevention and treatment.

I am pleased that the Keeping Children and Families Safe Act continues the legacy of the late Senator Wellstone in combating domestic violence and addressing its impact on children. It is estimated that 10 million children witness physical abuse between their parents each year, damaging their emotional and physical well being, and causing difficulties later in life.

Under this Act, new grants will be awarded, once appropriations for the Family Violence Prevention and Services Act reach $150 million, to address the physical and emotional needs of children who witness violence in their homes. Those funds will support direct services and interventions for children who witness domestic violence, bringing together child welfare agencies, courts, law enforcement, and other appropriate entities.

This Act also supports a new electronic network to connect victims of domestic violence and support organizations and networks in local communities. This network will enhance the current national domestic violence hotline, which serves as a vital resource for victims of domestic abuse 24-hours-a-day, 365 days a year. The hotline currently provides support and assistance to 300 to 400 callers a day.

We must do more to help children and their families overcome the harmful effects of abuse, neglect, and violence. The Keeping Children and Families Safe Act of 2003 is a step in the right direction toward that goal, and I urge my colleagues to support this important legislation.

Mr. DODD. Mr. President, I am pleased to join with Senator GREGG, Senator KENNEDY, and Senator ALEXANDER in introducing the Keeping Children and Families Safe Act of 2003.

The bill we are introducing today would strengthen efforts to prevent child abuse and neglect, promote increased sharing of information and partnerships between child protective services and education, health, and juvenile justice systems, and encourage a variety of new training programs to improve child protection, particularly cross-training in recognizing domestic violence and substance abuse in addition to child abuse detection and protection training.

The Keeping Children and Families Safe Act of 2003 renews grants to States to improve child protection systems and increases to $200 million the

authorization for child abuse investigations, training of child protection service, CPS, workers, and community child abuse prevention programs. For States to receive funding, they must meet several new requirements: have triage procedures to provide appropriate referrals of a child ''not at risk of imminent harm'' to a community organization or for voluntary preventive services; have policies in place to address the needs of infants who are born and identified as having been physically affected by prenatal exposure to illegal drugs, which must include a safe plan of care for the child; have policies for improved training, retention, and supervision of caseworkers; and require criminal background record checks for prospective foster and adoptive parents and all other adults living in the household, not later than 2 years after the law's enactment.

Child abuse and neglect continue to be significant problems in the United States.

About 3 million referrals concerning the welfare of about 5 million children were made to Child Protection Services, CPS, agencies throughout the Nation in 2000. Of these referrals, about two-thirds, 62 percent, were ''screened-in'' for further assessment and investigation. Professionals, including teachers, law enforcement officers, social service workers, and physicians made more than half, 56 percent, of the screened-in reports. About 879,000 children were found to be victims of child maltreatment. About two-thirds, 63 percent, suffered neglect, including medical neglect; 19 percent were physically abused; 10 percent were sexually abused; and 8 percent were emotionally maltreated.

Many of these children fail to receive adequate protection and services. Nearly half, 45 percent, of these children failed to receive services.

The most tragic consequence of child maltreatment is death. The April maltreatment summary data released by the Department of Health and Human Services, HHS, shows that about 1,200 children died of abuse and neglect in 2000. Children younger than six years of age accounted for 85 percent of child fatalities and children younger than one year of age accounted for 44 percent of child fatalities.

Child abuse is not a new phenomenon. For more than a decade, numerous reports have called attention to the tragic abuse and neglect of children and the inadequacy of our Child Protection Services, CPS, systems to protect our children.

In 1990, the U.S. Advisory Board on Child Abuse and Neglect concluded that ''child abuse and neglect is a national emergency.'' In 1995, the U.S. Advisory Board on Child Abuse and Neglect reported that ''State and local CPS caseworkers are often overextended and cannot adequately function under their current caseloads.'' The report also stated that, ''in many jurisdictions, caseloads are so high that CPS response is limited to taking the complaint call, making a single visit to the home, and deciding whether or not the complaint is valid, often without any subsequent monitoring of the family.''

A 1997 General Accounting Office, GAO, report found, ''the CPS system is in crisis, plagued by difficult problems, such as growing caseloads, increasingly complex social problems and underlying child maltreatment, and ongoing systemic weaknesses in day-to-day operations.'' According to GAO, CPS weaknesses include ''difficulty in maintaining a skilled workforce; the inability to consistently follow key policies and procedures designed to protect children; developing useful case data and record-keeping systems, such as automated case management; and establishing good working relationships with the courts.''

According to the May 2001 ''Report from the Child Welfare Workforce Survey: State and County Data and Findings'' conducted by the American Public Human Services Association, APHSA, the Child Welfare League of America, CWLA, and the Alliance for Children and Families, annual staff turnover is high and morale is low among CPS workers. The report found that CPS workers had an annual turnover rate of 22 percent, 76 percent higher than the turnover rate for total agency staff. The ''preventable'' turnover rate was 67 percent, or two-thirds higher than the rate for all other direct service workers and total agency staff. In some States, 75 percent or more of staff turnovers were preventable.

States rated a number of retention issues as highly problematic. In descending order they are: workloads that are too high and/or demanding; caseloads that are too high; too much worker time spent on travel, paperwork, courts, and meetings; workers not feeling valued by the agency; low salaries; supervision problems; and insufficient resources for families and children.

To prevent turnover and retain quality CPS staff, some States have begun to increase in-service training, increase education opportunities, increase supervisory training, increase or improve orientation, increase worker safety, and offer flex-time or changes in office hours. Most States, however, continue to grapple with staff turnover and training issues.

Continued public criticism of CPS efforts, continued frustration by CPS staff and child welfare workers, and continued abuse and neglect, and death, of our nation's children, served as the backdrop as we put together the Child Abuse Prevention and Treatment Act, CAPTA, reauthorization bill this year.

The Child Protection System mission must focus on the safety of children. To ensure that the system works as intended, CPS needs to be appropriately staffed. The staff need to receive appropriate training and cross-training to better recognize substance abuse and domestic violence problems. The bill we are introducing today encourages triage approaches and differential response systems so that those reports where children are most at-risk of imminent harm can be prioritized. The bill specifically emphasizes collaborations in communities between CPS, health agencies, including mental health agencies, schools, and community-based groups to help strengthen families and provide better protection for children. The bill provides grants for prevention programs and activities to prevent child abuse and neglect for families at-risk to improve the likelihood that a child will grow up in a home without violence, abuse, or neglect.

Beyond the CAPTA title of this legislation, our bill reauthorizes the Family Violence Prevention and Services Act, including new efforts to address the needs of children who witness domestic violence, the Adoption Opportunities Act, and the Abandoned Infants Assistance Act.

Child protection ought not be a partisan issue. This bill will help ensure that it is not. I want to commend and thank my co-authors—Chairman GREGG, Senator KENNEDY and Senator ALEXANDER—for their efforts to craft a bipartisan initiative that can help to prevent and alleviate suffering among our Nation's children. I urge my colleagues to join us in supporting this bill and to strengthen child protection laws early this year.

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By Ms. MIKULSKI (for herself, Mr. JOHNSON, Mrs. MURRAY, Ms. STABENOW, Mr. CORZINE, Mr. INOUYE, and Mr. BINGAMAN):

S. 343. A bill to amend title XVIII of the Social Security Act to permit direct payment under the medicare program for clinical social worker services provided to residents of skilled nursing facilities; to the Committee on Finance.

Ms. MIKULSKI. Mr. President, I rise today to introduce the ''Clinical Social Work Medicare Equity Act of 2003.'' I am proud to sponsor this legislation that will include clinical social workers among other mental health providers that are exempted from the Medicare Part B Prospective Payment System. This bill will ensure that clinical social workers can receive Medicare reimbursements for the mental health services they provide in skilled nursing facilities.

Since my first days in Congress, I have been fighting to protect and strengthen the safety for our Nation's seniors. Making sure that seniors have access to quality, affordable mental health care is an important part of this fight. I know that millions of seniors do not have access to, or are not receiving, the mental health services they need. For example, depression affects nearly 6 million seniors, but only one-tenth ever get treated. This is unacceptable. Clinical social workers

may also be the only mental health providers in some rural areas. Protecting seniors' access to clinical social workers can help make sure that our most vulnerable citizens get the quality, affordable mental health care they need.

Clinical social workers, much like psychologists and psychiatrists, treat and diagnose mental illnesses. In fact, clinical social workers are the primary mental health providers for nursing home residents. But unlike other mental health providers, clinical social workers cannot bill directly for the important services they provide to their patients. This bill will correct this inequity and make sure clinical social workers get the payments and respect they deserve.

Before the Balanced Budget Act of 1997, clinical social workers billed Medicare Part B directly for mental health services provided in nursing facilities to each patient they served. Under the Prospective Payment System, services provided by clinical social workers are lumped, or ''bundled,'' along with the services of other health care providers for the purposes of billing and payments. Psychologists and psychiatrists, who provide similar counseling, were exempted from this system and continue to bill Medicare directly. This bill would exempt clinical social workers, like their mental health colleagues, from the Prospective Payment System, and would make sure that clinical social workers are paid for the services they provide to patients in skilled nursing facilities. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act addressed some of these concerns, but this legislation would remove the final barrier to ensuring that clinical social workers are treated fairly and equitably for the care they provide.

This bill is about more than paperwork and payment procedures. This bill is about equal access to Medicare payments for the equal and important work done by clinical social workers. It is also about making sure our Nation's most vulnerable citizens have access to quality, affordable mental health care. Without clinical social workers, many nursing home residents may never get the counseling they need when faced with a life threatening illness or the loss of a loved one. I think we can do better by our nation's seniors, and I'm fighting to make sure we do.

The Clinical Social Work Medicare Equity Act of 2003 is strongly supported by the National Association of Social Workers. I ask unanimous consent that a letter of endorsement from the National Association of Social Workers be printed in the RECORD. I also want to thank Senators Johnson, Murray, Stabenow, Corzine, Inouye, and Bingaman for their cosponsorship of this bill. I look forward to working with my colleagues to enact this important legislation.

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

NATIONAL ASSOCIATION
OF SOCIAL WORKERS,
*Washington, DC, February 10, 2003.*

Hon. BARBARA A. MIKULSKI,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR MIKULSKI: I am writing on behalf of the National Association of Social Workers (NASW), the largest professional social work organization with nearly 150,000 members nationwide. NASW promotes, develops, and protects the effective practice of social work and social workers. NASW also seeks to enhance the well being of individuals, families, and communities through its work, service, and advocacy.

NASW strongly supports the Clinical Social Work Medicare Equity Act of 2003 which will end the unfair treatment of clinical social workers under the Medicare Part B Prospective Payment System (PPS) for Skilled Nursing Facilities (SNFs).

Section 4432 of the Balanced Budget Act of 1997 authorized the creation of the PPS, under which the cost of a variety of daily services provided to SNF patients is bundled into a single amount. Prior to PPS, a separate Medicare Part B claim was filed by the provider for each individual service rendered to a patient. Congress made this change in an attempt to captitate the rapidly rising costs of additional patient services delivered by Medicare providers to SNF patients, with the precise target being physical, occupational, and speech-language therapy services. However, Congress recognized that some services, such as mental health and anesthesia, are best provided on an individual basis rather than as part of the bundle of services. Thus, the following types of providers are specifically excluded from the PPS: physicians, clinical psychologists, certified nurse-midwives, and certified registered nurse anesthetists. Unfortunately, due to an unintentional oversight during the drafting process, clinical social workers were not listed among the aforementioned providers in the legislation.

In 1996, Department of Health and Human Services Inspector General June Gibbs Brown published a report entitled ''Mental Health Services in Nursing Facilities''. The purpose of the report was to describe the types of mental health services provided in nursing facilities and identify potential vulnerabilities in the mental health services covered by Medicare. One critical funding of the report was 70% of nursing home respondents stated that permitting clinical social workers and clinical psychologists to bill independently had a beneficial effect on the provision of mental health services in nursing facilities. The Clinical Social Work Medicare Equity will maintain this beneficial effect on SNF patients by ensuring the continuation of direct Medicare billing by clinical social workers for mental health services rendered to SNF patients.

Your efforts on behalf of mental health patients and professionals nationwide are greatly appreciated by our members. We thank you for your strong interest in and commitment to this important issue as demonstrated by your sponsorship of the Clinical Social Work Medicare Equity Act.

Please do not hesitate to contact Francesca Fierro O'Reilly of my staff at 202–408–8600 x336 should you require anything further. NASW looks forward to working with you on this and future issues of mutual concern.

Sincerely,

ELIZABETH J. CLARK,
*PhD, ACSW, MPH, Executive Director.*

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By Mr. AKAKA (for himself and Mr. INOUYE):

S. 344. A bill expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes; to the Committee on Indian Affairs.

Mr. AKAKA. Mr. President, I rise today to introduce a bill with my friend and colleague, the senior Senator from Hawaii, Mr. INOUYE, which would clarify the political relationship between Native Hawaiians and the United States. This measure would extend the Federal policy of self-determination and self-governance to Hawaii's indigenous, native peoples—Native Hawaiians, by providing a process for the reorganized Native Hawaiian governing entity to be recognized for the purposes of a government-to-government relationship with the United States.

The bill we introduce today is identical to legislation that was reported by the Senate Committee on Indian Affairs during the 107th Congress. This bill does three things. First if provides a process for Federal recognition of the Native Hawaiian governing entity. Second, it establishes an office within the Department of the Interior to focus on Native Hawaiian issues and to serve as a liaison between Native Hawaiians and the Federal Government. Finally, it establishes an interagency coordinating group to be composed of representatives of federal agencies which administer programs and implement policies impacting Native Hawaiians.

While Federal policies towards Native Hawaiians have paralleled that of Native American Indians and Alaska Natives, the Federal policy of self-determination and self-governance has not yet been extended to Native Hawaiians. This measure extends this policy to Native Hawaiians, thus furthering the process of reconciliation between Native Hawaiians and the United States, and providing parity in the Federal Government's interactions with American Indians, Alaska Natives, and Native Hawaiians.

This measure does not establish entitlements or special treatment for Native Hawaiians based on race. This measure focuses on the political relationship afforded to Native Hawaiians based on the United States' recognition of Native Hawaiians as the aboriginal, indigenous peoples of Hawaii. While the United States' history with its indigenous peoples has been dismal, in recent decades, the United States has engaged in a policy of self-determination and self-governance with its indigenous peoples. Government-to-government relationships provide indigenous peoples with the opportunity to work directly with the Federal Government on policies affecting their lands, natural resources and many other aspects of their well-being.

This measure does not impact program funding for American Indians and Alaska Natives. Federal programs for Native Hawaiian health, education, and housing are already administered by

the Departments of Health and Human Services, Education, and Housing and Urban Development. The bill I introduce today contains a provision which makes clear that this bill does not authorize new eligibility for participation in any programs and services provided by the Bureau of Indian Affairs. This bill does not authorize gaming in Hawaii. In fact, it clearly states that the Indian Gaming Regulatory Act, IGRA, does not apply to the Native Hawaiian governing entity.

Finally, this measure does not preclude Native Hawaiians from seeking alternatives in the international arena. This measure focuses on self-determination within the framework of Federal law and seeks to establish equality in the Federal policies extended towards American Indians, Alaska Natives and Native Hawaiians.

We introduced similar legislation during the 106th and 107th Congresses. A previous version of this legislation was passed by the House of Representatives during the 106th Congress. The legislation is widely supported by our indigenous brethren, American Indians and Alaska Natives. It is also supported by the Hawaii State Legislature which passed two resolutions supporting a government-to-government relationship between Native Hawaiians and the United States. Similar resolutions have been passed by the Alaska Federation of Natives, National Congress of American Indians, Japanese American Citizens' League, and the National Education Association.

The essence of Hawaii is captured not by the physical beauty of its islands, but by the beauty of its people. Those who have lived in Hawaii have a unique demeanor and attitude which is appropriately described as the ''aloha'' spirit. The people of Hawaii demonstrate the aloha spirit through their actions—through their generosity, through their appreciation of the environment and natural resources, through their willingness to care for each other, through their genuine friendliness.

The people of Hawaii share many ethnic backgrounds and cultures. This mix of culture and tradition is based on the unique history of Hawaii. The Aloha spirit is the legacy of the pride we all share in the culture and tradition of Hawaii's indigenous, native peoples, the Native Hawaiians. Hawaii's State motto, ''Ua mau ke'ea 'o ka 'aina i ka pono,'' which means ''the life of the land is perpetuated in righteousness,'' captures the culture of Native Hawaiians. Prior to western contact, Native Hawaiians lived in an advanced society, in distinct and structured communities steeped in science. The Native Hawaiians honored their 'aina, land, and environment, and therefore developed methods of irrigation, agriculture, aquaculture, navigation, medicine, fishing and other forms of subsistence whereby the land and sea were efficiently used without waste or damage. Respect for the environment formed the basis of their culture and tradition. It is from this culture and tradition that the Aloha spirit, which is demonstrated throughout Hawaii, by all of its people, has endured and flourished.

Despite the overthrow of the Kingdom of Hawaii, Native Hawaiians never directly relinquished their inherent sovereignty as a people over their national lands, either through their government or through a plebiscite or referendum. Ever since the overthrow of their government, Native Hawaiians have sought to maintain political authority within their community. The Federal policy of self-governance and self-determination recognizes and provides for this inherent right within Federal law.

Throughout my service in the Congress and the Senate, I have worked to establish a proper foundation of reconciliation between the United States and Native Hawaiians to positively address longstanding issues of concern resulting from the overthrow. The legislation we introduce today to clarify the political relationship between Native Hawaiians and the United States proceeds from our efforts to promote reconciliation. This endeavor enjoys overwhelming support from Native Hawaiians and all the people of Hawaii.

In 1978, the people of Hawaii acted to preserve Native Hawaiian culture and tradition by amending Hawaii's State constitution to establish the Office of Hawaiian Affairs and to give expression to the right of self-determination and self-governance at the State level for Hawaii's indigenous peoples, Native Hawaiians. Starting with statehood, Hawaii endeavored to address and protect the rights and concerns of Hawaii's indigenous peoples in accordance with authority delegated under Federal policy. The constraints of this approach are evident. This bill extends the Federal policy of self-determination and self-governance to Native Hawaiians at the Federal level through a government-to-government relationship with the Native Hawaiian governing entity.

This measure is not being introduced to circumvent the 1999 United States Supreme Court decision in the case of Rice v. Cayeano. The Rice case was a voting rights case whereby the Supreme Court held that the State of Hawaii must allow all citizens of Hawaii to vote for the trustees of a quasi-State agency, the Office of Hawaiian Affairs. Nothing in this legislation would alter the eligibility of the electorate who votes for the Board of Trustees for the Office of Hawaiian Affairs.

This measure is critical to the people of Hawaii because it provides the structure necessary to address many longstanding issues facing Hawaii's indigenous peoples and the State of Hawaii. By addressing and resolving these matters, we continue our process of healing, a process of reconciliation not only within the United States, but within the State of Hawaii. The time has come for us to be able to address these deeply rooted issues in order for us to be able to move forward as one.

I cannot emphasize how important this issue is for the people of Hawaii. At the state level, I will continue to work with the Hawaii State Legislature which has expressed its support for this legislation. I will also be working with Governor Linda Lingle, Hawaii's newly elected Governor, who has expressed her support for Federal recognition for Native Hawaiians. I look forward to continuing my discussions with officials within the Federal Government to address issues related to this bill, and I continue to welcome input from the people of Hawaii as to how we should move forward as a State, and as a community, to address longstanding issues resulting from the overthrow of the Kingdom of Hawaii.

We have an established record of United States' commitment to reconciliation with Native Hawaiians. This legislation is another step forward to honoring that commitment. I ask all my colleagues to join me in enacting this critical measure for the people of Hawaii.

Mr. President, I ask unanimous consent that the text of this measure be printed in the RECORD.

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

S. 344

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

**SECTION 1. FINDINGS.**

Congress makes the following findings:

(1) The Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States.

(2) Native Hawaiians, the native people of the Hawaiian archipelago which is now part of the United States, are indigenous, native people of the United States.

(3) The United States has a special trust relationship to promote the welfare of the native people of the United States, including Native Hawaiians.

(4) Under the treaty making power of the United States, Congress exercised its constitutional authority to confirm a treaty between the United States and the government that represented the Hawaiian people, and from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full diplomatic recognition to the Hawaiian Government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887.

(5) Pursuant to the provisions of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside 203,500 acres of land in the Federal territory that later became the State of Hawaii to address the conditions of Native Hawaiians.

(6) By setting aside 203,500 acres of land for Native Hawaiian homesteads and farms, the Act assists the Native Hawaiian community in maintaining distinct native settlements throughout the State of Hawaii.

(7) Approximately 6,800 Native Hawaiian lessees and their family members reside on Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Home Lands are on a waiting list to receive assignments of land.

(8) In 1959, as part of the compact admitting Hawaii into the United States, Congress

established the Ceded Lands Trust for 5 purposes, 1 of which is the betterment of the conditions of Native Hawaiians. Such trust consists of approximately 1,800,000 acres of land, submerged lands, and the revenues derived from such lands, the assets of which have never been completely inventoried or segregated.

(9) Throughout the years, Native Hawaiians have repeatedly sought access to the Ceded Lands Trust and its resources and revenues in order to establish and maintain native settlements and distinct native communities throughout the State.

(10) The Hawaiian Home Lands and the Ceded Lands provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the survival of the Native Hawaiian people.

(11) Native Hawaiians have maintained other distinctly native areas in Hawaii.

(12) On November 23, 1993, Public Law 103–150 (107 Stat. 1510) (commonly known as the Apology Resolution) was enacted into law, extending an apology on behalf of the United States to the Native people of Hawaii for the United States role in the overthrow of the Kingdom of Hawaii.

(13) The Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United States, either through their monarchy or through a plebiscite or referendum.

(14) The Apology Resolution expresses the commitment of Congress and the President to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and Native Hawaiians; and to have Congress and the President, through the President's designated officials, consult with Native Hawaiians on the reconciliation process as called for under the Apology Resolution.

(15) Despite the overthrow of the Hawaiian Government, Native Hawaiians have continued to maintain their separate identity as a distinct native community through the formation of cultural, social, and political institutions, and to give expression to their rights as native people to self-determination and self-governance as evidenced through their participation in the Office of Hawaiian Affairs.

(16) Native Hawaiians also give expression to their rights as native people to self-determination and self-governance through the provision of governmental services to Native Hawaiians, including the provision of health care services, educational programs, employment and training programs, children's services, conservation programs, fish and wildlife protection, agricultural programs, native language immersion programs and native language immersion schools from kindergarten through high school, as well as college and master's degree programs in native language immersion instruction, and traditional justice programs, and by continuing their efforts to enhance Native Hawaiian self-determination and local control.

(17) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.

(18) The Native Hawaiian people wish to preserve, develop, and transmit to future Native Hawaiian generations their ancestral lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, and to achieve greater self-determination over their own affairs.

(19) This Act provides for a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct aboriginal, indigenous, native community to reorganize a Native Hawaiian governing entity for the purpose of giving expression to their rights as native people to self-determination and self-governance.

(20) The United States has declared that—

(A) the United States has a special responsibility for the welfare of the native peoples of the United States, including Native Hawaiians;

(B) Congress has identified Native Hawaiians as a distinct indigenous group within the scope of its Indian affairs power, and has enacted dozens of statutes on their behalf pursuant to its recognized trust responsibility; and

(C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii.

(21) The United States has recognized and reaffirmed the special trust relationship with the Native Hawaiian people through the enactment of the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (Public Law 86–3; 73 Stat. 4) by—

(A) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held in public trust for 5 purposes, one of which is for the betterment of the conditions of Native Hawaiians; and

(B) transferring the United States responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act.

(22) The United States continually has recognized and reaffirmed that—

(A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, native people who exercised sovereignty over the Hawaiian Islands;

(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;

(C) the United States extends services to Native Hawaiians because of their unique status as the aboriginal, native people of a once sovereign nation with whom the United States has a political and legal relationship; and

(D) the special trust relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of the United States.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) ABORIGINAL, INDIGENOUS, NATIVE PEOPLE.—The term ''aboriginal, indigenous, native people'' means those people whom Congress has recognized as the original inhabitants of the lands and who exercised sovereignty prior to European contact in the areas that later became part of the United States.

(2) APOLOGY RESOLUTION.—The term ''Apology Resolution'' means Public Law 103–150 (107 Stat. 1510), a joint resolution extending an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States in the January 17, 1893, overthrow of the Kingdom of Hawaii.

(3) CEDED LANDS.—The term ''ceded lands'' means those lands which were ceded to the United States by the Republic of Hawaii under the Joint Resolution to provide for annexing the Hawaiian Islands to the United States of July 7, 1898 (30 Stat. 750), and which were later transferred to the State of Hawaii in the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'' approved March 18, 1959 (Public Law 86–3; 73 Stat. 4).

(4) INDIGENOUS, NATIVE PEOPLE.—The term ''indigenous, native people'' means the lineal descendants of the aboriginal, indigenous, native people of the United States.

(5) INTERAGENCY COORDINATING GROUP.—The term ''Interagency Coordinating Group'' means the Native Hawaiian Interagency Coordinating Group established under section 5.

(6) NATIVE HAWAIIAN.—

(A) Prior to the recognition by the United States of the Native Hawaiian governing entity, the term ''Native Hawaiian'' means the indigenous, native people of Hawaii who are the direct lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii, and includes all Native Hawaiians who were eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) and their lineal descendants.

(B) Following the recognition by the United States of the Native Hawaiian governing entity, the term ''Native Hawaiian'' shall have the meaning given to such term in the organic governing documents of the Native Hawaiian governing entity.

(7) NATIVE HAWAIIAN GOVERNING ENTITY.—The term ''Native Hawaiian governing entity'' means the governing entity organized by the Native Hawaiian people.

(8) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

**SEC. 3. UNITED STATES POLICY AND PURPOSE.**

(a) POLICY.—The United States reaffirms that—

(1) Native Hawaiians are a unique and distinct, indigenous, native people, with whom the United States has a political and legal relationship;

(2) the United States has a special trust relationship to promote the welfare of Native Hawaiians;

(3) Congress possesses the authority under the Constitution to enact legislation to address the conditions of Native Hawaiians and has exercised this authority through the enactment of—

(A) the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42);

(B) the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (Public Law 86–3; 73 Stat. 4); and

(C) more than 150 other Federal laws addressing the conditions of Native Hawaiians;

(4) Native Hawaiians have—

(A) an inherent right to autonomy in their internal affairs;

(B) an inherent right of self-determination and self-governance; and

(C) the right to reorganize a Native Hawaiian governing entity; and

(5) the United States shall continue to engage in a process of reconciliation and political relations with the Native Hawaiian people.

(b) PURPOSE.—It is the intent of Congress that the purpose of this Act is to provide a process for the recognition by the United States of a Native Hawaiian governing entity for purposes of continuing a government-to-government relationship.

**SEC. 4. ESTABLISHMENT OF THE UNITED STATES OFFICE FOR NATIVE HAWAIIAN RELATIONS.**

(a) IN GENERAL.—There is established within the Office of the Secretary the United States Office for Native Hawaiian Relations.

(b) DUTIES OF THE OFFICE.—The United States Office for Native Hawaiian Relations shall—

(1) effectuate and coordinate the trust relationship between the Native Hawaiian people and the United States, and upon the recognition of the Native Hawaiian governing entity by the United States, between the Native Hawaiian governing entity and the United States through the Secretary, and with all other Federal agencies;

(2) continue the process of reconciliation with the Native Hawaiian people, and upon the recognition of the Native Hawaiian governing entity by the United States, continue the process of reconciliation with the Native Hawaiian governing entity;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian governing entity by providing timely notice to, and consulting with the Native Hawaiian people and the Native Hawaiian governing entity prior to taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

(4) consult with the Interagency Coordinating Group, other Federal agencies, and with relevant agencies of the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands; and

(5) prepare and submit to the Committee on Indian Affairs and the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives an annual report detailing the activities of the Interagency Coordinating Group that are undertaken with respect to the continuing process of reconciliation and to effect meaningful consultation with the Native Hawaiian governing entity and providing recommendations for any necessary changes to existing Federal statutes or regulations promulgated under the authority of Federal law.

**SEC. 5. NATIVE HAWAIIAN INTERAGENCY COORDINATING GROUP.**

(a) ESTABLISHMENT.—In recognition of the fact that Federal programs authorized to address the conditions of Native Hawaiians are largely administered by Federal agencies other than the Department of the Interior, there is established an interagency coordinating group to be known as the ''Native Hawaiian Interagency Coordinating Group''.

(b) COMPOSITION.—The Interagency Coordinating Group shall be composed of officials, to be designated by the President, from—

(1) each Federal agency that administers Native Hawaiian programs, establishes or implements policies that affect Native Hawaiians, or whose actions may significantly or uniquely impact on Native Hawaiian resources, rights, or lands; and

(2) the United States Office for Native Hawaiian Relations established under section 4.

(c) LEAD AGENCY.—The Department of the Interior shall serve as the lead agency of the Interagency Coordinating Group, and meetings of the Interagency Coordinating Group shall be convened by the lead agency.

(d) DUTIES.—The responsibilities of the Interagency Coordinating Group shall be—

(1) the coordination of Federal programs and policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government which may significantly or uniquely impact on Native Hawaiian resources, rights, or lands;

(2) to assure that each Federal agency develops a policy on consultation with the Native Hawaiian people, and upon recognition of the Native Hawaiian governing entity by the United States, consultation with the Native Hawaiian governing entity; and

(3) to assure the participation of each Federal agency in the development of the report to Congress authorized in section 4(b)(5).

**SEC. 6. PROCESS FOR THE RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.**

(a) RECOGNITION OF THE NATIVE HAWAIIAN GOVERNING ENTITY.—The right of the Native Hawaiian people to organize for their common welfare and to adopt appropriate organic governing documents is hereby recognized by the United States.

(b) PROCESS FOR RECOGNITION.—

(1) SUBMITTAL OF ORGANIC GOVERNING DOCUMENTS.—Following the organization of the Native Hawaiian governing entity, the adoption of organic governing documents, and the election of officers of the Native Hawaiian governing entity, the duly elected officers of the Native Hawaiian governing entity shall submit the organic governing documents of the Native Hawaiian governing entity to the Secretary.

(2) CERTIFICATIONS.—

(A) IN GENERAL.—Within 90 days of the date that the duly elected officers of the Native Hawaiian governing entity submit the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents—

(i) establish the criteria for citizenship in the Native Hawaiian governing entity;

(ii) were adopted by a majority vote of the citizens of the Native Hawaiian governing entity;

(iii) provide for the exercise of governmental authorities by the Native Hawaiian governing entity;

(iv) provide for the Native Hawaiian governing entity to negotiate with Federal, State, and local governments, and other entities;

(v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian governing entity without the consent of the Native Hawaiian governing entity;

(vi) provide for the protection of the civil rights of the citizens of the Native Hawaiian governing entity and all persons subject to the authority of the Native Hawaiian governing entity, and ensure that the Native Hawaiian governing entity exercises its authority consistent with the requirements of section 202 of the Act of April 11, 1968 (25 U.S.C. 1302); and

(vii) are consistent with applicable Federal law and the special trust relationship between the United States and the indigenous native people of the United States.

(B) BY THE SECRETARY.—Within 90 days of the date that the duly elected officers of the Native Hawaiian governing entity submit the organic governing documents to the Secretary, the Secretary shall certify that the State of Hawaii supports the recognition of a Native Hawaiian governing entity by the United States as evidenced by a resolution or act of the Hawaii State legislature.

(C) RESUBMISSION IN CASE OF NONCOMPLIANCE WITH FEDERAL LAW.—

(i) RESUBMISSION BY THE SECRETARY.—If the Secretary determines that the organic governing documents, or any part thereof, are not consistent with applicable Federal law, the Secretary shall resubmit the organic governing documents to the duly elected officers of the Native Hawaiian governing entity along with a justification for each of the Secretary's findings as to why the provisions are not consistent with such law.

(ii) AMENDMENT AND RESUBMISSION BY THE NATIVE HAWAIIAN GOVERNING ENTITY.—If the organic governing documents are resubmitted to the duly elected officers of the Native Hawaiian governing entity by the Secretary under clause (i), the duly elected officers of the Native Hawaiian governing entity shall—

(I) amend the organic governing documents to ensure that the documents comply with applicable Federal law; and

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with the requirements of this paragraph.

(D) CERTIFICATIONS DEEMED MADE.—The certifications authorized in subparagraph (B) shall be deemed to have been made if the Secretary has not acted within 90 days of the date that the duly elected officers of the Native Hawaiian governing entity have submitted the organic governing documents of the Native Hawaiian governing entity to the Secretary.

(3) FEDERAL RECOGNITION.—Notwithstanding any other provision of law, upon the election of the officers of the Native Hawaiian governing entity and the certifications by the Secretary required under paragraph (1), the United States hereby extends Federal recognition to the Native Hawaiian governing entity as the representative governing body of the Native Hawaiian people.

**SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated such sums as may be necessary to carry out the activities authorized in this Act.

**SEC. 8. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS.**

(a) REAFFIRMATION.—The delegation by the United States of authority to the State of Hawaii to address the conditions of the indigenous, native people of Hawaii contained in the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'' approved March 18, 1959 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

(b) NEGOTIATIONS.—Upon the Federal recognition of the Native Hawaiian governing entity by the United States, the United States is authorized to negotiate and enter into an agreement with the State of Hawaii and the Native Hawaiian governing entity regarding the transfer of lands, resources, and assets dedicated to Native Hawaiian use to the Native Hawaiian governing entity. Nothing in this Act is intended to serve as a settlement of any claims against the United States.

**SEC. 9. APPLICABILITY OF CERTAIN FEDERAL LAWS.**

(a) INDIAN GAMING REGULATORY ACT.—Nothing contained in this Act shall be construed as an authorization for the Native Hawaiian governing entity to conduct gaming activities under the authority of the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.).

(b) BUREAU OF INDIAN AFFAIRS.—Nothing contained in this Act shall be construed as an authorization for eligibility to participate in any programs and services provided by the Bureau of Indian Affairs for any persons not otherwise eligible for such programs or services.

**SEC. 10. SEVERABILITY.**

In the event that any section or provision of this Act is held invalid, it is the intent of Congress that the remaining sections or provisions of this Act shall continue in full force and effect.

By Mr. NELSON of Florida (for himself, Mr. KENNEDY, Mr. GRAHAM of Florida, Mr. EDWARDS, and Mr. SARBANES):

S. 345. A bill to amend the title XVIII of the Social Security Act to prohibit physicians and other health care practitioners from charging membership or other incidental fee (or requiring purchase of other items or services) as a prerequisite for the provision of an item or service to a medicare beneficiary; to the Committee on Finance.

Mr. NELSON of Florida. Mr. President, I rise today to introduce the Equal Access to Medicare Act to combat the growing practice of ''concierge care'' medical practices. As my colleagues may recall I introduced similar legislation last Congress to deal with the growing problem of doctors shutting down their practices and opening new ones, only accepting those patients willing to pay a membership fee. These fees range from $1,500 to $20,000 annually. By charging these dues, or requiring patients to purchase non-Medicare covered services, doctors have been able to shrink their patient load and maintain high profit margins while continuing to bill Medicare, all on the backs of low- and middle-income beneficiaries.

This is a dangerous model that causes significant disparities in the care available to Medicare beneficiaries. A doctor receiving Medicare reimbursement should not be allowed to turn away those Medicare beneficiaries who cannot, or choose not to pay a membership fee. My bill simply prevents Medicare from reimbursing doctors who charge membership fees or require the purchase of non-Medicare covered services as a condition for the provision of care.

Since the introduction of this bill in 2001, the practice has been rapidly expanding with versions in many states. As an increasing number of Medicare beneficiaries voice their concerns, it is time for Congress to act. I hope that as we debate Medicare modernization this year, Congress will agree to put an end to this egregious practice.

In addition to the concerns of seniors, health care advocacy groups have begun to weigh in as well. Both the American Academy of Family Physicians and the American Medical Association have expressed concern about the ''. . . risks associated with the spread of this model'', AMA, June 2002 report. Should this practice proliferate, a doctor shortage for low- and middle-income Medicare beneficiaries is likely, exacerbating an already ailing health care marketplace.

I must emphasize: this bill does not interfere with a doctor's ability to set up a practice with a limited number of patients while remaining adequately compensated. Nor would doctors who participate in Medicare be prevented from contracting privately with patients for non-Medicare covered services. It simply provides that doctors who participate in the Medicare program may not select patients based upon willingness or ability to pay a fee for other services. This is the same standard that private insurance companies apply to their providers.

I hope my colleagues will join me in helping Medicare keep its promise of accessibility to seniors who have paid a lifetime of ''premiums.''

I ask unanimous consent that the text of this legislation be printed in the RECORD.

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

S. 345

*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 ''Equal Access to Medicare Act of 2003''.

**SEC. 2. PROHIBITION OF INCIDENTAL FEES AND REQUIRED PURCHASE OF NON-COVERED ITEMS OR SERVICES UNDER MEDICARE.**

(a) IN GENERAL.—Section 1842 of the Social Security Act (42 U.S.C. 1395u) is amended by adding at the end the following new subsection:

''(u) PROHIBITION OF INCIDENTAL FEES OR REQUIRING PURCHASE OF NONCOVERED ITEMS OR SERVICES.—

''(1) IN GENERAL.—A physician, practitioner (as described in section 1842(b)(18)(C)), or other individual may not—

''(A) charge a membership fee or any other incidental fee to a medicare beneficiary (as defined in section 1802(b)(5)(A)); or

''(B) require a medicare beneficiary (as so defined) to purchase a noncovered item or service,

as a prerequisite for the provision of a covered item or service to the beneficiary under this title.

''(2) CONSTRUCTION.—Nothing in this subsection shall be construed to apply the prohibition under paragraph (1) to a physician, practitioner, or other individual described in such subsection who does not accept any funds under this title.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to membership fees and other charges made, or purchases of items and services required, on or after the date of enactment of this Act.

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By Mr. LEVIN (for himself and Mr. THOMAS):

S. 346. A bill to amend the Office of Federal Procurement Policy Act to establish a governmentwide policy requiring competition in certain executive agency procurements; to the Committee on Governmental Affairs.

Mr. LEVIN. Mr. President, I am pleased to join with Senator CRAIG THOMAS in introducing the Federal Prison Industries Competition in Contracting Act. Our bill is based on a straightforward premise: it is unfair for Federal Prison Industries to deny businesses in the private sector an opportunity to compete for sales to their own government.

I repeat: the bill that we are introducing today, it enacted, would do nothing more than permit private sector companies to compete for Federal contracts that are paid for with their dollars. It may seem incredible that they are denied this opportunity today, but that is the law, because if Federal Prison Industries says that it wants a contract, it gets that contract, regardless whether a company in the private sector may offer to provide the product better, cheaper, or faster.

We have made considerable progress on this issue since Senator THOMAS and I introduced a similar bill in the 107th congress. Two years ago, the Senate voted 74–24 to end Federal Prison Industries' monopoly on Department of Defense contracts. Not only was that provision enacted into law, we were able to strengthen it with a second provision in last year's defense bill.

Despite this progress, much work remains to be done. As of today, Federal Prison Industries retains its monopoly on the contracts of every agency of the Federal Government, other than the Department of Defense. This means that all other Federal agencies, including the new Department of Homeland Security, may be required to purchase products from Federal Prison Industries. It also means that private sector companies may find it impossible to sell their products to their own government, even when their products outperform FPI products in terms of price, quality and time of delivery.

The bill that we are introducing today would not limit the ability of Federal Prison Industries to sell its products to Federal agencies. It would simply say that these sales should be made on a competitive, rather than a sole-source basis.

FPI starts with a significant advantage in any competition with the private sector, since FPI pays inmates less than two dollars an hour, far below the minimum wage and a small fraction of the wage paid to most private sector workers in competing industries. And of course, the taxpayers provide a direct subsidy to Federal Prison Industries products by picking up the cost of feeding, clothing, and housing the inmates who provide the labor. Given those advantages, there is no reason why we should still require Federal agencies to purchase products from FPI even when they are more expensive or of a lower quality than competing commercial items. I can think of no reason why private industry should be prohibited from competing for these federal agency contracts.

We have made several changes to this bill since it was introduced in the 107th Congress. The new bill has been harmonized with the provisions that we have already enacted for the Department of Defense, to ensure that we will have a single, government-wide procurement policy for agencies purchasing products available from Federal Prison industries. This government-wide policy would be codified in the Office of Federal Procurement Policy Act, which is the primary procurement statute that applies to both defense and non-defense agencies. I believe that these changes will strengthen the bill and reinforce its underlying intent.

Federal Prison Industries has repeatedly claimed that it provides a quality product at a price that is competitive with current market prices. Indeed, the Federal Prison Industries statute requires them to do so. That statute states that FPI may provide to Federal agencies products that ''meet their requirements'' at prices that do not ''exceed current market prices''.

Yet, FPI remains unwilling to compete with private sector businesses and their employees, or even to permit federal agencies to compare their products and prices with those available in the private sector. Indeed, FPI has tried to prohibit Federal agencies from conducting market research, as they would ordinarily do, to determine whether the price and quality or FPI products is comparable to what is available in the commercial marketplace. Instead, Federal agencies are directed to contact FPI, which acts as the sole arbiter of whether the product meets the agency's requirements.

The result is totally and understandably frustrating to private sector businesses and their employees who are denied an opportunity to compete for Federal business, as well as to the Federal agencies who are forced to buy FPI products. The frustration of these businesses comes through in a series of letters that were placed in the record of a House Small Business Committee hearing in the last Congress. One letter stated with regard to UNICOR—the trade name used by Federal Prison Industries:

DEAR MR. CHAIRMAN: My name is Billy Carroll; I am an outside sales representatives with C&C Office Supply Co. in Biloxi Mississippi. Our company has been in business for over 20 years and we employ 20 people.

During the course of our 20-year history we have done considerable business with numerous governmental agencies and military installations. Some of them being Naval Construction Battalion in Gulfport, Mississippi; Air National Guard in Gulfport; Keesler Air Force Base in Biloxi; Naval Station in Pascagoula; and NASA in Stennis Space Center.

As a result of FPI's unfair monopolistic practices, we have seen sales from these governmental agencies go from $100,000.00 a month to less than $5,000 a month.

There are numerous horror stories we hear from our customers who deal with UNICOR. The most recent one being that a customer had to wait 5 months to get their furniture. When the furniture finally arrived, it wasn't even what they had ordered. This is something that would have been averted had they been able to use our company or another dealer.

I could go on about how we could have sold the product much cheaper, which would have saved taxpayers money, faster delivery, which would have increased productivity, and finally better service, but I won't. You get the picture.

Sincerely,

BILLY CARROLL,
*C&C Office Supply Company, Biloxi, MS.*

Mr. LEVIN. Other vendors expressed even greater frustration about FPI's unfair business practices:

DEAR MR. CHAIRMAN: During the past 5 years I have had representatives from UNICOR tell my customers that they had to turn over my proprietary designs to UNICOR, without payment to the dealership. They have told my customers that if they do not buy UNICOR, they will be 'reported to congress' and that there is no place else to go for government furniture. They frighten young department of defense officials with words like 'illegal' when they ask about waivers.

The UNICOR reps routinely refuse waivers on the first approach. The answer is a standard 'UNICOR has products which will meet your needs.' No explanation. They refuse to answer waiver requests in a timely fashion. I have had a $110,000 order for the Arizona Air National Guard in Tucson literally taken away by UNICOR. The representative demanded the designs and said that UNICOR would fill the request. There would be no waiver and no discussion. And she was right. Despite the fact that all of the programming phase had been completed by my designers, at no cost to the federal government, this rep insisted that she knew what was best for this customer. Of course, the products arrived late, in poor condition, was much more expensive than the budgeted GSA furniture—and the reps have not been heard from. The answer is 'a 10% discount' or a 'free chair.'

In Texas, my representative worked for 4 months with a customer, completing designs and meeting all relevant criteria. She proposed only products on GSA contract. UNICOR unilaterally refused to waive the chairs, approximately $50,000 worth, because their factories were not at capacity. The fact that the UNICOR chairs do not meet the price point, that UNICOR spent no time with the customers determining function, color or other requirements has no meaning. The seating portion of the order is lost. The remaining portion would have been lost, as well, if the customer had not spent approximately 30 days going from one appeal process to the other attempting to get waivers. Very few customers will take the time to do this. Of course, when the project finally arrives, it will be late and missions will be compromised.

Sincerely,

*Ruthanne S. Pitts,*
*Simmons Contract Furnishings,*
*Tucson, Arizona.*

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DEAR MR. CHAIRMAN: I personally worked with the staff who had just moved into a new ward at Walter Reed Army Medical Center. We had two meetings during which I took measurements and went over in great detail the furniture items they needed for the report room, reception area, patient education room, two offices and some miscellaneous shelving. The total I quoted to Walter Reed was approximately $13,000 and met their needs exactly. This was in April of 2000. Our delivery would have been completed within a month.

Because Walter Reed couldn't get a UNICOR waiver (just to determine this fact takes at least 6 weeks) the order was placed with UNICOR and took eight months to be delivered (it just showed up last week) and much of it was not what officials at Walter Reed even ordered. FPI tells their customers what the customer can have rather than meeting the needs of the customer. As an example, we had designed a workstation for the report room to accommodate four computers. UNICOR sent an expensive, massive cherry workstation for an executive office that had to be put in someone's office (who didn't need new furniture) because it was unusable where it was supposed to go. UNICOR charged an additional $1,500.00 to assemble this (and didn't have proper tools to finish the assembly). Our price for the proper item including all set up was less than they charged for set-up alone.

You know, it's not just the impact FPI has on our businesses, it's the waste of everybody's tax dollars when furniture costs more and doesn't even do the job.

Sincerely,

DIANE LAKE,
*Economy Office Products, Inc. Fairfax, VA.*

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DEAR MR. CHAIRMAN: I am concerned in the way taxpayers' money is being wasted. A few years ago I had proposed over $100,000.00 in chairs to the VA Medical Center. They were excited about the chair I was proposing on contract. The chair was less expensive than the chair proposed by FPI. The customer also recognized that the chair I was proposing was better in quality and had more ergonomic features, which would assist in some of their health issues. Another comment made by the VA was the problem with the FPI chairs breaking easily. Parts were near impossible to get, so they would throw the FPI chair in the garbage.

In this situation FPI denied the VA waiver. Regretfully they had to buy FPI chairs. I can not believe this happens in America.

Sincerely,

RICK BUCHHOLZ,
*Christianson's Business Furniture.*

Mr. LEVIN. These letters are far from unique. In case after case, Federal Prison Industries insists on taking contracts away from private businesses, even where FPI's products are inferior, their prices are higher, and they are not prepared to deliver in a timely manner. This is wrong.

Avoiding competition is the easy way out, but it isn't the right way for FPI, it isn't the right way for the private sector workers whose jobs FPI is taking, and it isn't the right way for Federal agencies, which too often get stuck with the bill for inferior products that can't compete with private sector goods. Competition will be better for Federal agencies, better for the taxpayer, and better for working men and women around the country.

Mr. THOMAS. Mr. President, today I am pleased to join Senator LEVIN in introducing a bill that will further my efforts to limit government competition with the private sector. Senator LEVIN and I propose to eliminate the mandatory contracting requirement that Federal agencies are subject to when it comes to products made by the Federal Prison Industries, FPI. Under law, all Federal agencies, except the Department of Defense, are required to purchase products made by the FPI. Simply put, this bill will require the FPI to compete with the private sector for Federal contracts.

Currently, the FPI employs approximately 22,000 Federal prisoners or roughly 20 percent of all Federal prisoners. These prisoners are responsible for producing a diverse range of products for the FPI, ranging from office furniture to clothing. The remaining 80 percent of Federal prisoners, who work, do so in and around Federal prisons.

While Senator LEVIN and I believe that it is important to keep prisoners working, we do not believe that this effort should unduly harm or conflict with law-abiding businesses. This bill seeks to minimize the unfair competition that private sector companies face with the FPI.

The FPI's mandatory source requirement not only undercuts private business throughout America, but its mandatory source preference oftentimes costs American taxpayers more money. I believe American taxpayers would be alarmed to learn of the preferential treatment that the FPI enjoys when it comes to Federal contracts.

As I said before, Senator LEVIN and I support the goal of keeping prisoners busy while serving their time in prison. However, if we allow competition in Federal contracts, the FPI will be required to focus its efforts in product areas that don't unfairly compete with the private sector. Clearly, competitive bidding is a reasonable process that will ensure taxpayer's dollars are being spent justly.

Of particular note, our bill allows contracting officers, within each Federal agency, the ability to use competitive procedures for the procurement of products. This approach allows Federal agencies to select the FPI contracts if he/she believes that the FPI can meet that particularly agency's requirements and the product is offered at a fair and reasonable price. The above outlined provision in our bill seeks to place the control of government procurement in the hands of contracting officers, rather than in the hands of the FPI.

In addition to establishing a competitive procedure for the procurement of products, we include a provision that allows the Attorney General to grant a waiver to this process if a particular contract is deemed essential to the safety and effective administration of a particular prison.

I am confident that by allowing competition for government contracts our bill will save tax dollars. As Congress looks for additional cost saving practices, the elimination of the FPI's mandatory source preference will bring about numerous improvements, not just in cost savings, but also in streamlining of the FPI's products.

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By Mrs. FEINSTEIN:

S. 347. A bill to direct the Secretary of the Interior and the Secretary of Agriculture to conduct a joint special resources study to evaluate the suitability and feasibility of establishing the Rim of the Valley Corridor as a unit of the Santa Monica Mountains National Recreation Area, and for other purposes; to the Committee on Energy and Natural Resources.

Mrs. FEINSTEIN. Mr. President, I am pleased to introduce this bill today to direct the Interior Secretary to conduct a study to evaluate the suitability and feasibility of expanding the Santa Monica National Recreation Area to include the Rim of the Valley Corridor.

The Rim of the Valley Corridor encircles the San Fernando Valley, La Crescenta, Simi, Santa Clarita, Conejo Valleys, consisting of parts of the Santa Monica Mountains, Santa Susanna Mountains, San Gabriel Mountains, Verdugo Mountains, San Rafael Hills and connects to the adjacent Los Padres and San Bernardino National Forests.

This parcel of land is unique because of its rare Mediterranean ecosystem and wildlife corridor that stretches north from the Santa Monicas. With the population growth forecasted to multiply exponentially over the next several decades, the need for parks to balance out the expected population growth has become critical in California.

Since the creation of the Santa Monica Recreation Area in 1978, Federal, State, and local authorities have worked successfully together to create and maintain the highly successful Santa Monica Mountains National Recreation Area, the world's largest urban park, hemmed in on all sides by development.

Park and recreational lands provide people with a vital refuge from urban life while preserving valuable habitat and wildlife. With the passage of this legislation, Congress will hold true to its original commitment to preserve the scenic, natural, and historic setting of the Santa Monica Mountains Recreation Area. With the inclusion of the Rim of the Valley Corridor in Santa Monica Mountains Recreation Area, greater ecological health and diversity will be promoted, particularly for larger animals like mountain lions, bobcats, and the golden eagle.

After the study called for in this bill is complete, the Secretary of the Interior and Congress will be in a key position to determine whether the Rim of the Valley warrants national park status.

This bill enjoys strong support from local and State officials and I hope that it will have as much strong bipartisan support this Congress, as it did last Congress. Congressman Adam Schiff plans to introduce companion legislation for this bill in the House and I applaud his commitment to this issue.

I urge my colleagues to support this legislation.

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By Mr. SCHUMER (for himself, Mr. BIDEN, Ms. SNOWE, Mr. BAYH, Mr. SMITH, and Mr. DURBIN):

S. 348. A bill to amend the Internal Revenue Code of 1986 to make higher education more affordable, and for other purposes; to the Committee on Finance.

Mr. SCHUMER. Mr. President, 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. 348

*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 ''Make College Affordable Act of 2003''.

**SEC. 2. EXPANSION OF DEDUCTION FOR HIGHER EDUCATION EXPENSES.**

(a) AMOUNT OF DEDUCTION.—Subsection (b) of section 222 of the Internal Revenue Code of 1986 (relating to deduction for qualified tuition and related expenses) is amended to read as follows:

''(b) LIMITATIONS.—

''(1) DOLLAR LIMITATIONS.—

''(A) IN GENERAL.—Except as provided in paragraph (2), the amount allowed as a deduction under subsection (a) with respect to the taxpayer for any taxable year shall not exceed the applicable dollar limit.

''(B) APPLICABLE DOLLAR LIMIT.—The applicable dollar limit for any taxable year shall be determined as follows:

| "Taxable year: | Applicable dollar amount: |
|---|---|
| 2003 | $8,000 |
| 2004 and thereafter | $12,000. |

''(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(A) IN GENERAL.—The amount which would (but for this paragraph) be taken into account under subsection (a) shall be reduced (but not below zero) by the amount determined under subparagraph (B).

''(B) AMOUNT OF REDUCTION.—The amount determined under this subparagraph equals the amount which bears the same ratio to the amount which would be so taken into account as—

''(i) the excess of—

''(I) the taxpayer's modified adjusted gross income for such taxable year, over

''(II) $65,000 ($130,000 in the case of a joint return), bears to

''(ii) $15,000 ($30,000 in the case of a joint return).

''(C) MODIFIED ADJUSTED GROSS INCOME.—For purposes of this paragraph, the term 'modified adjusted gross income' means the adjusted gross income of the taxpayer for the taxable year determined—

''(i) without regard to this section and sections 911, 931, and 933, and

''(ii) after the application of sections 86, 135, 137, 219, 221, and 469.

For purposes of the sections referred to in clause (ii), adjusted gross income shall be determined without regard to the deduction allowed under this section.

''(D) INFLATION ADJUSTMENTS.—

''(i) IN GENERAL.—In the case of any taxable year beginning in a calendar year after 2003, both of the dollar amounts in subparagraph (B)(i)(II) shall be increased by an amount equal to—

''(I) such dollar amount, multiplied by

''(II) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, by substituting 'calendar year 2002' for 'calendar year 1992' in subparagraph (B) thereof.

''(ii) ROUNDING.—If any amount as adjusted under clause (i) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.''.

(b) QUALIFIED TUITION AND RELATED EXPENSES OF ELIGIBLE STUDENTS.—

(1) IN GENERAL.—Section 222(a) of the Internal Revenue Code of 1986 (relating to allowance of deduction) is amended by inserting ''of eligible students'' after ''expenses''.

(2) DEFINITION OF ELIGIBLE STUDENT.—Section 222(d) of such Code (relating to definitions and special rules) is amended by redesignating paragraphs (2) through (6) as paragraphs (3) through (7), respectively, and by inserting after paragraph (1) the following new paragraph:

''(2) ELIGIBLE STUDENT.—The term 'eligible student' has the meaning given such term by section 25A(b)(3).''.

(c) DEDUCTION MADE PERMANENT.—Title IX of the Economic Growth and Tax Relief Reconciliation Act of 2001 (relating to sunset of

provisions of such Act) shall not apply to the amendments made by section 431 of such Act.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made in taxable years beginning after December 31, 2002.

**SEC. 3. CREDIT FOR INTEREST ON HIGHER EDUCATION LOANS.**

(a) IN GENERAL.—Subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to nonrefundable personal credits) is amended by inserting after section 25B the following new section:

**''SEC. 25C. INTEREST ON HIGHER EDUCATION LOANS.**

''(a) ALLOWANCE OF CREDIT.—In the case of an individual, there shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to the interest paid by the taxpayer during the taxable year on any qualified education loan.

''(b) MAXIMUM CREDIT.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the credit allowed by subsection (a) for the taxable year shall not exceed $1,500.

''(2) LIMITATION BASED ON MODIFIED ADJUSTED GROSS INCOME.—

''(A) IN GENERAL.—If the modified adjusted gross income of the taxpayer for the taxable year exceeds $50,000 ($100,000 in the case of a joint return), the amount which would (but for this paragraph) be allowable as a credit under this section shall be reduced (but not below zero) by the amount which bears the same ratio to the amount which would be so allowable as such excess bears to $20,000 ($40,000 in the case of a joint return).

''(B) MODIFIED ADJUSTED GROSS INCOME.—The term 'modified adjusted gross income' means adjusted gross income determined without regard to sections 911, 931, and 933.

''(C) INFLATION ADJUSTMENT.—In the case of any taxable year beginning after 2003, the $50,000 and $100,000 amounts referred to in subparagraph (A) shall be increased by an amount equal to—

''(i) such dollar amount, multiplied by

''(ii) the cost-of-living adjustment determined under section (1)(f)(3) for the calendar year in which the taxable year begins, by substituting '2002' for '1992'.

''(D) ROUNDING.—If any amount as adjusted under subparagraph (C) is not a multiple of $50, such amount shall be rounded to the nearest multiple of $50.

''(c) DEPENDENTS NOT ELIGIBLE FOR CREDIT.—No credit shall be allowed by this section to an individual for the taxable year if a deduction under section 151 with respect to such individual is allowed to another taxpayer for the taxable year beginning in the calendar year in which such individual's taxable year begins.

''(d) LIMIT ON PERIOD CREDIT ALLOWED.—A credit shall be allowed under this section only with respect to interest paid on any qualified education loan during the first 60 months (whether or not consecutive) in which interest payments are required. For purposes of this paragraph, any loan and all refinancings of such loan shall be treated as 1 loan.

''(e) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED EDUCATION LOAN.—The term 'qualified education loan' has the meaning given such term by section 221(e)(1).

''(2) DEPENDENT.—The term 'dependent' has the meaning given such term by section 152.

''(f) SPECIAL RULES.—

''(1) DENIAL OF DOUBLE BENEFIT.—No credit shall be allowed under this section for any amount taken into account for any deduction under any other provision of this chapter.

''(2) MARRIED COUPLES MUST FILE JOINT RETURN.—If the taxpayer is married at the close of the taxable year, the credit shall be allowed under subsection (a) only if the taxpayer and the taxpayer's spouse file a joint return for the taxable year.

''(3) MARITAL STATUS.—Marital status shall be determined in accordance with section 7703.''.

(b) CONFORMING AMENDMENT.—The table of sections for subpart A of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 25B the following new item:

''Sec. 25C. Interest on higher education loans.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any qualified education loan (as defined in section 25C(e)(1) of the Internal Revenue Code of 1986, as added by this section) incurred on, before, or after the date of the enactment of this Act, but only with respect to any loan interest payment due after December 31, 2002.

Mr. BIDEN. Mr. President, I am pleased once again to join my colleague from New York, Senator SCHUMER, to talk about a bill that will help American families afford their children's college tuition. The bill we are reintroducing today, the Make College Affordable Act, will make up to $12,000 in college tuition tax deductible each year, while providing graduates with a tax credit to reduce the cost of their student loans.

With the average college graduate earning 80 percent more than the average non-college, high school graduate, it is abundantly clear that in today's economy a college degree is an absolute necessity. When I went to college, it cost about $1,000 a year. That meant, for a family making about $12,000 a year, the cost of college was about 6 or 7 percent of that family's income. Today the average cost of room, board and tuition at a four-year public college has jumped to over $9,000 a year. The average cost of room, board and tuition at a private four-year college has jumped to over $25,000. What does this mean? This means that hard working American families are spending a larger percentage of their income than ever before to send their children to school. To attend my alma mater, the University of Delaware, it costs nearly 20 percent of a Delaware family's average annual income to cover costs. If that same family wants to send their child to a private university, approximately 50 percent of their income is required. This means that the average American family is likely to spend just as much, if not more, on their child's tuition as they are to pay in annual mortgage payments.

I have said it before. How can we expect families to dream of a better and brighter future for their children, when the cost of attending even some public universities rivals their home mortgage payments? We can't.

That is why in 1995, I first offered an amendment to permit a $10,000 tuition tax deduction. That is why in 1996 and 1997, I introduced my GET AHEAD bill which would have provided students and their families with scholarships, tax deductions, and college savings plans. We've made some good progress. A number of initiatives were incorporated into the 1997 tax bill. Today families have available to them the Hope Scholarship—a tax credit of up to $1,500 for the first two years of college, and the Lifetime Learning Credit—which permits a 20 percent tax credit on up to $10,000 worth of higher education expenses. Students can also claim a tax deduction for interest on student loans, have the opportunity to consolidate their student loans at low interest rates and beginning in 2001, have had the chance to deduct up to $3,000 in tuition expenses from their Federal income tax.

And yet, we can and should do more to help qualified students attend the college of their dreams. This is why I introduced my Tuition Assistance for Families Act in January. This bill would expand current tuition tax credits, provide merit scholarships to graduating seniors, increase the maximum Pell Grant and raise the tuition tax deduction much like the bill before us today.

I join my friend from New York today to introduce the Make College Affordable Act because it will allow most taxpayers to take up to a $12,000 tax deduction each year for college tuition and fees. For some families this would amount to a tax savings of more than $3,000 each year—$3,000 that can go toward their children's doctor visits, retirement savings, child care costs and yes, toward their annual mortgage payment.

In addition to the tax deduction, the Schumer-Biden bill will provide a tax credit of up to $1,500 for the interest paid on student loans over the first five years of repayment. This credit will be available to individuals with incomes of up to $50,000, and families with incomes up to $100,000. When one considers that the average graduate is $16,928 in debt, you can imagine how quickly interest payments add up each year.

We are hearing a great deal these days about tax cuts. How we choose to provide them, and who we choose to provide them to, is a reflection of our nation's priorities and values. What greater priority could there be than providing our children with a first class education. Let's be smart about our investments when considering the tax proposals that come before us. Let's help families provide their children with a better life through the promise of a college education. And let's not forget that the Make College Affordable Act will not only ensure a brighter future for all our children, it will help to guarantee an educated and prosperous America down the road.

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By Mrs. FEINSTEIN (for herself, Ms. COLLINS, Ms. LANDRIEU, Ms. SNOWE, Mr. KENNEDY, Mr. ALLEN, Mr. JOHNSON, Mr. DAYTON, and Mr. BUNNING):

S. 349. A bill to amend title II of the Social Security Act to repeal the Government pension offset and windfall elimination provisions; to the Committee on Finance.

Mrs. FEINSTEIN. Mr. President, I rise today with my colleague, Senator COLLINS, to introduce legislation to repeal two provisions of current law that reduce earned Social Security benefits for teachers and other government pensioners—the Windfall Elimination, WEP, provision, and the Government Pension Offset, GPO, provision.

Under current law, public employees, whose salaries are often lower than those in the private sector to begin with, find that they are penalized and held to a different standard when it comes to retirement benefits. The unfair reduction in their benefits makes it more difficult to recruit teachers, police officers, and fire fighters.

The Social Security Windfall Elimination Provision reduces Social Security benefits for retirees who paid into Social Security and also receive a government pension, such as from a teacher retirement fund. Private sector retirees receive monthly Social Security checks equal to 90 percent of their first $561 in average monthly career earnings, plus 32 percent of monthly earnings up to $3,381 and 15 percent of earnings above $3,381. Government pensioners, however, are only allowed to receive 40 percent of the first $561 in career monthly earnings, a penalty of $280.50 per month.

To my mind it is simply unfair, especially at a time when we need to be doing all we can to attract qualified people to government service, and my legislation will allow government pensioners the chance to earn the same 90 percent to which non-government pension recipients are entitled.

The current Government Pension Offset provision reduces Social Security spousal benefits by an amount equal to two-thirds of the spouse's public employment civil service pension. This can have the effect of taking away, entirely, a spouse's benefits from Social Security.

It is beyond my understanding why we would want to discourage people from pursuing careers in public service by essentially saying that if you do enter public service, your family will suffer by not being able to receive the full retirement benefits they would otherwise be entitled to.

Record enrollments in public schools and the projected retirements of thousands of veteran teachers are driving an urgent need for teacher recruitment. Critical efforts to reduce class sizes also necessitate hiring additional teachers. It is estimated that schools will need to hire between 2.2 and 2.7 million new teachers nationwide by 2009.

California has 284,030 teachers currently, but will need to hire an additional 300,000 teachers by 2010 to keep up with California's rate of student enrollment, which is three times the national average. All in all, California has to hire 26,000 new teachers every year.

To combat the growing teacher shortage crisis, forty-five States and the District of Columbia now offer ''alternate routes'' for certification to teach in the Nation's public schools. It is a sad irony that policymakers are encouraging experienced people to change careers and enter the teaching profession at the same time that individuals who have worked in other careers are less likely to want to become teachers if doing so will affect Social Security benefits they worked so hard to earn.

Almost 300,000 government retirees nationwide are affected by the GPO and the WEP, but their impact is greatest in the 13 states that chose to keep their own public employee retirement systems, including California. According to the Congressional Budget Office, the GPO reduces benefits for some 200,000 individuals by more than $3,600 a year. The WEP causes already low-paid public employees outside the Social Security system, like teachers, firefighters and police officers, to lose up to sixty percent of the Social Security benefits to which they are entitled. Ironically, the loss of Social Security benefits may make these individuals eligible for more costly assistance, such as food stamps.

The reforms that led to the GPO and the WEP are almost 20 years old. At the time they were enacted, I'm sure they seemed like a good idea. Now that we are witnessing the practical effects of those reforms, I hope that Congress will pass legislation to address the unfair reduction of benefits that make it even more difficult to recruit and retain public employees.

Ms. COLLINS. Mr. President, I am pleased to join with my colleague from California, Senator FEINSTEIN, in introducing the Social Security Fairness Act, which repeals two provisions of current law—the windfall elimination provision, WEP, and the government pension offset, GPO—that unfairly reduce earned Social Security benefits for many public employees. This legislation is of tremendous importance to Maine's teachers, police officers, firefighters and other public employees who currently are unfairly penalized for working in the private sector when the time comes for them to retire.

Despite their challenging, difficult and sometimes dangerous jobs, these invaluable public servants often receive far lower salaries than private sector employees. It is therefore doubly unfair to penalize them and hold them to a different standard when it comes to their Social Security retirement benefits.

Moreover, at a time when we should be doing all that we can to attract qualified people to public service, this unfair reduction in Social Security benefits makes it even more difficult for our communities to recruit and retain the teachers, police officers, firefighters, and other public employees who are so critical to the safety and well-being of our families.

The government pension offset and windfall elimination provisions affect government employees and retirees in virtually every State, but their effect is most acute in Maine and 14 other States where most public employees are not covered by Social Security. Nationwide, more than one-third of teachers and school employees, and more than one-fifth of other public employees, are not covered by Social Security. Approximately 250,000 retired Federal, State and local government employees across the country have already been adversely affected by these provisions. Thousands more stand to be affected in the future.

The Social Security windfall elimination provision reduces Social Security benefits for retirees who paid into Social Security and who also receive a government pension from work not covered under Social Security, such as pensions from the Maine State Retirement Fund. While private sector retirees receive monthly Social Security checks equal to 90 percent of their first $561 in average monthly career earnings, government pensioners are only allowed to receive 40 percent—a harsh and unjust penalty of $280.50 per month.

The government pension offset reduces an individual's survivor benefit under Social Security by two-thirds of the amount of his or her public pension. Estimates indicate that 9 out of 10 public employees affected by the GPO lose their entire spousal benefit, even though their deceased spouses paid Social Security taxes for many years.

This offset is, unfortunately, most harsh for those who can least afford the loss: lower-income women. According to the Congressional Budget Office, the GPO reduces benefits for some 200,000 individuals by more than $3,600 a year—an amount that can make the difference between a comfortable retirement and poverty.

This simply is not fair and not right. Our teachers and other public employees face difficult enough challenges in their day-to-day work. Individuals who have devoted their lives to public service should not have the added burden of worrying about their retirement, and these two onerous provisions should be repealed.

This is an issue that I have heard about at the grocery store, at my church, and even at my 30th high school class reunion from my many friends who have entered the teaching profession and who are committed to living and working in Maine. They love their jobs and the children they teach, but they worry about the future and about their financial security in retirement.

I also hear a lot about this issue in my constituent mail. Patricia Dupont, for example, of Orland, ME, wrote that, because she taught for 15 years under

Social Security in New Hampshire, she is living on a retirement income of less than $13,000 after 45 years of teaching. Since she also lost survivors' benefits from her husband's Social Security, she calculates that a repeal of the WEP and GPO would double her current retirement income.

Wendy Lessard, an English teacher at Mt. Desert Island High School, is an example of another unfortunate consequence of the laws. After 10 years of teaching, she is now considering whether or not to continue her career because of the Social Security penalties associated with her teacher's pension. She tells me that she has worked vacations in her summers and off-hours to be able to make a better wage and pay back her student loans. She is just the kind of teacher we want teaching our students, but is now contemplating leaving the profession because of her concerns about financial security in retirement.

Moreover, these provisions also penalize private sector employees who leave their jobs to become public school teachers. Ruth Wilson, a teacher from Otisfield, ME, wrote:

I entered the teaching profession two years ago, partly in response to the nationwide pleas for educators. As the current pool of educators near retirement in the next few years, our schools face a crisis. Low wages and long hard hours are not great selling points to young students when selecting a career.

I love teaching and only regretted my decision when I found out about the penalties I will unfairly suffer. In my former life as a well-paid systems manager at State Street Bank in Boston, I contributed the maximum to Social Security each year. When I decided to become an educator, I figured that because of my many years of maximum Social Security contributions, I would still have a livable retirement ''wage.'' I was unaware that I would be penalized as an educator in your State.

Maine, like many States, is currently facing a serious shortage of teachers, and we simply cannot afford to discourage people from pursuing important careers in public service in this way. I am therefore pleased to join Senator FEINSTEIN in introducing this legislation to repeal these two unfair provisions, and I urge my colleagues to join us as cosponsors.

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By Mr. LEAHY (for himself, Mr. KENNEDY, Mr. DURBIN, Mr. EDWARDS, Mr. ROCKEFELLER, Mr. REID, Mrs. BOXER, Mr. FEINGOLD, and Mr. CORZINE):

S. 352. A bill to ensure that commercial insurers cannot engage in price fixing, bid rigging, or market allocations to the detriment of competition and consumers; to the Committee on the Judiciary.

Mr. LEAHY. Mr. President, today I am pleased to introduce the ''Medical Malpractice Insurance Antitrust Act of 2003'' along with Senators KENNEDY, DURBIN, EDWARDS, ROCKEFELLER, REID, BOXER, FEINGOLD, and CORZINE. In the deafening debate about medical malpractice, I believe this legislation is a clear and calm statement about fixing one significant part of the system that is broken—skyrocketing insurance premiums for medical malpractice.

Our health care system is in crisis. We have heard that statement so often that it has begun to lose the force of its truth, but that truth is one we must confront and the crisis is one we must abate.

Unfortunately, dramatically rising medical malpractice insurance rates are forcing some doctors to abandon their practices or to cross State lines to find more affordable situations. Patients who need care in high-risk specialties—like obstetrics—and patients in areas already under-served by health care providers—like many rural communities—are too often left without adequate care.

We are the richest and most powerful Nation on earth. We should be able to ensure access to quality health care to all our citizens and to assure the medical profession that its members will not be driven from their calling by the manipulations of the malpractice insurance industry.

The debate about the causes of this latest insurance crisis and the possible cures grows shrill. I hope today's hearing will be a calmer and more constructive discussion. My principal concerns are straightforward: That we ensure that our Nation's physicians are able to provide the high quality of medical care that our citizens deserve and for which the United States is world-renowned, and that in those instances where a doctor does harm a patient, that patient should be able to seek appropriate redress through our court system.

To be sure, different States have different experiences with medical malpractice insurance, and insurance remains a largely State-regulated industry. Each State should endeavor to develop its own solution to rising medical malpractice insurance rates because each State has its own unique problems. Some States—such as my own, Vermont—while experiencing problems, do not face as great a crisis as others. Vermont's legislature is at work to find the right answers for our State, and the same process is underway now in other States. To contrast, in States such as West Virginia, Pennsylvania, Florida, and New Jersey, doctors are walking out of work in protest over the exorbitant rates being extracted from them by their insurance carriers.

Thoughtful solutions to the situation will require creative thinking, a genuine effort to rectify the problem, and bipartisan consensus to achieve real reform. Unfortunately, these are not the characteristics of the Administration's proposal. Ignoring the central truth of this crisis—that it is a problem in the insurance industry, not the tort system—the Administration has proposed a plan that would cap non-economic damages at $250,000 in medical malpractice cases. The notion that such a one-size-fits-all scheme is the answer runs counter to the factual experience of the States.

Most importantly, the President's proposal does nothing to protect true victims of medical malpractice. A cap of $250,000 would arbitrarily limit compensation that the most seriously injured patients are able to receive. The medical malpractice reform debate too often ignores the men, women and children whose lives have been dramatically—and often permanently—altered by medical errors.

The President's proposal would prevent such individuals—even if they have successfully made their case in a court of law—from receiving adequate compensation. We are fortunate in this Nation to have many highly qualified medical professional, and this is especially true in my own home State of Vermont. Unfortunately, good doctors sometimes make errors. It is also unfortunate that some not-so-good doctors manage to make their way into the health care system as well. While we must do all that we can to support the men and women who commit their professional lives to caring for others, we must also ensure that patients have access to adequate remedies should they receive inadequate care.

High malpractice insurance premiums are not the result of malpractice lawsuit verdicts. They are the result of investment decisions by the insurance companies and of business models geared toward ever-increasing profits. But an insurer that has made a bad investment, or that has experienced the same disappointments from Wall Street that so many Americans have, should not be able to recoup its losses from the doctors it insures. The insurance company should have to bear the burdens of its own business model, just as the other businesses in the economy do.

But another fact of the insurance industry's business model requires a legislative correction—its blanket exemption from federal antitrust laws. Insurers have for years—too many years—enjoyed a benefit that is novel in our marketplace. The McCarran-Ferguson Act permits insurance companies to operate without being subject to most of the Federal antitrust laws, and our Nation's physicians and their patients have been the worse off for it. Using their exemption, insurers can collude to set rates, resulting in higher premiums than true competition would achieve—and because of this exemption, enforcement officials cannot investigate any such collusion. If Congress is serious about controlling rising premiums, we must objectively limit this broad exemption in the McCarran-Ferguson Act.

That is why today I introduce the ''Medical Malpractice Insurance Antitrust Act of 2003.'' I want to thank Senators KENNEDY, DURBIN, EDWARDS, ROCKFELLER, REID, BOXER, FEINGOLD, and CORZINE for cosponsoring this essential legislation. Our bill modified

the McCarran-Ferguson Act with respect to medical malpractice insurance, and only for the most pernicious antitrust offenses: price fixing, bid rigging, and market allocations. Only those anticompetitive practices that most certainly will affect premiums are addressed. I am hard pressed to imagine that anyone could object to a prohibition on insurance carriers' fixing prices or dividing territories. After all, the rest of our Nation's industries manage either to abide by these laws or pay the consequences.

Many State insurance commissioners police the industry well within the power they are accorded in their own laws, and some States have antitrust laws of their own that could cover some anticompetitive activities in the insurance industry. Our legislation is a scalpel, not a saw. It would not affect regulation of insurance by State insurance commissioners and other State regulators. But there is no reason to continue a system in which the Federal enforcers are precluded from prosecuting the most harmful antitrust violations just because they are committed by insurance companies.

Our legislation is a carefully tailored solution to one critical aspect of the problem of excessive medical malpractice insurance rates. I hope that quick action by the Judiciary Committee and then by the full Senate, will ensure that this important step on the road to genuine reform is taken before too much more damage is done to the physicians of this country and to the patients they care for.

Only professional baseball has enjoyed an antitrust exemption comparable to that created for the insurance industry by the McCarran-Ferguson Act. Senator HATCH and I have joined forces several times in recent years to scale back that exemption for baseball, and in the Curt Flood Act of 1998 we successfully eliminated the exemption as it applied to employment relations. I hope we can work together again to create more competition in the insurance industry, just as we did with baseball.

If Congress is serious about controlling rising medical malpractice insurance premiums, then we must limit the broad exemption to Federal antitrust law and promote real competition in the insurance industry.

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By Mr. BINGAMAN:

S. 354. A bill to authorize the Secretary of Transportation to establish the National Transportation Modeling and Analysis Program to complete an advanced transportation simulation model, and for other purposes; to the Committee on Environment and Public Works.

Mr. BINGAMAN. Mr. President, I rise today to introduce legislation that I believe will go a long way in helping to reduce congestion and improve safety and security throughout the Nation's transportation network. Today I am introducing the National Transportation Modeling and Analysis Program Establishment Act, or NATMAP for short.

The purpose of this bill is to authorize the Secretary of Transportation to complete an advanced computer model that will simulate, in a single integrated system, traffic flows over every major transportation mode, including highways, air traffic, railways, inland waterways, seaports, pipelines, and other intermodal connections. The advanced model will simulate flows of both passenger and freight traffic.

Our transportation network is a central component of our economy and fundamental to our freedom and quality of life. America's mobility is the engine of our free market system. The food we eat, the clothes we wear, the materials for our homes and offices, and the energy to heat our homes and power our businesses all come to us over the Nation's vast transportation network. Originating with a producer in one region, materials and products may travel via any number of combinations of truck, rail, airplane, and barge before reaching their final destinations.

Today, the Internet connects the world electronically. But it is our transportation network that provides the vital links for the movement of both people and goods domestically and around the world. According to the latest statistics, our transportation industry carries over 11 billion tons of freight per year worth about $7 trillion. Of the 3.7 trillion ton-miles of freight carried in 1998, 1.4 trillion went by rail, 1 trillion by truck, 673 billion by domestic water transportation, 620 billion by pipeline, and 14 billion by air carrier.

Individuals also depend on our transportation system—be it passenger rail, commercial airline, intercity bus, or the family car—for business travel or simply to enjoy a family vacation. Excluding public transit, passengers on our highways traveled a total of 4.2 trillion passenger-miles in 1998. Airlines carried another 463 billion passenger-miles. Transit companies and rail lines carried 50 billion.

We are also interconnected to the world's transportation system, and, as I am sure every Senator well knows, foreign trade is an increasingly critical component of our economy. Our Nation's seaports, international airports, and border crossing with Canada and Mexico are the gateways through which passengers and cargo flow between America and the rest of the world. The smooth flow of trade, both imports and exports, would not be possible without a robust transportation network and the direct links it provides to our international ports of entry.

It should be clear that key to our continuing economic strength is a transportation system that is safe, secure and efficient. Today, we are fortunate to have one of the best transportation networks in the world, and I believe we need to keep it that way. However, we are starting to see signs of strain from the dramatic increase in traffic. For example, according to the Department of Transportation, from 1980 to 2000, highway travel alone increased a whopping 80 percent. Between 1993 and 1997, the total tons of freight activity grew by over 14 percent and truck activity grew by 21 percent. In the future, truck travel is expected to grow by more than 3 percent per year—nearly doubling by 2020. As a result of the increased highway traffic, the operational performance, a measure of congestion, has deteriorated dramatically. For example, FHWA estimates that a typical trip that would take 20 minutes in 1987 now takes over 30 minutes—a dramatic 50 percent increase.

Meanwhile, the strong growth in foreign trade is putting increased pressure on ports, airports, and border crossings, as well as contributing to congestion throughout the transportation network. According to DoT, U.S. international trade more than doubled between 1990 and 2000, rising from $891 billion to $2.2 trillion.

Congestion and delay inevitably result when traffic rates approach the capacity of a system to handle that traffic. I do believe increased congestion in our transportation system is a growing threat to the nation's economy. Delays in any part of the vast network lead to economic costs, wasted fuel, increased pollution, and a reduced quality of life. Moreover, in the future new security measures could also increase delays and disruptions in the flow of goods through our international gateways.

To deal with the ever-increasing loading of our transportation network we will need to find ways to improve system efficiency as well as to expand some critical elements of the system. However, in planning for any improvements, we must examine the impact on the whole transportation system that would result from a change in one part of the system That's exactly the goal of the bill I am introducing today.

By simulating the Nation's entire transportation infrastructure as a single, integrated system, the National Transportation Analysis and Modeling Program will allow policy makers at the State, regional, and national levels to evaluate the implications of new transportation policies and actions. To ensure that all possible interrelated impacts are included, the model must simulate individual carriers and the transportation infrastructure used by each of the carriers in an interdependent and dynamic system. The advantage of this simulation of individual carriers and shipments is that the nation's transportation system can be examined at any level of detail—from the path of an individual truck to national multi-modal traffic flows.

Some of the transportation planning issues that could be addressed with NATMAP include: What infrastructure improvements result in the greatest

gains to overall system security and efficiency? How would the network respond to shifts in population or trade flows? How would the system respond to major disruptions caused by a natural disaster or another unthinkable terrorist attack? What effect would system delays due to increased security measures have on traffic flow and congestion?

Preliminary work on an advanced transportation model has been underway for several years at Los Alamos National Laboratory. As I'm sure most senators know, Los Alamos has a long and impressive history in computer simulations of complex systems, including the recent completion of the TRANSIMS model of transportation systems in metropolitan areas. The development of TRANSIMS for FHWA was originally authorized in section 1210 of TEA–21. NATMAP builds on the original work at LANL on the TRANSIMS model.

The initial work at LANL on NATMAP, funded in part by DoT, DoD, and the lab's own internal research and development program, demonstrated the technical feasibility of building a nation-wide freight transportation model that can simulate the movement of millions of trucks across the nation's highway system. During this initial development phase, the model was called the National Transportation Network and Analysis Capability, or NTNAC for short. In 2001, with funding from the Federal Highway Administration, LANL further developed the model and completed an assessment of cargo flows resulting from trade between the U.S. and Latin America.

These preliminary studies have clearly demonstrated the value to the nation of a new comprehensive modeling system. I do believe that the computer model represents a leap ahead in transportation modeling and analysis capability. Indeed, Secretary of Transportation Norm Mineta, in a letter to me dated April 9 of this year, had this to say about the early simulations: ''The DOT agrees that NTNAC shows great promise of producing a tool that would be useful for analyzing the national transportation system as a single, integrated system. We agree that NTNAC would provide DOT with important new capabilities to assess and formulate critical policy and investment options and to help address homeland security and vulnerabilities in the nation's transportation network.''

I ask unanimous consent that a copy of Secretary Mineta's letter be printed in the RECORD.

The bill I am introducing today establishes a six-year program in the Office of the Secretary of Transportation to complete the development of the advanced transportation simulation model. The program will also support early deployment of computer software and graphics packages to federal agencies and states for national, regional, or statewide transportation planning. The bill authorizes a total of $50 million from the Highway Trust Fund for this effort. When completed, NATMAP will provide the nation a tool to help formulate and analyze critical transportation policy and investment options, including major infrastructure requirements and vulnerabilities within that infrastructure.

Congress will soon take up the reauthorization of TEA–21, the six-year transportation bill. I am introducing this bill today so my proposal can be fully considered by the Senate's Environment and Public Works Committee and by the Administration as the next authorization bill is being developed. I look forward to working with Senator INHOFE, the Chairman of the EPW Committee, and Senator JEFFORDS, the ranking member, as well as Senator BOND, the Chairman of the Transportation, Infrastructure, and Nuclear Safety Subcommittee and Senator REID, the ranking member, to incorporate this bill in the reauthorization of TEA–21.

I ask unanimous consent that the text 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. 354

*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 ''National Transportation Modeling and Analysis Program Establishment Act''.

**SEC. 2. DEFINITIONS.**

In this Act:

(1) ADVANCED MODEL.—The term ''advanced model'' means the advanced transportation simulation model developed under the National Transportation Network and Analysis Capability Program.

(2) PROGRAM.—The term ''Program'' means the National Transportation Modeling and Analysis Program established under section 3.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Transportation.

**SEC. 3. ESTABLISHMENT OF PROGRAM.**

The Secretary of Transportation shall establish a program, to be known as the ''National Transportation Modeling and Analysis Program''—

(1) to complete the advanced model; and

(2) to support early deployment of computer software and graphics packages for the advanced model to agencies of the Federal Government and to States for national, regional, or statewide transportation planning.

**SEC. 4. SCOPE OF PROGRAM.**

The Program shall provide for a simulation of the national transportation infrastructure as a single, integrated system that—

(1) incorporates models of—

(A) each major transportation mode, including—

(i) highways;

(ii) air traffic;

(iii) railways;

(iv) inland waterways;

(v) seaports;

(vi) pipelines; and

(vii) other intermodal connections; and

(B) passenger traffic and freight traffic;

(2) is resolved to the level of individual transportation vehicles, including trucks, trains, vessels, and aircraft;

(3) relates traffic flows to issues of economics, the environment, national security, energy, and safety;

(4) analyzes the effect on the United States transportation system of Mexican and Canadian trucks operating in the United States; and

(5) examines the effects of various security procedures and regulations on cargo flow at ports of entry.

**SEC. 5. ELIGIBLE ACTIVITIES.**

Under the Program, the Secretary shall—

(1) complete the advanced model;

(2) develop user-friendly advanced transportation modeling computer software and graphics packages;

(3) provide training and technical assistance with respect to the implementation and application of the advanced model to Federal agencies and to States for use in national, regional, or statewide transportation planning; and

(4) allocate funds to not more than 3 entities described in paragraph (3), representing diverse applications and geographic regions, to carry out pilot programs to demonstrate use of the advanced model for national, regional, or statewide transportation planning.

**SEC. 6. FUNDING.**

(a) IN GENERAL.—There are authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this Act—

(1) $6,000,000 for fiscal year 2004;

(2) $7,000,000 for fiscal year 2005;

(3) $9,000,000 for fiscal year 2006;

(4) $10,000,000 for fiscal year 2007;

(5) $10,000,000 for fiscal year 2008; and

(6) $8,000,000 for fiscal year 2009.

(b) ALLOCATION OF FUNDS.—

(1) FISCAL YEARS 2004 AND 2005.—For each of fiscal years 2004 and 2005, 100 percent of the funds made available under subsection (a) shall be used to carry out activities described in paragraphs (1), (2), and (3) of section 5.

(2) FISCAL YEARS 2006 THROUGH 2009.—For each of fiscal years 2006 through 2009, not more than 50 percent of the funds made available under subsection (a) may be used to carry out activities described in section 5(4).

(c) CONTRACT AUTHORITY.—Funds authorized under this section shall be available for obligation in the same manner as if the funds were apportioned under chapter 1 of title 23, United States Code, except that the Federal share of the cost of—

(1) any activity described in paragraph (1), (2), or (3) of section 5 shall be 100 percent; and

(2) any activity described in section 5(4) shall not exceed 80 percent.

(d) AVAILABILITY OF FUNDS.—Funds made available under this section shall be available to the Secretary through the Transportation Planning, Research, and Development Account of the Office of the Secretary of Transportation.

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THE SECRETARY OF TRANSPORTATION,
*Washington, DC., April 9, 2002.*

Hon. JEFF BINGAMAN,
*U.S. Senate,*
*Washington, DC.*

DEAR JEFF: Thank you for your letter of January 30 expressing your strong support to continue the development of the National Transportation Network Analysis Capability (NTNAC). The U.S. Department of Transportation's (DOT) Office of Policy and the Federal Highway Administration (FHWA) have been working closely with Los Alamos National Laboratory to develop this tool.

During 1998, Los Alamos National Laboratory developed a prototype NTNAC with funding provided by the DOT ($50,000 from

the Office of the Secretary's Transportation Policy Development Office), the U.S. Department of Defense (TRANSCOM's Military Transportation Management Command), and the Laboratory's own internal research and development program. This effort demonstrated the technical feasibility of building a national transportation network that can simulate the movements of individual carriers (trucks, trains, planes, water vessels, and pipelines) and individual freight shippers.

During 1999, FHWA provided $750,000 to further develop NTNAC and to complete the study ''National Transportation Impact of Latin American Trade Flows.''

The DOT agrees that NTNAC shows great promise of producing a tool that would be useful for analyzing the national transportation system as a single, integrated system. We agree that NTNAC would provide DOT with important new capabilities to assess and formulate critical policy and investment options and to help address homeland security and vulnerabilities in the Nation's transportation network.

However, the Department's budget is very limited. It would be difficult to find funding to continue the project this year. If funding should become available, we will give priority consideration to continuing the NTNAC development effort.

Again, I very much appreciate your thoughts on the importance of continuing the development of NTNAC. If I can provide further information or assistance, please fell free to call me.

Sincerely yours,

NORMAL Y. MINETA.

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By Mrs. LINCOLN (for herself, Mr. GRASSLEY, Mr. HAGEL, Mr. DAYTON, Mr. DURBIN, Mr. HARKIN, Mr. COLEMAN and Mr. JOHNSON):

S. 355. A bill to amend the Internal Revenue Code of 1986 to allow a credit for biodiesel fuel; to the Committee on Finance.

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By Mrs. LINCOLN (for herself, Mr. BOND, and Mr. TALENT):

S. 356. A bill to amend the Energy Policy Act of 1992 to increase the allowable credit for biodiesel use under the alternatively fueled vehicle purchase requirement; to the Committee on energy and Natural Resources.

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By Mrs. LINCOLN (for herself, Mr. HAGEL, Mr. KERRY, and Mr. SMITH):

S. 357. A bill to amend the Internal Revenue Code of 1986 to modify the credit for the production of fuel from nonconventional sources to include production of fuel from agricultural and animal waste; to the Committee on Finance.

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By Mrs. LINCOLN:

S. 358. A bill to amend the Internal Revenue Code of 1986 to modify the credit for the production of fuel from nonconventional sources for the production of electricity to include landfill gas; to the Committee on Finance.

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By Mrs. LINCOLN (for herself and Mr. AKAKA):

S. 359. A bill to amend the Internal Revenue Code of 1986 to modify the credit for the production of electricity to include electricity produced from municipal solid waste; to the Committee on Finance.

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By Mrs. LINCOLN:

S. 360. A bill to amend the Internal Revenue Code of 1986 to treat natural gas distribution lines as 10-year property for depreciation purposes; to the Committee on Finance

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By Mrs. LINCOLN (for herself, Mr. ALLARD, Mr. GRASSLEY, Mr. HARKIN, Ms. STABENOW, Mr. HAGEL, Mr. LEVIN, and Mr. DEWINE):

S. 361. A bill to amend the Internal Revenue Code of 1986 to allow for an energy efficient appliance credit; to the Committee on Finance.

Mrs. LINCOLN. Mr. President, I rise today to introduce my package of alternative energy and energy efficiency bills. These bills all work in concert toward a single goal—promoting the use of cleaner, renewable energy for this nation.

For several decades, the U.S. has relied on foreign sources of energy supply. Worldwide demand for energy has continued to increase, while our domestic resource base has decreased, leaving the country vulnerable in the event of foreign supply disruptions. This year, the U.S. will import 60 percent of its crude oil needs this year. The events of September 11th have focused attention on the need to develop a new energy policy that focuses on creating new domestic sources. Our Nation needs to explore and develop all possible domestic options as resources for our energy supply. To reduce our dependence on foreign imports, it is imperative that policy makers create incentives to promote technologies that can produce quality alternative products. Our national security demands that the government undertake programs which assure the implementation of real alternative fuel technologies.

It is in the best security interests of our Nation to reduce our reliance on foreign energy suppliers. We can no longer afford to be subject to the whims and manipulations of foreign cartels like OPEC. Added to these threats posed by OPEC and the instability of the Middle East are the even more sinister possibilities that we face in other parts of the world. Developments in many regions of the world where much of today's energy supplies are obtained—West Africa, the Caspian Sea, Indonesia, Venezuela, and so forth—clearly serve notice that our Nation cannot continue to depend on these areas for our future energy needs. These events make it more pressing than ever that we proceed forward with the development of our own domestic alternative energy resources.

In the last Congress, both the House and the Senate passed comprehensive energy bills that would have brought us closer to these goals. In the Senate bill, we were able to strike a delicate balance between using our resources for energy and preserving our environment for future generations. I was pleased with the Senate version of the Energy Policy Act of 2002, and was disappointed that conferees were unable to iron out differences with the House of Representatives before adjournment. We must make energy independence a national priority because it is now essential to our homeland security.

Looking ahead, I will continue my work to build a cohesive national energy policy that ultimately reduces our dependence on foreign oil. To accomplish this goal, we must provide access to more resources, transmit these resources to the consumer, and encourage industrial and individual consumers to use more renewable energy sources. These important steps will lead to greater reliability and lower energy costs for consumers.

We should all work again in the 108th Congress to adopt a comprehensive energy plan that sets America on the road to energy independence and assures consumers of a reliable and affordable energy supply.

The legislation I am introducing today will encourage production of biodiesel and its use in this country; to promote the manufacture of energy efficient home appliances; to encourage the use of fuels produced from animal and agricultural wastes; to encourage the use of our waste sources such as landfill gas and municipal solid waste to produce energy; and to spur the investment in delivering fuels to rural America. These incentives for production and use of clean and renewable fuels can help bridge the investment cost gap between production of petroleum and renewable energy.

Each of these bills were either included or debated in the Senate during last year's Senate consideration and passage of the energy bill. I look forward to their inclusion in the debate and inclusion in any energy bill to be passed by the Senate during the 108th Congress.

The first bill I am introducing today is the Biodiesel Promotion Act of 2003. I am pleased to be joined in introducing this bill by Senators GRASSLEY, HAGEL, DAYTON, HARKIN, DURBIN, COLEMAN, and JOHNSON. This legislation will provide tax incentives for the production of biodiesel from agricultural oils, recycled oils, and animal fats and will ensure that biodiesel becomes a central component of this nation's automobile fuel market.

This legislation is identical to language authored by myself and Senator GRASSLEY included in the last Congress's Energy Bill. It is intended to be a starting point for our debate and discussion as we draft an energy bill for consideration in this Congress.

This legislation will provide a partial exemption from the diesel excise tax for diesel blended with biodiesel. Specifically, the bill provides a one-cent reduction for every percent of biodiesel from virgin agricultural oils blended

with diesel up to 20 percent. The legislation will also provide a half-cent reduction for every percent of biodiesel from recycled agricultural oils or animal fats.

Also importantly, in the year that we are to reauthorize the Transportation Enhancement Act of 1996, the bill provides for reimbursing the Highway Trust Fund from the USDA Commodity Credit Corporation, CCC. This procedure will protect the Trust Fund from lost revenues due to the biodiesel incentive while providing a much-needed boost to our nation's biodiesel industry. The cost to the CCC would be offset at least initially by the savings under the marketing loan program.

Biodiesel, which can be made from just about any agricultural oil including oils from soybeans, cottonseed, or rice, is completely renewable, contains no petroleum, and can be easily blended with petroleum diesel. A biodiesel-diesel blend typically contains up to 20 percent renewable content. It can be added directly into the gas tank of a compression-ignition, diesel engine vehicle with no major modifications. Biodiesel is completely biodegradable and non-toxic, contains no sulfur, and it is the first and only alternative fuel to meet EPA's Tier I and II health effects testing standards. Biodiesel also stands ready to help us reach the EPA's new rule to reduce the sulfur content of highway diesel fuel by over 95 percent.

Even after years of research and market development, biodiesel is not yet cost-competitive with petroleum diesel. In order to be so, market support and tax incentives are needed. I believe the provisions provided in this bill will help in leveling the field for biodiesel blends and help jumpstart this new industry.

The time is right for this investment. It is right for our rural economy, for our environment, and for our national energy security and I encourage my colleagues to join us in supporting the Biodiesel Promotion Act of 2003.

The second component of my package is the EPACT Alternative Fuel Flexibility Act of 2003. I am pleased to be joined today by Senators BOND and TALENT in introducing this legislation.

The purpose of this legislation is to place biodiesel fuel on equal footing with every other alternative motor fuel used in this nation.

The Energy Policy Act of 1992, EPACT, 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.

EPACT set a goal to replace 10 percent of petroleum-based fuels by 2000 and 30 percent by the year 2010. However, a GAO report issued in July of 2001 noted that ''limited progress has been made in increasing the numbers of alternative fuel vehicles, AFV, in the national vehicle fleet and the use of alternative fuels'' as compared to conventional vehicles and fuels.

We did not meet the original EPACT goals of replacing 10 percent of petroleum-based fuels by 2000. Today we are not on track to meet the goal of 30 percent by the year 2010. In fact, we haven't even come close, and that's partly a result of not allowing all alternative fuels to be used to meet the EPACT alternative fuel mandates.

This legislation will significantly increase the use of alternative fuels by allowing EPACT covered fleets to meet up to 100 percent of the EPACT purchase requirements through the use of biodiesel. Currently, covered fleets can only meet up to 50 percent of purchase requirements with biodiesel.

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 legislation is not expected to affect fleets that are currently using ethanol or natural gas. But this legislation does provide a further option for alternative fuel 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.

By allowing fleets to meet 100 percent of their AFV requirement by using biodiesel, we'll take a positive step toward moving this country away from dependence on petroleum-based motor fuels and toward alternative motor fuels. I urge all of my colleagues to support this legislation.

The third bill I introduce today as part of my energy independence package is the Animal and Agricultural Waste Renewable Energy Production Act of 2003. I am pleased to be joined today by Senators HAGEL, BOND, and KERRY in introducing this legislation.

This legislation would provide a credit under Section 29 of the tax code for the production of fuels from animal and agricultural wastes.

Thanks to new technological developments, we can now produce significant quantities of alternative fuels from agricultural and animal wastes in an environmentally friendly manner. Production incentives are needed to assure implementation and commercialization of this new generation of technology.

Section 29 was originally enacted to provide an incentive to produce alternative and hard-to-reach fuels that could compete with fossil fuels and hopefully reduce the nation's dependence on foreign oil. As originally enacted, a number of ''non-conventional fuels'' were eligible for the credit, including the following: oil from shale; oil from tar sands; natural gas from geo-pressured brine, coal seams, Devonian shale, or tight sands; liquid, gaseous or solid synthetic fuel from coal, including coke and coke by-products; gas from biomass, including wood; steam from solid agricultural by-products; and processed solid wood fuels.

Other biomass by-products, such as agricultural and animal oils and solids, also should qualify the same as liquid or gaseous synthetic fuels derived from coal.

New technological advances have been developed which will convert these biomass wastes efficiently to alternative fuels. The most readily available of these wastes are agricultural and animal wastes, municipal wastes, plastics, used tires, and forest product wastes. This production incentive opportunity would provide significant new annual quantities of alternative fuel to replace foreign imported oil and should be considered a government investment in the nation's future.

If these incentives are implemented, large marketable quantities of quality alternative fuel products can be produced as a replacement for foreign imported oil. These processes can achieve the desired results in an environmentally positive way that essentially converts all wastes to products and provides an answer for waste disposal problems. To achieve these results, financial incentives need be provided from the government. Section 29 should be extended to include alternative fuels produced from all biomass wastes and I encourage all of my colleagues to join us in supporting this legislation.

The fourth bill I am introducing today is the Capturing Landfill Gas for Energy Act of 2003. This legislation will provide a credit under either Section 29 or Section 45 of the tax code for the production of energy from landfill gas, LFG. It is designed to encourage additional collection and productive use of methane gas generated by garbage decomposing in America's landfills. LFG is a renewable fuel that can be used directly as an energy source for heating, as a clean burning vehicle fuel, as a hydrogen source for fuel cells. Furthermore, it can power generators to produce electricity.

Congress recognized the importance of LFG for energy diversity and national security by providing such a credit in 1980 and extending it for nearly two decades. With today's critical energy needs and emphasis on distributed generation, this incentive makes more sense than ever. Most of the 360 LFG projects that currently are operating were made economically feasible by the ''non-conventional-source fuel'' production tax credit under Section 29 of the tax code.

But since June 30, 1998, that credit to encourage construction of new LFG projects has been unavailable, and few have been constructed since that date. The U.S. Environmental Protection Agency estimates that 600–700 more LFG projects could be constructed nationwide if there were sufficient economic incentives in place to foster

their development. With such incentives, it is likely that about 55 new projects would be brought on line each year. Just one medium-sized project could provide three megawatts of electrical power capacity—enough to meet the electricity needs of 3,000 homes each year.

In addition to the value of LFG as an important contribution to our overall energy strategy, there are compelling environmental reasons to encourage these projects. Uncontrolled landfill gas can create fire hazards and odors and can impair air quality. The methane in landfill gas is 21 times more potent than carbon dioxide as a greenhouse gas. Even the large landfills that are required under the Clean Air Act to collect their gas and control non-methane organic compounds often find it more economic to simply flare or otherwise waste the gas rather than use the methane. Some smaller landfills are not required to collect the gas, and may continue to emit it for decades under the Clean Air Act. Thus, LFG projects not only reduce local and regional air pollution while yielding a renewable source of energy, they can also reduce the country's yearly emissions of greenhouse gases by a very substantial amount at a relatively small cost.

Unfortunately, the potential energy and environmental benefits of future LFG projects are substantial, but they will be lost without adequate LFG tax provisions to support project development. On average, the total capital cost of constructing an LFG-fueled electricity generating project is about $1 million per megawatt, and the annual operating and maintenance costs average another $150,000 per megawatt. The average capital cost of a new direct use fuel production and delivery project is about $2.5 million, with annual operation and maintenance costs of about $350,000.

My bill proposes sufficient, yet sensible, tax incentives to encourage these large investments, and I urge my colleagues to join me and support LFG tax credits.

Today I am also pleased to be joined by Senator AKAKA in introducing the fifth component of my energy package—the Waste to Energy Utilization Act of 2003. This legislation will provide a credit under Section 45 of the tax code for new waste-to-energy facilities or new generating units at existing facilities. Such a tax credit encourages clean renewable electricity and promotes energy diversity, while helping cities meet the challenge of trash disposal.

Nearly 2000 communities nationwide rely on waste-to-energy facilities to safely dispose of trash and generate clean, renewable energy that meets the power need of more than two and a half million homes. The U.S. Conference of Mayors has repeatedly urged Congress to include provisions that promote waste-to-energy in tax legislation and they are joined by the National Association of Regulatory Utility Commissioners, the Business Council for Sustainable Energy, the U.S. Chamber of Commerce, and the International Brotherhood of Boilermakers.

Arkansas stands with other environmentally conscious States in understanding that waste-to-energy technology saves valuable land and significantly reduces the amount of greenhouse gases that would have been released into our atmosphere without its operation. The volume of waste is reduced by greater than 90 percent in a waste-to-energy facility, and EPA has confirmed that more than 33 million tons of greenhouse gases are avoided annually by the combustion of municipal solid waste. Municipal solid waste is a sustainable source of clean, renewable energy.

Local governments spent about $1 billion over the past five years on air pollution control equipment to comply with EPA's Maximum Achievable Control Technology, MACT, standards required under the Clean Air Act. These retrofits have made waste-to-energy one of the cleanest power generators in the country. In June, EPA announced that these facilities have shown ''outstanding performance'' resulting in ''dramatic decreases'' in emissions, resulting in reductions of mercury emissions of more than 95 percent from a decade ago. Communities with waste-to-energy facilities recycle 33 percent of their trash, on average, and historically have more successful recycling programs than cities without waste-to-energy plants.

We must sustain a level marketplace to achieve energy diversity and economic growth. I believe this Senate should pass tax legislation that includes production tax credits to spur energy generation, and I encourage all of my colleagues to join us and support this legislation.

The sixth bill I introduce today is the Resource Efficient Appliance Incentives Act of 2003. I am pleased to be joined in introducing this bill by Senators ALLARD, GRASSLEY, HARKIN, STABENOW, HAGEL, LEVIN, and DEWINE.

This legislation will provide a tax credit for the production of super energy-efficient clothes washers and refrigerators if those appliances exceed new Federal energy efficiency standards. The tax credit would only be available for five years and would be capped for each manufacturer.

In 2001, the Department of Energy issued new energy efficiency standards for clothes washers. This agreement accompanies rules for higher efficiency refrigerators issued by the department two years ago. The new rules are significant because clothes washers, clothes dryers, and refrigerators account for approximately 15 percent of all household energy consumed in the U.S. annually. The tax incentives contained in this legislation are constructed to encourage manufacturers not only to exceed these new efficiency requirements, but to exceed them by up to 35 percent.

Tax incentives are essential to accelerate the production and market penetration of leading-edge appliance technologies that create significant environmental benefits. The need for super energy-efficient appliances is greater this year than at any time in the past 20 years. Over the life of the appliances, over 200 trillion BTUs of energy will be saved. This is the equivalent of taking 2.3 million cars off the road or making available for other uses the energy of six coal-fired power plants for a year.

In addition, the clothes washers will reduce the amount of water necessary to wash clothes by 870 billion gallons, an amount equal to the needs of every household in a city the size of Phoenix, Arizona for two years. The water savings attributable to these new technology machines is not based on some computer generated model but an actual case study that gathered data in the small community of Bern, KS by the Dept. of Energy's esteemed Oak Ridge National Laboratory in 1998.

The Association of Home Appliance Manufacturers estimates these super energy-efficient appliances could save the average family $100 per year—or $1,400 per family over the lifetime of the appliance. This legislation will create the incentives necessary to increase the production and sale of these super energy-efficient appliances in the short term while passing along energy savings to the American consumer.

As a DOE analysis indicates, high efficiency washers and refrigerators are significantly more expensive to manufacture than those that simply meet existing federal standards. Further, market surveys of consumers indicate that they are generally not willing to pay more for high efficiency appliances, even when it can be demonstrated that high efficiency appliances will generate greater savings in utility costs over time. The tax credit will provide an incentive for manufacturers to develop a greater selection of super efficient models that will appeal to consumers at all price points. In addition, to assure increased sales of these appliances, manufacturers will be encouraged to redirect their marketing and advertising resources toward the high efficiency models. Enactment of this legislation will bring immediate, significant, and lasting environmental benefits to the nation, and I encourage all of my colleagues to join us in supporting in this effort.

The final bill I am introducing today is the Gas Distribution Infrastructure Investment Act of 2003. This legislation will amend the Internal Revenue Code to modify the depreciation of natural gas pipelines, equipment, and infrastructure assets from 20 to 10 years.

America's demand for energy is expected to grow by 32 percent during the next 20 years. Consumer demand for natural gas will grow at almost twice that rate, due to its economic, environmental, and operational benefits. That level of natural gas use is almost 60

percent greater than the highest recorded level. To satisfy this projected demand, we must substantially expand our existing gas infrastructure. This is especially true with respect to the delivery sector. Higher capacity utilization of existing infrastructure will meet some of this increased demand, but the delivery sector still will require capital investments of at least $123 billion for infrastructure enhancement and additions.

Shrinking the lifetime over which an asset is depreciated does not change the amount of expense a company is allowed to claim over the asset's useful life, but simply shortens the expensing period for tax purposes. This shortened tax life generates higher cash flows in terms of reduced tax liability during the asset's early useful lifetime. Conversely, the cash flows are decreased, relative to the longer depreciation life, during the later part of the asset's useful life. The overall impact is zero on a gross basis.

I urge my colleagues to support this important legislation. Infrastructure development and expansion is crucial if America's homes are to continue to rely on clean-burning natural gas to heat their homes and fuel their appliances.

I ask unanimous consent that each of the seven bills I am introducing today be printed in the RECORD.

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

S. 355

*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 ''Biodiesel Promotion Act of 2003''.

**SEC. 2. INCENTIVES FOR BIODIESEL.**

(a) CREDIT FOR BIODIESEL USED AS A FUEL.—

(1) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business related credits) is amended by inserting after section 40 the following new section:

**''SEC. 40A. BIODIESEL USED AS FUEL.**

''(a) GENERAL RULE.—For purposes of section 38, the biodiesel fuels credit determined under this section for the taxable year is an amount equal to the biodiesel mixture credit.

''(b) DEFINITION OF BIODIESEL MIXTURE CREDIT.—For purposes of this section—

''(1) BIODIESEL MIXTURE CREDIT.—

''(A) IN GENERAL.—The biodiesel mixture credit of any taxpayer for any taxable year is the sum of the products of the biodiesel mixture rate for each qualified biodiesel mixture and the number of gallons of such mixture of the taxpayer for the taxable year.

''(B) BIODIESEL MIXTURE RATE.—For purposes of subparagraph (A), the biodiesel mixture rate for each qualified biodiesel mixture shall be—

''(i) in the case of a mixture with only biodiesel V, 1 cent for each whole percentage point (not exceeding 20 percentage points) of biodiesel V in such mixture, and

''(ii) in the case of a mixture with biodiesel NV, or a combination of biodiesel V and biodiesel NV, 0.5 cent for each whole percentage point (not exceeding 20 percentage points) of such biodiesel in such mixture.

''(2) QUALIFIED BIODIESEL MIXTURE.—

''(A) IN GENERAL.—The term 'qualified biodiesel mixture' means a mixture of diesel and biodiesel V or biodiesel NV which—

''(i) is sold by the taxpayer producing such mixture to any person for use as a fuel, or

''(ii) is used as a fuel by the taxpayer producing such mixture.

''(B) SALE OR USE MUST BE IN TRADE OR BUSINESS, ETC.—

''(i) IN GENERAL.—Biodiesel V or biodiesel NV used in the production of a qualified biodiesel mixture shall be taken into account—

''(I) only if the sale or use described in subparagraph (A) is in a trade or business of the taxpayer, and

''(II) for the taxable year in which such sale or use occurs.

''(ii) CERTIFICATION FOR BIODIESEL V.—Biodiesel V used in the production of a qualified biodiesel mixture shall be taken into account only if the taxpayer described in subparagraph (A) obtains a certification from the producer of the biodiesel V which identifies the product produced.

''(C) CASUAL OFF-FARM PRODUCTION NOT ELIGIBLE.—No credit shall be allowed under this section with respect to any casual off-farm production of a qualified biodiesel mixture.

''(c) COORDINATION WITH EXEMPTION FROM EXCISE TAX.—The amount of the credit determined under this section with respect to any biodiesel V shall, under regulations prescribed by the Secretary, be properly reduced to take into account any benefit provided with respect to such biodiesel V solely by reason of the application of section 4041(n) or section 4081(f).

''(d) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

''(1) BIODIESEL V DEFINED.—The term 'biodiesel V' means the monoalkyl esters of long chain fatty acids derived solely from virgin vegetable oils for use in compressional-ignition (diesel) engines. Such term shall include esters derived from vegetable oils from corn, soybeans, sunflower seeds, cottonseeds, canola, crambe, rapeseeds, safflowers, flaxseeds, rice bran, and mustard seeds.

''(2) BIODIESEL NV DEFINED.—The term 'biodiesel NV' means the monoalkyl esters of long chain fatty acids derived from nonvirgin vegetable oils or animal fats for use in compressional-ignition (diesel) engines.

''(3) REGISTRATION REQUIREMENTS.—The terms 'biodiesel V' and 'biodiesel NV' shall only include a biodiesel which meets—

''(i) the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under section 211 of the Clean Air Act (42 U.S.C. 7545), and

''(ii) the requirements of the American Society of Testing and Materials D6751.

''(4) BIODIESEL MIXTURE NOT USED AS A FUEL, ETC.—

''(A) IMPOSITION OF TAX.—If—

''(i) any credit was determined under this section with respect to biodiesel V or biodiesel NV used in the production of any qualified biodiesel mixture, and

''(ii) any person—

''(I) separates such biodiesel from the mixture, or

''(II) without separation, uses the mixture other than as a fuel,

then there is hereby imposed on such person a tax equal to the product of the biodiesel mixture rate applicable under subsection (b)(1)(B) and the number of gallons of the mixture.

''(B) APPLICABLE LAWS.—All provisions of law, including penalties, shall, insofar as applicable and not inconsistent with this section, apply in respect of any tax imposed under subparagraph (A) as if such tax were imposed by section 4081 and not by this chapter.

''(5) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) ELECTION TO HAVE BIODIESEL FUELS CREDIT NOT APPLY.—

''(1) IN GENERAL.—A taxpayer may elect to have this section not apply for any taxable year.

''(2) TIME FOR MAKING ELECTION.—An election under paragraph (1) for any taxable year may be made (or revoked) at any time before the expiration of the 3-year period beginning on the last date prescribed by law for filing the return for such taxable year (determined without regard to extensions).

''(3) MANNER OF MAKING ELECTION.—An election under paragraph (1) (or revocation thereof) shall be made in such manner as the Secretary may by regulations prescribe.

''(f) TERMINATION.—This section shall not apply to any fuel sold after December 31, 2005.''.

(2) CREDIT TREATED AS PART OF GENERAL BUSINESS CREDIT.—Section 38(b) of the Internal Revenue Code of 1986 is amended by striking ''plus'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '', plus'', and by adding at the end the following new paragraph:

''(16) the biodiesel fuels credit determined under section 40A(a).''.

(3) CONFORMING AMENDMENTS.—

(A) Section 39(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(11) NO CARRYBACK OF BIODIESEL FUELS CREDIT BEFORE JANUARY 1, 2003.—No portion of the unused business credit for any taxable year which is attributable to the biodiesel fuels credit determined under section 40A may be carried back to a taxable year beginning before January 1, 2003.''.

(B) Section 196(c) of such Code is amended by striking ''and'' at the end of paragraph (9), by striking the period at the end of paragraph (10), and by adding at the end the following new paragraph:

''(11) the biodiesel fuels credit determined under section 40A(a).''.

(C) Section 6501(m) of such Code is amended by inserting ''40A(e),'' after ''40(f),''.

(D) The table of sections for subpart D of part IV of subchapter A of chapter 1 of such Code is amended by adding after the item relating to section 40 the following new item:

''Sec. 40A. Biodiesel used as fuel.''.

(4) EFFECTIVE DATE.—The amendments made by this subsection shall apply to taxable years beginning after December 31, 2002.

(b) REDUCTION OF MOTOR FUEL EXCISE TAXES ON BIODIESEL V MIXTURES.—

(1) IN GENERAL.—Section 4081 of the Internal Revenue Code of 1986 (relating to manufacturers tax on petroleum products) is amended by adding at the end the following new subsection:

''(f) BIODIESEL V MIXTURES.—Under regulations prescribed by the Secretary—

''(1) IN GENERAL.—In the case of the removal or entry of a qualified biodiesel mixture with biodiesel V, the rate of tax under subsection (a) shall be the otherwise applicable rate reduced by the biodiesel mixture rate (if any) applicable to the mixture.

''(2) TAX PRIOR TO MIXING.—

''(A) IN GENERAL.—In the case of the removal or entry of diesel fuel for use in producing at the time of such removal or entry a qualified biodiesel mixture with biodiesel V, the rate of tax under subsection (a) shall be the rate determined under subparagraph (B).

''(B) DETERMINATION OF RATE.—For purposes of subparagraph (A), the rate determined under this subparagraph is the rate determined under paragraph (1), divided by a

percentage equal to 100 percent minus the percentage of biodiesel V which will be in the mixture.

''(3) DEFINITIONS.—For purposes of this subsection, any term used in this subsection which is also used in section 40A shall have the meaning given such term by section 40A.

''(4) CERTAIN RULES TO APPLY.—Rules similar to the rules of paragraphs (6) and (7) of subsection (c) shall apply for purposes of this subsection.''.

(2) CONFORMING AMENDMENTS.—

(A) Section 4041 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(n) BIODIESEL V MIXTURES.—Under regulations prescribed by the Secretary, in the case of the sale or use of a qualified biodiesel mixture (as defined in section 40A(b)(2)) with biodiesel V, the rates under paragraphs (1) and (2) of subsection (a) shall be the otherwise applicable rates, reduced by any applicable biodiesel mixture rate (as defined in section 40A(b)(1)(B)).''.

(B) Section 6427 of such Code is amended by redesignating subsection (p) as subsection (q) and by inserting after subsection (o) the following new subsection:

''(p) BIODIESEL V MIXTURES.—Except as provided in subsection (k), if any diesel fuel on which tax was imposed by section 4081 at a rate not determined under section 4081(f) is used by any person in producing a qualified biodiesel mixture (as defined in section 40A(b)(2)) with biodiesel V which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the per gallon applicable biodiesel mixture rate (as defined in section 40A(b)(1)(B)) with respect to such fuel.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to any fuel sold after December 31, 2002, and before January 1, 2006.

(c) HIGHWAY TRUST FUND HELD HARMLESS.—There are hereby transferred (from time to time) from the funds of the Commodity Credit Corporation amounts determined by the Secretary of the Treasury to be equivalent to the reductions that would occur (but for this subsection) in the receipts of the Highway Trust Fund by reason of the amendments made by this section.

S. 356

*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 ''EPACT Alternative Fuel Flexibility Act of 2003''.

**SEC. 2. BIODIESEL FUEL USE CREDITS.**

Section 312(b) of the Energy Policy Act of 1992 (42 U.S.C. 13220(b)) is amended—

(1) by striking ''(b) USE OF CREDITS.—'' and all that follows through ''At the request'' and inserting the following:

''(b) USE OF CREDITS.—At the request''; and

(2) by striking paragraph (2).

S. 357

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

**SECTION 1. MODIFICATION OF CREDIT FOR PRODUCTION OF FUEL FROM NONCONVENTIONAL SOURCES TO INCLUDE PRODUCTION OF FUEL FROM AGRICULTURAL AND ANIMAL WASTE.**

(a) IN GENERAL.—Section 29(c)(1) of the Internal Revenue Code of 1986 (relating to definition of qualified fuels) is amended—

(1) by striking ''and'' at the end of subparagraph (B)(ii),

(2) by striking the period at the end of subparagraph (C) and inserting '', and'', and

(3) by adding at the end the following new subparagraph:

''(D) liquid, gaseous, or solid fuels from qualified agricultural and animal waste, including such fuels when used as feedstocks.''.

(b) QUALIFIED AGRICULTURAL AND ANIMAL WASTE.—

(1) IN GENERAL.—Section 29(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(4) QUALIFIED AGRICULTURAL AND ANIMAL WASTE.—The term 'qualified agricultural and animal waste' means agriculture and animal waste, including by-products, packaging, and any materials associated with the processing, feeding, selling, transporting, or disposal of agricultural or animal products or wastes, including wood shavings, straw, rice hulls, and other bedding for the disposition of manure.''.

(2) CONFORMING AMENDMENT.—Section 29(c)(3) of such Code is amended—

(A) by striking ''and'' at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting '', and'', and

(C) by adding at the end the following new subparagraph:

''(C) qualified agricultural and animal waste.''.

(c) EXTENSION OF CREDIT.—Section 29(g) of the Internal Revenue Code of 1986 (relating to extension for certain facilities) is amended by adding at the end the following new paragraph:

''(3) FACILITIES PRODUCING FUELS FROM AGRICULTURAL AND ANIMAL WASTE.—In the case of facility for producing qualified fuels described in subsection (c)(1)(D)—

''(A) for purposes of subsection (f)(1)(B), such facility shall be treated as being placed in service before January 1, 1993, if such facility is placed in service after January 1, 2003, and before January 1, 2008, and

''(B) if such facility is originally placed in service after December 31, 1992, paragraph (2) of subsection (f) shall be applied with respect to such facility by substituting 'January 1, 2018' for 'January 1, 2003'.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuels sold after the date of the enactment of this Act.

S. 358

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

**SECTION 1. CREDIT FOR PRODUCING FUEL FROM LANDFILL GAS.**

(a) IN GENERAL.—Section 29 of the Internal Revenue Code of 1986 (relating to credit for producing fuel from a nonconventional source) is amended by adding at the end the following new subsection:

''(h) EXTENSION AND MODIFICATION FOR FACILITIES PRODUCING QUALIFIED FUELS FROM LANDFILL GAS.—

''(1) IN GENERAL.—In the case of a facility for producing qualified fuel from landfill gas which is placed in service after June 30, 1998, and before January 1, 2008, this section shall apply to fuel produced at such facility during the 5-year period beginning on the later of—

''(A) the date such facility was placed in service, or

''(B) the date of the enactment of this subsection.

''(2) REDUCTION OF CREDIT FOR PRODUCTION FROM CERTAIN LANDFILL GAS FACILITIES.—In the case of a facility to which paragraph (1) applies which is located at a landfill which is required pursuant to 40 CFR 60.752(b)(2) or 40 CFR 60.33c to install and operate a collection and control system which captures gas generated within the landfill, subsection (a)(1) shall be applied to gas so captured by substituting '$2' for '$3' for the taxable year during which such system is required to be installed and operated.

''(3) SPECIAL RULES.—In determining the amount of credit allowable under this section solely by reason of this subsection—

''(A) DAILY LIMIT.—The amount of qualified fuels sold during any taxable year which may be taken into account by reason of this subsection with respect to any facility shall not exceed an average barrel-of-oil equivalent of 200,000 cubic feet of natural gas per day. Days before the date the facility is placed in service shall not be taken into account in determining such average.

''(B) EXTENSION PERIOD TO COMMENCE WITH UNADJUSTED CREDIT AMOUNT.—In the case of fuels sold after 2003, subparagraph (B) of subsection (d)(2) shall be applied by substituting '2003' for '1979'.''.

(b) ADDITIONAL DEFINITION.—Section 29(d) of the Internal Revenue Code of 1986 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

''(9) LANDFILL GAS FACILITY.—

''(A) IN GENERAL.—A facility for producing qualified fuel from landfill gas, placed in service before, on, or after the date of the enactment of this paragraph, includes all wells, pipes, and other gas collection equipment installed as part of the facility over the life of the landfill, including any modifications or expansions thereof, after the facility is first placed in service.

''(B) LANDFILL GAS.—The term 'landfill gas' means gas derived from the biodegradation of municipal solid waste.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold after the date of the enactment of this Act.

**SEC. 2. EXTENSION AND EXPANSION OF CREDIT FOR PRODUCTION OF ELECTRICITY TO PRODUCTION FROM LANDFILL GAS.**

(a) IN GENERAL.—Section 45(c)(1) of the Internal Revenue Code of 1986 (defining qualified energy resources) is amended by striking ''and'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting '', and'', and by adding at the end the following new subparagraph:

''(D) landfill gas.''.

(b) QUALIFIED FACILITY.—Section 45(c)(3) of the Internal Revenue Code of 1986 (relating to qualified facility) is amended by adding at the end the following new subparagraph:

''(D) LANDFILL GAS FACILITY.—In the case of a facility using landfill gas to produce electricity, the term 'qualified facility' means any such facility owned by the taxpayer which is originally placed in service before January 1, 2008.''.

(c) SPECIAL RULES AND DEFINITIONS.—

(1) REDUCED CREDIT FOR CERTAIN PREEFECTIVE DATE FACILITIES.—Section 45(d) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(8) REDUCED CREDIT FOR CERTAIN PREEFFECTIVE DATE FACILITIES.—In the case of any facility described in subparagraph (D) of paragraph (3) which is placed in service before the date of the enactment of this subparagraph—

''(A) subsection (a)(1) shall be applied by substituting '1.0 cents' for '1.5 cents', and

''(B) the 5-year period beginning on the date of the enactment of this paragraph shall be substituted in lieu of the 10-year period in subsection (a)(2)(A)(ii).''.

(2) COORDINATION WITH SECTION 29.—Section 45(c)(3) of such Code (relating to qualified facility), as amended by subsection (b), is amended by adding at the end the following new subparagraph:

''(E) COORDINATION WITH SECTION 29.—The term 'qualified facility' shall not include any facility the production from which is taken

into account in determining any credit under section 29 for the taxable year or any prior taxable year.''.

(3) LANDFILL GAS.—Section 45(c) of such Code is amended by adding at the end the following new paragraph:

''(5) LANDFILL GAS.—The term 'landfill gas' means gas derived from the biodegradation of municipal solid waste.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act.

S. 359

*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 ''Waste to Energy Utilization Act of 2003''.

**SEC. 2. CREDIT FOR ELECTRICITY PRODUCED FROM MUNICIPAL SOLID WASTE.**

(a) IN GENERAL.—Section 45(c)(1) of the Internal Revenue Code of 1986 (defining qualified energy resources) is amended by striking ''and'' at the end of subparagraph (B), by striking the period at the end of subparagraph (C) and inserting '', and'', and by adding at the end the following new subparagraph:

''(D) municipal solid waste.''.

(b) QUALIFIED FACILITY.—Section 45(c)(3) of the Internal Revenue Code of 1986 (relating to qualified facility) is amended by adding at the end the following new subparagraph:

''(D) MUNICIPAL SOLID WASTE FACILITY.—

''(i) IN GENERAL.—In the case of a facility or unit using municipal solid waste to produce electricity, the term 'qualified facility' means—

''(I) any facility owned by the taxpayer which is originally placed in service on or after date of the enactment of this subparagraph and before January 1, 2008, or

''(II) any unit owned by the taxpayer which is originally placed in service and added to another facility on or after such date of enactment and before January 1, 2008.

''(ii) SPECIAL RULE.—In the case of a qualified facility described in clause (i)(II), the 10-year period referred to in subsection (a) shall be treated as beginning no earlier than the date of the enactment of this subparagraph.

''(iii) CREDIT ELIGIBILITY.—In the case of any qualified facility described in clause (i), if the owner of such facility is not the producer of the electricity, the person eligible for the credit allowable under subsection (a) is the lessee or the operator of such facility.''.

(c) DEFINITION.—Section 45(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

''(5) MUNICIPAL SOLID WASTE.—The term 'municipal solid waste' has the meaning given the term 'solid waste' under section 2(27) of the Solid Waste Disposal Act (42 U.S.C. 6903).''.

(d) NO CREDIT FOR CERTAIN PRODUCTION.—Section 45(d) of the Internal Revenue Code of 1986 (relating to definitions and special rules) is amended by adding at the end the following new paragraph:

''(8) OPERATIONS INCONSISTENT WITH SOLID WASTE DISPOSAL ACT.—In the case of a qualified facility described in subsection (c)(3)(D), subsection (a) shall not apply to electricity produced at such facility during any taxable year if, during a portion of such year, there is a certification in effect by the Administrator of the Environmental Protection Agency that such facility was permitted in a manner inconsistent with section 4003(d) of the Solid Waste Disposal Act (42 U.S.C. 6943(d)).''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to electricity sold after the date of the enactment of this Act, in taxable years ending after such date.

S. 360

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

**SECTION 1. NATURAL GAS DISTRIBUTION LINES TREATED AS 10-YEAR PROPERTY.**

(a) IN GENERAL.—Subparagraph (D) of section 168(e)(3) of the Internal Revenue Code of 1986 (relating to classification of certain property) is amended by striking ''and'' at the end of clause (i), by striking the period at the end of clause (ii) and by inserting '', and'', and by adding at the end the following new clause:

''(iii) any natural gas distribution line.''.

(b) ALTERNATIVE SYSTEM.—The table contained in section 168(g)(3)(B) of the Internal Revenue Code of 1986 is amended by inserting after the item relating to subparagraph (D)(ii) the following:

''(D)(iii) ..... 20''.

(c) ALTERNATIVE MINIMUM TAX EXCEPTION.—Subparagraph (B) of section 56(a)(1) of the Internal Revenue Code of 1986 is amended by inserting before the period the following: ''or in clause (iii) of section 168(e)(3)(D)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

S. 361

*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 ''Resource Efficient Appliance Incentives Act of 2003''.

**SEC. 2. CREDIT FOR ENERGY EFFICIENT APPLIANCES.**

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to business-related credits) is amended by adding at the end the following new section:

**''SEC. 45G. ENERGY EFFICIENT APPLIANCE CREDIT.**

''(a) GENERAL RULE.—For purposes of section 38, the energy efficient appliance credit determined under this section for the taxable year is an amount equal to the applicable amount determined under subsection (b) with respect to the eligible production of qualified energy efficient appliances produced by the taxpayer during the calendar year ending with or within the taxable year.

''(b) APPLICABLE AMOUNT; ELIGIBLE PRODUCTION.—For purposes of subsection (a)—

''(1) APPLICABLE AMOUNT.—The applicable amount is—

''(A) $50, in the case of—

''(i) a clothes washer which is produced in 2003 with at least a 1.26 MEF (at least 1.42 MEF for washers produced after 2003 but not after 2006), or

''(ii) a refrigerator produced in 2003 which consumes at least 10 percent less kWh per year than the energy conservation standards for refrigerators promulgated by the Department of Energy effective July 1, 2001,

''(B) $100, in the case of—

''(i) a clothes washer which is produced in 2003 with at least a 1.42 MEF (at least 1.5 MEF for washers produced after 2003 and before 2008), or

''(ii) a refrigerator produced after 2002 and before 2007 which consumes at least 15 percent less kWh per year (at least 20 percent less kWh per year for refrigerators produced in 2007) than such energy conservation standards, and

''(C) $150, in the case of a refrigerator which consumes at least 20 percent less kWh per year than such energy conservation standards and is produced after 2002 and before 2007.

''(2) ELIGIBLE PRODUCTION.—

''(A) IN GENERAL.—The eligible production of each category of qualified energy efficient appliances is the excess of—

''(i) the number of appliances in such category which are produced by the taxpayer during such calendar year, over

''(ii) the average number of appliances in such category which were produced by the taxpayer during calendar years 2000, 2001, and 2002.

''(B) CATEGORIES.—For purposes of subparagraph (A), the categories are—

''(i) clothes washers described in paragraph (1)(A)(i),

''(ii) clothes washers described in paragraph (1)(B)(i),

''(iii) refrigerators described in paragraph (1)(A)(ii),

''(iv) refrigerators described in paragraph (1)(B)(ii), and

''(v) refrigerators described in paragraph (1)(C).

''(C) SPECIAL RULE FOR 2003 PRODUCTION.—For purposes of determining eligible production for calendar year 2003—

''(i) only production after the date of enactment of this section shall be taken into account under subparagraph (A)(i), and

''(ii) the amount taken into account under subparagraph (A)(ii) shall be an amount which bears the same ratio to the amount which would (but for this subparagraph) be taken into account under subparagraph (A)(ii) as—

''(I) the number of days in calendar year 2003 after the date of enactment of this section, bears to

''(II) 365.

''(c) LIMITATION ON MAXIMUM CREDIT.—

''(1) IN GENERAL.—The maximum amount of credit allowed under subsection (a) with respect to a taxpayer for all taxable years shall be $60,000,000 except that not more than $30,000,000 shall be allowed for production of any combination of clothes washers produced with a 1.26 MEF (described in subsection (b)(1)(A)(i)) and refrigerators described in subsection (b)(1)(A)(ii).

''(2) LIMITATION BASED ON GROSS RECEIPTS.—The credit allowed under subsection (a) with respect to a taxpayer for the taxable year shall not exceed an amount equal to 2 percent of the average annual gross receipts of the taxpayer for the 3 taxable years preceding the taxable year in which the credit is determined.

''(3) GROSS RECEIPTS.—For purposes of this subsection, the rules of paragraphs (2) and (3) of section 448(c) shall apply.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED ENERGY EFFICIENT APPLIANCE.—The term 'qualified energy efficient appliance' means—

''(A) a clothes washer described in subparagraph (A)(i) or (B)(i) of subsection (b)(1), or

''(B) a refrigerator described in subparagraph (A)(ii), (B)(ii) or (C) of subsection (b)(1).

''(2) CLOTHES WASHER.—The term 'clothes washer' means a residential clothes washer, including a residential style coin operated washer.

''(3) REFRIGERATOR.—The term 'refrigerator' means an automatic defrost refrigerator-freezer which has an internal volume of at least 16.5 cubic feet.

''(4) MEF.—The term 'MEF' means Modified Energy Factor (as determined by the Secretary of Energy).

''(e) SPECIAL RULES.—

''(1) IN GENERAL.—Rules similar to the rules of subsections (c), (d), and (e) of section 52 shall apply for purposes of this section.

''(2) AGGREGATION RULES.—All persons treated as a single employer under subsection (a) or (b) of section 52 or subsection (m) or (o) of section 414 shall be treated as 1 person for purposes of subsection (a).

''(f) VERIFICATION.—The taxpayer shall submit such information or certification as the Secretary, in consultation with the Secretary of Energy, determines necessary to claim the credit amount under subsection (a).''.

(b) LIMITATION ON CARRYBACK.—Section 39(d) of the Internal Revenue Code of 1986 (relating to transition rules) is amended by adding at the end the following new paragraph:

''(11) NO CARRYBACK OF ENERGY EFFICIENT APPLIANCE CREDIT BEFORE EFFECTIVE DATE.—No portion of the unused business credit for any taxable year which is attributable to the energy efficient appliance credit determined under section 45G may be carried to a taxable year ending before January 1, 2003.''.

(c) CONFORMING AMENDMENT.—Section 38(b) of the Internal Revenue Code of 1986 (relating to general business credit) is amended by striking ''plus'' at the end of paragraph (14), by striking the period at the end of paragraph (15) and inserting '', plus'', and by adding at the end the following new paragraph:

''(16) the energy efficient appliance credit determined under section 45G(a).''.

(d) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

''Sec. 45G. Energy efficient appliance credit.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to appliances produced after December 31, 2002, in taxable years ending after such date.

Mr. GRASSLEY. Mr. President, I rise to voice my strong support for legislation introduced today by Senators LINCOLN and ALLARD, entitled ''The Resource Efficient Appliance Incentive Act of 2003.'' I'm proud to be an original cosponsor.

This legislation will provide a valuable incentive to accelerate and expand the production and market penetration of ultra energy-efficient appliances. By providing a tax credit for the development of super energy-efficient washing machines and refrigerators, this legislation creates the incentives necessary to increase the production and sale of these appliances in the short term and ultimately lead to a dramatic change in consumer purchasing decisions.

Under this proposal, manufacturers would be eligible to claim a credit of either $50 or $100, depending on efficiency level, for each super energy-efficient washing machine produced between 2003 and 2007. Likewise, manufacturers would be eligible to claim a credit of $50, $100, or $150, depending on efficiency level, for each super energy-efficient refrigerator produced between 2003 and 2007. It is estimated that this tax credit will increase the production and purchase of super energy-efficient washers by almost 200 percent and the purchase of super energy-efficient refrigerators by over 285 percent.

Equally important is the long-term environmental benefits of the expanded use of these appliances. Over the life of the appliances, over 200 trillion Btus of energy will be saved. This is the equivalent of taking 2.3 million cars off the road or closing 6 coal-fired power plants for a year. In addition, the clothes washers will reduce the amount of water necessary to wash clothes by 870 billion gallons, an amount equal to the needs of every household in a city the size of Phoenix, Arizona for two years. And, the benefits to consumers over the life of the washers and refrigerators from operational savings is estimated at nearly $1 billion.

In my home State of Iowa, this legislation would result in the production of 1.5 million super energy-efficient washers and refrigerators during the next five years. I also expect Iowans to save $11 million in operational costs over the life span of the appliances, and 9 billion gallons of water—enough to supply drinking water for the entire State for 30 years.

As Chairman of the Senate Finance Committee, I look forward to working with Senators LINCOLN and ALLARD as we continue to promote energy conservation and efficiency.

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By Ms. MIKULSKI (for herself Ms. SNOWE, Mr. SARBANES, Ms. COLLINS, Mrs. MURRAY, and Ms. CANTWELL):

S. 362. A bill to amend title II of the Social Security Act to provide that a monthly insurance benefit thereunder shall be paid for the month in which the recipient dies, subject to a reduction of 50 percent if the recipient dies during the first 15 days of such month, and for other purposes; to the Committee on Finance.

Ms. MIKULSKI. Mr. President, today, I rise to talk about an issue that is very important to me, very important to my constituents in Maryland and very important to the people of the United States of America.

For the fifth Congress in a row, I am joining in a bipartisan effort with my friend and colleague, Senator OLYMPIA SNOWE, to end an unfair policy of the Social Security System.

Senator SNOWE and I are introducing the Social Security Family Protection Act. This bill addresses retirement security and family security. We want the middle class of this Nation to know that we are going to give help to those who practice self-help.

What is it I am talking about? I was shocked when I found out that Social Security does not pay benefits for the last month of life. If a Social Security retiree dies on the 18th of the month or even on the 30th of the month, the surviving spouse or family members must send back the Social Security check for that month.

I think that is a harsh and heartless rule. That individual worked for Social Security benefits, earned those benefits, and paid into the Social Security trust fund. The system should allow the surviving spouse or the estate of the family to use that Social Security check for the last month of life.

This legislation has an urgency. When a loved one dies, there are expenses that the family must take care of. People have called my office in tears. Very often it is a son or a daughter that is grieving the death of a parent. They are clearing up the paperwork for their mom or dad, and there is the Social Security check. And they say, ''Senator, the check says for the month of May. Mom died on May 28. Why do we have to send the Social Security check back? We have bills to pay. We have utility coverage that we need to wrap up, mom's rent, or her mortgage, or health expenses. Why is Social Security telling me, 'Send the check back or we're going to come and get you'?''

With all the problems in our country today, we ought to be going after drug dealers and tax dodgers, not honest people who have paid into Social Security, and not the surviving spouse or the family who have been left with the bills for the last month of their loved one's life. They are absolutely right when they call me and say that Social Security was supposed to be there for them.

I've listened to my constituents and to the stories of their lives. What they say is this: ''Senator MIKULSKI, we don't want anything for free. But our family does want what our parents worked for. We do want what we feel we deserve and what has been paid for in the trust fund in our loved one's name. Please make sure that our family gets the Social Security check for the last month of our life.''

That is what our bill is going to do. That is why Senator SNOWE and I are introducing the Family Social Security Protection Act. When we talk about retirement security, the most important part of that is income security. And the safety net for most Americans is Social Security.

We know that as Senators we have to make sure that Social Security remains solvent, and we are working to do that. We also don't want to create an undue administrative burden at the Social Security Administration—a burden that might affect today's retirees. But it is absolutely crucial that we provide a Social Security check for the last month of life.

How do we propose to do that? We have a very simple, straightforward way of dealing with this problem. Our legislation says that if you die before the 15th of the month, you will get a check for half the month. If you die after the 15th of the month, your surviving spouse or the family estate would get a check for the full month.

We think this bill is fundamentally fair. Senator SNOWE and I are old-fashioned in our belief in family values. We believe you honor your father and your mother. We believe that it is not only a good religious and moral principle, but it is good public policy as well.

The way to honor your father and mother is to have a strong Social Security System and to make sure the system is fair in every way. That means fair for the retiree and fair for the

spouse and family. We strongly feel that the current system is an injustice to spouses and families across the Nation. Just because a beneficiary passes away, it does not mean that their bills can go unpaid. Join us to correct this policy and to ensure that families and recipients are protected during this difficult time. That is why we support making sure that the surviving spouse or family can keep the Social Security check for the last month of life.

We urge our colleagues to join us in this effort and support the Social Security Family Protection Act. I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 362

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

**SECTION 1. SHORT TITLE.**

This Act may be cited as the ''Social Security Family Protection Act''.

**SEC. 2. COMPUTATION AND PAYMENT OF LAST MONTHLY PAYMENT.**

(a) OLD-AGE AND SURVIVORS INSURANCE BENEFITS.—Section 202 of the Social Security Act (42 U.S.C. 402) is amended by adding at the end the following:

''Last Payment of Monthly Insurance Benefit Terminated by Death

''(z)(1) In any case in which an individual dies during the first 15 days of a calendar month, the amount of such individual's monthly insurance benefit under this section paid for such month shall be an amount equal to 50 percent of the amount of such benefit (as determined without regard to this subsection), rounded, if not a multiple of $1, to the next lower multiple of $1. This subsection shall apply with respect to such benefit after all other adjustments with respect to such benefit provided by this title have been made.

''(2) Any payment under this section by reason of paragraph (1) shall be made in accordance with section 204(d).''.

(b) DISABILITY INSURANCE BENEFITS.—Section 223 of the Social Security Act (42 U.S.C. 423) is amended by adding at the end the following:

''Last Payment of Benefit Terminated by Death

''(k)(1) In any case in which an individual dies during the first 15 days of a calendar month, the amount of such individual's monthly insurance benefit under this section paid for such month shall be an amount equal to 50 percent of the amount of such benefit (as determined without regard to this subsection), rounded, if not a multiple of $1, to the next lower multiple of $1. This subsection shall apply with respect to such benefit after all other adjustments with respect to such benefit provided by this title have been made.

''(2) Any payment under this section by reason of paragraph (1) shall be made in accordance with section 204(d).''.

(c) BENEFITS AT AGE 72 FOR CERTAIN UNINSURED INDIVIDUALS.—Section 228 of the Social Security Act (42 U.S.C. 428) is amended by adding at the end the following:

''Last Payment of Benefit Terminated by Death

''(i)(1) In any case in which an individual dies during the first 15 days of a calendar month, the amount of such individual's monthly insurance benefit under this section paid for such month shall be an amount equal to 50 percent of the amount of such benefit (as determined without regard to this subsection), rounded, if not a multiple of $1, to the next lower multiple of $1. This subsection shall apply with respect to such benefit after all other adjustments with respect to such benefit provided by this title have been made.

''(2) Any payment under this section by reason of paragraph (1) shall be made in accordance with section 204(d).''.

**SEC. 3. CONFORMING AMENDMENTS REGARDING PAYMENT OF BENEFITS FOR MONTH OF RECIPIENT'S DEATH.**

(a) OLD-AGE INSURANCE BENEFITS.—Section 202(a)(3) of the Social Security Act (42 U.S.C. 402(a)(3)) is amended by striking ''the month preceding'' in the matter following subparagraph (B).

(b) WIFE'S INSURANCE BENEFITS.—

(1) IN GENERAL.—Section 202(b)(1)(D) of such Act (42 U.S.C. 402(b)(1)(D)) is amended—

(A) by striking ''and ending with the month'' in the matter immediately following clause (ii)(II) and inserting ''and ending with the month in which she dies or (if earlier) with the month'';

(B) by striking subparagraph (E); and

(C) by redesignating subparagraphs (F) through (K) as subparagraphs (E) through (J), respectively.

(2) CONFORMING AMENDMENT.—Section 202(b)(5)(B) of the Social Security Act (42 U.S.C. 402(b)(5)(B)) is amended by striking ''(E), (F), (H), or (J)'' and inserting ''(E), (G), or (I)''.

(c) HUSBAND'S INSURANCE BENEFITS.—

(1) IN GENERAL.—Section 202(c)(1)(D) of the Social Security Act (42 U.S.C. 402(c)(1)(D)) is amended—

(A) by striking ''and ending with the month'' in the matter immediately following clause (ii)(II) and inserting ''and ending with the month in which he dies or (if earlier) with the month'';

(B) by striking subparagraph (E); and

(C) by redesignating subparagraphs (F) through (K) as subparagraphs (E) through (J), respectively.

(2) CONFORMING AMENDMENT.—Section 202(c)(5)(B) of the Social Security Act (42 U.S.C. 402(c)(5)(B)) is amended by striking ''(E), (F), (H), or (J)'' and inserting ''(E), (G), or (I)''.

(d) CHILD'S INSURANCE BENEFITS.—Section 202(d)(1) of the Social Security Act (42 U.S.C. 402(d)(1)) is amended—

(1) by striking ''and ending with the month'' in the matter immediately preceding subparagraph (D) and inserting ''and ending with the month in which such child dies or (if earlier) with the month''; and

(2) in subparagraph (D), by striking ''dies, or''.

(e) WIDOW'S INSURANCE BENEFITS.—Section 202(e)(1) of the Social Security Act (42 U.S.C. 402(e)(1)) is amended by striking ''ending with the month preceding the first month in which any of the following occurs: she remarries, dies,'' in the matter following subparagraph (F) and inserting ''ending with the month in which she dies or (if earlier) with the month preceding the first month in which any of the following occurs: she remarries, or''.

(f) WIDOWER'S INSURANCE BENEFITS.—Section 202(f)(1) of the Social Security Act (42 U.S.C. 402(f)(1)) is amended by striking ''ending with the month preceding the first month in which any of the following occurs: he remarries, dies,'' in the matter following subparagraph (F) and inserting ''ending with the month in which he dies or (if earlier) with the month preceding the first month in which any of the following occurs: he remarries,''.

(g) MOTHER'S AND FATHER'S INSURANCE BENEFITS.—Section 202(g)(1) of the Social Security Act (42 U.S.C. 402(g)(1)) is amended—

(1) by inserting ''with the month in which he or she dies or (if earlier)'' after ''and ending'' in the matter following subparagraph (F); and

(2) by striking ''he or she remarries, or he or she dies'' and inserting ''or he or she remarries''.

(h) PARENT'S INSURANCE BENEFITS.—Section 202(h)(1) of the Social Security Act (42 U.S.C. 402(h)(1)) is amended by striking ''ending with the month preceding the first month in which any of the following occurs: such parent dies, marries,'' in the matter following subparagraph (E) and inserting ''ending with the month in which such parent dies or (if earlier) with the month preceding the first month in which any of the following occurs: such parent marries,''.

(i) DISABILITY INSURANCE BENEFITS.—Section 223(a)(1) of the Social Security Act (42 U.S.C. 423(a)(1)) is amended by striking ''ending with the month preceding whichever of the following months is the earliest: the month in which he dies,'' in the matter following subparagraph (D) and inserting the following: ''ending with the month in which he dies or (if earlier) with whichever of the following months is the earliest:''.

(j) BENEFITS AT AGE 72 FOR CERTAIN UNINSURED INDIVIDUALS.—Section 228(a) of the Social Security Act (42 U.S.C. 428(a)) is amended by striking ''the month preceding'' in the matter following paragraph (4).

(k) EXEMPTION FROM MAXIMUM BENEFIT CAP.—Section 203 of the Social Security Act (42 U.S.C. 403) is amended by adding at the end the following:

''Exemption From Maximum Benefit Cap

''(m) Notwithstanding any other provision of this section, the application of this section shall be made without regard to any amount received by reason of section 202(z), 223(j), or 228(i).''.

**SEC. 4. EFFECTIVE DATE.**

The amendments made by this Act shall apply with respect to deaths occurring after the date that is 180 days after the date of the enactment of this Act.

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By Ms. MIKULSKI (for herself, Mr. SARBANES, Ms. COLLINS, Mr. BINGAMAN, Mr. DASCHLE, Ms. SNOWE, Mr. DORGAN, Ms. LANDRIEU, Mrs. MURRAY, Mr. BREAUX, Ms. CANTWELL, Mr. KENNEDY, and Mrs. CLINTON):

S. 363. A bill to amend title II of the Social Security Act to provide that the reductions in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation; to the Committee on Finance.

Ms. MIKULSKI. Mr. President, I rise today to talk about an issue that is very important to me, very important to my constituents in Maryland and very important to government workers and retirees across the Nation. I am reintroducing a bill to modify a cruel rule of government that is unfair and prevents current workers from enjoying the benefits of their hard work during retirement. My bill has bipartisan support and the House companion bill

had nearly 300 cosponsors last year. With this strong bipartisan support, I hope that we can correct this cruel rule of government this year.

Under current law, a Social Security spousal benefit is reduced or entirely eliminated if the surviving spouse is eligible for a pension from a local, State or Federal Government job that was not covered by Social Security. This policy is known as the Government Pension Offset.

This is how the current law works. Consider a surviving spouse who retires from government service and receives a government pension of $600 a month. She also qualifies for a Social Security spousal benefit of $645 a month. Because of the Pension Offset law, which reduces her Social Security benefit by 2/3 of her government pension, her spousal benefit is reduced to $245 a month. So instead of $1245, she will receive only $845 a month. That is $400 a month less to pay the rent, purchase a prescription medication, or buy groceries. I think that is wrong.

My bill does not repeal the government pension offset entirely, but it will allow retirees to keep more of what they deserve. It guarantees that those subject to the offset can keep at least $1200 a month in combined retirement income. With my modification, the 2/3 offset would apply only to the combined benefit that exceeds $1200 a month. So, in the example above, the surviving spouse would face only a $30 offset, allowing her to keep $1215 in monthly income.

Unfortunately, the current law disproportionately affects women. Women are more likely to receive Social Security spousal benefits and to have worked in low-paying or short-term government positions while they were raising families. It is also true that women receive smaller government pensions because of their lower earnings, and rely on Social Security benefits to a greater degree. My modification will allow these women who have contributed years of important government service and family service to rely on a larger amount of retirement income.

The last time Congress passed a bill significantly effecting Social Security benefits was in 1999. At that time, the Senate unanimously voted for and passed H.R. 5, The Senior Citizens' Freedom to Work Act of 1999. This legislation ensured that senior citizens who choose to work or who must work can earn income after retirement without losing a portion of their Social Security benefit. That law helps senior citizens who earn above $17,000 per year. In contrast, my bill specifically targets those with much lower retirement incomes around $13,000 per year and less. I believe that we must work to ensure a safety net for all of our seniors—including those retired federal employees who every day are forced to make difficult choices between rent, food, and prescription drugs due to the drastic effects of the government pension offset.

Why do we punish people who have committed a significant portion of their lives to government service? We are talking about workers who provide some of the most important services to our community—teachers, firefighters, and many others. Some have already retired. Others are currently working and looking forward to a deserved retirement. These individuals deserve better than the reduced monthly benefits that the Pension Offset currently requires.

Government employees work hard in service to our nation, and I work hard for them. I do not want to see them penalized simply because they have chosen to work in the public sector, rather than for a private employer, and often at lower salaries and sometimes fewer benefits. If a retired worker in the private sector received a pension, and also received a spousal Social Security benefit, they would not be subject to the Offset. I think we should be looking for ways to reward government service, not the other way around. I believe that people who work hard and play by the rules should not be penalized by arcane, legislative technicalities.

Frankly, I would like to repeal the offset all together. But, I realize that budget considerations make that unlikely. As a compromise, I hope we can agree that retirees who have worked hard all their lives should not have this offset applied until their combined monthly benefit, both government pension and Social Security spousal benefit, exceeds $1,200.

I also strongly believe that we should ensure that retirees buying power keeps up with the cost of living. That's why I have also included a provision in this legislation to index the $1,200 amount to inflation so retirees will see their minimum benefits increase along with the cost of living.

The Social Security Administration recently estimated that enacting the provisions contained in my bill will have a minimal long-term impact on the Social Security Trust Fund—about 0.01 percent of taxable payroll. Additionally, my bill is bipartisan and is strongly supported by CARE, the Coalition to Assure Retirement Equity with 43 member organizations including the National Association of Retired Federal Employees, NARFE, the American Federation of Federal State County and Municipal Employees, AFSCME, the National Education Association, NEA, and the National Treasury Employees Union, NTEU.

I urge my colleagues to join me in this effort and support my legislation to modify the Government Pension Offset. I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 363

*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 ''Government Pension Offset Reform Act''.

**SEC. 2. LIMITATION ON REDUCTIONS IN BENEFITS FOR SPOUSES AND SURVIVING SPOUSES RECEIVING GOVERNMENT PENSIONS.**

(a) WIFE'S INSURANCE BENEFITS.—Section 202(b)(4)(A) of the Social Security Act (42 U.S.C. 402(b)(4)(A)) is amended—

(1) by inserting ''the amount (if any) by which the sum of such benefit (before reduction under this paragraph) and'' after ''two-thirds of''; and

(2) by inserting ''exceeds the amount described in subsection (z) for such month,'' before ''if''.

(b) HUSBAND'S INSURANCE BENEFITS.—Section 202(c)(2)(A) of such Act (42 U.S.C. 402(c)(2)(A)) is amended—

(1) by inserting ''the amount (if any) by which the sum of such benefit (before reduction under this paragraph) and'' after ''two-thirds of''; and

(2) by inserting ''exceeds the amount described in subsection (z) for such month,'' before ''if''.

(c) WIDOW'S INSURANCE BENEFITS.—Section 202(e)(7)(A) of such Act (42 U.S.C. 402(e)(7)(A)) is amended—

(1) by inserting ''the amount (if any) by which the sum of such benefit (before reduction under this paragraph) and'' after ''two-thirds of''; and

(2) by inserting ''exceeds the amount described in subsection (z) for such month,'' before ''if''.

(d) WIDOWER'S INSURANCE BENEFITS.—Section 202(f)(2)(A) of such Act (42 U.S.C. 402(f)(2)(A)) is amended—

(1) by inserting ''the amount (if any) by which the sum of such benefit (before reduction under this paragraph) and'' after ''two-thirds of''; and

(2) by inserting ''exceeds the amount described in subsection (z) for such month,'' before ''if''.

(e) MOTHER'S AND FATHER'S INSURANCE BENEFITS.—Section 202(g)(4)(A) of such Act (42 U.S.C. 402(g)(4)(A)) is amended—

(1) by inserting ''the amount (if any) by which the sum of such benefit (before reduction under this paragraph) and'' after ''two-thirds of''; and

(2) by inserting ''exceeds the amount described in subsection (z) for such month,'' before ''if''.

(f) AMOUNT DESCRIBED.—Section 202 of such Act (42 U.S.C. 402) is amended by adding at the end the following:

''(z) The amount described in this subsection is, for months in each 12-month period beginning in December of 2003, and each succeeding calendar year, the greater of—

''(1) $1200; or

''(2) the amount applicable for months in the preceding 12-month period, increased by the cost-of-living adjustment for such period determined for an annuity under section 8340 of title 5, United States Code (without regard to any other provision of law).''.

(g) LIMITATIONS ON REDUCTIONS IN BENEFITS.—Section 202 of such Act (42 U.S.C. 402), as amended by subsection (f), is amended by adding at the end the following:

''(aa) For any month after December 2003, in no event shall an individual receive a reduction in a benefit under subsection (b)(4)(A), (c)(2)(A), (e)(7)(A), (f)(2)(A), or (g)(4)(A) for the month that is more than the reduction in such benefit that would have applied for such month under such subsections as in effect on December 1, 2003.''.

**SEC. 3. EFFECTIVE DATE.**

The amendments made by section 1 shall apply with respect to monthly insurance benefits payable under title II of the Social Security Act for months after December 2003.

## STATEMENTS ON SUBMITTED RESOLUTIONS

## SENATE RESOLUTION 51—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON GOVERNMENTAL AFFAIRS

Ms. COLLINS (for herself and Mr. LIEBERMAN) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 51

*Resolved,*

**SECTION 1. COMMITTEE ON GOVERNMENTAL AFFAIRS.**

(a) GENERAL AUTHORITY.—In carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdiction under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Governmental Affairs (referred to in this resolution as the ''committee'') is authorized from March 1, 2003, through February 28, 2005, in its discretion—

(1) to make expenditures from the contingent fund of the Senate;

(2) to employ personnel; and

(3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable, or nonreimbursable, basis the services of personnel of any such department or agency.

(b) EXPENSES FOR PERIOD ENDING SEPTEMBER 30, 2003.—The expenses of the committee for the period March 1, 2003, through September 30, 2003, under this section shall not exceed $4,764,738, of which amount—

(1) not to exceed $75,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $20,000, may be expended for the training of the professional staff of the committee (under procedures specified by section 202(j) of that Act).

(c) EXPENSES FOR FISCAL YEAR 2004 PERIOD.—The expenses of the committee for the period October 1, 2003, through September 30, 2004, under this section shall not exceed $8,387,779, of which amount—

(1) not to exceed $75,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(i))); and

(2) not to exceed $20,000, may be expended for the training of the professional staff of the committee (under procedures specified by section 202(j) of that Act).

(d) EXPENSES FOR PERIOD ENDING FEBRUARY 28, 2005.—For the period October 1, 2004, through February 28, 2005, expenses of the committee under this section shall not exceed $3,576,035, of which amount—

(1) not to exceed $75,000, may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946); and

(2) not to exceed $20,000, may be expended for the training of the professional staff of the committee (under procedures specified by section 202(j) of that Act).

**SEC. 2. REPORTING LEGISLATION.**

The committee shall report its findings, together with such recommendations for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2005.

**SEC. 3. EXPENSES; AGENCY CONTRIBUTIONS; AND INVESTIGATIONS.**

(a) EXPENSES OF THE COMMITTEE.—

(1) IN GENERAL.—Except as provided in paragraph (2), any expenses of the committee under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee.

(2) VOUCHERS NOT REQUIRED.—Vouchers shall not be required for—

(A) the disbursement of salaries of employees of the committee who are paid at an annual rate;

(B) the payment of telecommunications expenses provided by the Office of the Sergeant at Arms and Doorkeeper;

(C) the payment of stationery supplies purchased through the Keeper of Stationery;

(D) payments to the Postmaster of the Senate;

(E) the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper;

(F) the payment of Senate Recording and Photographic Services; or

(G) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

(b) AGENCY CONTRIBUTIONS.—There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee for the period March 1, 2003, through September 30, 2003, for the period October 1, 2003, through September 30, 2004, and for the period October 1, 2004, through February 28, 2005, to be paid from the appropriations account for ''Expenses of Inquiries and Investigations'' of the Senate.

(c) INVESTIGATIONS.—

(1) IN GENERAL.—The committee, or any duly authorized subcommittee of the committee, is authorized to study or investigate—

(A) the efficiency and economy of operations of all branches of the Government including the possible existence of fraud, misfeasance, malfeasance, collusion, mismanagement, incompetence, corruption, or unethical practices, waste, extravagance, conflicts of interest, and the improper expenditure of Government funds in transactions, contracts, and activities of the Government or of Government officials and employees and any and all such improper practices between Government personnel and corporations, individuals, companies, or persons affiliated therewith, doing business with the Government; and the compliance or noncompliance of such corporations, companies, or individuals or other entities with the rules, regulations, and laws governing the various governmental agencies and its relationships with the public;

(B) the extent to which criminal or other improper practices or activities are, or have been, engaged in the field of labor-management relations or in groups or organizations of employees or employers, to the detriment of interests of the public, employers, or employees, and to determine whether any changes are required in the laws of the United States in order to protect such interests against the occurrence of such practices or activities;

(C) organized criminal activity which may operate in or otherwise utilize the facilities of interstate or international commerce in furtherance of any transactions and the manner and extent to which, and the identity of the persons, firms, or corporations, or other entities by whom such utilization is being made, and further, to study and investigate the manner in which and the extent to which persons engaged in organized criminal activity have infiltrated lawful business enterprise, and to study the adequacy of Federal laws to prevent the operations of organized crime in interstate or international commerce; and to determine whether any changes are required in the laws of the United States in order to protect the public against such practices or activities;

(D) all other aspects of crime and lawlessness within the United States which have an impact upon or affect the national health, welfare, and safety; including but not limited to investment fraud schemes, commodity and security fraud, computer fraud, and the use of offshore banking and corporate facilities to carry out criminal objectives;

(E) the efficiency and economy of operations of all branches and functions of the Government with particular reference to—

(i) the effectiveness of present national security methods, staffing, and processes as tested against the requirements imposed by the rapidly mounting complexity of national security problems;

(ii) the capacity of present national security staffing, methods, and processes to make full use of the Nation's resources of knowledge and talents;

(iii) the adequacy of present intergovernmental relations between the United States and international organizations principally concerned with national security of which the United States is a member; and

(iv) legislative and other proposals to improve these methods, processes, and relationships;

(F) the efficiency, economy, and effectiveness of all agencies and departments of the Government involved in the control and management of energy shortages including, but not limited to, their performance with respect to—

(i) the collection and dissemination of accurate statistics on fuel demand and supply;

(ii) the implementation of effective energy conservation measures;

(iii) the pricing of energy in all forms;

(iv) coordination of energy programs with State and local government;

(v) control of exports of scarce fuels;

(vi) the management of tax, import, pricing, and other policies affecting energy supplies;

(vii) maintenance of the independent sector of the petroleum industry as a strong competitive force;

(viii) the allocation of fuels in short supply by public and private entities;

(ix) the management of energy supplies owned or controlled by the Government;

(x) relations with other oil producing and consuming countries;

(xi) the monitoring of compliance by governments, corporations, or individuals with the laws and regulations governing the allocation, conservation, or pricing of energy supplies; and

(xii) research into the discovery and development of alternative energy supplies; and

(G) the efficiency and economy of all branches and functions of Government with particular references to the operations and management of Federal regulatory policies and programs.

(2) EXTENT OF INQUIRIES.—In carrying out the duties provided in paragraph (1), the inquiries of this committee or any subcommittee of the committee shall not be construed to be limited to the records, functions, and operations of any particular branch of the Government and may extend to the records and activities of any persons, corporation, or other entity.

(3) SPECIAL COMMITTEE AUTHORITY.—For the purposes of this subsection, the committee, or any duly authorized subcommittee of the committee, or its chairman, or any other member of the committee or subcommittee designated by the chairman, from March 1, 2003, through February 28, 2005, is authorized, in its, his, or their discretion—

(A) to require by subpoena or otherwise the attendance of witnesses and production of correspondence, books, papers, and documents;

(B) to hold hearings;

(C) to sit and act at any time or place during the sessions, recess, and adjournment periods of the Senate;

(D) to administer oaths; and

(E) to take testimony, either orally or by sworn statement, or, in the case of staff members of the Committee and the Permanent Subcommittee on Investigations, by deposition in accordance with the Committee Rules of Procedure.

(4) AUTHORITY OF OTHER COMMITTEES.—Nothing contained in this subsection shall affect or impair the exercise of any other standing committee of the Senate of any power, or the discharge by such committee of any duty, conferred or imposed upon it by the Standing Rules of the Senate or by the Legislative Reorganization Act of 1946.

(5) SUBPOENA AUTHORITY.—All subpoenas and related legal processes of the committee and its subcommittee authorized under S. Res. 54, agreed to March 8, 2001 (107th Congress) are authorized to continue.

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## SENATE RESOLUTION 52—RECOGNIZING THE SOCIAL PROBLEM OF CHILD ABUSE AND NEGLECT, AND SUPPORTING EFFORTS TO ENHANCE PUBLIC AWARENESS OF THE PROBLEM

Mr. CAMPBELL (for himself, Mr. CRAIG, Mrs. LINCOLN, Mr. HATCH, Mr. LOTT, Mr. DORGAN, Ms. LANDRIEU, Mr. KOHL, Mr. INHOFE, Mr. DOMENICI, Mr. SPECTER, Mr. BIDEN, and Mr. ALLEN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 52

Whereas approximately 3,000,000 reports of suspected or known child abuse and neglect involving 5,000,000 American children are made to child protective service agencies each year;

Whereas 588,000 American children are unable to live safely with their families and are placed in foster homes and institutions;

Whereas it is estimated that more than 1,200 children, 85 percent of whom are under the age of 6 years and 44 percent of whom are under the age of 1 year, lose their lives as a direct result of abuse and neglect every year in America;

Whereas this tragic social problem results in human and economic costs due to its relationship to crime and delinquency, drug and alcohol abuse, domestic violence, and welfare dependency; and

Whereas Childhelp USA has initiated a ''Day of Hope'' to be observed on Wednesday, April 2, 2003, during Child Abuse Prevention Month, to focus public awareness on this social ill: Now, therefore, be it

*Resolved*, That—

(1) it is the sense of the Senate that—

(A) all Americans should keep the victims of child abuse and neglect in their thoughts and prayers;

(B) all Americans should seek to break the cycle of child abuse and neglect and to give these victimized children hope for the future; and

(C) the faith community, nonprofit organizations, and volunteers across America should recommit themselves and mobilize their resources to assist these abused and neglected children; and

(2) the Senate—

(A) supports the goals and ideas of the ''Day of Hope'', which was initiated by Childhelp USA and will be observed on April 2, 2003, as part of Child Abuse Prevention Month; and

(B) commends Childhelp USA for all of its efforts on behalf of abused and neglected children throughout the United States.

Mr. CAMPBELL. Mr. President, today I am submitting a resolution declaring Wednesday, April 2, 2003, as a National Day of Hope dedicated to remembering the victims of child abuse and neglect and recognizing Childhelp USA for initiating such a day. I am pleased to be joined in this effort by my colleagues Senators CRAIG, LINCOLN, HATCH, LOTT, DORGAN, LANDRIEU, KOHL, INHOFE, DOMENICI, SPECTER, BIDEN, and ALLEN who are original cosponsors of the resolution.

This resolution is similar to one I introduced in the 107th Congress, S. Res. 132, which passed the Senate by unanimous consent on May 22, 2002. It expresses the sense of Congress that we must break the cycle of child abuse and neglect by mobilizing all our resources including the faith community, nonprofit organizations and volunteers.

The resolution also recognizes Childhelp USA for focusing its efforts on prevention and research as well as on treatment. Childhelp USA is one of our oldest national organizations dedicated to meeting the needs of abused and neglected children. Childhelp and many other non-profits or faith-based organizations nationwide are performing a vital service to these children that they would not have otherwise, and they are to be commended for their efforts.

More than 3 million children are reported as suspected victims of child abuse and neglect each year. That is 3 million children too many. And, it is estimated that more than 1200 children lose their lives as a direct result of abuse and neglect every year. That is not acceptable. We must do something to change these disturbing statistics.

I know first-hand the importance of having help when it is needed. The National Day of Hope Resolution calls on each of us to renew our duty and responsibility to the vulnerable children and families caught in the cycle of child abuse and neglect.

While we are encouraged by the efforts of many organizations nationwide, more needs to be done. That is why we urge our colleagues to act quickly on this resolution so we can move another step closer to erasing the horror of child abuse from our Nation's history.

## SENATE RESOLUTION 53—AUTHORIZING EXPENDITURES BY THE COMMITTEE ON VETERANS' AFFAIRS

Mr. SPECTER submitted the following resolution; from the Committee on Veterans' Affairs; which was referred to the Committee on Rules and Administration:

S. RES. 53

*Resolved*, That, in carrying out its powers, duties, and functions under the Standing Rules of the Senate, in accordance with its jurisdictions under rule XXV of such rules, including holding hearings, reporting such hearings, and making investigations as authorized by paragraphs 1 and 8 of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs is authorized from March 1, 2003, through September 30, 2003; October 1, 2003, through September 30, 2004; and October 1, 2004, through February 28, 2005, in its discretion (1) to make expenditures from the contingent fund of the Senate, (2) to employ personnel, and (3) with the prior consent of the Government department or agency concerned and the Committee on Rules and Administration, to use on a reimbursable or non-reimbursable basis the services of personnel of any such department or agency.

SEC. 2. (a) The expenses of the committee for period March 1, 2003, through September 30, 2003, under this resolution shall not exceed $1,112,475, of which amount (1) not to exceed $59,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $5,900 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(b) For the period October 1, 2003, through September 30, 2004, expenses of the committee under this resolution shall not exceed $1,958,451, of which amount (1) not to exceed $100,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(I) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $10,000 may be expended for the training of the professional staff of such committee (under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

(c) For the period October 1, 2004, through February 28, 2005, expenses of the committee under this resolution shall not exceed $834,987, of which amount (1) not to exceed $42,000 may be expended for the procurement of the services of individual consultants, or organizations thereof (as authorized by section 202(i) of the Legislative Reorganization Act of 1946, as amended), and (2) not to exceed $4,200 may be expended for the training of the professional staff of such committee under procedures specified by section 202(j) of the Legislative Reorganization Act of 1946).

SEC. 3. The committee shall report its findings, together with such recommendation for legislation as it deems advisable, to the Senate at the earliest practicable date, but not later than February 28, 2004, and February 28, 2005, respectively.

SEC. 4. Expenses of the committeed under this resolution shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman of the committee, except that vouchers shall not be required for (1) the disbursement of salaries of employees paid at an annual rate, or (2) for the

payment of telecommunications provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (3) for the payment stationery supplies purchased through the Keeper of Stationery, United States Senate, or (4) for payments to the Postmaster, United States Senate, or (5) for the payment of metered charges on copying equipment provided by the Office of the Sergeant at Arms and Doorkeeper, United States Senate, or (6) for the payment of Senate Recording and Photographic Services, or (7) for payment of franked and mass mail costs by the Sergeant at Arms and Doorkeeper, United States Senate.

SEC. 5. There are authorized such sums as may be necessary for agency contributions related to the compensation of employees of the committee from March 1, 2003, through September 30, 2003; October 1, 2003, through September 30, 2004; and October 1, 2004, through February 28, 2005, to be paid from the appropriations account for ''Expenses of Inquiries and Investigations.''

## SENATE RESOLUTION 54—TO PROVIDE INTERNET ACCESS TO CERTAIN CONGRESSIONAL DOCUMENTS, INCLUDING CERTAIN CONGRESSIONAL RESEARCH SERVICE PUBLICATIONS, CERTAIN SENATE GIFT REPORTS, AND SENATE AND JOINT COMMITTEE DOCUMENTS

Mr. MCCAIN (for himself, Mr. LEAHY, Mr. LIEBERMAN, and Mr. HARKIN) submitted the following resolution; which was referred to the Committee on Rules and Administration:

S. RES. 54

Whereas it is the sense of the Senate that—

(1) it is often burdensome, difficult, and time-consuming for citizens to obtain access to public records of the United States Congress;

(2) congressional documents that are placed in the Congressional Record are made available to the public electronically by the Superintendent of Documents under the direction of the Public Printer;

(3) other congressional documents are also made available electronically on websites maintained by Members of Congress and Committees of the Senate and the House of Representatives;

(4) a wide range of public records of the Congress remain inaccessible to the public;

(5) the public should have easy and timely access, including electronic access, to public records of the Congress;

(6) the Congress should use new technologies to enhance public access to public records of the Congress; and

(7) an informed electorate is the most precious asset of any democracy; and

Whereas it is the sense of the Senate that it will foster democracy—

(1) to ensure public access to public records of the Congress;

(2) to improve public access to public records of the Congress; and

(3) to enhance the electronic public access, including access via the Internet, to public records of the Congress: Now, therefore, be it

*Resolved*, That the Sergeant-at-Arms of the Senate shall make information available to the public in accordance with the provisions of this resolution.

**SEC. 2. AVAILABILITY OF CERTAIN CRS INFORMATION.**

(a) AVAILABILITY OF INFORMATION.—

(1) IN GENERAL.—The Sergeant-at-Arms of the Senate, in consultation with the Director of the Congressional Research Service, shall make available through a centralized electronic system, for purposes of access and retrieval by the public under section 4 of this resolution, all information described in paragraph (2) that is available through the Congressional Research Service website.

(2) INFORMATION TO BE MADE AVAILABLE.—The information to be made available under paragraph (1) is:

(A) Congressional Research Service Issue Briefs.

(B) Congressional Research Service Reports that are available to Members of Congress through the Congressional Research Service website.

(C) Congressional Research Service Authorization of Appropriations Products and Appropriations Products.

(b) LIMITATIONS.—

(1) CONFIDENTIAL INFORMATION.—Subsection (a) does not apply to—

(A) any information that is confidential, as determined by—

(i) the Director; or

(ii) the head of a Federal department or agency that provided the information to the Congressional Research Service; or

(B) any documents that are the product of an individual, office, or committee research request (other than a document described in subsection (a)(2)).

(2) REDACTION AND REVISION.—In carrying out this section, the Sergeant-at-Arms of the Senate, in consultation with the Director of the Congressional Research Service, may—

(A) remove from the information required to be made available under subsection (a) the name and phone number of, and any other information regarding, an employee of the Congressional Research Service;

(B) remove from the information required to be made available under subsection (a) any material for which the Director determines that making it available under subsection (a) may infringe the copyright of a work protected under title 17, United States Code; and

(C) make any changes in the information required to be made available under subsection (a) that the Director determines necessary to ensure that the information is accurate and current.

(c) MANNER.—The Sergeant-at-Arms of the Senate, in consultation with the Director of the Congressional Research Service, shall make the information required under this section available in a manner that is practical and reasonable.

**SEC. 3. PUBLIC RECORDS OF THE SENATE.**

(a) IN GENERAL.—The Secretary of the Senate, through the Office of Public Records and in accordance with such standards as the Secretary may prescribe, shall make reports required under paragraph 2(a)(1)(B) and paragraph 4(b) of Rule XXXV of the Standing Rules of the Senate available on the Internet for purposes of access and retrieval by the public within 10 days (Saturdays, Sundays, and holidays excepted) after they are received.

(b) DIRECTORY.—The Superintendent of Documents, under the Direction of the Public Printer in the Government Printing Office, shall include information about the documents made available on the Internet under this section in the electronic directory of Federal electronic information required by section 4101(a)(1) of title 44, United States Code.

**SEC. 4. METHOD OF ACCESS.**

(a) IN GENERAL.—The information required to be made available to the public on the Internet under this resolution shall be made available as follows:

(1) CRS INFORMATION.—Public access to information made available under section 2 shall be provided through the websites maintained by Members and Committees of the Senate.

(2) PUBLIC RECORDS.—Public access to information made available under section 3 by the Secretary of the Senate's Office of Public Records shall be provided through the United States Senate website.

(b) EDITORIAL RESPONSIBILITY FOR CRS REPORTS ONLINE.—The Sergeant-at-Arms of the Senate is responsible for maintaining and updating the information made available on the Internet under section 2.

**SEC. 5. CONGRESSIONAL COMMITTEE MATERIALS.**

It is the sense of the Senate that each standing and special Committee of the Senate and each Joint Committee of the Congress, in accordance with such rules as the committee may adopt, should provide access via the Internet to publicly-available committee information, documents, and proceedings, including bills, reports, and official transcripts of committee meetings that are open to the public.

**SEC. 6. IMPLEMENTATION.**

The Sergeant-at-Arms of the Senate shall establish the database described in section 2(a) within 6 months after the date of adoption of this resolution.

**SEC. 7. GAO STUDY.**

(a) IN GENERAL.—Beginning 1 year after the date on which the database described in section 2(a) is established, the Sergeant-at-Arms shall request the Comptroller General to examine the cost of implementing this resolution, other than this section, with particular attention to the cost of establishing and maintaining the database and submit a report within 6 months thereafter. The Sergeant-at-Arms shall ask the Comptroller General to include in the report recommendations on how to make operations under this resolution more cost-effective, and such other recommendations for administrative changes or changes in law, as the Comptroller General may determine to be appropriate.

(b) DELIVERY.—The Sergeant-at-Arms shall transmit a copy of the Comptroller General's report under subsection (a) to—

(1) the Senate Committee on Rules and Administration;

(2) the Senate Committee on Commerce, Science, and Transportation;

(3) the Senate Committee on the Judiciary; and

(4) the Joint Committee of the Congress on the Library of Congress.

Mr. MCCAIN. Mr. President, I am pleased to be joined today by Senators LEAHY, LIEBERMAN, and HARKIN in submitting a resolution to make Congressional Research Service, CRS, reports, and other Senate documents, accessible over the Internet to the American people.

CRS is well-known for producing high quality reports and issue briefs that are concise, factual, and unbiased—a rarity in Washington. Many of us rely on the work of CRS to make decisions on a wide variety of diverse legislative proposals, such as formulating policies on homeland security, determining the implications of war with Iraq, contemplating the future of the Internet, developing health care reform, and analyzing tax policy. Also, we routinely send CRS reports to our constituents in order to help them understand the important issues of our time.

The sponsors of this resolution believe that it is important for the public

to have access to these CRS reports. The American public paid over $81 million to fund CRS's operations in fiscal year 2002 alone. The informational reports covered by this resolution are not confidential or classified, and the public deserves to have access to them.

By making these reports publicly available, the Senate will better serve an important function in helping to inform their constituents. Members of the public will be able to read these CRS products and receive a concise summary of issues that concern them. These reports also will help voters make decisions and petition their legislators on how to best represent them.

Currently, corporations, universities, and other well-heeled entities often hire former Members of Congress as lobbyists to get access to these reports. However, the general public does not have access to these reports. Instead, the public has to obtain these reports through independent companies, such as Penny Hill Press, which charges almost $30 for each report. Otherwise, they must search through a variety of government and non-government web sites for outdated reports or get them from their Members of Congress through the mail. It is not fair for the American people to have to pay a third party or search all over the web for products for which they have already footed the bill.

This resolution is drafted to set up a system for distributing CRS Reports that is similar to a pilot program ongoing in the House of Representatives. Under our resolution, the Senate Sergeant-at-Arms would establish and maintain a system for distribution of CRS documents. The public would only be able to access these documents through Senators' or Senate Committees' web pages. This system would allow Senators and Committee Chairmen to be able to choose which documents are made available to the public through their web page.

This resolution also includes other safeguards to ensure that CRS is able to carry out its mission. Confidential information and reports done for confidential research requests would not be made available to the public. The resolution provides authorization for the Senate Sergeant-at-Arms to remove the names of CRS employees from these products to prevent the public from distracting CRS employees. In addition, the Senate Sergeant-at-Arms would be authorized to remove copyrighted information from the publicly-available reports. This resolution would ensure that the CRS' mission is not altered in any way, and that it cannot be open to liability suits.

Finally, we recognize that cost concerns had been raised about prior versions of this legislation introduced in past Congresses. Yet, our understanding is that the House system of distribution has been achieved at a relatively low cost. We have designed this resolution to eliminate the cost burden to CRS by shifting the operation and maintenance of the system over to the Senate Sergeant-at-Arms. In addition, the Senate Sergeant-at-Arms is directed to ask the General Accounting Office, GAO, to evaluate the program after one year to explore how to make the operations more cost-effective.

The resolution also would require the Senate Office of Public Records to put other selected documents related to Members' receipt of honoraria and travel reimbursement on the Internet. We have already voted to make this information available to the public. Unfortunately, the public can only get access to this information by personally visiting an office in the Hart building. This resolution would allow our constituents throughout the country to access this information more readily.

This resolution has been endorsed by many groups, including the Project on Government Oversight, the Congressional Accountability Project, Intel, Computer & Communications Industry Association, the Center for Democracy and Technology, the American Library Association, SeeBeyond Technology Corporation, and others. I ask unanimous consent that these letters of support be printed in the RECORD.

I urge my colleagues to support this resolution. The Internet offers a unique opportunity to allow the American people to have everyday access to important information about their government.

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

SEEBEYOND,
*Reston, VA, February 11, 2003.*

Senator JOHN MCCAIN,
*Chairman, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, DC.*

DEAR CHAIRMAN MCCAIN: We are writing to express our support for the Congressional Openness Act that allows constituents easier and faster access to information through the Internet, and to urge quick Senate passage of the bill.

SeeBeyond is a software technology company that enables Government agencies to communicate and share vital information in real time to other federal agencies, state and local Governments and most importantly constituents.

The bill allows better ways for the Government to share information, documents and proceedings, including bills, reports and transcripts of committee meetings that educate the public, and we commend your efforts to further the Federal Government's work in this area.

We are pleased to offer you our support of this legislation and to encourage its swift passage by the full Senate.

Sincerely,

SAM MACCHEROLA,
*Vice President, Public Sector,*
*SeeBeyond Technology Corp.*

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CONGRESSIONAL ACCOUNTABILITY PROJECT,
*Portland, OR, February 11, 2003.*

Senator JOHN MCCAIN,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

Senator PATRICK LEAHY,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR SENATORS MCCAIN AND LEAHY: We heartily endorse your resolution to place useful congressional documents on the Internet, including Congressional Research Service (CRS) Reports and Issue Briefs, CRS Authorization and Appropriation products, and Senate gift disclosure reports. This resolution is a simple and inexpensive way to improve our democracy.

Citizens need access to congressional documents to discharge their civic duties. Regrettable, the 20th Century has come and gone, and yet Congress still has not put many of its most important documents on the Internet. Your resolution will help fix this problem.

The Congressional Research Service is a taxpayer-funded research arm of Congress. Their research materials are among the best produced by the federal government. They explain, with fairness and clarity, the controversies and complexities surrounding the most pressing issues of our day. This research belongs on the Internet. Taxpayers deserve easy access to the documents we pay for.

We applaud the resolution's directive that Senate committees should ''provide access via the Internet to publicly-available committee information, documents and proceedings, including bills, reports, and official transcripts of committee meetings that are open to the public.''

In 1822, James Madison explained why citizens need such information: ''A popular government,'' he wrote, ''without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.''

Sincerely,

American Association of Law Libraries; American Library Association; American Society of Newspaper Editors; Association of Research Libraries; Center for Democracy and Technology; Center for Digital Democracy; Center for Responsive Politics, Common Cause; Computer & Communications Industry Association; Computer Professionals for Social Responsibility; Congressional Accountability Project; Consumer Federation of America; Consumer Project on Technology; Electronic Frontier Foundation; Electronic Privacy Information Center.

Federation of American Scientists; Friends of the Earth; Green Party of the United States; Medical Library Association; National Federation of Press Women; National Security Archive; National Taxpayers Union; National Newspaper Association; OMB Watch; Project on Government Oversight; Public Citizen; Reporters Committee for Freedom of the Press; Society of Professional Journalists; Taxpayers for Common Sense; Union of Concerned Scientists; U.S. Public Interest Research Group (USPIRG).

Mr. LEAHY. Mr. President, I am pleased to join today with Senator MCCAINE to submit our bipartisan resolution to make Congressional Research Service products available over the Internet to the American people. I also want to thank the Project on Government Oversight for its excellent report on the need for access to CRS information.

The Congressional Research Service has a well-known reputation for producing high-quality reports and information briefs that are unbiased, concise and accurate. The taxpayers of this country, who pay millions of dollars a year to fund the CRS, deserve

speedy access to these public resources and have a right to see that their money is being spent well.

The goal of our bipartisan legislation is to allow every citizen the same access to the wealth of CRS information as a Member of Congress enjoys today. CRS performs invaluable research and produces first-rate reports on hundreds of topics. American taxpayers have every right to have direct access to these wonderful resources.

Our legislation ensures that private CRS products will remain protected by giving the CRS Director the authority to hold back any products that are deemed confidential. Moreover, the Director may protect the identity of CRS researchers and any copyrighted material. We can do both—protect confidential material and empower our citizens through electronic access to invaluable CRS products.

The Internet offers us a unique opportunity to allow the American people to have everyday access to this public information. Our bipartisan legislation would harness the power of the Information Age to allow average citizens to see these public records of the Senate in their official form, in context and without editorial comment.

All of these reports are ''public'' for only those who can afford to hire a lawyer or lobbyist, or who can afford to physically travel to Washington to visit the Office of Public Records in the Hart Building and read them. Indeed, the Project on Government Oversight reports that over 150 registered lobbyists are former Members of Congress who have automatic access to CRS documents. That is not very ''public,'' and does almost nothing for the average voter in Vermont or the rest of this country who does not have easy access to Washington.

We can do better, and this resolution does better. Under our resolution, any citizen in any corner of this country with access to a computer at home, at the office or at the public library will be able to get on the Internet and get these important congressional documents under our resolution. It allows individual citizens to check the facts, to make comparisons, and to make up their own minds.

I commend the senior Senator from Arizona for his leadership on this and similar issues. I share his desire for the American people to have electronic access to many more congressional resources. I look forward to working with him in the coming days to let the information age open up the Halls of Congress to all our citizens.

As Thomas Jefferson wrote, ''Information is the currency of democracy.'' Our democracy is stronger if all citizens have equal access to at least the ''congressional-type'' of currency, and that is something in which Members on both sides of the aisle can celebrate and join.

## SENATE CONCURRENT RESOLUTION 4—WELCOMING THE EXPRESSION OF SUPPORT OF 18 EUROPEAN NATIONS FOR THE ENFORCEMENT OF UNITED NATIONS SECURITY COUNSEL RESOLUTION 1441

Mr. MCCAIN (for himself, Mr. LIEBERMAN, Mr. GRAHAM of South Carolina, and Mr. BAYH) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 4

Whereas on November 8, 2002, the United Nations Security Council approved Security Council Resolution 1441 under Chapter VII of the United Nations Charter by a vote of 15–0, giving Iraq ''a final opportunity to comply with its disarmament obligations'';

Whereas on November 21, 2002, the North Atlantic Treaty Organization's North Atlantic Council unanimously approved a declaration stating, ''We deplore Iraq's failure to comply fully with its obligations which were imposed as a necessary step to restore international peace and security and we recall that the Security Council has decided in its resolution to afford Iraq a final opportunity to comply with its disarmament obligations under relevant resolutions of the Council.'';

Whereas the North Atlantic Council stated, ''NATO Allies stand united in their commitment to take effective action to assist and support the efforts of the United Nations to ensure full and immediate compliance by Iraq, without conditions or restrictions, with United Nations Security Council Resolution 1441. We recall that the Security Council in this resolution has warned Iraq that it will face serious consequences as a result of its continued violation of its obligations.'';

Whereas, on January 30, 2003, the Prime Ministers of Denmark, Italy, Hungary, Poland, Portugal, Spain, and the United Kingdom, and the President of the Czech Republic (''The Eight''), issued a declaration regarding Security Council Resolution 1441;

Whereas in their declaration, The Eight stated, ''The transatlantic relationship must not become a casualty of the current Iraqi regime's persistent attempts to threaten world security. . . . The Iraqi regime and its weapons of mass destruction represent a clear threat to world security. This danger has been explicitly recognized by the United Nations. All of us are bound by Security Council Resolution 1441, which was adopted unanimously.'';

Whereas The Eight stated, ''Resolution 1441 is Saddam Hussein's last chance to disarm using peaceful means. The opportunity to avoid greater confrontation rests with him. . . . Our governments have a common responsibility to face this threat. . . . [T]he Security Council must maintain its credibility by ensuring full compliance with its resolutions. We cannot allow a dictator to systematically violate those resolutions. If they are not complied with, the Security Council will lose its credibility and world peace will suffer as a result.'';

Whereas on February 5, 2003, the Foreign Ministers of Albania, Bulgaria, Croatia, Estonia, Latvia, Lithuania, Macedonia, Romania, Slovakia, and Slovenia (''The Ten'') issued a declaration regarding Security Council Resolution 1441;

Whereas in their declaration, The Ten stated, ''[T]he United States [has] presented compelling evidence to the United Nations Security Council detailing Iraq's weapons of mass destruction programs, its active efforts to deceive United Nations inspectors, and its links to international terrorism. . . . The transatlantic community, of which we are a part, must stand together to face the threat posed by the nexus of terrorism and dictators with weapons of mass destruction.'';

Whereas The Ten stated, ''[I]t has now become clear that Iraq is in material breach of United Nations Security Council resolutions, including United Nations Resolution 1441. . . . The clear and present danger posed by Saddam Hussein's regime requires a united response from the community of democracies. We call upon the United Nations Security Council to take the necessary and appropriate action in response to Iraq's continuing threat to international peace and security.'': Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That Congress welcomes—

(1) the expression of support from Albania, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Hungary, Italy, Latvia, Lithuania, Macedonia, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and the United Kingdom for Iraq's full compliance with Security Council Resolution 1441; and

(2) their expression of solidarity with the United States in calling for the demands of the Security Council to be met with regard to Iraq's full disarmament.

## NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON RULES AND ADMINISTRATION

Mr. LOTT. Mr. President, I wish to announce that the Committee on Rules and Administration will meet on Thursday, February 13, 2003, at 10:30 a.m., to conduct its organization meetings and to conduct a hearing on those Senate Committees that have presented budgets above guidelines for the 108th Congress.

For further information regarding this hearing, please contact Susan Wells at the Rules Committee on 224–6352.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, February 11, 2003, at 10 a.m., to conduct an oversight hearing on the semi-annual monetary policy report of the Federal Reserve. The Committee will also vote on the nomination of Mr. William H. Donaldson to be a member of the Securities and Exchange Commission.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Tuesday, February 11, 2003, at 9:30 a.m. on FAA reauthorization.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on

Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, February 11 at 10 a.m. to consider the president's proposed FY 2004 budget for the Department of the Interior.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, February 11, at 2:30 p.m. to consider the nomination of Joseph T. Kelliher to be a member of the Federal Energy Regulatory Commission.

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

COMMITTEE ON FINANCE

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Tuesday, February 11, 2003, at 10 a.m., to hear testimony on Examination of Proposals for Economic Growth and Job Creation: Incentives for Consumption.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, February 11, 2003 at 9:30 a.m. to hold a Hearing on the Future of Iraq.

Agenda

*Witnesses:*

Panel 1: The Honorable Marc I. Grossman, Undersecretary of State for Political Affairs, Department of State, Washington, DC., The Honorable Douglas J. Feith, Undersecretary of Defense for Policy, Department of Defense, Washington, DC.

Panel 2: Colonel Scott R. Feil (Ret.), Executive Director, Role of American Military Power, Arlington, VA. General Anthony Zinni, (Ret.), Former Commander in Chief of U.S. Central Command, Washington, DC., Professor Anthony H. Cordesman, Arleigh A. Burke Chair for Strategy, Center for Strategic and International Studies, Washington, DC.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

COMMITTEE ON THE JUDICIARY

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions and Committee on the Judiciary be authorized to meet for a joint hearing on Patient Access Crisis: The Role of Medical Litigation during the session of the Senate on Tuesday, February 11, 2003, at 2:30 p.m. in SD–106.

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

COMMITTEE ON THE JUDICIARY

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. LOTT. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a joint hearing on ''Patient Access Crisis: The Role of the Medical Litigation'' on Tuesday, February 11, 2003 in Dirksen Room 106 at 2:30 p.m.

*Witness List*

Laurie Peel, Raleigh, NC, Linda McDougal, Woodville, Wisconsin, Leanne Dyess, Vicksburg, MS, Jay Angoff, Of Counsel, Roger G. Brown & Associates, Jefferson City, MO, José Montemayor, Commissioner of Insurance, Austin, TX, Shelby Wilbourn, MD, Physician, on behalf of the American College of Obstetrics and Gynecology, Belfast, ME, Lawrence E. Smarr, President, Physician Insurers Association of America, Rockville, MD.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. LOTT. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, February 11, 2003 at 10 a.m. to hold an open hearing and 2:30 p.m. to hold a closed hearing.

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

SPECIAL COMMITTEE ON AGING

Mr. LOTT. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet on Tuesday, February 11, 2003, from 10 a.m.–12 p.m. in Dirksen 628 for the purpose of conducting a hearing.

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

## PRIVILEGE OF THE FLOOR

Mr. DURBIN. Mr. President, I ask unanimous consent that Michael Zubrensky, a detailee on my staff from the Department of Justice, be granted the privilege of the floor during the remainder of the first session of the this Congress.

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

## DISCHARGES AND REFERRALS—S. 277 AND S. RES. 51

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be discharged from further consideration of S. 277 and that the bill be referred to the Committee on Environment and Public Works.

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

Mr. HATCH. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be discharged from further action on S. Res. 51 and that the matter be referred to the Committee on Rules and Administration.

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

## REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 108–2

Mr. HATCH. Mr. President, I ask unanimous consent that the injunction of secrecy be removed from the following treaty transmitted to the Senate on February 11, 2003, by the President of the United States:

Amendments to the 1987 Treaty on Fisheries with Pacific Island States (Treaty Document No. 108–2).

I further ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The message of the President is as follows:

*To the Senate of the United States:*

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith Amendments to the 1987 Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, with Annexes and agreed statements, done at Port Moresby, April 2, 1987 (the Treaty), done at Koror, Palau, March 30, 1999, and at Kiritimati, Kiribati, March 24, 2002. I also transmit, for the information of the Senate, the report of the Secretary of State with respect to these Amendments, related Amendments to the Treaty Annexes, and the Memorandum of Understanding regarding provisional application. The United States enjoys positive and constructive fisheries relations with the Pacific Island Parties through the implementation and operation of the Treaty, which is one of the cornerstones of our overall foreign relations with the Pacific Island Parties. This Treaty, and the good relationships it has fostered, has provided new opportunities for collaboration between the Pacific Island Parties and the United States on fisheries conservation and management issues. The relationships established as a result of the Treaty have also helped to safeguard U.S. commercial and security interests in the region.

The Amendments to the Treaty will, among other things, allow U.S. longline vessels to fish in high seas portions of the Treaty Area; streamline the way amendments to the Treaty Annexes are agreed; and allow the Parties to consider the issue of capacity in the Treaty Area and, where appropriate, to promote consistency between the Treaty and the relevant fisheries management convention, which is likely to come into force during the duration of the extended operation of the Treaty. Therefore, no new legislation is necessary in order for the United States to

ratify these Amendments. However, minor amendments to section 6 of the South Pacific Tuna Act of 1988, Public Law 100–330 will be necessary to take account of the Amendment to paragraph 2 of Article 3 ''Access to the Treaty Area,'' which opens the high seas of the Treaty Area to fishing by U.S. longline vessels.

I recommend that the Senate give favorable consideration to these Amendments and give its advice and consent to their ratification at an early date.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 11, 2003.*

## ORDERS FOR WEDNESDAY, FEBRUARY 12, 2003

Mr. HATCH. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m., Wednesday, February 12. I further ask consent that on Wednesday, following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then return to executive session to resume the consideration of the nomination of Miguel Estrada to be a circuit judge for the DC Circuit.

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

## PROGRAM

Mr. HATCH. For the information of Senators, tomorrow the Senate will resume debate on the nomination of Miguel Estrada. We have now spent 4 days, over 20 hours, debating this well-qualified and capable nominee. While my colleagues on the other side of the aisle continue to object to any time agreement, we will continue to work with them to move this nomination to a final vote.

Many Members have participated in the debate, and we appreciate their efforts. However, at some point each side will have had adequate time to make their case, and that the Senate should then vote on this nomination. At this time, we will continue to give Members the opportunity to speak. Senators should, therefore, expect a late night tomorrow.

In addition to the Estrada nomination, it is the leader's intention to also complete action on the omnibus appropriations conference report prior to the President's Day recess. Again, I remind Senators that they should expect late nights and rollcall votes throughout the remainder of the week.

## ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. HATCH. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:10 p.m., adjourned until Wednesday, February 12, 2003, at 9:30 a.m.

## NOMINATIONS

Executive nominations received by the Senate February 11, 2003:

DEPARTMENT OF TRANSPORTATION

JEFFREY SHANE, OF THE DISTRICT OF COLUMBIA, TO BE UNDER SECRETARY OF TRANSPORTATION FOR POLICY. (NEW POSITION)

DEPARTMENT OF STATE

LINO GUTIERREZ, OF FLORIDA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO ARGENTINA.

RENO L. HARNISH, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF AZERBAIJAN.

JEFFREY LUNSTEAD, OF THE DISTRICT OF COLUMBIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA, AND TO SERVE CONCURRENTLY AND WITHOUT ADDITIONAL COMPENSATION AS AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF MALDIVES.

JOHN W. SNOW, OF VIRGINIA, TO BE UNITED STATES GOVERNOR OF THE INTERNATIONAL MONETARY FUND FOR A TERM OF FIVE YEARS; UNITED STATES GOVERNOR OF THE INTERNATIONAL BANK FOR RECONSTRUCTION AND DEVELOPMENT FOR A TERM OF FIVE YEARS; UNITED STATES GOVERNOR OF THE INTER-AMERICAN DEVELOPMENT BANK FOR A TERM OF FIVE YEARS; UNITED STATES GOVERNOR OF THE AFRICAN DEVELOPMENT BANK FOR A TERM OF FIVE YEARS; UNITED STATES GOVERNOR OF THE ASIAN DEVELOPMENT BANK; UNITED STATES GOVERNOR OF THE AFRICAN DEVELOPMENT FUND; UNITED STATES GOVERNOR OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT, VICE PAUL HENRY O'NEILL, RESIGNED.

DEPARTMENT OF JUSTICE

GREGORY A. WHITE, OF OHIO, TO BE UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF OHIO FOR THE TERM OF FOUR YEARS, VICE EMILY MARGARET SWEENEY, TERM EXPIRED.

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS THE CHIEF OF THE NATIONAL GUARD BUREAU, AND FOR APPOINTMENT TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 10502:

*To be lieutenant general*

H. STEVEN BLUM, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

*To be lieutenant general*

JOHN D.W. CORLEY, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

CHARLES N. DAVIDSON, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES AIR FORCE UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

THOMAS R. UNRATH, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

THOMAS W. SHEA, 0000
RICHARD H. TAYLOR, 0000
THOMAS W. YARBOROUGH, 0000

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

*To be colonel*

ROBERT J. KINCAID, 0000
CARLOS M. REYESROSADO, 0000
RODNEY L. THOMAS, 0000

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

*To be colonel*

BRADLEY J. JORGENSEN, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY IN THE DENTAL CORPS (DE), UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

*To be lieutenant colonel*

THERESA S. GONZALES, 0000
PETER M. GRONET, 0000
AUBREY R. HOPKINS JR., 0000
JONATHAN A. MAHAFFEY, 0000
MARK E. PEACOCK, 0000
ALBERT E. SCOTT JR., 0000

*To be major*

SIMUEL L. JAMISON, 0000
ANTHONY S. THOMAS, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY IN THE MEDICAL SPECIALIST CORPS (SP) UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

*To be major*

RONALD E. ELLYSON, 0000
WILLIAM C. WERLING, 0000

*To be captain*

JORGE L. CABALLERO, 0000
STEVEN S. GAY, 0000
DARREN L. HIGHTOWER, 0000
BILL A. SOLIZ, 0000
JEFFREY E. TRIGG, 0000
MELVA S. TRIGG, 0000
SHELDON WATSON, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY IN THE MEDICAL CORPS (MC), UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

*To be colonel*

DAVID J COHEN, 0000 MC
DANIEL G STRUM, 0000 MC

*To be lieutenant colonel*

ARTHUR E BROWN, 0000 MC
JOHN N CAREY, 0000 MC

*To be major*

ROBERT B CARROLL, 0000 MC
ROBERT D FORSTEN, 0000 MC
JOHN H GARR, 0000 MC
STEPHEN W JARRARD, 0000 MC
SHAWN C NESSEN, 0000 MC
MICHAEL J ZAPOR, 0000 MC

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY VETERINARY CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

*To be major*

BRAD A * BLANKENSHIP, 0000
MICHAEL R * BONHAGE, 0000
STEVEN T * GREINER, 0000
SANDER O * HACKER, 0000
KARL J * HOCHSTEIN, 0000
JERROD W * KILLIAN, 0000
BRIAN U * KIM, 0000
BRIDGET S * LEWIS, 0000
TIMOTHY P * LOONAM, 0000
ANNE M * MACLARTY, 0000
NANCY * MERRILL, 0000
MARK L * RICHEY, 0000
PATRICIA Y * RILEY, 0000
HEATHER A * SERWON, 0000
MARK A * SMITH, 0000
EUGENE K * WEBSTER, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SERVICE CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

*To be major*

SHEILA R * ADAMS, 0000
CHRISTOPHER E ANSELL, 0000
MARTINEZ W * ARIZA, 0000
JOHN R * BAILEY, 0000
CARMEN A * BELL, 0000
TIMOTHY N * BERGERON, 0000
GRAEME C * BICKNELL, 0000
ROBERT V * BIENVENU II, 0000
BENJAMIN S * BLACKWELL, 0000
DANIEL G BONNICHSEN, 0000
DANIEL C * BRANT JR., 0000
STEPHEN M * BROCK, 0000
KATHERINE A * BRUCH, 0000
TRAVIS J * BURCHETT, 0000
KYLE J * BURROW, 0000
JOHN R CALL, 0000
MARK C * CARDER, 0000
EVERETT R * CARDWELL JR., 0000
ERIC P * CARNAHAN, 0000
KRISTEN L * CASTO, 0000
DONALD J CHAPMAN, 0000
RODRIGO * CHAVEZ JR., 0000

STUART J * COHEN, 0000
ANTHONY S COOPER, 0000
JENNIFER L * CUMMINGS, 0000
GERALD L * DALLMANN, 0000
THOMAS N * DAMIANI, 0000
SOO L DAVIS, 0000
WILLIAM E DAVIS IV, 0000
SUELLEN D * DENNETT, 0000
MONICA S DOUGLAS, 0000
JAMES B * ELLEDGE, 0000
MICHAEL A * ELLIOTT, 0000
CRAIG R FISHER, 0000
BERNADETTE * FULLER, 0000
DOUGLAS H GALUSZKA, 0000
CHRISTOPHER A * GELLASCH, 0000
SHEPARD H GIBSON, 0000
GUY J * GIERHART, 0000
ROGER S * GIRAUD, 0000
JR W * GODFREY, 0000
STEVEN D * HANKINS, 0000
KATHRYN B HANNA, 0000
RONALD E * HARPER, 0000
JONATHAN A * HEAVNER, 0000
TIMOTHY J * HOIDEN, 0000
MATTHEW J * HORSLEY, 0000
NATHON O * HUCK, 0000
THOMAS C * HUTTON, 0000
MARK A * JAMES, 0000
RALPH T * JENKINS, 0000
DANIEL E * JETTON, 0000
KIMBERLY M JOHANEK, 0000
DAVID A JOHNSON JR., 0000
NATHAN A * KELLER, 0000
BURTON T * KERR, 0000
REX K * KING, 0000
ROSEMARIE P * KIRZNER, 0000
TIMOTHY A * KLUCHINSKY, 0000
TIMOTHY D * KUNDINGER, 0000
RONALD D * LAIN, 0000
JACK R * LEECH III, 0000
ANDREW G * LEIENDECKER, 0000
KENNETH A LEMONS, 0000
JOSEPH F LINEBERRY JR., 0000
JOHNNIE R * MANNING JR., 0000
JEFFREY S * MARKS, 0000
BRIAN D * MARTIN, 0000
JOHN J MARTIN, 0000
RICKY J * MARTINEZ, 0000
CLIFTON R MCCREADY, 0000
SHAWN D * MCINTOSH, 0000
CHARLES O MCKEITHEN JR., 0000
HUGH A * MCLEAN JR., 0000
JOHN H * MCMAHAN, 0000
KENNETH R * MCPHERSON, 0000
SCOTT R * MELLING, 0000
CALLIE J * MOLLOY, 0000
STACY A MOSKO, 0000
JEFFERY L MOSSO, 0000
JEAN * MUDERHWA, 0000
ROBERT L NACE, 0000
RICARDO J * NANNINI, 0000
CHAD E * NELSON, 0000
MATTHEW P * NOVAK, 0000
ENRIQUE ORTIZ JR., 0000
NOEL C * PACE, 0000
ECKART A * PAPE, 0000
PETER L * PLATTEBORZE, 0000
CHRISTOPHER B * POSEY, 0000
MICHAEL R POUNCEY, 0000
SCOTT A * PRESCOTT, 0000
BRANDON J PRETLOW, 0000
MARK C PROBUS, 0000
HABY * RAMIREZ, 0000
WILLIAM R * REDISKE, 0000
RAVEN E * REITSTETTER, 0000
JOSEPH C RHENEY, 0000
JASON H * RICHARDSON, 0000
JAMES A * ROBINSON JR., 0000
MICHAEL C * SAUER, 0000
ERIC R SCHMACKER, 0000
JEFFREY D SHIELDS, 0000
MAELIEN SHIPMAN, 0000
DAVID L * SILVER, 0000
ALICK E * SMITH, 0000
RACHELE M * SMITH, 0000
MIKAL L * STONER, 0000
WILLIAM M STRIDER, 0000
YOLONDA R * SUMMONS, 0000
PATRICK A * TAVELLA, 0000
BARBARA A * TAYLOR, 0000
LISA A * TEEGARDEN, 0000
GEORGE W THOMPSON III, 0000
STEENVORT J * VAN, 0000
JOHN D * VETTER, 0000
JOHN D * VIA, 0000
JAMES L WADDICK JR., 0000
BRIAN K * WALKER, 0000
DENNIS W WALKER, 0000
TIMOTHY D * WALSH, 0000
OLIVER T WALTON, 0000
LAURA A WARD, 0000
JEFFRY H * WARREN, 0000
NORMAN C * WATERS, 0000
BRIAN M * WHITE, 0000
RALPHINE R * WHITFIELD, 0000
MICHAEL C * WILLIAMS, 0000
TRACY M * WILSON, 0000
AMMON * WYNN III, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY MEDICAL SPECIALIST CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

*To be major*

MARY C * ADAMSCHALLENGER, 0000
ROGER J * BANNON, 0000
KENNETH R * BLANKENSHIP JR., 0000
KAREN S * BRASFIELD, 0000
DANIEL S * BRILEY, 0000
TERESA L * BRININGER, 0000
GREGORY J * BROMUND, 0000
JEFFREY A * BROOKS, 0000
PAUL W * CARDEN, 0000
SHELLY L * CLYDE, 0000
SUSAN * DAVIS, 0000
CLAUDIA A * DRUM, 0000
DAVID H * DUPLESSIS, 0000
HOWARD K * HAISLIP, 0000
MARY C * HANNAH, 0000
WILLIAM C * HARRIS III, 0000
VANEESH L * HOFLER, 0000
BRUCE D * INGOLD, 0000
PATRICIA P * INGOLD, 0000
GEORGE O * JAMES JR., 0000
MICHAEL R * JOHNSON, 0000
PAGE A * KARSTETER, 0000
JEFFERY A * KITCHENS, 0000
FRANCIS P * KOOPMAN, 0000
SHAWN T * LOCKETT, 0000
THEODORE * NASIOTIS, 0000
JEFFREY P * NELSON, 0000
STEPHEN J * PINKERTON, 0000
DAVID A * RIOS, 0000
LAURENT M * ST, 0000
DEYDRE S * TEYHEN, 0000
AMY J * TREVINO, 0000
WILLIAM R * UNGUREIT, 0000
JOHNNY R * VANDIVER, 0000
RICHARD A * VILLARREAL, 0000
ROGER M * WILLIAMS, 0000
DAVID A * WRIGHT, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES ARMY NURSE CORPS AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AN ASTERISK(*)) UNDER TITLE 10, U.S.C., SECTIONS 624, 531, AND 3064:

*To be major*

TEDD S * ADAIR II, 0000
FARRELL H ADKINS, 0000
PAUL B * ASETRE, 0000
VELVET D * BAKER, 0000
ELLEN S * BARKSDALE, 0000
THOMAS G * BAUGHAN, 0000
ANDREW C BAXTER, 0000
WILLIAM R * BECKER, 0000
LINDA L * BLACKMAN, 0000
STANLEY BORDEN III, 0000
ANNAMAE CAMPBELL III, 0000
CHRISTINA M * CASSIN, 0000
JAMIE P * CHERRY, 0000
PATRICIA A * COBURN, 0000
JAMIE F CORNALI, 0000
MICHAEL L * COX, 0000
DEREK L * CURTIS, 0000
FREDERICK L DAVIDSON, 0000
CECILIO B * DEJESUS, 0000
LAURA D DESNOO, 0000
LISA A DRUMMOND, 0000
JODY L ENNIS, 0000
KENNETH A FERRELL, 0000
KIRSTEN M FITCH, 0000
HERBERT J FLACHOFSKY, 0000
DEYOUNG V FLOOD, 0000
LISA R * FORD, 0000
MELISA A * GANTT, 0000
EUGENIO GARCIA JR., 0000
JANET D GOODART, 0000
TAD * GOW, 0000
PEGGY T * GUDERIAN, 0000
KAY * HADLEY, 0000
MICHELLE D * HAIRSTON, 0000
JAMES G * HAMPTON, 0000
REBECCA L * HILFIKER, 0000
TIMOTHY L * HUDSON, 0000
CAROL E HUNTER, 0000
SAMUEL L JONES JR., 0000
SHANNON M * JONES, 0000
VALERIE A * JONES, 0000
DOUGLAS E * KIRCHER, 0000
LAURE A * KLINE, 0000
KENNETH R KOVATS, 0000
LISA * LEAZENBY, 0000
CHARLES T LENT, 0000
CHARLES W * LEONARDO, 0000
TODD R LITTLE, 0000
MICHAEL J * LOUGHREN, 0000
MICHAEL E LUDWIG, 0000
DARIN S * MARCHOK, 0000
HENG M * MCCALL, 0000
PEGGY K * MCMILLAN, 0000
ELIZABETH M MILLER, 0000
CHRISTOPHER * MILSTEAD, 0000
REBECCA N * MIONE, 0000
WESLEY A MORGAN, 0000
DANA A * MUNARI, 0000
DONALD L * NANCE, 0000
ROBIN R NEUMEIER, 0000
MELLEN P * ONEAL, 0000
SUSAN * ORCUTT, 0000
DAVID J PARIS, 0000
SCOTT L PARIS, 0000
NANCY E PARSON, 0000
SYLVIA F PEREZ, 0000
JOSE A PEREZVELAZQUEZ, 0000
ANTHONY D PEVERINI, 0000
BRIAN E * PREHN, 0000
DELORIS S * QUATTLEBAUM, 0000
JAMES R REED, 0000
RICHARD T * REID, 0000
RUTH A RING, 0000
MILAGROS * ROSA, 0000
MICHAEL L * SCHLICHER, 0000
DOROTHY L SHACKLEFORD, 0000
PAMELA M * SOLETLINDSAY, 0000
YOUNGHEE * SONG, 0000
BRITTANY R * SPEERS, 0000
SONYA * STREETERCHAMBERS, 0000
STEVEN R * STUDZINSKI, 0000
CYNTHIA L * SVEINE, 0000
STACY E USHER, 0000
MARIA M VANTERPOOL, 0000
JAMES * VOGEL, 0000
ROBERT C * WAGNER, 0000
ERIC H * WATSON, 0000
KIMBERLY E * WILLIAMS, 0000
SARAH A WILLIAMSBROWN, 0000
JASON S WINDSOR, 0000
JOSEPH N WINTER, 0000
REBECCA A * YUREK, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY IN THE ARMY NURSE CORPS (AN), UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

*To be major*

DAVID W GARCIA, 0000 AN
ARLIN C GUESS, 0000 AN
LINDA E JONES, 0000 AN

*To be captain*

SHERI A BURTON, 0000 AN
JAMES E BUTERA, 0000 AN
RENE CARDONA, 0000 AN
JESUS FLORES, 0000 AN
RONALD S GESAMAN, 0000 AN
HAYONG N HIRST, 0000 AN
JAMES R HUNLEY JR., 0000 AN
BONNIE J JEANICE, 0000 AN
HENG M MCCALL, 0000 AN
PEGGY K MCMILLAN, 0000 AN
LINDA I NOBACH, 0000 AN
SHERRI K RIBBING, 0000 AN
JEFFREY D RUMFIELD, 0000 AN
JUDY A SMITH, 0000 AN
CHARLES E TRUDO, 0000 AN
HOPE M WILLIAMSON, 0000 AN

*To be first lieutenant*

TERRY E RAINES, 0000 AN

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY IN THE MEDICAL SERVICE CORPS (MS),

UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3064:

*To be major*

DONOVAN G GREEN, 0000 MS
CATHY N TROUTMAN, 0000 MS

*To be captain*

TIMOTHY C ACEL, 0000 MS
SHAWN M ALDERMAN, 0000 MS
MEAGAN M BACHARACH, 0000 MS
NICHOLAS K BATCHELOR, 0000 MS
SLAVA M BELENKIY, 0000 MS
ADAM L BROWN, 0000 MS
ARCHIE J CHAPMAN SR, 0000 MS
SUNGHUN CHO, 0000 MS
DANIEL V CORDARO, 0000 MS
MARK S CRAGO, 0000 MS
AMANDA S CUDA, 0000 MS
SCOTT P CUDA, 0000 MS
CORD W CUNNINGHAM, 0000 MS
JAY M DINTAMAN, 0000 MS
BRAD M DOLINSKY, 0000 MS
ZACHARY E FISHER, 0000 MS
JOANNA GARNAS, 0000 MS
JAMES L GEE, 0000 MS
DENA L GEORGE, 0000 MS
ELIZABETH A GOWDY, 0000 MS
MARK L HARSHANY, 0000 MS
NIDAL M HASAN, 0000 MS
WILLIAM E HERMAN, 0000 MS
BENNIE L HUDSON, 0000 MS
CRISTIN A KILEY, 0000 MS
PETER KREISHMAN, 0000 MS
JEFFREY T LACZEK, 0000 MS
DOUGLAS R LANGFORD, 0000 MS
ABIGAIL J LEE, 0000 MS
JOSEPH M LURIA, 0000 MS
CAMILLE F MCGANN, 0000 MS
JOSEPH C MCLEAN, 0000 MS
ETHAN A MILES, 0000 MS
LUKE M MILLER, 0000 MS
FOUAD J MOAWAD, 0000 MS
SCOTT J MURCIN, 0000 MS
JASON M NAKAMURA, 0000 MS
JOSHUA T NAPIER, 0000 MS
SHAHIN NASSIRKHANI, 0000 MS
NAVEED A NAZ, 0000 MS
ADAM S NIELSON, 0000 MS
PETER D OCONNOR, 0000 MS
DAVID OWSHALIMPUR, 0000 MS
TERRIE L PITTMAN, 0000 MS
THEODORE T REDMAN, 0000 MS
JULIE A REID, 0000 MS
ELIZABETH H RORICK, 0000 MS
KEITH A SCORZA, 0000 MS
SHAWN C SHAFFER, 0000 MS
GERALD W SURRETT, 0000 MS
MICHAEL P SZCZEPANSKI, 0000 MS
SCOT A TEBO, 0000 MS
KHOAN T THAI, 0000 MS
JAMES Y WANG, 0000 MS
ERIC D WEBER, 0000 MS

TIMOTHY S WELCH, 0000 MS
DANIEL M WILLIAMS, 0000 MS

IN THE MARINE CORPS

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To Be lieutenant colonel*

KARL G. HARTENSTINE, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

MICHAEL S. NISLEY, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

KENNETH O. SPITTLER, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be lieutenant colonel*

LEONARD HALIK III, 0000
ERNEST R. HINES, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

*To be colonel*

THOMAS DUHS, 0000
RUSSELL C. DUMAS, 0000
WILLIAM M. LAKE, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

LELAND W. SUTTEE, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

CARLOS D. SANABRIA, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

JOHN W. BRADWAY JR., 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

KATHLEEN A. HOARD, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

JEFFREY A. FULTZ, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

ERIC R. MCBEE, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

CHRISTOPHER J. AMBS, 0000
RANDALL C. BAKER, 0000
RICHARD A. BOWERS, 0000
WILLIAM M. SIMONS, 0000
DOUGLAS E. WEDDLE, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

ROBERT E. COTE, 0000
KYLE T. DEBOER, 0000
BRET M. MCLAUGHLIN, 0000
FRANK L. WHITE, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

CHARLES W. ANDERSON, 0000
TRACY G. BROOKS, 0000
ROBERT D. GINGRAS, 0000
JERRY B. SCHMIDT, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

PATRICK W. BURNS, 0000
ROY E. LAWRENCE, 0000
DANIEL S. RYMAN, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

DOUGLAS M. FINN, 0000
RONALD P. HEFLIN, 0000

THE FOLLOWING NAMED LIMITED DUTY OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

*To be major*

CALVIN L. HYNES, 0000
CHARLES S. MORROW JR., 0000

## CONFIRMATIONS

Executive nominations confirmed by the Senate February 10, 2003:

THE JUDICIARY

JOHN R. ADAMS, OF OHIO, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO.

S. JAMES OTERO, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO.

ROBERT A. JUNELL, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS.

## WITHDRAWAL

Executive message transmitted by the President of the Senate on February 11, 2003, withdrawing from further Senate consideration the following nomination:

JEFFREY SHANE, OF THE DISTRICT OF COLUMBIA, TO BE ASSOCIATE DEPUTY SECRETARY OF TRANSPORTATION, VICE STEPHEN D. VAN BEEK, RESIGNED, WHICH WAS SENT TO THE SENATE ON JANUARY 9, 2003.